

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 4 of 4
Pages 1385 - 1839

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1 discussions with Ms. Sherman in regards to settling
2 the dispute?

3 A. Not directly with her; but based on my
4 analysis, I prepared a letter, a settlement -- a
5 proposed settlement offer for Michael's signature.

6 Q. Okay. Turning now to the first page of
7 Exhibit 12. Did the information Ms. Powell provided
8 you in Exhibit 12, particularly page 1, have any
9 bearing on your analysis of the business assets?

10 A. Sure did.

11 Q. Tell me about it.

12 A. It triggered an alarm that I needed to
13 look carefully at something and I did.

14 Q. Tell me about that a little further,
15 please.

16 A. Well, I recall a series of letters --
17 maybe not a series, but one letter in particular
18 between Terry and his brother about winding up their
19 affairs. And so I looked carefully at Chic Antiques
20 to see if that had happened and it did not happen.
21 So legally, although they had talked about it, it
22 had never been implemented.

23 Q. And, therefore, Terry still maintained
24 an interest?

25 A. Yes, he did. And I also looked -- and I

1 can't recall having all of their bank records, but
2 it seems like I did look at some of the bank records
3 to see if something of value had gone out to
4 purchase that interest and I never found anything
5 that would indicate that interest had been sold.

6 Q. So you didn't find the source funds for
7 the acquisition?

8 A. And the tax returns and the corporate
9 returns didn't reflect that it had -- that Terry had
10 ever disposed of his interest either. And also,
11 remember, this is a pre-marital asset, so there was
12 still a question of transmutation.

13 Q. This being Chic Antiques?

14 A. Right. And the only reason I know about
15 that is that Michael and I have talked about
16 transmutation.

17 Q. How about the issue regarding Columbia
18 Management?

19 A. Well, I looked at that. Columbia
20 Management was an active concern and I did the same
21 analysis for Columbia Management that I did with
22 Chic Antiques and that was also a part of my
23 deposition with Tim Tyler. We covered all of that.

24 Q. Did you conclude that Tim Tyler was
25 named as a partner in Conrad's attempt to dilute the

1 assets?

2 A. He remained a partner and I also believe
3 that I -- my research indicated that there had never
4 been any attempts to dilute the assets. Carolyn had
5 suspected it, but I didn't see any grounds to
6 confirm those suspicions.

7 Q. What would you describe as the ways in
8 which a party can dilute an asset?

9 A. Well, first, you can transfer it. You
10 could issue shares in a corporation, if the asset
11 were owned by the corporation, so that your
12 shareholder interest decreased.

13 Q. How about wasting corporate assets?

14 A. I didn't see any evidence of wasting
15 corporate assets here. Most of these assets were
16 real estate and this was before the market collapsed
17 and real estate tended to hold its value. And I
18 traced all of the transfers in and out of any real
19 estate. Now, there were also some discussions about
20 rugs and about, you know, the rugs being shipped off
21 to North Carolina; but before we had an opportunity
22 to depose Terry Powell, this case was settled.

23 Q. Did you reach any conclusions on the rug
24 business, as to whether it was a viable entity,
25 marital asset, anything of that sort?

1 A. I don't think that I saw it as a viable
2 asset. I think my investigation confirmed what
3 Carolyn told me, that it was a money loser.

4 Q. Were there any points made by Ms. Powell
5 in Exhibit 12 that turned out not to be true?

6 A. I don't think Conrad Powell considered
7 Carolyn to be his full partner.

8 Q. In which business are you talking about
9 now?

10 A. Chic Antiques.

11 Q. Okay. Were there any items of evidence
12 to make an argument that she was a partner?

13 A. Well, she had told me that there had
14 been promises made that, if she gave up her business
15 on Harden Street, I think she had a location there,
16 that she would become a member of the LLC at a later
17 time; but -- and also her sweat equity that she put
18 in the business. And I believe those were questions
19 that I asked Conrad in his deposition and he
20 disputed both of those.

21 Q. What did you think of the merits of the
22 argument on Ms. Powell's behalf? Did she have a
23 good argument?

24 A. I didn't know enough about the law to
25 have an opinion. I didn't know if -- what the --

1 how the Family Court would look at that. I just
2 knew that it was an argument that we could make.
3 And I think that when Carolyn and I met to discuss a
4 settlement proposal, we discussed the weaknesses in
5 her position; but I don't think I had enough
6 knowledge of the law to. . .

7 Q. How were you able to discuss those
8 issues with Ms. Powell if you didn't have enough
9 familiarity with the law to even today give an
10 opinion?

11 A. I asked my partner, who does a lot of
12 Family Court Law, to sit in on that meeting and he
13 gave us his opinion from a Family Court perspective.

14 Q. And what partner was that?

15 A. William Bird.

16 Q. And what did Mr. Bird opine?

17 A. That the issues were weak.

18 Q. Ms. Powell's claim was weak?

19 A. Right. Right.

20 Q. And we're talking now her claim to sweat
21 equity as creating some type of ownership interest
22 in Chic Antiques?

23 A. Right. Right.

24 (PLF. EXH. 13, Reid Smith Notes, Bates
25 Stamped SMI_00135, was marked for

1 identification.)

2 BY MR. PENDARVIS:

3 Q. Mr. Smith, I apologize. This might
4 needed to have been included earlier, with Exhibit
5 11 maybe, and this might be a copy of page 2 of
6 Exhibit 11.

7 A. I think it is.

8 Q. Except this one has got some handwritten
9 notes in the middle, touching on Paragraph Number 2.
10 Do you see that in Exhibit 13?

11 A. Uh-huh.

12 Q. This question is, is that your
13 handwriting in the middle?

14 A. No. That's too neat to be my
15 handwriting.

16 Q. So does that, by default, exclude Mr.
17 Taylor as well?

18 Do you know whose handwriting appears on
19 Exhibit 13?

20 A. I do not.

21 Q. Okay. Do you know what is referred to
22 as the Hipp shares?

23 A. I do.

24 Q. Tell me about that.

25 A. He was one of the original shareholders

1 of the partnership, I believe.

2 Q. Okay.

3 A. And I think my analysis identifies that.

4 Q. Okay.

5 (PLF. EXH. 14, Handwritten Note to Reid,
6 Dated April, 4, 2006, Bates Stamped
7 SMI_01210, was marked for
8 identification.)

9 BY MR. PENDARVIS:

10 Q. Mr. Smith, Exhibit 14 has been passed to
11 you. This appear to be a handwritten note from Ms.
12 Powell to you dated April 4, 2006?

13 A. Uh-huh.

14 Q. Have you seen this document before
15 today?

16 A. Yes, I believe so.

17 Q. Is this a cover letter to some materials
18 that Ms. Powell brought to you in April of '06?

19 A. I believe she dropped -- she hand
20 delivered them to our office and this was -- I may
21 have been out of the office at the time and this was
22 on the -- on the documents that she brought by.

23 Q. Was Ms. Powell consistent through the
24 representation of supplying you information and
25 helping gather any information that you needed to

1 help evaluate the business assets for the marital
2 estate?

3 A. Well, my opinion is that she was
4 helpful, but not organized, and that there were
5 documents that she produced that she had to go to
6 various sources to retrieve. So I don't know if
7 that answers your question or not.

8 Q. Did you ever ask Ms. Powell to get
9 things or locate things that she simply didn't just,
10 you know, respond to or didn't --

11 A. No. I think she would say, I couldn't
12 find it or -- she never ignored a request.

13 (PLF: EXH. 15, Letter to J. Michael
14 Taylor from Reid B. Smith, With Time
15 Line Analysis, was marked for
16 identification.)

17 BY MR. PENDARVIS:

18 Q. Mr. Smith, you've given some testimony
19 earlier, I believe, to a May letter. Is this the
20 May letter you were talking about --

21 A. It is.

22 Q. -- to Mr. Taylor?

23 A. Yes.

24 Q. And summarily describe this letter for
25 me, please.

1 A. Well, this is the results of the
2 investigation that I'd done from February to May.
3 And, in here, I set out my opinion and talk about
4 the companies that I'd investigated and just gave a
5 report.

6 Q. Are there any conclusions reached in
7 this report that you later learned were incorrect?

8 A. I think the RC2 Wheels Racing, I think
9 that turned out to be incorrect.

10 Q. And that's a reference on page 2?

11 A. Right. I think that I later accounted
12 for that 660,000 for Oak Hill. And I think the
13 Pawleys proceeds was approximately 1.7 instead of
14 1.8.

15 Q. And this letter is accompanied by a
16 spreadsheet and some other information summarizing
17 various assets?

18 A. Yes.

19 Q. Is that a fair characterization?

20 A. Right. And income, net income, things
21 of that sort.

22 Q. And is this essentially a time line of
23 material events that related to the businesses owned
24 by the Powells?

25 A. Yes.

1 Q. Was there information you needed and did
2 not have available to make this report as of May 19,
3 2006?

4 A. I don't recall anything that I lacked to
5 make the report. I don't recall anything that I had
6 requested that had not been provided.

7 Q. What would distinguish this report from
8 the report generated by a forensic accountant?

9 A. I don't know.

10 Q. Have you ever seen a report generated by
11 a forensic accountant?

12 A. I don't think so.

13 Q. Did you look at any reports used in
14 other Family Court matters that involved business
15 assets to help prepare what we're looking at and
16 what's been marked Exhibit 15?

17 A. No.

18 Q. How did you know what to do?

19 A. I did what I thought was right.

20 Q. Did Mr. Taylor communicate with you
21 after receiving this letter dated March 19, 2006
22 marked as Exhibit 15?

23 A. Yes, I'm sure we communicated. I don't
24 recall any specific conversations, but I do recall
25 that he confirmed that he had it and that later we

1 talked about using this as the foundation for making
2 settlement proposals.

3 Q. Were there any discussions in the May
4 2006 time period about your serving as an expert,
5 providing some of these opinions to the Court?

6 A. I think, yes, there was some discussion
7 and the conclusion was that we didn't know whether
8 I'd be an attorney or a witness. We were still
9 undecided on that point.

10 Q. After Mr. Taylor received this letter
11 and you and Mr. Taylor communicated about plans that
12 you've just testified about, possibly using this for
13 the settlement demand, what were the plans for the
14 immediate preparation of Ms. Powell's case after you
15 all discussed this letter?

16 A. I don't think I had discussions -- I
17 don't recall any discussions with Michael, except to
18 him saying that we want to depose Conrad. We want
19 to depose Tim Tyler, who is Conrad's accountant, and
20 then to try to get the case settled.

21 Q. Were there any discussions about the
22 costs that would be involved to develop this
23 testimony, take these depositions?

24 A. I don't think so. Not between Carolyn
25 and me or Michael and me.

1 MR. PENDARVIS: Dead battery.

2 MR. WATSON: Reid, you all right for a
3 break? We've been going another hour, hour and
4 fifteen minutes.

5 THE WITNESS: Thank you.

6 MR. PENDARVIS: Break or go?

7 MR. WATSON: We can keep going for a
8 while. I mean, he's okay. Unless y'all want one?

9 MR. HILL: (Indicating.)

10 BY MR. PENDARVIS:

11 Q. When you and Mr. Taylor were having
12 discussions about how the case was going to proceed
13 and what depositions needed to be taken and the
14 plans for making settlement proposals, to what
15 degree was Ms. Powell included in that discussion,
16 if any?

17 A. I think she was included in everything.
18 I remember meeting a couple of times at Michael's
19 office after this, phone calls, and I'm assuming
20 that Carolyn and Michael were talking in addition to
21 that.

22 Q. That assumption is based on what?

23 A. Just knowing how Michael practices and
24 just based on conversations that Michael and I had
25 that indicated that he'd talked to Carolyn.

1 Q. Okay. Were there any conversations with
2 Mr. Taylor about the fact that no les pendencies,
3 not sure what the plural is on that. That is no les
4 pendens had been filed and how that may affect the
5 marital estate --

6 A. I don't think so.

7 Q. -- as far as the -- let me get this.
8 I'm trying to get into the strategies.

9 Did you have discussions with Mr. Taylor
10 that involved a communication with Ms. Powell that
11 said, well, in our judgment, we think it's going to
12 be best to not file les pendencies and not do things
13 to protect martial assets? Did y'all have any of
14 those conversations with Ms. Powell?

15 A. I don't recall any.

16 Q. Same question for temporary hearings.
17 Did you have any conversations with Ms. Powell and
18 Mr. Taylor in which the strategy about not
19 proceeding with a temporary hearing was discussed?

20 A. I recall a discussion and I'm trying to
21 distinguish between what may have been discussed and
22 what I learned at one of the depositions. There was
23 a strategy reason for that. But I think we could
24 have discussed that what Conrad was paying her was
25 more than what she could have gotten in a temporary

1 hearing, but I don't -- I can't give you a date or
2 where or when that happened, but I do recall vaguely
3 that we may have discussed that.

4 Q. And it's possible that you learned that
5 in depositions in this litigation?

6 A. It's possible, too, so. . .

7 Q. Do you recall whether that was a
8 telephone conference with you, Mr. Taylor and Ms.
9 Powell?

10 A. No, I don't. It would have been maybe
11 when Michael and I met to discuss the case.

12 Q. Were there ever any conference calls
13 where -- three-party conference calls where all
14 three, you, Mr. Taylor and Ms. Powell, were on the
15 telephone during the entire course of the
16 representation?

17 A. It seems like there was at least one,
18 but I'm not sure.

19 Q. Same question for meetings?

20 A. Yes. The three of us met. I can recall
21 at least three before Conrad's deposition. I mean,
22 that would be from the beginning to that deposition,
23 where all three of us met.

24 Q. And those meetings were at Mr. Taylor's
25 office?

1 A. Yes, I think one was at his office on
2 Main Street and then two were at his current office.

3 Q. On Devine?

4 A. Uh-huh.

5 Q. Yes?

6 A. Yes.

7 MR. PENDARVIS: We'll get him trained as
8 a witness.

9 (PLF. EXH. 16, E-mail to Reid from
10 Carolyn, Bates Stamped SMI_00570, was
11 marked for identification.)

12 BY MR. PENDARVIS:

13 Q. Mr. Smith, take a moment and look at
14 Exhibit 16.

15 A. (Complying.) Okay.

16 Q. First off, this is an e-mail from Ms.
17 Powell to you and your handwriting suggests it was
18 May 24, 2006; is that correct?

19 A. That is correct.

20 Q. In these communications, and I'll just
21 blame all of this on AOL, was Mr. Taylor being
22 copied on these e-mails from Ms. Powell?

23 A. I don't so think. I think Michael's
24 entry into the electronic world was even later than
25 mine.

1 Q. Okay. Were you sharing the substance of
2 these communications from Ms. Powell to you with Mr.
3 Taylor?

4 A. In general terms, but not specifics.

5 Q. Again, Ms. Powell is expressing a
6 concern about the delay and proceeding with her
7 domestic case?

8 A. Right. Right. That's the gist of this,
9 but I don't -- I'm pretty confident that this was
10 not forwarded to Michael and I probably did not
11 discuss it with Michael.

12 (PLF. EXH. 17, E-mail to Carolyn from
13 Reid, Bates Stamped SMI 00569, was
14 marked for identification.)

15 BY MR. PENDARVIS:

16 Q. Mr. Smith, Exhibit 17 has been passed to
17 you and it again appears to be an e-mail from May
18 24, 2006 from you. Apparently, this is a reply
19 e-mail --

20 A. Uh-huh.

21 Q. -- back to Ms. Powell. And what did you
22 do to move the case forward as expeditiously as you
23 could after May 24, 2006?

24 A. I don't recall specifically what I may
25 have done. I think I may have talked to Michael

1 about her concerns about the delay, but I don't
2 recall doing anything immediately after this to move
3 the case along.

4 (PLF. EXH. 18, E-mail to Michael from
5 Reid With Attachments, Bates Stamped
6 SMI_00571 through 00582, was marked for
7 identification.)

8 BY MR. PENDARVIS:

9 Q. Mr. Smith, Exhibit 18 has been passed
10 along to you and it appears that it wasn't long
11 after May 2006 that Mr. Taylor entered into the
12 digital world?

13 A. Right.

14 Q. Because this appears to be an e-mail
15 from you to Mr. Taylor, is that correct, August 4,
16 2006?

17 A. Could be the very first one. I'm not
18 confident, but it might be.

19 Q. Well, I'll represent to you I've not
20 seen anything before this date; but it's a good
21 thing, I guess. Attached to this e-mail -- well,
22 let me ask. The income analysis, asset summaries
23 and other materials that are attached to this
24 e-mail -- let me ask. Were those documents attached
25 to this e-mail?

1 A. Yes, they were.

2 Q. And if I --

3 A. And I prepared them.

4 Q. And I understand that the chronology
5 that begins, if you look at the numbers on the
6 bottom right-hand corner, SMI 00577?

7 A. Yes.

8 Q. Isn't that the same chronology we saw
9 earlier in another exhibit?

10 A. I don't know. I'll have to look.

11 Q. You're welcome to compare that if you
12 want. I think it's Exhibit 15, possibly.

13 A. I don't see it.

14 Q. Okay. Did you find Exhibit 15?

15 A. I did.

16 Q. So this is a different chronology?

17 A. Oh, okay. Wait a minute.

18 Q. Beginning on page 577.

19 A. Yes. I'm sorry. That is the same
20 chronology.

21 Q. Okay. The income analysis and asset
22 summaries appear to be some new information?

23 A. Right.

24 Q. Are there any items -- page 2 of Exhibit
25 18, page 2, 3, 4, and 5 and 6 of the exhibit, at any

1 point later in the representation, did you discover
2 any information that indicated that the amounts and
3 information stated in this part of Exhibit 18 were
4 incorrect or --

5 A. Well, yeah. The first one would be the
6 Wheels Sports Group, where I talked about him having
7 809 shares remaining. I later learned that those
8 were only warrants and, because of events that
9 transpired and the warrants couldn't be exercised,
10 so I concluded that the -- that were there no
11 remaining shares.

12 Q. That's the -- okay. I see that. 809
13 shares remaining?

14 A. Right.

15 Q. Okay. And we know the Pawleys Island
16 real estate ultimately sold?

17 A. Right. And we had an accounting of
18 those funds. A million in a qualified investment
19 account and 707,000 was in an NBSC CD that was still
20 in existence. Both of those accounts were in
21 existence.

22 Q. And just so we can understand your
23 notes, when it says sold Lakeshore, the numbers
24 below that were the net proceeds from those sales,
25 same for Devonshire?

1 A. That's correct. And I tried to
2 determine what happened to the net proceeds.

3 Q. And page 3 of Exhibit 18 says -- there's
4 one that says, an entry toward the bottom of page 3,
5 that says 12/03 separation?

6 A. Right.

7 Q. What was that intended to demonstrate?

8 A. When the parties separated and the
9 transactions that occurred before separation and
10 after separation.

11 Q. During your representation of Ms. Powell
12 in this domestic matter, did you come to learn when
13 she had first engaged Taylor/Potterfield?

14 A. Not specifically, no. Not until I heard
15 it in the deposition, I think.

16 Q. In this lawsuit?

17 A. Right.

18 Q. Okay. From whom did you get the
19 information that the December 3 -- excuse me,
20 December 2003 date was the date of separation?

21 A. I may have gotten it from the pleadings,
22 the complaint.

23 Q. The fourth page, carrying over to the
24 next page, it says query?

25 A. Uh-huh.

1 Q. Did you ever get an answer to your
2 question, what happened to the \$502,000 in sales
3 from the Lakeshore and Devonshire properties?

4 A. I don't recall. I believe I may have
5 asked Conrad in his deposition what happened to
6 those funds.

7 Q. Did Mr. Taylor ever give you any
8 information on that point?

9 A. I don't think so. I don't recall.

10 Q. Same question for Ms. Potterfield?

11 A. I think Ashlin was no longer active in
12 the case and all of my communications were through
13 Michael.

14 Q. Okay. Was Ms. Potterfield ever involved
15 in the divorce proceedings after you became
16 involved?

17 A. Not to my knowledge.

18 Q. Next paragraph under query begins with
19 Kenilworth?

20 A. Uh-huh.

21 Q. It seems like you're asking, in addition
22 to a share of net proceeds, is Carolyn entitled to a
23 credit for NBSC second mortgage or should we use
24 this as a foundation for transmuting?

25 A. Uh-huh.

1 Q. Did you get an answer to that question?

2 A. I think it was discussed in terms of
3 weaknesses, but I don't -- my purpose in this was
4 highlighting what I saw were the issues that needed
5 to be addressed, you know, from the Family Court
6 side. And it may be a recommendation on my part
7 that something should be considered.

8 Q. And I'm trying to find out, did Mr.
9 Taylor respond to this?

10 A. Well, he wouldn't have been -- I wasn't
11 involved in that aspect of the case. I mean, he
12 wouldn't call me and say, we're going to do this
13 because it's a, you know, transmutation. I think he
14 was competent enough to do that on his own without
15 consulting with me.

16 Q. Moving down to the bottom of this, did
17 any conclusive summary numbers that you summarily
18 concluded for each of these assets, Wheels, Pawleys,
19 Lakeshore, Devonshire, Kenilworth, were any of those
20 numbers ever -- did you ever come across any
21 evidence that showed those numbers were inaccurate?

22 A. Well, I just said Wheels possibly.

23 Q. Okay.

24 A. And, yeah, I think when I was reviewing
25 the closing statement on Kenilworth, I think the net

1 may have been 53, instead of 57.

2 Q. Okay. Same questions when we turn to
3 the next page on the marital interests in the
4 business, this summary report showing Blossom-Huger,
5 Chic and Columbia Management. Did you ever come
6 across evidence that suggested any of the numbers or
7 information you listed were inaccurate?

8 A. No.

9 (PLF. EXH. 19, E-mail to Reid Smith from
10 Carolyn Powell, Dated August 8, 2006,
11 was marked for identification.)

12 BY MR. PENDARVIS:

13 Q. Mr. Smith, a document marked Exhibit 19
14 has been passed to you. It appears to be an August
15 8, 2006 e-mail from Ms. Powell -- actually, it's a
16 thread. The first one from you to Mr. Taylor, with
17 a copy to Ms. Powell, correct, and then second a
18 response from Ms. Powell to you?

19 A. The first is from Carolyn to me. I
20 don't see a copy to Michael. Then there's one
21 that's from me to Michael with a copy to Carolyn.

22 Q. Right. And the bottom part of the page
23 is August 4 at 11:39 and the top one is August 8,
24 7:47?

25 A. Right. That's correct.

1 Q. So the first one would have been from
2 you to -- who is ADent55?

3 A. I believe that was Michael's e-mail
4 address before he became sophisticated --

5 Q. Okay.

6 A. -- in electronics.

7 Q. And the cc to Sacredtales is Ms. Powell?

8 A. That's correct.

9 Q. So the first e-mail on August 4 is from
10 you to Mr. Taylor, copy to Ms. Powell and it's
11 including this income summary?

12 A. Right. I believe that's correct.

13 Q. And the questions I've got for you deal
14 primarily with Ms. Powell's response. What did you
15 do when you saw where she's referring, hopefully my
16 case has been placed back on the front burner?

17 A. I didn't do anything. I saw that as
18 just a comment that she made.

19 (PLF. EXH. 20, E-mail from Carolyn
20 Powell to Reid Smith, Dated August 9,
21 2006, was marked for identification.)

22 BY MR. PENDARVIS:

23 Q. Mr. Smith, a document has been passed to
24 you marked as Exhibit 20. It appears to be an
25 e-mail from you -- excuse me from Ms. Powell to you.

1 Again I'm going to summarize here, expressing her
2 frustrations with the delay in the prosecution of
3 her domestic case. My question to you is, first
4 off, did you receive this e-mail?

5 A. I think -- I think so. I don't recall
6 seeing this in my electronic records; but, again,
7 this was before my office was as sophisticated as it
8 is now and it's possible that it was -- I just -- I
9 didn't locate it when I was going through my
10 records.

11 Q. Do you recall receiving this e-mail?

12 A. I think so, yes.

13 Q. Did you have any conversations with Mr.
14 Taylor after you received this e-mail and really the
15 last couple of e-mails we have been looking at where
16 Ms. Powell's expressing her frustration over the
17 delay?

18 A. I think I talked to Michael again about
19 her wanting to move the case along and, by this time
20 though, we were at the point where depositions were
21 being scheduled. And until we got through those
22 depositions, I didn't think we would be in a
23 position to actually go to trial.

24 Q. What efforts were being made to get the
25 depositions scheduled?

1 A. I think Michael's paralegal was
2 coordinating the dates with Marne Sherman's office.

3 Q. And we're going to get to it, but when
4 approximately did the depositions take place?

5 A. I think Conrad's took place -- I believe
6 it was originally scheduled for late October,
7 November; but we had to reschedule and it was
8 finally held in December. And then I think
9 Carolyn's was in January. We wanted to do Conrad's
10 first. And then I think Tim Tyler's was February of
11 2007.

12 Q. And, as you said, Terry Powell never had
13 his taken and then --

14 A. Because it settled right after Tim
15 Tyler's deposition.

16 (PLF. EXH. 21, E-mail from Carolyn
17 Powell to Reid Smith, Dated November 6,
18 2006, was marked for identification.)

19 THE WITNESS: Okay.

20 BY MR. PENDARVIS:

21 Q. Wanted to make sure you had a chance to
22 read it.

23 A. I was reading it.

24 Q. A document marked as Exhibit 21 to your
25 deposition has been passed to you. This appears to

1 be an e-mail and, now, we're into November. This is
2 November 6, 2006 from Ms. Powell to you. Do you
3 recall receiving this e-mail?

4 A. I think so; but, again, I don't think it
5 was in my electronic records, but I do think I
6 received it.

7 Q. Again, first paragraph, she's expressing
8 her frustrations on the delay?

9 A. Uh-huh.

10 Q. Correct?

11 A. Uh-huh.

12 Q. Yes or no?

13 A. Yes. Sorry.

14 Q. In the middle paragraph, she's raising
15 some questions about the deposition of Mr. Conrad
16 Powell. Do you see that?

17 A. Yes, I do.

18 Q. And did you respond to those questions,
19 to Ms. Powell?

20 A. I don't recall. I'm sure I did, but I
21 don't recall a specific conversation.

22 Q. What do you generally recall about the
23 conversation in response to the questions raised in
24 the middle paragraph of Exhibit 21?

25 A. Well, I think that, at this point, I may

1 have said something about why Conrad needed to be
2 deposed, that we needed to confirm through his
3 testimony what my investigation had uncovered. And
4 I also think that it was at this point when, because
5 of Carolyn's frustrations, that I may have indicated
6 to Carolyn that, if she wanted me to find another
7 Family Court lawyer, that I would help her do that.
8 I think she was already considering that as part of
9 the venting.

10 Q. By November 6, 2006, had Ms. Powell
11 explained how long she had been represented by the
12 Taylor/Potterfield firm?

13 A. Well, I was aware of it by then. Sure.

14 Q. Did you relay -- well, let's go to the
15 next paragraph. She's identifying her agenda, what
16 she would like to have accomplished in the third
17 paragraph; correct?

18 A. Yes.

19 Q. Did you relay this information to Mr.
20 Taylor?

21 A. Again, I think I may have expressed to
22 Michael her need to move the case along or to get it
23 settled.

24 Q. If you look at the next to the last
25 sentence in the third paragraph that begins -- well,

1 it says, I'm not sure how Michael's strategy gets me
2 there now. What did you understand she was
3 referring to in terms of Michael's strategy?

4 A. I don't know.

5 Q. Well, backing up a little bit, it sounds
6 like -- it sounds to me like a deposition involves
7 additional depositions, litigation, procedures that
8 could take months. You see that?

9 A. Yes.

10 Q. Is that maybe what she was referring to
11 in terms of Michael's strategy?

12 A. I don't know. I do know that she wanted
13 a settlement offer and I think -- at this point, I
14 can't remember if Michael instructed me to or if I
15 volunteered to do a settlement offer for Carolyn.
16 To actually type the settlement letter that she
17 could -- that she would approve.

18 Q. Okay.

19 (PLF. EXH. 22, Fax to Reid Smith from J.
20 Michael Taylor, Dated November 16, 2006,
21 Bates Stamped MIT005109 through 005129,
22 was marked for identification.)

23 BY MR. PENDARVIS:

24 Q. Before we get to Exhibit 22, Mr. Smith,
25 by November 2006, had you discussed with Mr. Taylor

1 Ms. Powell's thoughts about getting another attorney
2 or law firm to represent her on the domestic matter?

3 A. I don't think I did, no.

4 Q. Why not?

5 A. Because the decision had not been made.
6 She didn't tell me she wanted it. She didn't say
7 no.

8 Q. Did you say anything to Mr. Taylor like,
9 you know, she's definitely concerned about how this
10 case is being managed?

11 A. I don't recall questioning how he was
12 managing the case or telling her -- telling Michael
13 that she was talking about getting another lawyer,
14 no.

15 Q. But in terms of frustration, Ms.
16 Powell's frustrations with the length of time it was
17 taking, what did you tell Mr. Taylor?

18 A. Again, that she wanted to move the case
19 along or she wanted to settle the case.

20 Q. And what did he say in response?

21 A. I don't recall what he said
22 specifically; but I do know that, by this point, the
23 depositions had been scheduled and that I felt that,
24 before we could ever put a good settlement offer on
25 the table, we needed to go through Conrad's

1 deposition.

2 Q. And I think you've given some testimony
3 on this earlier. In that regard, Mr. Taylor sent
4 you a general domestic outline for a defendant
5 husband?

6 A. Yes.

7 Q. And is that what we're looking at,
8 Exhibit 22?

9 A. Well, the one he sent me didn't have all
10 these notes in it.

11 Q. Oh, I understand that; but, I mean, the
12 general typed out part was part of what Mr. Taylor
13 sent to you --

14 A. Yes.

15 Q. -- to help you prepare for Mr. --

16 A. It was.

17 Q. -- Conrad Powell's deposition?

18 A. Yes.

19 Q. And are these your handwritten notes in
20 third page?

21 A. No. Again, that's too neat to be my
22 handwriting.

23 Q. Possible that Ms. Powell's?

24 A. Possibly, yes.

25 Q. Okay.

1 A. So I took what Michael had suggested and
2 also incorporated my own questions and then I
3 remember that, after Michael sent this to me, that
4 Michael and Carolyn and I met in Michael's office to
5 discuss the deposition strategy.

6 Q. That was one of the three meetings you
7 testified to earlier?

8 A. Well, there could have been more; but
9 three that I recall specifically.

10 Q. Okay.

11 A. And, also, I don't think this
12 deposition -- we were ready to take this deposition
13 until I did my analysis. I mean, I wouldn't have
14 felt comfortable going in and asking Conrad
15 questions about his business interests if I had not
16 taken the three to four months necessary to prepare
17 for this deposition. And it was like a series of
18 building blocks. First, I had to find out about his
19 assets, about the companies assets. I had to become
20 familiar with what he had set out in his discovery,
21 in his financial statements. At that point, we were
22 ready to take the deposition.

23 Q. What -- I'm sorry?

24 A. I was going to say so, you know, as far
25 as moving the case along, I think considering

1 that -- the fact that I was just involved in this
2 case in let's say February or March, with my report
3 in May and then, you know, the problems with
4 scheduling. I think from the time I got involved
5 until the time that this case settled was roughly 13
6 or 14 months in the overall scope. That's moving it
7 along pretty good. And I think Michael's getting me
8 involved is what helped move this case forward to
9 the point that we could settle it.

10 Q. And if I'm understanding your testimony,
11 without the depositions and the analysis of the
12 marital assets and the businesses that were involved
13 or claimed to be marital assets, the matter couldn't
14 have been really settled with any certainty as to
15 what was a fair settlement?

16 A. I think, based on Carolyn's knowledge,
17 she could have -- she could have given us the
18 decision; but I don't think we were in a position to
19 recommend a settlement before we had all this
20 information. My impression was that Carolyn had a
21 good handle on what the assets were, but her
22 instructions on settlement terms were never
23 consistent. I mean, she wanted this; but then let's
24 change it to this. And until I knew the facts, I
25 couldn't say, well, I don't think that's right. I

1 don't think that's a good settlement. I don't think
2 we can get that. I didn't know enough to say yes or
3 no to what she was saying that she wanted.

4 Q. Did Mr. Taylor tell you why they didn't
5 approach you to assist with this business analysis
6 and inquiry until January of 2006?

7 A. No.

8 Q. Did you ever ask him why?

9 A. No.

10 Q. When Ms. Powell was venting her
11 frustrations over the delay, the fact that you
12 didn't become involved until, at the earliest,
13 January 2006, that issue wasn't mentioned to Mr.
14 Taylor in your conversation?

15 A. What issue?

16 Q. Well, the point that you weren't
17 involved and engaged to do these things until
18 January 2006 and Ms. Powell -- let me stop and make
19 a better question out of this. Let me restate that.

20 It's clear from May through August,
21 November of 2006, Ms. Powell's communications
22 consistently report her frustrations with the delay;
23 is that a fair characterization?

24 A. To me?

25 Q. Yes.

1 A. Yes.

2 Q. In the context of having a client that's
3 frustrated with the delay in the case, did you and
4 Mr. Taylor ever discuss why you weren't engaged to
5 do what you were doing, the business analysis, until
6 early 2006?

7 A. No. We never discussed it and I never
8 even questioned why.

9 Q. Briefly back to Exhibit 22. Is the
10 typed written portion of Exhibit 22 -- was all of
11 the type written content prepared by Mr. Taylor?

12 A. I think so, yes. I don't know if
13 there's anything -- I don't see anything in this
14 that I prepared.

15 Q. Thank you.

16 A. And, you know, looking further at this,
17 these deposition questions, I do think those are
18 Carolyn's handwriting -- that is Carolyn's
19 handwriting. And it appears to be her thoughts on
20 Conrad Powell's answers to the questions.

21 Q. During the deposition?

22 A. Right.

23 Q. Okay.

24 (PLF: EXH. 23, Letter to Reid B. Smith
25 from Marne Sherman, Dated December 18,

1 2006, Bates Stamped Original Client 10,
2 was marked for identification.)

3 (PLF. EXH. 24, Notice of Appearance of
4 Counsel, Bates Stamped SMI_00090 and
5 00091, was marked for identification.)

6 MR. WATSON: You want to take about a
7 five-minute break?

8 THE COURT REPORTER: Yes.

9 (A recess transpired.)

10 (Off-the-record conference.)

11 BY MR. PENDARVIS:

12 Q. Mr. Smith, you've been passed two
13 exhibits, 23 and 24. Were these the -- did you get
14 this letter from Ms. Sherman marked as Exhibit 23?

15 A. I did.

16 Q. Asking about a notice of appearance?

17 A. I did.

18 Q. And Mr. Taylor was still involved at the
19 time the notice of appearance was filed?

20 A. Yes.

21 Q. Did you call Mr. Taylor and tell him you
22 were going to go ahead and file a notice of
23 appearance after you got the letter from Ms.
24 Sherman?

25 A. No. I think we discussed this issue

1 beforehand and we had determined that, after I had
2 conducted Conrad's deposition, that I would be
3 appearing as co-counsel and not as a witness.

4 Q. Okay. So this was before Mr. Foster
5 became involved in this suit?

6 A. Yes, it was.

7 (PLF. EXH. 25, Draft for Discussion,
8 Dated January 6, 2007, Bates Stamped
9 SMI_00912 and 00913, was marked for
10 identification.)

11 BY MR. PENDARVIS:

12 Q. Mr. Smith, an exhibit marked Number 25
13 has been passed to you. Is this the draft
14 settlement letter you had talked about earlier in
15 your deposition?

16 A. It is. Carolyn Powell and I spent
17 about -- almost four hours in my office and I drew
18 the assets that I saw as -- on a dry board and my
19 partner, William Bird, was in there. And we -- as a
20 result of that meeting, this is the settlement
21 proposal that she had authorized. This was after we
22 had taken Conrad Powell's deposition, but it was
23 before Carolyn's deposition.

24 Q. Did you transmit a copy of this to Mr.
25 Taylor?

1 A. I think I transmitted a copy to both
2 Carolyn Powell and Michael Taylor, because my time
3 records in this indicate that we had a discussion
4 about the settlement two days after this letter.

5 Q. Okay. And I didn't bring a copy of your
6 deposition of Mr. Powell, but you took that
7 deposition?

8 A. I did. Right. That's correct.

9 Q. You've seen the transcript?

10 A. Yes.

11 Q. Accurately recorded to the best of your
12 knowledge?

13 A. To the best of my knowledge, yes.

14 Q. Tell me about the conversations --
15 excuse me. Did you have any conversations prior to
16 Mr. Powell's deposition about -- with Mr. Taylor
17 about who was going to take it?

18 A. We did. Yes.

19 Q. And you testified earlier, based on --
20 in general, that the decision was made based on your
21 knowledge of the assets that you would be better
22 suited to handle the deposition?

23 A. And the corporate and business issues.

24 Q. Okay. And Mr. Taylor was there during
25 the deposition?

1 A. Yes, he was.

2 Q. Did he pass you questions or notes or
3 prompt you to ask certain things during the
4 deposition?

5 A. I believe he did, yes.

6 Q. Okay. Did you feel like you had
7 everything you needed to take Mr. Powell's
8 deposition when you took it?

9 A. Yes, I did.

10 Q. Were you aware, during your
11 representation of Ms. Powell, of a statute that
12 defined marital property?

13 A. I'm familiar with that statute in the
14 context of a debtor/creditor issue. I happened to
15 have been involved peripherally with the Prosser
16 case which established, for case law purposes, the
17 time that a marital estate is created, because we
18 sometimes have to deal with that in the Bankruptcy
19 Court.

20 Q. So you were aware what was defined as a
21 martial estate by statute and by case law at the
22 time you were preparing the demand letter marked --

23 A. Yes.

24 Q. -- as Exhibit 25?

25 A. Yes.

1 Q. And your partner was assisting in
2 this --

3 A. Yes.

4 Q. -- preparation as well?

5 A. Right.

6 Q. Outside of the business assets,
7 liabilities and other business issues that you were
8 looking at, did you -- what else did you do to
9 determine the inventory of the marital estate?

10 A. Well, the tax returns showed assets. By
11 the time of the deposition, I believe that we had
12 Conrad Powell's financial declaration. I had my
13 notes and my -- from my investigation. And plus
14 from my conversations with Carolyn, what she thought
15 they were.

16 Q. Once this Exhibit 25 -- let me back up a
17 second. I think I'm getting pretty good on this.
18 This is your handwriting at the top?

19 A. That is my handwriting.

20 Q. And is that about the date that this
21 Exhibit 25 was developed?

22 A. It is. I think our meeting was on
23 January 5th. And, as a result of that meeting, I
24 did this letter the next day. So yes.

25 Q. And when was the handwritten Jan. 6,

1 2007, placed on Exhibit 25?

2 A. I think, when I was going through my
3 electronic records, I noticed that it didn't have a
4 date and so I hand wrote it on there.

5 Q. So this was printed from an electronic
6 file --

7 A. Yes.

8 Q. -- instead of a copy in a paper folder?

9 A. Yes.

10 Q. Okay.

11 A. Well, let me -- let me take that back.
12 I believe that this was a hard copy, because I see
13 the holes at the top. I think it was in the file;
14 but I wasn't sure about the date, so I went back to
15 the electronic record and saw the date.

16 Q. And was a copy of Exhibit 25 sent to Mr.
17 Taylor? You did testify to that?

18 A. Yes, I believe it was and to Mrs.
19 Powell.

20 Q. And, first for Mr. Taylor, did he have a
21 response?

22 A. I know we talked two days later, but I
23 don't recall the specifics of that conversation.

24 Q. Same question for Ms. Powell.

25 A. Same thing.

1 Q. She called you two days later as well?

2 A. No. I may have called her. I'm not
3 sure who initiated the call, but I know that we
4 talked.

5 Q. And is it your testimony this is
6 consistent with what you and Ms. Powell discussed in
7 that four-hour meeting --

8 A. Yes.

9 Q. -- on January 5, 2007?

10 A. It is.

11 Q. Were there any other -- other than
12 discussions about settlement and the contents of
13 this letter during the meeting on January 5, 2007,
14 did Ms. Powell say anything else to you about the
15 Taylor/Potterfield firm and their continued
16 involvement in the case?

17 A. No, she did not. I don't recall
18 discussing that. And one thing I'd like to add to
19 all of those questions. I had assumed that Carolyn
20 was making those same comments to Mr. Taylor. I
21 didn't see why I needed to be a conduit there when
22 she was communicating with him at the same time.

23 Q. You mean her concerns and frustrations
24 about the delay?

25 A. Yes.

1 Q. I just wanted to make sure we were on --

2 A. Yes, sir.

3 Q. When Ms. Powell got the draft of this
4 proposed settlement letter to Ms. Sherman, did she
5 agree with the content when you spoke with her?

6 A. Yes.

7 Q. When did Mr. Foster get involved in this
8 representation of Ms. Powell?

9 A. My records indicate that I was called on
10 January 19, 2007 by Carolyn Powell to tell me that
11 she had retained Cantzon Foster.

12 Q. Do you know how Ms. Powell's retention
13 of Mr. Foster came about?

14 A. Yes, I do.

15 Q. Tell me about that.

16 A. Bunni Crawford was a very good friend of
17 Carolyn Powell's and Cantzon handled all of her real
18 estates transactions and Bunni felt that Cantzon
19 walked on water.

20 Q. Did you have any experience with Mr.
21 Foster prior to January 2007?

22 A. I did not. But he was a former law
23 clerk and maybe an associate for Robert Price, who
24 was my partner at the time; but that was before my
25 involvement with Mr. Price.

1 Q. When you learned Mr. Foster was going to
2 be involved in the representation of Ms. Powell, did
3 you discuss that with Mr. Price?

4 A. I don't think so. I don't recall.

5 Q. Did Mr. Price give you any comments
6 about Mr. Foster, quality of his skills as an
7 attorney, things of that nature?

8 A. I don't recall talking about that, no.

9 Q. How did you learn that Mr. Foster -- you
10 said it was a call on the 19th of January?

11 A. Yes.

12 Q. From whom?

13 A. Carolyn Powell.

14 Q. And what did she tell you?

15 A. That she had hired Cantzon Foster. And
16 I believe that I asked her if she wanted me to be
17 involved still and she said yes.

18 Q. Did you have any communications with Mr.
19 Taylor about the change of counsel?

20 A. I think so. I think we talked and I
21 told him that Cantzon Foster had been retained as
22 her lawyer or he may have called me to tell me. I'm
23 not sure.

24 Q. And were there any other -- I mean, it
25 was just a short conversation, said basically I'm

1 out?

2 A.. It was right matter of fact. Here it
3 is. I'm out. Right.

4 Q. Did you sense Mr. Taylor was frustrated
5 or upset by the change of counsel by Ms. Powell?

6 A. I didn't sense anything other than
7 he's -- the conversation that I'm no longer involved
8 in the case..

9 Q. Did you all discuss any matters in terms
10 of transferring the file from Mr. Taylor to Mr.
11 Foster?

12 A. I believe that that discussion occurred
13 between Cantzon Foster's office and Michael Taylor's
14 office. I had nothing to do with it.

15 Q. Were there any things that you felt the
16 Taylor/Potterfield firm should have done during
17 their representation of Ms. Powell that were not
18 done?

19 MR. HILL: Object to the form.

20 THE WITNESS: No.

21 BY MR. PENDARVIS:

22 Q. Did you have any communications with Mr.
23 Foster?

24 A. I did. Shortly after I learned that he
25 was the attorney, he and I met with Carolyn Powell

1 at his office. And I believe, shortly after that
2 meeting, that Carolyn's deposition was held at his
3 office.

4 Q. About when was that?

5 A. Well, I know the deposition, I think,
6 was January 26th. So it would have to be between
7 the 19th and the 26th when we had our meeting.

8 (PLF. EXH. 26, Facsimile to Reid Smith
9 from Marne Sherman, Dated January 29,
10 2007, Bates Stamped SMI_00076 through
11 00080, was marked for identification.)

12 BY MR. PENDARVIS:

13 Q. Take a moment and look through Exhibit
14 26. This is a letter from Ms. Sherman to --
15 addressed on the front page to Mr. Foster and you're
16 copied on it, but --

17 A. I'm familiar with it.

18 Q. Okay. When Ms. Sherman -- we're looking
19 at a communication fairly early into Mr. Foster's
20 representation?

21 A. Uh-huh.

22 Q. And when Ms. Sherman is making
23 substantive points through the first -- all three
24 pages of the letter, were you and Mr. Foster
25 discussing the points Ms. Sherman was making in

1 order to help Mr. Foster respond?

2 A. No. I didn't have anything to do with
3 this or respond to it and I thought it was -- I
4 thought Ms. Sherman was being very aggressive in
5 checking up on a fellow attorney when he said he had
6 a court hearing. I don't understand why she did
7 that.

8 (PLF. EXH. 27, Letter to Marne Sherman
9 from C. Cantzon Foster, II, Dated
10 February 14, 2007, Bates Stamped
11 SMI_00907 through 00911, was marked for
12 identification.)

13 BY MR. PENDARVIS:

14 Q. Mr. Smith, I'm passing you now a
15 document. This one is dated February 14th,
16 addressed from Mr. Foster to Ms. Sherman, copy to
17 you and Ms. Powell. It appears to be pretty much a
18 copy of your or an adoption of your draft settlement
19 letter; is that correct?

20 A. That's correct. And that's how I know
21 that Carolyn approved the proposal that I prepared
22 January 6th.

23 Q. Did you send the letter or the draft of
24 that letter to Mr. Foster?

25 A. I believe I did. I believe he called

1 and asked for a copy and I sent it to him.

2 Q. Which I think was marked as Exhibit 25?

3 Yes.

4 A. So it's basically the same.

5 Q. Did you have any -- describe your
6 conversation with Mr. Foster about what led to
7 Exhibit 27?

8 A. He called me and I think, in the course
9 of our discussions, I told him that I had drafted a
10 settlement proposal; but, because he had replaced
11 Michael Taylor, I don't think the proposal had gone
12 out. And he asked me to send him a copy, which I
13 can't remember if I faxed it to him or e-mailed it
14 to him; but I did get a copy to him right away.

15 Q. Did you have any conversations with Mr.
16 Foster about your role, your continuing role for Ms.
17 Powell, your representation of Ms. Powell?

18 A. Yes. I believe that he wanted me to
19 continue as co-counsel since I was familiar with all
20 the business issues.

21 Q. Did you communicate with Mr. Foster
22 frequently during the January, February, March,
23 April time period of 2007?

24 A. Yes. Because there was a lot of
25 activity in the case at that time. I think we had

1 Carolyn Powell's deposition. We had Tim Tyler's
2 deposition. And we had settlement proposals going
3 on during that time.

4 Q. And who took the depositions?

5 A. I did the deposition of Tim Tyler. I
6 asked the questions because I was more familiar with
7 the issues related to the business aspects of the
8 case. And I wanted to confirm my findings and my
9 own investigation.

10 (PLF. EXH. 28, Affidavit of Attorney's
11 Fees, Bates Stamped MIT001665 and
12 001667, was marked for identification.)

13 BY MR. PENDARVIS:

14 Q. Mr. Smith, Exhibit 28 has been passed to
15 you. It appears to be an affidavit you signed that
16 was submitted to the Family Court in the Powell v.
17 Powell matter --

18 A. Right.

19 Q. -- is that correct?

20 A. That's correct. I'm not sure if it was
21 submitted or not. I know it was prepared for the
22 purposes of the interim hearing in March, but I'm
23 not sure if it was actually filed with the Court. I
24 know it was prepared, but I think all the issues had
25 already been resolved before we went to that hearing

1 and so it wasn't necessary to file this.

2 Q. Well, I was going to hold off on making
3 this an exhibit. Let me pass this first to you.
4 This is a pendente lite package that was -- this
5 appears to be a clocked copy of something that was
6 filed March 14th by Mr. Foster on behalf of Ms.
7 Powell. And toward the very back, the unfortunate
8 part, I think it's like three pages from the back,
9 is the first page of your affidavit. And what was
10 produced did not include page 2, which is why I
11 handed you what's been marked as Exhibit 27.

12 A. Cantzon must have filed it. I know I
13 didn't.

14 MR. PENDARVIS: Well, let's go ahead and
15 mark it.

16 (PLF. EXH. 29, Pendente Lite Package,
17 Bates Stamped 00942 through 00964, was
18 marked for identification.)

19 BY MR. PENDARVIS:

20 Q. So apparently Mr. Foster did submit this
21 affidavit as part of the pendente lite hearing?

22 A. Yes.

23 Q. Did you attend the hearing?

24 A. I did.

25 Q. You did?

1 A. I was there.

2 Q. What was the result of the pendente lite
3 hearing?

4 A. I think Carolyn Powell was awarded
5 250,000.

6 Q. And what type of award was that?

7 A. I think it was to be -- it was an agreed
8 amount to be credited toward the equitable
9 distribution award.

10 Q. I'll represent to you -- wait a minute.
11 Let's just do that.

12 (PLF. EXH. 30, Letter to Reid B. Smith
13 from Michelle G. Edgar, With Enclosures,
14 Dated March 15, 2007, Bates Stamped
15 SMI_028551 through 02875, was marked for
16 identification.)

17 BY MR. PENDARVIS:

18 Q. Exhibit 30 has been passed to you. It
19 appears to be a letter from the Foster Law Firm to
20 you dated March 15, 2007. Do you recall receiving
21 this correspondence from Mr. Foster's office?

22 A. I did. I received it.

23 Q. And it appears that a complaint was
24 filed March 15, 2007?

25 A. Right.

1 Q. Was this an amended pleading or what?

2 A. I don't know. Again, I wasn't involved
3 in the Family Court aspects of the case.

4 Q. Did Mr. Foster discuss with you his
5 plans to file papers, file new pleadings?

6 A. No. I think he may have indicated that
7 the other action had been dismissed and that he
8 filed this one, but he didn't tell me what his
9 strategies were or why he was doing it or -- he
10 just, you know, did it.

11 Q. Okay. And this contains, buried in this
12 document, I'm going to represent to you, the
13 financial declaration of Mr. Powell, Conrad Powell?

14 A. Right.

15 Q. And is he basically just providing you
16 copies of things that were submitted to the Court at
17 the hearing?

18 A. Right.

19 Q. Okay.

20 A. I think he. . .

21 Q. And was there any discussion about your
22 name appearing in the pleadings that were filed?
23 And we've got copies of which were marked in Exhibit
24 30.

25 A. I don't recall any discussions about me

1 being named on the pleadings and I didn't sign the
2 pleadings.

3 Q. I recall your testimony today earlier
4 that you remember signing a notice of appearance
5 once Mr. Foster got involved and we actually -- I'm
6 going to tell you, there's two. We saw the one
7 earlier that was filed when Mr. Taylor was in. And
8 I'm going to. . .

9 (PLF. EXH. 31, Notice of Appearance of
10 Counsel, Bates Stamped 00965 and 00967,
11 was marked for identification.)

12 BY MR. PENDARVIS:

13 Q. I'm going to show you an exhibit marked
14 as 31 and apparently this is the notice of
15 appearance in the 2007 matter, Powell v. Powell;
16 correct?

17 A. Yes.

18 Q. And was there a reason you discussed
19 with Mr. Foster prompting the filing of this notice
20 of appearance?

21 A. I think he recommended I go ahead and do
22 it, so I followed his recommendation.

23 Q. Based on what concerns?

24 A. No concerns. Since I had deposed Conrad
25 Powell, that I -- you know, I couldn't -- I wouldn't

1 be appearing as a witness. I would simply be an
2 attorney in the case or co-counsel in the case.

3 Q. Rolly W. Jacobs did some work in this
4 matter. Do you recall?

5 A. He's the judge.

6 Q. She's the judge. And this is the --
7 (PLF. EXH. 32, Memorandum Dated March
8 16, 2007, Bates Stamped 00566 through
9 00572, was marked for identification.)

10 BY MR. PENDARVIS:

11 Q. Is Exhibit 32 a memorandum of her
12 opinion after the hearing?

13 A. His opinion, yes.

14 Q. I said that twice. Did that in the last
15 deposition. Sorry. Is this the memorandum of
16 opinion that Judge Jacobs issued?

17 A. Yes, it is.

18 Q. Did you have some conversations with Ms.
19 Powell about the rulings from the Court at the March
20 14th hearing?

21 A. I think we did. We talked. And I think
22 she made a promise to pay my attorney's fees once
23 she received her lump sum award.

24 Q. Were there outstanding fees due from Ms.
25 Powell to you --

1 A. Yes.

2 Q. -- as of March of 2007?

3 A. Yes.

4 Q. About what amount was that?

5 A. I think it was probably around \$6,000 or
6 somewhere in that range.

7 Q. Was Judge Jacobs made aware of the
8 length of time that this domestic matter had been
9 pending, notwithstanding that a newly filed action
10 was started in 2007?

11 A. I think there were some statements made
12 in the course of the hearing to that effect by
13 Cantzon Foster.

14 Q. Were you involved in -- I'm going to
15 represent to you there were communications between
16 Ms. Sherman and Mr. Foster in March, leading into
17 April of 2007, settlement negotiations.

18 A. Yes.

19 Q. Were you involved in those?

20 A. No. I think I was -- after I sent that
21 draft to Cantzon, I don't recall being involved in
22 the discussions. I recall being kept abreast. I
23 also recall being told that Bunni Crawford had
24 become involved in the negotiations and that she had
25 met with Conrad Powell over the weekend and that a

1 final settlement agreement had been reached with
2 Bunni's involvement.

3 Q. So all of the communications -- did you
4 prepare or were you involved in any comments on the
5 pendente lite order that was prepared by Ms.
6 Sherman?

7 A. I don't think so, no; but I was copied.

8 Q. I know. I've got copies with your name
9 on them, but were you involved in any discussions
10 about agreeing or disagreeing with the terms of the
11 proposed order or anything of that nature?

12 A. No.

13 Q. What was your involvement after
14 delivering to Mr. Foster the draft settlement letter
15 from January 2007?

16 A. Conducted Tim Tyler's deposition. I was
17 scheduled to conduct Terry Powell's deposition, but
18 the settlement agreement was reached and his
19 deposition was canceled. Terry Powell's deposition
20 was canceled.

21 Q. Was there anything else in which you
22 were involved?

23 A. We met, I think, before the hearing to
24 discuss the strategy for the hearing.

25 Q. You're referring now to the March 14th?

1 A. Yes. What Cantzon intended to ask for.
2 He needed the affidavit of my attorney's fees. And
3 I think that was it.

4 (PLF. EXH. 33, E-mail from Carolyn
5 Powell to Reid Smith, Dated April 18,
6 2007, was marked for identification.)

7 BY MR. PENDARVIS:

8 Q. Mr. Smith, before you take a careful
9 look at Exhibit 33, I'm going to represent to you
10 that I've skipped over quite a number of
11 communications and letters from March and April
12 between Ms. Sherman and Mr. Foster, which you were
13 copied on; but it just appears from your testimony
14 that you weren't really actively involved, other
15 than being copied on the other activities in the
16 case?

17 A. Right.

18 Q. What I passed to you marked as Exhibit
19 33 appears to be an e-mail from Ms. Powell to you
20 and a copy to Mr. Foster, subject Tim Tyler and it's
21 dated April 18, 2007, which is really close to when
22 it got settled, I'll tell you. But do you recall
23 receiving Exhibit 33?

24 A. Again, I didn't see it in my electronic
25 records; but I do think I received it, yes.

1 Q. Did you or Mr. Foster have any
2 discussions about Tim Tyler and the issues that are
3 raised by Ms. Powell in this letter?

4 A. I don't think so. I think Cantzon
5 pretty much left it to me to conduct Tim's
6 investigation and to address these issues in that
7 deposition.

8 Q. The deposition that never happened?

9 A. No, no. Tim Tyler's did.

10 Q. That's right. I'm backwards on that.
11 Okay.

12 A. Yes.

13 Q. Terry?

14 A. Right. And I think Carolyn may have
15 sent this to me in preparation for that deposition.

16 Q. I think this is a little bit out of
17 order.

18 (PLF. EXH. 34, E-mail from Reid Smith to
19 Carolyn Powell and Cantzon Foster, Dated
20 April 18, 2007, was marked for
21 identification.)

22 BY MR. PENDARVIS:

23 Q. Mr. Smith, it appears that Exhibit 34
24 was actually transmitted a little ahead of Exhibit
25 33?

1 A. Yes.

2 Q. And this is your e-mail to Ms. Powell,
3 copied to -- and to Mr. Foster?

4 A. Right.

5 Q. Can you tell me more about -- is there
6 anything that led to this e-mail?

7 A. I think this was in preparation for Tim
8 Tyler and Terry Powell's depositions and it was, I
9 guess, an outline of what I intended to ask in the
10 depositions. I don't think we ever -- I don't
11 recall ever doing a formal deposition question
12 outline the way that Michael had given me in the
13 Conrad Powell deposition. I think it was more based
14 on my handwritten notes than a typed outline.

15 Q. Okay. When settlement agreements were
16 being exchanged in late April, April 20 or so
17 between Mr. Foster and Ms. Sherman, did you have any
18 comments on the -- I see you were copied on some of
19 these e-mails. And rather than cluttering up this
20 deposition, my question to you is, did you receive a
21 copy of a settlement agreement and call or contact
22 Mr. Foster or Ms. Powell about the content?

23 A. I think that I received a call from
24 Brian Caskey about the settlement agreement and he
25 and I discussed it briefly, but I don't think I ever

1 discussed anything with Carolyn or Ms. Sherman.

2 Q. Tell me about the communication with Mr.
3 Caskey.

4 A. Well, he just bringing me up to date and
5 it may have been through him that I learned of Bunni
6 Crawford's activity, that she had been the one who
7 met with Conrad over the weekend to hammer out the
8 final details.

9 Q. Can you describe Mr. Caskey's
10 involvement, what his role was in that matter?

11 A. He is an associate of Mr. Foster's who
12 helped with this litigation and I think he may have
13 been the one to prepare some of the pleadings, but I
14 guess you would just say he was an associate.

15 (PLF. EXH. 35, E-mail from Reid Smith to
16 Cantzon Foster, Dated April 23, 2007,
17 was marked for identification.)

18 THE WITNESS: Yes, I've seen it.

19 BY MR. PENDARVIS:

20 Q. Mr. Smith, the document marked Exhibit
21 35 has been passed to you. This appears to be your
22 e-mail to Mr. Foster, copy to Ms. Powell?

23 A. That's correct.

24 Q. And it appears this is an outline of
25 some items that were promised during the deposition

1 that you had not received as of April 23rd. And my
2 question is with really the last sentence before --
3 last paragraph before your name at the bottom.

4 A. Uh-huh.

5 Q. Can you explain that? I'm not sure if
6 I'm understanding what I'm reading.

7 A. Sure. During the course of the
8 deposition, I was asking questions and when -- I had
9 asked -- if I recall correctly, Tim Tyler was
10 supposed to bring certain documents to the
11 deposition. And during the course of the
12 questioning, I asked him if he had that document in
13 follow up to the question and he said no. And I
14 asked if those documents were available and he said
15 yes. Will you provide them to me? He said yes.

16 And in the course of asking the
17 questions and writing down what he promised, I
18 thought, well, maybe I didn't write everything down
19 that he promised because it's hard to talk and write
20 at the same time. So I asked Cantzon to review the
21 to do list that Tim Tyler was supposed to provide.
22 And if there was something that I had overlooked,
23 for him to add that to the list.

24 Q. Were you and Mr. Foster needing these
25 materials to help with the settlement negotiations

1 that were going on around this time period?

2 A. Apparently not because I think the next
3 day or two it settled, even before he got those
4 documents to me.

5 (PLF. EXH. 36, E-mail from Cantzon
6 Foster to Reid Smith, Dated April 23,
7 2007, Bates Stamped MIT005292, was
8 marked for identification.)

9 BY MR. PENDARVIS:

10 Q. Mr. Smith, a copy of an e-mail thread
11 marked Exhibit 36 has been passed to you reflecting
12 e-mails originating between Mr. Foster and Ms.
13 Sherman on April 23, 2007 and then apparently which
14 Mr. Foster forwarded on to you and Ms. Powell with
15 comments basically agreeing, if they're going to
16 settle it, let's try to do it that Monday or
17 Tuesday, the 24th. Do you see that?

18 A. Uh-huh.

19 Q. That was a yes?

20 A. I'm sorry.

21 Q. That's okay. It's getting late.

22 A. Yes.

23 Q. Was Ms. Powell communicating with you by
24 telephone during this latter part of April 2007?

25 A. Yes. She and I were talking by phone.

1 Q. What was the general sense of Ms.
2 Powell's state of mind about this whole litigation
3 by April 23, 2007?

4 A. Well, it's hard to read someone's mind.

5 Q. What was your impression of Ms. Powell's
6 state of mind during this latter part of April 2007?

7 A. I'm trying to think. I believe she was
8 pleased that there were finally negotiations for
9 settlement going forward, but I'm not really sure I
10 understand the question.

11 Q. Did you get the sense she was recharged,
12 invigorated, she had new counsel, and she ready to
13 go the next couple of years and do what it took to
14 fully develop the discovery in the case?

15 A. Yeah. I do think that she was -- she
16 did have a different attitude. I mean, she didn't
17 complain when she talked to me about anything and
18 she did seem to be very -- in a much better mood.

19 Q. At the same time, did you sense that she
20 was exhausted and frustrated that this matter was
21 continuing almost four years after she started?

22 A. No, I didn't sense that. I think that,
23 when Cantzon got involved, the impression I had is
24 that she was willing to go forward. We've scheduled
25 Cantzon's deposition -- I mean, Terry Powell's

1 deposition. We talked about the girlfriend's
2 deposition. And also we -- in the pendente lite
3 award, there was a -- part of the basis was the need
4 to hire a forensic accountant. So I really didn't
5 detect anything on Carolyn's part about being beat
6 down to the point of resignation.

7 Q. What did she say to you about the whole
8 idea of settling in April 2007 after having gotten
9 new attorneys?

10 A. She was pleased that we were -- that
11 they were finally able to reach an agreement.

12 Q. Did she say anything to you commenting
13 on her approval or disapproval of the terms of the
14 settlement?

15 A. I got the impression she was very much
16 in favor of the settlement.

17 Q. Did you or Mr. Foster -- did you explain
18 to Ms. Powell that there were a number of witnesses
19 whose depositions needed to be taken to better
20 understand the marital estate as of April 2007?

21 A. Well, I don't recall telling her
22 specifically that we needed that information to
23 understand the marital estate. By that time, we had
24 taken Conrad's deposition and Tim Tyler's
25 deposition, but I know that Carolyn was aware of

1 Terry Powell's pending deposition. And some of the
2 issues that she had raised could have only been
3 answered by him. And I do recall discussions with
4 Cantzon that, if the settlement takes place, then of
5 course we would not depose Terry Powell. That that
6 deposition would be cancelled.

7 Q. And the girlfriend's deposition as well?

8 A. Right. Right. Yeah.

9 Q. Did Ms. Powell express any concern to
10 you that maybe we need to finish these depositions
11 before we really finalize any settlement?

12 A. No. No concern whatsoever.

13 Q. Did you have any discussions with Mr.
14 Foster about whether discovery should be completed
15 before the settlement was accomplished?

16 A. I don't recall any discussions with
17 Cantzon about the need to finish the depositions.
18 The impression I got was that Bunni Crawford had
19 gotten some concessions from Conrad Powell that he
20 had not been willing to make before and that Bunni
21 Powell (sic) facilitated the settlement and that
22 Carolyn was in full agreement with the terms of the
23 settlement.

24 MR. WATSON: Did you mean Bunni
25 Crawford? You said Bunni Powell.

1 THE WITNESS: I'm sorry. I did mean
2 Bunni Crawford. Yes.

3 BY MR. PENDARVIS:

4 Q. Was there a plan for these depositions?
5 We're looking at Exhibit 36, this Monday, April 23,
6 and Mr. Foster is pointing out to you and to Ms.
7 Powell that it would be -- that everyone should try
8 to get the settlement before Tuesday, the 24th. Was
9 there a reason that that was an important date?

10 A. I think that was -- Terry Powell's
11 deposition was looming. I don't remember the date.
12 And from the tenor of Marne Sherman's letter, she
13 was threatening to seek fees for having to go to
14 North Carolina to do the deposition. So that -- and
15 I'm just basing my answer on reading Marne Sherman's
16 e-mail.

17 Q. Was there anything else in this e-mail
18 that was surprising to you, Ms. Sherman's e-mail to
19 Mr. Foster, bottom part of Exhibit 36?

20 A. No. No.

21 Q. Wasn't Mr. Powell, Conrad Powell,
22 denying the adultery allegations?

23 A. I think he did. In his deposition, he
24 did deny it.

25 Q. But his lawyer is essentially

1 admitting -- stating in Paragraph A of her e-mail
2 that her client at least has admitted?

3 A. You know, I never really noticed that
4 until you pointed it out.

5 MR. PENDARVIS: Tell you what, can I
6 have about five minutes with my client?

7 MR. WATSON: Yes.

8 MR. PENDARVIS: I got a few things I
9 want to go through to finish it up.

10 (A recess transpired.)

11 BY MR. PENDARVIS:

12 Q. I'm skipping and jumping through an
13 outline to fill in some gaps so we can finish up
14 your deposition, Mr. Smith. You have made some
15 comments about Ms. Powell. Basically that one of
16 the criticisms, I'll call it, was that she was a
17 little unorganized. Am I correct that that was one
18 of the comments you made about Ms. Powell?

19 A. Well, when I asked her for information,
20 she would have to go to different places. I didn't
21 imply in her personal life that she was unorganized,
22 but what she needed to get for me was not organized.

23 Q. Were there any other things Ms. Powell
24 could have done better to assist in the
25 representation?

1 A. No. She never ignored a request and she
2 always got the information that I asked for.

3 Q. Were there any criticisms you would have
4 been able to make had you been called as a witness
5 to comment on Conrad Powell's handling of the
6 marital assets?

7 A. No. As a matter of fact, I didn't see
8 anything to indicate that he was trying to hide any
9 assets or dissipate assets or to do anything
10 improper. So I don't think I would have had any
11 criticism of the way that he'd handled the marital
12 estate.

13 Q. Did you form any opinions on how Mr.
14 Powell was handling his obligations to his family
15 during the pendency of the divorce?

16 A. Yes, I did. I thought he was being very
17 generous to his daughters.

18 Q. How about his maintenance obligations to
19 his wife, Ms. Powell?

20 A. Well, except for the 400,000, I'm not so
21 sure that he did anything for Carolyn. Maybe he was
22 paying her insurance and he was also -- when we were
23 trying to reach a solution in the foreclosure
24 action, he came forward and loaned Carolyn the money
25 to save the barn. In essence, he brought the

1 mortgage from Lavigno.

2 Q. Did you have any opinion about Mr.
3 Conrad Powell's handling of the marital home during
4 the early part of the divorce, candidly before you
5 got involved in the matter?

6 A. I never really thought about it and I'm
7 not sure that -- as I understand it, Carolyn was out
8 of town or something and he said she'd have to sell
9 it, which I thought was a little abrupt; but other
10 than being abrupt, I didn't think it was -- and I
11 was also, you know, thought about the children, too.
12 You know, Carolyn had expressed that concern about
13 having to find a place for the children. So yeah.

14 Q. So you thought that wasn't a good thing
15 Conrad Powell did?

16 A. Well, the abruptness and, you know, not
17 having another place for the children to go to.

18 Q. Do you have any experience on how Family
19 Court Judges typically treat marital homes in
20 circumstances similar to those the Powells were
21 in --

22 A. No, I don't.

23 Q. -- in the 2004 time period?

24 A. I don't.

25 Q. Why didn't you file les pendens

1 against -- to secure some of those properties?

2 A. I don't know enough about Family Court
3 procedure to know that.

4 Q. Same question for a motion for pendente
5 lite relief?

6 A. That wasn't my role.

7 Q. Were you concerned about the sale of the
8 Student Loan Building?

9 A. No. That happened before I got involved
10 and it appeared to be -- it appears to be a good
11 business decision.

12 Q. Were you involved in any of the
13 decisions that involved Ms. Powell's alimony claim
14 against Mr. Powell?

15 A. No.

16 Q. Did Mr. Taylor discuss any of those
17 issues with you?

18 A. Well, he did discuss, you know, the not
19 entitled to because of the alleged adultery.

20 Q. What did he tell you?

21 A. That, if you're guilty of adultery,
22 you're not entitled to alimony.

23 Q. Did he offer an opinion whether he
24 thought there was evidence to establish Ms. Powell
25 had committed adultery?

1 A. Well, the PI report.

2 Q. And did Mr. Taylor discuss that with
3 you?

4 A. Yeah. We discussed the PI report and
5 what -- how it would make it difficult to get
6 alimony.

7 Q. Did you ever have any conversations with
8 Ms. Powell about her entitlement to alimony in light
9 of the PI report?

10 A. I don't think so.

11 Q. Do you know if Mr. Taylor had those
12 conversations with Ms. Powell?

13 A. I don't know.

14 Q. Do you agree that, if a written property
15 settlement agreement had been reached before January
16 2005, that any subsequent romantic encounter would
17 have not barred Ms. Powell's claim to alimony?

18 MR. HILL: Object to the form.

19 THE WITNESS: I don't know. I'm not
20 familiar enough with marital litigation to know
21 about that.

22 BY MR. PENDARVIS:

23 Q. I'm going to go down a pretty decent
24 list of various companies that Mr. Conrad Powell may
25 have had an interest in.

1 A. Uh-huh.

2 Q. And my question common to every company,
3 so we can go through this pretty quickly is, did you
4 investigate the assets and the ownership interests
5 and things of that nature that may have had some
6 bearing on the marital estate with regard to each of
7 these companies.

8 A. Okay.

9 Q. B&H Limited Partnership?

10 A. Yes.

11 Q. B&H Land?

12 A. I don't recall B&H Land, unless it was a
13 predecessor to the B&H Partnership.

14 Q. Thank you. Blossom-Huger, LP?

15 A. Yes.

16 Q. Chapel Creek/Santee Golf?

17 A. Yes.

18 Q. Chic Antiques and Interiors,
19 Incorporated?

20 A. Yes.

21 Q. City Rugs, Incorporated?

22 A. Yes.

23 Q. Columbia Management Group?

24 A. Yes.

25 Q. Cold Stream Golf Club?

1 A. Yes.

2 Q. Columbia Golf Properties, LLC?

3 A. Yes.

4 Q. Columbia Management, Incorporated?

5 A. Yes.

6 Q. Flight Environments, Incorporated?

7 A. I don't recall off the top of my head
8 anything about Flight Environments.

9 Q. Fox-N-Hare Investment?

10 A. Yes.

11 Q. Galley Numeral II?

12 A. Yes. I think that was a part of Chic
13 Antiques.

14 Q. High Performance Sports Marketing,
15 Incorporated?

16 A. Yes.

17 Q. J/B Acquisition?

18 A. Off the top of my head, I don't recall
19 that one either. That's not to say that I didn't,
20 it's just that the name is not familiar.

21 Q. Land Management, Incorporated?

22 A. Yes.

23 Q. One word here, Marknet, Incorporated?

24 A. How do you spell that?

25 Q. M-a-r-k-n-e-t.

1 A. I don't think so, no.
2 Q. I don't know how to pronounce this one.
3 Miroc?
4 A. Yes.
5 Q. M-i-r-o-c Columbia?
6 A. Yes.
7 Q. And then Miroc, LLC?
8 A. Yes.
9 Q. Oak Hills Golf Course?
10 A. Yes.
11 Q. The Penny Farthing?
12 A. Yeah. I think was just a business
13 without any assets, but yes.
14 Q. Racing Champions South, Incorporated?
15 A. Yes.
16 Q. RC2, Incorporated?
17 A. Same thing.
18 Q. RC2 Corp.?
19 A. I believe they're all --
20 Q. These may be derivations, but --
21 A. Yeah.
22 Q. RC2 South, Incorporated?
23 A. Yes.
24 Q. SM Acquisition Company?
25 A. I think so. I'd have to look at my

1 notes to confirm, but that name is familiar.

2 Q. I thought I was at the end. Team
3 Sports, Incorporated?

4 A. That was part of the racing.

5 Q. The Victoria?

6 A. I don't recall that off the top of my
7 head.

8 Q. Village Antiques and Interiors --

9 A. Yes.

10 Q. -- Incorporated?

11 A. Yes.

12 Q. Village Antiques, Incorporated?

13 A. I think they were the same.

14 Q. Vista Rugs, Incorporated?

15 A. Yes.

16 Q. Wheels Sports Group?

17 A. That was the same as the racing.

18 Q. Okay. World Racing, Incorporated?

19 A. I think that was part of that group,
20 too. I think it may be a name that they changed to
21 later.

22 Q. WSG Acquisition, Incorporated?

23 A. Can't recall that one off the top of my
24 head.

25 Q. It might be Wheels Sports Group. I

1 don't know.

2 A. Yes. Then the answer is yes.

3 Q. WSG?

4 A. Right.

5 Q. Do you know what remedies can be -- what
6 things can be filed in Family Court to make sure a
7 spouse is not dissipating marital assets?

8 A. I would assume that there could be a
9 restraining order, like in any litigation, or what
10 we seek sometimes before you appoint a receiver.

11 Q. Are there things that can be filed to
12 make a spouse account for missing marital assets?

13 A. Well, I think -- yes. You can depose
14 them about that and force them to pay the value of
15 that asset through a court order.

16 Q. Can you explain how it was in Ms.
17 Powell's best interest to allow Conrad Powell to
18 live off proceeds from the sale of the marital
19 assets between the date of separation and his
20 deposition in December 2006?

21 A. No.

22 Q. Do you know if any remedy is available
23 in Family Court to prohibit a spouse from living off
24 of martial assets during the pendency of divorce?

25 A. No. But my sense of fairness would say

1 that, in this situation, that the Court is not going
2 to prohibit someone from living or the ability to
3 pay their living expenses.

4 Q. And that's just your sense of fairness?

5 A. Yes.

6 Q. Is there a joint defense agreement
7 between you and the Taylor/Potterfield firm and Mr.
8 Taylor?

9 A. You'd need to talk to my attorney about
10 that.

11 Q. Are you aware yourself of a joint --

12 A. I think there is.

13 Q. -- defense agreement?

14 A. I think there is.

15 Q. And if there's a joint defense
16 agreement, this may be privileged; but I do want to
17 ask this. Have you had conversations with Ms.
18 Potterfield or Mr. Taylor about the allegations in
19 this lawsuit?

20 A. Yes. Can I clarify that?

21 Q. You certainly can.

22 A. I told them what bullshit I thought it
23 was.

24 Q. And what did you mean by that?

25 A. That it was frivolous and without merit.

1 Q. You mean the entire lawsuit or the fact
2 that you were named as a party?

3 A. I was focused on me.

4 Q. And their response?

5 A. I don't recall exactly what their
6 response was. Maybe they expressed some sort of
7 agreement.

8 MR. PENDARVIS: We're finished.

9 THE WITNESS: Okay.

10 MR. HILL: No questions.

11 (The witness, after having been advised
12 of his right to read and sign this transcript,
13 waives that right.)

14 (The deposition was concluded at 2:51
15 p.m.)

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1 CERTIFICATE OF REPORTER
2
3

4 I, Wanda K. Cecil, Certified Court
5 Reporter and Notary Public for the State of South
6 Carolina at Large, do hereby certify that the
7 foregoing transcript, pages 1 through 165, is a
8 true, accurate, and complete record.

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

12 Witness my hand, I have hereunto affixed
13 my official seal this 12th day of October, 2011, at
14 Columbia, Richland County, South Carolina.
15
16
17
18
19
20

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

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Carolyn Mitchell Powell.

Plaintiff,

vs.

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

Defendants.

Check box above indicating submitting party

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT
Civil Action No. 2009-CP-40-8705

**MOTION AND ORDER INFORMATION FORM
AND COVER SHEET**

name, SC Bar no. and address of plaintiff's attorney		name, SC Bar no. and address of defendant's attorney	
SEE ATTACHED LIST		SEE ATTACHED LIST	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: MOTION FOR SUMMARY JUDGMENT Estimated Time Needed: _____ Court Reporter Needed: YES ☒ NO ☐			
SECTION II: Motion Type			
☐ Written motion attached ☐ Form Motion: I hereby move for relief or action by the court as set forth in the attached proposed order. February 9, 2011 Date Submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: <u>\$25.00</u> (check reason) ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE: _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ (print name)		DATE FILED	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (1/2003)

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ATTACHED SHEET

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FILING THIS MOTION

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Carolyn Mitchell Powell,	)	Civil Action No.: 2009-CP-40-8705
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Ashlin Blanchard Potterfield; J. Michael	)	<u>DEFENDANTS REID SMITH AND</u>
Taylor; Taylor/Potterfield; Golden, Taylor	)	<u>PRICE, BIRD & SMITH, P.A.</u>
Potterfield and Barron; Reid Smith; and	)	<u>MOTION FOR SUMMARY</u>
Price, Bird & Smith, P.A.,	)	<u>JUDGMENT</u>
	)	
Defendants.	)	

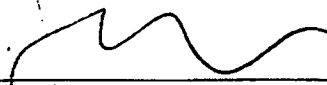
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 RICHLAND COUNTY

YOU WILL PLEASE TAKE NOTICE that the Defendants Reid Smith ("Smith") and Price, Bird & Smith, P.A. by and through its counsel, will move before the Presiding Judge of the Richland County Court of Common Pleas on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order granting Summary Judgment in favor of Defendants Reid Smith and Price, Bird & Smith, P.A. on all claims or causes of action asserted by Plaintiff Carolyn Powell.

Defendants Smith and Price, Bird & Smith, P.A. make this motion pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that all claims or causes of action asserted against these Defendants by the Plaintiff are barred by waiver, collateral estoppel, judicial estoppel, and/or law of the case. Attached as support for this Motion are the **Complete Property, Support and Custody Agreement** dated April 20, 2007, transcript of testimony given by Plaintiff under oath on May 2, 2007, before the Honorable Anne Jones, and the Court's **Final Decree of Divorce and Order Approving Agreement**, dated May 2, 2007, all made in connection with *Carolyn W. Powell v. W.*

Conrad Powell, Case No. 04-DR-40-3081, 07-DR-40-0570. In addition, these Defendants will submit Plaintiff's deposition testimony in the above captioned matter before the hearing on this Motion. This Motion is also supported by South Carolina law as well as a memorandum of law, affidavits and other documentation which Defendants Smith and Price Bird & Smith, P.A. may submit to the Court.

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

By: 

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

Columbia, South Carolina
February 9, 2011

ATTACHMENT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Carolyn W. Powell,)
Plaintiff,)

vs.)

W. Conrad Powell,)
Defendant.)

IN THE FAMILY COURT FOR
THE FIFTH JUDICIAL CIRCUIT

DOCKET NO: 07-DR-40-3081
DOCKET NO: 07-DR-40-0570

COMPLETE PROPERTY, SUPPORT, AND
CUSTODY AGREEMENT

This action was commenced by Plaintiff with the filing and service of a Notice of Motion and Motion for Temporary Relief, Summons and Complaint, bearing docket number 04-DR-40-3081, on or about August 27, 2004. Defendant filed and served his Answer and Counterclaim on or about October 21, 2004. Defendant filed and served his Amended Answer and Counter claim on or about November 4, 2004. Plaintiff filed and served a Reply on or about December 16, 2004. Subsequently, the case was administratively dismissed, pursuant to the 270 day rule in July of 2005, and Plaintiff re-filed and served a Notice of Motion and Motion for Temporary Relief, Summons, and Verified Complaint, bearing docket number 07-DR-40-0570, on or about February 21, 2007.

On or about March 6, 2007, Plaintiff filed and served a Notice of Motion and Motion to Restore Action and Consolidate Actions. The Court granted the Motion to Restore the Action and Consolidate the Actions on March __, 2007.

This Complete Property, Support, and Custody Agreement (hereinafter referred to as the "Agreement") is made and entered into this the 20 day of April, 2007 in Richland County, South Carolina, by and between Carolyn W. Powell (hereinafter referred to as "Wife") and W. Conrad Powell (hereinafter referred to as "Husband").

mg

WITNESSETH:

WHEREAS, Carolyn W. Powell, Wife, is a citizen and resident of Richland County, South Carolina;

WHEREAS, W. Conrad Powell, Husband, is a citizen and resident of Richland County, South Carolina;

WHEREAS, the parties hereto are Husband and Wife, having been duly and lawfully married to each other on September 17, 1988;

WHEREAS, one (2) children were born of this marriage, to-wit: Mary Morgan Powell (DOB: 4/18/89) and Alexandra Caroline Powell (DOB: 5/05/91); and no other children were born of this marriage and none are expected;

WHEREAS, Husband and Wife last resided and cohabited as Husband and Wife in Richland County, South Carolina;

WHEREAS, the parties separated on or about December of 2003 and have resided continuously separate and apart since that date;

WHEREAS, both parties consider it in their respective best interests to settle and resolve between themselves all matters in issue and all matters heretofore arising or hereafter to arise from their marital union, and have reached a permanent and complete Agreement and now wish to reduce that Agreement to writing and desire that it shall constitute the complete and total Agreement between them, both now and following any Decree of Divorce or Final Decree of Separate Support and Maintenance which either side might obtain, with respect to all matters relative to alimony, debt allocation, property division, attorney fees, tax matters, and all other matters which are raised or could have been raised between the parties hereto, other than the issue of divorce itself;

WHEREAS, Wife is represented by C. Cantzon Foster, II, Esquire of Columbia, South

Carolina;

WHEREAS, Husband is represented by Marne Sherman, Esquire of Columbia, South Carolina;

WHEREAS, both parties acknowledge that they have been completely and fairly represented and believe that that they have been fully advised of or otherwise know their rights and responsibilities generally and especially hereunder; each party further acknowledges that the other party's attorney represents only the other party, and neither Husband nor Wife has relied on legal opinions or advice of the other party's attorney;

WHEREAS, both parties acknowledge that each is familiar with the financial ability, income, expenses, assets and liabilities of the other and each recognizes and acknowledges that they are not entering into this Agreement as a result of threats, duress or undue influence but as a natural consequence of the breakdown of their marriage and they fully recognize that each party has freely, actively, and fully taken part in the negotiation hereof over a reasonable period of time and each fully accepts the terms and conditions hereof and each party acknowledges and considers the same to be fair, just and equitable under the circumstances; and

WHEREAS, both parties acknowledge and represent that the general circumstances under which this Agreement is entered into include those set forth above:

NOW, THEREFORE, for and in consideration of the mutual and several binding promises, covenants, Agreements, and undertakings herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby acknowledge full satisfaction with regard to the terms and conditions hereof and with respect to their legal representation herein and acknowledge the terms and conditions of this Agreement to be fair, just, adequate and reasonable, and hereby freely and voluntarily agree as follows:

PAGE 3 OF 21 

I. CHILD CUSTODY AND VISITATION

- a. Custody/Visitation: Wife shall have sole custody of the minor children. Husband shall be entitled to the same liberal visitation with the children as he has enjoyed since the separation of the parties.
- b. Information: Husband and Wife shall both be entitled to full information and records pertaining to the children. This right shall include but not be limited to all reports and information concerning the health, education, and all other matters of similar importance of the children. Both parents shall be placed on all school, church, doctor, and activities mailing lists; however, when said information is provided by third parties to one but not both parents, the parent receiving said information shall immediately make said information available to the other parent. It is the intent herein that both parties should continually be advised of the continuing best interest and welfare of the children, as well as with regard to their activities and progress. Wife shall have possession of originals of the minor children's Birth Certificates and Social Security cards.
- c. Decisions: Whenever emergencies arise or when major decisions are to be made or substantial changes brought about affecting the life or well-being of the children (with respect to such non-routine matters such as education, choice of schools, travel, religious training, illnesses and operations, selection of physicians, dentists, psychologists, psychiatrists, camps, participation in sports, major discipline matters, and other matters of similar importance) Husband and Wife shall inform one another and consult with one another, to solicit the insights and opinions of the other concerning the same; and each agrees to give due deference to input and opinions of the other. Both parents agree to be

mr

reasonable and cooperative in this process and shall always act in a manner calculated to serve the best interests and continuing welfare of their children. In the event the parents are not able to reach an Agreement on such an issue, either party shall have the right to submit said issue to the Family Court for adjudication. The Family Court may assess attorneys' fees and suit costs in the matter against a party it finds to have been unreasonable in the matter.

- d. Supervision: At all times, and particularly during the summer months when the children are out of school, both parents shall assure that the children are properly supervised. Both parties shall keep the children in good moral environments. Neither party shall expose the children to any illegal, immoral, or improper atmosphere. At those times when the party has custody of, or visitation with the parties' minor children, neither party shall have a member of the opposite sex to whom he or she is not related by blood or marriage (i.e., a paramour), nor someone with whom the party is romantically or sexually involved, stay overnight while any of the children are present.
- e. Disparagement: Husband and Wife shall each encourage the children to love, respect and honor the other parent and neither of them shall alienate or attempt to alienate or diminish the affections of the children from the other parent or siblings of the children, or disparage or allow others to disparage the other parent or siblings of the children in the presence of the children.
- f. Parental Designations: The parties shall see to it that the designations of "Father" and "Mother", or their equivalents, are used by the children only to refer to the parties hereto, and not to other persons. Neither party shall allow any third parties to use such designations when referring to the relationship between the children and any third parties.

- g. Communication: At all times hereafter, Husband and Wife shall keep each other informed of their respective business and home telephone numbers, and their respective street and mailing addresses. Both Husband and Wife will make themselves available for direct communication with the other for the purpose of discussions pertaining to the children; provided, however, neither parent will harass or unduly burden the other with excessive or abusive telephone calls or any other such nonproductive communication.
- h. Children's Birthdays: Each party shall have reasonable access to the children on their respective birthday.
- i. Parent's Birthdays: Each party shall have reasonable access to the children on their respective birthday.

II. CHILD SUPPORT/ EXPENSE OBLIGATION:

A. Monthly Child Support:

- a. The parties recognize and acknowledge that they are deviating from the South Carolina Child Support Guidelines and that a portion of Husband's child support payments as set forth hereinbelow is attributable to an equitable property distribution by Husband to Wife. The equitable property distribution portion of this payment is \$3,751.00. Husband shall pay directly to Wife, by way of child support/property distribution, twelve payments in the amount of \$5,000 [Five Thousand and No/100 Dollars] each on the fifteenth day of each and continuing every month beginning April 15, 2007 and with the last \$5,000 payment ending on March 15, 2008.
- b. Thereafter, Husband shall pay Wife a monthly child support/property distribution



payment in the amount of \$1,500 [One Thousand Five Hundred and no/100s] beginning April 15, 2008 and continuing on the fifteenth day of each month thereafter until the parties' youngest child, Alexandra, graduates from High school or if she goes to college, on the 1st day of the month in which she is enrolled in and attends college (which is anticipated to be August following her graduation from High School). A portion of this payment in the amount of \$622.00 shall be deemed equitable property distribution.

- c. If Husband is ever more than five days late paying his child support/property distribution payment as described above, Wife shall be entitled to file an affidavit with the Clerk of Court for Richland County and thereafter Husband shall pay all future child support payments through the Clerk of Court and shall also be responsible for paying all attendant administration fees, which are currently 5%.

B. Medical Insurance: For so long as Husband has an obligation to pay child support, he will continue to insure the children for health insurance. In the event the children go to undergraduate school, he will maintain health insurance on each child until they each graduate, not to exceed 5 years for each child or for so long as the insurer permits.

C. Expenses for the Children: Husband shall pay educational costs¹ for the children including

¹ Husband's obligation to pay for the educational costs of the children including private school in Columbia, SC, for Alexandra, and both of the girls to obtain an undergraduate degree, such not to exceed a period of five (5) years per child in undergraduate school, with undergraduate expenses to include tuition, books, room and board (and as to room and board, only if the children stay on campus at the educational institution they attend). Husband's obligation for undergraduate expenses will be limited to that which is charged by the University of South Carolina. Such is not meant as a limitation of Husband's financial obligation. Specifically omitted from this Agreement is any obligation of Husband to pay for graduate school for the children. If the children want to attend graduate school and want Husband to pay for such school, that will be a matter to be determined between the children and Husband.

school tuition, uncovered and insured health and medical expenses, car insurance and car maintenance expenses for the children and he will pay for sports in which the children are involved, including the horses and equestrian activities. Wife will be responsible to pay the expenses for the children's attendance at Aiken Preparatory School for the School Year 2006-2007.² Husband will be required to pay for the expenses associated with no more than four horses and four pets. In addition, he will pay for reasonable clothing and miscellaneous expenses for the children. Wife will be responsible for paying for food for the children when they are in her care. As to the forgoing expenses for the children, Husband will have the ultimate decision-making authority (i.e. the provider for the car insurance, the provider for car maintenance expenses, where the horses will be boarded, etc.). However, the schools the children attend must be mutually agreed upon by the parties.

- D. Dependent Exemption: For so long as the Husband is actually paying child support and children expenses as set forth above, Husband shall be entitled to take the minor children as a dependent exemption for purposes of state and federal taxes. The parties shall execute any and all necessary documentation to effectuate this provision.

III. MUTUAL WAIVER OF ALIMONY:

As a mutual consideration expressed herein, Husband and Wife hereby acknowledge that they are irrevocably barred from any and all past, present, or future obligations to pay, on a temporary, permanent, or other basis, any form of spousal support, including, but not limited to, separate maintenance, periodic alimony, rehabilitative alimony, reimbursement alimony, or lump sum alimony, to the other, and hereby discharge, waive and agree to be irrevocably barred from any

² Husband gave Wife a check for \$20,000 in July 2006. \$10,000 of the \$20,000 check was to be applied towards Husband's half of the tuition for the 2006-2007 term at Aiken Preparatory School.

and all past, present, or future claims of a like nature which either they now have or could have in the future against each other arising out of the marital relationship between the Husband and Wife, both presently, and in the event of divorce, following divorce. Further, the Husband and Wife hereby each release and discharge the other of and from all obligations, duties and services which, as spouses he or she may owe the other and from all duties, liabilities, and responsibilities of whatever nature he or she may owe the other by reason of the marital relationship, especially including the right to be supported.

IV. EQUITABLE DIVISION OF MARITAL PROPERTY:

A. Health Insurance for Wife: As part of equitable distribution to Wife, Husband shall pay Wife's health insurance for a period not to exceed eight months following the date of the execution of the Court's approval of this Agreement. This provision is non-modifiable and Wife will be responsible for paying for all uninsured, unreimbursed medical, dental, optical and prescription expenses for herself.

B. 3505 Devine Street ("Devine Street Property"): The parties have agreed that Husband shall assist Wife with the pay off the mortgage on a property located in Aiken, SC commonly known to the parties as the "Clark Barn Property." The parties' Agreement related to the Clark Barn Property is attached hereto as Exhibit A. Husband shall transfer clear title³ to the Devine Street Property by way of General Warranty Deed to be prepared by Wife's attorney within five days after the sale of the Clark Barn Property as set forth in Exhibit A. Until title is transferred to Wife, Husband will maintain a homeowner's insurance policy covering the Devine Street Property in the amount of no less than \$750,000. Husband may continue to have possession of the Devine Street Property until June 30, 2007. Wife will be permitted to

³ Free of all judgments, liens or other encumbrances.

take possession of the Devine Street property no later than July 1, 2007. If Husband vacates the Devine Street Property before June 30, 2007, Wife may have the immediate possession of said property. Wife agrees that she and the children will relocate to Columbia when she takes possession of the Devine Street Property. By way of equitable distribution, Husband agrees to give Wife \$20,000 to be applied to the renovations/repairs of the Devine Street Property within 15 days of the Court's approval of this Agreement. All light fixtures will remain in the Devine Street property with the exception of the dining room light fixture which will be replaced with Iron and Crystal Chandelier located at 602 Huger Street.

C. Advances on Equitable Distribution: Wife acknowledges that she has already received \$400,000 by way of equitable distribution in January of 2005 and Husband agrees to advance another \$250,000 no later than 24 hours from the date both parties execute this unaltered Agreement.

D. Automobiles: Each party shall be entitled to the exclusive use and possession of his or her respective vehicles, and each shall continue to be responsible for all financial obligations and debts related to such vehicle, including, without limitation, the monthly loan payment, insurance, repairs, maintenance, and taxes. For purposes of this Agreement, Wife's automobile is her 1997 Lexus and Mr. Powell's automobiles are his 1996 Infinity, 2001 Mercury. However, Wife will be allowed to continue to use the 1996 Infinity until such time as Husband purchases a suitable automobile for the parties' daughter, Alexandra.

E. Personal Property, Furniture, Fixtures, Personal Effects: Except as set forth below, each party shall retain possession and have ownership of those items of personal property, including but not limited to boats, tools, household furnishings, stereo equipment, TVs, VCRs, computers, and computer-related hardware currently in his or her respective possession at the

time of the execution of this Agreement.

Items to be provided to Wife

1. Two cargo containers located at 602 Huger Street, Columbia South Carolina and all of the items contained therein;
2. Wife's personal possessions located at 1215 S. Boundary SE, Aiken, South Carolina;
3. Items attached and incorporated hereto as Exhibit B.

D. Bank Accounts, Investments, and Other Property

(1) Wife shall have sole and exclusive ownership of her savings, checking, IRA, pension, retirement, and any other accounts titled solely in her or under her control, free and clear of all claims of interest of Husband.

(2) Husband shall have sole and exclusive ownership of his savings, checking, IRA, pension, retirement, and any other accounts titled solely in his or under his control, free and clear of all claims of interest of Wife.

V. MARITAL INDEBTEDNESS AND OBLIGATIONS:

A. Existing Indebtedness:

(1) Husband shall be solely and exclusively responsible for and shall pay the indebtedness assumed by him under the terms of this Agreement, as set forth above, and additionally, he shall be solely and exclusively responsible for payment of the existing indebtedness in his name and on any debts Husband incurred during the parties' separation.

(2) Husband shall hold Wife harmless from the indebtedness assumed by him under the terms of this Agreement, as set forth above and elsewhere in this Agreement, and shall indemnify her from any liability thereon, including any attorney fees or costs incurred by the Wife in

defending against any such liability.

(3) Wife shall be solely and exclusively responsible for and shall pay the indebtedness assumed by her under the terms of this Agreement, as set forth above, and additionally, she shall be solely and exclusively responsible for payment of the existing indebtedness in her name and on any debts Wife incurred during the parties' separation.

(4) Wife shall hold Husband harmless from the indebtedness assumed by him under the terms of this Agreement, as set forth above and elsewhere in this Agreement, and shall indemnify him from any liability thereon, including any attorney fees or costs incurred by the Husband in defending against any such liability.

(5) Each party warrants and represents that he or she has made a full and complete disclosure of any and all existing indebtedness or liabilities of any nature or description, whether contingent or otherwise, which he or she has incurred at any time during the parties' marriage which have not been paid or satisfied in full prior to the date of this Agreement and that all such indebtedness and liabilities have been expressly addressed and allocated under the terms of this Agreement. Further, the Agreement is made upon the assurance that each party has made a full, complete and total disclosure to the other party of his or her income and the nature, extent, and value, of all the parties' respective assets and obligations, for the purpose of inducing the other party to enter into this Agreement. Therefore, to the extent that either party has failed to make such full and complete disclosure, then the releases and waivers contained in this Agreement shall be null and void as to any income, property, or assets of the party which he or she has not disclosed accurately; and any such property is unaffected by this Agreement. In the event that by reason of non-disclosure or inaccurate disclosure by one party, the other party incurs additional counsel fees or incurs or expends suit money or costs in order to protect the asset or assert his or her right or claims,

the non-disclosing or inaccurately disclosing party shall hold harmless and indemnify the other party from all financial detriment thereby incurred by that party.

B. Future Indebtedness:

(1) From and after the date of this Agreement, Husband shall not incur any indebtedness or liability, of any nature or description, in the name of Wife or in the parties' joint names.

(2) From and after the date of this Agreement, Wife shall not incur any indebtedness or liability, of any nature or description, in the name of Husband or in the parties' joint names.

(3) As soon as possible, all accounts of joint and several nature shall be closed or converted to the individual name of the responsible party so as to not impair the credit of the other party. In any event, the joint accounts shall be closed when paid in full. Upon execution of this Agreement, each of the parties shall return to the other all credit cards and other indicia of credit and shall make no further charges thereon.

VI. STATE AND FEDERAL INCOME TAX RETURNS:

For 2007 and thereafter, the parties shall file separate federal and state tax returns. Each party shall be responsible, respectively, for any liability, and entitled to any refund, in relation to his and her respective income and deductions.

Husband and Wife shall hold each other harmless for the payment of all taxes, assessments, penalties, and interest resulting from any acts or omissions of either party and from any action of any taxing authority resulting from the acts or omissions of either party for the period commencing with the date of the marriage through the date of the parties' separation.

In order to avoid unintended tax consequences, the parties shall execute and deliver to the other such title documents as are necessary to transfer all property consistent with the terms of this Agreement as soon as practicable after execution of this Agreement. Neither party shall sell or do

any other act that would precipitate tax consequences to the other party, including, but not limited to, selling property while such property remains jointly titled.

Husband and Wife acknowledge that neither attorney has provided them with any tax advice as to the tax treatment of the distribution of property set forth herein or any other tax consequences of the terms of this Agreement. Husband and Wife acknowledge that neither party is relying on any opinions that may have been expressed by either attorney as to the tax consequences of the execution of this Agreement.

VII. ATTORNEY FEES, SUIT MONEY, AND COSTS:

The parties agree that they shall be individually responsible for their respective attorney fees, private investigator fees, suit money, and costs involved in this matrimonial dispute from its inception and also in the negotiation, preparation, and approval of this Agreement and for all attorney fees, suit money, and costs heretofore or hereafter incurred in any litigation brought before any Court for the purpose of approving this Agreement and/or to obtain an uncontested divorce of the parties; and further hereby waive and mutually release each other from any and all claims thereto.

This waiver and release does not constitute a waiver or release or in any way bar either party from claiming attorney fees, suit money and costs, from the other in actions brought subsequent to the signing of this Agreement to enforce the terms and conditions hereof.

VIII. SEPARATION AND NON-INTERFERENCE:

The parties do hereby acknowledge that on or about December of 2003 prior to the execution of this Agreement, the parties separated and have continued to live separate and apart. Although recognizing their legal bond of marriage, they recognize and agree that in order to promote their mental health and well-being, the parties must now continue to live separate and apart.

from each other and shall be free to conduct themselves as if they were unmarried. Each party shall be free from the control of the other. Husband and Wife will not in any manner annoy, molest, or disturb the other, or compel or endeavor to compel the other to cohabit with him or her and will honor the request of one part to the other not to communicate with him or her upon such request not to communicate.

IX. RELEASES AND DISMISSAL OF ALL CLAIMS:

Except for specific rights, responsibilities, and conditions set forth in this Agreement, Husband and Wife hereby generally and fully release each other from all actions, causes of action, claims, suits, demands, rights, damages, losses, costs, expenses, fees, attorney fees, suit money, private investigator fees, accounts, judgments, executions, debts, obligations, and any and all other liabilities of any kind or nature whatsoever either in law or in equity, whether known or unknown, suspected or unsuspected from the beginning of time to date the parties executed this Agreement, including, but not limited to, claims for personal injury and claims arising out of their marital relationship.

The parties do hereby declare and represent that in making this Release and Agreement, each relies wholly upon his or her own judgment, belief, and knowledge of the nature, extent and effect of said acts, and that each has not been influenced to any extent whatsoever in the making of this release by any representations or statements regarding the entire matter or by persons, firms, agents, attorneys, or corporations representing them.

Each party understands that this settlement is a compromise of a disputed claim and that any payment to or by each or either of them is not to be construed as an admission of liability for said acts.

Richland County, South Carolina, for the purpose of having the Court review and approve the terms and conditions of this Agreement and for the issuance of an appropriate Order approving the terms and conditions hereof and making the same the Order of the Court.

Each party solemnly agrees to promulgate and support the Court's approval of this Agreement and do nothing in derogation hereof and in any way attempt to discourage said approval and merger by the Court. If the Court does not approve this Agreement in its totality, this Agreement shall be null and void.

Once approved and made the Order of this Court, the Family Courts of the State of South Carolina shall have continuing jurisdiction to enforce the terms and conditions of this Agreement, along with any Order issued with respect thereto, and both parties shall be subject to the contempt powers and jurisdiction of the Family Courts of the State of South Carolina with respect to any breach or violation of this Agreement or the Order of this Court.

Husband and Wife hereby acknowledge and agree that this is a full and complete custody, property and support Agreement with respect to all matters raised and with respect to those which could have been raised in the controversy between them, and is considered by them to be a fully integrated Agreement. It is the intent of the parties hereto that the provisions of this Agreement shall govern the rights and obligations of the parties, as well as all rights of modification; and, further, that the terms and conditions of this Agreement and any Order approving the same, shall not be modifiable by the parties or any Court without the written consent of Husband and Wife, saving and excepting the matters of child custody, child support, and child visitation, which terms and conditions are now and shall always be subject to modification and termination by the Family Courts of the State of South Carolina as provided in this Agreement. The parties specifically agree that the Family Courts of the State of South Carolina (or any other Court) shall not have any

jurisdiction to modify, supplement, terminate, or amend this Agreement, or the rights and obligations of the parties, except as provided in this Agreement.

XIII. GENERAL PROVISIONS:

The parties represent to each other and further agree to the following, to-wit:

A. Voluntary Agreement: Each party acknowledges that he and she are fully informed as to his or her legal rights and obligations; that each of them has entered into and executed this Agreement after conferring with each of their respective independent attorneys, and having such knowledge and opportunity, each of them executes this Agreement freely and voluntarily, intending to be bound forever by it and intending that it shall be enforceable by either party by proceedings in Family Court for the Fifth Judicial Circuit in Richland County, South Carolina. It is further understood and agreed that this Agreement is not, and is not to be construed to be, an Agreement for divorce.

B. Complete Agreement: This Agreement expresses the entire Agreement between the parties, supersedes any prior understandings or Agreements between them and there are not any other representations or warranties other than those specifically set forth herein.

C. Full Disclosure: Each party represents to the other that a true and accurate disclosure has been made to the other of all assets and financial matters.

D. Waiver of Estate Rights: Each party hereby releases and relinquishes and by these presents are hereby barred from any and all rights and claims he or she may have or hereafter acquire as a spouse under the present or future laws of any jurisdiction by way of dower, inheritance, descent, distribution, elective share, and all other rights or claims whatsoever, including but not limited to claims in or to the property or estate of the other, whether real, personal, or mixed,

and whether now owned or hereafter acquired. Both parties are aware of their elective share rights, and they hereby release and relinquish any right to elective share that he or she may have with the full knowledge of all rights thereto.

E. Enforcement: Each party may apply to the Family Courts of the State of South Carolina for an Order directing specific performance of any act or duty imposed upon the other in the terms of this Agreement, and for appropriate relief to enforce the terms and conditions hereof.

F. Defaults Not Waived: No waiver of any breach by either party of the terms and conditions of this Agreement shall be binding upon either of the parties unless reduced to writing and subscribed to by both of the parties. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement shall not be construed as a waiver of any continuing or subsequent default of the same or similar nature.

G. Applicable Law: This Agreement was duly executed and delivered in the State of South Carolina, and its terms and conditions shall be governed by and interpreted under the laws of the State of South Carolina.

H. Addresses: Until all of the obligations created by this Agreement have been fully performed by both parties, each party shall at all times keep the other informed of his or her residential address and shall notify the other of any change of residential address within ten (10) days of any change, providing the address of new residence.

I. Reconciliation: This Agreement shall not be invalidated by a reconciliation or resumption of marital cohabitation of the parties. This Agreement shall be nullified in the event of reconciliation only if the parties specifically execute a statement, signed by each of them with the same formality as this Agreement, declaring this Agreement to be null and void.

J. Severability: If any provision of this Agreement is held to be invalid or

W

unenforceable, all other provisions shall nevertheless continue to be fully effective.

K. Construction Against Drafting Party Inapplicable: Both parties (and their respective counsel) shall be treated as having drafted this Agreement cooperatively; therefore, neither party shall have any ambiguity construed against him or her and neither party shall be entitled to claim the benefit of any ambiguity resulting from the drafting of this Agreement.

M. Headings: The headings used in this Agreement are for convenience of the parties only and shall not be used to establish or interpret any of the rights or obligations set forth in this Agreement.

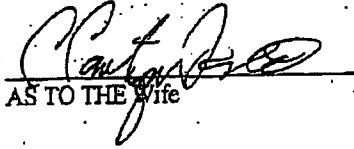
N. Modifications: A modification of the terms of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

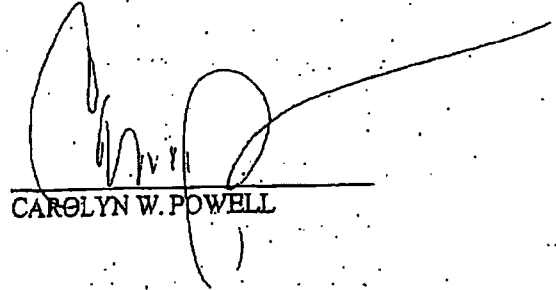
O. Implementation: The parties expressly agree that at any time hereafter, each of them shall make, execute, and deliver any and all further and other instruments, papers, or things as may reasonably be required or desirable for the purpose of giving full effect to this Agreement (including but not limited to deeds, renunciations, bills of sale, income tax returns, tax reporting forms, powers of attorney authorizing statements to tax returns and assignments, and other such documents).

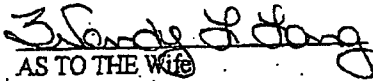
P. Confidentiality: The parties recognize that the financial information disclosed in this Agreement is confidential and each party shall not disclose such information to any other person, directly or indirectly, without the express written consent of the other party.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date
and year first shown above on this Agreement.

IN THE PRESENCE OF:


AS TO THE Wife


CAROLYN W. POWELL


AS TO THE Wife

AS TO THE Husband

W. CONRAD POWELL

AS TO THE Husband





STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) AGREEMENT

In consideration for W. Conrad Powell paying the sum of \$435,000.00 to Sun Equities Lending Group, the undersigned, Carolyn W. Powell, as mortgagor under a certain mortgage dated May 13, 2005, hereby consents to the assignment of the rights and obligations of Sun Equities Lending Group, a Georgia Partnership as mortgagee to W. Conrad Powell, assignee.

Carolyn W. Powell further agrees that the property subject to the mortgage will continue to be listed with a real estate agent at a price of \$595,000.00, and that after payment of reasonable and ordinary closing costs, and \$435,000.00 to W. Conrad Powell, that the net proceeds will be shared equally by Carolyn W. Powell and W. Conrad Powell.

Carolyn W. Powell agrees and stipulates that she will not further encumber the property.

The parties agree that W. Conrad Powell shall have the right to approve the sale of the property subject to the mortgage.

W. Conrad Powell agrees that in consideration for the terms set out above that payment will be made to Thomas P. Murphy, attorney for Sun Equities Lending Group, on the following terms: \$25,000.00 before 10:30 a.m. April 2, 2007, and \$410,000.00 before 5:00 p.m. April 10, 2007, contingent upon conditions in appendix "A" attached are met in a timely manner. *up* *sign*

Date: April 1, 2007

Carolyn W. Powell

W. Conrad Powell

~~PAID~~ Q03 - 193131 (REID SM m) 4/01/07

AGREEMENT RE: Aileen BARN -

Appendix "A"

P = Paul Power = CP to advance 25,000 on 4/2/07,
P = Carolyn Power 20,000 of which applies to mortgage payoff,
upon receipt of letter from atty stating this agreement.

- CP to advance additional monies for total payoff
of mortgage w/in 10 days w/ not to exceed
add. fund 410,000

no further funds
from Paul Power
10/2/07
W. Power

CP agrees the orig 25,000 to be returned
to CP upon payment of 250,000 equitable distribution
if all the following do not occur:

1) all paperwork/documents provided per Jimmy
Knight's direction

2) Recordable note/agreement from CP

stating a) Property is w/h/will not be further
encumbered with debts/liens,

b) Property will remain on The Market @ 595,000 +

c) upon sale, CP to receive all monies invested
plus 1/2 net amount received after investment
dollars are returned

d) Devine st mortgage will not be paid off
until stable is sold/closed,

e) After taking possession CP to pay Devine st

Mortgage until stable is sold/closed -

Signed CAROLYN W. POWER

Signed

W. Power

EXHIBIT B

Personal Property List to be provided to Wife:

Cotton Warehouse Storage

Miscellaneous personal items belonging to the children.

602 Huger Street Office:

All items in personal office

(Office to be secured until items removed on or before July 1, 2007)

Smalls Items:

China doll under glass

Art Nouveau Gas Lamp

Redware Platter

Coat Rack

Furniture:

1800's American Corner Cabinet purchased 10 yrs ago through Ron Jones.

French Bombay Chest with Green Marble Top purchased on Wedding Trip to England in 1988 and became household furniture.

Red Leather Club Chair

Lighting:

Tiffany Style Hanging Light

Pair of Gas Lights

Bronze Fox sconce (for Morgan)

Other:

Statue: Suzanna (Christmas gift 2003)

Concrete Buddha

Large Stained Glass

Iron/wooden Bench (Fran built)

***Painted Table (paid \$200 at auction for beach house)

***Bench made from ship's parts (paid \$35 for beach house)

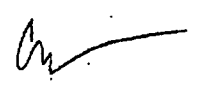
Pair of Iron gates for privacy and security on Devine Street (If Fran can locate we will do an exchange with Fran)

French Bronze Urn (one of three)

929 Gervais Street:

All items in personal office

To include items in storage in other closets in building



(Office to be secured until items removed on or before July 1, 2007)

Rugs:

Choice of Two Oriental Rugs from Rug Inventory

Lighting:

Art Nouveau Pendant Light in Gallery Space

Bronze Mailland Smith Frog Fountain (purchased for personal use in Mailland Smith warehouse for \$1000)

3505 Devine Street

Art:

All Art removed from 929 Gervais Street Office to 3505 Devine in 2004 to include:

Three Yagjian Paintings purchased privately

Madonna and Child Painting purchased at NC Auction

Steinway Piano:

To belong to Morgan and Ali

Other:

Basket (beach house)

Wedgewood China (10 place settings) purchased privately

Gallery Computer removed from 929 Gervais Street (Gateway)

Personal items left in guest house storage closets



ATTACHMENT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE FAMILY COURT

CAROLYN POWELL

- vs -

W. CONRAD POWELL

:
:
: TRANSCRIPT OF RECORD
:
:

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

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

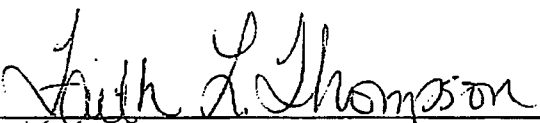
2 STATE OF SOUTH CAROLINA)

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

ATTACHMENT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Carolyn W. Powell,)
Plaintiff,)

vs.)

W. Conrad Powell,)
Defendant.)

IN THE FAMILY COURT FOR THE
IN THE FIFTH JUDICIAL CIRCUIT

Case No. 04-DR-40-3081
Case No. 07-DR-40-0570

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

Date of Hearing: May 2, 2007
Presiding Judge: The Honorable Anne Gue Jones
Plaintiff's Attorney: C. Cantzon Foster, II, Esquire
Defendant's Attorney: Marne Sherman, Esquire
Court Reporter: Ms. Faith Thompson

EXHIBIT A 50011
FAMILY COURT
MAY 2 2007

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

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

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

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

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

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

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

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

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

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

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

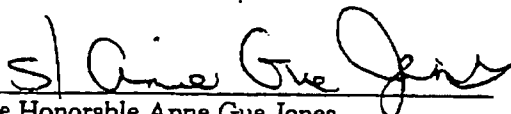
Now, therefore, based upon the foregoing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

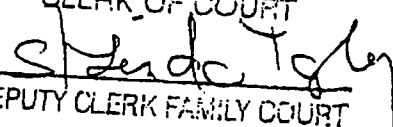
- A. Plaintiff's motion to restore docket number 04-DR-40-3081 and consolidate said case with docket number 07-DR-40-0570 is hereby granted.
- B. Plaintiff and Defendant are mutually granted a divorce *a vinculo matrimonii* from each other on the statutory ground of living continuously separate and apart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

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

AND IT IS SO ORDERED, ADJUDGED AND DECREED.


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

May 2, 2007
Columbia, South Carolina

ATTEST: A TRUE COPY
BARBARA A. SCOTT
CLERK OF COURT
BY: 
DEPUTY CLERK FAMILY COURT

CERTIFICATE OF SERVICE

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

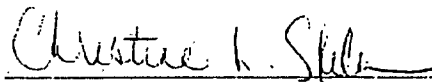
Pleadings:

**DEFENDANTS REID SMITH AND PRICE, BIRD &
SMITH, P.A.'S MOTION FOR SUMMARY
JUDGMENT**

Counsel Served:

Thomas A. Pendarvis, Esquire
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Telephone: (843) 524-9500
Attorneys for Plaintiff

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



Christine L. Skamera

February 9, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,
☐ Plaintiff

CASE NO.: 09-CP-40-8705

v.

**MOTION AND ORDER INFORMATION FORM
AND COVER SHEET**

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

Plaintiff's Attorney:
Thomas A. Pendarvis, Esq.
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Beaufort, SC 29902-5066
Phone: (843) 524-9500 Fax: (843) 524-9501
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Attorney for Defendant:
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Columbia, S.C. 29202
Phone: 803-227-4240 Fax: 803-400-1493
Email: Chill@TurnerPadgett.com

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment on behalf of Defendants Potterfield, Taylor, and Taylor/Potterfield [in relation to a previously filed motion]

Estimated Time Needed: 20 minutes

Court Reporter Needed: YES ☒ / NO ☐

SECTION II: Motion Type

- ☒ Written motion attached
☐ Form Motion - I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendants Potterfield/Taylor, et al

March 1, 2011
Date submitted

SECTION III: Motion Fee

- ☒ **PAID - AMOUNT: \$25.00**
☐ **EXEMPT:** (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE
CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

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

Plaintiff,

vs.

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

Defendants.

**MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANTS
POTTERFIELD, TAYLOR, AND
TAYLOR/POTTERFIELD**

The defendants Ashlin Blanchard Potterfield, J. Michael Taylor, and Taylor/Potterfield move the court for an order granting them summary judgment on all claims or causes of action asserted by plaintiff Carolyn Powell.

This motion is made on the same basis, with the same grounds, and in reliance on the same supporting materials, as the motion for summary judgment previously made by defendants Reid Smith and Price, Bird & Smith, P.A., served and filed on February 9, 2011, all of which are incorporated herein by reference.

TURNER PADGET GRAHAM & LANEY, P.A.



Charles E. Hill, Esq.
1901 Main Street, 17th Floor (29201)
Post Office Box 1473
Columbia, SC 29202
Telephone: (803) 227-4240
Facsimile: (803) 400-1493

Columbia, South Carolina
March 1, 2011

*Attorneys for Defendants Potterfield,
Taylor, and Taylor/Potterfield*

TPGL 3695761v1

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

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

vs.

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

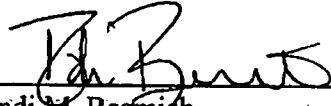
Defendants.

CERTIFICATE OF SERVICE

I, the undersigned employee of Turner, Padgett, Graham & Laney, P.A., attorneys for defendants Potterfield, Taylor, and Taylor/Potterfield, do hereby certify that I have this day served a copy of the foregoing **MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS POTTERFIELD, TAYLOR, AND TAYLOR/POTTERFIELD** in connection with the above-referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following address(es):

Thomas A. Pendarvis, Esquire
Pendarvis Law Offices, PC
500 Carteret Street, Ste A
Beaufort, SC 29902-5066
Attorneys for Plaintiff

J. Calhoun Watson, Esquire
Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
*Attorneys for Reid Smith and
Price, Bird & Smith, P.A.*


Randi M. Beamish

Columbia, South Carolina
March 1, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

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

Plaintiff,

vs.

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

Defendants.

**AMENDED
MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF DEFENDANTS ASHLIN
BLANCHARD POTTERFIELD,
J. MICHAEL TAYLOR AND
TAYLOR/POTTERFIELD**

The defendants Ashlin Blanchard Potterfield, J. Michael Taylor, and Taylor/Potterfield move for summary judgment on the following grounds:

1. *As to all defendants:* In this legal malpractice case, the Amended Scheduling Order entered Nov. 22, 2011, established a deadline of Feb. 13, 2012, for plaintiff to identify any expert witness in addition to plaintiff's previously disclosed experts, Gregory Adams and Gary Brown. Plaintiff did not identify any additional experts by the deadline. Neither Adams nor Brown, by affidavit, report, or deposition, has expressed any opinion that plaintiff would have received a more favorable settlement in the underlying action but for the alleged negligence of defendants. Absent such evidence, defendants are entitled to judgment as a matter of law. *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); *Doe v. Howe*, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2005).
2. *As to defendant Taylor:* Plaintiff's expert Brown testified that he has no opinion as to whether defendant Taylor deviated from the standard of care. See pages 92-93 and

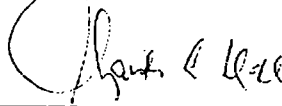
98 of Attorney Brown's deposition, taken November 16, 2011. Adams gave an affidavit dated Dec. 11, 2009, which was served and filed with the complaint pursuant to Code of Laws of S.C. Section 15-36-100(B); this affidavit is no longer current in view of substantial discovery, including depositions of the parties, which has occurred subsequently. With no expert testimony to the effect that defendant Taylor deviated from the standard of care in his representation of plaintiff Carolyn Powell in the underlying marital litigation, plaintiff has failed to make out a case of legal malpractice and defendant Taylor is entitled to judgment as a matter of law.

3. *As to defendant Potterfield:* There is no dispute of fact that defendant Potterfield's representation of plaintiff Powell in the underlying litigation ended on April 1, 2005. See pages from the following depositions: deposition of Ashlin Potterfield, March 10, 2011, pages 203 and 227; deposition of Michael Taylor, April 19, 2011, pages 28 and 85; deposition of Carolyn Powell, January 27, 2011, page 55. The summons and complaint in this action were filed on December 11, 2009. This case is governed by the three year statute of limitations, Code of Laws of South Carolina Section 15-3-530. More than three years lapsed between Attorney Potterfield's representation of Ms. Powell and the filing of the suit.
4. *As to defendant Taylor/Potterfield:* Defendant Taylor/Potterfield is the partnership within which defendants Taylor and Potterfield practice law. There are no allegations against the partnership exclusive of the allegations against defendants Taylor and Potterfield individually. When the claims against the individual attorneys fail, then there is no basis for a claim against the partnership, and it is entitled to judgment as a matter of law.

Defendants incorporate by reference the materials attached to their prior motion for summary judgment filed December 27, 2011.

This motion is made pursuant to Rule 56, South Carolina Rules of Civil Procedure. There is no genuine issue as to any material fact with reference to the grounds stated above, and the defendants are entitled to judgment as a matter of law.

TURNER PADGET GRAHAM & LANEY, P.A.



Charles E. Hill
1901 Main Street, 17th Floor (29201)
Post Office Box 1473
Columbia, SC 29202
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Facsimile: (803) 400-1493

Columbia, South Carolina
February 16, 2012

*Attorneys for Defendants Potterfield,
Taylor, and Taylor/Potterfield*

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

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

vs.

CERTIFICATE OF SERVICE

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

Defendants.

I, the undersigned employee of Turner, Padget, Graham & Laney, P.A., attorneys for defendants Potterfield, Taylor, and Taylor/Potterfield, do hereby certify that I have this day served a copy of the foregoing **AMENDED MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS ASHLIN BLANCHARD POTTERFIELD, J. MICHAEL TAYLOR AND TAYLOR/POTTERFIELD** in connection with the above-referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following address(es):

Thomas A. Pendarvis, Esquire
Pendarvis Law Offices, PC
500 Carteret Street. Ste A
Beaufort, SC 29902-5066
Attorneys for Plaintiff



Randi M. Berlin

Columbia, South Carolina
February 16, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

Defendants.

**MEMORANDUM IN OPPOSITION
TO TAYLOR/POTTERFIELD
DEFENDANTS' (SECOND)
MOTION AND AMENDED
(SECOND) MOTION FOR
SUMMARY JUDGMENT**

TO: CHARLES E. HILL, J.D., COUNSEL FOR DEFENDANTS:

Plaintiff, Carolyn Mitchell Powell, respectfully submits this Memorandum of Law in Opposition to Defendants' (Second) Motion and Amended (Second) Motion for Summary Judgment filed on behalf of Defendants, Ashlin Blanchard Potterfield; J. Michael Taylor; Taylor/Potterfield; Golden, Taylor Potterfield and Barron (collectively "Taylor/Potterfield Defendants"). Former Defendants, Reid Smith; and Price, Bird & Smith, P.A., have been voluntarily dismissed from this lawsuit. **Defendants first Motion for Summary Judgement was denied by an Order issued by the Honorable G. Thomas Cooper, Jr. dated May 31, 2011.** The Taylor/Potterfield Defendants want to take a second bite at the same summary judgment apple.

SUMMARY OF THE ARGUMENTS

1. Genuine issue of material fact remain as to whether Plaintiff would have received a more favorable settlement in her divorce action but for Taylor/Potterfield

Defendants' negligence and professional neglect..

2. Two expert affidavits support Plaintiff's allegations that the Taylor/Potterfield Defendants deviated from the standard of care in their representation of Plaintiff in the underlying divorce action thereby creating a genuine issue of material fact.
3. Plaintiff's claims are not barred by the statute of limitations.
4. Plaintiff's claims against Defendant Taylor/Potterfield remain valid.

STANDARD OF REVIEW

Summary judgment is a drastic remedy and should be granted only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c); *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). Summary judgment is not proper when there are genuine issues as to material facts in dispute on the elements of the claim. See *Smith v. Hastie*, 367 S.C. 410, 417, 626 S.E.2d 13, 16-17 (Ct. App. 2005); *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004). Under Rule 56(c), SCRPC, the party seeking summary judgment has the burden of demonstrating the absence of a genuine issue of material fact. See *Baughman*, 306 S.C. at 102, 410 S.E.2d at 539.

In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. See *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997); *City of Columbia v. American Civil Liberties Union*, 323 S.C. 384, 475 S.E.2d 747 (1996); *Lattie v. SHS Enterprises, Inc.*, 300 S.C. 417, 389 S.E.2d 300 (Ct. App. 1990) (summary judgment standard of review is to liberally construe the record in favor of the nonmoving

party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn therefrom). "At the summary judgment stage of the proceedings, it is only necessary for the non-moving party to submit a *scintilla of evidence* warranting determination by a jury for summary judgment to be denied." *Hill v. York County Sheriff's Department*, 313 S.C. 303, 308, 437 S.E.2d 179, 182 (Ct. App. 1993), *cert. denied* (1994) (emphasis added).

As demonstrated in this memorandum, Plaintiff's testimony, the Affidavit of Prof. Adams filed with the Complaint, and the Affidavit of H.G. Brown filed and served on March 12, 2012, genuine issues of material fact exist prohibiting summary judgment in this case.

ARGUMENTS

I. Genuine issue of material fact remain as to whether Plaintiff would have received a more favorable settlement in her divorce action but for the negligence of Defendants.

Summary judgment is unavailable because genuine issue of material fact still exists as to whether Plaintiff would have received a more favorable settlement in her divorce action but for the negligence of Defendants. Plaintiff has presented expert testimony that the Taylor/Potterfield Defendants breached the standard of care in their representation of Plaintiff in the underlying divorce matter and that Taylor/Potterfield Defendants' breach financially damaged the Plaintiff. See Affidavit of H.G. Brown at 3-4. Plaintiff's expert contends that Defendants breached their standard of care by, among other things,

1. failing to seek a verified financial declaration;
2. failing to hire a forensic accountant;
3. failing to request a temporary hearing;
4. failing to file Lis Pendens on real properties that were part of the marital

estate;

5. failing to obtain restraining orders regarding dissipation of assets;
6. failing to issue subpoenas or other discovery and;
7. failing to bring in third party business associates as parties to this action.

See id. at 3.

Plaintiff's expert further opined that Defendants' breach of the standard of care financially harmed Plaintiff by failing to protect and preserve assets and by failing to identify assets or supplement and verify information obtained directly from the opposing party in the underlying action. See id. at 4. In addition, Plaintiff's expert stated that Defendant Taylor's breach of care caused financial harm by failing to have proper monitoring of a Section 1031 Tax Free Exchange, which financially harmed Plaintiff by incurring a tax which otherwise would not have it been incurred had Defendant Taylor timely complied. See id. Plaintiff has presented more than sufficient expert testimony to demonstrate that Plaintiff would have received a more favorable settlement in her underlying divorce action but for the negligence of Defendants; therefore, summary judgment is unavailable.

II. Two expert affidavits support Plaintiff's allegations that Defendants deviated from the standard of care in their representation of Plaintiff in the underlying divorce action thereby creating a genuine issue of material fact.

It would be error to grant Defendants' motion for summary judgment because evidence of Defendant Taylor's professional negligence is supported by expert testimony. One expert in the ethical obligations of lawyers has opined that "the lawyers and their law firms violated their duties to Ms. Powell in numerous ways, including the [multiple] violations of the South Carolina Rules of Professional Conduct (Rule 407, SCACR), each of which constitutes a failure to adhere to the standard of care required of a South Carolina

lawyer representing a client is such circumstances.” See Affidavit of G. Adams at 2-3. Subsequent discovery has not diminished Dr. Adams’ opinions that Defendants breached the standard of care in Plaintiff’s underlying divorce matter.

Further, another expert with vast experience in family law has given his opinion that “Mr. Taylor continued a pattern of delay and failed to take sufficient action once he personally became involved in handling this matter in April, 2005. [Mr. Taylor] remained personally involved in the handling of this matter until he was terminated in January, 2007. This equates a time period of approximately 20 to 21 months.” See Affidavit of H.G. Brown at 1-2. This expert further opines that Defendant Taylor failed to seek a Lis Pendens to prevent assets from being sold; failed to obtain a restraining order (whether by consent or by temporary motion) to preserve assets; failed to hire a forensic accountant that specializes in tracing of assets; failed to schedule a temporary hearing to obtain an order of discovery and other relief in a binding order; failed to obtain a verified financial declaration establishing income and assets from the opposing party under oath and; failed to perform other discovery in a timely fashion, such as sending additional requests to produce, obtaining other depositions or issuing subpoenas. See Affidavit of H.G. Brown at 3.

Defendant Taylor has defended his inactions by claiming that all decisions he made were a matter of “judgment.” See Taylor Deposition at 33:13, 36:3, 37:3, 38:20, 57:3, 68:11, 69:3, 73:3, 78:24, 107:17, 167:17, 168:2, 180:10. However, Plaintiff’s expert, Attorney Brown, has presented sworn testimony that, in his opinion, Defendant Taylor breached the standard of care necessary to properly represent Plaintiff in her divorce action. Our expert has opined that “the amount of time Mr. Taylor allowed to lapse and his

failure to take certain actions, as herein below set forth, caused Ms. Powell to be unprotected and vulnerable to dissipation of marital assets by her husband for an unreasonable length of time." See Affidavit of H.G. Brown at 2. Whether Defendant Taylor damaged the Plaintiff by failing to meet the standard of care in his representation of her during her divorce proceedings is a genuine issue of material fact; therefore, summary judgement should be denied.

III. Plaintiff's claims are not barred by the statute of limitations.

Defendant Potterfield remained responsible for the representation of Plaintiff until she and her firm were relieved as counsel on January 19, 2007 and replaced with attorney Cantzon Foster. While other attorneys in Defendant Potterfield's firm may have assumed the primary responsibility for Plaintiff's divorce matter, Defendant Potterfield is unable to argue that her "representation of plaintiff Powell in the underlying litigation ended on April 1, 2005." Defendant Potterfield entered into an attorney-client relationship with Plaintiff and agreed to represent Plaintiff in her divorce action. At some point in 2005, other attorneys with Taylor/Potterfield, including Defendant Potterfield's partner, Defendant Taylor, began working on Plaintiff's divorce matter. **At no point until 2007 did any court enter any Order pursuant to Rule 11, SCRPC, relieving Ms. Potterfield as counsel for Plaintiff in the underlying divorce action.**

Under agency law, it is patently obvious that Defendant Potterfield was in no manner replaced or relieved as counsel until Cantzon Foster was substituted in 2007.

The Defendant lawyers and law firm are vicariously liable for the acts of their partners and/or subordinate lawyers based on the nature of their partnership and agency relationship. South Carolina has recognized the concept of joint and several liability, and,

from the earliest decisions applying the concept, the courts have focused on the indivisibility of injury caused by more than one tortfeasor, rather than the unity or concert of the tortfeasors' conduct.

Joint tortfeasors are persons who owe a common duty to another and actively participate in committing a tort against him. See *Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 604 S.E.2d 385, 394 (2004). On the other hand, primary and secondary liability involves one person who is primarily liable through active negligence or through actual knowledge of a dangerous situation and acquiescence in the continuance thereof, and another person who is secondarily liable because, although he owed a common duty to the injured party, he did not participate in the act or omission causing injury and his negligence was merely passive is secondarily liable. See *Long v. Norris & Associates, Ltd.*, 342 S.C. 561, 538 S.E.2d 5 (Ct. App. 2000). Secondary liability generally arises in situations, like vicarious liability, where a relationship exists between the tortfeasors that permits one tortfeasor to be held liable for the consequences of the other's actions. See *James v. Kelly Trucking Co.*, 377 S.C. 628, 661 S.E.2d 329 (2008); *Holtz v. Minyard*, 304 S.C. 225, 403 S.E.2d 634 (1991) (law firm could be vicariously liable for actions of lawyer for breach of fiduciary duty in failing to disclose material information to client).

Defendants' conduct giving rise to the claims in these cases would support the application of joint and several liability as well as vicarious liability. The joint and several liability would be based, in part, on the evidence establishing that each Defendant, all of whom are members of the law firm, shared responsibility for the representation of the Plaintiff and also shared in the attorney fees paid by Plaintiff. The vicarious liability would be based on the relationship between all of the Defendant lawyers as partners and/or co-

joint venturers for any breach by another co-joint venturer of the duties to the Plaintiff.

Each partner in a partnership is jointly and severally liable for the torts and breaches of trust of all partners when the actions complained of are taken in the ordinary course of the partnership business. See, e.g., S.C. CODE ANN. §§ 33-41-350, 33-41-370; 59A Am. Jur. 2d, PARTNERSHIP § 658. Defendant Potterfield was not relieved as counsel until January 19, 2007 when Cantzon Foster was substituted as counsel. Prior to that, Defendant Potterfield, her partner Defendant Taylor and her law firm Taylor/Potterfield all remained jointly and severally responsible for the proper handling of Plaintiff's divorce matter. Summary judgment is unavailable because the statute of limitations does not bar Plaintiff's claims.

IV. Plaintiff's claims against Defendant Taylor/Potterfield remain valid.

Defendants are unable to argue that their law firm, Defendant Taylor/Potterfield, is entitled to judgment as a matter of law because there are "no allegations against the partnership exclusive of the allegations against defendants Taylor and Potterfield individually." For all the reasons cited above, Plaintiff has shown that genuine issues of material fact exist as to Defendant Taylor's and Defendant Potterfield's professional negligence; therefore Plaintiff's claims against Defendant Taylor/Potterfield remain valid. Plaintiff's expert has opined that "Taylor/Potterfield handled this matter for 3 ½ to 4 years. Both partners participated in the case and contributed to the delay." See Affidavit of H.G. Brown at 2. Therefore, genuine issues of material fact still exist and summary judgment is unavailable.

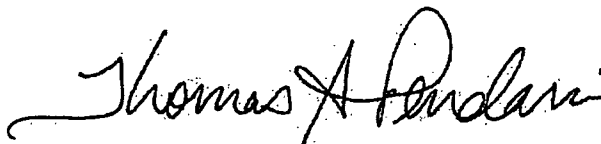
CONCLUSION

Based on the foregoing arguments, the affidavits, testimony, and other evidence,

Defendants' motions for summary judgement must be denied. Genuine issues of material fact are in dispute on each element of Plaintiff's claims for breach of fiduciary duty and professional malpractice, such that granting Defendants' (Second) Motion for Summary Judgment or Defendants Amended (Second) Motion for Summary Judgment would be inappropriate and would constitute reversible error. A jury is needed to resolve these disputed issues of material fact.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



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Attorneys for Plaintiff

Beaufort, South Carolina

March 14, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE [X] COURT OF COMMON PLEAS
IN THE [] FAMILY COURT

Carolyn Mitchell Powell,

Plaintiff,

vs.

Ashlin Blanchard Potterfield, J. Michael
Taylor and Taylor/Potterfield,

Defendants.

Case No. **09-CP-40-8705**

MOTION INFORMATION COVER SHEET

name, S.C. Bar no. and address of Plaintiff's attorney

name, S.C. Bar no. and address of Defendant's attorney

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Chill@TurnerPadget.com

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: Motion to Alter or Amend Judgment

Estimated Time Needed: 30 Minutes

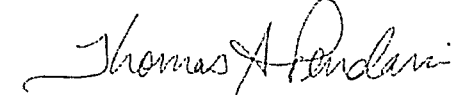
Court Reporter Needed: Yes / No

SECTION II: Motion Type

☒ Written motion attached

☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for Plaintiff / Defendant

May 11, 2012

Date Submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instruction

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

Judge _____

CODE: _____

Date: _____

CLERK'S VERIFICATION

Collected By: _____

DATE FILED: _____

(Print Name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

RICHLAND COUNTY
FILED

2012 MAY 15 AM 9:35
JESSIE M. MOHRIDE
CLERK, S.C.P. & C.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

Defendants.

**PLAINTIFF'S NOTICE AND
MOTION TO ALTER OR AMEND
JUDGMENT**

RICHLAND COUNTY
FILED
2012 MAY 15 AM 9:35
JEANETTE
C.C. S. S.
MCCBRIDE

TO: J. CALHOUN WATSON, J.D. AND CHARLES E. HILL, J.D., COUNSEL FOR DEFENDANTS:

NOTICE

PLEASE TAKE NOTICE THAT Plaintiff Carolyn Mitchell Powell, through her undersigned counsel, will move ten days after service of this motion or as soon thereafter as counsel can be heard at the Richland County Judicial Center, Columbia, South Carolina, for an Order pursuant to Rule 52(a) and Rule 59(e), SCRCP, altering or amending the Order issued by the Honorable R. Knox McMahon, dated and filed with the clerk on April 23, 2012 and received by counsel for the Plaintiff on May 2, 2012, granting Defendants' Motion for Summary Judgment.

MOTION

Plaintiff Carolyn Mitchell Powell's motion for the Court to reconsider the Order pursuant to Rule 52(a) and Rule 59(e), SCRCP, is based on mistakes and omissions identified in the factual findings and errors and omissions contained in the conclusions of

law set forth therein. A copy of the Order is attached and incorporated herein by reference as **Exhibit 1**.

SUMMARY OF THE ARGUMENTS

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

ARGUMENTS

- I. **The Order misstates or fails to recognize factual allegations critical to the matter.**

The Order contains instances of inaccurate factual allegations. For example, in its Statement of Facts, the Order cites as fact that "[o]n April 1, 2005 Plaintiff terminated Potterfield and separately retained Michael Taylor to represent her." This is simply untrue.

In 2005, Potterfield transferred to the role of primary attorney to her partner, Michael Taylor, which is reflected in the record. See, e.g., Potterfield Deposition, 222:18-224:18; Taylor Deposition, 28:24-29:21. Potterfield remained responsible for Plaintiff's divorce action and did not file a motion or obtain an Order reflecting her alleged withdrawal as required by Rule 11(b), SCRCP.

In addition, the Order omits factual allegations that are contained in the record and are integral to the proper resolution of Defendants' Motion for Summary Judgment. For instance, the Order twice lists the financial details of Plaintiff's final divorce settlement, but fails to frame those details in context by reporting the total assets of Plaintiff's former husband. Not only do the citations to the financial details of Plaintiff's divorce settlement inaccurately reflect Plaintiff's true damages, the Order omits any reference to the alimony plaintiff lost as a direct result of Taylor/Potterfield's failure to advise her in the divorce matter. The Order describes the final divorce agreement as placing "significant financial obligations on Mr. Powell" but omits the fact that the obligations on Mr. Powell were far less than Plaintiff contends they should have been and may not have been significant at all considering his full financial assets. See Order at p. 3.

The Order also omits reference to the expert witness opinions, which are in the record. For example, the record reflects the opinions by Plaintiff's expert, Grady Brown, that Defendant Taylor breached of the standard of care by failing to have proper monitoring of a Section 1031 Tax Free Exchange, which financially harmed Plaintiff by incurring a tax which otherwise would not have it been incurred had Defendant Taylor timely complied. See affidavit of H. Grady Brown at 4.

The Order further omits reference to the record where Plaintiff hired Defendants in

July 2003 giving Defendants' urgent instructions to file an action for divorce based on her former husband's adultery, proof of which Plaintiff simultaneously provided to Defendants. Also omitted from the Order is the fact that it took over a year for Defendants to file a complaint on Plaintiff's behalf and the complaint failed to include the adultery of Plaintiff's former husband. In addition, the Order omits the fact that Plaintiff terminated Taylor/Potterfield because they were unable to resolve her divorce matter almost four years later.

Further, the Order mentions that Defendants hired Reid Smith to "address the business issues in the marital litigation" but omits that Reid Smith had absolutely no background or experience as a forensic accountant. The Order also mentions that the expert affidavit of Dr. Adams had not been updated or amended but omits the fact that the affidavit contains his expert opinions as to Defendants' duty, breach of duties, causation and Plaintiff's damages.

Plaintiff respectfully requests that the Order be modified to correct factual misstatements and omissions, which should result in an Order denying Defendants' motion for summary judgment.

II. The Order fails to recognize that discovery was not complete nor was discovery closed under the scheduling order when the trial court granted summary judgment.

Discovery was ongoing in this matter and the scheduling order neither limited Plaintiff's ability to supplement her responses to discovery requests nor limited the existing experts' ability to supplement their opinions. "[S]ince it is such a drastic remedy, summary judgment . . . must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Doe v. Batson*, 338 S.C. 291, 297, 525 S.E.2d 909,

912 (Ct. App. 1999), *aff'd in part, vacated in part, sub nom., Doe ex rel. Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854 (2001). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Moriarty v. Garden Sanctuary Church of God*, 334 S.C. 150, 155, 511 S.E.2d 699, 702 (Ct. App. 1999). Summary judgment "must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991).

As the transcript of the motions hearing will reflect, Defendant was put on notice that a consulting expert in the field of forensic accounting was working on a comprehensive damages report for submission and consideration by Plaintiff's expert, H. Grady Brown, J.D. and that Plaintiff would be timely supplementing her discovery responses. In addition, the record shows that Plaintiff's current expert witnesses were ready to review the findings of the consulting expert and if the existing experts agreed with these findings, then the existing experts were prepared to adopt, disclose and present the findings as to the specific financial damages suffered by Plaintiff due to the Defendants' misconduct.

In addition, the Order misapprehends the limitations and requirements of the scheduling order in this matter. As the Order properly notes, the scheduling order provided that "Plaintiff shall identify any additional expert witnesses by February 13, 2012, and shall simultaneously provide the experts' resumes together with the opinions as to which they are expected to testify." (Emphasis added) The scheduling order only put limitations and requirements on naming "additional expert witnesses" and their opinions by February 13, 2012. The scheduling order in no way affected the existing expert witnesses or limited the Plaintiff's ability to continue preparing this case for trial. No limitations were imposed

prohibiting the use of consulting experts to prepare forensic accountant reports for use by previously named experts or limiting the existing experts' ability and duty to supplement their testimony according to Rule 26(e), SCRPC.

The Court and all parties were placed on notice that Plaintiff had hired a forensic accountant who was working diligently to prepare a detailed damages report to supplement the previously named expert witnesses opinions regarding the specific damages suffered by Plaintiff. Discovery was ongoing per Rule 26(e), SCRPC, and not limited by the scheduling order; therefore, summary judgment was premature. Plaintiff respectfully requests that the Order be altered to deny Defendants' Amended Motions for Summary Judgment because discovery is not complete.

III. **The Order fails to recognize the evidence creating a disputed issue of material fact presented by two expert witnesses' sworn testimony supporting Plaintiff's allegations that Plaintiff was damaged by Defendants' acts or omissions.**

The Order ignores the evidence on the record that could allow Plaintiff to argue that she would have received a more favorable settlement in her divorce action but for the negligence of Defendants.

The client's burden of establishing proximate cause in a legal malpractice action requires that he prove that he would have obtained a better result in the underlying matter if the attorney had exercised reasonable care. The burden does not necessarily compel the client to demonstrate that he would have won the underlying case. Rather, it is enough for the legal malpractice plaintiff to show that he has lost a valuable right; e.g., the settlement value of the underlying case. Stated otherwise, the client need not show a perfect claim. But the client must show a least that he has lost a probability of success as a result of the attorney's negligence.

Doe v. Howe, 367 S.C. 432, 626 S.E.2d 25, 32 (Ct. App. 2006).

The record includes an expert witnesses opinion that Defendants' "violations proximately caused Ms. Powell considerable damages including loss of any right to separate maintenance and support and loss of substantial value of the marital estate and her share of it due to the dissipation, transfer, and secreting of much of it by her husband during the pendency of the divorce litigation." See Affidavit of Gregory B. Adams at 3-4.

Also on the record is expert testimony that Defendants breached their standard of care in their representation of Plaintiff in the underlying divorce matter and that Defendants' breach financially damaged the Plaintiff. See Affidavit of H. Grady Brown at 3-4. Plaintiff's expert opined that Defendants' breach of the standard of care financially harmed Plaintiff by failing to protect and preserve assets and by failing to identify assets or supplement and verify information obtained directly from the opposing party in the underlying action. See *id.* at 4. In addition, Plaintiff's expert stated that Defendant Taylor's breach of care caused financial harm by failing to have proper monitoring of a Section 1031 Tax Free Exchange, which financially harmed Plaintiff by incurring a tax which could have been avoided had Defendant Taylor timely complied. See *id.* Plaintiff has shown that she lost a valuable right and lost the probability of success in her divorce action due to Defendants' negligence.

"In determining whether any triable issue of fact exists, the evidence and all inferences reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Hall v. Fedor*, 349 S.C. 169, 173, 561 S.E.2d 654, 656 (Ct. App. 2002) (citing *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 66, 504 S.E.2d 117, 121 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). In this case, the issues of fact, the evidence at all entrances must be viewed in the light most favorable to the Plaintiff. Plaintiff has presented sufficient expert testimony, going far beyond the

“scintilla of evidence” test, to demonstrate that Plaintiff would have received a more favorable settlement in her underlying divorce action but for the negligence of Defendants; therefore, summary judgment was improper and Plaintiff respectfully requests that the Order be altered and Defendants’ Amended Motions for Summary Judgment be denied.

IV. The Order fails to recognize the specificity of the experts witnesses’ statements regarding damages as presenting the evidence necessary to move forward with a trial in this matter.

The record contains an expert witness’ opinion that Defendants’ “violations proximately caused Ms. Powell considerable damages including loss of any right to separate maintenance and support and loss of substantial value of the marital estate and her share of it due to the dissipation, transfer, and secreting of much of it by her husband during the pendency of the divorce litigation.” See Affidavit of G. Adams at 3-4. In addition, Defendants were provided the opportunity to depose Dr. Adams to further explore his opinions on damages and chose not to do so. Plaintiff notified Defendants of a damages report being prepared by a forensic accountant and further notified Defendants of the existing experts’ intentions to review these findings and modify their opinions pursuant to the damages report.

The record also includes an expert witness’ opinion that Defendants’ breach of the standard of care financially harmed Plaintiff by failing to protect and preserve assets and by failing to identify assets or supplement and verify information obtained directly from the opposing party in the underlying action. See Affidavit of H.G. Brown at 4. In addition, Plaintiff’s expert stated that Defendant Taylor’s breach of care caused financial harm by failing to have proper monitoring of a Section 1031 Tax Free Exchange, which financially harmed Plaintiff by incurring a tax which could have been avoided had Defendant Taylor

timely complied. See *id.* While these two expert witnesses' opinions may not include specific dollar values, discovery was ongoing and Defendants were on notice that these expert opinions would be supplemented and modified prior to trial. The law does not require that damages be specified to the exact dollar amount prior to trial but only that there is scintilla of evidence that Plaintiff sustained some damages as a result of Defendants' negligence. See *Doe*, 626 S.E.2d at 32.

The Order fails to recognize that Plaintiff's expert witnesses have opined with sufficient specificity to meet the summary judgment standard and Plaintiff respectfully requests that the Order be altered to deny Defendants' Amended Motions for Summary Judgment.

V. The Order fails to recognize Plaintiff's breach of fiduciary duty claim and the evidence in the record satisfying the standard of proof as to disputed facts regarding the amount of damages flowing from the attorneys' errors in breach of their fiduciary duties owed to Plaintiff.

The Order granting summary judgment focuses solely and completely on Plaintiff's claims for professional negligence and the "but-for" causation standard to show proximate cause. More specifically, in a professional negligence claim, a Plaintiff has the burden to show that more likely than not, but for the attorney's negligence, the Plaintiff would not have been damaged. However, in a breach of fiduciary duty claim, the South Carolina Court of Appeals has held that the Plaintiff merely must show that she incurred damages resulting from the lawyer's breach of fiduciary duty. See *Smith v. Hastie*, 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005) (reversing the trial court's granting of defendant's motion for summary judgment and holding that "One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the

relation.”)

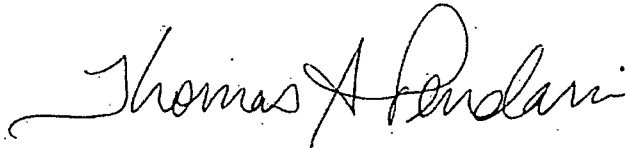
The Order fails to recognize the evidence of damages resulting from the Defendants’ breach of fiduciary duties and Plaintiff respectfully requests that the Order be altered to deny Defendants’ Amended Motions for Summary Judgment.

CONCLUSION

Based on the foregoing arguments, evidence, and facts before this Court, Plaintiff Carolyn Mitchell Powell respectfully requests that her MOTION TO ALTER OR AMEND THE JUDGMENT be granted, the Order be withdrawn, and Defendants’ MOTION FOR SUMMARY JUDGEMENT be denied allowing these disputed issues of fact to be determined by a jury.

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.



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Beaufort, South Carolina

May 11, 2012

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2009CP4008705

Carolyn Mitchell Powell

Ashlin Blanchard Potterfield

J Michael Taylor

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

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

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

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

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

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

Susan F Campbell

Thomas A. Pendarvis

J Calhoun Watson
J Calhoun Watson

Charles E. Hill

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. McBride

EXHIBIT

1

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CAROLYN MITCHELL POWELL,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

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

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

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

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

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



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

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

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

SUMMARY OF FACTS

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



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

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

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

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

A handwritten signature, possibly reading "AH", is written in black ink. A long, curved line extends upwards from the signature, looping back towards the left margin of the page.

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

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

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

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

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

STANDARDS

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

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

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

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

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

ANALYSIS

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

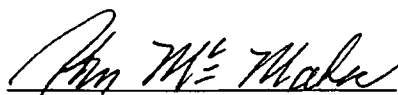
for the attorney, the court observed, "The attorney affidavits in the record contain mere conclusory statements suggesting legal actions which, in hindsight, might have been instituted on behalf of appellants. Nowhere in the affidavits do the attorneys address the likelihood of success of these actions."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

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

CONCLUSION

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

AND IT IS SO ORDERED.



R. Knox McMahon
Presiding Judge
Fifth Judicial Circuit

Lexington, S.C.

April 23rd, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

Defendants.

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 MAY 15 AM 9:35
JEANETTE W. McBRIDE
C.C.P. & G.S.

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Charles E. Hill, J.D.
TURNER, PADGET GRAHAM & LANEY, PA
PO Box 1473
Columbia, SC 29202
Chill@TurnerPadget.com

Documents Served: PLAINTIFF'S NOTICE AND MOTION TO ALTER OR AMEND JUDGMENT

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
May 11, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CAROLYN MITCHELL POWELL,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

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

**DEFENDANT'S REPLY TO
PLAINTIFF'S MOTION TO ALTER OR
AMEND JUDGMENT**

Defendants submit this reply to plaintiff's motion to alter or amend the order of Hon. R. Knox McMahon, filed April 26, 2012, granting defendants' motion for summary judgment.

At the outset, it may be observed that the court's order has been very narrowly drawn. Summary judgment was granted to defendants on the sole basis that plaintiff failed to prove damages. Defendant's motion for summary judgment was premised, in part, on plaintiff's failure to make a showing, within the requirements of Hall v. Fedor, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002), Dow v. Howe, 367 S.C. 432, 626 S.E.2d 25 (Ct. App. 2005), and Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988), that, but for the alleged malpractice of the defendant attorneys, plaintiff most probably would have obtained a more favorable settlement in the underlying litigation. The court's order concluded, "Here Plaintiff has provided nothing more than bald assertions and conjecture, with no real factual support for any damages. The evidence in the record is not sufficient to withstand summary judgment as to the issues of damages in this case." Order, p. 15.

Thus plaintiff's assertions of "inaccurate factual allegations" or omissions, such as whether plaintiff terminated defendant Potterfield, or whether the underlying action was timely

filed, or whether Reid Smith was qualified to determine plaintiff's husband's financial condition, are irrelevant, having no bearing on the dispositive issue of damages.

Plaintiff asserts that discovery was not complete, and she should have been allowed time to submit the "comprehensive damages report" being prepared by "a consulting expert in the field of forensic accounting." Plaintiff's motion, page 5.

The governing scheduling order in this case provided, "Plaintiff shall identify any additional expert witnesses by February 13, 2012, and shall simultaneously provide the experts' resumes *together with the opinions as to which they are expected to testify.*" (Emphasis added.) Plaintiff apparently takes the position that this provision did not preclude her from having "a consulting expert in the field of forensic accounting," who at some undetermined point prior to trial would issue a "comprehensive damages report," which would be furnished to one of plaintiff's previously disclosed expert witnesses, who would then offer testimony based on the undisclosed expert's report.

This argument fails on several bases. First, the scheduling order set a deadline for disclosing the opinions of any additional experts. Apparently plaintiff acknowledges she is bound by the expiration of the deadline to *name* a new expert, but contends the *opinions* of the otherwise disqualified expert could be considered. The court should not accept this tortured interpretation of the scheduling order.

Next, plaintiff appears to contend that one of her previously disclosed experts could simply rely on the report of the undisclosed expert so as to render an opinion on damages. This argument is entirely speculative, in that it assumes the undisclosed consulting forensic accountant's as yet unprepared report would have (1) arrived at an evaluation of the settlement package obtained by Ms. Powell in the underlying action; (2) found evidence of marital assets

that defendants failed to discover, protect, and/or secure; (3) made an evaluation of the undiscovered, wasted or dissipated assets; and (4) comparing the evaluations, would have been able to support a conclusion that Ms. Powell most probably would have been able to obtain a settlement in excess of the value of the underlying settlement. Whether plaintiff's undisclosed expert would have been able to accomplish any of these tasks is completely unknown, unproven and conjectural.

Further, the argument also assumes that one of the previously disclosed plaintiff's experts would have "agreed with these findings" (plaintiff's motion, page 5), accepted and adopted the consulting expert's opinion, and incorporated it into his own. The disclosed experts, Grady Brown and Gregory Adams, are attorneys, and have not been held out as experts in forensic accounting. There would have been a substantial evidentiary challenge at trial as to whether, even under Rule 703, Rules of Evidence, the undisclosed expert's report could have formed the basis for a different expert's opinion under these circumstances.

This case was filed on December 11, 2009. Defendants' motion for summary judgment, filed more than two years after suit was brought, squarely raised the issue of whether plaintiff could satisfy her burden of proof as to damages. "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in the rule, must set forth *specific facts* showing that there is a genuine issue for trial." Rule 56 (e), SCRCF, emphasis added.

Plaintiff attempted to meet this burden by filing the last-minute affidavit of Attorney Brown. This expert had previously submitted a report (Sept. 12, 2011) to plaintiff's attorney stating that his review "was not in any way intended to determine the nature or extent of any

damages.” When Brown’s deposition was taken on Nov. 16, 2011, he reiterated and affirmed that he was offering no testimony on the issue of damages. But in an affidavit of March 12, 2012, two days before this motion was scheduled for hearing, Brown claimed for the first time that plaintiff’s assets were “vulnerable to dissipation,” that actions to protect them “would have been beneficial,” and that assets “could have been preserved.”

While the submittal of Brown’s affidavit demonstrates plaintiff’s awareness that evidence of damages was essential to defeat the motion, this effort nevertheless falls short. Under the established and controlling precedents of Hall, Doe and Manning, expert testimony is required as to the value of the underlying settlement, and the amount in excess of the value of the underlying settlement for which plaintiff could have settled but for the alleged negligence of the defendants. Order, page 14. Neither Brown’s affidavit of March 12, 2012, nor Adams’ pre-suit affidavit of Dec. 11, 2009, satisfies these requirements.

Plaintiff asserts (page 8 of the motion) that defendants “were provided the opportunity to depose Dr. Adams to further explore his opinions on damages and chose not to do so.” But the burden had shifted to plaintiff to create an issue of fact. Plaintiff could have submitted an affidavit from Adams, but chose not to do so.

Plaintiff asserts that she was financially harmed by defendants’ failure to properly monitor a Section 1031 tax free exchange, causing plaintiff to incur a tax which could have been avoided “had Defendant Taylor timely complied.” Again, this assertion is completely devoid of requisite detail. How much money was involved? How did that compute, if at all, into the settlement that was achieved? What difference would it have made in any potential settlement? The court cannot speculate on the answers to these questions; it must have evidence.

Similarly, plaintiff asserts that the order “omits any reference to the alimony plaintiff lost.” (Motion, page 3). Initially, it may be observed that there is no certainty that alimony will be awarded in any divorce case; much is left to the discretion of the family court judge. But if an amount in the nature of alimony was excluded from the agreed-to settlement on the basis of defendants’ alleged negligence, the burden was on the plaintiff to prove how much greater an alternative settlement could have been. Plaintiff adduced no such evidence.

Plaintiff complains that the court’s order “twice lists the financial details of Plaintiff’s final divorce settlement, but fails to frame those details in context by reporting the total assets of Plaintiff’s former husband.” Motion, page 3. The purpose of the detailed recitation of the components of the settlement that Ms. Powell voluntarily agreed to—and which her then counsel, Cantzon Foster, regarded as “a good settlement”—was to set in part the bar which plaintiff’s evidence must have exceeded to prove damages. In the final analysis, plaintiff was unable to provide any financial data whatsoever in support of the essential element of damages, and thus could not defeat defendants’ motion.

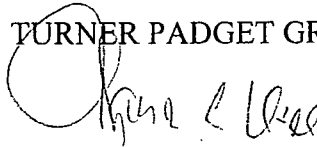
Finally, plaintiff asserts that she is entitled to damages on her claim for breach of fiduciary duty. This argument was not raised in the hearing of March 16, 2012, and cannot be raised for the first time in a motion to alter or amend. In any event, in this case plaintiff has failed to adduce any evidence of any damages flowing from an alleged breach of fiduciary duty.

(continued on next page)

For the reasons set forth in the court's order entered April 26, 2012, plaintiff's evidence was not sufficient to withstand summary judgment as to the issues of damages. Summary judgment was properly granted to defendants, and plaintiff's motion to alter or amend judgment should be denied.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY, P.A.



Charles E. Hill
1901 Main Street, 17th Floor (29201)
Post Office Box 1473
Columbia, SC 29202
Telephone: (803) 227-4240
Facsimile: (803) 400-1493

Columbia, South Carolina
May 18, 2012

*Attorneys for Defendants Potterfield,
Taylor, and Taylor/Potterfield*

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

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

vs.

CERTIFICATE OF SERVICE

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

Defendants.

I, the undersigned employee of Turner, Padgett, Graham & Laney, P.A., attorneys for defendants Potterfield, Taylor, and Taylor/Potterfield, do hereby certify that I have this day served a copy of the foregoing **DEFENDANT'S REPLY TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT** in connection with the above-referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following address(es):

Thomas A. Pendarvis, Esquire
Pendarvis Law Offices, PC
500 Carteret Street. Ste A
Beaufort, SC 29902-5066
Attorneys for Plaintiff


Randi M. Berlin

Columbia, South Carolina
May 18, 2012

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Common Pleas Court

Case Number: 2009-CP-40-8705

Plaintiff:

Carolyn Mitchell Powell

vs.

Defendant:

Ashlin Blanchard Potterfield, et al.

For:

McCutchen Blanton Hopkins & Campbell, LLP

P.O. Box 11316

Columbia, SC 29211

Received by SERVE-ONE, INC. to be served on J. Michael Taylor Individually and on behalf of Taylor/ Potterfield, 2301 Devine Street, Columbia, SC 29205.

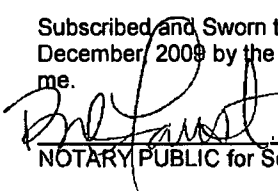
I, Rhonda Nesbitt, being duly sworn, depose and say that on the 22nd day of December, 2009 at 11:53 am, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the Civil Action Cover Sheet and Summons and Complaint and Verification and Affidavit of Expert Opinion of Dr. Gregory B. Adams and Exhibits to: J. Michael Taylor Individually and on behalf of Taylor/ Potterfield at the address of: 2301 Devine Street, Columbia, SC 29205, and informed said person of the contents therein, in compliance with state statutes.

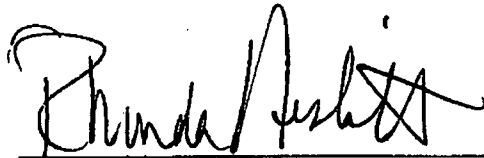
I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

RICHLAND COUNTY
FILED
2009 DEC 30 PM 12:01
JEANETTE M. HERBIDE
C.C.P. & G.S.

Subscribed and Sworn to before me on the 22nd day of December, 2009 by the affiant who is personally known to me.


NOTARY PUBLIC for South Carolina

My commission expires: My Commission Expires September 4, 2017



Rhonda Nesbitt
Process Server

SERVE-ONE, INC.
P.O. Box 2584
Greenville, SC 29602-2584
(864) 235-7766

Our Job Serial Number: 2009009448

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Common Pleas Court

Case Number: 2009-CP-40-8705

Plaintiff:

Carolyn Mitchell Powell

vs.

Defendant:

Ashlin Blanchard Potterfield, et al.

For:

McCutchen Blanton Hopkins & Campbell, LLP

P.O. Box 11316

Columbia, SC 29211

Received by SERVE-ONE, INC. to be served on Ashlin Blanchard Potterfield Individually and on behalf of Taylor/ Potterfield, 2301 Devine Street, Columbia, SC 29205.

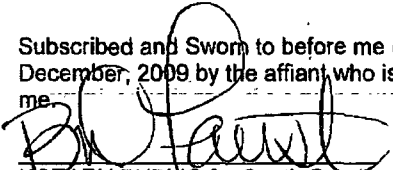
I, Rhonda Nesbitt, being duly sworn, depose and say that on the 23rd day of December, 2009 at 12:12 pm, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the Civil Action Cover Sheet and Summons and Complaint and Verification and Affidavit of Expert Opinion of Dr. Gregory B. Adams and Exhibits to: Ashlin Blanchard Potterfield Individually and on behalf of Taylor/ Potterfield at the address of: 2301 Devine Street, Columbia, SC 29205, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

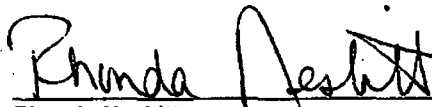
RICHLAND COUNTY
FILED
2009 DEC 30 PM 12:01
JEANETTE W. McBRIDE
C.C.P. & G.S.

Subscribed and Sworn to before me on the 23rd day of December, 2009 by the affiant, who is personally known to me.


NOTARY PUBLIC for South Carolina

My Commission
Expires
September 4, 2017

My commission expires:



Rhonda Nesbitt
Process Server

SERVE-ONE, INC.
P.O. Box 2584
Greenville, SC 29602-2584
(864) 235-7766

Our Job Serial Number: 2009009446

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Common Pleas Court

Case Number: 2009-CP-40-8705

Plaintiff:

Carolyn Mitchell Powell

vs.

Defendant:

Ashlin Blanchard Potterfield, et al.

For:

McCutchen Blanton Hopkins & Campbell, LLP

P.O. Box 11316

Columbia, SC 29211

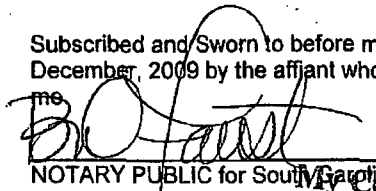
Received by SERVE-ONE, INC. to be served on Price, Bird & Smith, P.A., 1712 St. Julian Place, Suite 102, Columbia, SC 29204.

I, Rhonda Nesbitt, being duly sworn, depose and say that on the 23rd day of December, 2009 at 10:26 am, I:

served Price, Bird & Smith, P.A. by delivering a true copy of the Civil Action Cover Sheet and Summons and Complaint and Verification and Affidavit of Expert Opinion of Dr. Gregory B. Adams and Exhibits to: Diane Taylor as Authorized To Accept for Price, Bird & Smith, P.A., at the address of: 1712 St. Julian Place, Suite 102, Columbia, SC 29204, and informed said person of the contents therein, in compliance with state statutes.

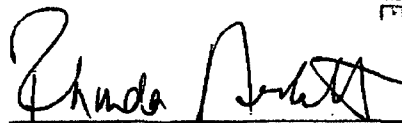
I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 23rd day of December, 2009 by the affiant who is personally known to me


NOTARY PUBLIC for South Carolina

My Commission Expires

My commission expires: **September 4, 2017**



Rhonda Nesbitt
Process Server

SERVE-ONE, INC.
P.O. Box 2584
Greenville, SC 29602-2584
(864) 235-7766

Our Job Serial Number: 2009009451

JEANETTE W. McBRIDE
C.C.P. & G.S.

2009 DEC 30 PM 12:01

RICHLAND COUNTY
FILED

AFFIDAVIT OF SERVICE

State of South Carolina

County of Richland

Common Pleas Court

Case Number: 2009-CP-40-8705

Plaintiff:

Carolyn Mitchell Powell

vs.

Defendant:

Ashlin Blanchard Potterfield, et al.

For:

McCutchen Blanton Hopkins & Campbell, LLP

P.O. Box 11316

Columbia, SC 29211

Received by SERVE-ONE, INC. to be served on Reid Smith, C/O Price, Bird & Smith, P.A., 1712 St. Julian Place, Suite 102, Columbia, SC 29204.

I, Rhonda Nesbitt, being duly sworn, depose and say that on the 23rd day of December, 2009 at 10:26 am, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the Civil Action Cover Sheet and Summons and Complaint and Verification and Affidavit of Expert Opinion of Dr. Gregory B. Adams and Exhibits to: Reid Smith at the address of: C/O Price, Bird & Smith, P.A., 1712 St. Julian Place, Suite 102, Columbia, SC 29204, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

RICHLAND COUNTY
FILED
2009 DEC 30 PM 12:01
JEANETTE H. MCBRIDE
C.C.P. & G.S.

Subscribed and Sworn to before me on the 23rd day of December, 2009 by the affiant who is personally known to me

[Signature]

NOTARY PUBLIC for South Carolina

My commission expires:

My Commission Expires
September 4, 2011

[Signature]

Rhonda Nesbitt
Process Server

SERVE-ONE, INC.
P.O. Box 2584
Greenville, SC 29602-2584
(864) 235-7766

Our Job Serial Number: 2009009450

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

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

Plaintiff,

vs.

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

Defendants.

**NOTICE OF TAKING THE DISCOVERY
DEPOSITION OF
DR. GREGORY B. ADAMS
(DUCES TECUM)**

TO: WILLIAM E. HOPKINS, JR. AND SUSAN F. CAMPBELL, ATTORNEYS FOR
PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the attorneys for the Defendants, Ashlin Blanchard Potterfield, Michael Taylor, and Taylor/Potterfield will take the discovery deposition testimony of the plaintiffs' expert, **Gregory B. Adams, Esquire** at the date, time and location noted below:

Date: Tuesday, October 19, 2010

Time: 10:00 o'clock a.m.

Location: McCutchen Blanton Hopkins & Campbell, LLP
1414 Lady Street
Columbia, SC 29201

Court Reporter: Ray Swartz and Associates

This deposition will take place before a notary public for the State of South Carolina, or before some other officer authorized by law to administer oaths, in the above matter. Pursuant to the attached deposition subpoena duces tecum, the deponent will provide the responsive

materials and records as directed.

The oral examination will continue from day to day until completed.

You are hereby noticed to appear and take part in the examinations as is fit and proper.

TURNER PADGET GRAHAM & LANEY, P.A.



Charles E. Hill
Virginia W. Williams
1901 Main Street, 17th Floor (29201)
Post Office Box 1473
Columbia, SC 29202
Telephone: (803) 227-4240
Facsimile: (803) 400-1493

Columbia, South Carolina
August 20, 2010

*Attorneys for Defendants Potterfield,
Taylor, and Taylor/Potterfield*

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

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

vs.

CERTIFICATE OF SERVICE

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

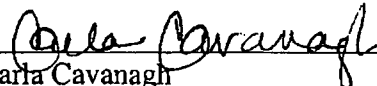
Defendants.

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

William E. Hopkins, Jr., Esquire
Susan F. Campbell, Esquire
Paul B. Deal, Esquire
1414 Lady Street (29201)
Post Office Box 11316
Columbia, SC 29211-1316
Attorneys for Plaintiff

J. Calhoun Watson, Esquire
Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
*Attorneys for Reid Smith and
Price, Bird & Smith, P.A.*

Columbia, South Carolina
August 20, 2010


Carla Cavanagh

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

vs.

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

Defendants.

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

**AMENDED NOTICE OF TAKING
THE DISCOVERY DEPOSITION OF
DR. GREGORY B. ADAMS
(DUCES TECUM)**

TO: THOMAS A. PENDARVIS, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the attorneys for the Defendants, Ashlin Blanchard Potterfield, Michael Taylor, and Taylor/Potterfield will take the discovery deposition testimony of the plaintiffs' expert, Gregory B. Adams, Esquire at the date, time and location noted below:

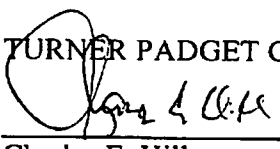
Date: Friday, August 19, 2011
Time: 10:00 o'clock a.m.
Location: Turner Padget Graham & Laney P.A.
1901 Main Street, Suite 1700
Columbia, SC 29201
Court Reporter: Ray Swartz and Associates

This deposition will take place before a notary public for the State of South Carolina, or before some other officer authorized by law to administer oaths, in the above matter. Pursuant to the attached deposition subpoena duces tecum, the deponent will provide the responsive

materials and records as directed.

The oral examination will continue from day to day until completed.

You are hereby noticed to appear and take part in the examinations as is fit and proper.


TURNER PADGET GRAHAM & LANEY, P.A.

Charles E. Hill

Virginia W. Williams

1901 Main Street, 17th Floor (29201)

Post Office Box 1473

Columbia, SC 29202

Telephone: (803) 227-4240

Facsimile: (803) 400-1493

Columbia, South Carolina
June 29, 2011

*Attorneys for Defendants Potterfield,
Taylor, and Taylor/Potterfield*

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

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

vs.

CERTIFICATE OF SERVICE

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

Defendants.

I, the undersigned employee of Turner, Padgett, Graham & Laney, P.A., attorneys for defendants Potterfield, Taylor, and Taylor/Potterfield, do hereby certify that I have this day served a copy of the foregoing **Amended Notice of Deposition of Dr. Gregory B. Adams** in connection with the above-referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following address(es):

Thomas A. Pendarvis, Esq.
Pendarvis Law Offices, PC
500 Carteret Street, Ste A
Beaufort, SC 29902-5066
Attorney for Plaintiff

J. Calhoun Watson, Esquire
Sowell Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
*Attorneys for Reid Smith and
Price, Bird & Smith, P.A.*

Columbia, South Carolina
June 29, 2011



Carla Cavanagh

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

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

vs.

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

Defendants.

**SECOND AMENDED NOTICE OF
TAKING
THE DISCOVERY DEPOSITION OF
DR. GREGORY B. ADAMS
(DUCES TECUM)**

TO: THOMAS A. PENDARVIS, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE THAT the attorneys for the Defendants, Ashlin Blanchard Potterfield, Michael Taylor, and Taylor/Potterfield will take the discovery deposition testimony of the plaintiffs' expert, **Gregory B. Adams, Esquire** at the date, time and location noted below:

Date: Wednesday, December 7, 2011
Time: 11:00 o'clock a.m.
Location: Turner Padgett Graham & Laney P.A.
1901 Main Street, Suite 1700
Columbia, SC 29201
Court Reporter: Ray Swartz and Associates

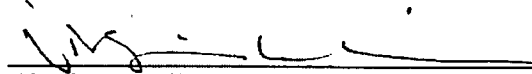
This deposition will take place before a notary public for the State of South Carolina, or before some other officer authorized by law to administer oaths, in the above matter. Pursuant to the attached deposition subpoena duces tecum, the deponent will provide the responsive

materials and records as directed.

The oral examination will continue from day to day until completed.

You are hereby noticed to appear and take part in the examinations as is fit and proper.

TURNER PADGET GRAHAM & LANEY, P.A.



Charles E. Hill

Virginia W. Williams

1901 Main Street, 17th Floor (29201)

Post Office Box 1473

Columbia, SC 29202

Telephone: (803) 227-4240

Facsimile: (803) 400-1493

Columbia, South Carolina
September 23, 2011

*Attorneys for Defendants Potterfield,
Taylor, and Taylor/Potterfield*

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

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

vs.

CERTIFICATE OF SERVICE

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

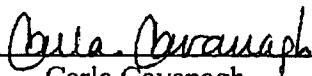
Defendants.

I, the undersigned employee of Turner, Padgett, Graham & Laney, P.A., attorneys for
defendants Potterfield, Taylor, and Taylor/Potterfield, do hereby certify that I have this day
served a copy of the foregoing **Second Amended Notice of Deposition of Dr. Gregory B.**

Adams in connection with the above-referenced case by placing a copy of the same in the United
States Mail, postage prepaid, to the following address(es):

Thomas A. Pendarvis, Esq.
Pendarvis Law Offices, PC
500 Carteret Street, Ste A
Beaufort, SC 29902-5066
Attorney for Plaintiff

Columbia, South Carolina
September 23, 2011



Carla Cavanagh

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

CAROLYN MITCHELL POWELL,

Plaintiff

(Deposition Subpoena Duces Tecum)

v.

SUBPOENA IN A CIVIL CASE

ASHLIN BLANCHARD POTTERFIELD;

Defendants,

Case Number: 09-CP-40-8705

Pending in RICHLAND County

TO: Dr. Gregory B. Adams c/o Thomas A. Pendarvis, attorney for the plaintiff

☐ YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Law Offices of Turner Padget Graham & Laney P.A.
1901 Main Street, Suite 1700
Columbia, SC 29201

DATE AND TIME

December 7, 2011
11:00 a.m.

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date, and time specified below (list documents or objects):

Any additional materials you have reviewed that were not provided previously in response to the subpoena duces tecum served by Cal Watson, attorney for Reid Smith on or about January 19, 2010 in regards to this action.

PLACE: (Mail) Charles E. Hill
Turner Padget Graham & Laney P.A.
POB 1473
Columbia, SC 29202

DATE AND TIME

December 1, 2011
11:00 a.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED PURSUANT TO RULE 30(B)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Charles E. Hill, Turner, Padget, Graham & Laney, P.A., P. O. Box 1473, Columbia, SC 29202 (803) 254-2200

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

SCCA FORM 254 (7-93)

See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse

Attorney for Defendants

DATE September 23, 2011

PROOF OF SERVICE

SERVED	DATE 09/23/11	FEES AND MILEAGE TENDERED TO WITNESS (Scheduled by agreement and fees to be determined.) ☐ YES ☐ NO AMOUNT \$
	PLACE Pendarvis Law Offices, PC 500 Carteret Street, Ste A Beaufort, SC 29902-5066	
SERVED ON (PRINT NAME) c/o Thomas A. Pendarvis, Attorney for Plaintiff		MANNER OF SERVICE First Class Mail
SERVED BY (PRINT NAME) Carla Cavanagh		TITLE Employee of Turner, Padgett

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 09/23/11
DATE

Carla Cavanagh
SIGNATURE OF SERVER

POB 1473, Columbia, SC 29202

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires a person who is not a party or an officer, director or managing agent of a party to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from the county where the subpoena was served to the place within the state where the trial is held; or

- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena:

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer, director or managing agent of a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

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

Plaintiff,

vs.

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

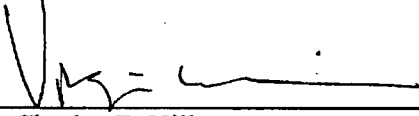
Defendants.

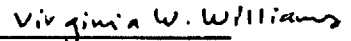
**AFFIDAVIT OF KEN H. LESTER IN
SUPPORT OF AMENDED MOTION FOR
SUMMARY JUDGMENT ON BEHALF
OF DEFENDANTS ASHLIN
BLANCHARD POTTERFIELD, J.
MICHAEL TAYLOR AND
TAYLOR/POTTERFIELD**

The defendants Ashlin Blanchard Potterfield, J. Michael Taylor, and Taylor/Potterfield
("Defendants") hereby submit the attached affidavit of Ken H. Lester in support of Defendants'
Amended Motion for Summary Judgment, filed on or about February 16, 2012.

TURNER PADGET GRAHAM & LANEY, P.A.

signing
for


Charles E. Hill
1901 Main Street, 17th Floor (29201)
Post Office Box 1473
Columbia, SC 29202
Telephone: (803) 227-4240
Facsimile: (803) 400-1493


Virginia W. Williams

Columbia, South Carolina
March 2, 2012

*Attorneys for Defendants Potterfield,
Taylor, and Taylor/Potterfield*

PERSONALLY APPEARED BEFORE ME KEN H. LESTER, WHO, FIRST BEING DULY SWORN, DEPOSES AND SAYS:

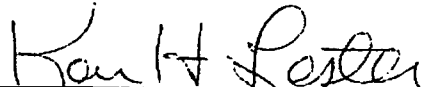
1. My name is Ken H. Lester. I am an attorney licensed to practice law in South Carolina. I am senior partner in the law firm of Lester & Hendrix, with offices located in Columbia, Beaufort and Myrtle Beach.
2. My practice is devoted to family and marital litigation. I am a diplomat of the American College of Family Trial Lawyers, an organization limited to the top 100 family court trial lawyers in the United States; a fellow in the International Academy of Matrimonial Lawyers, which is made up of approximately 960 lawyers worldwide, and a fellow of the American Academy of Matrimonial Lawyers, which consists of 1,700 of the top matrimonial attorneys in the United States and Canada. I am on the faculty of the Houston Family Law Trial Institute which is held for nine (9) days each year at the South Texas College of Law where 48 lawyers from across the United States are taught to litigate family law cases. I have served as chairman of the Family Law Section of the South Carolina Bar. I have taught the family law portion of the South Carolina bar review course.
3. I have been retained by the attorneys representing the defendants in this case to review file materials from the underlying litigation of Carolyn Powell v. Conrad Powell, as well as depositions and other materials produced in discovery in the present case, and to offer my opinions regarding the conduct of Ashlin Potterfield and Michael Taylor in their prior representation of Carolyn Powell.
4. From the materials furnished to me, it appears that Carolyn Powell entered into a fee contract with Potterfield on Sept. 17, 2003. Mr. and Mrs. Powell separated in December 2003. The summons and complaint instituting the marital litigation between the Powells was filed on August 27, 2004.
5. On April 1, 2005, Carolyn Powell separately retained Michael Taylor to assume the handling of her case, and Potterfield was not thereafter involved in the matter.
6. In my opinion, Potterfield and Taylor's representation of Carolyn Powell exhibited the appropriate knowledge, skill, thoroughness and preparation required of attorneys handling marital litigation. Their prosecution of the action in family court was appropriately handled under the circumstances of the case, and they exercised appropriate judgment and strategy. The file materials indicate that there was regular and sufficient communication by Taylor and Potterfield with Carolyn Powell.
7. In reviewing the materials presented to me, I found no evidence that the husband, Conrad Powell, was dissipating, transferring or secreting marital assets. Carolyn Powell provided her attorneys with detailed information regarding her husband's assets in his handwriting early in the course of the matter. Being in possession of this information, it was reasonable and appropriate for Potterfield not to engage in formal discovery with regard to the husband's assets. There was never any reasonable cause

for Potterfield or Taylor to file motions for protective orders with regard to marital asserts, or to file lis pendens with regard to the husband's property.

8. Potterfield and Taylor made reasonable efforts to move the matter forward, but their efforts were frequently thwarted by their client's own conduct. For example, there is evidence that Carolyn Powell endorsed her husband's name to checks made out to him, changed the amount on checks her husband had written to her, moved the couple's minor children to another county without the husband's consent, and instead of using funds provided by the husband to obtain housing, bought horse stables. There was extensive communication between Potterfield and Marne Sherman, the attorney representing the husband, as to potential settlement terms, but Carolyn Powell rejected all such offers.
9. At the outset of the representation, Powell was advised about the consequences of having a romantic relationship while still married, as evidenced by materials given her by Potterfield explaining that an adulterous spouse is not entitled to alimony under the South Carolina statute. Nevertheless, Powell engaged in a sexual relationship with a man other than her husband in September 2005 and continued thereafter, thus forfeiting any entitlement to separate maintenance and support.
10. In January 2005, Potterfield was able to negotiate an advancement on equitable distribution of property from the husband in the amount of \$400,000. In my experience, this negotiated advancement was far more favorable than was likely to be awarded by the court had there been a pendente lite hearing.
11. When Taylor assumed the handling of Powell's case, he appropriately associated Columbia attorney Reid Smith to assist in the financial aspects of the case. Smith conducted a careful analysis of Conrad Powell's property holdings and other assets, which were disclosed in reports to Taylor. I have considered the deposition testimony of Attorney Smith, in which he stated he found no evidence that Conrad Powell had unlawfully dissipated, transferred, or secreted marital assets. In this regard I have also considered the deposition testimony of Carolyn Powell. Although she suspected such conduct on the part of her husband, she was unable to identify any such transferred or hidden assets, either at the time of the pending marital litigation or since the case ended.
12. In January 2007, Carolyn Powell terminated Taylor as her attorney, and retained Columbia attorney Cantzon Foster to assume her representation in the marital litigation. I have considered the deposition testimony of Attorney Foster, in which he likewise testified that he did not identify any such transferred or hidden assets.
13. In April 2007, Carolyn Powell and Conrad Powell entered into a "Complete Property, Support, and Custody Agreement." Carolyn Powell signed this agreement, testifying under oath that she was familiar with the financial ability, income, expenses, assets and liabilities of Conrad Powell, and further acknowledging that she was not under any threats, duress or undue influence. On May 2, 2007, Carolyn Powell appeared

before Family Court Judge Anne Gue Jones, acknowledging that she entered into the settlement voluntarily, and that the agreement provided for a fair and equitable division of the parties' marital property. Judge Jones entered an order the same day, approving the settlement as fair, equitable and reasonable.

14. Again, in reviewing the materials presented to me, I find no evidence, either from any lay witness or expert, that Carolyn Powell's husband, Conrad Powell, was unlawfully dissipating, transferring or secreting marital assets.
15. I have not seen or been provided any evidence that Carolyn Powell could have obtained a more favorable settlement but for the alleged negligence of Potterfield and Taylor.
16. Based on my education, training and experience as a family law attorney, it is my opinion that Potterfield and Taylor's representation of Carolyn Powell in the underlying marital litigation was within the latitude of judgment and strategy afforded to attorneys who practice in this area of the law, and complied with the standard of care required of such attorneys. It is my further opinion that Potterfield and Taylor did not breach any fiduciary duties they owed to Carolyn Powell.


Ken H. Lester

Sworn to and subscribed before me
this 1 day of March, 2012


Notary Public for South Carolina
My Commission Expires: 4.11.2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

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

vs.

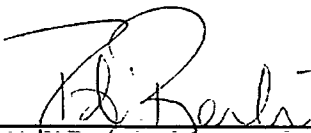
CERTIFICATE OF SERVICE

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

Defendants.

I, the undersigned employee of Turner, Padget, Graham & Laney, P.A., attorneys for defendants Potterfield, Taylor, and Taylor/Potterfield, do hereby certify that I have this day served a copy of the foregoing **AFFIDAVIT OF KEN H. LESTER IN SUPPORT OF AMENDED MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS ASHLIN BLANCHARD POTTERFIELD, J. MICHAEL TAYLOR AND TAYLOR/POTTERFIELD** in connection with the above-referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following address(es):

Thomas A. Pendarvis, Esquire
Pendarvis Law Offices, PC
500 Carteret Street, Ste A
Beaufort, SC 29902-5066
Attorneys for Plaintiff



Randi M. Berlin

Columbia, South Carolina
March 2, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
5th JUDICIAL CIRCUIT
CASE NO.: 09-CP-40-8705

CAROLYN MITCHELL POWELL,

Plaintiff,

vs.

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

Defendant.

AFFIDAVIT OF H. GRADY BROWN, ESQ.

RICHLAND COUNTY
FILED
2012 MAR 19 AM 11:04
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, H. GRADY BROWN, ESQ., who
being duly sworn deposes and says:

I have been retained by Thomas A. Pendarvis, Esq., to render opinions in
connection with this case regarding the standard of care applied by Ashlin Potterfield,
Michael Taylor and the Taylor/Potterfield Law Firm in connection with this case.

I have previously prepared a letter dated September 12, 2011, which is attached,
in which I addressed aspects of this case and rendered my opinions as to the standard
of care involved in this representation. Although this letter related primarily to the
services rendered by Ashlin Potterfield, I feel that some of the same reasons referenced
in that letter regarding deviation from standard of care also apply to Mr. Taylor's
involvement in this case.

It is my opinion Mr. Taylor continued a pattern of delay and failed to take
sufficient action once he personally became involved in handling this matter in April,
2005. He remained personally involved in the handling of this matter until he was

terminated in January, 2007. This equates a time period of approximately 20 to 21 months.

It appears that Mr. Taylor's law partner, Ashlin Potterfield, was involved in this case from mid-2003 until it was turned over to Mr. Taylor in April, 2007. Thus, Taylor/Potterfield handled this matter for 3 ½ to 4 years. Both partners participated in the case and contributed to the delay.

It is my belief that the amount of time Mr. Taylor allowed to lapse and his failure to take certain actions, as herein below set forth, caused Ms Powell to be unprotected and vulnerable to dissipation of marital assets by her husband for an unreasonable length of time. Under the Family Court Rules, a case is supposed to be dismissed once it has been pending for more than 365 days. It is my understanding that the purpose for this rule is to require cases to move forward promptly. It does not appear that this rule was ever raised by the Clerk of Court or any of the parties; however, I believe that it serves as a legitimate guide to establish that the length of this case was unreasonable.

Moreover, the original pleadings filed by Ms Potterfield were never amended by Mr. Taylor. Therefore, from the standpoint of procedure, Ms Powell never sought an equitable division of assets. Nor did she formally request any alimony. Both of these issues were admitted to be important to Ms Powell.

Furthermore, according to Mr. Taylor's deposition, the primary cause for the delay during his representation was the conduct of Ms Powell. He specifically stated that she refused to provide him with information in a timely fashion and he was having difficulty dealing with her because she did not have a clear understanding of what was happening.

It is my opinion that if an attorney believes his client is causing delay, he should note it in the file to verify this occurrence and he should take other action to limit its impact. Other action would include verifying and obtaining as much information from

other sources as possible. Should the client not understand what is happening, the attorney should make a better effort to clarify the proceedings in the mind of the client.

It is my opinion that Mr. Taylor could have taken advantage of a Lis Pendens to prevent assets from being sold. He could have obtained a restraining order (whether by consent or by temporary motion) to preserve assets. He could have hired a forensic accountant that specializes in tracing of assets. He could have obtained a temporary hearing and gotten an order of discovery and other relief in a binding order. He could have obtained a verified financial declaration establishing income and assets from the opposing party under oath. He could have performed other discovery in a timely fashion, such as sending additional requests to produce, obtaining other depositions or issuing subpoenas.

Other than sending relatively standard interrogatories and requests to produce and taking the deposition of the adverse party, all of which occurred during the 20 months of Mr. Taylor's representation, no other serious discovery was performed.

However, Mr. Taylor and a bankruptcy attorney apparently reviewed documents at opposing counsel's office and a summary and timeline of those records was obtained. However, I discussed in my previous letter the shortcomings of this report and its own admission that it was not complete and was prepared in a rush. In my view, this begs the need for additional efforts to identify and value assets.

On numerous occasions throughout his deposition, Mr. Taylor used the phrase "judgment call". He contends that it was a judgment call not to seek a verified financial declaration, not to hire a forensic accountant, not to request a temporary hearing, not to obtain a Lis Pendens, not to obtain restraining orders regarding dissipation of assets, not to issue subpoenas or other discovery referenced above and not to bring in third party business associates as parties to this action.

It is my opinion that all of the above would have been beneficial to Ms Powell by protecting and preserving assets and by identifying assets or supplementing and verifying information obtained directly from the opposing party. Had these tools and procedures been used, and used promptly, assets could have been preserved or their status controlled, settlement negotiations could have proceeded based on verified information and delay avoided.

For example, regarding the sale of the beach property, Mr. Taylor's deposition indicated that this property was sold and that \$1,000,000 was placed into an account and the balance of \$700,000 was placed into another account. This was done in order to be able to obtain a Section 1031 Tax Free Exchange. It appears the opposing party did timely comply with the IRS code and therefore a tax was incurred which otherwise would not have been incurred had he timely complied. By monitoring this situation or having court control over it, taxes might have been saved and this asset would not have been diminished in value.

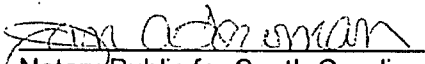
Ultimately, throughout Mr. Taylor's 20 months of representation, a clear picture of all of the marital assets was never obtained. In my opinion, information that was obtained regarding assets was based on too much reliance upon information provided by the opposing party.

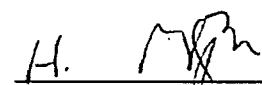
It also appears that Mr. Taylor was aware of the frustrations exhibited by Ms Powell as a result of this delay and at one point even acknowledged that he understood her frustrations. He then blamed the delay on his own client. He failed to accept any responsibility for any delay.

Mr. Taylor seemed to have an explanation for every reason he failed to take the action referenced above on behalf of his client. However, each explanation appears to me to be more of an attempt to cover himself than an effort to genuinely protect the marital assets and legal rights of his client. In short, a minimum amount of services were

provided during a lengthy amount of time and the services provided failed to achieve any real clarification or benefit to Ms Powell.

Sworn to before me
This 12 day of March, 2012


Notary Public for South Carolina
My Commission Expires: 05-25-15


H. GRADY BROWN

Law Offices of
H. GRADY BROWN, P.A.
615 PRINCE STREET
BEAUFORT, SOUTH CAROLINA 29902

H. GRADY BROWN *
* Certified Family Court Mediator
JAN A. LOWMAN, Paralegal

PHONE: (843)379-3900
FAX: (843)379-3901
EMAIL: gradybrown@gradybrown.com

September 12, 2011

Thomas A. Pendarvis, J.D.
PENDARVIS LAW OFFICES, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902

Re: Carolyn M. Powell vs. Potterfield Law Firm

Dear Thomas:

Pursuant to your request, I have reviewed the two depositions you provided to me in connection with the above matter with a view towards rendering opinions as to whether or not the legal services provided by Taylor/Potterfield fell below what I deem to be an appropriate standard of care. The depositions provided to me consisted of the deposition of Carolyn Mitchell Powell and the deposition of Ashlin Blanchard Potterfield. I have not had an opportunity to view all of the pleadings in this case or in the original divorce case. I have only reviewed the documents which were made exhibits to the two depositions.

Moreover, my review of the depositions and the exhibits was limited to a determination of whether or not the Taylor/Potterfield Law Firm failed to take action or took inappropriate action with respect to their representation of Ms Powell. My review was not in any way intended to determine the nature or the extent of any damages Ms Powell may have incurred as a result of representation by the Taylor/Potterfield Law Firm.

From the information I have been provided, it appears that the Taylor/Potterfield Law Firm was involved in the representation of Carolyn Powell from mid-2003 until early-2007. The length of representation in and of itself is quite unusual in a domestic relations case. The length of involvement would suggest that the case was either extremely complex and complicated or that an unusual period of delay or inaction had occurred.

Based on the documents provided to me, it is my opinion that an unreasonable and unnecessary amount of time elapsed in this matter and that inadequate actions were taken or which could have provided protection to Ms Powell's legal rights or legal position in the domestic relations case.

In particular, the documents I have seen suggest that several parcels of real estate with considerable value were sold by Mr. Powell after representation of his wife had been commenced and that no action was taken by Taylor/Potterfield to preserve these assets, which appear to be marital. For instance, in September, 2004 the Kenilworth residence was placed on the market for sale without her knowledge while Ms Powell was out of the country. This was the residence in which she and the children had been residing at the time. This sale ultimately required Ms Powell and her children to be uprooted and move into another residence. The reason this property was sold is not clear from the documents I have seen. However, it did not appear to me that there was any urgency or necessity for the sale of this property at the time it was marketed.

In addition, it appears from the records I have seen that the Pawley's Island beach house was sold by Mr. Powell in early-2005 and generated approximately \$1,700,000 worth of proceeds. The documents I reviewed do not make it clear precisely what happened to those proceeds; however, there is correspondence between counsel that suggests it was at some point placed into escrow by agreement of counsel. However, the correspondence I reviewed also suggested that Mr. Powell intended to use some of the proceeds for his personal living expenses. Whether this occurred is not clear in the documents I received. In any event, there appears to have been a lack of control over this marital asset.

Also, the documents suggest that real estate consisting of the Student Loan Building was sold by Mr. Powell after Taylor/Potterfield commenced representation of Ms Powell. I have no clear understanding as to what happened to the proceeds or what the reason for the sale was from the documents provided to me. Again, there does not appear to be any control or management plan for preserving this asset.

Accordingly, it appears that at least three parcels of real estate were sold by Mr. Powell during the time Taylor/Potterfield represented Ms Powell in connection with the parties' separation and marital situation. All of these sales could have either been prevented or managed such that reasons for the sale would have to have been justified to either opposing counsel or the court and the proceeds could have been preserved or distributed in a manner approved by counsel or the court. Moreover, the sales could have been prevented completely by Taylor/Potterfield taking specific action. This action would include the filing of a Lis Pendens against all real estate in Mr. Powell's name, commencing appropriate litigation which requested an equitable division and a temporary hearing and seeking a temporary restraining order regarding the disposing of assets while the case is pending. It appears from what I have read that none of these actions were taken, except for the filing of a suit on behalf of Ms Powell in approximately late-August, 2004. Despite the filing of this suit, there was no request for a temporary hearing, no request for even equitable division of assets and no filing of a Lis Pendens on her behalf at anytime during this representation.

It is also interesting to note that Ms Potterfield in her deposition stated that she was not concerned about the sales of real estate by Mr. Powell or that any assets "might get away". She also admitted that as of October, 2005 she did not know what happened to some of the proceeds of the sales of these properties, including Kenilworth.

Additionally, in her deposition Ms Potterfield stated that she recalled discussing with Ms Powell statements by Mr. Powell that he would make sure she received nothing as a result of their divorce/separation and that she felt that all of the marital assets were "for sale". Interestingly, Ms Potterfield says that she felt there was no reason for obtaining a Lis Pendens because all of the property was "for sale". This seems completely inconsistent to me and in fact emphasizes the need for a Lis Pendens.

Ms Potterfield also stated that she did not have any concerns about Mr. Powell moving assets around because she felt it was hard to hide real estate transactions. That, however, begs the questions of why a real estate transaction should be allowed at all in this marital context without any controls or input by both parties.

In my view, one of the most important elements of a domestic relations case is the preservation and maintenance of marital assets once representation has begun. The loss of control over the assets, or the dissipation of the assets, could be prejudicial to a client, particularly if that client is not titled with the asset and would have no knowledge as to the appropriateness of the terms associated with the sale or be entitled to the use of the proceeds from the sale. It is prudent to have the court approve any such sale or, at a minimum, not allow a sale to occur without the consent of opposing counsel and a plan for how it is to be handled.

In addition to the foregoing, the law in this State regarding the establishment of a marital interest in a potential marital asset is the date of the filing of marital litigation. Thus, should filing be delayed, a potential marital asset could be sold and the proceeds dissipated before the opposing spouse could claim an interest in the asset. Thus, substantial prejudice could occur by failing to file in a timely fashion.

It is important to note that some of the initial documents provided to Ms Powell by Taylor/Potterfield required Ms Powell to acknowledge that any delay in starting marital litigation may "considerably" prejudice the client. Thus, Taylor/Potterfield should have known they needed to seriously consider the consequences of delaying filing. This document also states that Taylor/Potterfield believes it is qualified to charge a higher fee because of the caliber of the attorneys that work in this firm. It would appear that they are holding themselves out as "excellent" attorneys and suggests that they should be held to a higher standard of care as a result. Not only does this appear to be important in terms of the points I raised above, but I also believe it is also relevant on the question of the quality of the guidance provided to Ms Powell by Taylor/Potterfield given the emotional trauma Ms Powell was experiencing and her belief that the case was not moving forward quickly, as well as Ms Potterfield's claim that it did not need to move forward quickly because Ms Powell did not want it to do so. Given this apparent inconsistency, it is my opinion that Taylor/Potterfield needed to be more assertive in the handling of the case and clearer in their communications with their client as to the plan to be followed and the goals which could be achieved in order to justify their claim of excellence.

The documents I have seen suggest that Ms Powell was never informed that the settlement offers ultimately made by her attorneys were within the "realm of reason". It was proposed that she get \$500,000 as an advance. Mr. Powell only offered \$400,000

and this amount was accepted. Additionally, it appears that there is no way her attorneys could have known whether the offers made by either party were within the "realm of reason" because there was no clear picture provided by Mr. Powell to verify the existence or value of substantial marital assets or determine his earnings ability. In short, it would appear that decisions were being made about settlement offers, including whether the terms of offers to be made to opposing counsel and opposing counsel's offers, for consideration, without the ability to evaluate their reasonableness under the circumstances. In my opinion, this is an ineffective and inappropriate manner in which to negotiate the resolution of a domestic relations case.

It is my opinion that several actions could have or should have been taken which would have benefited Ms Powell with respect to an equitable distribution. First, it appears that the Complaint that was ultimately filed well over a year after representation had begun did not seek an equitable division in its prayer. Nor did it seek any alimony or a request for a temporary hearing. Ms Potterfield acknowledged that she had filed "vanilla pleadings". I do not understand why these pleadings were never amended. Timely filing, I believe, would have benefited Ms Powell in the manner referenced above.

Moreover, the South Carolina Rules of Family Court require that the parties file a financial declaration within 45 days of the date the suit is filed or at a temporary hearing, whichever occurs first. The documents I have seen suggest that neither party ever filed a financial declaration or served the same on the other party. The financial declaration would have listed in considerable detail the assets and the values of the assets claimed by both parties. The obtaining of a financial declaration of Mr. Powell would have been extremely valuable to Ms Powell not only because it helps clarify what needs to be done in discovery, but it also enhances her knowledge of the assets, provides an under oath basis for identifying and valuing assets for which negotiations for settlement can be based and creates an element of perjury should the disclosure by the opposing party turn out to be inaccurate.

Discovery would also have substantially assisted Ms Powell by providing information which could be verified regarding the identification and valuation of all assets. Additionally, verification could be obtained by a search of courthouse records for real estate and taxable personal property in Mr. Powell's name. The documents I have reviewed suggested none of these actions were taken on behalf of Ms Powell. In my opinion, the above conduct is below the standard of reasonable care and certainly below the higher standard Ms Powell was told she was entitled to by Taylor/Potterfield.

Furthermore, the use of a professional forensic investigator under the circumstances presented in the depositions would have been highly beneficial to Ms Powell. No such investigator was obtained until Mr. Taylor hired Reid Smith in May, 2006. However, Mr. Smith is an attorney and did not hold himself out as a forensic investigator in domestic relations cases. Nevertheless, he prepared a summary of assets for Mr. Taylor that apparently has some level of detail, but which appears to be incomplete. Ms Powell stated in her deposition she felt that this summary had "holes" in it and was not to be deemed completely accurate because it was based upon unverified information from her husband. She suspected there may be additional assets which were not disclosed by her husband, even in his deposition. Frankly, I have found it is not

unusual for parties to be deceptive in their testimony and that confirmation or verification through other means is essential. Failure to do so is dangerous in that it could cause an asset to be missed or a valuation to be less than accurate. In any event, a detrimental impact could result to a client by failing to verify the existence and value of all assets. A proper expert would know where to look and could provide valuable assistance with preparing requests to produce.

Ms Potterfield claimed that Ms Powell chose not to obtain a forensic investigator. The documents I have read suggest that there was not much debate between Ms Potterfield and Ms Powell on this point or that Ms Potterfield insisted that it was necessary for her to provide proper representation of Ms Powell for an investigator to be obtained. It appears from what I have read that Ms Potterfield simply acquiesced to Ms Powell. In my view that is inadequate representation.

Likewise, the deposition of Ms Potterfield suggested that Taylor/Potterfield failed to engage in any discovery because Ms Powell asked them not to. There does not appear to be any reference to substantial debate on this issue and, again, it appears that Taylor/Potterfield merely acquiesced on this matter. It is my opinion that Taylor/Potterfield should have taken a firmer stance on the matter of obtaining an expert and seeking discovery.

It also does not appear that a financial declaration was ever prepared for Ms Powell. Without any determination of the true expenses Ms Powell was incurring, I believe it would be difficult to counsel her with regards to the amount of support, whether alimony or child support, she would need. Although alimony apparently became a contested issue, it is clear to me that Ms Powell would have been entitled to some level of support. No specific amount was ever ordered until years after representation began and Ms Powell could have been subject to the whims of Mr. Powell with respect to the payments he was making to her prior to any formal court order. This risk may have been avoided for a while, but it certainly existed.

Moreover, child support and alimony are both based upon earnings ability and not necessarily the actual earnings of a party. The documents I have seen do not reflect any discussion regarding Mr. Powell's earnings ability and the impact this would have on the alimony and support issues. In fact, Ms Potterfield stated in her deposition that she did not think Ms Powell may be entitled to alimony because Mr. Powell had no income. That seems to beg the question to me as to what he is capable of earning and it does not appear to me that this determination was ever made or looked into.

Furthermore, it appears that Ms Powell could have shown that her husband committed adultery as a result of a private investigator's report. Ms Potterfield stated in her deposition she did not think that Mr. Powell's adulterous conduct would have had an impact on Ms Powell's adultery claim. I would disagree because the South Carolina alimony statute states that marital misconduct is a relevant factor a court considers in an alimony situation. Additionally, the alimony statute requires that a spouse's earnings ability and the marital assets they are to receive are additional factors which need to be considered. It does not appear that these factors carried much weight or deserved much consideration with Taylor/Potterfield from the documents I have read.

It further appears that Taylor/Potterfield was concerned about allegations that Ms Powell had engaged in a lesbian relationship subsequent to the commencement of representation by Taylor/Potterfield. It is not clear to me from the documents I have read whether it is a certainty that Ms Powell did so or that Taylor/Potterfield claimed to inform her of the effect of a homosexual relationship on a claim for alimony sometime after January, 2005, until after the suit had been filed and after many months of representation. Had a temporary hearing been held earlier, the issue may not have come up. Moreover, had Taylor/Potterfield engaged in discovery, hired an expert and obtained a financial declaration from Mr. Powell early on, it is possible that a reasonable permanent settlement could have been reached either before suit was filed or shortly thereafter which addressed the alimony issue favorably to Ms Powell. If so, subsequent adulterous conduct on her behalf would have been irrelevant.

In her deposition, Ms Potterfield expressed a concern that Ms Powell may not receive alimony at a temporary hearing, if one were to be requested, because Mr. Powell had been paying her more than she felt Ms Powell would have received had a temporary hearing been held. This is a debatable issue; however, courts typically try and maintain the status quo at a temporary hearing. Thus, it is possible that Ms Powell could have shown the amounts her husband was providing to or on her behalf prior to a temporary hearing and the court could have required him to continue to do so pursuant to an enforceable court order.

Additionally, Ms Potterfield stated that she had concerns Ms Powell could not continue to receive the level of support her husband was voluntarily providing for her if a temporary hearing was held because she could not justify the need for the amount of money he was paying. The documents I have read do not indicate that there was any summary of Ms Powell's expenses or a financial declaration prepared for her which would establish any specific amount of financial need on her part. Thus, I question how Ms Potterfield's statement can be supported.

On several occasions in her deposition Ms Potterfield stated that many months had elapsed without any formal action being taken to commence litigation because she needed to determine what Ms Powell's plans for her living arrangements were going to be. That clearly is not a very proactive approach to take and again seems to be a conscious decision to acquiesce to a client that was by her own admission "desperate", "on the verge of a nervous breakdown" and vacillating between how she wanted to proceed with this case. It is my opinion that a more proactive approach was necessary with this client.

Ms Potterfield claimed that she felt she could not file the lawsuit earlier in the representation because the parties were still living together. It is my understanding that South Carolina law allows the filing of a divorce case based on fault grounds, even though the parties continue to live together. The documents I have read do not reflect that this was ever discussed between Taylor/Potterfield and Ms Powell.

Furthermore, Ms Potterfield continually mentioned in her deposition that she had no specific timetable she was working on in this case and that she felt there was no

reason she needed to file the suit earlier than it was filed. The depositions suggest to me that Ms Potterfield was dealing with a client that needed quicker results than she got and which needed the prompt establishment of certain enforceable rules of conduct and a financial game plan.

On several occasions Ms Powell expressed her desire that this case come to some conclusion or closure and that some definitive rules be put into effect so she could plan for her future. Taylor/Potterfield seemed to want her to make her plans for her future before they took any action on her behalf. This seems a backwards approach to me. I believe it would be appropriate to determine her financial parameters first.

Eventually, Mark Taylor had to get involved in this case in the winter of 2005. It is not clear to me exactly why he needed to get involved, other than his experience in litigation. However, this case does not look like it was anywhere close to being litigated once he got involved and it is certainly believable to me that he may have gotten concerned about the quality of representation provided by his firm and felt he needed to get involved to avoid any ramifications. In other words, he may have decided it was time to bring in the "big guns".

There is some question regarding Ms Potterfield's involvement in a judicial race and its potential effect upon the prioritizing of her time and energies. The depositions I have read do not seem to indicate that this was a problem in her mind. I cannot conclude whether it was or was not. However, my experience as a practitioner and my knowledge of other colleagues who have run for judgeships suggest that it is a time consuming process and may have had an effect on her time availability for clients.

All of the opinions I have set forth herein are based upon a reasonable degree of professional certainty. I trust that the contents of this letter are sufficient to assist you in your case. Should you wish to discuss this further, please feel free to contact me.

Sincerely,

H. Grady Brown

/jal

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

Defendants.

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 MAR 19 AM 11:04
JENNIFER A. CLARK
JEP.C.C.P. & D.S.

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Charles E. Hill, J.D.
TURNER, PADGET GRAHAM & LANEY, PA
PO Box 1473
Columbia, SC 29202
Chill@TurnerPadget.com

Documents Served: AFFIDAVIT OF H. GRADY BROWN

Jennifer A. Clark

Jennifer A. Clark

Beaufort, South Carolina
March 12, 2012

FILED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

AFFIDAVIT OF CAROLYN POWELL

Docket No. 07-DR-40-0570

2007 MAR 16 AM 9:22
BARBARA A. SCOTT
CC-CF-GS
& FAMILY COURT

PERSONALLY APPEARED BEFORE ME, Carolyn Powell, who first being
duly sworn deposes and states that:

1. I make this affidavit on personal knowledge except where stated to be on information and belief, and as to those matters, I believe them to be true.
2. I am the Plaintiff in this action and I am asking for the following temporary relief:
 - a. An order requiring my Husband to immediately transfer no less than \$250,000 to me to use for living expenses, litigation fees and to allow me to pay off obligations that I have incurred since our separation four years ago. I further request that the character allocation of these funds (i.e. attorney fees, equitable distribution, child support, etc.) to be held in abeyance pending the final hearing;
 - b. An order requiring my Husband to pay child support in the fixed amount of \$3,000 per month;
 - c. An order requiring my Husband to continue paying the bills and expenses he has historically paid including but not limited to: the children's health insurance and expenses, the automobile insurance, the expenses associated with the stabling and upkeep of our children's horses (approximately \$1,000 per horse); and the life insurance premiums on his life insurance policy;

Ex 18

d. I would also request that my Husband be responsible for our children's tuition and the College expenses of eldest daughter, Morgan, who will be attending College this coming fall.

3. **Brief History:** My Husband, Conrad Powell, and I were married on September 17, 1988 and have two daughters together, Ali (age 15) and Morgan (age 17).
4. After 15 years of marriage, my Husband and I separated during December of 2003 due to my husband's verbal and emotional abuse and also because I learned that he was having an affair with Michelle Owens.
5. I was originally represented by Ashlin Potterfield and then Michael Taylor, however, after almost four years of litigation I realized that we were no closer to a trial date or a settlement than we were on the day we separated so I retained Mr. Foster to represent me and hopefully I can finally obtain a divorce. Mr. Foster recently informed me that our original action had been administratively dismissed in July of 2005 and he filed this action and a motion to consolidate the two cases.
6. Since our separation, I have had custody of both of our girls and have done everything in my power to ensure that our children receive the education, love and care that they need. They are currently enrolled in Aiken Preparatory School which is a private school, in Aiken South Carolina. Both my girls are doing very well academically. My daughter Ali has made remarkable academic improvements since she transferred from Hand Middle School.
7. It is imperative to me that my children are able to maintain the style of living that they were accustomed to before the demise of our marriage, which was due to Conrad's infidelity. Our lifestyle was comfortable and safe. We lived in a 6000 sq ft (million plus)

home with a swimming pool and plenty of room for our pets which included dogs, birds, cats, and horses. Conrad often told our friends that he would not have his children live any other way. Since our girls were very young, they have been passionate about horse riding and Conrad and I both supported their love for this sport.

8. After I married Conrad my lifestyle changed dramatically. Instead of focusing on my successful career, my new role was to entertain friends, raise our children, and work every day building a viable antique and design business while working in extreme hot and cold conditions. As a result of my efforts and Conrad's, we have grown the antique business, acquired assets and accumulated a respectable estate. During my marriage I was a gracious hostess, deserving mother, and dedicated wife.
9. Since our separation and the sale of our marital home the needs and welfare of my children became secondary to my Husband's anger and punitive behavior. I have struggled every day to provide for my children and their beloved animals without sacrificing their mental and physical well-being. My Husband has provided minimal support since the sale of our marital home in an attempt to "starve" me into accepting a less than fair property settlement. Early on in the litigation, I received a payment in the amount of \$400,000 from Conrad, which was supposed to be a partial payment towards equitable division of assets. An accounting of what I have done with the funds that have been provided to me is attached and incorporated hereto as Exhibit A. I have tried to obtain an income independent of my Husband by purchasing and restoring investment property and inventory for my Art and Design Business. I have also used a substantial portion of the funds for the support and care of our children. It is my position that both my children and I deserve to live in the same lifestyle as before and that I be supported to

this extent so that I can re-build my business and continue the work I have done for almost twenty years now.

10. Conrad is living off our marital estate. My Husband stated in his deposition that he has not received an income since 1998 from his business and that his income is solely derived from the sale of our marital assets. My Husband also stated that his income derives from the sale of marital assets prior to 2006. See Exhibit B. He also testified that he still has most of the approximately \$1.7 million of net proceeds from the sale of our beach house in a bank account. If Conrad is allowed to support himself and fund this litigation solely from the proceeds of the sale of our marital property he should be required to provide me with sufficient funds to support myself and my family as well. The assets he is funding this litigation with and supporting himself with are our marital assets. If the Court refuses to grant my request for an immediate interim distribution, I will be unable to support my family and also to pay the fees and expenses associated with this litigation.

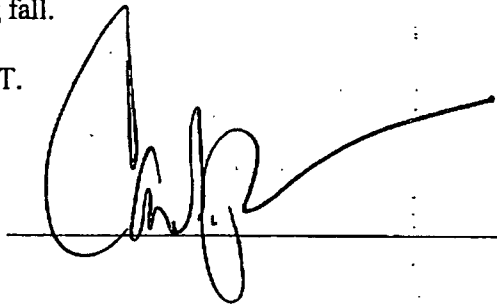
11. Fees needed for litigation; We have made every effort to try to get the case settled. However, presently I am told that we can not even get my Husband to respond to our last settlement offer and that this case will likely have to be taken to trial. Accordingly, my attorney has selected an expert to assist us in the identification and valuation of marital assets. I had no idea that it would have taken so long and been so costly to ultimately terminate my marriage. My Husband has control of virtually all of our funds and resources. I am therefore pleading with this Court to grant the following relief:

- a. An order requiring my Husband to immediately transfer no less than \$250,000 to me to use for living expenses, litigation fees and to allow me

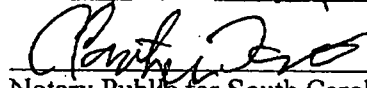
to pay off obligations that I have incurred since our separation four years ago. I further request that the character allocation of these funds (i.e. attorney fees, equitable distribution, child support, etc.) to be held in abeyance pending the final hearing;

- b. An order requiring my Husband to pay child support in the fixed amount of \$3,000 per month;
- c. An order requiring my Husband to continue paying the bills and expenses he has historically paid including but not limited to: the children's health insurance and expenses, the automobile insurance, the expenses associated with the stabling and upkeep of our children's horses (approximately \$1,000 per horse); and the life insurance premiums on his life insurance policy; and
- d. I would also request that my Husband be responsible for our children's tuition and the College expenses of eldest daughter, Morgan, who will be attending College this coming fall.

FURTHER AFFIANT SAYETH NOT.



Sworn and subscribed to before me
This 14 day of March, 2007


Notary Public for South Carolina
My Commission Expires: 6/10/2012



Disbursements of Marital Property Settlement Funds (400,000 + 3,000 + 10,000)

Investment Properties (Barn)	\$ 75,000
Inventory Art and Design Business	\$100,000
Horses (exclude 6mo horses were under care of husband)	\$ 96,000
Medical/Dental	\$ 10,000
Car Maintenance	\$ 16,000
Telephone Expenses	\$ 13,500
Rent and Utilities	\$ 43,200
Education (Tuition, computers, books, lunches..)	\$ 50,000
Pets	\$ 6,000
Food	\$ 25,500
Clothing (children)	\$ 15,000
Taxes	\$ 11,000
Barn Rental	\$ 15,000
Vacations and Incidentals	\$ 15,000

Attorney Fees	\$ 10,000

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- 1 A: No.
- 2 Q: What's your occupation?
- 3 A: I'm in the antique business, Columbia Antique
- 4 Mall, Chic Antiques.
- 5 Q: Anything else?
- 6 A: No.
- 7 Q: Well, what is your work schedule?
- 8 A: I work every day.
- 9 Q: What time do you go in?
- 10 A: Ten-ish.
- 11 Q: And what time do you leave?
- 12 A: 5:30, 6:00.
- 13 Q: And what kind of a lunch break do you take?
- 14 A: I usually go get something and bring it in.
- 15 Q: Okay. And how much do you earn in your
- 16 occupation?
- 17 A: I have no salary. Haven't had a salary since
- 18 probably '98.
- 19 Q: How do you pay yourself?
- 20 A: I don't from that business.
- 21 Q: Okay. Then what are your other sources of
- 22 income?
- 23 A: Selling assets, selling mostly real property
- 24 assets.
- 25 Q: Who do those assets belong to?

1 A: I guess they belong to, until it's settled,
2 they belong to the estate, whatever you would
3 call whatever we have until we have a
4 settlement or divorce.

5 Q: It would be marital property?

6 A: Not all of it, no. Some of it was premarital.

7 Q: What property have you sold this year, 2006?

8 A: None.

9 Q: Then what is your source of income in 2006?

10 A: Assets from previous sales previous years.

11 Q: Explain that.

12 A: What do you mean explain it?

13 Q: Well, you said you weren't taking a salary from
14 the business. You lived on the sale of assets,
15 meaning real properties, and you've indicated
16 that you had not sold any real property this
17 year, and I asked how you survive then. What's
18 been your sources of income this year?

19 A: From sales earlier, from earlier years.

20 Q: You've lived on the funds generated from the
21 sales in earlier years?

22 A: (Nods head affirmatively).

23 Q: What sales are those?

24 A: Well, where do you want to start? I'll be glad
25 to ... I mean, you want to go back how far? I

1 don't know what you ...

2 Q: Well, just go back to 2005. What did you sell
3 in 2005?

4 A: I think, I'm not sure, but I believe the only
5 thing was the beach house at Pawley's Island.

6 Q: And so, you've been living off the proceeds
7 from the sale of the beach house at Pawley's?

8 A: No. Most of that's been in the bank waiting
9 for a settlement.

10 Q: Okay. Then where did you get the money that
11 you've lived off this year?

12 A: Well, let's see. Go back ... I'm sorry, I
13 don't remember when what was sold. So if you
14 want to look at the financial statement, we can
15 talk about the specifics of what sold when.

16 Q: Okay. We'll come back to that later. How far
17 had you gotten in school?

18 A: I've ... a Doctorate of Education.

19 Q: Okay.

20 A: I have three degrees.

21 Q: Where did you ... could you tell me the degrees
22 and where they were earned?

23 A: They were all from UNC-Chapel Hill. I have an
24 undergraduate degree in English and Political
25 Science. I have a Master's Degree in English,

FILED

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

2007 MAR 16 AM 9:28
BARBARA A. SCOTT
CC. CP. GS
FAMILY COURT

IN THE FAMILY COURT
FOR THE
FIFTH JUDICIAL CIRCUIT

CAROLYN W. POWELL,

Civil Action No. 07-DR-40-570

Plaintiff,

-vs-

W. CONRAD POWELL,

Defendant.

AFFIDAVIT OF W. CONRAD POWELL

PERSONALLY APPEARED BEFORE ME, W. Conrad Powell, who first being
duly sworn, says:

1. I am the Defendant in the within captioned matter and I have knowledge
of the facts set forth hereinafter.

2. The following is the relief Carolyn is requesting at the *Pendente Lite*
hearing, as well as my response:

- **Custody of the children:** Mary Morgan will be 18 in April, 2007,
and Alexandra will be 16 in May, 2007. I have no objection to
Carolyn having the custody of the girls. Carolyn and I have been
separated since December, 2003, and she and the girls live in Aiken
and I have visitation with the children. Carolyn and I seem to have
been able to work out the custody and visitation issues. I see the
girls frequently and this has not been problematic;
- **Child Support:** I have been paying Carolyn \$1,585.00 per month
without a Court Order in effect and I have been doing this for at

E-19

least two (2) years. In addition, I have been paying for the health and dental insurance for both the girls and for Carolyn, for the car insurance for Mary Morgan, Alexandra and Carolyn, all uninsured, unreimbursed medical and dental bills for the girls and for Carolyn (and the dental bills have been significant for both the girls—both of the girls have had their teeth whitened and Alexandra had to have braces and Carolyn had braces and I paid for one-half (1/2) of her braces), and I have paid for one (1) horse since the separation and I have paid for the care and feeding of all the horses for most of the separation. I purchased a car for Mary Morgan during this litigation. **For Year 2005, I wrote checks to Carolyn or to third parties for the children in the amount of \$26,565.00 and this does not include credit card expenses for the children and it does not include the insurances I have paid on behalf of the children (or their mother). For Year 2006, the expenditures which I have paid on behalf of the children, including the monthly child support for the girls, was \$121,143.71.** It is my preference to pay the providers for the services rendered to the girls because, unfortunately, Carolyn is a spendthrift and it has been my experience that when I have given her monies for the girls (and to be paid to third parties), she does

not pay the bills so, in effect, I end up paying double. When this action was first begun in 2004, I asked my attorney to calculate the child support for me and, given my income, it was \$1,585.00. **My only sources of income include Social Security (\$1,480.20) and, in addition, because the girls are minors, I receive \$656.00 for each of the girls.** It is my understanding that my entitlement to receive Social Security benefits for the children terminates when they graduate from high school or when they turn age 18, whichever event occurs later in time. **In addition, I earn interest income from investments.** For Year 2006, I estimate that my gross income from interest on investments will be approximately \$63,646.00. I have not filed an Income Tax Return for Year 2006. My filed Tax Return for Year 2005 showed my income from all sources to be interest income of \$23,462.00 and dividend income of \$11,102.00. In Year 2005, there was a large capital gain shown on my tax return (and this is a non-recurring event). I also had income of \$6,190.00 as a result of the national tobacco litigation (and this is as a result of owning real estate in North Carolina which is clearly non-marital property). The first year Carolyn and the girls were living in Aiken, Carolyn paid for the girls to attend Aiken Preparatory School for their attendance for one-half

(1/2) of the school year. Last year, Carolyn paid for the girls to attend private school. This present school year, I paid for the girls to attend private school. **During the prior litigation (which I am told will be consolidated into this litigation), Carolyn received an advance on equitable division of \$400,000.00 and an advance of \$10,000.00 and an advance of \$1,500.00.** I have no objection to paying child support—the problem is that Carolyn is a spendthrift and the monies get spent on everything else but the children. Every week I give both the girls cash as an allowance to them so that they have money to buy their lunch at school and so that they can have a meal in the evening when they get home. I know that this sounds as if I am trying to control Carolyn, but the honest truth of the matter is that Carolyn fritters away money and then calls me and complains that she does not have money for the children. I ask the Court to be mindful that Mary Morgan will graduate in May or June, 2007, and she is college-bound, so I ask the Court to permit me to decrease any child support I am required to pay effective August, 2007, when Mary Morgan goes to college. Attached hereto and made a part hereof is a copy of the Child Support Guideline based on my current income for two (2) children and the same Guideline based

on one (1) child. I have been paying more child support ~~without~~
a Court Order.

- **Child Support Arrearage:** I do not believe that I have any child support arrearage. I ask the Court to consider that which I have **voluntarily done** for the children without the necessity of an Order of the Court.
- **Private School Education for the Children:** Mary Morgan will graduate at the end of the present school year and will go to college. Carolyn recently told me that Hammond as the school for Alexandra, so, perhaps, she is considering relocating back to Columbia.
- **Providing Carolyn with payments for household and living expenses, including mortgage payment or rent, utilities and any other expenses necessary for the normal subsistence of Plaintiff:** This sounds as if Carolyn is asking for spousal support or alimony. Carolyn has committed adultery with Roe Young and both she and Roe Young have admitted that they have an intimate relationship with one another—depositions were taken and attached hereto is a copy of the pertinent page of Carolyn's deposition transcript in which she admits committing adultery. Roe Young's deposition was taken last week and he admitted having an

adulterous relationship with Carolyn—we do not have his transcript yet from the Court Reporter.

- **Fees for Experts:** Litigation has been pending between Carolyn and me since 2004. She has had at least four (4) attorneys representing her since the institution of the 2004 litigation. I want the Court to consider that Carolyn had an advance of \$400,000.00 in equitable division on or about January 21, 2005. Carolyn has had monies for at least the last two (2) years to retain experts to assist her value the property **and she has done nothing and now the monies which were advanced to her are gone, according to her deposition testimony.** If the Court requires me to advance additional funds to Carolyn, I would like a provision that such advance is without prejudice and can be considered at the merits hearing and readjusted at that time.
- **Pre-Judgment Interest and Post-Judgment Interest on any award of funds:** My attorney does not know what this means.
- **Pre-Trial Discovery:** I have no objection to full pre-trial discovery, so long as it is mutual.
- **Attorney's Fees:** Since the institution of this action in 2004, three (3) depositions have been taken—mine, Carolyn and Roe Young's. There was formal discovery in the 2004 action and all documents

requested were provided and were reviewed in detail by Carolyn's former lawyers, J. Michael Taylor and Reid Smith. So far as I can tell in the present action, her attorney has done nothing but draft a Summons and Complaint and a Notice of Motion for a Temporary Hearing and send out deposition subpoenas (most of them to people who know very little, if anything, about our finances). For example, my brother's significant other has been noticed for a deposition in North Carolina next week and she knows nothing about my finances! I ask the Court to make Carolyn pay her own attorney's fees and costs. Mr. Foster is her fourth attorney (and I am aware that she consulted with other attorneys in this town). After nearly three (3) years of litigation and four (4) attorneys, nothing is any closer to being prepared for trial than it was three (3) years ago.

- **Auto/Health Insurance and Uninsured Medical and Dental Bills:** I have paid the automobile and health insurance for Carolyn and the children and I have paid for the uninsured medical and dental bills for the girls. I will continue to pay for the automobile insurance for the girls and Carolyn should be required to pay her own insurance. I will pay the uninsured medical and dental bills for the children, with contribution by Carolyn.

- LIFE Insurance: I have \$250,000.00 worth of life insurance which is made payable to a Trustee for the benefit of the girls. I object to being required to name Carolyn as the irrevocable beneficiary or trustee of any insurance I own.
- Restraining Provisions: I have no objection to a restraining provision as to person. I operate an antique business and I do not need to be restrained as to carrying on business in the normal course of action.



W. Conrad Powell

Sworn to and subscribed before me
this 13th day of March, 2007.

Maure Thurman (L.S.)
NOTARY PUBLIC, STATE OF SOUTH CAROLINA

My Commission Expires: 7-7-10

1 Q: And why were y'all separated?

2 A: We were going through a divorce. We had
3 decided we didn't want to be married.

4 Q: Obviously, you reconciled?

5 A: We did reconcile.

6 Q: Okay. At any point during the time that you've
7 been married to Conrad, up to and including
8 today, have you been unfaithful to him?

9 A: I have not.

10 Q: You have not had sexual intercourse with any
11 person?

12 A: Oh, you mean up through today, I'm sorry.

13 Q: Up through today, because you're still married.

14 A: Yes, I have.

15 Q: With whom have you had sexual or intimate
16 relations?

17 A: Roe Young.

18 Q: Who else?

19 A: That's all.

20 Q: Have you ever had an intimate relationship with
21 Mike Clark?

22 A: I have not.

23 Q: Who is Mike Clark?

24 A: Mike Clark is a friend of Alice Beckers, who's
25 my children's horse trainer and a friend of

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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

**PLAINTIFF'S RESPONSES TO
DEFENDANTS' REID SMITH AND
PRICE, BIRD & SMITH P.A.'S FIRST
REQUEST FOR PRODUCTION**

TO: J. CALHOUN WATSON, ESQUIRE, ATTORNEY FOR DEFENDANTS REID SMITH AND PRICE, BIRD, SMITH, P.A.:

Plaintiff, Carolyn Mitchell Powell (hereafter "Plaintiff"), hereby responds to Defendant Reid Smith and Price, Bird & Smith, P.A.'s First Request for Production to Plaintiff as follows:

1. All statement(s) of possible witnesses, whether written, electronic, oral, summarized, or otherwise reproduced in any manner, relating to the claims set forth in the Complaint.

RESPONSE:

See the Affidavit prepared by Dr. Gregory Adams and Plaintiff's Verification of the Complaint. No other statements have been taken.

2. All documents referenced or identified in Plaintiff's responses to Defendant Reid Smith and Price Bird & Smith, P A.'s First Set of Interrogatories, specifying each particular interrogatory to which the document relates.

RESPONSE:

Plaintiff's divorce file obtained from Cantzon Foster, Esquire and containing

documents and correspondence from all Defendants in this matter is produced on a CD (Bates Range MIT00001 – MIT005042) and attached hereto as Exhibit A. Plaintiff will also make arrangements for Defendants to inspect and copy the file if Defendants deems necessary. Additionally, Plaintiff produces documents (Bates Range MIT005043-MIT005326) in her possession as Exhibit B. These documents were referenced in responding to Interrogatory Number 8 and Number 10.

3. All correspondence or other written or electronic documents received by Plaintiff or any of her representatives from Defendants Reid Smith and/or Price Bird & Smith, PA.

RESPONSE:

See response to Request Number 2. The specific bates number at issue are MIT000857, MIT000859, MIT000861, MIT000865, MIT000869, MIT000871, MIT000873, MIT003125, MIT005139-MIT005141, MIT005170-MIT005172, MIT005174-MIT005180, MIT005227, MIT005269-MIT005278, MIT005284, MIT005286, MIT005288, MIT005290-MIT005291

4. All correspondence or other written or electronic documents received by Plaintiff or any of her representatives relating to the divorce proceeding at issue in this case from any person or entity, other than defendants Ashlin Blanchard Potterfield, J. Michael Taylor, Taylor Potterfield, or Golden, Taylor Porterfield and Barron.

RESPONSE:

See Response to Request Number 2. Plaintiff objects to this request to the extent that it could be read to request production of documents received from her attorneys in the present litigation, as protected attorney-client communications.

5. All correspondence or other written or electronic documents received by Plaintiff or any of her representatives relating to the divorce proceeding at issue in this case from defendants Ashlin Blanchard Potterfield, J. Michael Taylor, Taylor/Potterfield, or Golden, Taylor Potterfield and Barron.

RESPONSE:

See response to Request Number 2.

6. All correspondence or other written or electronic documents received by Plaintiff from

Cantzon Foster related to Plaintiff's divorce proceeding at issue in this case or related to the claim Plaintiff asserts in this matter.

RESPONSE:

See response to Request Number 2.

7. All file materials maintained by Plaintiff or anyone acting on her behalf regarding the claim set forth in the Complaint.

RESPONSE:

Plaintiff objects to this request to the extent it requests production of file materials in the possession of her attorneys in this present matter which are protected by the attorney-client privilege and work product doctrine. Plaintiff further objects to this interrogatory as being both ambiguous and overly broad. Without waiving said objection, Plaintiff produces her divorce file as Exhibit A and her records as Exhibit B.

8. To the extent not previously produced, all reports, documents, compilations of data, and other material prepared by any experts retained by Plaintiff.

RESPONSE:

Plaintiff responds that all documents responsive to this request were produced on February 15, 2010, in response to Defendant Reid Smith's subpoena to Dr. Gregory Adams.

9. To the extent not previously provided, produce the following for each expert witness retained by Plaintiff:

- a. All tangible reports, documents, compilations of data, and other materials prepared by another person, but which form a basis, either in whole or in part, of the expert's opinions as they relate to the expert's testimony as a witness in this action.

RESPONSE:

Plaintiff responds that all documents responsive to this request were

produced on February 15, 2010, in response to Defendant Reid Smith's subpoena to Dr. Gregory Adams.

- b. All documents concerning or relating to any reports the expert(s) have prepared regarding the subject matter of this lawsuit.

RESPONSE:

Plaintiff responds that all documents responsive to this request were produced on February 15, 2010, in response to Defendant Reid Smith's subpoena to Dr. Gregory Adams.

- c. All documents reviewed by Plaintiff's expert(s) in the information and/or preparation of his or her opinion in this case.

RESPONSE:

Plaintiff responds that all documents responsive to this request were produced on February 15, 2010, in response to Defendant Reid Smith's subpoena to Dr. Gregory Adams.

- d. A copy of a current curriculum vitae for each expert.

RESPONSE:

Plaintiff craves reference to the Affidavit of Dr. Gregory Adams filed in conjunction with the Complaint in this matter, which includes a current curriculum vitae.

- e. All documents reflecting, evidencing, or relating to communications between Plaintiff's expert(s) and any person regarding the subject matter of this lawsuit.

RESPONSE:

Plaintiff objects to this request as being both overly broad and unlikely to lead to discoverable evidence. Plaintiff further objects to this request to the extent it could be construed to require production of communications between her attorneys and Dr. Gregory Adams, as protected work product.

- f. All work papers, notes, or drafts of any reports generated by Plaintiff's

expert(s) regarding the subject matter of this lawsuit.

RESPONSE:

To the exception of the Affidavit of Dr. Gregory Adams filed in conjunction with the Complaint in this matter and documents produced on February 15, 2010, in response to Defendant Reid Smith's subpoena served to Dr. Gregory Adams, Plaintiff responds there are no additional documents responsive to this request

- g. All documents evidencing or reflecting fees incurred or charges billed to Plaintiff's attorney relating to the review of any documents and preparation of any reports regarding the subject matter of this lawsuit.

RESPONSE:

Plaintiff's fee agreement with Dr. Gregory Adams is attached hereto as Exhibit C. Plaintiff has not received any further documents from Dr. Adams reflecting fees incurred or charges billed to her attorneys.

- h. Any and all lectures, articles or excerpts from treatises authored by Plaintiff's expert(s) regarding the subject matter of this lawsuit.

RESPONSE:

Plaintiff does not possess any lectures, articles or excerpts from treatises authored by Dr. Gregory Adams. Plaintiff objects to this request as it appears to request documents that are not in her possession. Documents in the possession of Dr. Adams should be requested in a duly issued subpoena to this witness. Without waiving said objection, Plaintiff's attorneys have been informed that it would take an estimated 10-12 hours of work and substantial expense to comply with such a subpoena. Any such expense should be paid by Defendant.

- i. All publications, articles, textbooks, or other documents that Plaintiff's expert(s) recognize as being authoritative with respect to any of the issues in this case.

RESPONSE:

Plaintiff does not possess any articles, textbooks or other documents responsive to this request. Plaintiff objects to this request as it appears to request documents that are not in her possession. Documents in the possession of Dr. Adams should be requested in a duly issued subpoena directed to this witness.

- j. All tests utilized, performed, or otherwise relied upon by Plaintiffs expert(s) in arriving at any opinion that may be rendered in this case.

RESPONSE:

Plaintiff responds that no tests were utilized, performed or relied upon.

- k. A list or any similar document identifying each lawsuit in which Plaintiff's expert(s) have appeared as an expert witness (whether or not a retained expert), the subject matter of each lawsuit, and the name, address, and telephone number of the attorney or party for whom or on whose behalf he or she appeared as a witness.

RESPONSE:

Plaintiff does not possess a list or similar document responsive to this request. Plaintiff objects to this request as it appears to request documents that are not in her possession. Documents in the possession of Dr. Adams should be requested in a duly issued subpoena directed to this witness. Without waiving said objection, Plaintiff's attorneys have been informed that no such list or similar document exists.

- l. Any and all documents relating to each expert witness services, firms, registries, and/or directories with whom Plaintiffs expert(s) have ever been associated.

RESPONSE:

Plaintiff does not possess documents responsive to this request. Plaintiff objects to this request as it appears to request documents that are not in her possession. Without waiving said objection,

Plaintiff's attorneys have been informed Dr. Gregory Adams is not associated with any expert witness services, firms, registries or directories.

- m. All documents relating to any advertising Plaintiff s expert(s) have ever engaged in with respect to his or her availability as a consultant and/or expert witness in medical/legal/insurance matters.

RESPONSE:

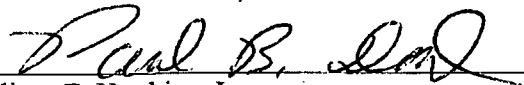
Not applicable. Plaintiff does not possess documents responsive to this request. Plaintiff objects to this request as it appears to request documents that are not in her possession. Documents in the possession of Dr. Gregory Adams should be requested in a duly issued subpoena directed to this witness. Without waiving said objection, Plaintiff's attorneys have been informed Dr. Gregory Adams does not advertise his services.

10. Produce all documents, notes, records or correspondence that evidence or relate to any kind of communication between (i) Plaintiff or anyone acting on Plaintiff s behalf, and (ii) any other person or entity, which relate to Defendants Reid Smith and Price Bird & Smith, P A.

RESPONSE:

Plaintiff objects to this request as being overly broad, unduly burdensome, and unlikely to lead to admissible evidence. Plaintiff further objects to the extent this request could be construed to required production of materials protected by the attorney-client privilege and/or work product doctrine. Notwithstanding said objection, Plaintiff states that all such documents in her possession have been produced as Exhibit A and Exhibit B.

McCUTCHEN BLANTON HOPKINS
& CAMPBELL, LLP



William E. Hopkins, Jr.
Susan F. Campbell
Paul B. Deal

1414 Lady Street (29201)
Post Office Box 11316
Columbia, South Carolina 29211-1316
(803) 256-6152
(803) 256-6155 - facsimile
wehopkins@mbhclaw.com
scampbell@mbhclaw.com
pdeal@mbhclaw.com

ATTORNEYS FOR PLAINTIFF

April 23, 2010

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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

CERTIFICATE OF SERVICE

I, the undersigned, of the law firm of McCutchen Blanton Hopkins & Campbell, LLP, do certify that I have served the below named with a copy of the discovery specified below on April 23, 2010, **Via Hand Delivery**, to the following addresses:

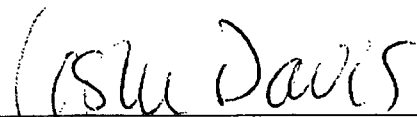
Discovery:

- 2) Plaintiff's Responses to Defendants Reid Smith and Price Byrd & Smith P.A.'s First Set of Request for Production

Served:

Charles E. Hill, Esquire
Virginia Williams, Esquire
Turner Padgett Graham & Laney, P.A.
PO Box 1473, Columbia SC 29202
1901 Main Street, Suite 1700
Columbia SC 29201

J. Calhoun Watson
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, SC 29211



Leslie M. Davis, Paralegal

Dr. Gregory B. Adams

ELECT, Ltd., 1050 Wellington Drive, Charleston, SC 29412-4823

Tel: 843.324.8221 Email: gbadams@comcast.net

November 22, 2009

Susan F. Campbell, Esq.

McCutchen Blanton Hopkins & Campbell, LLP

1414 Lady Street

Columbia, SC 29201

via email: scampbell@mbhclaw.com

pdeal@mbhclaw.com

RE: Powell v. Potterfield, et al.

Dear Susan:

As we discussed on the phone, I would be pleased to work with you, providing expert services in connection with your representation of Carolyn Powell in her litigation against Ashlin Potterfield, J. Michael Taylor, Reid Smith, et al. This engagement letter constitutes the agreement between your firm and me. Please let me know if it does not accurately reflect your understanding of that agreement or if any of the terms are not acceptable.

The terms of your engagement of me as a consulting expert in this case are as follows. Initially, I will review your draft complaint and the fact chronology you sent me and will provide you with my expert opinions based on those. If you desire me to become a testifying expert, I will do so and will provide you with an expert affidavit to be attached to the complaint. I understand that you wish to file the complaint before December 13, 2009.

During the course of this litigation, I will review the pleadings, deposition transcripts, exhibits, discovery, and other evidence that you furnish me and will conduct whatever further investigation and research I believe is appropriate to render opinions on the issues you have requested I address. In reviewing this case and preparing my opinions, I will have access to all discovery and other information I deem relevant; you and your client will provide me with materials and information I request and will cooperate fully with my investigation. Once my review and research are completed, I will provide you with my opinions. In addition, I will be available for consultation on the matter and will testify as an expert witness, if you desire. My engagement becomes effective upon my receipt of a \$5,000.00 retainer, against which I will bill my fees and expenses; please make the check payable to Elect, Ltd.

All work will be billed at my standard hourly rate at the time the work is performed. That rate currently is \$500.00 an hour, but is subject to adjustment; I will provide you with advance notice of any adjustments. In addition to my fee, you will pay my out-of-pocket expenses. I will bill your firm monthly, unless I judge that the amount of work in a



month does not warrant separate billing. Your firm agrees to pay each statement within 20 days of its date, without regard to whether your client has paid your firm by that date (unless other arrangements have been agreed to by me, in writing). Delinquent statements are subject to 1.5% interest per month and entitle me to suspend all work on this case until all amounts due me have been paid. In addition, I will bill for all time I spend seeking payment of delinquent amounts.

You agree that when opposing counsel desire to depose me, you will inform them of my current hourly fee and that they will be expected to pay my statement promptly. I will bill for travel time to and from the deposition as well as all time at the deposition, and not merely the time the deposition is in session; in addition, I will bill for my expenses. Please obtain their agreement to these terms, or I will expect your firm to pay my fee and expenses for the deposition. In the event that opposing counsel does not pay my fee and expenses within 20 days, you will be responsible to obtain prompt payment or to pay my statement and seek reimbursement from opposing counsel.

My contract is directly with your firm. At no time will I have a direct relationship, attorney-client or otherwise, with your client. Please be sure that your client understands that I am not their attorney or advocate and am not advising or representing them.

I will treat all consultations about this case and opinions rendered as a consulting expert as confidential, and I will protect material covered by your client's attorney-client privilege and the attorney work-product doctrine. Of course, once I have been identified as an expert witness, my opinions and the facts upon which they are based are discoverable.

You understand that I serve as an expert witness in various matters in the several areas of my recognized expertise and that in doing so I am not an advocate for nor the confidential advisor of the lawyers who engage my services or their clients. Thus I owe no fiduciary duty of loyalty to them, but instead my primary duty is to provide my honest expert opinions to the court.

I look forward to working with you on this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Greg", written in dark ink.

Gregory B. Adams

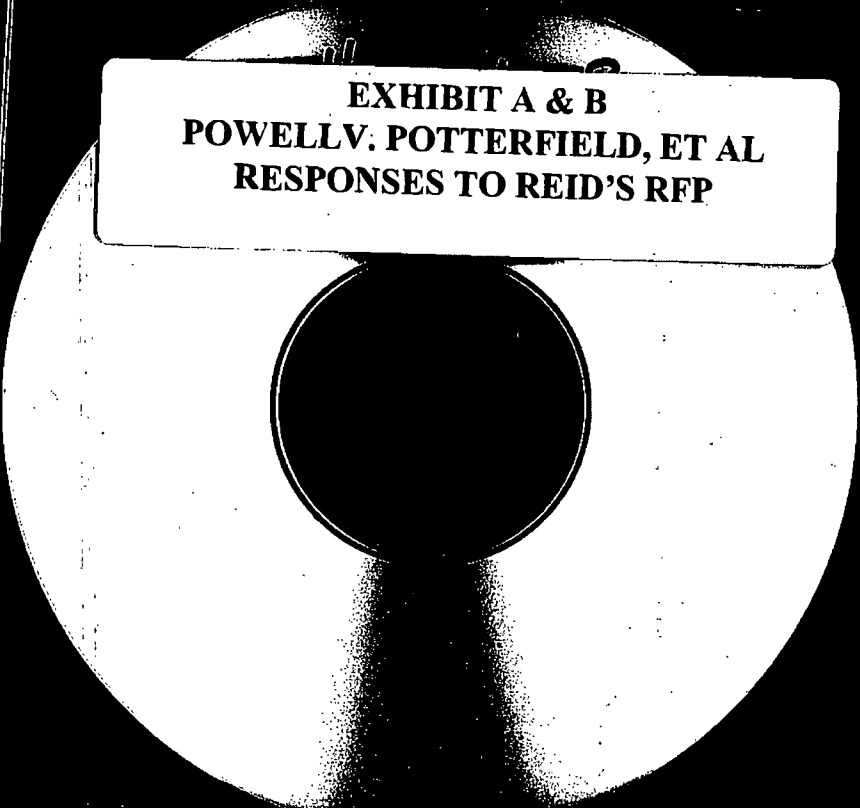
A CD-ROM disc is shown against a black background. A white rectangular label is affixed to the top of the disc. The label contains three lines of text in a bold, sans-serif font. The disc itself is partially visible, showing its characteristic reflective surface and central hole.

EXHIBIT A & B
POWELLV. POTTERFIELD, ET AL
RESPONSES TO REID'S RFP

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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

**PLAINTIFF'S RESPONSES TO
DEFENDANTS POTTERFIELD,
TAYLOR AND
POTTERFIELD/TAYLOR'S FIRST SET
OF INTERROGATORIES**

TO: CHARLES E. HILL, ESQUIRE AND VIRGINIA WILLIAMS, ESQUIRE, ATTORNEYS
FOR DEFENDANTS ASHLIN BLANCHARD POTTERFIELD; J. MICHAEL TAYLOR;
AND TAYLOR/POTTERFIELD

Pursuant to Rule 33 of the South Carolina Rules of Civle Procedure, Plaintiff responds to Defendants' First Set of Interrogatories to Plaintiff as follows:

GENERAL STATEMENTS

- a. Plaintiff and her counsel are presently continuing to pursue their investigation and analysis of the facts and law relating to this case and have not completed discovery or preparation for trial. Therefore, the responses set forth herein are given without prejudice to Plaintiff's right to add to, supplement, modify or otherwise change or amend the responses herein based on any subsequent facts or interpretation or discovery thereof.
- b. Plaintiff has made a good faith effort to respond to the Interrogatories. The information hereinafter set forth is true and correct to the best knowledge and belief of Plaintiff as of the date herein stated, and is subject to correction for inadvertent errors, mistakes or omissions, if any such errors, mistakes or omissions should be found to exist. These responses are based upon records and information presently and reasonably available to Plaintiff.
- c. In responding to the Interrogatories, Plaintiff does not concede the relevance or materiality of such Interrogatories or the subject matter to which the Interrogatory

refers. Plaintiff's response to each Interrogatory is made by Plaintiff expressly subject to and without in any way waiving or tending to waive any objections to the competency, relevancy, materiality, privilege or admissibility as evidence, or for any other purpose, of any of the matters referred to herein at any proceeding, including the trial of this action or any subsequent proceeding.

GENERAL OBJECTIONS

The following general objections to the Interrogatories ("general objections") apply to and are incorporated by reference into such specific response and answer detailed below, whether or not expressly incorporated by reference in each individual response or answer.

- a. Plaintiff objects to the Interrogatories to the extent that the responses maybe derived or ascertained from this Defendants' own records.
- b. Plaintiff objects to the Interrogatories to the extent any Interrogatory seeks to require Plaintiff to identify, describe or state "each" or "every" fact, document or thing, or "all" documents, or identify "each" person, as overly broad, unduly burdensome and oppressive, especially given that discovery in this action is not yet complete. Plaintiff at this time is unable to identify "all" information that supports Plaintiff's claims and allegations. Thus, Plaintiff reserves the right to provide such additional facts and information that subsequently become available in a supplemental production if and when appropriate and only if so required under the Rules of Civil Procedure.
- c. Plaintiff objects to each and every one of the Interrogatories to the extent such Interrogatories seek information protected from discovery under the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection from discovery. Any inadvertent disclosure of information protected by attorney-client privilege, the work product doctrine or any other applicable privilege or protection from discovery is not intended and should not be construed as or constitute a waiver, either generally or specifically, with respect to such material or the subject matter thereof.
- d. Plaintiff objects to each and every one of the Interrogatories to the extent that any interrogatory calls for information outside the permissible scope of discovery or seeks to impose rules, requirements, definitions, or obligations upon Plaintiff inconsistent with or beyond those contained in the Rules of Civil Procedure.

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE:

- A. Carolyn Mitchell Powell
c/o Susan F. Cambell
McCutchen Blanton Hopkins & Campbell, LLP
Post Office Box 11316
Columbia, South Carolina 29211-1316**

Ms. Powell is the Plaintiff in this case and will testify to any and all issues which may arise at the trial of the case. No written or recorded statements have been taken from the Plaintiff, to the exception of her Verification of the Complaint in this matter.

- B. Conrad Powell
[REDACTED]
Columbia, South Carolina 29205**

Mr. Powell is Plaintiff's former husband and will testify to the events he witnessed as alleged in the Complaint. No written or recorded statements have been taken.

- C. J. Michael Taylor, Esquire**

Mr. Taylor is a defendant in this action and will be called as an adverse witness, and the substance of his testimony is therefore unknown to Plaintiff at this time.

- D. Ashlin Blanchard Potterfield, Esquire**

Ms. Potterfield is a defendant in this action and will be called as an adverse witness, and the substance of her testimony is therefore unknown to Plaintiff at this time.

- E. Reid Smith, Esquire**

Mr. Smith is a defendant in this action and will be called as an adverse witness, and the substance of his testimony is therefore unknown to Plaintiff at this time.

H. **Tim Tyler**

[REDACTED]
Chapin, South Carolina 29036

Mr. Tyler was Conrad Powell's accountant both prior to and during his separation from the Plaintiff. He will testify to Mr. Powell's financial status, transfers of property, and real estate holdings. No written or recorded statements have been taken.

Plaintiff specifically reserves the right to supplement this response.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE:

To the exception of Plaintiff's divorce case file from Defendants and Cantzon Foster, Plaintiff is unaware of any photographs, plats, sketches, or other prepared documents responsive to this request.

3. Set forth an itemized statement of all damages claimed to have been sustained by the party.

RESPONSE:

Plaintiff intends to use an expert witness to calculate damages. This interrogatory response will be supplemented once an expert report concerning damages is finalized.

4. List the names, addresses and telephone numbers of any expert witnesses whom the plaintiffs propose to use as a witness at the trial of the case, and for each state in detail:
 - (a) his/her qualifications to testify;
 - (b) a description of the subject matter on which each such expert is expected to testify;
 - (c) a description of the facts on which each such expert is expected to rely in testifying;
 - (d) a description of the opinions and conclusions about which each such expert is expected to testify;
 - (e) a summary of the grounds for each such opinion and conclusion;
 - (i) whether said expert has conducted any investigation, inspection, and/or interviews in connection with the issues involved with this suit, and, if so, the nature of each such investigation, inspection, and/or interviews, the results of same and the dates on which such work was performed;

- (g) whether or not said expert has personally interviewed any plaintiff. If so, provide the dates of the interview(s) and any memoranda created by the expert in connection with the interview(s);
- (h) whether said expert has generated a written report, and if so, would you, without a motion to produce, attach a copy of the report to your responses; and,
- (i) as to each, list all treatises, books, documents and recognized authorities which such experts plan to utilize or cite in support of their position.

RESPONSE:

Plaintiff objects to this interrogatory to the extent it requires the disclosure of facts known to or opinions held by an expert protected from disclosure under Rule 26(b)(4) of the Rules of Civil Procedure. Subject to and without waiving this objection, Plaintiff responds she has retained the following expert witness:

Dr. Gregory B. Adams

[REDACTED]

Charleston, South Carolina 29412-4823

In answering Interrogatory 4 (a-i), Plaintiff craves reference to the Affidavit of Dr. Adams with resume attached which was filed together with the Complaint in this matter. Plaintiff further responds that she has not been interviewed by Dr. Adams and no report other than the Affidavit of Dr. Adams has been generated as of today's date. Dr. Adams will testify regarding issues relevant to this litigation, including but not limited to his opinion of facts alleged in the Complaint and learned during discovery and defenses and other arguments made by defendants. The substance of the facts and opinions to which Dr. Adams will testify and the grounds for those opinions may be explored during a properly noticed deposition pursuant to Rule 30 of the Rules of Civil Procedure. Furthermore, Plaintiff has produced documents reviewed by Dr. Adams in response to a subpoena from Defendant Reid Smith. Those documents are attached hereto as Exhibit A.

Plaintiff also intends to utilize an accounting expert, but none have been retained as of today's date. Plaintiff specifically reserves the right to supplement this response.

- 5. **State in detail the factual information supplied to such expert(s) which was used as a basis for forming his/her opinion(s), including all documents, reports or records furnished, statements and reference material reviewed and all physical evidence, objects, test results, inspection report, photographs, or other information provided to each expert for review or inspection.**

RESPONSE:

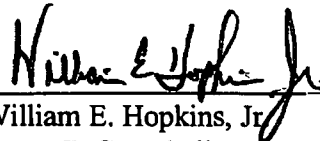
Plaintiff craves reference to the Affidavit of Dr. Adams which was filed together with the Complaint in this matter. Plaintiff further responds that documents supplied to Dr. Adams have been produced at Exhibit A.

6. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE:

Plaintiff craves reference to her response to interrogatory number one (1).

McCUTCHEN BLANTON HOPKINS
& CAMPBELL, LLP



William E. Hopkins, Jr.
Susan F. Campbell
Paul B. Deal
1414 Lady Street (29201)
Post Office Box 11316
Columbia, South Carolina 29211-1316
(803) 256-6152
(803) 256-6155 - facsimile
wehopkins@mbhclaw.com
scampbell@mbhclaw.com
pdeal@mbhclaw.com

ATTORNEYS FOR PLAINTIFF

April 6, 2010

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carolyn Mitchell Powell

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

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

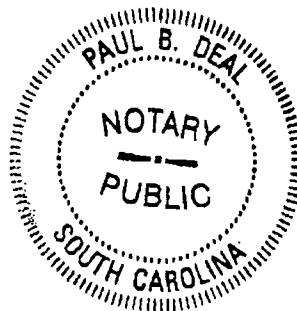
VERIFICATION

PERSONALLY APPEARED BEFORE ME, the undersigned who being duly sworn, deposes and states that she has read **Plaintiff's Responses to Defendants Potterfield, Taylor and Potterfield/Taylor's First Set of Interrogatories** in the foregoing action and the statements contained therein are true to the best of her knowledge, information and belief.

Carolyn Mitchell Powell

SWORN TO AND SUBSCRIBED before me
on this 5th day of April, 2010

Paul B. Deal
NOTARY PUBLIC FOR
My Commission Expires: September 25, 2017



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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

I, the undersigned, of the law firm of McCutchen Blanton Hopkins & Campbell, LLP, do certify that I have served the below named with a copy of the discovery specified below on April 6, 2010, **Via Hand Delivery**, to the following address:

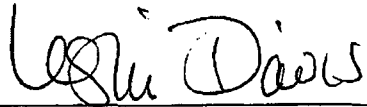
Discovery:

- 2) Plaintiff's Responses to Defendants Potterfield, Taylor, and Potterfield/Taylor's First Set of Interrogatories

Served:

Charles E. Hill, Esquire
Virginia Williams, Esquire
Turner Padgett Graham & Laney, P.A.
PO Box 1473, Columbia SC 29202
1901 Main Street, Suite 1700
Columbia SC 29201

J. Calhoun Watson
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, SC 29211



Leslie M. Davis, Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

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

Plaintiff,

vs.

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

Defendants.

**DEFENDANTS'
POTTERFIELD, TAYLOR, AND
TAYLOR/POTTERFIELD'S
ANSWERS TO PLAINTIFF'S FIRST SET
OF INTERROGATORIES TO ALL
DEFENDANTS**

Defendants Ashlin Blanchard Potterfield, J. Michael Taylor, and Taylor/Potterfield
answer plaintiff's first set of interrogatories as follows:

1. Give the names and addresses of persons known to the parties or counsel to be
witnesses concerning the facts of the case and indicate whether or not written or recorded
statements have been taken from the witnesses and indicate who has possession of such
statements.

ANSWER:

a. **J. Michael Taylor
2301 Devine Street
Columbia, S.C. 29205**

Represented Carolyn Powell in Powell v. Powell litigation.

b. **Ashlin Potterfield
2301 Devine Street
Columbia, S.C. 29205**

Represented Carolyn Powell in Powell v. Powell litigation

- c. Carolyn Powell
Current address unknown to these defendants

Plaintiff

- d. Conrad Powell
[REDACTED]
Columbia, S.C. 29205

Defendant in Powell v. Powell litigation

- e. Reid Smith
[REDACTED]
Columbia, S.C. 29204

Represented Carolyn Powell in Powell v. Powell litigation

- f. Cantzon Foster
[REDACTED]
Columbia, S.C. 29205

Represented Carolyn Powell in Powell v. Powell litigation

- g. Marne Sherman
[REDACTED]

Represented Conrad Powell in Powell v. Powell litigation

- h. Tim Tyler
[REDACTED]
Chapin, S.C. 29036

Conrad Powell's accountant

- i. Bunni Crawford
[REDACTED]
Columbia, S.C.

On information and belief, Ms. Crawford is familiar with the Powell v. Powell litigation, and the settlement agreement reached between those parties.

These defendants have no statements from any of these witnesses, other than those contained in their files, and in the previously produced files of Cantzon Foster, in the Powell v. Powell litigation.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Answering interrogatories 2, 7, 8, 16, 19, 20, 21, 22, 23, and 38, please see Exhibit A attached hereto and incorporated herein by reference. Exhibit A is a chronological compilation of documents, correspondence, pleadings, notes, memos, conferences, billing entries, calendar entries and other items contained in these defendants' files, or obtained from other sources during this litigation, which reflect actions, correspondence, communications, appearances, functions, meetings, and other work performed by these defendants, or otherwise pertaining to the representation by these defendants of Carolyn Powell in the Powell v. Powell matter. In view of the voluminous materials involved, this list may be incomplete at this time and these defendants reserve the right to revise and supplement Exhibit A as this litigation continues.

3. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See response to interrogatory No. 1.

4. Commencing from the date when the plaintiff first contacted You through the date of Your answers to these Interrogatories, state whether or not You are covered by any contract, agreement, or policy of professional liability insurance and/or other liability insurance coverage relating to the claims set forth in the Complaint. If Your answer is anything other than an unqualified "No," then for each such contract, agreement or policy of insurance, please provide the following information specifically and in detail:

- a. The full name and address of the insurance carrier.
- b. The policy number or numbers.

- c. The limits of coverage (total and "per occurrence"), the type of policy or amount of any deductibles.
- d. The period of coverage and the acts that were covered.
- e. Whether the policy is an "occurrence" or a "claims made" policy.

ANSWER:

- a. **Attorneys Liability Protection Society, Inc., RRG
111 N. Higgins, Suite 200, Missoula, MT 59807**
- b. **ALPS11141-4**
- c. **\$2,000,000 indemnity limit for each claim, reduced dollar for dollar after expense allowance of \$1,000,000 is exhausted; aggregate of \$4,000,000. Deductible of \$2500. "Each claim" means "all claims arising out of the same, related or continuing professional services."**
- d. **Claims made policy for policy period of May 1, 2009-May 1, 2010; loss inclusion date of January 1, 1987; retroactive date of January 1, 1987 as to J. Michael Taylor; retroactive date of February 15, 1993 as to Ashlin Potterfield.**
- e. **Claims made.**

5. Set forth in sufficient detail all actions undertaken by You, or by someone acting for You with regard to each of the following aspects of the plaintiff's underlying marital litigation against Conrad Powell:

- a. Efforts to assure plaintiff received an appropriate share of marital property;
- b. Efforts to assure plaintiff's interest in marital assets were protected; and
- c. Efforts to assure plaintiff did not lose her right to make a claim for alimony.

ANSWER:

- a. **These defendants monitored the situation with regard to marital property during their representation of Carolyn Powell, and communicated with Conrad Powell's attorney regarding same.**

Carolyn Powell provided these defendants with detailed information concerning the marital assets early in the representation. To these defendants' knowledge, information and belief, none of the real property marital assets were alienated during the representation without Carolyn Powell's knowledge and agreement, and the proceeds from the sale of real properties were maintained by Conrad Powell except as necessary for living expenses, and except as provided from time to time to Carolyn Powell as advances on equitable distribution and for expenses incurred by Carolyn Powell personally and on behalf of the Powells' children.

- b. See response to subsection (a).
- c. See document executed by Carolyn Powell on June 23, 2003, acknowledging that an adulterous spouse cannot be granted alimony in South Carolina.

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case. For each expert listed, please provide the following:

- a. The witness' qualification to give an opinion as an expert and field of expertise (if such information is available on an expert's curriculum vitae (CV), You may attach a copy thereof in lieu of answering this Interrogatory subpart).
- b. The witness' occupation and place of employment.
- c. The subject matter on which the expert is expected to testify.
- d. The facts and opinions to which the expert is expected to testify.
- e. A complete basis for the grounds of each opinion.
- f. Whether the witness has been an expert in legal malpractice cases prior to the present action, and if so, please list each time the witness has testified, including the name of the court and whether the witness testified for the plaintiff or defendant in such cases.
- g. Whether the witness has ever testified for You in any prior legal malpractice case.

ANSWER: None at this time. The defendants reserve the right to supplement this answer.

7. Identify all pleadings You filed on plaintiff's behalf in the Family Court for the Fifth Judicial Circuit with respect to the underlying marital litigation against Conrad Powell, including the date You filed them, and identify all correspondence sent by You to plaintiff, including the date You sent them to plaintiff; and all correspondence or communication sent by plaintiff to You.

ANSWER: With regard to pleadings, these defendants filed a summons and complaint on August 27, 2004, and a reply to the amended answer and counterclaim of Conrad Powell on December 16, 2004.

Answering interrogatories 2, 7, 8, 16, 19, 20, 21, 22, 23, and 38, please see Exhibit A attached hereto and incorporated herein by reference. Exhibit A is a chronological compilation of documents, correspondence, pleadings, notes, memos, conferences, billing entries, calendar entries and other items contained in these defendants' files, or obtained from other sources during this litigation, which reflect actions, correspondence, communications, appearances, functions, meetings, and other work performed by these defendants, or otherwise pertaining to the representation by these defendants of Carolyn Powell in the Powell v. Powell matter. In view of the voluminous materials involved, this list may be incomplete at this time and these defendants reserve the right to revise and supplement Exhibit A as this litigation continues.

8. Identify sufficiently to be designated in a Request for Production of Documents, all documents, contracts, retainer agreements, correspondence, files, bills, or other papers, writings, or things which substantiate the allegations set forth in Your Answer, including, but not limited to, all stated defenses (affirmative or otherwise) as they relate to plaintiff.

ANSWER: Answering interrogatories 2, 7, 8, 16, 19, 20, 21, 22, 23, and 38, please see Exhibit A attached hereto and incorporated herein by reference. Exhibit A is a chronological compilation of documents, correspondence, pleadings, notes, memos, conferences, billing entries, calendar entries and other items contained in these defendants' files, or obtained from other sources during this litigation, which reflect actions, correspondence, communications, appearances, functions, meetings, and other work performed by these defendants, or otherwise pertaining to the representation by these defendants of Carolyn Powell in the Powell v. Powell matter. In view of the

voluminous materials involved, this list may be incomplete at this time and these defendants reserve the right to revise and supplement Exhibit A as this litigation continues.

9. Do You possess any specialties? If so, for each specialty, please set forth the following information:

- a. A description of the specialty.
- b. The particular training and education that You have with respect to the specialty.
- c. For how many years did You engage in a practice of law that was limited exclusively to that specialty?
- d. For how many years did You engage in a practice of law that was partially limited to that specialty?
- e. Please indicate the time periods during which You engaged in the specialty and the respective percentages devoted to specialization for each period.

ANSWER:

- a. **Michael Taylor and Ashlin Potterfield limit their practices to the area of family law. In compliance with Rule 7.4, Rules of Professional Conduct, they do not hold themselves out as "specialists," since family law is not a recognized specialty practice in South Carolina.**
- b. **Michael Taylor is a graduate of the University of South Carolina School of Law, class of 1980. Mr. Taylor has been attending seminars in family law litigation since he was admitted to the bar, and typically attends family law continuing legal education programs sponsored by the South Carolina Bar or the American Academy of Matrimonial Lawyers.**

Ashlin Potterfield is a graduate of the University of South Carolina School of Law, class of 1991. She took the family court practice clinic in law school. She typically attends family law continuing legal education classes, and is a frequent speaker at family law CLE programs.
- c. **Michael Taylor: mid 1981-1985; 1987 to date. Ashlin Potterfield: 1991 to date.**

d. See response to subsection (c).

e. See response to subsection (c).

10. With respect to Your education, please identify each institution of higher learning that You ever attended, including the law school from which You graduated. In so responding, please provide the date that You graduated and each degree that You earned and received. If You completed a prescribed course of study, but did not receive a degree, describe why You did not receive a degree.

ANSWER: Michael Taylor attended William Rainey Harper College; University of South Carolina at Spartanburg; and University of South Carolina at Columbia, from which he graduated with a B.A. degree in history in 1977. He obtained the J.D. degree from the University of South Carolina School of Law in 1980.

Ashlin Potterfield obtained a B.A. degree from Converse College in 1988 and the J.D. degree from the University of South Carolina School of Law in 1991.

11. Did You ever enter into or establish an attorney-client relationship with the plaintiff? If Your answer is anything other than a unqualified "No," please set forth the following information specifically and in detail:

- a. The date upon which the relationship was first established, and if the relationship was ever terminated, the date or dates of each such terminations. Also, please indicate the reason, if any, for each termination of the relationship. This Interrogatory includes the dates for each individual attorney practicing within a law firm if separate from the date of the attorney-client relationship by or with a partner or associate within the same law firm.
- b. The nature and description of services You agreed to provide, and the nature and description of the services that You actually provided.
- c. Please identify every contract, retainer agreement, letter of engagement or writing that relates to the establishment of Your relationship with the plaintiff by stating its title, date, signatories and a brief summary of its contents. Please set forth the name, address and telephone number of the custodian of each such writing and its location

and indicate whether You will, without a Request to Produce, attach a copy to Your answers to these Interrogatories.

ANSWER:

- a. Carolyn Powell first consulted with Ashlin Potterfield on June 23, 2003, and executed certain documents at that time. On September 17, 2003, Carolyn Powell executed a fee contract and agreed to pay a retainer of \$3,000.

On April 1, 2005, Carolyn Powell retained Michael Taylor, Ashlin Potterfield's partner, to represent her. Ashlin Potterfield's representation of Carolyn Powell ended at that time.

Michael Taylor represented Carolyn Powell until January 17, 2007, when Carolyn Powell terminated the representation.

- b. Ashlin Potterfield agreed to represent Carolyn Powell in the matter of "Carolyn Powell v. Conrad Powell," to be filed in Richland County Family Court. Ashlin Potterfield and Michael Taylor provided these services.

- c. (1) Document with name and address of Law Offices of Golden, Taylor, Potterfield and Barron, entitled, "To Prospective Clients: Please Read This First," signed by Carolyn Powell and dated June 23, 2003.

(2) Document captioned, "Fee Agreement and Acknowledgements," signed by Carolyn Powell and dated June 23, 2003.

(3) Document captioned, "Fee Contract," signed by Carolyn Powell and Ashlin Potterfield, dated September 17, 2003.

(4) Letter on letterhead of Golden, Taylor, Potterfield & Barron, signed by Ashlin Potterfield and acknowledged by Carolyn Powell on September 17, 2003

Copies of these documents are produced in response to plaintiff's request for production.

12. Did You represent the plaintiff with respect to any matters other than those which are the subject of this litigation as set forth in the Complaint? If Your answer is anything other

than unconditional "No," please set forth the following information specifically and in detail with respect to each case or matter:

- a. The nature of the matter [i.e., Civil, Criminal, Probate, Transactional, etc.].
- b. The period during which the matter was handled.
- c. The type of work performed and documents prepared pursuant to Your representation.

ANSWER: No.

13. Set forth the name, address and title of each individual who participated in the preparation, investigation, evaluation and analysis of any aspect of Your representation of the plaintiff, including, but not limited to, present and former attorneys, secretaries, paralegals, investigators, law clerks, student assistants, and other individuals who participated in the handling of the plaintiff's case.

ANSWER: In addition to Ashlin Potterfield and Michael Taylor, employees of Taylor/Potterfield who assisted in the representation of Carolyn Powell were Beatrice "Cookie" Atkerson, secretary; Carolyn Bone, law clerk; and Brenda Love, paralegal/office manager. Reid Smith was associated as co-counsel.

14. Did You consult with any other legal professional and/or an accounting professional at any time during the course of Your professional relationship with the plaintiff? If Your answer is anything other than unconditional "No," please set forth the following information specifically and in detail with respect to each person with whom You consulted with respect to the plaintiff:

- a. The name, occupation, area of specialization, address and telephone number.
- b. The date the consultation was requested and the date(s) wherein the services were actually provided.

- c. The purpose for each consultation.
- d. A summary of the information You obtained as a result of the consultation.
- e. What, if anything, You revised with respect to Your handling of the plaintiff's case or problems as a result of the consultation.
- f. Please provide every writing that relates to the consultation by stating its date, signatories, and a brief summary of its contents. Please set forth the name, address and telephone number of the custodian of each such writing and its location, and please indicate whether or not You will, without a Request to Produce, attach a copy of Your answers to these Interrogatories.
- g. State whether You ever consulted with a forensic accountant regarding plaintiff's case, and identify the same, including the date of the consultation.

ANSWER: Yes.

- a. Reid Smith
- b. These defendants are uncertain when Attorney Smith was first consulted. Attorney Smith provided an analysis of the financial issues relating to Conrad Powell to Attorney Taylor on May 19, 2006.
- c. Attorney Taylor consulted Attorney Smith because of his financial expertise.
- d. See Attorney Smith's correspondence of May 19, 2006, with attachments.
- e. Attorney Taylor took Attorney Smith's analysis into consideration in evaluating Conrad Powell's financial situation as it pertained to property distribution, and in preparing for the deposition of Conrad Powell.
- f. Correspondence from Attorney Smith to Attorney Taylor, with attachments, dated May 19, 2006. Time line analysis of financial issues relating to Conrad Powell, analysis of tax returns, analysis of Mr. Powell's business interests. Copy of this document is produced in response to plaintiff's requests for production.
- g. No.

15. Did You ever refer the plaintiff to another legal professional and/or accounting professional for assistance? If Your answer is "No," please state every reason why You did not make such a referral. If however, Your answer is anything other than an unconditional "No," please set forth the following information specifically and in detail:

- a. The name, occupation, area of specialization, address and telephone number of each person to whom You referred the plaintiff.
- b. The date upon which the referral took place.
- c. The purpose for the referral.
- d. Please identify every writing that relates to the referral, by stating its date, signatories, and a brief summary of its contents. Please set forth the name, address and telephone numbers of the custodian of each such writing and its location, and please indicate whether or not You will, without a Request to Produce, attach a copy of Your answers to these Interrogatories.
- e. Please provide the details with respect to splitting or division of fees with respect to the referral. If any fees were split, state whether or not the plaintiff was so informed.
- f. State the manner in which You communicated the referral to the plaintiff.

ANSWER: See response to interrogatory 14, above.

16. With respect to each meeting, telephone conversation or e-mail discussion You had with the plaintiff, please set forth the following information with specificity and in detail:

- a. The mode of the conversation [i.e. personal meeting, teleconference, e-mail, telephone conversation, etc.].
- b. The date and approximate time of the communication.
- c. The substance of any conversations.
- d. Identify all correspondence and/or billing record which mentions or refer to the communication by stating its date, its author, the person to whom it was transmitted, the date of transmission or mailing and the substance of correspondence and/or billing record. Indicate

whether or not You will, without a Request to Produce, attach a copy of Your answers to these Interrogatories.

ANSWER: Answering interrogatories 2, 7, 8, 16, 19, 20, 21, 22, 23, and 38, please see Exhibit A attached hereto and incorporated herein by reference. Exhibit A is a chronological compilation of documents, correspondence, pleadings, notes, memos, conferences, billing entries, calendar entries and other items contained in these defendants' files, or obtained from other sources during this litigation, which reflect actions, correspondence, communications, appearances, functions, meetings, and other work performed by these defendants, or otherwise pertaining to the representation by these defendants of Carolyn Powell in the Powell v. Powell matter. In view of the voluminous materials involved, this list may be incomplete at this time and these defendants reserve the right to revise and supplement Exhibit A as this litigation continues.

17. Did You ever refuse to communicate with the plaintiff or act on her behalf? If Your answer is anything other than an unqualified "No," please set forth the following information specifically and in detail for each refusal:

- a. The date, time and place of the refusal.
- b. A description of the matter involving the refusal and the specific reason for the refusal.
- c. State whether or not You ever told the plaintiff that You were no longer going to communicate with her. If so, for each such time, state the date and the method by which You informed the plaintiff that You will no longer communicate, including the substance of the conversation.

ANSWER: No.

18. Did You withdraw from the representation of the plaintiff? If so, please state the time, date and place of the withdrawal and the reason for the withdrawal; and indicate whether or not You withdrew as attorney of record in any court proceedings then pending.

ANSWER: Attorney Potterfield ceased to represent Carolyn Powell when Mrs. Powell separately retained Michael Taylor to represent her on or about April 1, 2005. Attorney Potterfield did not file any document with the court pertaining to her withdrawal, but it is apparent from

certificates of service filed with the court beginning July 14, 2005, that Attorney Taylor had assumed the representation of Carolyn Powell within the Taylor/Potterfield firm.

19. With respect to the matters involving custody and support of plaintiff's then minor children, please identify each and every function, appearance and drafting work that You engaged in on plaintiff's behalf and with respect to the same, please set forth the following information specifically and in detail:

- a. The description of the work performed.
- b. The date that the work was performed.
- c. The approximate time involved and the amount charged the plaintiff as a result.
- d. If the matter involved a motion, hearing or trial, please describe all rulings, judgments and/or other results.
- e. Identify all correspondence and/or billing report that mentions or refers to the work that You performed by stating its title, date, author, the person to whom it was transmitted, the date of transmission or mailing and the substance of the same. Indicate whether or not You will, without a Request to Produce, attach copies to Your answers to these Interrogatories.

ANSWER: Answering interrogatories 2, 7, 8, 16, 19, 20, 21, 22, 23, and 38, please see Exhibit A attached hereto and incorporated herein by reference. Exhibit A is a chronological compilation of documents, correspondence, pleadings, notes, memos, conferences, billing entries, calendar entries and other items contained in these defendants' files, or obtained from other sources during this litigation, which reflect actions, correspondence, communications, appearances, functions, meetings, and other work performed by these defendants, or otherwise pertaining to the representation by these defendants of Carolyn Powell in the Powell v. Powell matter. In view of the voluminous materials involved, this list may be incomplete at this time and these defendants reserve the right to revise and supplement Exhibit A as this litigation continues.

The defendants further respond that during their representation of Carolyn Powell, support of the children was independently agreed upon by the plaintiff and her husband. These payments typically

exceeded what the court ultimately ordered Conrad Powell to pay. These defendants recognized this as a significant benefit to Carolyn Powell and the minor children. They worked to preserve this amicable arrangement and to encourage continued voluntary payments. Furthermore, Ashlin Potterfield's efforts secured a \$400,000 cash advance on property distribution on January 21, 2005 from Conrad Powell to Carolyn Powell shortly after the divorce proceedings were filed. The advancement was motivated by Carolyn Powell's need for a home for herself and the children. This advancement was in addition to the monthly support Conrad Powell paid to Carolyn Powell for the children. These defendants recognized what a substantial benefit this large sum of money was for Carolyn Powell so early into settlement discussions, and that the court would not likely have compelled this advancement at this juncture in the case.

As to custody, Carolyn Powell maintained sole physical custody of the children throughout these defendants' representation. The plaintiff and her husband independently arranged his time with the children and otherwise made decisions regarding their welfare. Potential custody issues were arose from time to time because of Carolyn Powell's actions. For example, she moved the children to Aiken early in 2005 without Conrad's knowledge or approval. Nonetheless, these defendants mediated any disputes over Carolyn having primary care of the children.

20. With respect to the matters involving separate support and maintenance of the plaintiff, please identify each and every function, appearance and drafting work that You engaged in, on the plaintiff's behalf and with respect to the same, set forth the following information specifically and in detail:

- a. The description of the work performed.
- b. The date that the work was performed.
- c. The approximate time involved and the amount charged the plaintiff as a result.
- d. If the matter involved a motion, hearing or trial, please describe all rulings, judgments and/or other results.
- e. Identify all correspondence and/or billing report that mentions or refers to the work that You performed by stating its title, date, author, the person

to whom it was transmitted, the date of transmission or mailing and the substance of the same. Indicate whether or not You will, without a Request to Produce, attach copies to Your answers to these Interrogatories.

ANSWER: Answering interrogatories 2, 7, 8, 16, 19, 20, 21, 22, 23, and 38, please see Exhibit A attached hereto and incorporated herein by reference. Exhibit A is a chronological compilation of documents, correspondence, pleadings, notes, memos, conferences, billing entries, calendar entries and other items contained in these defendants' files, or obtained from other sources during this litigation, which reflect actions, correspondence, communications, appearances, functions, meetings, and other work performed by these defendants, or otherwise pertaining to the representation by these defendants of Carolyn Powell in the Powell v. Powell matter. In view of the voluminous materials involved, this list may be incomplete at this time and these defendants reserve the right to revise and supplement Exhibit A as this litigation continues.

As noted in answer to Interrogatory No. 18, Ashlin Potterfield accomplished a \$400,000 advance on property distribution for the plaintiff within six months after the pleadings were filed. Additionally, Carolyn Powell continued to receive voluntary support from Conrad Powell throughout the defendants' representation of Carolyn. These defendants approached separate maintenance and support in a manner not to disturb the favorable amounts of support Carolyn Powell was receiving from Conrad without the court's involvement.

21. With respect to the matters involving division of marital debts and assets regarding plaintiff and her then husband, Conrad Powell, please identify each and every function, appearance and drafting work that You engaged in on the plaintiff's behalf and with respect to each, set forth the following information specifically and in detail:

- a. The description of the work performed.
- b. The date that the work was performed.
- c. The approximate time involved and the amount charged the plaintiff as a result.
- d. If the matter involved a motion, hearing or trial, please describe all rulings, judgments and/or other results.

- e. Identify all correspondence and/or billing report that mentions or refers to the work that You performed by stating its title, date, author, the person to whom it was transmitted, the date of transmission or mailing and the substance of the same. Indicate whether or not You will, without a Request to Produce, attach copies to Your answers to these Interrogatories.

ANSWER: Answering interrogatories 2, 7, 8, 16, 19, 20, 21, 22, 23, and 38, please see Exhibit A attached hereto and incorporated herein by reference. Exhibit A is a chronological compilation of documents, correspondence, pleadings, notes, memos, conferences, billing entries, calendar entries and other items contained in these defendants' files, or obtained from other sources during this litigation, which reflect actions, correspondence, communications, appearances, functions, meetings, and other work performed by these defendants, or otherwise pertaining to the representation by these defendants of Carolyn Powell in the Powell v. Powell matter. In view of the voluminous materials involved, this list may be incomplete at this time and these defendants reserve the right to revise and supplement Exhibit A as this litigation continues.

These defendants further respond that during their representation of Carolyn Powell, Ashlin Potterfield accomplished a \$400,000 advance on property distribution for the plaintiff within six months after the pleadings were filed. Additionally, Carolyn Powell continued to receive voluntary support from Conrad Powell throughout the defendants' representation of Carolyn.

22. With respect to the matters involving plaintiff's right to make a claim for alimony, please identify each and every function, appearance and drafting work that You engaged in on the plaintiff's behalf and with respect to each, set forth the following information specifically and in detail:

- a. The description of the work performed.
- b. The date that the work was performed.
- c. The approximate time involved and the amount charged the plaintiff as a result.
- d. If the matter involved a motion, hearing or trial, please describe all rulings, judgments and/or other results.

- e. Identify all correspondence and/or billing report that mentions or refers to the work that You performed by stating its title, date, author, the person to whom it was transmitted, the date of transmission or mailing and the substance of the same. Indicate whether or not You will, without a Request to Produce, attach copies to Your answers to these Interrogatories.

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The defendants further respond that a request for alimony was specifically pled in the plaintiff's divorce complaint filed on August 27, 2004.

23. With respect to the matters involving legal advice concerning the alleged extra-marital affair by plaintiff's then husband, please identify each and every function, appearance and drafting work that You engaged in on the plaintiff's behalf and with respect to each, set forth the following information specifically and in detail:

- a. The description of the work performed.
- b. The date that the work was performed.
- c. The approximate time involved and the amount charged the plaintiff as a result.
- d. If the matter involved a motion, hearing or trial, please describe all rulings, judgments and/or other results.
- e. Identify all correspondence and/or billing report that mentions or refers to the work that You performed by stating its title, date, author, the person to whom it was transmitted, the date of transmission or mailing and the

substance of the same. Indicate whether or not You will, without a Request to Produce, attach copies to Your answers to these Interrogatories.

ANSWER: Answering interrogatories 2, 7, 8, 16, 19, 20, 21, 22, 23, and 38, please see Exhibit A attached hereto and incorporated herein by reference. Exhibit A is a chronological compilation of documents, correspondence, pleadings, notes, memos, conferences, billing entries, calendar entries and other items contained in these defendants' files, or obtained from other sources during this litigation, which reflect actions, correspondence, communications, appearances, functions, meetings, and other work performed by these defendants, or otherwise pertaining to the representation by these defendants of Carolyn Powell in the Powell v. Powell matter. In view of the voluminous materials involved, this list may be incomplete at this time and these defendants reserve the right to revise and supplement Exhibit A as this litigation continues.

Further, Carolyn Powell furnished to these defendants evidence she had independently obtained regarding her husband's alleged infidelity, at the time she first contacted them with regard to representation.

24. Identify all payment and/or retainers paid to You by the plaintiff, including the dates of payment(s), and an explanation of how any retainer fees were applied to the fees earned by You.

ANSWER: Carolyn Powell paid a retainer to Ashlin Potterfield in the amount of \$3,000 on September 5, 2003. She paid a retainer to Michael Taylor in the amount of \$10,000 on April 1, 2005. These funds were applied against fees and costs in the amount of \$15,767.05 through January 11, 2007.

25. With respect to the retainer fees paid by the plaintiff to You, please provide detailed reasons why You chose not to provide billing statements to plaintiff indicating how her retainer was being applied.

ANSWER: The fee contract signed by Carolyn Powell on September 17, 2003, provided that the client "may be sent interim bills of fees, cost and expenses," but did not obligate the attorneys or law firm to do so. To the recollection of Michael Taylor and Ashlin Potterfield, Carolyn Powell never requested a detailed billing statement.

26. With respect to the matters involving plaintiffs then husband's sale of the South Carolina Student Loan building, please provide detailed reasons why You chose not to protect the proceeds from the sale of that building.

ANSWER: The property referred to as the "South Carolina Student Loan Building" was owned by Columbia Management Group, Inc., of which Conrad Powell was a part owner. Conrad Powell's individual share from the sale of this property was approximately \$300,000, which he used in part to fund the \$400,000 advance of property distribution which he voluntarily paid to Carolyn Powell on January 21, 2005. Thus Carolyn Powell's interests were protected, in that she received the proceeds from the sale of this property.

27. With respect to plaintiff's alleged proof of her then husband's opportunity and inclination to commit adultery, please provide detailed reasons why You chose not to immediately proceed with a divorce on behalf of the plaintiff on the statutory grounds of adultery. Provide the date You first learned of the alleged affair.

ANSWER: Carolyn Powell indicated that she suspected Conrad Powell was having an adulterous affair in a document she provided to Ashlin Potterfield on July 1, 2003. Carolyn Powell did not actually retain Ashlin Potterfield until September 2003, and Conrad Powell did not move out of the marital home until December 2003. The decision as to when to file a complaint for divorce was a matter of judgment and strategy reached and agreed upon by attorney and client.

28. With respect to the matter involving plaintiffs right to make a claim for alimony, please provide detailed reasons why You chose not to advise the plaintiff that she would be forever barred from receiving alimony should she engage in an adulterous affair before the earliest of these two events:

- a. The formal signing of a written property or marital settlement agreement, or
- b. Entry of a permanent order of separate maintenance and support or a permanent order approving a property or marital settlement agreement between the plaintiff and her then husband Conrad Powell.

ANSWER: Defendants object to this interrogatory as stated in that it does not accurately state South Carolina law. Without waiving the objection, Ashlin Potterfield advised Carolyn Powell that an adulterous spouse cannot be granted alimony in South Carolina. See written disclosure signed by Carolyn Powell on June 23, 2003.

29. With respect to the matters involving plaintiff's then husband Conrad Powell's alleged opportunity and inclination to dissipate or hide marital assets through family members and business ventures, please provide detailed reasons why You chose not to make any filing with the Richland County Family Court in an attempt to protect those marital assets which were known or should have been known to You. If Your response indicated that filings were made in this regard, identify all such filings.

ANSWER: Defendants object to this interrogatory as stated in that it misrepresents the facts of this case. The strategic decision as to when to file litigation in the Richland County Family Court was arrived at based on consultation between attorney and client, and in the exercise of appropriate judgment on the part of these defendants. Additionally, Carolyn Powell furnished Ashlin Potterfield information she had obtained from Conrad Powell with regard to assets and his plans for the marital litigation. Initial suit papers in the Powell v. Powell litigation were filed on August 27, 2004.

30. With respect to plaintiff's interest in the proceeds from the sale of the marital home, please provide detailed reasons why You:

- a. Chose not to negotiate any provision whereby plaintiff and the minor children could move into another residence then owned by the parties; and
- b. Chose not to protect plaintiff's interests in the proceeds of the sale of the home.

ANSWER: These defendants object to this interrogatory as stated, in that it contains inaccurate assumptions. The sale of the Kenilworth residence was one part of an overall effort to work out an apportionment of marital assets that began in approximately July 2004 and continued for months thereafter, as is reflected in numerous communications among the parties and their counsel. A part of this plan was the payment by Conrad Powell to Carolyn Powell of

\$400,000, which was made in January 2005 as an advance on property distribution, and which was accepted by Carolyn Powell. Carolyn Powell's conduct and intransigence during this time hindered these defendants' efforts to negotiate a complete resolution of the apportionment of marital assets.

31. If You were paid a retainer in September, 2003, please provide detailed reasons why You did not file a Complaint for divorce based on the statutory grounds of adultery and why You did not file an action for separate support and maintenance until on or about August, 2004.

ANSWER: Ashlin Potterfield accepted a retainer of \$3,000 paid by Carolyn Powell on September 5, 2003. Under the fee contract signed by Ashlin Potterfield and Carolyn Powell on September 17, 2003, Ashlin Potterfield agree to represent Carolyn Powell in the matter of "Carolyn Powell v. Conrad Powell to be filed in Richland County Family Court." The contract did not oblige Ashlin Potterfield to file a complaint on any specific grounds, or to file an action for separate support and maintenance, at any particular time. The attorney-client relationship obligated Ashlin Potterfield to provide competent representation. Decisions as to when to file proceedings, and on what grounds, were matters of judgment and strategy, and based on consultations between Ashlin Potterfield and Carolyn Powell.

32. With respect to the sale of the couple's beach home for approximately Two million Seventy-Five Thousand dollars (\$2,075,000), please provide detailed reasons why You chose not to protect plaintiff's interest in the proceeds from the sale of the beach home. If in responding to this Interrogatory, You state that You did protect plaintiff's interest in the proceeds from the sale of the beach home, please identify all efforts made by You in that regard.

ANSWER: These defendants object to this interrogatory on the grounds that it is inaccurately stated. The Pawley's Island property was titled in the name of Conrad Powell, and was sold by him on March 7, 2005. In anticipation of the sale, Ashlin Potterfield wrote to Marne Sherman, counsel for Conrad Powell, on February 2, 2005, requesting confirmation that the proceeds would be deposited in an escrow account. Attorney Sherman replied on February 8, 2005, stating that she had advised Conrad Powell that the proceeds should be deposited into an escrow account. According to the analysis provided by Reid

Smith on May 19, 2006, "There should be approximately \$1,800,000 on hand from the sale of the Pawleys real estate." These defendants are not aware that these assets were dissipated by Conrad Powell, other than for living and maintenance expenses for himself, Carolyn Powell, and their children. Carolyn Powell and her counsel were aware of the status of these assets when entering into the "Complete Property, Support, and Custody Agreement" of April 27, 2007.

33. With respect to the partial property settlement of Four Hundred Thousand dollars (\$400,000) which occurred on or about January 21, 2005, please provide detailed reasons why You chose not to reduce to a formal writing the terms of the property settlement. Further, state whether doing so would have protected plaintiff's right to pursue her claim for alimony.

ANSWER: These defendants object to this interrogatory as stated in that it is factually incorrect. No partial property settlement occurred on or about January 21, 2005. Conrad Powell advanced the sum of \$400,000 on January 21, 2005, but other matters remained unresolved. For example, there continued to be a dispute as to when Carolyn Powell would vacate the gallery space; there was a dispute as to the children relocating to Aiken without Conrad Powell's consent; and there was a dispute as to the amount of monthly support to be paid for the children. Counsel for the parties continued to exchange correspondence regarding the terms of a potential settlement into April of 2005. On April 1, 2005, Carolyn Powell wrote Ashlin Potterfield with regard to Conrad Powell's offer of settlement (as stated in Attorney Sherman's letter of March 23, 2005), "It is apparent to me that neither my husband or his attorney intends to be equitable or fair." On April 20, 2005, Attorney Sherman wrote to Ashlin Potterfield, noting that there had been no response to the offer of settlement, and withdrawing the offer. Thus, there was no settlement agreement that could have been reduced to writing as of January 21, 2005.

34. With respect to plaintiff's then husband's Motion for *Pendent Lite* Relief, please provide detailed reasons why You chose to consent to the withdrawal of husband's motion, and state whether doing so deprived with the ability to move forward with a scheduled temporary hearing and a request that the court approve a partial property agreement entered into on or about January 21, 2005.

ANSWER: These defendants object to this interrogatory as stated in that it is factually incorrect. No partial property settlement occurred on or about January 21, 2005. Just prior to the hearing scheduled for January 12, 2005, the attorneys for the parties were hopeful that a temporary agreement could be reached. See Ashlin Potterfield letter to Marne Sherman of January 5, 2005. Attorney Sherman set forth a detailed proposal for a temporary settlement in a letter dated January 5. Ashlin Potterfield wrote to Marne Sherman on January 10, 2005, stating that she had reviewed Sherman's proposal with Carolyn Powell, and "we are very close to resolving this on a permanent basis." Potterfield and Sherman had a telephone conference on January 10, and while there remained disagreement on some of the terms of a settlement, the attorneys agreed to continue the hearing so that they could keep working toward an agreement. Judge Riddle's order dated January 13 (filed January 14), 2005, recited, "The parties have requested a continuance as they wish to pursue working on an agreement to settle the issues in their case." This order was consented to by Attorney Potterfield and Attorney Sherman. There was no partial property settlement agreed to at that time; see answer to interrogatory No. 33, above.

35. If defendant Potterfield had allowed the hearing on plaintiff's then husband's Motion for *Pendent Lite* Relief to go forward as scheduled for a hearing, state whether You believe an order could have or would have been entered with respect to the partial property agreement, thereby protecting plaintiff's ability to pursue a claim for alimony.

ANSWER: These defendants object to this interrogatory as stated in that it is factually and legally incorrect. No partial property settlement occurred on or about January 21, 2005. No order could have been entered because the terms of a settlement had not been agreed to. See answers to interrogatories No. 33 and 34, above.

36. Did defendant Potterfield engage in any formal and/or informal discovery at any time during her multi-year representation of plaintiff? If so, identify each such discovery.

ANSWER: Defendant Potterfield did not serve any formal discovery requests. Early in the representation, Carolyn Powell furnished Ashlin Potterfield with documents pertaining to Conrad Powell's assets, business interests, and approach to the anticipated marital litigation. Mrs. Powell stated that she removed some of these documents from her husband's safe. These documents disclosed much of the information that would have been sought in formal discovery, which

was thus made unnecessary. Additionally, these defendants understood and appreciated that any formal discovery procedures initiated by them on behalf of their client would be reciprocated by the opposing party. The focus of the parties during Ashlin Potterfield's representation was to reach a voluntary settlement agreement, as is reflected in numerous correspondence and communications between the parties and their counsel. Neither formal nor informal discovery was necessary to this focus, and in the judgment of Ashlin Potterfield, engaging in such discovery would have been counterproductive to the negotiations. Michael Taylor served formal discovery (interrogatories and requests for production) on Conrad Powell's attorney on June 23, 2005; Conrad Powell's attorney reciprocated by serving interrogatories and requests for production directed to Carolyn Powell on July 12, 2005.

37. Did You ever advise the plaintiff that despite the fact that she had been separated from her husband for several years, any claim for alimony would be forever barred if she began a sexual relationship with someone other than her then husband?

ANSWER: Yes. See answer to interrogatory No. 28.

38. During Your representation of the plaintiff, state the number of face-to-face meetings You had with the plaintiff in Your law office (or at any other location) and set forth the date and length of time for each. If those meetings identified are set forth in any correspondence and/or billing record, please identify the same.

ANSWER: Answering interrogatories 2, 7, 8, 16, 19, 20, 21, 22, 23, and 38, please see Exhibit A attached hereto and incorporated herein by reference. Exhibit A is a chronological compilation of documents, correspondence, pleadings, notes, memos, conferences, billing entries, calendar entries and other items contained in these defendants' files, or obtained from other sources during this litigation, which reflect actions, correspondence, communications, appearances, functions, meetings, and other work performed by these defendants, or otherwise pertaining to the representation by these defendants of Carolyn Powell in the Powell v. Powell matter. In view of the voluminous materials involved, this list may be incomplete at this time and these defendants reserve the right to revise and supplement Exhibit A as this litigation continues.

39. During the time that You served as plaintiff's attorney, state whether You provided plaintiff with any itemized bills for services rendered, any refunds or portions of unearned fees with respect to retainer fees paid by plaintiff.

ANSWER: No. Carolyn Powell did not request itemized bills. At the termination of the representation, attorneys' fees and costs exceeded the amount of the two retainers paid by Carolyn Powell.

40. When Defendant Taylor took over the representation of the plaintiff, on or about April 1, 2005, did You make any representations to plaintiff which assured her that this change in attorneys within the law firm would provide relief to plaintiff's concerns in regards to inactivity in her domestic case. Did any other defendant ever make such representations to plaintiff during the period of your engagement?

ANSWER: Michael Taylor assisted in Ashlin Potterfield's representation of Carolyn Powell beginning in December of 2004, in connection with issues pertaining to the altered and forged checks.

With Carolyn Powell's knowledge and agreement, the change of attorneys within the law firm was to effect a change in strategy and emphasis, from a prior approach of not engaging in expensive and formal discovery, to one of more formalized discovery.

41. Identify the date You first requested Conrad Powell's financial declaration and/or statements from his attorney, and please provide detailed reasons why You chose to wait that long to request such information.

ANSWER: As early as April 22, 2004, Ashlin Potterfield requested financial information from Marne Sherman. Potterfield mentioned in correspondence to Sherman dated November 18, 2004, that Conrad Powell had not provided a financial declaration or statement of assets, but that she and her client were willing to negotiate settlement terms based on "what we do know." In fact, Carolyn Powell had good knowledge of Conrad Powell's financial status, based in part on documents she had retrieved from her husband's safe. Both parties were willing to engage in substantive settlement discussions without demanding formal financial declarations from each other, and these discussions continued for some time. In correspondence to Sherman

dated June 23, 2005, Michael Taylor noted that financial declarations had not been exchanged, and requested that the parties do so within the next two weeks. Sherman replied to Taylor on July 12, commenting, "Ashlin and I spent a lot of time dealing with your client's financial adventures to have the time and luxury of exchanging Financial Declarations!" Carolyn Powell was dilatory in providing these defendants with the necessary information to prepare her financial declaration; see letter of Carolyn Powell to Michael Taylor of February 22, 2006.

42. On what date did You first learn and/or believe that plaintiff's then husband, Conrad Powell, was dissipating, hiding or transferring marital assets.

ANSWER: Carolyn Powell did not provide any information to these defendants to support the contention that Conrad Powell was hiding or transferring marital assets. During the period of the separation and these defendants' representation, Conrad Powell supported himself, and made payments to Carolyn Powell, from assets accumulated and sold during the marriage, all to the knowledge of Carolyn Powell.

43. With respect to the date provided in Your response to the immediately preceding Interrogatory, identify all subsequent filings made by You in the Richland County Family Court in an attempt to protect plaintiff's interests in the marital assets and/or any other efforts made by You in this regard.

ANSWER: These defendants object to this interrogatory as stated; see response to interrogatory 42. Without waiving the objection, these defendants made no filings in the Richland County Family Court in this regard. Ashlin Potterfield requested that the proceeds from the sale of the Pawley's Island property be placed in escrow in correspondence to Marne Sherman on February 2, 2005, to which Attorney Sherman responded on February 8, 2005.

44. During the time that You represented the plaintiff, were You aware that plaintiff was experiencing anxiety and depression? If so, state the approximate date that You first gained such knowledge.

ANSWER: It is typical that parties experience anxiety and depression during the course of marital litigation, and these defendants were aware of Carolyn Powell's emotions of that nature. Mrs. Powell did not inform

these defendants of any medical diagnosis of depression, nor whether she was being treated by any physician or other medical practitioner for such condition.

45. Do You contend that some other person or entity is responsible for the damages and injuries alleged in plaintiff's Complaint? If so, identify such other persons or entities and set forth the detailed factual information upon which You believe such liability would rest. If You believe plaintiff is responsible, state all facts supporting Your response.

ANSWER: These defendants object to this interrogatory as stated. Not agreeing that Carolyn Powell has sustained any injuries and damages arising from their representation of her, these defendants do not contend that any other person or entity is liable to Carolyn Powell. Discovery is ongoing and these defendants reserve the right to amend this answer.

These defendants do contend that, by her own conduct, Carolyn Powell impeded their representation of her, and hindered their efforts to negotiate a complete settlement of the marital litigation. Examples of Carolyn Powell's conduct in this regard include, but are not limited to, the following:

--allowed persons to use beach property without notice, thus interfering with the realtor renting or showing the house, and resulting in penalty to Conrad Powell. See Conrad Powell's note of October 4, 2004.

--appropriating the check from James W. Smith Real Estate made payable to Conrad Powell in the amount of \$10,211.16, signing her husband's name to the check, and using the proceeds for her own purposes. See Marne Sherman's letter of October 14, 2004.

--changing the amounts on checks written to her by Conrad Powell and cashing the checks for the increased amounts. See Marne Sherman's letter of October 14, 2004.

--arranging for Washington Mutual to mail Conrad Powell's check for the escrow refund from the sale of the Kenilworth property to herself, and converting the proceeds of \$16,031.14 to her own use. See Marne Sherman's letter of October 14, 2004. This resulted in a claim made by Wachovia Bank against Carolyn Powell for a forged endorsement. See letter of Wachovia Bank dated December 13, 2004. (Attorney Sherman

wrote, "I would truly like to be able to settle this case with you once you and I can identify and value the marital estate, but if your client continues to behave as my client believes she has, it will make it virtually impossible for you and me to be in a position to solve the domestic problems of our clients.")

--removing property, antiques, paintings and the like and storing them in trailers at the antique mall, without providing an inventory of the contents in spite of numerous requests to do so. See, e.g., Marne Sherman letters of October 31, 2004, and January 5, 2005.

--diverting funds via "counter checks" from the Chic Antiques account for her personal use, resulting in the NBSC account being overdrawn, so that Conrad Powell removed her name as a signatory from the account. See Marne Sherman letter of December 16, 2004. (Attorney Sherman commented that if Carolyn Powell diverted other funds, Conrad Powell would have no alternative but to report her for theft or conversion. "Thievery is thievery.")

--refusing to vacate the premises of the gallery as requested by Conrad Powell

--relocating children out of state without knowledge or consent of Conrad Powell. See Marne Sherman letter of January 31, 2005.

--removing personal property from antique mall and gallery space. See Marne Sherman letters to Ashlin Potterfield of March 30, 2005, April 20, 2005, and to Michael Taylor of February 23, 2006

--failing on at least one occasion to make the children available for visitation with Conrad Powell. See Conrad Powell's letter to Carolyn Powell of April 10, 2005.

--cursing at Conrad Powell in telephone conversation concerning stable property. See Marne Sherman letter to Ashlin Potterfield dated May 10, 2005.

--instead of using the \$400,000 of advance on equitable distribution of property to purchase a residence for herself and her children, as intended, purchasing a stable for twelve horses, and asking Conrad Powell to pay for the stable. See Marne Sherman letter of May 10, 2005.

--"She has done what I consider to be some unsavory things since this marital litigation began and this is primarily the reason why we have not been able to get the case settled or moving in the direction of settlement." Marne Sherman letter to Michael Taylor of July 12, 2005.

--placing the two children in private school in Aiken for the school year beginning in the fall of 2005, over the objection of Conrad Powell. See Conrad Powell note of August 2, 2005.

--having an adulterous relationship with Roe Young beginning in September 2005

--leaving the two children by themselves overnight without proper supervision. Marne Sherman letter to Michael Taylor of February 23, 2006.

--making unreasonable demands with regard to distribution of property.

TURNER PADGET GRAHAM & LANEY, P.A.



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Columbia, South Carolina
July 1, 2010

*Attorneys for Defendants Potterfield,
Taylor, and Taylor/Potterfield*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

vs.

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

Defendants.

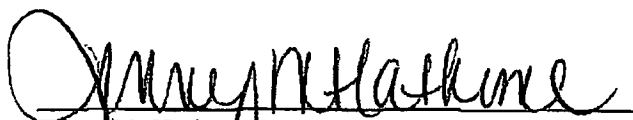
Civil Action No.: 09-CP-40-8705

CERTIFICATE OF SERVICE

I, the undersigned employee of Turner, Padgett, Graham & Laney, P.A., attorneys for defendants Potterfield, Taylor, and Taylor/Potterfield, do hereby certify that I have this day served a copy of the foregoing **Defendants' Potterfield, Taylor, and Taylor/Potterfield's Answers to Plaintiff's First Set of Interrogatories to All Defendants** in connection with the above-referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following address(es):

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Price, Bird & Smith, P.A.*


Jenny M. Hathorne

Columbia, South Carolina

July 1, 2010

EXHIBIT A

July 1, 2010

In response to interrogatories 2, 7, 8, 16, 19, 20, 21, 22, 23, and 38, the following table is a chronological listing of documents, correspondence, pleadings, notes, memos, conferences, billing entries, and calendar entries that may be pertinent to the subject matter of those interrogatories. This is not intended to identify every document in defendants' files. In view of the voluminous nature of these materials, this exhibit is subject to revision as review of the source materials is ongoing. The bates number references "OC" are to documents stored in a compact disk produced with these defendants' discovery responses. Where the referenced document consists of multiple pages, the cited bates number may be the first in the sequence. Attorneys Taylor and Potterfield have been unable to locate their calendars for the year 2004.

Date	Type of exchange	To	From	Brief description
6-27-97	documents	Plaintiff	Golden	Consultation forms, OC 255
6-30-99	documents			Conrad Powell's personal financial statements, OC 1972
7-5-99	documents			Tim Tyler's personal financial statements, OC 1982
5-3-00	documents			appraisal of Gervais Street properties, OC 1042
5-30-01	documents			Conrad's financial statements prepared by Tim Tyler, OC 1898
6-29-01	documents			settlement statement for Senate Street property, OC 1845
8-21-02	documents			Conrad's financial statements prepared by Tim Tyler, OC 1904
9-13-02	documents			settlement statement for Oak Hills Golf Course, OC 1843
2003	documents			Plaintiff's consultation form for Potterfield, OC 253
6-20-03	documents			PI intelligence log observing Conrad, OC 1125
6-23-03	appointment	Plaintiff	Potterfield	calendar entry
6-23-03	documents			Defendants information to divorce client at beginning of representation, OC 257

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6-23-03	document	Defendants/ Plaintiff	Plaintiff/ Defendants	fee arrangement for representation, OC 263
7-1-03	draft	Potterfield	Plaintiff	"rough draft," OC 385
7-1-03	document		Plaintiff	"The Novel" outlining priorities, desire in litigation, OC 386
7-2-03	phone message	Potterfield	Plaintiff	phone message on answering machine, OC 182
7-8-03	document			settlement statement for Devonshire property, OC 1842
7-8-03	document			settlement statement for Lakeshore Dr property, OC 1846
7-21-03	document			private investigator report tracking Conrad, OC 1125
7-29-03	document			appraisal of SC Student Loan Building, OC 1040
8-8-03	appointment	Plaintiff	Potterfield	Carolyn Powell to call. Calendar entry.
9-7-03	letter	Potterfield	Plaintiff	physical separation, Columbia Management, fax from Tim Tyler to Terry Powell, OC 399
9-2-03	letter	Potterfield	Plaintiff	Conrad's potential adultery, draft of settlement demand, check for retainer, OC 390
9-12-03	phone conference	Potterfield	Plaintiff	OC 233
9-15-03	appointment	Plaintiff	Potterfield	calendar entry
9-16-03	appointment	Plaintiff	Potterfield	calendar entry
9-17-03	conference	Potterfield	Plaintiff	OC 233; calendar entry
9-17-03	document	Potterfield/ Plaintiff	Plaintiff/ Potterfield	fee contract for representation, office procedures document, OC 274 et al.
9-18-03	documents			mortgage documents for 3505 Devine Street, OC 1867
9-18-03	letter; attached handwritten document "personal and confidential"	Potterfield	Plaintiff	removal of documents from Conrad's safe, OC 394; OC 395
9-19-03	fax	Potterfield	Plaintiff	regarding Conrad's refusal to discuss separation, OC 394 reviewed, OC 233

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9-23-03	telephone conference	Potterfield	Plaintiff	OC 233
9-26-03	letter	Potterfield	Plaintiff	memo regarding her discussion with Conrad about separating, attaching other letters, OC 399 et al
10-8-03	review of letter			Potterfield, OC 233
10-9-03	phone conference	Potterfield	Plaintiff	OC 233
12-8-03	letter	Potterfield	Plaintiff	reconciliation impossible, begin process of divorce, OC 397
12-9-03	review of letter		Potterfield	OC 233
1-6-04	phone conference	Potterfield	Plaintiff	OC 233
1-13-04	conference	Potterfield	Plaintiff	OC 233
1-13-04	memo		Potterfield	memo re assets, OC 282
2-2-04	phone conference	Potterfield	Plaintiff	OC 233
2-4-04	phone conference	Potterfield	Plaintiff	OC 233
2-24-04	phone conference	Potterfield	Plaintiff	OC 233
2-26-04	phone conference	Potterfield	Sherman	OC 233
2-27-04	letter	whom it may concern	Sherman	Plaintiff and Conrad separated, Conrad's separate residence since 2003, OC 412
4-22-04	phone conference	Potterfield	Plaintiff	OC 233
4-22-04	letter	Sherman	Potterfield	status of financial information, OC 180
5-18-04	phone conference	Potterfield	Plaintiff	OC 233
5-30-04	document			Conrad's personal financial statement, OC 1044
6-21-04	document			contract for sale of Kenilworth property, OC 1998
7-19-04	phone conference	Plaintiff	Potterfield	sale of Kenilworth, OC 283
7-28-04	phone conference	Potterfield	Sherman	OC 233
8-10-04	note		Potterfield	re phone call with Crawford, OC 284

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8-11-04	phone conference	Potterfield	Plaintiff	OC 233
8-26-04	review of file		Potterfield	changes to pleadings, OC 233
8-27-04	summons & complaint	Richland Cty. Family court	Potterfield	filed
8-27-04	receipt	Potterfield		for filing fee, OC 230
8-30-04	prepare letter	Sherman	Potterfield	OC 233
8-31-04	prepare certificate of service		Potterfield	OC 233
8-31-04	letter	Plaintiff	Potterfield	filing of pleadings, requests appointment, mentions property request, OC 179
9-2-04	filing			Sherman's acceptance of service of Complaint, OC 176
9-3-04	letter	Potterfield	Sherman	acceptance of service, requests extension to answer, OC 178
9-15-04	document			closing packages for Kenilworth property, OC 1813
9-22-04	prepare letter	Sherman	Potterfield	OC 233
9-22-04	filing	Sherman	Potterfield	copy of Sherman's service acceptance for summons and complaint, OC 175
10-4-04	letter	?	Conrad	regarding issues with children, beach property, and Gallery, OC 413
10-5-04	conference, review of file	Plaintiff	Potterfield	OC 233
10-13-04	phone conference	Sherman	Potterfield	OC 233
10-14-04	letter	Potterfield	Sherman	Plaintiff frauding checks, intercepting mail, Washington Mutual escrow check, children at home alone, OC 167
10-19-04	review of letter, prepare letter		Potterfield	letter from Sherman, letter to Plaintiff, OC 233
10-19-04	letter	Plaintiff	Potterfield	referencing Sherman's letter and accusations with checks, OC 166
10-20-04	answer & counterclaim	Richland Cty. Family court	Sherman	OC 185

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10-21-04	letter	Clerk	Sherman	filing answer and counterclaim, OC 184
10-24-04	letter	Potterfield	Plaintiff	responding to Shernan's accusations, OC 415
10-25-04	review of letter		Potterfield	letter from Plaintiff, OC 233
10-26-04	review of letter, pleadings		Potterfield	OC 233
10-27-04	prepare letter	Plaintiff	Potterfield	OC 233
10-27-04	letter	Plaintiff	Potterfield	enclosing Conrad's answer and counterclaim, OC 165
10-28-04	phone conference	Plaintiff	Potterfield	OC 233
10-29-04	letter	Potterfield	Plaintiff	response to Conrad's counterclaim, draft of settlement offer, OC 419
10-31-04	letter	Potterfield	Sherman	support payments, purchase home for Plaintiff, requests property inventory, OC 163
11-3-04	amended answer & counterclaim	Richland Cty. Family court	Sherman	OC 192
11-4-04	letter	Potterfield	Plaintiff	references Sherman's letter 10-31-04, finances, house purchase, division of marital home property, OC 422
11-4-04	letter	Potterfield	Plaintiff	Conrad's support payments, payment of bills, demand for child support, OC 425
11-4-04	letter	Potterfield	Sherman	clocked copy of Answer and Counterclaim, OC 191
11-9-04	handwritten note	Plaintiff	Conrad	Plaintiff allegedly diverting \$26k in funds , OC 428
11-11-04	review of notes		Potterfield	notes from client, OC 233
11-11-04	letter	Potterfield	Plaintiff	Mais Oui Building break-in, with letter from Conrad regarding visitation and money, OC 427
11-12-04	review of file, prepare letters, phone conference with client			OC 233
11-12-04	draft	Sherman	Potterfield	draft letter with plaintiff's marginal notes, OC 432
11-12-04	letter	Sherman	Potterfield	need for home for children, references break-in, OC 159

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11-18-04	corrections to letter		Potterfield	OC 233
11-18-04	letter	Sherman	Potterfield	noting almost one year separation, settlement, OC 157
11-23-04	document			Plaintiff's Wachovia account statement, OC 1309
11-30-04	letter	Potterfield	Plaintiff	need of money, need for home, list of expenses, with letter from Plaintiff to Conrad asking for money, OC 434
12-6-04	letter	Potterfield	Plaintiff	complaint of delay, lack of home, no money from assets, barred from business, OC 438
12-7-04	motion for p.l. relief	Richland Cty. Family court	Sherman	hearing scheduled for 1/12/05, OC 199
12-10-04	letter	Sherman	Potterfield	extension to answer counterclaim, OC 154
12-10-04	note		Taylor	note in file, OC 288
12-13-04	letter	Powell	Wachovia	re forged endorsement, OC 149
12-14-04	review of letter, file, phone conference with client, conference with associate counsel		Taylor	OC 233
12-14-04	letter	Oscar Gutman	Plaintiff	regarding show at Gallery 2, OC 520
12-15-04	phone conference	Sherman	Potterfield	OC 233
12-15-04	document			copy of clocked Reply, OC 873
12-15-04	note		Potterfield	re potential advancement, OC 289
12-16-04	prepare letter	Sherman	Potterfield	OC 233
12-16-04	letter	Potterfield	Sherman	offer to advance \$400k, counter checks, temporary hearing notice, OC 151 et al
12-16-04	letter	Potterfield	Sherman	clocked copy of motion for Pendente Lite, OC 197
12-16-04	letter	Sherman	Potterfield	serving Reply, OC 871
12-16-04	document	Potterfield		notice of ☐ endent elite hearing, OC 894

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12-16-04	document	Sherman	Potterfield	certificate of service copy, OC 872
12-16-04	filing			Plaintiff's Reply, OC 873
12-20-04	review of letter, prepare letter to client		Potterfield	OC 233
12-20-04	handwritten note	Plaintiff	Conrad	enclosing \$1000 for Christmas gifts for girls, OC 446
12-20-04	draft	Conrad	Plaintiff	letter regarding support payments, home, money OC 447
12-20-04	letter	Potterfield	Plaintiff	WaMu forgery claim, Potterfield not returning calls, OC 445
12-21-04	letter	Plaintiff	Potterfield	noting Plaintiff's need for money, hearing, alimony, \$400k advance, OC 150
12-21-04	phone conference	Plaintiff	Potterfield	review of file, letter, confer with associate counsel, OC 233
12-27-04	phone conference	Plaintiff	Potterfield	OC 233
12-27-04	letter	S. Anderson (Wachovia)	Potterfield	addressing allegations of fraud, OC 148
12-28-04	letter	Conrad, Plaintiff, etc.	Paul Sloan (Mais Oui)	missing property at Mais Oui, OC 452
12-31-04	letter	Plaintiff	Wachovia	forging \$16k check, OC 149
2005	draft			consent order for temporary hearing on 1-12-05, OC 895, 137
2005	draft			Gallery 2 business report, OC 1147
1-2-05	letter	? Potterfield	Plaintiff	Mais Oui building security issues, OC 515
1-4-05	handwritten note	Paul Sloan	Conrad	missing property at Mais Oui, OC 453
1-5-05	phone conference	Plaintiff	Potterfield	OC 233
1-5-05	letter	Sherman	Potterfield	potential agreement, \$400k advance, OC 141
1-5-05	letter	Potterfield	Sherman	temporary settlement proposal, OC 143
1-5-05	note		Potterfield	phone conf. with bank, OC 290
1-6-05	review of letter		Taylor	OC 233

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1-7-05	conference	Plaintiff	Potterfield	OC 233; calendar entry
1-7-05	review file, letter; conf. with assoc. counsel; conf. w/client	Plaintiff	Taylor	OC 233; calendar entry
1-7-05	letter	Paul Sloan	Plaintiff	issues at Gallery 2, Mais Oui Building, OC 132
1-7-05	note		Potterfield	re Wachovia Bank, etc., OC 293
1-7-05	note		Taylor	re settlement issues, OC 294
1-8-05	affidavit			Janna Cotterill – Plaintiff is primary caregiver, OC 1007
1-8-05	affidavit			Bunni Crawford – describes Plaintiff, Conrad's business relationship, OC 1008
1-10-05	letter	Sherman	Potterfield	permanent settlement talks between Conrad and Plaintiff, temporary settlement proposal, OC 138
1-10-05	affidavit			Donna Lewis – Plaintiff is primary caregiver, very involved with business, OC 1009
1-10-05	handwritten letter	those with access to Mais Oui	Conrad	security issues at Mais Oui Building, OC 449
1-11-05	phone conference	Plaintiff	Potterfield	OC 233
1-11-05	conf. with assoc., review file, prep. For temp. hearing, etc.		Taylor	OC 233
1-11-05	review letter, conf. w/assoc. counsel (2)		Taylor	OC 233
1-11-05	fax	Sherman	Potterfield	consent order to continue 1- 12-05 hearing, OC 136
1-11-05	memo		Potterfield	re phone conf. with Sherman, OC 296
1-11-05	letter	Potterfield	Sherman	\$400k advance on condition Plaintiff vacates Mais Oui, OC 133
1-11-05	receipt	Potterfield		motion fee receipt, OC 230
1-11-05	check		Potterfield	filing fee, OC 896

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1-12-05	phone conference	Plaintiff	Atkerson	OC 233
1-13-05	conference with assoc. counsel, phone conf. with client	Plaintiff	Taylor	OC 233
1-13-05	phone conf. with client, review file	Plaintiff	Taylor	OC 233
1-13-05	letter	Sherman	Potterfield	Plaintiff will vacate Mais Oui, OC 128
1-13-05	fax	Potterfield	Sherman	Plaintiff must vacate Mais Oui or pay rent, OC 128
1-13-05	order			consent order of temporary hearing continuance, OC 875
1-14-05	letter	Conrad, Paul Sloan	Plaintiff	security issues at Mais Oui, accusation of stealing, OC 450
1-14-05	letter	Potterfield ?	Plaintiff	schools in Aiken, vacating Mais Oui, Plaintiff's role in Chic Antiques, OC 405
1-15-05	contract			between Gallery 2 and artists for shows, OC 110
1-18-05	phone conference	Plaintiff	Potterfield	OC 233
1-18-05	letter	Potterfield	Sherman	Plaintiff and NBSC Chic Antique account, Aiken, OC 108
1-19-05	letter	Potterfield	Sherman	shows at Mais Oui, \$400k advance when vacates Mais Oui, \$4500 in support, OC 106
1-19-05	letter	Sherman	Potterfield	asking for \$400k advance, OC 109
1-20-05	letter	Sherman	Potterfield	responding to NBSC accusations, OC 97
1-20-05	memo	Potterfield	Plaintiff	responding to NBSC accusations, housing, settlement issues, OC 100
1-21-05	check	Potterfield	Conrad	\$400,000, OC 94
1-21-05	letter		Potterfield	acknowledging receipt of \$400k, OC 95
1-21-05	handwritten note	Plaintiff	Conrad	took computer, insurance issues, OC 408
1-24-05	phone conference	Plaintiff	Potterfield	OC 233

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1-31-05	letter	Potterfield	Sherman	Alexandra Powell enrolled at Aiken Prep, Plaintiff and girls living in Augusta, OC 93
2-2-05	phone conference	Plaintiff	Potterfield	OC 233
2-2-05	letter	Sherman	Potterfield	Pawley's Island house under contract, OC 91
2-3-05	phone conference	Wachovia	Potterfield	OC 233
2-3-05	letter	Sherman	Potterfield	resolve Wachovia escrow check issue handled via court, OC 89
2-3-05	note		Potterfield	re phone conf, OC 295
2-8-05	notice		Richland Cty. Family ct.	P.L. hearing for 3/16/05
2-8-05	prepare letter	Plaintiff	Atkerson	OC 233
2-8-05	letter	Potterfield	Sherman	requesting offer for permanent settlement, confirms Pawley's sold, OC 87 (same as OC 88)
2-8-05	letter	Plaintiff	Potterfield	requesting contact from Plaintiff, OC 86
2-9-05	review of hearing notice		Potterfield	OC 233
2-9-05	letter	Plaintiff	Potterfield	forwarding blank financial declaration to complete, OC 85
2-10-05	letter	Plaintiff	Potterfield	copy of Notice of Hearing on 3-16-05, OC 870
2-11-05	review of letter		Potterfield	and prepare letter to Plaintiff, OC 233
2-11-05	letter	Plaintiff	Potterfield	Conrad's offer sent on 2-8-05, OC 84
2-22-05	conference with client; prepare letter	Plaintiff	Potterfield	OC 233; calendar entry
2-22-05	note		Potterfield	considerations for potential settlement, OC 298
2-22-05	review file, conf. with assoc. counsel, review letter and pleadings, conf. with client	Plaintiff	Taylor	OC 233; calendar entry
2-22-05	note		Taylor	OC 315

2-22-05	letter	Sherman	Potterfield	Conrad's offer for settlement, OC 83
3-2-05	phone conference	Sherman	Potterfield	OC 233
3-3-05	letter	Potterfield	Sherman	withdrawing motion for ☐ endent elite hearing, OC 79
3-3-05	letter	Sherman	Potterfield	filed continuance, OC 77
3-3-05	documents			closing package for Pawley's, OC 1796
3-4-05	letter	Plaintiff	Potterfield	order or continuance, rescheduled to 3-16-05, OC 76
3-4-05	letter	Sherman	Potterfield	certificate of service, consent of continuance, OC 78
3-14-05	letter	Judge Strom	Sherman	withdrawing motion for ☐ endent elite, OC 73
3-16-05	filing			consent order withdrawing motion for ☐ endent elite, OC 74
3-17-05	filing			Consent order filed rescheduling pendent elite, OC 71
3-20-05	review of letter		Potterfield	OC 233
3-23-05	letter	Potterfield	Sherman	offer of permanent settlement, \$5k/month child support, OC 67
3-23-05	letter	Potterfield	Sherman	copy of filed consent order, OC 70
3-25-05	review of letter	Potterfield	Sherman	OC 233
3-30-05	letter	Potterfield	Sherman	property taken from Mais Oui, OC 66
3-31-05	review of letter		Potterfield	OC 233
3-31-05	documents			Conrad's Synovus Trust statements, OC 1571
4-1-05	handwritten letter	Potterfield	Plaintiff	proposed settlement, hiring Taylor, OC 63
4-1-05	documents			Conrad's tax returns for 2003, OC 1588
4-8-05	handwritten letter	Plaintiff	Conrad	checks to help with girls' expenses, OC 1933
4-10-05	handwritten note	Plaintiff	Conrad	visitation issues, OC 1934
4-11-05	letter	Columbia Management	Paul Sloan	missing property at Mais Oui, OC 57
4-20-05	letter	Potterfield	Sherman	withdrawing Conrad's settlement offer, OC 56

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4-22-05	letter	Taylor	Plaintiff	revised financial draft, settlement, property list, OC 1929
4-22-05	draft			Plaintiff's financial declaration draft, OC 1930
4-27-05	letter	Plaintiff	Taylor	Sherman's 4-20-05, Paul Sloan's 4-11-05 letter, OC 55
4-27-05	phone message	Taylor	Plaintiff	left voice message, OC 59
4-27-05	phone conference	Plaintiff	Potterfield	and review of letter, OC 233
5-5-05	letter	Conrad	Nationwide	confirming daughters as beneficiaries, OC 2006
5-10-05	letter	Potterfield	Sherman	buying stable in Aiken, argument between Plaintiff and Conrad, OC 53
5-11-05	documents			Plaintiff purchase of property in Aiken, OC 1129
5-12-05	letter	Taylor	Plaintiff	parameters for a final settlement, OC 456
5-13-05	documents			Aiken property, OC 1129
6-13-05	documents			Plaintiff's Bank of America statements, OC 1263
6-22-05	phone conference	Plaintiff	Taylor	OC 233
6-23-05	letter	Sherman	Taylor	Taylor as Plaintiff's attorney, no financials exchanged, proceeds from Pawley's, serves discovery requests, OC 39
6-23-05	review file, pleadings, prepare discovery requests, phone conference, prepare letter	Plaintiff	Taylor	OC 233; calendar entry
6-23-05	filing			service of Plaintiff's discovery requests, OC 41
6-23-05	filing			Plaintiff's first set of discovery requests, OC 42
7-7-05	documents			Chic Antiques Verizon Wireless bills, OC 1152

7-12-05	letter	Taylor	Sherman	serving Conrad's discovery requests, no financials exchanged, Pawley's proceeds, no visitation order, OC 458
7-13-05	filing			Conrad's discovery requests to Plaintiff, OC 460 et al.
7-14-05	conference with associate		Taylor	also review of letter, discovery requests, OC 233
7-31-05	documents			Gallery 2 NBSC statements, OC 1256
8-2-05	handwritten note	Plaintiff	Conrad	wish girls to stay in public school, OC 475
8-9-05	conference with associate		Taylor	also review of letter, discovery requests, OC 233
8-9-05	letter	Sherman	Taylor	requesting discovery responses, to be sent in a week, OC 38
8-10-05	conference with associate		Taylor	OC 233
8-15-05	documents			inventory of Conrad's financial documents, OC 1037
8-16-05	letter	Taylor	Sherman	Conrad's answers to Plaintiff's discovery requests, OC 1015
8-17-05	letter	Taylor	Plaintiff	Pawley's proceeds, children status, OC 476
8-29-05	letter	Taylor	Sherman	responses to discovery requests due, OC 36
8-30-05	appointment	Potterfield	Plaintiff	"Called and left message at 8:35 a.m." Calendar entry
8-31-05	appointment	Potterfield	Plaintiff	Calendar entry
8-31-05	receipt			Aiken County - Plaintiff's car taxes, OC 1143
9-7-05	document			Plaintiff's affair with R. Young beings, OC 1563
9-8-05	conference with associate		Taylor	OC 233
9-24-05	documents			PI report on Plaintiff, OC 1563
10-7-05	picture			Plaintiff's car, taken by PI, OC 1566
10-11-05	fax	Taylor	Plaintiff	antiques inventory, premarital assets, OC 478

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11-?-05	picture			screen shot of Plaintiff's account balance, OC 1144
11-1-05	documents			Morgan Powell's report card, OC 494
11-1-05	documents			Alexandra Powell's report card, OC 495
11-27-05	handwritten note	Plaintiff	Conrad	discussing holidays with children, OC 121
12-1-05	appointment	Reid Smith	Taylor	Calendar entry
12-6-05	appointment	Plaintiff	Taylor	Calendar entry
12-9-05	conference	Plaintiff	Taylor	OC 233; calendar entry
12-12-05	phone message	Taylor	Plaintiff	OC 291
12-19-05	conference	Plaintiff	Taylor	OC 233; calendar entry
12-21-05	filing			clocked copy of motion to compel Plaintiff's response to discovery, OC 32
? 2006	draft			unsigned consent order of continuance regarding motion to compel, OC 28
1-4-06	appointment	Plaintiff	Taylor	"Client rescheduled—does not have paperwork together yet." Calendar entry
1-6-06	appointment	Plaintiff	Taylor	"Client rescheduled—sick." Calendar entry
1-6-06	letter	Taylor	Sherman	certificate of service, OC 35
1-9-06	appointment	Plaintiff	Taylor	"Sick child---client rescheduled." Calendar entry
1-10-06	conference	Plaintiff	Taylor	OC 233; calendar entry
1-10-06	filing (fax Taylor to Reid)			Lis pendens by Sun Equities against Plaintiff, OC 483
1-10-06	filing			Plaintiff's responses to Conrad's discovery requests, OC 1100-42
1-12-06	fax, handwritten notes in margin	Taylor	Plaintiff	asking Taylor to call Plaintiff, OC 481
1-13-06	appointment—phone conf.	Plaintiff	Taylor	Calendar entry
1-17-06 [correct date?]	letter	Taylor	Plaintiff	terminating representation, OC 482
1-23-06	phone conference	Plaintiff, Smith	Taylor	OC 233; Reid Smith documentation
1-25-06	phone conference	Sherman	Taylor	also legal research, prep for motion, conference with client, OC 233

1-25-06	letter	Taylor	Sherman	consent order dismissing motion to compel, OC 28
1-25-06	letter	Taylor	Sherman	regarding Plaintiff's answers to discovery, OC 24
1-26-06	letter	Thomas Murphy (attorney)	Smith	suit by Sun Equities Lending Group, OC 22
1-30-06	letter	Taylor	Plaintiff	enclosing financial declaration draft, listing of personal property, OC 1939-43
1-30-06	letter	Taylor	Plaintiff	settlement proposal, OC 302
1-31-06	phone conference	Plaintiff	Taylor	also review of pleadings, phone conference with opposing counsel, phone conference with associate, conference with associate, OC 233
1-31-06	letter	Sherman	Taylor	motion to compel, OC 20
1-31-06	filing			Plaintiff's amended responses, OC 1315
1-31-06	memo		Taylor	amended answers to interrogatories re adultery, OC 304
2-7-2006	note	Smith	Taylor	PI report on Plaintiff, OC 13
2-1-06	review of file, pleadings		Taylor	also prepare letters, OC 233
2-1-06	letter	Sherman	Taylor	requesting statements of Pawley's accounting, OC 1014
2-2-06	review of letter		Taylor	OC 233
2-16-06	phone conference	Plaintiff	Taylor	OC 233
2-16-06	email	Plaintiff	Smith	accountant recommendations, OC 510
2-21-06	phone conference	witness	Taylor	also conference with associate counsel, phone conference with Sherman, OC 233
2-22-06	conference		Taylor	with associate and with Sherman, OC 233
2-22-06	conference	Plaintiff; Smith	Taylor	Reid Smith documentation
2-22-06	appointment	Plaintiff	Taylor	Calendar entries
2-22-06	notes		Taylor	OC 305

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2-22-06	draft			Plaintiff's responses to Conrad's discovery requests, OC 491
2-22-06	letter	Taylor	Plaintiff	re Sherman's letter of 1/30, OC 491
2-23-06	phone conference	associate counsel	Taylor	OC 233
2-23-06	letter	Taylor	Sherman	Plaintiff's supervision of children, OC 492
2-23-06	letter	Taylor	Sherman	Conrad's sexual relations during separation, Plaintiff's PI report on Conrad, OC 498
2-23-06	letter	Taylor	Sherman	Plaintiff taking items from Antique mall, return Conrad's car, OC 15
2-23-06	letter	Sherman	Taylor	forwarding some of Plaintiff's financial info, OC 11
2-23-06	letter, handwritten note	Taylor	Sherman	cost of copies, "TC July 7, 2003 She was talking to him & has decided to file rather than talk to him", OC 19
2-23-06	letter	Taylor	Sherman	admitting Conrad's extramarital relationships, OC 17
2-23-06	letter	Taylor	Sherman	missing property at Antique Mall, Conrad's car, threat of restraining order, OC 15
2-23-06	letter	Sherman	Taylor	copy of PI report on Plaintiff, review of two boxes of documents, OC 12
2-23-06	letter, handwritten notes	Sherman	Taylor	notes from Taylor to Smith, Plaintiff's financials, OC 11
2-28-06	phone conference	Plaintiff	Taylor	left detailed message, OC 233
2-28-06	letter	Plaintiff	Taylor	requesting her comments on 2-23-06 letters, OC 496
3-1-06	letter	Taylor	Plaintiff	responding to 2-23-06 letters, OC 504
3-2-06	phone conference	associate counsel, Plaintiff	Taylor	OC 233
3-3-06	review of letter		Taylor	OC 233
3-5-06	letter	Plaintiff	Conrad	child support and insurance, OC 309

3-16-06	note		Taylor	re phone conference with plaintiff, OC 311
3-29-06	phone conference	Plaintiff	Taylor	OC 233
4-20-06	phone conference	associate counsel, Plaintiff	Taylor	OC 233
4-24-06	phone conference	associate counsel	Taylor	OC 233
5-19-06	letter	Taylor	Smith	timeline of Conrad's financials, OC 316
5-25-06	phone conference	associate counsel	Taylor	OC 233
5-26-06	phone conference	Plaintiff	Taylor	OC 233
7-18-06	phone conference	associate counsel	Taylor	OC 233
8-3-06	phone conference	associate counsel	Taylor	OC 233
8-21-06	note		Taylor	re phone conference with plaintiff, OC 312
8-23-06	call to set up appointment	Plaintiff, assoc. counsel	Taylor	Calendar entry.
8-31-06	phone conference	Plaintiff	Taylor	OC 233
9-1-06	phone conference	associate counsel, Plaintiff	Taylor	OC 233
9-1-06	note		Taylor	options, OC 314
10-2-06	phone conference	associate counsel	Taylor	OC 233
10-2-06	phone conference	Plaintiff	Taylor	OC 233
10-5-06	review of file, draft deposition		Taylor	OC 233
10-6-06	conference	associate counsel	Taylor	OC 233; calendar entry
10-10-06	appointment	Plaintiff; assoc. counsel	Taylor	Calendar entry
10-12-06	filing	Sherman		notice of Conrad's deposition, OC 200
10-23-06	phone conference	associate counsel	Taylor	OC 233

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11-14-06	phone conference	associate counsel	Taylor	OC 233
11-15-06	phone conference	associate counsel	Taylor	OC 233
11-15-06	fax	Smith	Taylor	deposition questions for Conrad, OC 352
11-16-06	phone conference	Sherman; Plaintiff; assoc. counsel	Taylor	OC 233; calendar entry
11-21-06	filing			amended notice of deposition of Conrad, OC 205
12-6-06	filing			deposition notice of Roe Young, OC 208
12-6-06	filing			notice of Plaintiff's deposition, OC 211, 207
12-12-06	conference	associate counsel	Taylor	OC 233
12-12-06	phone conference	Plaintiff	Taylor	OC 233
12-13-06	conference	Smith, Plaintiff	Taylor	OC 233; calendar entry
12-13-06	deposition			Conrad, questioned by Smith, OC 379
12-18-06	letter	Smith	Sherman	need filed copy of representation notice, OC 10
12-20-06	filing			deposition notice of Bunni Crawford, OC 215
12-20-06	filing			subpoena on Plaintiff's Verizon Wireless records, OC 217
12-20-06	filing			subpoena of Plaintiff's Bank of America records, OC 220
12-27-06	filing			Smith's notice of appearance (filed 12-29-09), OC 223
1-3-07	conference	associate counsel		OC 233
1-8-07	phone conf.	Smith	Taylor	Reid Smith documentation
1-10-07	phone conference	Plaintiff	Taylor	OC 233
1-11-07	phone conference	associate counsel	Taylor	OC 233
1-16-07	phone message	Taylor	Plaintiff	OC 9
1-19-07	letter	Taylor	Foster	arranging file pick-up, OC 3

1-21-07	filing			consent order substituting counsel, replacing Taylor with Foster, OC 225

Undated

Type of exchange	To	From	Brief description
letter	Potterfield	Plaintiff	Conrad's financials, contract on home, priorities for representation, OC 409
handwritten note	Potterfield	Plaintiff	wants to discuss some issues, OC 513
affidavit			Karen Everhart – Plaintiff's role in businesses, OC 1006
draft		Plaintiff	answers to Conrad's discovery requests, listing of assets, OC 559
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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

Defendants.

**PLAINTIFF'S SUPPLEMENTAL
RESPONSE TO DEFENDANTS'
POTTERFIELD, TAYLOR AND
POTTERFIELD/TAYLOR'S FIRST SET
OF INTERROGATORIES TO PLAINTIFF**

TO: CHARLES E. HILL, ESQUIRE, ATTORNEYS FOR DEFENDANTS TAYLOR,
POTTERFIELD AND TAYLOR / POTTERFIELD:

Plaintiff, Carolyn Mitchell Powell (hereafter "Plaintiff"), hereby supplements her responses to Defendants Taylor, Potterfield and Taylor / Potterfield's First Set of Interrogatories as follows:

INTERROGATORIES

4. List the names, addresses and telephone numbers of any expert witnesses whom the plaintiffs propose to use as a witness at the trial of the case, and for each state in detail:
 - (a) his/her qualifications to testify;
 - (b) a description of the subject matter on which each such expert is expected to testify;
 - (c) a description of the facts on which each such expert is expected to rely in

testifying;

- (d) a description of the opinions and conclusions about which each such expert is expected to testify;
- (e) a summary of the grounds for each such opinion and conclusion;
- (f) whether said expert has conducted any investigation, inspection, and/or interviews in connection with the issues involved with this suit, and, if so, the nature of each such investigation, inspection, and/or interviews, the results of same and the dates on which such work was performed;
- (g) whether or not said expert has personally interviewed any plaintiff. If so, provide the dates of the interview(s) and any memoranda created by the expert in connection with the interview(s);
- (h) whether said expert has generated a written report, and if so, would you, without a motion to produce, attach a copy of the report to your responses; and,
- (i) as to each, list all treatises, books, documents and recognized authorities which such experts plan to utilize or cite in support of their position.

SUPPLEMENTAL RESPONSE:

H. Grady Brown, JD
LAW OFFICES OF H. GRADY BROWN, PA
615 Prince Street
Beaufort SC 29902

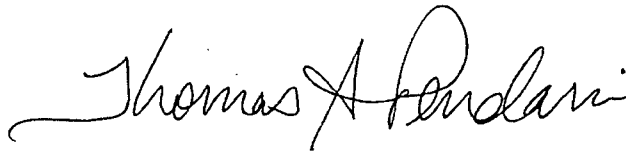
- (a) His license to practice law and his years of experience in Family Court matters;
- (b) Whether Defendants met the standard of care in their representation of

Plaintiff in the underlying case, whether any deviation by Defendants caused damages to Plaintiff, and to a limited degree, the types of damages caused by Defendants' deviations in the standard of care;

- (c) The facts regarding the underlying case as reflected in the documents, transcripts, court papers and other documents available from the underlying matter, deposition testimony taken in this case;
- (d) Defendants failed to meet the standard of care in their representation of Plaintiff in the underlying case; that deviation from the standard of care by Defendants caused damages to Plaintiff; and Defendants' deviations in the standard of care caused Plaintiff to accept and agree to a settlement with her former husband in the underlying matter on financial terms for far less than she otherwise would have accepted or otherwise would have been available had Defendants satisfied their duties in their representation of Plaintiff;
- (e) The grounds for Mr. Brown's opinions are based on facts regarding the underlying case as reflected in the documents, transcripts, court papers and other documents available from the underlying matter, deposition testimony taken in this case so far, and his experience in handling cases in the Family Court;
- (f) Yes, Mr. Brown has reviewed documents available from the underlying case and transcripts of the depositions take in this case beginning in November 2010 continuing to the present as additional transcripts are obtained;
- (g) Mr. Brown has not personally interviewed Plaintiff, but may do so as part of further developing his expert opinion;

- (h) Yes - see document attached with a Bates range of Brown00001-00007;
and,
- (l) Mr. Brown has not provided or identified any treatises, books, documents
and recognized authorities, if any, which he may use or plans to utilize or cite
in support of his opinion.

PENDARVIS LAW OFFICES, P.C.



Thomas A. Pendarvis (SC Bar # 064918)
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September 16, 2011

Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Carolyn Mitchell Powell,

Plaintiff,

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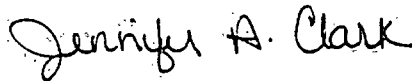
Defendants.

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Charles E. Hill, J.D.
TURNER, PADGET GRAHAM & LANEY, PA
PO Box 1473
Columbia, SC 29202
Chill@TurnerPadget.com

Documents Served: PLAINTIFF'S SUPPLEMENTAL RESPONSE TO DEFENDANTS TAYLOR, POTTERFIELD AND TAYLOR/POTTERFIELD'S FIRST SET OF INTERROGATORIES



Jennifer A. Clark

Beaufort, South Carolina
September 16, 2011

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September 12, 2011

Thomas A. Pendarvis, J.D.
PENDARVIS LAW OFFICES, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902

Re: Carolyn M. Powell vs. Potterfield Law Firm

Dear Thomas:

Pursuant to your request, I have reviewed the two depositions you provided to me in connection with the above matter with a view towards rendering opinions as to whether or not the legal services provided by Taylor/Potterfield fell below what I deem to be an appropriate standard of care. The depositions provided to me consisted of the deposition of Carolyn Mitchell Powell and the deposition of Ashlin Blanchard Potterfield. I have not had an opportunity to view all of the pleadings in this case or in the original divorce case. I have only reviewed the documents which were made exhibits to the two depositions.

Moreover, my review of the depositions and the exhibits was limited to a determination of whether or not the Taylor/Potterfield Law Firm failed to take action or took inappropriate action with respect to their representation of Ms Powell. My review was not in any way intended to determine the nature or the extent of any damages Ms Powell may have incurred as a result of representation by the Taylor/Potterfield Law Firm.

From the information I have been provided, it appears that the Taylor/Potterfield Law Firm was involved in the representation of Carolyn Powell from mid-2003 until early-2007. The length of representation in and of itself is quite unusual in a domestic relations case. The length of involvement would suggest that the case was either extremely complex and complicated or that an unusual period of delay or inaction had occurred.

Based on the documents provided to me, it is my opinion that an unreasonable and unnecessary amount of time elapsed in this matter and that inadequate actions were taken or which could have provided protection to Ms Powell's legal rights or legal position in the domestic relations case.

In particular, the documents I have seen suggest that several parcels of real estate with considerable value were sold by Mr. Powell after representation of his wife had been commenced and that no action was taken by Taylor/Potterfield to preserve these assets, which appear to be marital. For instance, in September, 2004 the Kenilworth residence was placed on the market for sale without her knowledge while Ms Powell was out of the country. This was the residence in which she and the children had been residing at the time. This sale ultimately required Ms Powell and her children to be uprooted and move into another residence. The reason this property was sold is not clear from the documents I have seen. However, it did not appear to me that there was any urgency or necessity for the sale of this property at the time it was marketed.

In addition, it appears from the records I have seen that the Pawley's Island beach house was sold by Mr. Powell in early-2005 and generated approximately \$1,700,000 worth of proceeds. The documents I reviewed do not make it clear precisely what happened to those proceeds; however, there is correspondence between counsel that suggests it was at some point placed into escrow by agreement of counsel. However, the correspondence I reviewed also suggested that Mr. Powell intended to use some of the proceeds for his personal living expenses. Whether this occurred is not clear in the documents I received. In any event, there appears to have been a lack of control over this marital asset.

Also, the documents suggest that real estate consisting of the Student Loan Building was sold by Mr. Powell after Taylor/Potterfield commenced representation of Ms Powell. I have no clear understanding as to what happened to the proceeds or what the reason for the sale was from the documents provided to me. Again, there does not appear to be any control or management plan for preserving this asset.

Accordingly, it appears that at least three parcels of real estate were sold by Mr. Powell during the time Taylor/Potterfield represented Ms Powell in connection with the parties' separation and marital situation. All of these sales could have either been prevented or managed such that reasons for the sale would have to have been justified to either opposing counsel or the court and the proceeds could have been preserved or distributed in a manner approved by counsel or the court. Moreover, the sales could have been prevented completely by Taylor/Potterfield taking specific action. This action would include the filing of a Lis Pendens against all real estate in Mr. Powell's name, commencing appropriate litigation which requested an equitable division and a temporary hearing and seeking a temporary restraining order regarding the disposing of assets while the case is pending. It appears from what I have read that none of these actions were taken, except for the filing of a suit on behalf of Ms Powell in approximately late-August, 2004. Despite the filing of this suit, there was no request for a temporary hearing, no request for even equitable division of assets and no filing of a Lis Pendens on her behalf at anytime during this representation.

It is also interesting to note that Ms Potterfield in her deposition stated that she was not concerned about the sales of real estate by Mr. Powell or that any assets "might get away". She also admitted that as of October, 2005 she did not know what happened to some of the proceeds of the sales of these properties, including Kenilworth.

Additionally, in her deposition Ms Potterfield stated that she recalled discussing with Ms Powell statements by Mr. Powell that he would make sure she received nothing as a result of their divorce/separation and that she felt that all of the marital assets were "for sale". Interestingly, Ms Potterfield says that she felt there was no reason for obtaining a Lis Pendens because all of the property was "for sale". This seems completely inconsistent to me and in fact emphasizes the need for a Lis Pendens.

Ms Potterfield also stated that she did not have any concerns about Mr. Powell moving assets around because she felt it was hard to hide real estate transactions. That, however, begs the questions of why a real estate transaction should be allowed at all in this marital context without any controls or input by both parties.

In my view, one of the most important elements of a domestic relations case is the preservation and maintenance of marital assets once representation has begun. The loss of control over the assets, or the dissipation of the assets, could be prejudicial to a client, particularly if that client is not titled with the asset and would have no knowledge as to the appropriateness of the terms associated with the sale or be entitled to the use of the proceeds from the sale. It is prudent to have the court approve any such sale or, at a minimum, not allow a sale to occur without the consent of opposing counsel and a plan for how it is to be handled.

In addition to the foregoing, the law in this State regarding the establishment of a marital interest in a potential marital asset is the date of the filing of marital litigation. Thus, should filing be delayed, a potential marital asset could be sold and the proceeds dissipated before the opposing spouse could claim an interest in the asset. Thus, substantial prejudice could occur by failing to file in a timely fashion.

It is important to note that some of the initial documents provided to Ms Powell by Taylor/Potterfield required Ms Powell to acknowledge that any delay in starting marital litigation may "considerably" prejudice the client. Thus, Taylor/Potterfield should have known they needed to seriously consider the consequences of delaying filing. This document also states that Taylor/Potterfield believes it is qualified to charge a higher fee because of the caliber of the attorneys that work in this firm. It would appear that they are holding themselves out as "excellent" attorneys and suggests that they should be held to a higher standard of care as a result. Not only does this appear to be important in terms of the points I raised above, but I also believe it is also relevant on the question of the quality of the guidance provided to Ms Powell by Taylor/Potterfield given the emotional trauma Ms Powell was experiencing and her belief that the case was not moving forward quickly, as well as Ms Potterfield's claim that it did not need to move forward quickly because Ms Powell did not want it to do so. Given this apparent inconsistency, it is my opinion that Taylor/Potterfield needed to be more assertive in the handling of the case and clearer in their communications with their client as to the plan to be followed and the goals which could be achieved in order to justify their claim of excellence.

The documents I have seen suggest that Ms Powell was never informed that the settlement offers ultimately made by her attorneys were within the "realm of reason". It was proposed that she get \$500,000 as an advance. Mr. Powell only offered \$400,000

and this amount was accepted. Additionally, it appears that there is no way her attorneys could have known whether the offers made by either party were within the "realm of reason" because there was no clear picture provided by Mr. Powell to verify the existence or value of substantial marital assets or determine his earnings ability. In short, it would appear that decisions were being made about settlement offers, including whether the terms of offers to be made to opposing counsel and opposing counsel's offers, for consideration, without the ability to evaluate their reasonableness under the circumstances. In my opinion, this is an ineffective and inappropriate manner in which to negotiate the resolution of a domestic relations case.

It is my opinion that several actions could have or should have been taken which would have benefited Ms Powell with respect to an equitable distribution. First, it appears that the Complaint that was ultimately filed well over a year after representation had begun did not seek an equitable division in its prayer. Nor did it seek any alimony or a request for a temporary hearing. Ms Potterfield acknowledged that she had filed "vanilla pleadings". I do not understand why these pleadings were never amended. Timely filing, I believe, would have benefited Ms Powell in the manner referenced above.

Moreover, the South Carolina Rules of Family Court require that the parties file a financial declaration within 45 days of the date the suit is filed or at a temporary hearing, whichever occurs first. The documents I have seen suggest that neither party ever filed a financial declaration or served the same on the other party. The financial declaration would have listed in considerable detail the assets and the values of the assets claimed by both parties. The obtaining of a financial declaration of Mr. Powell would have been extremely valuable to Ms Powell not only because it helps clarify what needs to be done in discovery, but it also enhances her knowledge of the assets, provides an under oath basis for identifying and valuing assets for which negotiations for settlement can be based and creates an element of perjury should the disclosure by the opposing party turn out to be inaccurate.

Discovery would also have substantially assisted Ms Powell by providing information which could be verified regarding the identification and valuation of all assets. Additionally, verification could be obtained by a search of courthouse records for real estate and taxable personal property in Mr. Powell's name. The documents I have reviewed suggested none of these actions were taken on behalf of Ms Powell. In my opinion, the above conduct is below the standard of reasonable care and certainly below the higher standard Ms Powell was told she was entitled to by Taylor/Potterfield.

Furthermore, the use of a professional forensic investigator under the circumstances presented in the depositions would have been highly beneficial to Ms Powell. No such investigator was obtained until Mr. Taylor hired Reid Smith in May, 2006. However, Mr. Smith is an attorney and did not hold himself out as a forensic investigator in domestic relations cases. Nevertheless, he prepared a summary of assets for Mr. Taylor that apparently has some level of detail, but which appears to be incomplete. Ms Powell stated in her deposition she felt that this summary had "holes" in it and was not to be deemed completely accurate because it was based upon unverified information from her husband. She suspected there may be additional assets which were not disclosed by her husband, even in his deposition. Frankly, I have found it is not

unusual for parties to be deceptive in their testimony and that confirmation or verification through other means is essential. Failure to do so is dangerous in that it could cause an asset to be missed or a valuation to be less than accurate. In any event, a detrimental impact could result to a client by failing to verify the existence and value of all assets. A proper expert would know where to look and could provide valuable assistance with preparing requests to produce.

Ms Potterfield claimed that Ms Powell chose not to obtain a forensic investigator. The documents I have read suggest that there was not much debate between Ms Potterfield and Ms Powell on this point or that Ms Potterfield insisted that it was necessary for her to provide proper representation of Ms Powell for an investigator to be obtained. It appears from what I have read that Ms Potterfield simply acquiesced to Ms Powell. In my view that is inadequate representation.

Likewise, the deposition of Ms Potterfield suggested that Taylor/Potterfield failed to engage in any discovery because Ms Powell asked them not to. There does not appear to be any reference to substantial debate on this issue and, again, it appears that Taylor/Potterfield merely acquiesced on this matter. It is my opinion that Taylor/Potterfield should have taken a firmer stance on the matter of obtaining an expert and seeking discovery.

It also does not appear that a financial declaration was ever prepared for Ms Powell. Without any determination of the true expenses Ms Powell was incurring, I believe it would be difficult to counsel her with regards to the amount of support, whether alimony or child support, she would need. Although alimony apparently became a contested issue, it is clear to me that Ms Powell would have been entitled to some level of support. No specific amount was ever ordered until years after representation began and Ms Powell could have been subject to the whims of Mr. Powell with respect to the payments he was making to her prior to any formal court order. This risk may have been avoided for a while, but it certainly existed.

Moreover, child support and alimony are both based upon earnings ability and not necessarily the actual earnings of a party. The documents I have seen do not reflect any discussion regarding Mr. Powell's earnings ability and the impact this would have on the alimony and support issues. In fact, Ms Potterfield stated in her deposition that she did not think Ms Powell may be entitled to alimony because Mr. Powell had no income. That seems to beg the question to me as to what he is capable of earning and it does not appear to me that this determination was ever made or looked into.

Furthermore, it appears that Ms Powell could have shown that her husband committed adultery as a result of a private investigator's report. Ms Potterfield stated in her deposition she did not think that Mr. Powell's adulterous conduct would have had an impact on Ms Powell's adultery claim. I would disagree because the South Carolina alimony statute states that marital misconduct is a relevant factor a court considers in an alimony situation. Additionally, the alimony statute requires that a spouse's earnings ability and the marital assets they are to receive are additional factors which need to be considered. It does not appear that these factors carried much weight or deserved much consideration with Taylor/Potterfield from the documents I have read.

It further appears that Taylor/Potterfield was concerned about allegations that Ms Powell had engaged in a lesbian relationship subsequent to the commencement of representation by Taylor/Potterfield. It is not clear to me from the documents I have read whether it is a certainty that Ms Powell did so or that Taylor/Potterfield claimed to inform her of the effect of a homosexual relationship on a claim for alimony sometime after January, 2005, until after the suit had been filed and after many months of representation. Had a temporary hearing been held earlier, the issue may not have come up. Moreover, had Taylor/Potterfield engaged in discovery, hired an expert and obtained a financial declaration from Mr. Powell early on, it is possible that a reasonable permanent settlement could have been reached either before suit was filed or shortly thereafter which addressed the alimony issue favorably to Ms Powell. If so, subsequent adulterous conduct on her behalf would have been irrelevant.

In her deposition, Ms Potterfield expressed a concern that Ms Powell may not receive alimony at a temporary hearing, if one were to be requested, because Mr. Powell had been paying her more than she felt Ms Powell would have received had a temporary hearing been held. This is a debatable issue; however, court's typically try and maintain the status quo at a temporary hearing. Thus, it is possible that Ms Powell could have shown the amounts her husband was providing to or on her behalf prior to a temporary hearing and the court could have required him to continue to do so pursuant to an enforceable court order.

Additionally, Ms Potterfield stated that she had concerns Ms Powell could not continue to receive the level of support her husband was voluntarily providing for her if a temporary hearing was held because she could not justify the need for the amount of money he was paying. The documents I have read do not indicate that there was any summary of Ms Powell's expenses or a financial declaration prepared for her which would establish any specific amount of financial need on her part. Thus, I question how Ms Potterfield's statement can be supported.

On several occasions in her deposition Ms Potterfield stated that many months had elapsed without any formal action being taken to commence litigation because she needed to determine what Ms Powell's plans for her living arrangements were going to be. That clearly is not a very proactive approach to take and again seems to be a conscious decision to acquiesce to a client that was by her own admission "desperate", "on the verge of a nervous breakdown" and vacillating between how she wanted to proceed with this case. It is my opinion that a more proactive approach was necessary with this client.

Ms Potterfield claimed that she felt she could not file the lawsuit earlier in the representation because the parties were still living together. It is my understanding that South Carolina law allows the filing of a divorce case based on fault grounds, even though the parties continue to live together. The documents I have read do not reflect that this was ever discussed between Taylor/Potterfield and Ms Powell.

Furthermore, Ms Potterfield continually mentioned in her deposition that she had no specific timetable she was working on in this case and that she felt there was no

reason she needed to file the suit earlier than it was filed. The depositions suggest to me that Ms Potterfield was dealing with a client that needed quicker results than she got and which needed the prompt establishment of certain enforceable rules of conduct and a financial game plan.

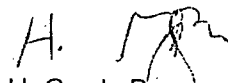
On several occasions Ms Powell expressed her desire that this case come to some conclusion or closure and that some definitive rules be put into effect so she could plan for her future. Taylor/Potterfield seemed to want her to make her plans for her future before they took any action on her behalf. This seems a backwards approach to me. I believe it would be appropriate to determine her financial parameters first.

Eventually, Mark Taylor had to get involved in this case in the winter of 2005. It is not clear to me exactly why he needed to get involved, other than his experience in litigation. However, this case does not look like it was anywhere close to being litigated once he got involved and it is certainly believable to me that he may have gotten concerned about the quality of representation provided by his firm and felt he needed to get involved to avoid any ramifications. In other words, he may have decided it was time to bring in the "big guns".

There is some question regarding Ms Potterfield's involvement in a judicial race and its potential effect upon the prioritizing of her time and energies. The depositions I have read do not seem to indicate that this was a problem in her mind. I cannot conclude whether it was or was not. However, my experience as a practitioner and my knowledge of other colleagues who have run for judgeships suggest that it is a time consuming process and may have had an effect on her time availability for clients.

All of the opinions I have set forth herein are based upon a reasonable degree of professional certainty. I trust that the contents of this letter are sufficient to assist you in your case. Should you wish to discuss this further, please feel free to contact me.

Sincerely,


H. Grady Brown

/jal

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

Defendants.

**PLAINTIFF'S SECOND
SUPPLEMENTAL RESPONSE TO
DEFENDANTS' POTTERFIELD,
TAYLOR AND
POTTERFIELD/TAYLOR'S FIRST SET
OF INTERROGATORIES TO PLAINTIFF**

TO: CHARLES E. HILL, ESQUIRE, ATTORNEYS FOR DEFENDANTS TAYLOR,
POTTERFIELD AND TAYLOR / POTTERFIELD:

Plaintiff, Carolyn Mitchell Powell (hereafter "Plaintiff"), hereby supplements her responses to Defendants Taylor, Potterfield and Taylor / Potterfield's First Set of Interrogatories as follows:

INTERROGATORIES

4. List the names, addresses and telephone numbers of any expert witnesses whom the plaintiffs propose to use as a witness at the trial of the case, and for each state in detail:
 - (a) his/her qualifications to testify;
 - (b) a description of the subject matter on which each such expert is expected to testify;
 - (c) a description of the facts on which each such expert is expected to rely in

testifying;

- (d) a description of the opinions and conclusions about which each such expert is expected to testify;
- (e) a summary of the grounds for each such opinion and conclusion;
- (f) whether said expert has conducted any investigation, inspection, and/or interviews in connection with the issues involved with this suit, and, if so, the nature of each such investigation, inspection, and/or interviews, the results of same and the dates on which such work was performed;
- (g) whether or not said expert has personally interviewed any plaintiff. If so, provide the dates of the interview(s) and any memoranda created by the expert in connection with the interview(s);
- (h) whether said expert has generated a written report, and if so, would you, without a motion to produce, attach a copy of the report to your responses; and,
- (i) as to each, list all treatises, books, documents and recognized authorities which such experts plan to utilize or cite in support of their position.

SUPPLEMENTAL RESPONSE:

H. Grady Brown, JD
LAW OFFICES OF H. GRADY BROWN, PA
615 Prince Street
Beaufort SC 29902

- (a) His license to practice law and his years of experience in Family Court matters;
- (b) Whether Defendants met the standard of care in their representation of

Plaintiff in the underlying case, whether any deviation by Defendants caused damages to Plaintiff, and to a limited degree, the types of damages caused by Defendants' deviations in the standard of care;

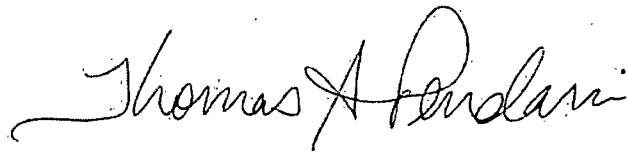
- (c) The facts regarding the underlying case as reflected in the documents, transcripts, court papers and other documents available from the underlying matter, deposition testimony taken in this case;
- (d) Defendants failed to meet the standard of care in their representation of Plaintiff in the underlying case; that deviation from the standard of care by Defendants caused damages to Plaintiff; and Defendants' deviations in the standard of care caused Plaintiff to accept and agree to a settlement with her former husband in the underlying matter on financial terms far less than she otherwise would have accepted or otherwise would have been available had Defendants satisfied their duties in their representation of Plaintiff;
- (e) The grounds for Mr. Brown's opinions are based on facts regarding the underlying case as reflected in the documents, transcripts, court papers and other documents available from the underlying matter, deposition testimony taken in this case so far, and his experience in handling cases in the Family Court;
- (f) Yes, Mr. Brown has reviewed documents available from the underlying case and transcripts of the depositions taken in this case beginning in November 2010 continuing to the present as additional transcripts are obtained;
- (g) Mr. Brown has not personally interviewed Plaintiff, but may do so as part of further developing his expert opinion;

- (h) Yes - see document attached with a Bates range of Brown00001-00007;
and,
- (l) Mr. Brown has not provided or identified any treatises, books, documents
and recognized authorities, if any, which he may use or plans to utilize or cite
in support of his opinion.

SECOND SUPPLEMENTAL RESPONSE:

- (l) See document attached with a Bates range of Brown00008-Brown00048.

PENDARVIS LAW OFFICES, P.C.



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Attorneys for Plaintiff

November 21, 2011

Beaufort, South Carolina

DIVORCE AND SEPARATION

A Guide for Clients

**By
H. Grady Brown**

H. Grady Brown

Mr. Brown is a family law trial advocate. His practice consists primarily of handling family law matters in South Carolina

He has been practicing family law in the South Carolina Lowcountry since 1979. He has been a partner in the former Dowling Law Firm and Harvey and Battey in Beaufort, South Carolina.

He was a founder of the Sea Island Mediation Network and was an officer of the Beaufort County Bar Association. He is a member of the South Carolina Trial Lawyers Association and the Family Law Section of the South Carolina Bar and American Bar Association.

He is a 1976 graduate of Clemson University and received his law degree from the St. Louis University School of Law in 1979.

Mr. Brown has been listed in the National Registry of *Who's Who*. He has been practicing as a solo practitioner since 2002.

He practices throughout the South Carolina Lowcountry and can be reached either by phone at (843) 379-3900, by fax (843) 379-3901, or by e-mail at gradybrown@hargray.com.

WARNING

This information is not a substitute for a lawyer.

Do not try to use this information as a do-it-yourself divorce guide.

**The information contained herein may not be appropriate
for your particular situation.**

**If you attempt to use this information instead of hiring a lawyer,
you are setting yourself up for a
potential disaster of epic proportions.**

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DIVORCE

Divorce is a part of life in this country. A divorce may be necessary to clear away a problem that blocks you from leading a better life. Divorce is not pleasant. Some divorces are more unpleasant than others.

This booklet describes many things; some will apply in your case and some will not. However, knowing those that apply to your case will help you avoid some problems and better deal with others. This booklet does not and cannot cover all of the issues, laws, or rules involved. Divorce law is always subject to amendment by the legislature, reinterpretation by the courts, different application by different judges, and factual variation from case to case.

PRENUPTIAL OR ANTENUPTIAL AGREEMENT

Prenuptial and antenuptial (not *anti* although it seems that way) agreements are the same thing. They are different names for a document that sets out the terms that will apply to the dissolution of a marriage when there is a death or divorce. It is an agreement which is entered into before the marriage. If you signed one of these prior to your marriage, let me know. That document should control the terms of the dissolution of the marriage. The law has changed several times in this area and there are some technical requirements and loopholes, so it is important that we examine any premarital agreements.

GROUND

In order to obtain a divorce in South Carolina the party requesting it must prove he or she has grounds for it. There are only four grounds recognized by the South Carolina legislature: 1.) Adultery, 2.) Physical (not mental) abuse, 3.) Drug or alcohol abuse, and 4.) One years continuous living apart.

A traditional contested divorce is a case in which the parties cannot agree and must go to trial. An uncontested divorce is a case in which the parties have reached an agreement or a settlement of all issues. Usually, the agreement is put into writing and is adopted by the court in a final decree of divorce.

If you are filing for divorce, you must have your grounds before you file. If you cannot prove your grounds for divorce by clear and convincing evidence and with corroboration, you will not be awarded a divorce. Pending the final divorce, you should not do anything to give your spouse any grounds for divorce because it can probably be used against you.

A common defense to the grounds for divorce is:

Condonation- knowing what your spouse did wrong but forgiving him or her anyway; this is usually proven by showing that you and your spouse had sexual relations after you found out what your spouse did.

A final hearing to obtain the divorce cannot be held for a period of 90 days after the lawsuit requesting the divorce has been filed.

LEGAL SEPARATION

A legal separation is technically called a Decree of Separate Support and Maintenance. You are still married (you cannot date). This remedy must be used if you do not have grounds for divorce. If you are not ready for a divorce but you want to talk things over with someone, I recommend counseling; and I will be glad to recommend some counselors. Do not use a "trial separation" as a substitute for effective marriage counseling. If you want the marriage to work, you will probably need counseling. If you do not want a divorce, counseling is a good way to avoid it or prepare you if you must go through with it.

ANNULMENT

Annulments are granted by the court only in certain rare cases. The legal effect is to void a marriage from the very beginning – as if the parties had never married.

RESIDENCE AND VENUE

Prior to filing your action for divorce, you must have resided in South Carolina for (1) one year. There is no residency requirement for a separation.

Some people wish to get divorced in another county; you can if both parties agree to it. One disadvantage is that if anything goes wrong- and there is much that can go

wrong (alimony or support does not get paid, visitation is not working, property was not transferred)- it is more expensive and complicated to straighten problems out if the divorce was granted in another county. Proper venue is generally in the county where you and your spouse last resided together as husband and wife.

FILING

There may be tactical advantages for the person who files first. The legal document that starts the proceeding is the **Complaint**. It covers certain technical matters and asks the court for the relief you want. It must be served on the other spouse.

If you and your spouse cannot agree on something (support, visitation, property division, attorney's fees, court costs, maiden name restored), then you must ask the court for it in the complaint or the court cannot give it to you. Think of it as a wish list. If the wording seems strange, remember that it is a formal legal document and much of the wording is required by law. If your spouse has already filed, be sure that your lawyer has a copy of your spouses' complaint as soon as possible. A response to the complaint must be served within 30 days.

The person who files the complaint is the **plaintiff**. The other person is the **defendant** and that person must respond to the complaint in a formal document known as an **answer**. The defendant may also want to ask for specific relief from the court. To do so the defendant files a **Counter-complaint** and the plaintiff has 30 days to reply to it.

DISCOVERY

Discovery is that part of the case in which both sides exchange information with the other side and can include written questions, known as **Interrogatories**, or request for documents, known as **Request for Production of Documents**, or face-to-face questions before a court reporter, known as a **Deposition**. Interrogatories and Request for Production of Documents must be responded to truthfully and the responses served before thirty (30) days. You will be required to help prepare responses. It will take us some time to prepare your responses so you have to get them back to us well within thirty (30) days. **Request for Admissions** are a list of specific facts you are requested to admit or deny. If you fail to deny a fact within thirty (30) days, it is deemed admitted.

SEPARATION AND RECONCILIATION

The legal requirement for separation before filing for a divorce requires proof of physical separation (not sleeping under the same roof) and a lack of physical relations. Renewing physical relations may destroy your grounds for divorce and would provide your spouse with the defense of condonation. Reconciliation after a divorce may have tax consequences you need to explore. However, I encourage reconciliation. If you and your spouse get back together, you only owe me for the services that you have used to that point. Physical Separation is required before an action for a separation is commenced. Physical separation is not required if a divorce is requested when fault grounds are alleged.

DOMESTIC VIOLENCE AND ABUSE

Violence within the family (domestic violence) is much more common than many of us believe. Each year, this occurs in 3 to 4 million families. Divorces often bring on an increase in such violence; 50 percent of serious assaults occur at or after the point of separation or divorce.

If there has been any violence in your family, we need to talk about that before anything is filed in court. Together we need to determine whether an injunction or protective order is needed, to protect you or your children from future violence. Many spouses will simply stay away if such an order has been issued. Even if your spouse will not obey the order, it will help the police to physically remove your spouse if you can show the order to them. If you need to go into any sort of "safe house" to protect yourself or your children from violence, tell me about this before you do so.

If there are allegations about your committing domestic abuse toward your spouse or children during the marriage, you need to tell me about it so that I can be prepared to deal with that issue. There is a good likelihood that your spouse will parade these allegations before the court. If you are innocent we need to organize our proof to defend you. If this happened there may be an explanation about why things happened, such as your spouse was hitting you and you defended yourself. If you committed abuse you will need to get counseling and stop the abuse.

Child abuse is disgusting. It is often an example of the weak being victimized by the strong. A false allegation of child abuse is just as disgusting. Both do damage that can continue through a family for generations.

Abuse can be clear cut or questionable. In some cases one person's abuse is another person's discipline. Some experts, such as a psychologist, can be helpful while some can make the problem worse.

If the police come you must be calm. Even if you called the police they may arrest the person they consider to be the "aggressor." If you are yelling or trying to get at your spouse then the police will be more likely to see you as the aggressor. Yelling at the police increases your likelihood of being arrested even more.

INJUNCTIONS AND PROTECTIVE ORDERS

Injunctions and protective orders are orders of the court that are issued to prevent harm pending future hearings. If you are afraid that your spouse will beat you, take your money out of the bank, or run off with your children, the court can enjoin or prohibit these things by issuing an injunction. The court may require a hearing before deciding on the need for an injunction.

The standard injunction provides as follows:

(1) Transferring, assigning, borrowing against, concealing or in any way dissipating or disposing, without the consent of the other party or an order of the court, of any marital property.

(2) Harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other and from making disparaging remarks about the other to or in the presence of any children of the parties.

(3) PARENTS MUST NOT:

- Expose the child(ren) to violent conduct.
- Expose the child(ren) to a non-spouse romantic companion over night or under circumstances that are immoral or illegal (see SC 16-15-80)
- Expose the child(ren) to any non-spouse romantic companion
- Expose the child(ren) to the use or possession of alcohol, drugs, or other intoxicants.
- Remove the child(ren) from SC.

- Make of allow disparaging comments about the other parent or his/her family in the presence of the child(ren)
- Use or allow the use of vulgar, profane, demeaning or violent language in the presence of the child(ren).
- Discuss the case in the presence of the child(ren).

If you disobey a restraining order or a protective order, the court can put you in jail. Even if the judge does not put you in jail, you can be fined and the judge may have a hard time trusting you later when you testify. The police do not want to get involved in problems between spouses; but they have to act if you have a protective order. If you are under a Restraining Order or Protective Order you must **follow the order**. Failure to follow the order can result in your being put in jail.

If you are under a Restraining Order or a Protective Order, you may be the same as a felon as far as the Federal Firearms Act is concerned. Being a felon, receiving or possessing a firearm is a serious federal crime. If you have guns and are under a protective order, get them out of your possession and do not acquire any while the order is in effect.

A protective order deals with domestic violence and is stronger than a Restraining Order, but you need a more complex and expensive legal process to get a protective order. If you need protection, I will get you a Restraining Order. However, if you feel you need the extra protection of a protective order, ask me about it.

You must obey protective orders and restraining orders, even if your spouse tells you it is all right to ignore the order. That spouse may be setting you up for a trap. You must obey the order until the court modifies or vacates the order.

CONTEMPT

Contempt is the willful disobedience of a valid court order and must be established by clear and convincing evidence. In some cases it may be difficult to get your ex-spouse to comply with the court's orders. I recommend that you try to work out small differences yourself. The bigger problems, however, need to be brought to my attention. For example, if your ex-spouse does not pay child support or refuses to give visitation as ordered, there are a number of steps we can take to force compliance. One possible step would be to ask the court to find your ex-spouse in contempt. Contempt findings

can ultimately lead to jail time if the judge believes that your ex-spouse is intentionally refusing to comply with a lawful court order.

Another possibility would be an income assignment order. You may be able to get an order that will take the child support directly out of your ex-spouse's pay and require the employer to pay it to the court clerk. (It will show up as a deduction on the employee's paystub). The clerk will then pay this money over to you. Catching up on delinquent support gets more and more difficult the further behind the payor gets. Therefore, if you are not receiving child support that you should, you ought to take steps to enforce the support before it gets too far behind.

PROPERTY DIVISION

It is critical you tell me all you know about all the assets acquired during the marriage (known as "marital property"). The more I know, the more I may be able to get for you. In South Carolina, a statute covers property division.

Property includes real estate, and personal property, (both tangible and intangible). Property can include houses, pensions, businesses, coin collections- almost anything. First, you must find and value the property (equity in the house, value of pensions, value of antique furniture). Next, you must determine whether the particular piece of property is separate property and remains with the person who owned it (known as "non-marital property"). Separate property is usually acquired before the marriage or outside the marriage, such as by gift or inheritance. Marital property is usually acquired during the marriage. Marital property can include increases in separate property that occurs during the marriage if your spouse contributed to its appreciation or preservation even if only indirectly.

To determine who gets what marital property, the court will consider:

Length of marriage;

Age, health, skills, and abilities of the parties;

Relative ability of the parties to acquire property in the future;

Contribution to the value of the marital property or the separate property;

Amount of separate property owned by each spouse;

Premarital property;

Financial conditions of each party;

Tax consequences;

Marital misconduct;

Value of marital property and any liens;

Child custody arrangements and support obligations (child and spousal)

and

Other factors that the court considers appropriate.

Title to assets is not important. What matters most is when each asset was acquired. Most marital assets are divided equally between spouses, unless special circumstances, such as adultery, justify an unequal division.

If you and your spouse can agree on how things will be divided, and if your agreement is reasonable, it will usually be approved by the court. If you cannot agree, the court will divide the property.

Do not hide assets. These assets are usually found; and if they are found, you will look like a crook to the court. The judge will have trouble believing what you say about anything after that, but the judge will have less trouble assessing attorney's fees against you for your behavior.

Sometimes there are important tax issues to consider. Transfer of property (such as a bank account) from spouse to spouse during a divorce is usually not taxable, but transfer of income (for example, interest) from an asset can be taxable. Be careful about capital gains.

Under the right circumstances, the sale of a house by a couple can have an untaxed capital gain of Five Hundred Thousand (\$500,000.00) Dollars or an individual can get half that. This may effect your decision to sell your home before the divorce (as a couple) or after the divorce (as an individual). See the taxes section below *and* talk to your tax advisor.

DEBTS

Debts are the other side of assets and must be dealt with in a divorce. If you cannot agree, then the court will generally consider several factors in dividing debt obligations. Those factors can include:

- Who made the original debt?
- For what purpose was the debt made?
- Who received the benefit of the debt proceeds?
- Who will receive as a part of the division of marital assets the particular asset (if any) connected with the debt?
- Who is better able to pay the debt?

Despite an agreement for one spouse to pay a debt that is in both parties' names, there can still be problems with the debt. If the party responsible for the debt does not pay the debt, the other party can still be sued for the debt by the creditor.

For example, the wife gets the house and the husband agrees to pay the mortgage, which is in both names. The husband dies or goes bankrupt. The mortgage company can foreclose on the house if the payments go unpaid and sue the wife for any unpaid balance after foreclosure. The best way to protect the wife in this case would be for the husband to refinance the property and to remove the wife from the debt if possible. Sometimes this is financially impossible for large debts such as houses, but can still be done with smaller debts such as second mortgages and car notes. It may be necessary to sell certain assets so the debt can be satisfied.

CREDIT

Close joint accounts and notify the banks, charge cards, and others by a certified, return receipt letter that you are no longer responsible for your spouse's expenses. You may want the company to reopen an account in your own name. This is a good time to request it.

At the bank you may want to divide joint accounts or put them in your name. If you do this before a ruling by the court, it will make the judge angry with you, but it is often easier to *give* money back than to *get* it back. If you are the breadwinner, do not put your

dependent spouse or children out in the cold without money to get by on. This will aggravate the judge, who will make you pay anyway.

Do not cut off the utilities on your spouse and children. Leaving your spouse and children home without heat or light in December seldom sits well with the judge.

Some people get into a lot of debt shortly before their marriage falls apart. If you have a lot of debt, you need to take steps to correct this problem as soon as possible. There will be less money to go around after you and your spouse separate because you will be supporting two households on the income that previously only had to pay for one.

During your marriage, most of your debts were probably incurred for the benefit of the family. That means that both of you are responsible for the repayment of the debt. When your divorce is finalized either through a settlement agreement or a court hearing, the court will make orders concerning who is to pay what debt. If your ex-spouse does not make the required payments, you can usually take your ex-spouse back into court, but you cannot stop the creditor from trying to collect from you. Your creditors are not parties to your divorce, so the order requiring your spouse to pay off the joint debt will not bind them. They agreed to loan money because you and your spouse **both** agreed in a signed contract that said you **both** will pay the money back. This means you can have a real problem if your spouse is financially irresponsible. If your debts are not too high, some creditors may be willing to refinance loans so that only one spouse is responsible for repayment.

If there is any reason why your spouse may be considering bankruptcy, you need to discuss this with me so that we can take steps to try to protect you in the event that happens.

LIFE INSURANCE

The cash value in life insurance may be marital property. If you are receiving alimony or child support, you may want life insurance on the payor to insure the payment, should the payor die.

It may be appropriate to require life insurance on the life of the spouse paying alimony or child support. The court must have evidence that this is necessary, such as proof the paying spouse may have a dangerous job or has a history of non-payment. It would also need to be shown that the paying spouse is able to obtain the insurance by considering age and ability to pay.

BANKRUPTCY

Filing bankruptcy may relieve a debtor of many debts, but the responsibilities of paying court awarded alimony and child support remain. However, if you get a notice or have actual knowledge that your spouse has filed for bankruptcy, contact your lawyer immediately. Although I do not handle bankruptcy matters, I can recommend a lawyer who specializes in bankruptcy.

TAXES

The *general* rules outlined in the next few paragraphs are intended to alert you to issues and provide some general information. Before you sign any tax return or take any action with respect to your federal or state income returns, please review your situation with your tax advisor; that is not me. I am a lawyer, not a C.P.A.

Subject to many qualifications, alimony paid in cash is deductible to the party paying it and taxable to the party receiving it. Child support is not deductible to the party paying it or taxable to the party receiving it.

If you receive alimony you may need to make estimated quarterly tax payments. If you are employed you need to tell your employer about the divorce so they can change your tax filing status which will increase your withholding.

Unless specifically addressed in your Decree, generally the custodial parent will be entitled to claim the dependency exemption for your children on his or her income tax return. The custodial parent may agree to execute I.R.S. Form 8332, releasing the dependency exemption to the noncustodial parent. This may be done as an annual election.

Generally, there is no tax gain or loss recognized as a result of the division of property between spouses upon divorce. Thus, there may be no tax incurred by dividing the property.

It is important to know the basis of the property that you receive in the division of your assets. The basis is generally the cost of acquiring, and in some cases developing, a capital asset. If the asset has appreciated, the person who receives that asset will be responsible for tax on the appreciation when the asset is sold. Depreciation is deducting a portion of the basis of an asset. If an asset has been depreciated to a low basis, the

sale of that asset can have very adverse tax consequences. This commonly occurs with rental property and business equipment.

If your Decree provides that you and your former spouse will sell your jointly owned residence, you will each be responsible for reporting your portion of any capital gain. Capital gain is the profit resulting from the sale of capital investments, such as the marital real estate. Under new tax law there is a Five Hundred Thousand (\$500,000.00) Dollar exemption for capital gains for the sale of a home by a couple or Two Hundred Fifty Thousand (\$250,000.00) Dollars exemption for any single person. If you are going to sell your home, make sure you consult your tax advisor to see if you qualify for this exemption. You are no longer required to buy another property to avoid gain on a home sale.

Beware of signing joint tax returns with your ex-spouse-to-be. Although your agreement may provide for your ex-spouse-to-be to be responsible for any tax liability, the IRS can turn to you. By the time the IRS does the audit, your ex-spouse may be bankrupt or dead and you may be the only one left to pay the taxes.

If you have moved you need to file Form 8822 to notify the I.R.S. that you moved. Without that, the I.R.S. can send notices to your old address and you may not receive the notices, but the I.R.S. can hold you responsible for any missed deadlines.

The impact of taxes can make a great difference in divorce. I am not a tax lawyer. While I know some things about taxes and divorce, I am not a tax expert by any means. If you need tax advice, we must associate a tax lawyer or a certified public accountant in your case. They are qualified to do tax planning.

ALIMONY

The purpose of alimony is to provide financial assistance to a spouse (not a child). There are several types of alimony. Most people are aware of permanent periodic alimony. This type is paid until you or your spouse dies or the receiving spouse remarries. Permanent periodic alimony can be raised or lowered over time if there is a change of circumstances. If you waive alimony at the time of the divorce, you cannot get alimony later on. Also, this type of alimony can be modified. Technically, husbands can get alimony from wives, but it seldom happens. In South Carolina, a statute applies to alimony.

Alimony is based upon the relative needs and resources of the parties. The legislature set out criteria for the court to consider and they include the following:

Relative earning capacity, needs and obligations, this includes income from pension, profit sharing and all sources;

Education and ability of the parties, as well as opportunities for additional education;

Length of the marriage;

Age, physical, and mental condition of the two parties;

Whether or not one of the parties should stay at home with the child(ren) of the parties instead of working;

Separate property a person has;

Marital property a person gets;

Standard of living the parties enjoyed during the marriage;

Tangible and intangible contributions of a homemaker and the tangible and intangible contributions of one party to the education, training, or increased earning power of the other party;

Fault of one of the parties;

Support obligation of a prior marriage;

Tax consequences;

Other factors that the court considers appropriate.

There are other types of alimony. These include: 1.) lump sum alimony. This is a fixed amount and may be paid out over time, and 2.) rehabilitative alimony. This is alimony for a fixed amount of time in order to allow the receiving spouse to be financially rehabilitated, such as by additional education or training. These types of alimony are generally not modifiable.

Living with someone after the divorce for more than ninety days, may cause alimony to be lowered or stopped. The court can require life insurance as a bond or put a lien on property to ensure the payment of alimony or child support.

MEDICAL INSURANCE

If you cover your spouse or children on your health insurance, do not drop them from the policy at least until the divorce is final. You are probably responsible for their medical bills until then anyway. Even after the divorce, you or your spouse may be required to keep the children covered. If you are paying child support, a large unexpected medical expense for the child could have an effect on the amount of child support ordered. The cost of health insurance for your children is factored into the calculation of child support. The uninsured health expenses for your children will be generally paid in proportion to your incomes.

Pursuant to COBRA federal legislation, nonemployee/spouses may be eligible after the divorce is final for certain insurance coverage at group rates. The insurance can continue up to 36 months, depending on your situation and the premiums should not exceed 105% of the current group rate. However, you must apply for this within **60 days** of the date that the dissolution was final. **Only** if you file within that time period will you be eligible for COBRA coverage. Please check with your former spouse or through their employer immediately, as federal statutes and deadlines may change.

CHILDREN

The following advice about children is based on my experience and reading. I am not a psychologist. Realize that your situation is unique and that this advice is general.

If you have children, the divorce can be as difficult for them as it is for you. Children will normally feel fear, confusion, guilt, depression, anger, and other emotions. Although you will be feeling these emotions too, you have a lifetime of experience to help you. The children have two parents. Generally, they look up to their parents and find security. Now those parents seem to be a source of stress rather than of reassurance.

The loss of their family is often worse for the children than the parents. Even infants are affected by parental conflict. They may not understand what their parents are arguing about but they understand the emotional intensity of the conflict. It is not uncommon to see infants or toddlers withdrawn and regress in their development.

You need to take steps to ease the burden on your children. Part of this involves how you tell them about the divorce and what you say about your spouse. It is usually better if both parents together tell the children about the divorce. Do not dump your bad feelings about your spouse on your children. Simply tell them that the grown-ups have

decided it is better to live apart. Tell the children that the divorce is not their fault and that they will still have both parents. Avoid talking badly about the other parent, if there is any possible way to do so. A child is made from both parents. If they are forced to look upon a parent as bad, they cannot help but feel badly about part of themselves. Also, the judges do not like it. Tell the children it is all right to love both parents. Never get mad and compare your child to the other parent. "You are just as bad as your no good mother/father" are not words a child needs to hear.

I have watched this dynamic play out many times over the years. I insist that you refuse to talk bad about your spouse to your children, although you may have more than sufficient reason to do so. You also must refuse to let your children talk bad about the other parent. Advise children that even if you don't like what your spouse does the child must love both parents. Love your children and give them the time and attention they need. They return this feeling. Take the high road; it is a better trip for you and the children.

Depending on your circumstances, you may also want to alert your children's counselors and teachers to the family change so that they can be on the lookout for behavior changes. Counseling can help many children as they adapt to life after their parents separate. I will be glad to recommend a counselor if you want one.

Try to work with your spouse about the children. Many parents stand together on issues involving the children even though they are separating in a divorce. Do not let the children play the parents off against each other. Children do this. Attempting to play one parent off against the other is normal for a child. Falling for it as a parent is not. Parents in divorce can even encourage this behavior. Do not use the children as your counselor. The children are not equipped for this and it will devastate them. At best, they can only give you childish advice. This will be better for you and your children. I will be glad to recommend a counselor if you want one.

If you are in a relationship with a new person, do not introduce your children to this person until after the divorce and after they have adjusted to the separation. If the divorce is pending, then you may have made your children witnesses to your adultery.

Discuss support and property division with your spouse, not your children. **Do not use the children as messengers or spies.** Do not recruit your child into the divorce war. Make a special effort to spend time with your children during this difficult time. Give them your full attention. Reassure them that both parents love them, even if you do not believe it. **Give them extra love, attention, and understanding now- they need it.** Although it is your divorce, the children's needs come before yours.

CUSTODY

Disagreement over custody is almost guaranteed to put you right in the middle of a bitterly contested and expensive divorce. Custody cases are the most destructive litigation. Be sure that the children would be significantly better off with you than the other parent before you get involved in a custody fight. Custody cases are expensive in both emotional cost and in legal cost. The damage caused by winning a custody case is great; the damage caused by losing is terrifying. Children belong to both parents until a court has awarded custody. I do not recommend snatching a child from the other parent. You should get court approval first.

Joint custody will usually be approved by the court if the parties mutually agree. The primary custodian is the one the child primarily lives with and has final decisions on issues such as school, medical care, and other issues. By agreement one parent can be responsible for some areas and the other parent can be responsible for other areas. Joint custody is rarely awarded in contested cases. Typically the court will award sole custody to one parent and visitation to the other in a contested case.

The legal standard in deciding who will get custody is what is in the best interest of the children. Every judge sees it differently. If the judge's father abandoned his family and the judge's mother slaved day and night to help her son through law school, then the judge will have a hard time understanding why a father should have custody. Some judges are more moderate, but the father is usually at a disadvantage. If the court takes custody away from the mother, it usually has a good reason.

If there is custody litigation, you must be able to show the judge that the child is better off with you. Photographs of you and your child having a good time doing things together is useful evidence. It is good to subscribe to publications such as *Parents* magazine. Buy some books about children, parenting, and getting children through divorce. Attend seminars and keep the brochures and literature. Do these things for your child and yourself, not just to impress the judge.

If you have been the primary caretaker of the children, take the children with you if you move out. Continuity of placement is a factor for the court. If the other parent does not object and the children do well in your custody, it works to your favor. Stay close to your children. Make sure you use your visitation time with them for their enjoyment and development. Take them to interesting places like museums, parades, church, and appropriate movies. Have someone (not boyfriend or girlfriend) take pictures to show the court. Be involved in their school. Get and send me copies of report cards, tests, and anything else you get from the school. Keep a calendar or journal of significant

events. You will forget details over time if you do not have a record. Be careful what you write. Often these documents turn up in court and the other side will cast the worse possible light on anything you write. This is not where you vent your anger at your spouse. Do not resort to drugs, alcohol, or violence. There are specific statutes that say the judge must count this against you. Your soon to be ex-spouse will reveal any alcohol or drug incidents to the court. It is also bad for you and your children.

If the litigation gets very bitter, the court may threaten to place the children with someone other than the parent. However, the parents must be shown to be unfit before the children will be given to someone else.

The children may need their own lawyer. This is a Guardian Ad Litem. The Guardian Ad Litem is appointed by the court to look into the best interest of the children. This will add significantly to the cost of your case.

Custody is never "set in stone". It can be modified in the future if there have been substantial changes in circumstances effecting the best interest of the children.

VISITATION

If the mother and father can agree on visitation, the court will usually approve the plan. The best plans usually maximize the parent's time with the children. You need to consider everyone's schedule, school time, outside activities, sports, church, vacation, and the fact that as the children become teenagers they will have a life of their own and will usually prefer to be with their friends rather than either parent. A typical pattern is alternating weekends, a few weeks in the summer, and alternating holidays. If the parties live far apart, this pattern will not work. The pattern then calls for fewer but longer visitation periods when the children are not in school. If the parties live far apart, you must deal with who will provide or pay for transportation.

Sometimes when parents fight about visitation, they are really upset about something else that they do not believe they can fight about. It may be because they feel angry at the other spouse for leaving. But for whatever reason, they are involved in an argument about the children. It can be the custodial parent wanting to restrict the other's visitation. This is normally not a good idea, because when the custodial parents says to the other, "I don't want you to visit at this time," that immediately becomes the time that the other parent wants to visit with the child.

In some cases the problem is that that custodial parent wants the noncustodial parent to visit and they will not do it. You cannot force court ordered visitation.

Remember in the back of your mind that they are a free babysitter. Also, you might remember that the noncustodial parent who visits regularly tends to be a parent who pays support regularly.

Even if your situation is that the noncustodial parent is a jerk, and you do not think it is the best thing in the world for the kids to be around the jerk, you still need to encourage visitation. Withholding visitation may result in being held in contempt or possibly losing custody.

Like custody, visitation schedules may be modified in the future upon a showing of a change of circumstances.

RELOCATION

Moving the child away has caused a great deal of litigation and conflicting rulings. Getting away from the other parent so that a parent cannot visit is not a good reason. Being transferred by your company in a "move or lose your job" situation is usually a good reason. If the noncustodial parent is actually spending substantially equal intervals of time with the child or has a joint custody arrangement then the court will require a stronger reason to move than if the relationship is not as significant.

PARENTAL KIDNAPPING

Parental kidnapping is an issue that has received a lot of attention in the media. As a result of this publicity, legislation has been passed in every state and by the federal government trying to stop this ugly situation. If you are unhappy with a court ruling on custody or visitation, do **not** take the law into your own hands by taking or keeping your children in violation of a court order. Sooner or later, you will be caught. And when you are, the judge will not be pleased.

Many parents who kidnap their children lose their custody and/or visitation rights for a period of time. Some go to jail, which also hampers visitation. The kidnapping parent can be limited to supervised visitation- which means the children can only visit that parent while under the supervision of an agency or other person that the court trusts- with the visiting parent usually required to pay a fee to the supervisor who keeps an eye on that parent. You do not want this.

If your children have been taken or held by their other parent in violation of a court order or against your will in the absence of any court order, you need to get legal help right away. There are many ways to track down kidnapping parents, and it is usually easier to find them when the trail is still fresh.

CHILD SUPPORT

Child support relates to financial assistance for maintenance of children. It is paid to the custodial parent by the non-custodial parent. In arriving at a fair amount of child support, you should (and in the event of a contested trial, the court will) consider the needs of the children and the financial assets, earnings, and needs of each parent. In South Carolina, we use the Child Support Guidelines to calculate the amount of support to be paid. It is essentially a formula.

Both parents have a duty to support their children. The guidelines establish the percentage each parent should pay based upon the incomes of the parents.

The formula also takes into consideration the cost for insurance and/or daycare for the children. The court can order the noncustodian to pay child support and provide such things as life or health insurance. The court can also order the support to be deducted from the payor's paycheck. The law currently places a lot of pressure on the court to payroll deduction.

The court can require support of a normal child only until the age of eighteen or until the child graduates high school, but no later than the child's 19th birthday. You can provide for college by agreement, or the court can order it if certain requirements are met and the cost to attend is known. South Carolina does not require a parent to put a child through college. If you have a child with a mental or physical disability, be sure to let me know, as it may be possible to have support continue after an impaired child turns eighteen. If the children's needs or the parent's ability to pay support substantially and materially changes, then child support can be raised or lowered.

RECORDS

It is very important that you keep records of payments you make or receive for alimony and child support. If you are paying, pay by check and keep all canceled checks. Never pay with cash. If you must do so, be sure to get a signed receipt. If you cannot prove you paid it, you might as well have not paid it. If you are receiving payments, keep a running account in a permanent place. If you cannot prove what you did get, the court might not believe you when you testify about what you did not get. It is

easier for both parties to have payments deducted from the paycheck of the person who is paying.

Also keep a diary of other relevant events. By writing down incidents which occur, statements made, witnesses to events or questions you may have, you will not rely solely on your memory.

TEMPORARY RELIEF

(Pendente Lite)

"Pendente lite" is Latin for "pending the litigation." There are things you may need for the court to do pending the final trial. The court, upon request, can set a hearing to determine the needs and the abilities of the parties and children, order support accordingly, and divide assets and debts temporarily. This award is subject to rehearing at the final trial. The court can also order custody or specific visitation pending the final trial.

The temporary hearing can usually be held within thirty days of filing. The hearing is usually only 15 minutes. There is no live testimony. The court receives evidence by way of sworn affidavits and financial statements.

CHANGE OF WIFE'S NAME

In South Carolina, a woman may go back to using her maiden name at any time. However, sometimes it is hard to convince the Social Security Administration that she has legally returned to her maiden name. A woman can have the court order the restoration of her maiden name in the final decree, even if she is not the plaintiff. I suggest that you go back to your maiden name only when there are no children, or go back to a former married name when there are children of that former marriage. If you want to do this, let me know.

TELEPHONE

All too often people use the telephone not to communicate but to destroy communication. The angry spouse may call to scream insults or make hang-up calls.

The first case is the easiest to deal with- hang up. If you choose to stay on the telephone and to listen to the rude jerk that called, then you have made a bad choice. You can change that choice by simply hanging up; the sooner the better.

Get an answering machine. The machine will screen your calls, and you can return the calls of the people you want to talk to. If the jerk calls and curses at you over the machine, we can bring that tape to court for the judge to hear.

The telephone company offers services that may be very worthwhile to you at this time, including the following:

Caller identification- At a glance you can see who calls even before you pick up.

Call tracing- This traces calls so we can prove to the court who made the call.

Call block- This locks out calls from certain numbers. You can block out your ex-spouse-to-be and many of your ex-in-laws-to be.

If the other side is abusing you with the telephone keep a calendar with the calls documented by date, time, and number. You have the legal right to record phone calls that you are a party to.

AIDS AND OTHER MEDICAL ISSUES

I recommend you have a **complete physical examination as soon as possible**. As a result of such an examination, you may discover you have a medical condition that would normally not have been diagnosed and could be fatal if it is not treated. If you have cancer or other medical problems, it can dramatically affect your case.

Your examination should include an HIV test. If you suspect your spouse may have been exposed to AIDS virus or a sexually transmitted disease, you **must** have yourself tested. Your exposure is not only to your spouse but also to everyone who had sex with anyone who had sex with your spouse. The most frequent avenue of exposure is sexual contact. However, that is not the only means of contracting AIDS; exposure to blood is also a risk. Therefore, spouses of physicians, dentists, undertakers, or any medical workers have a special concern. Consult your physician and let us know the results of any tests.

DATING

Do not date. You are married. Your spouse can use it against you. If you are divorced, moving in with your lover could cause problems with custody, visitation, or alimony. If you do date, be prepared to face the problems that may arise. Tell me about it, because if I am surprised by it in court, it will hurt your case. If you date, do not throw it in your spouse's face. This will make bad feelings worse and is proof against you at trial (confession). Avoid dating at social events your spouse will be at. Really avoid having your picture taken. You never know if a private investigator is watching you.

Do Not Lie About Dating. Although Judges do not like people "fooling around," they are not usually too angry when they hear about it. Judges are much more likely to get mad if they are being lied to. Lying under oath can result in your going to jail for contempt of court or the crime of perjury.

SNOOPING

The Omnibus Crime Control and Safe Street Act of 1968 makes it a federal crime and a civil tort for anyone to listen in on a telephone conversation or to record any conversation if they are not a party to that conversation or do not have permission from someone who is a party. Such recordings are not admissible as evidence. If you record your spouse's conversation with his or her "lover," you cannot use that tape in court and you could end up in a federal prison.

It is lawful for a person to record a telephone conversation or other conversations in which you or one of the parties to the communication has given prior consent to record it. Your spouse can tape the conversation between you and your spouse then ask you if you will stop seeing your "lover." The tape with your answer would be admissible in court. If you are depending on the consent of a party to the conversation other than yourself, make sure you get that consent in writing.

PRIVATE INVESTIGATORS

Private investigators are professionals that are paid to investigate and testify. In South Carolina they are licensed professionals. They can be the key to success or an expensive dead end. It is important to give them all the help that you can. The more information you give them the less they have to find out and the less it will cost you.

You may be on the other end. Your spouse may have hired an investigator to follow you. If you are not doing anything wrong do not worry. If you are stop doing it.

POWER OF ATTORNEY

If you have given your spouse power of attorney (the legal authority to act for you) get it back and cancel it. We can draft a cancellation if necessary but it is very useful for us to have the original document.

FAMILY AND FRIENDS

Your well-meaning family and friends may offer you advice about your case. Frequently such advice is not accurate. The facts surrounding your marriage, divorce, children, and property are unique and different from any other case. The only thing your divorce and your Aunt Harriet's divorce may have in common is that you and your Aunt Harriet are related to each other. Remember, everybody's life and circumstances are different. It is hard to compare apples to apples in these cases.

ONE ATTORNEY FOR BOTH OF YOU

If there ever was a conflict of interest, it has to be two people getting a divorce. I can not represent both parties in a divorce. If you and your spouse have agreed on everything, it may be possible for me to do all the legal work, but I will represent **only** one of you. If you and your spouse disagree later, I will continue to represent that person unless I have been directed otherwise.

KEEPING YOU INFORMED

You will receive copies of many of the documents that were prepared or received by me. Due to court appearances, trials, depositions, negotiations, and other commitments, I am difficult to reach on the telephone. Therefore, I recommend that you talk to my paralegal about your problems. The paralegal will be easy to reach and can give you information or take messages. Try to work with her. It will make things easier, and it will hold down the cost of your divorce, since the paralegal's time is billed at a much lower rate.

COOPERATION

I expect you to be cooperative and truthful. If you are not, I will not represent you. I also expect you to handle your financial commitments to our office in a prompt and business like manner. Please notify me of any change of address or telephone number or of any new information that may affect your case.

COST AND EXPENSES

There are different types of costs in divorce cases. The largest cost is usually attorney's fees, which is what I charge for the work I do on your case. See Attorney's Fee below. Court costs are the fees that are charged by the court for the filing of the divorce papers and various other papers. You may also have suit money, which is fees paid to experts or other persons to assist with your case.

In contested cases, attorney's fees, suit money and court costs are higher and there may be other costs for things such as depositions, private investigators, photographs, psychological evaluations, and tax consultants. You must pay these costs, as we are ethically prohibited from lending clients money.

Any discussion about what the costs or attorney's fees will be is the roughest of estimates. There are many variables in any divorce case, including some over which I have no control. Who your spouse will hire as a lawyer, how complex the financial issues are, or what mood the judge is in on the day of trial will affect how I handle your case and, therefore, what it will cost you.

The emotional cost of a divorce can be greater than the dollar cost. The damage of having a broken marriage examined in court is something only those who have lived through it can understand.

ATTORNEY'S FEES

I require that my client's sign an Employment Contract which sets forth in detail my fee agreement to serve as your attorney. It also addresses how costs are handled, when my duties terminate and your responsibilities as my client.

A basic divorce includes the initial conference; the preparation and filing of the complaint or the review of the complaint filed by the other spouse; the preparation of the

answer; the obtaining of information from you concerning your grounds for divorce, assets, liabilities, income, and expenses; the preparation of the marital dissolution agreement; the preparation or the review of a final decree of divorce; and attending at least one court hearing to have the case disposed of as an uncontested divorce and to submit the appropriate mailings.

Additional time is spent for telephone conferences, negotiations, telephone calls, and other court appearances. If tax planning is needed, a tax lawyer must be associated, as I do not practice or advise clients in that area.

One party can be ordered by the court to pay some or all of the other party's attorney's fees. The court will rarely order a party to pay the full amount of the attorney's fees. You are responsible for paying the agreed fees, and I will give you full credit for any payments made by your spouse. You have probably heard of divorces in which the attorney representing the wife promises to collect the attorney's fees from the husband. This creates a conflict of interest between the attorney and the client, and the attorney might be tempted to compromise the wife's rights in more important areas to protect the fee. We will negotiate and argue about your attorney's fees; however, our focus will be on the total picture. Any discussion about the total cost of a divorce is only an estimate. Because we do not have control over many things such as what your spouse's attorney may or may not do, we cannot tell you how much time your case will require.

I require a retainer to accept your case and to begin drawing up the necessary papers. If you decide not to retain me, you will only be charged for the office conference. If you retain me, you will sign a contract setting out the terms of representation in writing.

NEGOTIATIONS WITH YOUR SPOUSE

Over two thousand years ago Sun Tzu wrote in the *Art of War*, "Those who know when to fight and when not to fight are victorious."

This applies to ancient Chinese warfare and your divorce. If you can work out a satisfactory settlement with your spouse you will have a victory. Even if you win at a great trial, there is a great cost in money and emotion. For the client a good settlement is better than a great trial.

In trying to work something out with your spouse, the following are some useful pointers to remember:

Meet on neutral ground- Not at this office or at her mother's home, but some place here both parties will feel comfortable.

Put aside time- A reasonable amount of time should be set aside to deal with the issues. If you leave to answer a telephone call just as you almost have things worked out, you may find that things have fallen apart when you get back. On the other hand, do not leave the meeting time open-ended. A meeting without a deadline will drag on and issues will not get resolved.

Set an agenda- Decide what will be dealt with at the meeting. "This week we will decide on custody and child support, next week we will decide on the house."

Do not bog down- Try to talk about what you agree on. No matter how bad it is, there are some things you agree on ("the marriage stinks" or "the kid is cute"). If you hit a point that gives you trouble, move on to something else and come back to the problem after you have resolved some other issues.

Reschedule as needed- If things start to turn nasty, if someone gets angry, or if you think you are losing everything, reschedule the meeting for another time. It is important that both of you feel that the agreement is a good thing.

Keep the kids out of it- Your children do not need to be involved in this. Do not have them around. They will interrupt you, and it will upset them.

Start talking early- Divorces usually settle early on when both parties feel guilty and are not locked into a position, or divorces settle after much litigation when the parties are too exhausted to fight anymore. Sometimes you can get more with guilt than you can get at a trial.

If you and your spouse work out something and you make notes, **do not sign the notes.** This could be considered to be an agreement. Before you commit to any deal, it needs to be examined by an attorney.

MEDIATION AND OTHER ALTERNATIVES TO TRIAL

Normally the parties will try to settle their case. If that does not work, the attorneys will normally try to settle the case. These approaches are dynamic and can both go on at the same time. Sometimes despite the best efforts of everyone, the case will not settle. Before going to the ultimate test of a trial, there are alternatives.

Mediation is negotiation with a neutral party assisting the negotiations. The mediator is not an advocate for either spouse. The mediator facilitates the process and does not "take sides" or make decisions for you. They merely facilitate settlement. I recommend this and urge you to ask me more about it for your specific case. As of January 01, 2008, mediation is mandatory in South Carolina.

You may also want to consider **arbitration**. In arbitration, the arbitrator makes a final decision. This is like a judge, but you must pay the arbitrator and you are bound by the decision.

WAITING PERIOD

A final divorce cannot be granted until at least ninety (90) days after filing if it is based on fault grounds. This is a minimum interval.

During the waiting period we will try to help you work out the details of custody, visitation, support, and property settlement, or if necessary, prepare for trial.

COURT APPEARANCE- UNCONTESTED

In an uncontested divorce case, the plaintiff needs to appear in court to testify. The other party needs only appear if he or she wants to. You will need to bring a witness with you to testify on your grounds for divorce. You may want us to issue a subpoena to require your witnesses to appear in court. The subpoena helps your witnesses get off work and protects you if they do not appear.

FACTS

I must have all the facts to represent you properly. **Tell me everything you know:** "My husband took a trip out of town. Here is a copy of the ticket." **Tell me what you suspect:** "I bet he met his girlfriend down there." Something that may not seem important to you may be critical to your case. If the other side knows something that I do not, the information could be used against you, and I would be unprepared and unable to defend you against it. However, if you give me the information, no matter how bad it may appear, then I can take the proper steps to prepare a defense to avert what could otherwise turn out to be a disaster.

Try not to discuss your case with anyone unless you have my permission, especially your spouse. When you do say something, be careful what you say. Anything you say may get played back to you on the stand. If you say something petty or wrong, it may hurt your case. Until the divorce is over do not say anything you would not want the judge to hear.

Do not sign anything involving this case unless you have approval from me. You may be signing something that could harm you later on.

Furnish me immediately with the names, addresses, and telephone numbers of any and all witnesses, and tell me what they know. Advise me immediately if you hear of anything that might affect your case. If I am not in, you may leave this information with my secretary or paralegal.

NEVER LIE OR WITHHOLD INFORMATION FROM YOUR ATTORNEY.

CONFIDENTIALITY

Anything you tell any member of my office is strictly confidential and will not be disclosed outside without your permission. However, I will not allow you to lie under oath nor allow you to plan to commit a crime. If someone outside of you or my office overhears or reads communications, the privilege is lost as to those communications.

If you communicate with us by a method that allows access to that communication you may well have lost the privileged nature of the communication. If you email me, do not leave a copy of the email on your computer so others can read it. Remember that merely hitting the delete key will *not* delete the email. Intercepting other persons wire communication is a serious crime.

All papers filed in your case and all testimony in your case are theoretically matters of public record, and the public has a right to see or hear it. However, the only people you are likely to see at court are the other people who are getting divorced themselves that day, and they are far more concerned with their own problems than with your case.

EVIDENCE

If you have not done so already, start looking for evidence. Check desk drawers, safety-deposit boxes, bank boxes, or other places where documents might be hidden. This is a good time to visit with your family banker, stockbroker, or accountant to discuss the family financial situation, although you may not want to tell them about the divorce.

You need to supply me with copies of the documents such as:

Prenuptial agreement;

Income tax returns;

Financial statements (these are most often filed when borrowing money and are **very important**);

Employment contracts or any explanations of benefits from you or your spouse's work;

Canceled checks and charge records;

Retirement plans, including IRAs;

Deeds;

Real estate tax bills or appraisals;

Insurance policies including life insurance, medical insurance, health insurance, or homeowner's insurance;

Bank accounts and bank statements;

Safety-deposit boxes (you will want the bank to verify and inventory if possible);

Securities;

Partnership agreements, corporations, or other documents showing any business interests;

Any inheritance or trust interests;

Wills by you or your spouse;

Any written agreements or notes between you and your spouse;

Any evidence you have such as photographs or letters.

WITNESSES AND EVIDENCE

When you must prove something in court, you must have legally admissible proof. If you claim or allege a particular fact, you have the burden of proving it with believable evidence. Most proof comes from witnesses and documentary evidence. If you are proceeding on grounds, you need to have corroboration (support) of your proof, even if your spouse is not disputing the grounds. In a contested case you may need many witnesses or many documents to be submitted as evidence on the issues before the court. We will issue a subpoena for witnesses if you request it and give us their name and addresses. The subpoena will help the witnesses get off work to appear in court.

An expert witness is a witness who has such training or expertise that the witness' opinion is valuable to the court. Psychologists, accountants, appraisers and doctors are often expert witnesses. Expert witnesses must be paid for the time they spend in preparation and at trial. I expect you to arrange and pay the fee with the expert. I will recommend experts I feel can best help you.

TRIAL

Before you come to court, decide what you want to accomplish. Do you want to persuade the judge or do you want to vent your feelings? The likelihood of the judge paying attention to an angry party is small; giving sympathy on the basis of an emotional rant is even less. Judges can be persuaded by facts clearly and appropriately presented.

FINAL DIVORCE

The dissolution of marriage and orders contained in the Final Decree are not final until the typed order has been signed by the judge. Your remedies to change the orders in the Final Decree are to file a Motion to Alter or Amend the Judgment within ten (10) days, or notice of appeal of the court's decision to the Court of Appeals.

If you wish to appeal any of the orders of the court, you have thirty (30) days from the date of the Final Decree or the order on the Motion to Alter or Amend to file a notice of appeal. Failure to file one of these pleadings causes your right to appeal to be permanently lost.

REMARRIAGE

Oscar Wilde described remarriages as the "triumph of hope over experience."

If you do remarry, you may want a prenuptial agreement (also called premarital or antenuptial agreement). This is an agreement with your new spouse to be made before the marriage. If you are interested in this, ask me. It can help you avoid problems in your next marriage.

CHANGES

If you and your spouse or ex-spouse agree to change the terms of a court order (Temporary Support Order, Final Decree, or any other), you **must** change it with another order. If your spouse says, "You don't have to pay alimony for the next year if you will take the children to Disneyland this summer," you must get it in writing and entered in court for it to be binding on your spouse and to protect you from contempt.

If you need to change child support or certain types of alimony, you can petition the court for a change. If you show a change of circumstances, then the court may modify these provisions. The change of circumstances that most impress the court are those changes that you do not expect: "I lost my job because the company went bankrupt." The courts are less sympathetic to "I just don't want to work as hard as I used to work."

WILLS

You probably need a new will now. If you wish to pursue this, ask me and I will give you the names of some attorneys who do wills.

If you have given your spouse a power of attorney, cancel it as soon as possible. Until you do, your spouse has control over your property and can sell it or give it away.

If you have a living will in which your ex-spouse has the right to tell the hospital to pull the plug and let you die, you may want that changed.

SOCIAL SECURITY

If you and your former spouse were married for longer than ten (10) years and paid into the Social Security Trust Funds, you may be entitled to spouse's or survivor benefits on your former spouse's account upon reaching age 62, regardless of whether your former spouse has retired at that time. These benefits are provided by the federal government and are not usually addressed in a Decree.

The Social Security Administration advises contacting it three months in advance of your anticipated eligibility date. For survivor benefits, this could be as early as three months before turning age 60; for spouse's benefits, three months before turning age 62.

When applying for Social Security benefits, you should have your Social Security Number, Birth Certificate, Marriage Certificate and Final Decree, showing your marriage termination date.

Social Security laws are constantly changing, and your future benefits may be affected by those changes. To be sure of the exact benefits to which you are entitled, and your earliest eligibility to receive the benefits, contact the Social Security Administration directly and contact them *now*.

EMOTIONS

If you are going through a divorce and you feel uncertain, insecure, or depressed, then you have a fairly normal problem. You may want some counseling for the problem.

If you are going through a divorce and you feel no uncertainty, insecurity, or depression, then you probably have a really big problem. You should get professional help immediately.

It is easy to use anger as a cover for the hurt you will experience in the divorce. Rather than feeling hurt and lonely, it is much easier emotionally to be angry at your spouse. This is true whether you have good reason to be angry or not. Anger is a powerful drug. Like drugs anger has side effects such as clouded judgment and is addictive. If you use the divorce only as a device to express your anger you will be disappointed. You should expect to feel hurt, angry, betrayed, lonely, and confused. That is why you should seek counsel. While the litigation may secure a fair dissolution of the marriage, it cannot heal your hurt.

Divorce is an unpleasant time at best. You will be beset by a range of emotions, including, denial, anger, guilt, depression, fear, resignation, ambivalence, and frustration. Remember this is normally only temporary. You probably will feel different next week. Instead of feeling angry next week you might feel fearful, next week indifferent, next week depressed, next week ambivalent, and so on until finally one week you are happy that it is all over.

Counseling is helpful. Individual or group therapy will be useful to help you work through this difficult change in your life. I can recommend counselors and divorce recovery programs that are helpful. Getting counseling is not usually seen as a sign of weakness but intelligent planning in a difficult situation.

Excessive drugs or alcohol are bad for you and your case. The severity of the judge's reaction varies depending on their background and the specific facts. You can be ordered to participate in random drug tests and lose custody or visitation of your child.

FEAR

Fear is a normal human response to uncertainty. As you go through a divorce there will be times when you cannot control what will happen. You will be afraid of what your future will be. Will I go broke? Will the other lawyer ask me about _____ (fill in with whatever you didn't tell your lawyer)? Will I die alone and unloved? Will this case ever end? Your imagination will usually be worse than reality. If you let your fear control you it will destroy your case.

When you get on a plane, you decide where you want to go, but not how the plane will be flown. You cannot control the weather along your route or how the pilot flies the plane. When the ride gets bumpy you don't get up and demand that the pilot fly the plane your way or fight for control of the plane. If you do, and your lucky, you end up in jail; if not, you crash the plane and destroy everything.

Your lawyer has been through this before and will look out for you. However to do this the lawyer *must* have your cooperation. There will be many decisions for you to make, but there are critical decisions that your lawyer will have to help you with or, in some cases, make for you. You hired your lawyer for his or her expertise and experience. You need a lawyer you can have faith in. You must be able to accept your lawyer's counsel for you to have a successful case. Do not destroy your case (crash the plane) by a fear induced demand to control everything.

WORRY

Human beings, among all the animals of the earth, have a unique ability for worry. Even during good times, people find things to worry about. When going through a divorce, you will find many things to worry about, and you will have good reason to worry. Even if I tell you not to worry, you will worry.

Let me suggest that instead of worrying **about** your problems, you worry **at** your problems. Instead of letting your mind be consumed with worrying about how bad the problem is, you should concern yourself with what you can do to solve the problems.

DEALING WITH YOUR EX-SPOUSE

After the divorce, you and your ex-spouse will have two separate households. You will have to maintain those two homes on the money with which you maintained one earlier. "Two" cannot live as cheaply as "one," especially when "two" are two separate households.

Furthermore, if your ex-spouse has been a jerk all of his or her life, it is very unlikely that going through a divorce will make him or her less of a jerk. A drunken wastrel will probably continue to be a drunken wastrel, and nothing the court nor I can do will be likely to cure the problem. After the divorce, you will be separated, but to the extent that you are still tied together by visitation, child support, alimony, or debt payments, you will still have to deal with the problems together.

If your ex-spouse-to-be is garbage, then no matter how hard we try or how well we succeed in court, your ex-spouse-to-be will probably still be garbage.

Once you are divorced you have an ex-spouse to deal with. The level of dealing varies from "You still have my red hammer" to "Will you contribute to your daughter's wedding?" You can do this in ways that will help create a greater likelihood of calm discussion or you can help create a situation that can be emotionally chaotic. Useful recommendations are:

- Remain calm. Your ex-spouse may not have gotten over you. He or she may want to engage you emotionally and if anger works they will go there.

- Let go of your anger.

·Do not send mixed messages.

·Stay focused on business matters.

·If you state consequences you must follow through. But remember every negative comment does not demand a negative response. A fish that is rises for every bait soon gets caught. You are smarter than a fish.

·Do not use the children as messengers or spies.

·Comply with agreements and orders. This minimizes areas of conflict.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Carolyn Mitchell Powell,

Plaintiff,

vs.

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

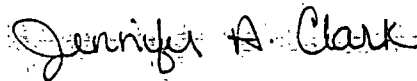
Defendants.

CERTIFICATE OF SERVICE

I, Jennifer A. Clark, paralegal for Pendarvis Law Offices, PC, hereby certify that I have served the documents listed below upon all counsel of record by mailing a copy of same, postage prepaid and return address clearly indicated on said envelope, to said counsel at the following address:

Charles E. Hill, J.D.
TURNER, PADGET GRAHAM & LANEY, PA
PO Box 1473
Columbia, SC 29202
Chill@TurnerPadget.com

Documents Served: PLAINTIFF'S SECOND SUPPLEMENTAL RESPONSE TO DEFENDANTS
TAYLOR, POTTERFIELD AND TAYLOR/POTTERFIELD'S FIRST SET OF INTERROGATORIES



Jennifer A. Clark

Beaufort, South Carolina
November 21, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

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

Plaintiff,

vs.

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

Defendants.

**SUPPLEMENTAL RESPONSES OF
DEFENDANTS ASHLIN BLANCHARD
POTTERFIELD; J. MICHAEL TAYLOR;
AND, TAYLOR/POTTERFIELD TO
PLAINTIFF'S FIRST SET OF REQUESTS
TO PRODUCE**

TO: THOMAS A. PENDARVIS, ATTORNEY FOR THE PLAINTIFF

Defendants Ashlin Blanchard Potterfield, J. Michael Taylor, and Taylor/Potterfield
provide these supplemental responses to plaintiff's first set of requests to produce as follows:

6. List the names and addresses of any expert witnesses whom the party proposes
to use as a witness at the trial of the case. For each expert listed, please provide the following:

- a. The witness' qualification to give an opinion as an expert and field of expertise (if such information is available on an expert's curriculum vitae (CV), You may attach a copy thereof in lieu of answering this Interrogatory subpart).
- b. The witness' occupation and place of employment.
- c. The subject matter on which the expert is expected to testify.
- d. The facts and opinions to which the expert is expected to testify.
- e. A complete basis for the grounds of each opinion.
- f. Whether the witness has been an expert in legal malpractice cases prior to the present action, and if so, please list each time the witness has testified, including the name of the court and whether the witness testified for the plaintiff or defendant in such cases.

- g. Whether the witness has ever testified for You in any prior legal malpractice case.

ANSWER: Ken H. Lester

- a. See attached CV
- b. Lester & Hendrix, Attorneys at Law
1901 Gadsden Street, Suite A
Columbia, South Carolina 29201
See also attached CV.
- c. See attached affidavit.
- d. See attached affidavit.
- e. See attached affidavit.
- f. Defendants to supplement.
- g. No.

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


Charles E. Hill
Virginia W. Williams
Post Office Box 1473
Columbia, South Carolina 29202
(803) 227-4240
Phone: (803) 227-4240
Fax: (803) 400-1493
Email: Chill@TurnerPadget.com

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

Columbia, South Carolina
March 20, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CAROLYN MITCHELL POWELL,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 09-CP-408705

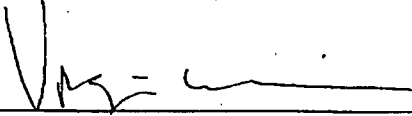
AFFIDAVIT OF KEN H. LESTER IN
SUPPORT OF AMENDED MOTION FOR
SUMMARY JUDGMENT ON BEHALF
OF DEFENDANTS ASHLIN
BLANCHARD POTTERFIELD, J.
MICHAEL TAYLOR AND
TAYLOR/POTTERFIELD

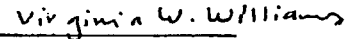
RICHLAND COUNTY
FILED
MAR - 5
2012
JENNIFER W. MOORE
Clerk of Court
& G.S.

The defendants Ashlin Blanchard Potterfield, J. Michael Taylor, and Taylor/Potterfield
("Defendants") hereby submit the attached affidavit of Ken H. Lester in support of Defendants'
Amended Motion for Summary Judgment, filed on or about February 16, 2012.

TURNER PADGET GRAHAM & LANEY, P.A.

signing
for


Charles E. Hill
1901 Main Street, 17th Floor (29201)
Post Office Box 1473
Columbia, SC 29202
Telephone: (803) 227-4240
Facsimile: (803) 400-1493



Columbia, South Carolina
March 2, 2012

*Attorneys for Defendants Potterfield,
Taylor, and Taylor/Potterfield*

PERSONALLY APPEARED BEFORE ME KEN H. LESTER, WHO, FIRST BEING DULY SWORN, DEPOSES AND SAYS:

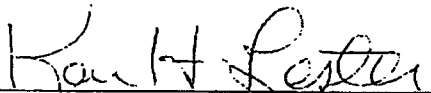
1. My name is Ken H. Lester. I am an attorney licensed to practice law in South Carolina. I am senior partner in the law firm of Lester & Hendrix, with offices located in Columbia, Beaufort and Myrtle Beach.
2. My practice is devoted to family and marital litigation. I am a diplomat of the American College of Family Trial Lawyers, an organization limited to the top 100 family court trial lawyers in the United States; a fellow in the International Academy of Matrimonial Lawyers, which is made up of approximately 960 lawyers worldwide, and a fellow of the American Academy of Matrimonial Lawyers, which consists of 1,700 of the top matrimonial attorneys in the United States and Canada. I am on the faculty of the Houston Family Law Trial Institute which is held for nine (9) days each year at the South Texas College of Law where 48 lawyers from across the United States are taught to litigate family law cases. I have served as chairman of the Family Law Section of the South Carolina Bar. I have taught the family law portion of the South Carolina bar review course.
3. I have been retained by the attorneys representing the defendants in this case to review file materials from the underlying litigation of Carolyn Powell v. Conrad Powell, as well as depositions and other materials produced in discovery in the present case, and to offer my opinions regarding the conduct of Ashlin Potterfield and Michael Taylor in their prior representation of Carolyn Powell.
4. From the materials furnished to me, it appears that Carolyn Powell entered into a fee contract with Potterfield on Sept. 17, 2003. Mr. and Mrs. Powell separated in December 2003. The summons and complaint instituting the marital litigation between the Powells was filed on August 27, 2004.
5. On April 1, 2005, Carolyn Powell separately retained Michael Taylor to assume the handling of her case, and Potterfield was not thereafter involved in the matter.
6. In my opinion, Potterfield and Taylor's representation of Carolyn Powell exhibited the appropriate knowledge, skill, thoroughness and preparation required of attorneys handling marital litigation. Their prosecution of the action in family court was appropriately handled under the circumstances of the case, and they exercised appropriate judgment and strategy. The file materials indicate that there was regular and sufficient communication by Taylor and Potterfield with Carolyn Powell.
7. In reviewing the materials presented to me, I found no evidence that the husband, Conrad Powell, was dissipating, transferring or secreting marital assets. Carolyn Powell provided her attorneys with detailed information regarding her husband's assets in his handwriting early in the course of the matter. Being in possession of this information, it was reasonable and appropriate for Potterfield not to engage in formal discovery with regard to the husband's assets. There was never any reasonable cause

for Potterfield or Taylor to file motions for protective orders with regard to marital assets, or to file lis pendens with regard to the husband's property.

8. Potterfield and Taylor made reasonable efforts to move the matter forward, but their efforts were frequently thwarted by their client's own conduct. For example, there is evidence that Carolyn Powell endorsed her husband's name to checks made out to him, changed the amount on checks her husband had written to her, moved the couple's minor children to another county without the husband's consent, and instead of using funds provided by the husband to obtain housing, bought horse stables. There was extensive communication between Potterfield and Marne Sherman, the attorney representing the husband, as to potential settlement terms, but Carolyn Powell rejected all such offers.
9. At the outset of the representation, Powell was advised about the consequences of having a romantic relationship while still married, as evidenced by materials given her by Potterfield explaining that an adulterous spouse is not entitled to alimony under the South Carolina statute. Nevertheless, Powell engaged in a sexual relationship with a man other than her husband in September 2005 and continued thereafter, thus forfeiting any entitlement to separate maintenance and support.
10. In January 2005, Potterfield was able to negotiate an advancement on equitable distribution of property from the husband in the amount of \$400,000. In my experience, this negotiated advancement was far more favorable than was likely to be awarded by the court had there been a pendente lite hearing.
11. When Taylor assumed the handling of Powell's case, he appropriately associated Columbia attorney Reid Smith to assist in the financial aspects of the case. Smith conducted a careful analysis of Conrad Powell's property holdings and other assets, which were disclosed in reports to Taylor. I have considered the deposition testimony of Attorney Smith, in which he stated he found no evidence that Conrad Powell had unlawfully dissipated, transferred, or secreted marital assets. In this regard I have also considered the deposition testimony of Carolyn Powell. Although she suspected such conduct on the part of her husband, she was unable to identify any such transferred or hidden assets, either at the time of the pending marital litigation or since the case ended.
12. In January 2007, Carolyn Powell terminated Taylor as her attorney, and retained Columbia attorney Cantzon Foster to assume her representation in the marital litigation. I have considered the deposition testimony of Attorney Foster, in which he likewise testified that he did not identify any such transferred or hidden assets.
13. In April 2007, Carolyn Powell and Conrad Powell entered into a "Complete Property, Support, and Custody Agreement." Carolyn Powell signed this agreement, testifying under oath that she was familiar with the financial ability, income, expenses, assets and liabilities of Conrad Powell, and further acknowledging that she was not under any threats, duress or undue influence. On May 2, 2007, Carolyn Powell appeared

before Family Court Judge Anne Gue Jones, acknowledging that she entered into the settlement voluntarily, and that the agreement provided for a fair and equitable division of the parties' marital property. Judge Jones entered an order the same day, approving the settlement as fair, equitable and reasonable.

14. Again, in reviewing the materials presented to me, I find no evidence, either from any lay witness or expert, that Carolyn Powell's husband, Conrad Powell, was unlawfully dissipating, transferring or secreting marital assets.
15. I have not seen or been provided any evidence that Carolyn Powell could have obtained a more favorable settlement but for the alleged negligence of Potterfield and Taylor.
16. Based on my education, training and experience as a family law attorney, it is my opinion that Potterfield and Taylor's representation of Carolyn Powell in the underlying marital litigation was within the latitude of judgment and strategy afforded to attorneys who practice in this area of the law, and complied with the standard of care required of such attorneys. It is my further opinion that Potterfield and Taylor did not breach any fiduciary duties they owed to Carolyn Powell.



Ken H. Lester

Sworn to and subscribed before me
this 1 day of March, 2012



Notary Public for South Carolina
My Commission Expires: 4-11-2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

vs.

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

Defendants.

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

CERTIFICATE OF SERVICE

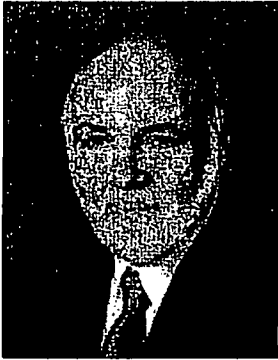
RICHLAND COUNTY
FILED
2012 MAR -5 AM 10:16
JEANETTE MCBRIDE
C.C.P.

I, the undersigned employee of Turner, Padgett, Graham & Laney, P.A., attorneys for defendants Potterfield, Taylor, and Taylor/Potterfield, do hereby certify that I have this day served a copy of the foregoing AFFIDAVIT OF KEN H. LESTER IN SUPPORT OF AMENDED MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANTS ASHLIN BLANCHARD POTTERFIELD, J. MICHAEL TAYLOR AND TAYLOR/POTTERFIELD in connection with the above-referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following address(es):

Thomas A. Pendarvis, Esquire
Pendarvis Law Offices, PC
500 Carteret Street, Ste A
Beaufort, SC 29902-5066
Attorneys for Plaintiff


Randi M. Berlin

Columbia, South Carolina
March 2, 2012



Email: Ken H. Lester

Ken H. Lester has offices in Columbia, Myrtle Beach/Conway area, and Beaufort/Hilton Head Island area, South Carolina. He received his B.S. and J.D. degree from the University of South Carolina.

- He is a Diplomat in the American College of Family Trial Lawyers, an organization limited to the top 100 family court trial lawyers in the United States.
- He is a fellow in the International Academy of Matrimonial Lawyers which is made up of approximately 960 lawyers worldwide. He is a Fellow of the American Academy of Matrimonial Lawyers and served as President of the South Carolina chapter. The American Academy of Matrimonial Lawyers consists of 1,700 of the top matrimonial attorneys in the United States and Canada.
- Mr. Lester is on the faculty of the Houston Family Law Trial Institute which is held for nine (9) days each year at the South Texas College of Law in downtown Houston, Texas where 48 lawyers from across the United States are taught to try family law cases. South Texas College of Law is nationally known for its award winning trial advocacy program and has won more trial advocacy awards than any other law school in the United State of America.
- Mr. Lester served as the Chairman of the Family Law Section of the South Carolina Bar and served as the Section Delegate to the South Carolina Bar House of Delegates.
- He served as Chairman of the Family Law Committee of the South Carolina Association of Justice and is currently a member of the South Carolina Association of Justice where he has served on the Board.
- He is also former Chairman of the Richland and Lexington County Bar Family Law Committees.
- He also taught the Family Law portion of the South Carolina Bar Review course which is taught twice each year to lawyers preparing for the South Carolina Bar exam.
- Mr. Lester is the former Chairman of the South Carolina Child Support Guidelines Sub-committee and has served on all of the update committees.
- Mr. Lester has written and continues to write on various issues dealing with South Carolina Family Law in addition to speaking, and coordinating numerous Continuing Legal Education and Judicial Continuing Legal Education Seminars locally and nationally.
- Mr. Lester served as the chairman of the American Academy of Matrimonial Lawyers Children Committee and served as a member on the five members Same-Sex Marriage Committee of the American Academy of Matrimonial Lawyers. He was a member of the American Bar Association Same-Sex Marriage Committee and Products Development Committee. He is the author of the Chapter on Protection of Marriage by Statute and Constitutions on the American Bar Associations White Paper on Same-Sex issues.

Mr. Lester routinely serves as a mediator in complex custody or financial cases in the Family Court.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CAROLYN MITCHELL POWELL,

Plaintiff,

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

vs.

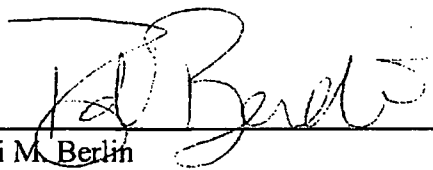
CERTIFICATE OF SERVICE

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

Defendants.

I, the undersigned employee of Turner, Padgett, Graham & Laney, P.A., attorneys for defendant, do hereby certify that I have this day served a copy of the foregoing **SUPPLEMENTAL RESPONSES OF DEFENDANTS ASHLIN BLANCHARD POTTERFIELD; J. MICHAEL TAYLOR; AND, TAYLOR/POTTERFIELD TO PLAINTIFF'S FIRST SET OF REQUESTS TO PRODUCE** in connection with the above-referenced case by placing a copy of the same in the United States Mail, postage prepaid, to the following address(es):

Thomas A. Pendarvis, Esq.
Pendarvis Law Offices, PC
500 Carteret Street, Ste A
Beaufort, SC 29902-5066
Attorneys for Plaintiff



Randi M. Berlin

Columbia, South Carolina
March 20, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Carolyn W. Powell,)
Plaintiff,)

vs.)

W. Conrad Powell,)

Defendant.)

IN THE FAMILY COURT FOR
THE FIFTH JUDICIAL CIRCUIT

DOCKET NO: 04-DR-40-3081

DOCKET NO: 07-DR-40-0570

**COMPLETE PROPERTY, SUPPORT, AND
CUSTODY AGREEMENT**

ORIGINAL

This action was commenced by Plaintiff with the filing and service of a Notice of Motion and Motion for Temporary Relief, Summons and Complaint, bearing docket number 04-DR-40-3081, on or about August 27, 2004. Defendant filed and served his Answer and Counterclaim on or about October 21, 2004. Defendant filed and served his Amended Answer and Counterclaim on or about November 4, 2004. Plaintiff filed and served a Reply on or about December 16, 2004. Subsequently, the case was administratively dismissed, pursuant to the 270 day rule in July of 2005, and Plaintiff re-filed and served a Notice of Motion and Motion for Temporary Relief, Summons, and Verified Complaint, bearing docket number 07-DR-40-0570, on or about February 21, 2007.

On or about March 6, 2007, Plaintiff filed and served a Notice of Motion and Motion to Restore Action and Consolidate Actions. The Court granted the Motion to Restore the Action and Consolidate the Actions on March ____, 2007.

This Complete Property, Support, and Custody Agreement (hereinafter referred to as the "Agreement") is made and entered into this the 27 day of April, 2007 in Richland County, South Carolina, by and between Carolyn W. Powell (hereinafter referred to as "Wife") and W. Conrad Powell (hereinafter referred to as "Husband").

Ex 20

WITNESSETH:

WHEREAS, Carolyn W. Powell, Wife, is a citizen and resident of Richland County, South Carolina;

WHEREAS, W. Conrad Powell, Husband, is a citizen and resident of Richland County, South Carolina;

WHEREAS, the parties hereto are Husband and Wife, having been duly and lawfully married to each other on September 17, 1988;

WHEREAS, one (2) children were born of this marriage, to-wit: Mary Morgan Powell (DOB: 4/18/89) and Alexandra Caroline Powell (DOB: 5/05/91); and no other children were born of this marriage and none are expected;

WHEREAS, Husband and Wife last resided and cohabited as Husband and Wife in Richland County, South Carolina;

WHEREAS, the parties separated on or about December of 2003 and have resided continuously separate and apart since that date;

WHEREAS, both parties consider it in their respective best interests to settle and resolve between themselves all matters in issue and all matters heretofore arising or hereafter to arise from their marital union, and have reached a permanent and complete Agreement and now wish to reduce that Agreement to writing and desire that it shall constitute the complete and total Agreement between them, both now and following any Decree of Divorce or Final Decree of Separate Support and Maintenance which either side might obtain, with respect to all matters relative to alimony, debt allocation, property division, attorney fees, tax matters, and all other matters which are raised or could have been raised between the parties hereto, other than the issue of divorce itself;

WHEREAS, Wife is represented by C. Cantzon Foster, II, Esquire of Columbia, South

Carolina;

WHEREAS, Husband is represented by Marne Sherman, Esquire of Columbia, South Carolina;

WHEREAS, both parties acknowledge that they have been completely and fairly represented and believe that that they have been fully advised of or otherwise know their rights and responsibilities generally and especially hereunder; each party further acknowledges that the other party's attorney represents only the other party, and neither Husband nor Wife has relied on legal opinions or advice of the other party's attorney;

WHEREAS, both parties acknowledge that each is familiar with the financial ability, income, expenses, assets and liabilities of the other and each recognizes and acknowledges that they are not entering into this Agreement as a result of threats, duress or undue influence but as a natural consequence of the breakdown of their marriage and they fully recognize that each party has freely, actively, and fully taken part in the negotiation hereof over a reasonable period of time and each fully accepts the terms and conditions hereof and each party acknowledges and considers the same to be fair, just and equitable under the circumstances; and

WHEREAS, both parties acknowledge and represent that the general circumstances under which this Agreement is entered into include those set forth above:

NOW, THEREFORE, for and in consideration of the mutual and several binding promises, covenants, Agreements, and undertakings herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby acknowledge full satisfaction with regard to the terms and conditions hereof and with respect to their legal representation herein and acknowledge the terms and conditions of this Agreement to be fair, just, adequate and reasonable, and hereby freely and voluntarily agree as follows:

I. CHILD CUSTODY AND VISITATION

- a. Custody/Visitation: Wife shall have sole custody of the minor children. Husband shall be entitled to the same liberal visitation with the children as he has enjoyed since the separation of the parties.
- b. Information: Husband and Wife shall both be entitled to full information and records pertaining to the children. This right shall include but not be limited to all reports and information concerning the health, education, and all other matters of similar importance of the children. Both parents shall be placed on all school, church, doctor, and activities mailing lists; however, when said information is provided by third parties to one but not both parents, the parent receiving said information shall immediately make said information available to the other parent. It is the intent herein that both parties should continually be advised of the continuing best interest and welfare of the children, as well as with regard to their activities and progress. Wife shall have possession of originals of the minor children's Birth Certificates and Social Security cards.
- c. Decisions: Whenever emergencies arise or when major decisions are to be made or substantial changes brought about affecting the life or well-being of the children (with respect to such non-routine matters such as education, choice of schools, travel, religious training, illnesses and operations, selection of physicians, dentists, psychologists, psychiatrists, camps, participation in sports, major discipline matters, and other matters of similar importance) Husband and Wife shall inform one another and consult with one another, to solicit the insights and opinions of the other concerning the same; and each agrees to give due deference to input and opinions of the other. Both parents agree to be

reasonable and cooperative in this process and shall always act in a manner calculated to serve the best interests and continuing welfare of their children. In the event the parents are not able to reach an Agreement on such an issue, either party shall have the right to submit said issue to the Family Court for adjudication. The Family Court may assess attorneys' fees and suit costs in the matter against a party it finds to have been unreasonable in the matter.

- d. Supervision: At all times, and particularly during the summer months when the children are out of school, both parents shall assure that the children are properly supervised. Both parties shall keep the children in good moral environments. Neither party shall expose the children to any illegal, immoral, or improper atmosphere. At those times when the party has custody of, or visitation with the parties' minor children, neither party shall have a paramour, or someone with whom the party is romantically or sexually involved, stay overnight while any of the children are present.
- e. Disparagement: Husband and Wife shall each encourage the children to love, respect and honor the other parent and neither of them shall alienate or attempt to alienate or diminish the affections of the children from the other parent or siblings of the children, or disparage or allow others to disparage the other parent or siblings of the children in the presence of the children.
- f. Parental Designations: The parties shall see to it that the designations of "Father" and "Mother", or their equivalents, are used by the children only to refer to the parties hereto, and not to other persons. Neither party shall allow any third parties to use such designations when referring to the relationship between the children and any third parties.
- g. Communication: At all times hereafter, Husband and Wife shall keep each other informed

of their respective business and home telephone numbers, and their respective street and mailing addresses. Both Husband and Wife will make themselves available for direct communication with the other for the purpose of discussions pertaining to the children; provided, however, neither parent will harass or unduly burden the other with excessive or abusive telephone calls or any other such nonproductive communication.

- h. Children's Birthdays: Each party shall have reasonable access to the children on their respective birthday.
- i. Parent's Birthdays: Each party shall have reasonable access to the children on their respective birthday.

II. CHILD SUPPORT/ EXPENSE OBLIGATION:

A. Monthly Child Support:

- a. The parties recognize and acknowledge that they are deviating from the South Carolina Child Support Guidelines and that a portion of Husband's child support payments as set forth hereinbelow is attributable to an equitable property distribution by Husband to Wife. The equitable property distribution portion of this payment is \$3,751.00. Husband shall pay directly to Wife, by way of child support/property distribution, twelve payments in the amount of \$5,000 [Five Thousand and No/100 Dollars] each on the first day of each and continuing every month beginning May 1, 2007 and with the last \$5,000 payment ending on April 1, 2008.
- b. Thereafter, Husband shall pay Wife a monthly child support/property distribution payment in the amount of \$1,500 [One Thousand Five Hundred and no/100s] beginning May 1, 2008 and continuing on the first day of each month thereafter until the parties' youngest child, Alexandra, graduates from High school or if she goes to

college, on the 1st day of the month in which she is enrolled in and attends college (which is anticipated to be August following her graduation from High School). A portion of this payment in the amount of \$622.00 shall be deemed equitable property distribution.

- c. If Husband is ever more than five days late paying his child support/property distribution payment as described above, Wife shall be entitled to file an affidavit with the Clerk of Court for Richland County and thereafter Husband shall pay all future child support payments through the Clerk of Court and shall also be responsible for paying all attendant administration fees, which are currently 5%.

B. Medical Insurance: For so long as Husband has an obligation to pay child support, he will continue to insure the children for health insurance. In the event the children go to undergraduate school, he will maintain health insurance on each child until they each graduate, not to exceed 5 years for each child or for so long as the insurer permits.

C. Expenses for the Children: Husband shall pay educational costs¹ for the children including school tuition, uncovered and insured health and medical expenses, car insurance and car maintenance expenses for the children and he will pay for sports in which the children are involved, including the horses and equestrian activities. Wife will be responsible to pay the expenses for the children's attendance at Aiken Preparatory School for the School Year

¹ Husband's obligation to pay for the educational costs of the children including private school in Columbia, SC, for Alexandra, and both of the girls to obtain an undergraduate degree, such not to exceed a period of five (5) years per child in undergraduate school, with undergraduate expenses to include tuition, books, room and board (and as to room and board, only if the children stay on campus at the educational institution they attend). Husband's obligation for undergraduate expenses will be limited to that which is charged by the University of South Carolina. Such is not meant as a limitation of Husband's financial obligation. Specifically omitted from this Agreement is any obligation of Husband to pay for graduate school for the children.

2006-2007.² Husband will be required to pay for the expenses associated with no more than four horses and four pets. In addition, he will pay for reasonable clothing and miscellaneous expenses for the children. Wife will be responsible for paying for food for the children when they are in her care. As to the forgoing expenses for the children, Husband will have the ultimate decision-making authority (i.e. the provider for the car insurance, the provider for car maintenance expenses, where the horses will be boarded, etc.). However, the schools the children attend must be mutually agreed upon by the parties.

- D. Dependent Exemption: For so long as the Husband is actually paying child support and children expenses as set forth above, Husband shall be entitled to take the minor children as a dependent exemption for purposes of state and federal taxes. The parties shall execute any and all necessary documentation to effectuate this provision.

III. MUTUAL WAIVER OF ALIMONY:

As a mutual consideration expressed herein, Husband and Wife hereby acknowledge that they are irrevocably barred from any and all past, present, or future obligations to pay, on a temporary, permanent, or other basis, any form of spousal support, including, but not limited to, separate maintenance, periodic alimony, rehabilitative alimony, reimbursement alimony, or lump sum alimony, to the other, and hereby discharge, waive and agree to be irrevocably barred from any and all past, present, or future claims of a like nature which either they now have or could have in the future against each other arising out of the marital relationship between the Husband and Wife, both presently, and in the event of divorce, following divorce. Further, the Husband and Wife hereby each release and discharge the other of and from all obligations, duties and services which,

² Husband gave Wife a check for \$20,000 in July 2006. \$10,000 of the \$20,000 check was to be applied towards Husband's half of the tuition for the 2006-2007 term at Aiken Preparatory School.

as spouses he or she may owe the other and from all duties, liabilities, and responsibilities of whatever nature he or she may owe the other by reason of the marital relationship, especially including the right to be supported.

IV. EQUITABLE DIVISION OF MARITAL PROPERTY:

- A. **Health Insurance for Wife:** As part of equitable distribution to Wife, Husband shall pay Wife's health insurance premium not to exceed \$800.00 per month for a period not to exceed eight months following the date of the execution of the Court's approval of this Agreement. This provision is non-modifiable and Wife will be responsible for paying for all uninsured, unreimbursed medical, dental, optical and prescription expenses for herself.
- B. **3505 Devine Street ("Devine Street Property"):** The parties have agreed that Husband shall assist Wife with the pay off the mortgage on a property located in Aiken, SC commonly known to the parties as the "Clark Barn Property." The parties' Agreement related to the Clark Barn Property is attached hereto as Exhibit A. The Parties further agree that the Clark Barn Property shall be listed and sold for at least \$550,000 and that Husband is authorized to execute a contract for the sale of the Clark Barn Property for \$550,000 or more. Husband shall transfer clear title³ to the Devine Street Property by way of General Warranty Deed to be prepared by Wife's attorney within five days after the sale of the Clark Barn Property as set forth in Exhibit A. Until title is transferred to Wife, Husband will maintain the existing homeowner's insurance policy covering the Devine Street Property. Husband may continue to have possession of the Devine Street Property until July 7, 2007. Wife will be permitted to take possession of the Devine Street property no later than July 8, 2007. If Husband vacates the Devine Street Property before June 30, 2007, Wife may have the immediate possession of

³ Free of all judgments, liens or other encumbrances.

said property. When Wife takes possession of the Devine Street Property, she shall be responsible to make the monthly mortgage payment (principal and interest)(not to exceed \$2,300) until the sale of the Clark Barn Property and she shall indemnify and hold Husband harmless for this monthly payment. If Wife fails to make the monthly payment, Husband shall deduct same (not to exceed \$2,300) from the \$5,000 payment set forth hereinabove. Wife agrees that she and the children will relocate to Columbia when she takes possession of the Devine Street Property. By way of equitable distribution, Husband agrees to give Wife \$20,000 to be applied to the renovations/repairs of the Devine Street Property within 15 days of the Court's approval of this Agreement. All light fixtures will remain in the Devine Street property with the exception of the dining room light fixture which will be replaced with Iron and Crystal Chandelier located at 602 Huger Street. Husband agrees to allow Wife to list the Devine Street Property for sale following the execution of this Agreement and will allow the Wife's agent to show the Property to potential buyers upon reasonable notice while he is in possession of the Property.

C. 15 Gibbs Court; The Parties acknowledge that Plaintiff has made an offer to purchase property located at 15 Gibbs Court contingent upon the sale of the Devine Street Property described above. In the event Wife sells the Devine Street Property before the Barn Property sells, Husband agrees to sign all documents necessary to transfer ownership to the potential Buyer, payoff the existing mortgages on the Devine Street Property (out of his personal funds and not the sales proceeds) at the time of the sale and distribute the sales proceeds of the Devine Street Property less agents' commissions, deed stamps and normal seller closing costs to Wife at the time the Devine Street Property closes.

D. Advances on Equitable Distribution: Wife acknowledges that she has already received

\$400,000 by way of equitable distribution in January, 2005, as well as an additional \$250,000 on March 16, 2007.

E. **Automobiles**: Each party shall be entitled to the exclusive use and possession of his or her respective vehicles, and each shall continue to be responsible for all financial obligations and debts related to such vehicle, including, without limitation, the monthly loan payment, insurance, repairs, maintenance, and taxes. For purposes of this Agreement, Wife's automobile is her 1997 Lexus and Mr. Powell's automobiles are his 1996 Infinity, 2001 Mercury. However, Wife will be allowed to continue to use the 1996 Infinity until such time as Husband provides a suitable automobile for the parties' daughter, Alexandra. Wife will return the 96 Infinity within ten days after Husband provides Alexandra with her automobile described above.

F. **Personal Property, Furniture, Fixtures, Personal Effects**: Except as set forth below, each party shall retain possession and have ownership of those items of personal property, including but not limited to boats, tools, household furnishings, stereo equipment, TVs, VCRs, computers, and computer-related hardware currently in his or her respective possession at the time of the execution of this Agreement.

Items to be provided to Wife

1. Two cargo containers located at 602 Huger Street, Columbia South Carolina and all of the items contained therein;
2. Wife's personal possessions located at 1215 S. Boundary SE, Aiken, South Carolina;
3. Items attached and incorporated hereto as Exhibit B.

D. Bank Accounts, Investments, and Other Property

(1) Wife shall have sole and exclusive ownership of her savings, checking, IRA, pension, retirement, and any other accounts titled solely in her or under her control, free and clear of all claims of interest of Husband.

(2) Husband shall have sole and exclusive ownership of his savings, checking, IRA, pension, retirement, and any other accounts titled solely in his or under his control, free and clear of all claims of interest of Wife.

V. MARITAL INDEBTEDNESS AND OBLIGATIONS:

A. Existing Indebtedness:

(1) Husband shall be solely and exclusively responsible for and shall pay the indebtedness assumed by him under the terms of this Agreement, as set forth above, and additionally, he shall be solely and exclusively responsible for payment of the existing indebtedness in his name except as to the Mortgage on the Devine Street property as set forth hereinabove, and on any debts Husband incurred during the parties' separation.

(2) Husband shall hold Wife harmless from the indebtedness assumed by him under the terms of this Agreement, as set forth above and elsewhere in this Agreement, and shall indemnify her from any liability thereon, including any attorney fees or costs incurred by the Wife in defending against any such liability.

(3) Wife shall be solely and exclusively responsible for and shall pay the indebtedness assumed by her under the terms of this Agreement, as set forth above, and additionally, she shall be solely and exclusively responsible for payment of the existing indebtedness in her name and on any debts Wife incurred during the parties' separation.

(4) Wife shall hold Husband harmless from the indebtedness assumed by him under the terms of this Agreement, as set forth above and elsewhere in this Agreement, and shall indemnify

him from any liability thereon, including any attorney fees or costs incurred by the Husband in defending against any such liability.

(5) Each party warrants and represents that he or she has made a full and complete disclosure of any and all existing indebtedness or liabilities of any nature or description, whether contingent or otherwise, which he or she has incurred at any time during the parties' marriage which have not been paid or satisfied in full prior to the date of this Agreement and that all such indebtedness and liabilities have been expressly addressed and allocated under the terms of this Agreement. Further, the Agreement is made upon the assurance that each party has made a full, complete and total disclosure to the other party of his or her income and the nature, extent, and value, of all the parties' respective assets and obligations, for the purpose of inducing the other party to enter into this Agreement. Therefore, to the extent that either party has failed to make such full and complete disclosure, then the releases and waivers contained in this Agreement shall be null and void as to any income, property, or assets of the party which he or she has not disclosed accurately; and any such property is unaffected by this Agreement. In the event that by reason of non-disclosure or inaccurate disclosure by one party, the other party incurs additional counsel fees or incurs or expends suit money or costs in order to protect the asset or assert his or her right or claims, the non-disclosing or inaccurately disclosing party shall hold harmless and indemnify the other party from all financial detriment thereby incurred by that party.

B. Future Indebtedness:

(1) From and after the date of this Agreement, Husband shall not incur any indebtedness or liability, of any nature or description, in the name of Wife or in the parties' joint names.

(2) From and after the date of this Agreement, Wife shall not incur any indebtedness or liability, of any nature or description, in the name of Husband or in the parties' joint names.

(3) As soon as possible, all accounts of joint and several nature shall be closed or converted to the individual name of the responsible party so as to not impair the credit of the other party. In any event, the joint accounts shall be closed when paid in full. Upon execution of this Agreement, each of the parties shall return to the other all credit cards and other indicia of credit and shall make no further charges thereon.

VI. STATE AND FEDERAL INCOME TAX RETURNS:

For 2007 and thereafter, the parties shall file separate federal and state tax returns. Each party shall be responsible, respectively, for any liability, and entitled to any refund, in relation to his and her respective income and deductions.

Husband and Wife shall hold each other harmless for the payment of all taxes, assessments, penalties, and interest resulting from any acts or omissions of either party and from any action of any taxing authority resulting from the acts or omissions of either party for the period commencing with the date of the marriage through the date of the parties' separation.

In order to avoid unintended tax consequences, the parties shall execute and deliver to the other such title documents as are necessary to transfer all property consistent with the terms of this Agreement as soon as practicable after execution of this Agreement. Neither party shall sell or do any other act that would precipitate tax consequences to the other party, including, but not limited to, selling property while such property remains jointly titled.

Husband and Wife acknowledge that neither attorney has provided them with any tax advice as to the tax treatment of the distribution of property set forth herein or any other tax consequences of the terms of this Agreement. Husband and Wife acknowledge that neither party is relying on any opinions that may have been expressed by either attorney as to the tax consequences of the execution of this Agreement.

VII.

ATTORNEY FEES, SUIT MONEY, AND COSTS:

The parties agree that they shall be individually responsible for their respective attorney fees, private investigator fees, suit money, and costs involved in this matrimonial dispute from its inception and also in the negotiation, preparation, and approval of this Agreement and for all attorney fees, suit money, and costs heretofore or hereafter incurred in any litigation brought before any Court for the purpose of approving this Agreement and/or to obtain an uncontested divorce of the parties; and further hereby waive and mutually release each other from any and all claims thereto.

This waiver and release does not constitute a waiver or release or in any way bar either party from claiming attorney fees, suit money and costs, from the other in actions brought subsequent to the signing of this Agreement to enforce the terms and conditions hereof.

VIII.

SEPARATION AND NON-INTERFERENCE:

The parties do hereby acknowledge that on or about December of 2003 prior to the execution of this Agreement, the parties separated and have continued to live separate and apart. Although recognizing their legal bond of marriage, they recognize and agree that in order to promote their mental health and well-being, the parties must now continue to live separate and apart from each other and shall be free to conduct themselves as if they were unmarried. Each party shall be free from the control of the other. Husband and Wife will not in any manner: annoy, molest, or disturb the other, or compel or endeavor to compel the other to cohabit with him or her and will honor the request of one part to the other not to communicate with him or her upon such request not to communicate.

IX. RELEASES AND DISMISSAL OF ALL CLAIMS:

Except for specific rights, responsibilities, and conditions set forth in this Agreement, Husband and Wife hereby generally and fully release each other from all actions, causes of action, claims, suits, demands, rights, damages, losses, costs, expenses, fees, attorney fees, suit money, private investigator fees, accounts, judgments, executions, debts, obligations, and any and all other liabilities of any kind or nature whatsoever either in law or in equity, whether known or unknown, suspected or unsuspected from the beginning of time to date the parties executed this Agreement, including, but not limited to, claims for personal injury and claims arising out of their marital relationship.

The parties do hereby declare and represent that in making this Release and Agreement, each relies wholly upon his or her own judgment, belief, and knowledge of the nature, extent and effect of said acts, and that each has not been influenced to any extent whatsoever in the making of this release by any representations or statements regarding the entire matter or by persons, firms, agents, attorneys, or corporations representing them.

Each party understands that this settlement is a compromise of a disputed claim and that any payment to or by each or either of them is not to be construed as an admission of liability for said acts.

Each party has read the foregoing Release and the Agreement and each has had the same explained to them by their counsel. Each knows the content thereof and signs the same as their own free act fully realizing that execution of this instrument will bar any further claim by each against the other and any heirs and all other persons, agents and attorneys who are or might be liable, including all those persons entities named herein above, except as specifically set forth herein.

X. BINDING EFFECT ON HEIRS AND ASSIGNS:

The terms and conditions of this Agreement shall be fully binding on and enforceable by the heirs, assigns, and successors of the parties and their estates. The obligations of the parties under the terms and conditions of this Agreement shall not be extinguished by bankruptcy or insolvency proceedings or any assignments for the benefit of creditors.

XI. FAIRNESS OF AGREEMENT:

Each party acknowledges that this Agreement is fair and reasonable. Each has adequate knowledge of the other's financial situation, including: income, expenses, debts, and assets as they have exchanged sworn financial declarations. Each party enters into this Agreement freely and voluntarily. This Agreement is not the result of any duress, or undue influence, and this document is executed after deliberation, consideration, and consultation with the parties' respective attorneys. Each party acknowledges his or her satisfaction with all legal assistance provided herein, and neither has looked to the attorneys for tax advice, but has received separate tax advice from independent sources as desired.

XII. APPROVAL, MODIFICATION, AND ENFORCEMENT OF AGREEMENT:

This Agreement shall be submitted to the Family Court for the Fifth Judicial Circuit of Richland County, South Carolina, for the purpose of having the Court review and approve the terms and conditions of this Agreement and for the issuance of an appropriate Order approving the terms and conditions hereof and making the same the Order of the Court.

Each party solemnly agrees to promulgate and support the Court's approval of this Agreement and do nothing in derogation hereof and in any way attempt to discourage said approval and merger by the Court. If the Court does not approve this Agreement in its totality, this Agreement shall be null and void.

Once approved and made the Order of this Court, the Family Courts of the State of South Carolina shall have continuing jurisdiction to enforce the terms and conditions of this Agreement, along with any Order issued with respect thereto, and both parties shall be subject to the contempt powers and jurisdiction of the Family Courts of the State of South Carolina with respect to any breach or violation of this Agreement or the Order of this Court.

Husband and Wife hereby acknowledge and agree that this is a full and complete custody, property and support Agreement with respect to all matters raised and with respect to those which could have been raised in the controversy between them, and is considered by them to be a fully integrated Agreement. It is the intent of the parties hereto that the provisions of this Agreement shall govern the rights and obligations of the parties, as well as all rights of modification; and, further, that the terms and conditions of this Agreement and any Order approving the same, shall not be modifiable by the parties or any Court without the written consent of Husband and Wife, saving and excepting the matters of child custody, child support, and child visitation, which terms and conditions are now, and shall always be subject to modification and termination by the Family Courts of the State of South Carolina as provided in this Agreement. The parties specifically agree that the Family Courts of the State of South Carolina (or any other Court) shall not have any jurisdiction to modify, supplement, terminate, or amend this Agreement, or the rights and obligations of the parties, except as provided in this Agreement.

XIII. GENERAL PROVISIONS:

The parties represent to each other and further agree to the following, to-wit:

A. **Voluntary Agreement:** Each party acknowledges that he and she are fully informed as to his or her legal rights and obligations; that each of them has entered into and

executed this Agreement after conferring with each of their respective independent attorneys, and having such knowledge and opportunity, each of them executes this Agreement freely and voluntarily, intending to be bound forever by it and intending that it shall be enforceable by either party by proceedings in Family Court for the Fifth Judicial Circuit in Richland County, South Carolina. It is further understood and agreed that this Agreement is not, and is not to be construed to be, an Agreement for divorce.

B. Complete Agreement: This Agreement expresses the entire Agreement between the parties, supersedes any prior understandings or Agreements between them and there are not any other representations or warranties other than those specifically set forth herein.

C. Full Disclosure: Each party represents to the other that a true and accurate disclosure has been made to the other of all assets and financial matters.

D. Waiver of Estate Rights: Each party hereby releases and relinquishes and by these presents are hereby barred from any and all rights and claims he or she may have or hereafter acquire as a spouse under the present or future laws of any jurisdiction by way of dower, inheritance, descent, distribution, elective share, and all other rights or claims whatsoever, including but not limited to claims in or to the property or estate of the other, whether real, personal, or mixed, and whether now owned or hereafter acquired. Both parties are aware of their elective share rights, and they hereby release and relinquish any right to elective share that he or she may have with the full knowledge of all rights thereto.

E. Enforcement: Each party may apply to the Family Courts of the State of South Carolina for an Order directing specific performance of any act or duty imposed upon the other in the terms of this Agreement, and for appropriate relief to enforce the terms and conditions hereof.

F. Defaults Not Waived: No waiver of any breach by either party of the terms and

conditions of this Agreement shall be binding upon either of the parties unless reduced to writing and subscribed to by both of the parties. The failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement shall not be construed as a waiver of any continuing or subsequent default of the same or similar nature.

G. **Applicable Law:** This Agreement was duly executed and delivered in the State of South Carolina, and its terms and conditions shall be governed by and interpreted under the laws of the State of South Carolina.

H. **Addresses:** Until all of the obligations created by this Agreement have been fully performed by both parties, each party shall at all times keep the other informed of his or her residential address and shall notify the other of any change of residential address within ten (10) days of any change, providing the address of new residence.

I. **Reconciliation:** This Agreement shall not be invalidated by a reconciliation or resumption of marital cohabitation of the parties. This Agreement shall be nullified in the event of reconciliation only if the parties specifically execute a statement, signed by each of them with the same formality as this Agreement, declaring this Agreement to be null and void.

J. **Severability:** Subsequent to the Court's approval of this Agreement, if any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue to be fully effective.

K. **Construction Against Drafting Party Inapplicable:** Both parties (and their respective counsel) shall be treated as having drafted this Agreement cooperatively; therefore, neither party shall have any ambiguity construed against him or her and neither party shall be entitled to claim the benefit of any ambiguity resulting from the drafting of this Agreement.

M. **Headings:** The headings used in this Agreement are for convenience of the parties

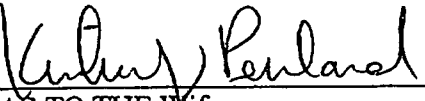
only and shall not be used to establish or interpret any of the rights or obligations set forth in this Agreement.

N. **Modifications**: A modification of the terms of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

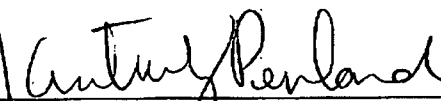
O. **Implementation**: The parties expressly agree that: at any time hereafter, each of them shall make, execute, and deliver any and all further and other instruments, papers, or things as may reasonably be required or desirable for the purpose of giving full effect to this Agreement (including but not limited to deeds, renunciations, bills of sale, income tax returns, tax reporting forms, powers of attorney authorizing statements to tax returns and assignments, and other such documents).

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date and year first shown above on this Agreement.

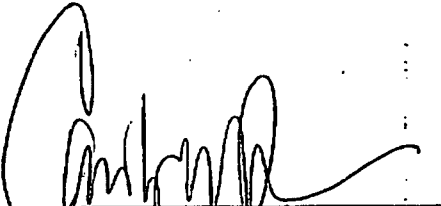
IN THE PRESENCE OF:


AS TO THE Wife


AS TO THE Wife


AS TO THE Husband


AS TO THE Husband


CAROLYN W. POWELL


W. CONRAD POWELL

A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) AGREEMENT

In consideration for W. Conrad Powell paying the sum of \$435,000.00 to Sun Equities Lending Group, the undersigned, Carolyn W. Powell, as mortgagor under a certain mortgage dated May 13, 2005, hereby consents to the assignment of the rights and obligations of Sun Equities Lending Group, a Georgia Partnership as mortgagee to W. Conrad Powell, assignee.

Carolyn W. Powell further agrees that the property subject to the mortgage will continue to be listed with a real estate agent at a price of \$595,000.00, and that after payment of reasonable and ordinary closing costs, and \$435,000.00 to W. Conrad Powell, that the net proceeds will be shared equally by Carolyn W. Powell and W. Conrad Powell.

Carolyn W. Powell agrees and stipulates that she will not further encumber the property.

The parties agree that W. Conrad Powell shall have the right to approve the sale of the property subject to the mortgage.

W. Conrad Powell agrees that in consideration for the terms set out above that payment will be made to Thomas P. Murphy, attorney for Sun Equities Lending Group, on the following terms: \$25,000.00 before 10:30 a.m. April 2, 2007, and \$410,000.00 before 5:00 p.m. April 10, 2007. Contingent upon conditions in Appendix "A" Attached are met in a timely manner. up *up*

Date: April 1, 2007

Carolyn W. Powell
 Carolyn W. Powell

W. Conrad Powell
 W. Conrad Powell

Agreement RE: Stiken BARN -
Appendix "A"

P = Fred Powell = CP to Advance 25,000 on 4/2/07,
P = Carolyn Powell 20,000 of which applies to mortgage payoff,
upon receipt of letter from atty stating this arrangement.

- CP to advance additional monies for total payoff
of Mortgage w/in 10 days, not to exceed
additional 40,000.

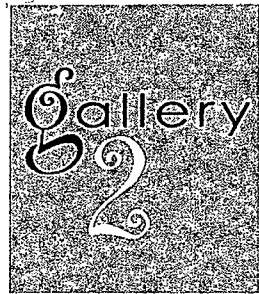
No letter from
attorney
April 10, 2007
W. Conrad Powell

CWP agrees the orig 25,000 to be returned
to CP upon payment of 250,000 equitable distribution
if all the following do not occur:

- 1) all paperwork/documents provided per Jimmy
Knight's direction
- 2) Recordable note/agreement from CWP
stating a) Property is not/will not be further
encumbered with debts/liens;
b) Property will remain in The Market @ 595,000 ±
c) Upon sale, CP to receive all monies invested
plus 1/2 net amount received after investment
dollars are returned;
d) Devine st Mortgage will not be paid off
until stable is sold/closed;
e) After taking possession CWP to pay Devine st
Mortgage until stable is sold/closed -

Signed: CAROLYN W. POWELL

Signed: W. Conrad Powell



RECEIVED APR 4 2005

PROPRIETORS **Bunni Crawford**
Carolyn Powell

April 1, 2005

Ashlin

I received today copy of Sherman's
"Proposed" Settlement.

It is apparent to me that
Neither my husband or his attorney intends
to be equitable or fair — To wait
yet another month (without support)
and receive more "garbage" is
the final straw for me ...

WE NEED to Change Strategy
and Move Forward towards litigation.

929 Gervais Street
Columbia, SC 29201

Gallerytwo@aol.com
Telephone (803) 771-6123
Facsimile (803) 771-0122

I have sent Michael Taylor

a check for retainer, and

will have a response to the offer →

And my Financial Statement draft
in the mail (and or faxed)
Monday 4/4 _____

Please telephone @ your earliest
convenience _____

Angela Jones

803 312 1111

Thanks

LAW OFFICES OF GOLDEN, TAYLOR, POTTERFIELD AND BARRON
1712-1714 Main Street
Columbia, South Carolina 29201

TO PROSPECTIVE CLIENTS: PLEASE READ THIS FIRST:

MS. POTTERFIELD'S FEE FOR FIRST CONSULTATION IS A MINIMUM OF \$200.00 FOR THE FIRST HOUR, DURING NORMAL BUSINESS HOURS.

One of the major problems in divorce proceedings is the tendency of the public, and even many lawyers and Judges, to over-simplify the problems and procedures. This does not mean we must over-complicate, but the fact is there are many, many facets to a divorce, custody or support case*, and the more thorough the lawyer knows how to be, the better it is for the client. Not all lawyers are knowledgeable in this field - we are. Please help us be more thorough by absorbing the attached information which we want you to read, and by straight-forwardly giving us the information we seek from you in the remaining attachments.

We need to know a lot about your situation before we can give you appropriate advice. As every concert pianist knows, art is more than just not making mistakes. We try to raise creative lawyering to an imaginative and productive level and in order to do this, we need a constant supply of current information from the client. You need to know right from the beginning that there are some terrifying things that can happen to you in a domestic relations case - the kinds of things that can happen in a criminal case, in a bankruptcy case or a tort case and the only preventative is to get a good experienced attorney and even that is no sure guarantee. No other kind of case is full of as many pitfalls as domestic cases; that is why experienced counsel is so important.

It may be, after reading these "first level" papers, you may have gained enough insight into your problem or condition that you don't need to go further and see a lawyer at this time. That's OK with us, and there will be no charge, however, you must return all papers and not refer to this office as representing you in any way.

Mrs. Potterfield fees are \$200.00 per hour. Paralegal fees are \$50.00 per hour. We are professionals and truly want to help you, however, as Abe Lincoln said: "A lawyer's time and advice are his stock in trade."

P.S. (Note to high asset clients: In today's global economy, assets are easily hidden abroad. It may be wise for us to hire on your behalf an experienced international investigator to conduct a world-wide assets search to assist in your case. Ask us about this



if appropriate.

THANKS AND GOOD LUCK!

* For instance, understanding the terms: jurisdiction, grounds, fairness, reasonableness, attorney's fees, fault, alimony and support, equity, negotiations, settlement, agreements, defaults, pre-trial discovery, perjury, 5th Amendment, contested cases, merger, decrees, lump sum, tax liability, equitable distribution of property, etc.

A SHORT COURSE ON DOMESTIC RELATIONS LAW IN SOUTH CAROLINA FOR CLIENTS OF ASHLIN B. POTTERFIELD - IN CONTESTED CASES ONLY.

Please read carefully, sign page 3 and place your initials in the left-hand margin of pages 1 and 2.

1. With respect to custody, the general rule now is: What is in the best interest of the child? It used to be that minor children of tender years were usually left by the Court in the custody of the mother and the only way for the father to obtain such custody was by proof of the mother's severe neglect or her unfitness (on basis of morals or health) to care for the children. Keep in mind that just because it may be proven that the mother is an unfit wife for some reason, this does not necessarily prove that she is an unfit mother. Therefore, one sexual indiscretion does not qualify her to be an unfit mother. This is a frequent misconception of clients but, nowadays, parents are on a fairly equal basis, but Judges remember the old ways of favoring mothers and they die hard.

2. The Law in South Carolina states that there are five (5) grounds for a divorce in this State and that before any of these five grounds can be brought, at least one of the parties must have been a resident of South Carolina for more than one year prior to instituting the action for divorce, or both spouses must have resided in South Carolina for at least three months. These five grounds are: Adultery, Physical Cruelty, Desertion for more than one year, and Habitual Drunkenness or Habitual Use of Drugs, and Separation for a period of one (1) year without cohabitation ("No Fault").

3. It is normally necessary to have some outside proof in addition to the testimony of the suing party. This proof can be in the form of a doctor's statement that he tended the bruises involved if the aggrieved party is tying up the fact that the bruises were as a result of a beating, for instance. Sometimes it is sufficient proof of physical cruelty for persons who heard the screams of the

individual involved to so testify if this coincides with the times and dates of the beatings. In adultery cases, pictures of the spouse and lover holding hands or embracing or entering an apartment or motel are corroborative. In habitual drunkenness cases, codeine bottles or canceled checks at liquor stores or tapes of drunken conversations or pictures of liquor bottles (empty) all lined up, etc., are corroborating evidence if he is thoroughly convinced there is no collusion. Collusion means the parties have conspired to fake the grounds. It is illegal itself, leads to perjury and is unethical and improper.

4. The law does not require absolute proof of adultery and frequently if someone is seen to enter into suspicious circumstances, this is enough proof unless properly and reasonably explained. Thus, innocent activities can be dangerous. This is why MS. POTTERFIELD STRONGLY RECOMMENDS NO DATING ON THE PART OF HER CLIENTS DURING THE PENDENCY OF ANY DIVORCE ACTION, although some other attorneys may feel differently. The reason that Ms. Potterfield has this rule is that innocent dating can unduly give evidence to the other side, insofar as "where there's smoke-there's fire" attitude on the part of the trial judge and adds unnecessarily to the difficulties of the case. If you go against this recommendation, Ms. Potterfield will probably still remain as your counsel, but you will not be heard to complain if you have damaged your own cause as to alimony, etc. An Adulterous spouse cannot be granted alimony in South Carolina. The test of adulterous circumstances is: was there opportunity and inclination? AND it must be proven by "clear and convincing" proof.

5. You must understand when you sign the Verification to the Complaint that this is an affidavit under oath that the statements made in the Complaint are true and that you are expected to testify to these same facts in the same way only in greater detail upon the case being called for trial before the Judge. There is no jury in South Carolina with respect to divorce cases and the only people present are the lawyers for the parties involved, the parties themselves, the Judge, and his Stenographer, and sometimes the witnesses. On motion of one of the attorneys, witnesses can be "segregated" and allowed to remain outside the room where the testimony is taken until their testimony is involved. This is usually done in the case of children. Children can sometimes be witnesses in cases against one parent, however, Ms. Potterfield does not usually require this unless it is absolutely essential and then only if the child is of sufficient age or awareness where his testimony will be believed. This, of course, is not good for the

child even when the child qualifies under the latter, and can lead to serious psychological damage later on, as well as permanently injuring the relationship between the child and the spouse against whom the child is testifying. Most of the time the Judge will consent to talking to the child in Chambers, but Judges differ in how well they accomplish this.

6. Although, despite ERA, etc., the Law in South Carolina still looks upon the wife as the "favored suitor" and gives her a considerable head start in the law suit; however, wives can lose their cases and just because she decides she wants to get a divorce is not sufficient grounds in South Carolina. Also, mothers can lose custody of children more easily now, than 10 to 20 years ago. She must prove her case as set forth in paragraph two (2) above. The main edge which the wife has is in what Ms. Potterfield calls "round one", which is the temporary short hearing held after the pleadings are served on the other spouse. "Round one" usually looks into temporary custody, temporary support, temporary alimony, temporary use of household and car, temporary Court expenses, temporary attorney's fees for the wife's attorney paid by the husband, and an injunction against harassment or waste of assets. It is extremely important for you to understand that "Round One" usually takes place before the Judge himself and therefore he is usually unwilling, because of limited time, to delve deeply into the problems of the parties and to hear their individual complaints in detail. This should not leave you with the impression that the Law is not to give you your day in Court as fully as you want, because in the final hearing you will be allowed to take as much time as your attorney thinks is appropriate in testifying and bringing other evidence in about your case; however, the temporary hearing, "Round one" is not the time for this and many clients get the impression that their attorney is remiss and lacks thoroughness because of the brevity of the "Round one" hearing. This is not true and is done only to expedite the temporary relief. Frequently the attorneys for the parties can get together and reasonably agree to temporary relief so that the "Round One" hearing is unnecessary. This is especially good if the parties later reconcile and haven't had to face each other in Court at the "Round one" hearing.

7. You may not be able to afford to have Ms. Potterfield hire for you a private detective to gain additional proof during the pendency of our suit. Additional proof of various wrong-doings on the part of your spouse is admissible in Court at the final hearing even after the initial hearing is held. Therefore, you will be your best detective and should at all possible times be on the

lookout for your acquisition of additional proof to help your attorney and be on your guard and aware that the other attorney has probably told your spouse the same thing. Upon request, Ms. Potterfield will recommend a detective agency for you. It could turn out to be the best investment you ever made.

8. Also, you should be on your guard with respect to any phony attempts at reconciliation by your spouse. Yours spouse's attorney may have told your spouse that the quickest and most effective way to defeat your case would be to "court" you and thus get you back into the marital relationship, thus causing you to lose all our grounds, no matter how strong they may have been. This in no way should be taken to mean that Ms. Potterfield is against reconciliation if it is bona fide. Ms. Potterfield believes in assisting in reconciliations wherever possible and will never put herself in the position of pushing clients into getting a divorce, however, the key to this difference is whether the attempt at reconciliation is phony or bona fide, with a reasonable hope for change (for your spouse to "be sorry" is not enough.)

9. You should know that if your spouse is not served with the papers in South Carolina, but has moved to another State, that you may still be able to get a divorce, but only a divorce, without matters such as alimony or child support able to be passed by this Court. A "wait and see what he does" attitude may be your downfall, if your spouse leaves the State before you sue.

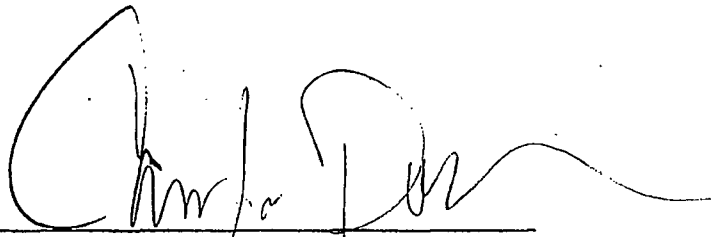
10. In matters of Legal Separations (suits for "Separate Maintenance") the rules are pretty much the same, but the grounds are not as strict as in divorce cases, and not as much proof is required and not as much corroboration, if any, is required and a broader spectrum of grounds is possible, largely dependent on the thoroughness and resourcefulness of the attorney involved. That is why a detailed "novel" is so important. Of course, this does not mean that someone who is living with their spouse can go into Court and ask for a legal separation just because they have "had enough". There needs to be some legal reason why he or she is entitled to have the Court give such relief (such as its permission to live separate and apart with support from the other spouse, etc.) Also, of course, in a legal separation, you are still married, but your relationship with your spouse is legally defined, regarding such things as support, alimony, custody of children, house, car, furnishings, savings accounts and other assets, visitation, and restraining orders. In South Carolina it is possible to get as

much permanent relief from a Court as in a divorce case, except for the divorce itself. After a "Decree of Separate Maintenance" (whether it was fought for, or a settlement agreement was approved by a Court) an additional serious danger exists from the time of the legal separation until the time of the divorce. During this period, a spouse could still be divorced on the grounds of adultery or other fault grounds if that is provable. The only benefit is that the adultery (or other grounds) cannot disqualify a spouse from alimony if it was properly agreed to and memorialized in the previous Decree of Separate Maintenance. And, an adultery charge can follow some people through life and ruin some futures (in the case of later bonding of corporate officers, promotion in some jobs, subsequent marriage to very religious persons, etc.)

11. If you are over forty (40), one of the things you should do is contact the Social Security Administration and request, free of charge, a Personal Earnings and Benefits Estimate Statement that shows your SS earning over the years, how much you have paid in SS taxes, and your estimated future benefits. Social Security has installed a toll-free number, 800-2345-SSA to assist you in finding out and understanding everything you need to know about your program. The line is open from 7 a.m. to 7 p.m. and they suggest that you avoid calling during the peak hours: i.e., the first week of any month, and from 9 a.m. to 5 p.m. The hours from 7 to 9 a.m. and 5 to 7 p.m. are the best times to call.

12. These are only general highlights and may only marginally apply to your case, but it is best for you to understand the above.

I ACKNOWLEDGE READING THE ABOVE:



CLIENT

DATED: 4/23/03

REID B. SMITH, ATTORNEY AT LAW

1620 Lady Street, Suite B
Columbia, South Carolina 29201

COPY

Mailing Address:
Post Office Box 5537
Columbia, South Carolina 29250

E-mail: schrlaw@aol.com
Telephone: (803) 779-2255
Facsimile: (803) 765-9725

May 19, 2006

J. Michael Taylor, Esq.
1634 Main St., Suite 95
Columbia, S.C. 29201

Re: Carolyn Powell

Dear Michael:

Enclosed, please find a time line analysis of the financial issues relating to Conrad Powell. I also enclose a spread sheet analysis of the tax returns for Chic Antiques, joint returns for Mr. and Mrs. Powell, and Mr. Powell's 2003 return. In order to provide this information, it was necessary to study an entire banker's box full of records. I apologize for the delay, but as I explained to Carolyn, it was necessary to take the time to analyze the records in detail so that I could provide a complete report.

It appears that the only pre-marital assets are Mr. Powell's interest in Blossom-Huger L.P. and Chic Antiques and Interiors, Inc. The major asset of Blossom-Huger L.P. is the real estate at 602 Huger St. in Columbia. The major assets of Chic Antiques and Interiors, Inc. are the inventory and the cash flow. If the tax returns are correct, the business is losing money. However, Carolyn has provided correspondence between Conrad and his accountant that makes me question the veracity of the 2002 return, and by implication, all other returns. Specifically, the corporation may have been under reporting its income and manipulating its expenses. We need to explore this issue through the accountant's deposition.

Conrad Powell's interest in Blossom-Huger L.P. and the interest of Chic Antiques and Interiors, Inc. in the Blossom-Huger L.P. increased after the marriage. The increases result from members of the partnership withdrawing or selling their interest. According to Carolyn, funds to purchase the withdrawing member's interest came from their joint checking account.

It appears that Conrad is a 50% shareholder in Chic Antiques and Interiors, Inc. Approximately one month prior to the marriage, Conrad Powell and his brother, Terry Powell, borrowed \$405,000.00 from S.C. Federal. A portion of the loan proceeds, \$100,000.00, was earmarked to purchase inventory. Carolyn and Conrad went to England for their honeymoon and purchased a substantial amount of inventory. Upon their return, a new business location was

02783



MIT005139

opened in Five Points, at the Bazaar. Chic Antiques placed inventory in this location and Carolyn managed this location. I would like to continue investigating whether this was sufficient to transmute the corporation into a marital asset.

At a minimum, Conrad loaned the corporation personal funds after the marriage. At one point, he wrote off a \$100,000.00 loan to the corporation as a bad debt on his tax returns. The loans were used to purchase inventory and to cover operating expenses. At a minimum, the inventory owned by the corporation may be subject to a claim as marital property.

I also have enclosed a summary of Conrad Powell's interest in Wheels Sports Group, which is also included in the time line. His interest was acquired after the marriage. In 1999, he disposed of 207,000 shares of stock, and received \$3,106,288.00. This funded many of his investments, including the interest in Oak Hills Golf Course, and perhaps many other business venture which began at or about mid 1999.

Because I am pressed for time, and I told Carolyn that I would get a preliminary report to you today, I will have to discuss in greater detail how Wheels funded the various enterprises. However, you can get a flavor of the importance of Wheels by noting the business ventures which began in 1999. Also note in the time line the various real estate purchases and subsequent sales at substantial profits.

I am not sure how much stock in Wheels successor, RC2, Inc. Conrad continues to own. According to a note in his 2001 financial statement he continued to own approximately 48,000 shares. (My calculation indicates more.) Today, RC2, Inc. shares are trading at \$37.40 a share. If Conrad continues to own 48,000 shares, his interest is worth \$1,795,200.00.

The Oak Hill proceeds were used in a tax free exchange for the Pawleys Island property. Mr. Powell received \$2,360,233.79 proceeds from the sale of Oak Hill, which were placed with Frederick M. Zeigler. From this, \$1,700,00.00 was used to purchase the Pawleys property, leaving \$660,233.79 unaccounted for.

Also, there should be approximately \$1,800,000.00 on hand from the sale of the Pawleys real estate. Of course, cap gains taxes must be deducted.

Michael, contact me after you have reviewed this. Thank you for allowing me to work with you on this case.

Very Truly Yours,



Reid B. Smith

[REDACTED]

Entity		1995	1996	1997	1998	1999	2000	2001	2002	2003
Chic Antiques	gross	229,876	223,523	470,477	422,182	385,851	330,649	379,143	286,691	241,022
	Cog	177,354	169,659	291,663	281,606	249,683	257,769	241,033	275,927	213,467
	Exp	152,361	140,548	163,539	140,674	135,517	125,851	138,608	130,555	127,819
	Net	(12,479)	(446)	15,304	(98)	651	(16)	(498)	(19,791)	(264)
Joint 1040	Joint ¹ W2				24,115	12,000			3,000	
	Carolyn W2						9,000	9000		
	Conrad W2						11,000			
	Interest				2,436	33,299	21,873	13,490	7,385	
	Dividends				23		6,463	2,867	2,734	
	Cap gains				1,461	2,551,676	72,151	320,483	526,041	
	Rental				(2,051)	(66,495)	(36,0009)	(68,792)	(57,647)	
Conrad 1040	W2									
	Interest									3,590
	Dividends									3,167
	Cap gains									191,839
	Rental									(83,314)
	Misc									1,925

¹Cannot distinguish income because copies of W2s are not attached to return

9/13/79 Chic Antiques and Interiors, Inc. incorporated

4/8/81 Blossom-Huger LP formed

undated and unsigned "Transfer of Partnership Interest"

1) Warren B. Buford, II 10% LP interest to Chic Antiques

2) M Daniel Iseman 9% LP interest and 1% GP interest to
Chic Antiques

1981 Blossom-Huger Limited Partnership acquired 602 Huger St

1981 unsigned Chic Antiques and Interiors, Inc. Shareholder Buy Sale
Agreement

W. Conrad Powell

John B. Hipp 196 shares

Terry J. Powell 196 shares

H. Larry Winecoff 196 shares

W. Jackson Lyday 196 shares

Leonard and Mary Powell,

Jointly with right of

Survivorship 176 shares

1987 Blossom-Huger Limited Partnership Form 1065

Terry Powell 10%

Jacqueline C. Loomis 10%

John B. Hipp 10%

W. Jack Lyday 10%

H. Larry Winecoff 10%

W. Conrad Powell 10%

Chic Antiques and Interiors, Inc. 40%

1988 undated and unsigned "Transfer of Partnership Interest"

John B. Hipp 9% LP interest and 1% GP interest in Blossom-Huger Limited Partnership to Terry Powell

1988 Blossom-Huger Limited Partnership K-1

W. Conrad Powell 10%

8/11/88 SC Federal Loan Commitment \$405,00

Loan to Terry Powell and Conrad Powell to:
 Pay off Louie Baker mortgage (\$225,000)
 Pay off NBSC (\$60,000)
 Purchase inventory for new location at the Bazaar (\$100,000) (Honeymoon in England and purchased antiques)
 Loan costs (\$5,000)
 Struck through- "Buyout Henry Loomis (\$15,000)

9/2/88 letter from G. Marcus Knight to Terry Powell
 re: Mrs. Loomis' withdrawal from partnership

9/17/88 Carolyn & Conrad married

1990 Blossom-Huger Limited Partnership K-1

John B. Hipp 10%
 W. Conrad Powell 10%
 Chic Antiques and Interiors, Inc. 50%
 (Other K-1s missing)

3/15/91 Conrad acquired interest in Wheels Sports Group

1993 Blossom-Huger Limited Partnership Form 1065

Terry Powell	15%
W. Jack Lyday	10%
H. Larry Winecoff	10%
W. Conrad Powell	15%
Chic Antiques and Interiors, Inc.	50%

- 12/12/96 Wheels Sports Group Articles of Incorporation filed in NC
- 4/1/97 Wheels Sports Group, Inc announced initial stock offering of 900,000 shares of common stock and 900,000 shares of warrants
- 6/12/98 Wheels Sports Group, Inc. merged with WSG Acquisition, Inc. Conrad Powell owned 517,303 shares of Wheels stock, which was converted at .51 shares , resulting in 263,825 shares of stock in the merged company.
- 7/20/98 Wheels Sports Group, Inc. name changed to Racing Champions South, Inc.
- 12/20/98 Racing Champions South, Inc. merged with SM Acquisition Company, J/B Acquisition, High Performance Sports Marketing, Inc., and World of Racing, Inc.
- 3/22/99 Columbia Golf Properties, LLC formed
- 3/25/99 Columbia Golf Properties, LLC acquired tracts 1,2,3,4, & 5 09600-03-01 and 09600-03-02 (Oak Hills) in Richland County
- 7/22/99 Columbia Golf Properties, LLC deeded 39.105 acres and 674.285 acres to W. Conrad Powell \$702,000
09600-02-13 and 09600-03-03
- 8/10/99 Columbia Management Group Inc. formed

9/3/99 Columbia Management Group Inc. Acquired Berry Hill Rd r/e
\$2,150,000

9/3/99 Wachovia mortgage on Berryhill Rd \$1,827,500

9/12/99 207,000 shares of Racing Champions South, Inc stock sold for
\$3,106,288 (Conrad left with 56,825 shares, plus 48,000 in
escrow?)

5/19/00 Columbia Management Group Inc acquired 927, 929, and 931
Gervais from Paul D. Sloan

5/22/00 plat filed for Columbia Management Group Inc for
927, 929, and 931 Gervais

10/6/00 5123 Lakeshore deeded to Conrad \$450,000

1/22/01 memo from H. Larry Winecoff to James Knight
Re: POA authorized upon receipt of letter from
Connie Buford stating that \$30,00 paid by Conrad

1/22/01 Letter from Connie Buford confirming payment of \$30,000

7/3/01 deed to Conrad 3505 Devine Street \$682,500

3/19/02 Vista Antiques and Persian Rugs, Inc. formed

9/2/02 appraisal for 3912 Kenilworth \$1,250,000

9/13/02 Miroc Columbia, LLC formed with Michelle Owens as registered
agent

9/13/02 W. Conrad Powell deeded Oak Hills real estate to Miroc
Columbia, LLC \$2,500,000 sales price, \$2,360,233.79 proceeds
to Frederick M. Zeigler; 09600-02-13 and 09600-03-03

9/25/02	deed to Conrad 3912 Kenilworth	\$865,000
9/25/02	Wash Mutual mort on 3912 Kenilworth	
10/1/2002	Deed from Richard & Elizabeth Boggs to W. Conrad Powell 111 Atlantic Avenue Pawleys Island \$1,700,000 (Tax free exchange with Oak Hill proceeds. Have not been able to account for the remaining proceeds of \$660,233.79 paid to Zeigler.	
1/13/03	City Rugs, Inc. incorporated in NC	
9/2/03	Barczak appraisal for 3505 Devine St	\$740,000
9/25/03	BOA mortgage loan 6920122717 on 3505 Devine	\$470,500
12/03	Carolyn & Conrad separated	
5/23/03	Columbia Management Group Inc mortgage to NBSC on Berryhill Rd	\$1,100,000
6/30/03	Racing Champions South, Inc. name changed to RC2 South, Inc.	
7/9/03	5123 Lakeshore sold	\$500,000
	cash to seller	\$467,758.49
7/9/03	1523 Devonshire deeded to Conrad	\$415,000
10/28/03	1523 Devonshire sold	\$449,900
3/19/04	deed Columbia Management Group Inc to SC Student Loan Corp \$2,860,000 (Berryhill Rd real estate)	

4/26/04 statement from Winecoff confirming that He has no interest in B and H Properties or Chic Antiques

4/27/04 Columbia Management Group Inc NBSC mortgage on Berryhill Rd satisfied

4/27/04 Columbia Management Group Inc Wachovia mortgage on Berryhill Rd satisfied

6/4/04 Columbia Management Group Inc mortgage to NBSC
\$753,636.65 acct #4531168950 note 5
2nd mortgage on 927-931 Gervais

2/24/05 Barczak appraisal for 3505 Devine St \$740,000

3/7/05 111 Atlantic Ave W. Conrad Powell to Dennison & Francis Robey \$2,075,000
\$1,000,000 to Q.I. Donna Nesbit
\$707,080.74 to Conrad (used to purchase NBSC CD)

3/14/06 Miroc Columbia, LLC to Columbia View, LLC
\$4,510,000 09600-02-13 and 09600-03-03

Wheels Sports Group

- 3/15/91 Acquired interest in Wheels Sports Group
- 12/12/96 Wheels Sports Group Articles of Incorporation filed in NC
- 4/1/97 Wheels Sports Group, Inc announced initial stock offering of 900,000 shares of common stock and 900,000 shares of warrants
- 6/12/98 Wheels Sports Group, Inc. merged with WSG Acquisition, Inc. Conrad Powell owned 517,303 shares of Wheels stock, which was converted at .51 shares , resulting in 263,825 shares of stock in the merged company.
- 7/20/98 Wheels Sports Group, Inc. name changed to Racing Champions South, Inc.
- 12/20/98 Racing Champions South, Inc. merged with SM Acquisition Company, J/B Acquisition, High Performance Sports Marketing, Inc., and World of Racing, Inc.
- 9/12/99 207,000 shares of Racing Champions South, Inc stock sold for \$3,106,288
- 6/30/03 Racing Champions South, Inc. name changed to RC2 South, Inc.
- 5/18/06 RC2 South, Inc. is a wholly owned subsidiary of RC2 Corp, trading on NASDAQ as RCRC. Trading at \$37.40 on this date

DRAFT FOR DISCUSSION

Jan 6, 2007

Marne Sherinan, Esq.
301 Stoneridge Drive
Columbia, SC 29210

Re: Powell v. Powell; Settlement Proposal (all privileges shall apply)

Dear Marne:

Carolyn Powell has authorized the following proposal to settle all issues in this case. We believe that this offer distributes the assets in a manner that is fair and equitable to both parties and addresses the needs of the children.

In his testimony on December 13, 2006, Conrad identified and valued the following assets:

proceeds from sale of lake lots	\$ 70,000.00
proceeds from sale of Pawley's real estate	\$1,700,000.00
proceeds from sale of Berryhill Rd property	\$ 300,000.00

Mr. Powell valued the assets of Columbia Management, Inc.
as follows:

Mais Ouis building	\$1,500,000.00
remaining lake lots	\$ 200,000.00
rugs	\$ 650,000.00
total	\$2,350,000.00
less mortgages on building	<\$1,300,000.00>
net value	\$1,050,000.00

Conrad Powell's one-third interest \$ 350,000.00

The testimony placed the following values on the assets of
Blossom Huger, LP and Chic Antiques:

real estate	\$ 720,000.00
inventory	\$ 300,000.00
total	\$1,020,000.00

Conrad Powell's one-half interest \$ 510,000.00

Total value of all assets \$2,930,000.00

The total value of the assets addressed in the testimony must be increased by



\$449,000.00, which is the amount of proceeds received from the sale of the Devonshire real estate shortly before the parties separation, and the estimated equity of \$240,000.00 in the Devine St. real estate. This results in a value of \$3,619,000.00 for the assets.¹

The value should be reduced by the following:

prior distribution to Carolyn Powell	\$ 400,000.00
capital gain tax from sale of Pawley's	\$ 100,000.00

Net value of assets addressed in this offer \$3,119,000.00

In full settlement of all issues between the parties, Carolyn Powell will receive the Mais Ouis building free and clear of liens and encumbrances and \$475,000 cash. In addition, Mr. Powell will pay \$5,000.00 per month in support, health insurance for Carolyn and the children, medical expenses for the girls, and college expenses, to include graduate or professional school. Mr. Powell will also provide a life insurance policy in the minimum amount of \$1,000,000.00, naming the children as beneficiaries.

Mr. Powell will receive:

lake lot proceeds	\$ 70,000.00
remainder of Pawley's proceeds	\$1,125,000.00 ²
Devine-St. equity	\$ 240,000.00
B- H & Chic	\$ 510,000.00
Columbia Management	<u>\$ 350,000.00</u>
total	\$2,295,000.00

We recognize that this settlement will be funded in part by Columbia Management, Inc. However, because of the relationship among the shareholders, and considering Mr. Powell's inordinate contributions to this company as well as other business ventures, the request for such funding is reasonable.

Please let me know if this proposal is acceptable.

Very Truly Yours,

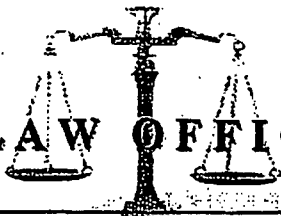
J. Michael Taylor

¹Although other assets, such as bank accounts or brokerage accounts exist, this offer contemplates settlement of all issues based on the assets identified and discussed in this offer.

²This assumes that the \$475,000.00 payment to Carolyn Powell will be paid from these proceeds

7014

FOSTER LAW OFFICE, L.L.C



C. Cantzon Foster, II
Bryan D. Caskey, Associate

3100 Devine Street
Columbia, SC 29205

Telephone: (803) 400-1921
Facsimile: (803) 400-1951

February 14, 2007

Sent Via Facsimile and U.S. Mail

Marne Sherman, Esquire
310 Stoneridge Drive
Columbia, SC 29210

RE: **Carolyn Powell vs. W. Conrad Powell**
Case No. 04-DR-3081
Our File No. 7014

[For Settlement Purposes Only and Not For Use at Trial]

Mrs. Sherman:

Carolyn Powell has authorized me to make the following offer of settlement of the issues involved in this case. This is a fair and equitable offer, which is in the best interest of the parties and their children.

In his testimony on December 13, 2006, Mr. Powell identified and valued the following assets:

- Proceeds from the sale of lake lots \$70,000.00
- Proceed from the sale of Pawley's Island real estate \$1,700,000.00
- Proceeds from the sale of Berryhill property \$300,000.00

Mr. Powell valued the assets of Columbia Management, Inc. as follows:

• Mais Ouis building	\$1,500,000.00
• Remaining lake lots	\$200,000.00
• Rugs	\$650,000.00
Total	\$2,350,000.00
Less mortgages on building	(\$1,300,000.00)
Net Value	\$1,050,000.00
Conrad Powell's one-third interest	<u>\$350,000.00</u>

Foster
EX 7

MIT000763

Mr. Powell also placed value on the following assets of Blossom Huger, LP and Chic Antiques:

• Real Estate	\$720,000.00
• Inventory	\$300,000.00
Total	\$1,020,000.00
Conrad Powell's one-half interest	\$510,000.00
Total value of all assets	\$2,930,000.00

The total value of the assets addressed in the testimony must be increased by \$449,000.00, which represents the proceeds from the sale of the Devonshire real estate shortly before the parties' separation and the estimated equity of \$240,000.00 in the Devine Street real estate. This results in a value of \$3,619,000.00 for the assets.¹

The value should be reduced by the following:

- Prior distribution to Carolyn Powell (\$400,000.00)
- Capital gains tax from sale of Pawley's (\$100,000.00)

Net value of assets addressed in this offer \$3,119,000.00

In full settlement of all issues between the parties, Carolyn Powell will receive the Mais Ouis building free and clear of liens and encumbrances and \$475,000 cash. In addition, Mr. Powell will pay \$5,000 per month in child support; maintain health and dental insurance coverage on the children; pay all necessary medical and educational expenses for the children; and agree to pay all reasonable college expenses and post graduate educational expense for the children. Mr. Powell will also need to maintain a life insurance policy in the amount of \$1,000,000 naming the children as beneficiaries and reimburse my client for attorney fees incurred to date (approximately \$12,000). My client shall also keep any personal belongings in her current possession and the following:

- Items located in two containers located at 602 Huger Street
- Personal belongings and art work located at 929 Gervais Street and 3505 Devine Street and 602 Huger Street.

The parties shall have joint custody with the children primarily placed with Mrs. Powell. We are in agreement to work with you to provide a liberal and flexible visitation schedule for your client.

My client recognizes that this settlement is based upon values provide by your client and that actual inventory and appraisals will likely reveal significantly higher values. We also recognize

¹ Although other assets, such as bank accounts or brokerage accounts exist, this offer contemplates settlement of all issues based on the assets identified and discussed in this offer.

Marne Sherman, Esquire
February 14, 2006
Page Three of Three

that this settlement will have to be funded in part by Columbia Management, Inc. However, because of the relationship among the shareholders, and considering Mr. Powell's inordinate contributions to this company as well as other business ventures, the request for such funding is reasonable.

This offer will expire and not be renewed at 5 pm on Wednesday, February 21, 2007. Time is of the essence.

Please accept my kindest regards.

Sincerely,



C. Cantzon Foster, II

Enclosure

cc: *Mrs. Carolyn Powell*
Reid B. Smith, Esquire

MIT000767

7014

FOSTER LAW OFFICES, L.L.C.

C. Cantzon Foster, II, Esquire

FAX COVER SHEET

Date: 2-14-07

Pages Sent (including this page): 4

To: Marne Sherman

Fax: 772-3063

CC: Reid Smith 799-3131

From: Wendy L. Long

Subject: Powell v. Powell

Foster Law Office, L.L.C.
Received
on 02/14/07
at 10:00 AM
cc: [illegible]
pc: [illegible]

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3100 Devine Street, Columbia, South Carolina 29205
Ph: (803) 400-1921 Fax: (803) 400-1951 cantzon@bellsouth.net

MIT000769

* * * Memory TX Result Report (Feb. 14. 2007 2:41PM) * * *

1) Foster Law Office, LLC
2)

Date/Time: Feb. 14. 2007 2:40PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
9343	Memory TX	7723063	P. 4	OK	
	Powell, Carolyn				

Reason for error

E. 1) Hang up or line fail
E. 3) No answer
E. 5) Exceeded max. E-mail size

E. 2) Busy
E. 4) No facsimile connection



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C. Foster, P.E., D. Foster

FAX COVER SHEET

Date: 2-14-07

Pages Sent (including this page): 4

To: Marne Sherman

Fax: 772-9063

CC: Rod Smith 789-3331

From: Wendy L. Lane

Subject: Powell v. Powell

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MIT000771

* * * Memory TX Result Report (Feb. 14. 2007 2:43PM) * * *

1) Foster Law Office, LLC
2)

Date/Time: Feb. 14. 2007 2:40PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
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	Powell, Carolyn				

Reason for error
 E. 1) Hang up or line fail
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FOSTER LAW OFFICES, L.L.C.

C. Gordon Foster, II, Esq.

FAX COVER SHEET

Date 2-14-07

Pages Sent (including this page): 4

To: Maria Sherman

Fax: 772-3063

On: Held Smith 799-3131

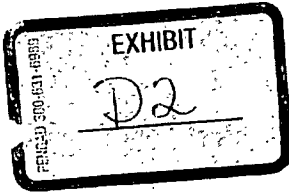
From: Wendy L. Long

Subject: Powell v. Powell

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MIT000773



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* Certified Family Court Mediator
JAN A. LOWMAN, Paralegal

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FAX: (843)379-3901
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September 12, 2011

Thomas A. Pendarvis, J.D.
PENDARVIS LAW OFFICES, P.C.
500 Carteret Street, Suite A
Beaufort, South Carolina 29902

Re: Carolyn M. Powell vs. Potterfield Law Firm

Dear Thomas:

Pursuant to your request, I have reviewed the two depositions you provided to me in connection with the above matter with a view towards rendering opinions as to whether or not the legal services provided by Taylor/Potterfield fell below what I deem to be an appropriate standard of care. The depositions provided to me consisted of the deposition of Carolyn Mitchell Powell and the deposition of Ashlin Blanchard Potterfield. I have not had an opportunity to view all of the pleadings in this case or in the original divorce case. I have only reviewed the documents which were made exhibits to the two depositions.

Moreover, my review of the depositions and the exhibits was limited to a determination of whether or not the Taylor/Potterfield Law Firm failed to take action or took inappropriate action with respect to their representation of Ms Powell. My review was not in any way intended to determine the nature or the extent of any damages Ms Powell may have incurred as a result of representation by the Taylor/Potterfield Law Firm.

From the information I have been provided, it appears that the Taylor/Potterfield Law Firm was involved in the representation of Carolyn Powell from mid-2003 until early-2007. The length of representation in and of itself is quite unusual in a domestic relations case. The length of involvement would suggest that the case was either extremely complex and complicated or that an unusual period of delay or inaction had occurred.

Based on the documents provided to me, it is my opinion that an unreasonable and unnecessary amount of time elapsed in this matter and that inadequate actions were taken or which could have provided protection to Ms Powell's legal rights or legal position in the domestic relations case.

Brown00001

In particular, the documents I have seen suggest that several parcels of real estate with considerable value were sold by Mr. Powell after representation of his wife had been commenced and that no action was taken by Taylor/Potterfield to preserve these assets, which appear to be marital. For instance, in September, 2004 the Kenilworth residence was placed on the market for sale without her knowledge while Ms Powell was out of the country. This was the residence in which she and the children had been residing at the time. This sale ultimately required Ms Powell and her children to be uprooted and move into another residence. The reason this property was sold is not clear from the documents I have seen. However, it did not appear to me that there was any urgency or necessity for the sale of this property at the time it was marketed.

In addition, it appears from the records I have seen that the Pawley's Island beach house was sold by Mr. Powell in early-2005 and generated approximately \$1,700,000 worth of proceeds. The documents I reviewed do not make it clear precisely what happened to those proceeds; however, there is correspondence between counsel that suggests it was at some point placed into escrow by agreement of counsel. However, the correspondence I reviewed also suggested that Mr. Powell intended to use some of the proceeds for his personal living expenses. Whether this occurred is not clear in the documents I received. In any event, there appears to have been a lack of control over this marital asset.

Also, the documents suggest that real estate consisting of the Student Loan Building was sold by Mr. Powell after Taylor/Potterfield commenced representation of Ms Powell. I have no clear understanding as to what happened to the proceeds or what the reason for the sale was from the documents provided to me. Again, there does not appear to be any control or management plan for preserving this asset.

Accordingly, it appears that at least three parcels of real estate were sold by Mr. Powell during the time Taylor/Potterfield represented Ms Powell in connection with the parties' separation and marital situation. All of these sales could have either been prevented or managed such that reasons for the sale would have to have been justified to either opposing counsel or the court and the proceeds could have been preserved or distributed in a manner approved by counsel or the court. Moreover, the sales could have been prevented completely by Taylor/Potterfield taking specific action. This action would include the filing of a Lis Pendens against all real estate in Mr. Powell's name, commencing appropriate litigation which requested an equitable division and a temporary hearing and seeking a temporary restraining order regarding the disposing of assets while the case is pending. It appears from what I have read that none of these actions were taken, except for the filing of a suit on behalf of Ms Powell in approximately late-August, 2004. Despite the filing of this suit, there was no request for a temporary hearing, no request for even equitable division of assets and no filing of a Lis Pendens on her behalf at anytime during this representation.

It is also interesting to note that Ms Potterfield in her deposition stated that she was not concerned about the sales of real estate by Mr. Powell or that any assets "might get away". She also admitted that as of October, 2005 she did not know what happened to some of the proceeds of the sales of these properties, including Kenilworth.

Additionally, in her deposition Ms Potterfield stated that she recalled discussing with Ms Powell statements by Mr. Powell that he would make sure she received nothing as a result of their divorce/separation and that she felt that all of the marital assets were "for sale". Interestingly, Ms Potterfield says that she felt there was no reason for obtaining a Lis Pendens because all of the property was "for sale". This seems completely inconsistent to me and in fact emphasizes the need for a Lis Pendens.

Ms Potterfield also stated that she did not have any concerns about Mr. Powell moving assets around because she felt it was hard to hide real estate transactions. That, however, begs the questions of why a real estate transaction should be allowed at all in this marital context without any controls or input by both parties.

In my view, one of the most important elements of a domestic relations case is the preservation and maintenance of marital assets once representation has begun. The loss of control over the assets, or the dissipation of the assets, could be prejudicial to a client, particularly if that client is not titled with the asset and would have no knowledge as to the appropriateness of the terms associated with the sale or be entitled to the use of the proceeds from the sale. It is prudent to have the court approve any such sale or, at a minimum, not allow a sale to occur without the consent of opposing counsel and a plan for how it is to be handled.

In addition to the foregoing, the law in this State regarding the establishment of a marital interest in a potential marital asset is the date of the filing of marital litigation. Thus, should filing be delayed, a potential marital asset could be sold and the proceeds dissipated before the opposing spouse could claim an interest in the asset. Thus, substantial prejudice could occur by failing to file in a timely fashion.

It is important to note that some of the initial documents provided to Ms Powell by Taylor/Potterfield required Ms Powell to acknowledge that any delay in starting marital litigation may "considerably" prejudice the client. Thus, Taylor/Potterfield should have known they needed to seriously consider the consequences of delaying filing. This document also states that Taylor/Potterfield believes it is qualified to charge a higher fee because of the caliber of the attorneys that work in this firm. It would appear that they are holding themselves out as "excellent" attorneys and suggests that they should be held to a higher standard of care as a result. Not only does this appear to be important in terms of the points I raised above, but I also believe it is also relevant on the question of the quality of the guidance provided to Ms Powell by Taylor/Potterfield given the emotional trauma Ms Powell was experiencing and her belief that the case was not moving forward quickly, as well as Ms Potterfield's claim that it did not need to move forward quickly because Ms Powell did not want it to do so. Given this apparent inconsistency, it is my opinion that Taylor/Potterfield needed to be more assertive in the handling of the case and clearer in their communications with their client as to the plan to be followed and the goals which could be achieved in order to justify their claim of excellence.

The documents I have seen suggest that Ms Powell was never informed that the settlement offers ultimately made by her attorneys were within the "realm of reason". It was proposed that she get \$500,000 as an advance. Mr. Powell only offered \$400,000

and this amount was accepted. Additionally, it appears that there is no way her attorneys could have known whether the offers made by either party were within the "realm of reason" because there was no clear picture provided by Mr. Powell to verify the existence or value of substantial marital assets or determine his earnings ability. In short, it would appear that decisions were being made about settlement offers, including whether the terms of offers to be made to opposing counsel and opposing counsel's offers, for consideration, without the ability to evaluate their reasonableness under the circumstances. In my opinion, this is an ineffective and inappropriate manner in which to negotiate the resolution of a domestic relations case.

It is my opinion that several actions could have or should have been taken which would have benefited Ms Powell with respect to an equitable distribution. First, it appears that the Complaint that was ultimately filed well over a year after representation had begun did not seek an equitable division in its prayer. Nor did it seek any alimony or a request for a temporary hearing. Ms Potterfield acknowledged that she had filed "vanilla pleadings". I do not understand why these pleadings were never amended. Timely filing, I believe, would have benefited Ms Powell in the manner referenced above.

Moreover, the South Carolina Rules of Family Court require that the parties file a financial declaration within 45 days of the date the suit is filed or at a temporary hearing, whichever occurs first. The documents I have seen suggest that neither party ever filed a financial declaration or served the same on the other party. The financial declaration would have listed in considerable detail the assets and the values of the assets claimed by both parties. The obtaining of a financial declaration of Mr. Powell would have been extremely valuable to Ms Powell not only because it helps clarify what needs to be done in discovery, but it also enhances her knowledge of the assets, provides an under oath basis for identifying and valuing assets for which negotiations for settlement can be based and creates an element of perjury should the disclosure by the opposing party turn out to be inaccurate.

Discovery would also have substantially assisted Ms Powell by providing information which could be verified regarding the identification and valuation of all assets. Additionally, verification could be obtained by a search of courthouse records for real estate and taxable personal property in Mr. Powell's name. The documents I have reviewed suggested none of these actions were taken on behalf of Ms Powell. In my opinion, the above conduct is below the standard of reasonable care and certainly below the higher standard Ms Powell was told she was entitled to by Taylor/Potterfield.

Furthermore, the use of a professional forensic investigator under the circumstances presented in the depositions would have been highly beneficial to Ms Powell. No such investigator was obtained until Mr. Taylor hired Reid Smith in May, 2006. However, Mr. Smith is an attorney and did not hold himself out as a forensic investigator in domestic relations cases. Nevertheless, he prepared a summary of assets for Mr. Taylor that apparently has some level of detail, but which appears to be incomplete. Ms Powell stated in her deposition she felt that this summary had "holes" in it and was not to be deemed completely accurate because it was based upon unverified information from her husband. She suspected there may be additional assets which were not disclosed by her husband, even in his deposition. Frankly, I have found it is not

unusual for parties to be deceptive in their testimony and that confirmation or verification through other means is essential. Failure to do so is dangerous in that it could cause an asset to be missed or a valuation to be less than accurate. In any event, a detrimental impact could result to a client by failing to verify the existence and value of all assets. A proper expert would know where to look and could provide valuable assistance with preparing requests to produce.

Ms Potterfield claimed that Ms Powell chose not to obtain a forensic investigator. The documents I have read suggest that there was not much debate between Ms Potterfield and Ms Powell on this point or that Ms Potterfield insisted that it was necessary for her to provide proper representation of Ms Powell for an investigator to be obtained. It appears from what I have read that Ms Potterfield simply acquiesced to Ms Powell. In my view that is inadequate representation.

Likewise, the deposition of Ms Potterfield suggested that Taylor/Potterfield failed to engage in any discovery because Ms Powell asked them not to. There does not appear to be any reference to substantial debate on this issue and, again, it appears that Taylor/Potterfield merely acquiesced on this matter. It is my opinion that Taylor/Potterfield should have taken a firmer stance on the matter of obtaining an expert and seeking discovery.

It also does not appear that a financial declaration was ever prepared for Ms Powell. Without any determination of the true expenses Ms Powell was incurring, I believe it would be difficult to counsel her with regards to the amount of support, whether alimony or child support, she would need. Although alimony apparently became a contested issue, it is clear to me that Ms Powell would have been entitled to some level of support. No specific amount was ever ordered until years after representation began and Ms Powell could have been subject to the whims of Mr. Powell with respect to the payments he was making to her prior to any formal court order. This risk may have been avoided for a while, but it certainly existed.

Moreover, child support and alimony are both based upon earnings ability and not necessarily the actual earnings of a party. The documents I have seen do not reflect any discussion regarding Mr. Powell's earnings ability and the impact this would have on the alimony and support issues. In fact, Ms Potterfield stated in her deposition that she did not think Ms Powell may be entitled to alimony because Mr. Powell had no income. That seems to beg the question to me as to what he is capable of earning and it does not appear to me that this determination was ever made or looked into.

Furthermore, it appears that Ms Powell could have shown that her husband committed adultery as a result of a private investigator's report. Ms Potterfield stated in her deposition she did not think that Mr. Powell's adulterous conduct would have had an impact on Ms Powell's adultery claim. I would disagree because the South Carolina alimony statute states that marital misconduct is a relevant factor a court considers in an alimony situation. Additionally, the alimony statute requires that a spouse's earnings ability and the marital assets they are to receive are additional factors which need to be considered. It does not appear that these factors carried much weight or deserved much consideration with Taylor/Potterfield from the documents I have read.

It further appears that Taylor/Potterfield was concerned about allegations that Ms Powell had engaged in a lesbian relationship subsequent to the commencement of representation by Taylor/Potterfield. It is not clear to me from the documents I have read whether it is a certainty that Ms Powell did so or that Taylor/Potterfield claimed to inform her of the effect of a homosexual relationship on a claim for alimony sometime after January, 2005, until after the suit had been filed and after many months of representation. Had a temporary hearing been held earlier, the issue may not have come up. Moreover, had Taylor/Potterfield engaged in discovery, hired an expert and obtained a financial declaration from Mr. Powell early on, it is possible that a reasonable permanent settlement could have been reached either before suit was filed or shortly thereafter which addressed the alimony issue favorably to Ms Powell. If so, subsequent adulterous conduct on her behalf would have been irrelevant.

In her deposition, Ms Potterfield expressed a concern that Ms Powell may not receive alimony at a temporary hearing, if one were to be requested, because Mr. Powell had been paying her more than she felt Ms Powell would have received had a temporary hearing been held. This is a debatable issue; however, courts typically try and maintain the *status quo* at a temporary hearing. Thus, it is possible that Ms Powell could have shown the amounts her husband was providing to or on her behalf prior to a temporary hearing and the court could have required him to continue to do so pursuant to an enforceable court order.

Additionally, Ms Potterfield stated that she had concerns Ms Powell could not continue to receive the level of support her husband was voluntarily providing for her if a temporary hearing was held because she could not justify the need for the amount of money he was paying. The documents I have read do not indicate that there was any summary of Ms Powell's expenses or a financial declaration prepared for her which would establish any specific amount of financial need on her part. Thus, I question how Ms Potterfield's statement can be supported.

On several occasions in her deposition Ms Potterfield stated that many months had elapsed without any formal action being taken to commence litigation because she needed to determine what Ms Powell's plans for her living arrangements were going to be. That clearly is not a very proactive approach to take and again seems to be a conscious decision to acquiesce to a client that was by her own admission "desperate", "on the verge of a nervous breakdown" and vacillating between how she wanted to proceed with this case. It is my opinion that a more proactive approach was necessary with this client.

Ms Potterfield claimed that she felt she could not file the lawsuit earlier in the representation because the parties were still living together. It is my understanding that South Carolina law allows the filing of a divorce case based on fault grounds, even though the parties continue to live together. The documents I have read do not reflect that this was ever discussed between Taylor/Potterfield and Ms Powell.

Furthermore, Ms Potterfield continually mentioned in her deposition that she had no specific timetable she was working on in this case and that she felt there was no

reason she needed to file the suit earlier than it was filed. The depositions suggest to me that Ms Potterfield was dealing with a client that needed quicker results than she got and which needed the prompt establishment of certain enforceable rules of conduct and a financial game plan.

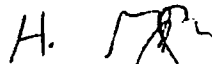
On several occasions Ms Powell expressed her desire that this case come to some conclusion or closure and that some definitive rules be put into effect so she could plan for her future. Taylor/Potterfield seemed to want her to make her plans for her future before they took any action on her behalf. This seems a backwards approach to me. I believe it would be appropriate to determine her financial parameters first.

Eventually, Mark Taylor had to get involved in this case in the winter of 2005. It is not clear to me exactly why he needed to get involved, other than his experience in litigation. However, this case does not look like it was anywhere close to being litigated once he got involved and it is certainly believable to me that he may have gotten concerned about the quality of representation provided by his firm and felt he needed to get involved to avoid any ramifications. In other words, he may have decided it was time to bring in the "big guns".

There is some question regarding Ms Potterfield's involvement in a judicial race and its potential effect upon the prioritizing of her time and energies. The depositions I have read do not seem to indicate that this was a problem in her mind. I cannot conclude whether it was or was not. However, my experience as a practitioner and my knowledge of other colleagues who have run for judgeships suggest that it is a time consuming process and may have had an effect on her time availability for clients.

All of the opinions I have set forth herein are based upon a reasonable degree of professional certainty. I trust that the contents of this letter are sufficient to assist you in your case. Should you wish to discuss this further, please feel free to contact me.

Sincerely,


H. Grady Brown

/jal

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

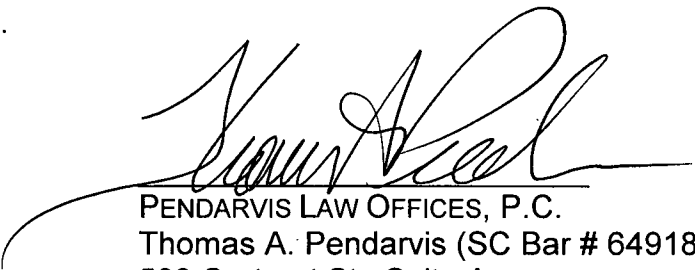
Carolyn Mitchell Powell. Appellant,

vs.

Ashlin Blanchard Potterfield; J. Michael Taylor;
and TAYLOR/POTTERFIELD Respondents.

Certificate of Counsel

Pursuant to Rule 210(g) of the South Carolina Appellate Court Rules, the undersigned, as counsel for Appellant, hereby certifies that, to the best of my knowledge and belief, the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Thomas A. Pendarvis (SC Bar # 64918)
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Beaufort, SC 29902-5066
(843) 524.9500

Beaufort, South Carolina
March 13, 2013

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,

vs.

Ashlin Blanchard Potterfield; J. Michael Taylor;
and TAYLOR/POTTERFIELD Respondents.

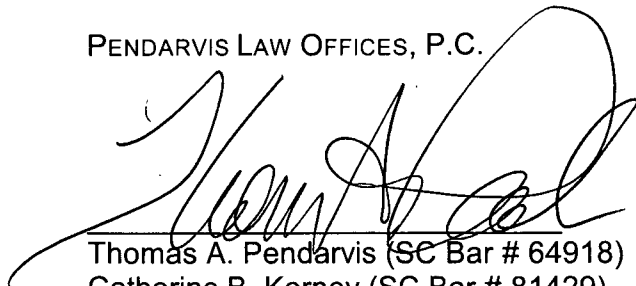
PROOF OF SERVICE

I, Thomas A. Pendarvis, a lawyer with PENDARVIS LAW OFFICES, P.C., certify that I have served one (1) copy of the RECORD ON APPEAL and CERTIFICATE OF COUNSEL on counsel for Respondents: Ashlin Blanchard Potterfield; J. Michael Taylor; and TAYLOR/POTTERFIELD by depositing a copy of the same in the United States Mail, postage prepaid, on the 13th day of March, 2013 addressed to Charles E. Hill, J.D., TURNER, PADGET GRAHAM & LANEY, PA, PO Box 1473 Columbia, SC 29202.

RECEIVED
MAR 18 2013
SC Court of Appeals

Respectfully submitted,

PENDARVIS LAW OFFICES, P.C.

A large, stylized handwritten signature in black ink, likely belonging to Thomas A. Pendarvis, is written over the printed name and address.

Thomas A. Pendarvis (SC Bar # 64918)

Catherine B. Kerney (SC Bar # 81429)

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March 13, 2013

Beaufort, South Carolina