1 the nature and consequences of this plan?
2 A Yes.
3 Q And did you try and satisfy that obligation as best
4 you could?
5 A Yes.
6 Q And did that involve an effort to explain to them
7 the nature of community property and separate property and the
8 difference between the thing?
9 A Yes.
10 Q And its attributes?
11 A Yes.
12 Q Now, did you explain to them for the purpose that in
13 order for this plan to work it would be necessary to have a
14 true separate property agreement dividing their property?
15 A Yes.
16 Q Is it your opinion and belief that you can't have a
17 separate property agreement for the purposes of making this
18 asset protection work versus creditors, but have some side
19 agreement that it's not going to apply in other circumstances?
20 A Yes.
21 Q And did you explain that to them?
22 A I don't know if we specifically talked about that.
23 We just talked about how in order for the agreement to be
24 effective, you had to meet formalities and you had to convert

1 the property to separate property.
2 Q Now, in connection with that separate property
3 agreement, what did you explain to Eric and Lynita with
4 respect for how they should divide up their assets?
5 A My only advice was that it should be an equal
6 division and the two of them should carefully review the
7 property that they owned and come up with an agreed upon
8 schedule, and that, of course, that on Eric's schedule would
9 be any venture that he was going to enter into for gaming
10 purposes.
11 Q Okay. Did you help them come up with a schedule?
12 A No, I did not.
13 Q Did you review the schedule they came up with?
14 A Yes.
15 Q And did you satisfy yourself that they both thought
16 that that was a fair division?
17 A Yes.
18 Q You didn't see any indication that Lynita was taking
19 advantage of Eric in that split or vice versa, did you?
20 A No.
21 Q In connection with this estate planning, did you
22 tell Lynita whether her pool of separate property should be
23 protected from potential future liability that Eric would
24 incur on his side if it worked right?

1 A Yes.
2 Q And did she -- is it your belief that she understood
3 that?
4 A Yes.
5 Q And, in fact, she wanted that; correct?
6 A Yes.
7 Q Would you turn to Exhibit 4 which is already in
8 evidence here. That is, in fact, the separate property
9 agreement that you prepared, correct?
10 A Yes.
11 MR. DICKERSON: And, Your Honor, just for the
12 record, there would be an objection to -- any questioning with
13 respect to the 1993 agreement. You indicated yesterday that I
14 have a standing objection, but just with each witness, I would
15 like to renew and reaffirm that standing objection, that they
16 have no standing.
17 THE COURT: This is probably to the spendthrift
18 trust that's in question at this point. So noted.
19 MR. DICKERSON: I thought the purpose of the trust
20 of even calling him was because Mr. Solomon wanted to ask him
21 questions that Mr. Jimmerson didn't. Mr. Jimmerson asked
22 these questions.
23 MR. SOLOMON: I humbly disagree.
24 THE COURT: I haven't reviewed the testimony. I

1 will in great deal on that. But we did talk a lot about these
2 questions before.
3 BY MR. SOLOMON:
4 Q There's a schedule A and a schedule B. First of
5 all, was it your understanding that these two schedules listed
6 all of the community property that the parties had?
7 A That was my understanding, yes.
8 Q And was it further your understanding that these two
9 schedules purported to divide their community property
10 pursuant to their requests into two equal shares?
11 A Yes.
12 Q And your form the likes like on Bates stamp
13 Burr_00157 --
14 A Yes?
15 Q -- has, in this case, Eric certifying certain things
16 including that he has read the trust agreement and that it
17 fully and accurately sets out the terms and trusts and
18 conditions under which the trust estate therein is to be held,
19 managed, disposed of by the trustee therein named and he
20 approves, ratifies and confirms said trust agreement.
21 Is that from -- did you use the schedules from the trust
22 to the -- that you had currently prepared -- to be the
23 schedules for this separate property agreement?
24 A I don't recall exactly where the schedules came from

1 or whether they
2 Q Maybe I confusing you with the question.
3 A Okay.
4 Q It was under this plan, you were dividing the
5 property, but almost simultaneously funding whatever you
6 divided into these trusts, correct?
7 A Yes.
8 Q So what's being divided as his is going to be put
9 into his trust and what's being divided into hers is going to
10 be put into her trust; is that correct?
11 A Yes, that was the intent and
12 Q And that was done in this case, was it not?
13 A To the best of my knowledge, yes.
14 Q Now, Mr. Coke testified just before you did and so,
15 of course, your familiar with him. You already indicated in
16 your testimony that you thought it was necessary to have each
17 party independently consult with counsel of their own,
18 correct?
19 A Yes.
20 Q And how was it decided that you were going to
21 represent Mr. Nelson in this and somebody else was going to
22 represent Lynita?
23 A To the best of my recollection, I just felt like
24 Lynita because Eric was kind of the more involved party should

1 get separate counsel and hear separate advice from someone
2 other than just myself.
3 Q Do you recall whether you ever spoke to Mr. Coke?
4 A I just -- typically I do speak to an attorney in
5 this situation. We have at least one conversation together,
6 but I don't have a specific recollection whether I did or
7 didn't, but my standard procedure would be to talk to him.
8 Q Turn to page 30 of your deposition, volume one. And
9 start on line 1 and go to line 14 and read it to yourself.
10 MS. PROVOST: Which one?
11 MR. DICKERSON: What page?
12 MR. SOLOMON: I'm sorry?
13 MS. PROVOST: What page?
14 MR. SOLOMON: Page 30.
15 BY MR. SOLOMON:
16 Q The (indiscernible - 11:10:29) at page 30?
17 A Yeah.
18 Q Does that refresh your recollection that you had a
19 brief telephone conversation with Mr. Coke?
20 A Yeah, again, to the best of my recollection I would
21 have had a call and talk with him and that would have been the
22 normal procedure and I vaguely do remember, but I am just
23 trying to be as accurate as I can. It was so long ago.
24 Q Understood. In your deposition you said it was a

1 very brief conversation
2 MR. DICKERSON: He didn't say very brief. He didn't
3 say brief.
4 THE WITNESS: You know, again, to the extent that we
5 had that conversation, it would have been just basically
6 telling him what the purpose of the plan was and what was
7 trying to be accomplished in the planning.
8 BY MR. SOLOMON:
9 Q And did your ask him to discuss it with Lynita and
10 go over the ramifications?
11 (Phone ringing.)
12 MR. DICKERSON: Sorry.
13 THE WITNESS: To the extent I talked to him, yes, I
14 would have definitely asked him to discuss that with Lynita
15 and go over the ramifications with her.
16 BY MR. SOLOMON:
17 Q And if you turn to Exhibit 3, this is already in
18 evidence. This is a letter from Molina Barr (phonetic) to Mr.
19 Coke forwarding a copy of the agreement and the schedules.
20 Do you see that?
21 A Yes.
22 Q And did you direct Molina to do this?
23 A Yes.
24 Q And Molina is a paralegal in your office?

1 A Yes.
2 Q And she does estate planning drafts?
3 A Yes.
4 Q Now, now -- I'm sorry, going back to Exhibit 4 for a
5 second, you signed a certificate, a certification of attorney?
6 A Yes.
7 Q And you did that on behalf of Eric?
8 A Yes.
9 Q And is everything in that certification true and
10 correct?
11 A Yes.
12 Q You already indicated that when you met with Eric
13 and Lynita together you explained to them the legal
14 consequences of the separate property agreement. Let me ask
15 specifically: Did you believe that you had an ethical
16 obligation in representing both of them in connection with
17 this type of estate plan to go over with them the benefits and
18 risks and detriments involved in such an agreement?
19 A Yes.
20 Q And do you believe that you satisfied that ethical
21 obligation to go over with them the benefits and risks and
22 detriments involved?
23 A Yes.
24 Q And did you explain to them that the agreement had

1 legal consequences as between them?
2 A Yes.
3 Q And did you explain to them how their property was
4 community before the agreement, but that it would be converted
5 to separate under the agreement?
6 A Yes.
7 Q And did you believe that Eric and Lynita had
8 understood what you were telling them in that regard?
9 A Yes.
10 Q Now, did you give them any advice with respect to
11 whether they would have the power and ability after they
12 entered into the separate property agreement to make gifts to
13 each other?
14 A Yes.
15 Q And did you discuss with them that if they wanted to
16 rebalance their trusts at any times in terms of values or
17 assets, they had the ability to do that?
18 A Yes.
19 Q Did you tell them how they would have to -- what
20 they would have to do that in order to do that from a legal
21 standpoint?
22 A I just told them that they would need to make gifts
23 to each other and transfer assets to rebalance the trusts.
24 Q And just to make sure in this type of estate plan,

1 there is nothing wrong, vis a vis the asset protection
2 element, with the parties making periodic gifts back and
3 forth, correct?
4 A In my view, no.
5 Q On the other hand if there was an agreement to make
6 gifts, that would create an issue, wouldn't it? Any binding
7 agreements at the time that you did this?
8 A If it could be shown that there was a binding
9 agreement, then it would not have been good.
10 Q Now, isn't it also true that when you were
11 explaining the risks associated with the agreement, you also
12 advised them that any divorce between the parties, that a
13 party might be able to receive his or her separate property
14 without the court division?
15 A I -- we discussed one of the dangers of this type of
16 agreement was the fact that perhaps in a dissolution that they
17 would lose the right to claim the other party's assets that
18 were separated, yes.
19 Q And while you were explaining the effective of this
20 agreement from the (indiscernible - 11:17:44), to the
21 separate, did you also tell the parties that after the
22 division, each would be free to operate their separate
23 property in terms of buying and selling things?
24 A I'm sure we had that type of discussion. I don't

1 have a firm recollection of specifically talking about it, but
2 that was the purpose why they came to see me so that Eric
3 could conduct the business of gaming separately and
4 distinctly.
5 Q Now, you've already indicated that part of this
6 estate planning concept required or involved the creation of
7 the separate property trusts and the main purpose of putting
8 your separate property in a separate property trust like this
9 would be what, as far as the asset protection purposes?
10 A Well, to prevent co mingling so that -- and you're
11 also basically have another document where you have the chance
12 to declare that the property is separate, in addition to the
13 separate property agreement, and you avoid probate, all of the
14 estate planning reasons, also.
15 Q And in this case it's your understanding that
16 Lynita's separate property would have just been divided was,
17 in fact, and funded into her separate property, correct?
18 A From my understanding, yes.
19 Q Can you turn to Exhibit 5. This is already
20 admitted. And on page 2, at the top, you already -- I think
21 you testified that the trust gave you an opportunity to,
22 again, declare that its property was separate, correct?
23 A Yes.
24 Q And that's expressed at the top of page 2?

1 A Yes.
2 Q Is it true, Mr. Burr, that at the time the Nelsons
3 implemented this 1993 estate plan -- let me just ask it a
4 different way.
5 Did you have any reason to believe that the time that
6 they entered this 1993 estate plan that they had -- the plan
7 was wrongful or fraudulent as to creditors?
8 A No.
9 Q Or that Eric or Lynita intended for the plan to be
10 fraudulent or wrongful to creditors?
11 A No.
12 Q Did you have any reason to believe that there was
13 any undue influence where Lynita was trying to take advantage
14 of Eric or vice versa in connection with this plan?
15 A I was aware of none, no.
16 Q Did they represent to you that this was a fair and
17 equal division of the property?
18 MR. DICKERSON: Object to the form of the question
19 as compound.
20 THE COURT: Overruled.
21 MR. DICKERSON: Can he break them separately into
22 each one?
23 MR. SOLOMON: Oh, thank you, Bob. I can do that.
24 //

1 BY MR. SOLOMON:
2 Q Did Lynita represent to you that this was a fair and
3 equitable division of the assets at that point in time?
4 A They both presented the schedule represented and
5 agreed to by them and I relied upon Mr. Coke to really discuss
6 with Lynita whether it was a fair division or not. But,
7 again, I was told that that was an agreed upon division by
8 both parties.
9 Q By them?
10 A Yes.
11 Q Your recollection is that you heard that from both
12 of them?
13 A I don't recall hearing it from Lynita specifically,
14 no. All I know is I advised them to go back, come back with
15 the schedules, and present them, and we'd go from there. I
16 don't remember specifically Lynita saying
17 Q Okay. Can you turn to page 48 of volume 1.
18 A Okay.
19 Q And if you look at lines 9 through 14.
20 A Okay.
21 Q Does that refresh your recollection that it was
22 represented to you that it was a fair and equal representation
23 of the assets at that time and that that representation came
24 from both of them?

1 A That wasn't your specific question in the
2 deposition.
3 What I was answering was based on the totality of
4 the circumstances and the fact that I had asked them to bring
5 back the schedules and they did, in fact, do so and then she
6 went to go see Mr. Coke, that I felt like it was represented
7 because of their actions that it was fair and equal.
8 But you specifically asked me, "Did Lynita actually
9 tell me that?" I don't remember her specifically telling me
10 that.
11 Q Okay. But you did testify that it was represented
12 to me that this was a fair and equal division of the assets at
13 that time and then I asked you, "And that representation came
14 from both of them?"
15 And you answered "yes"; is that right?
16 A Yes.
17 Q Did I read that correctly?
18 A Yes.
19 Q Okay. Well, let's put it this way, Mr. Burr, you
20 had no reason to believe that Lynita was concerned about the
21 division, correct?
22 A Right.
23 Q Right. And if you had that concern you would have
24 done something about it?

1 A Yes.
2 Q You wouldn't have gone forward with the plan, would
3 you?
4 A No.
5 (Counsel confer.)
6 Q Would you turn to Exhibit 7. Is this the separate
7 property trust that you created for Eric at the same time?
8 A Yes.
9 MR. SOLOMON: I would offer 7, Your Honor.
10 MS. FORSBERG: No objection.
11 MR. DICKERSON: No objection.
12 THE COURT: I hereby enter it as Intervenor's 7.
13 (Whereupon, Intervenor's Exhibit No. 7 is admitted
14 into evidence.)
15 MS. PROVOST: And that's cross referenced with
16 Plaintiff's 211.
17 MR. SOLOMON: I'm sorry, what number was it?
18 MS. PROVOST: Plaintiff's 211.
19 MR. DICKERSON: So you're saying these haven't been
20 admitted?
21 MR. LUSZECK: No.
22 BY MR. SOLOMON:
23 Q Would you turn to Exhibit 6. And is this a document
24 that your office prepared to help assign assets that Lynita

1 held into her trust, her separate property trust?
2 A It appears so, yes.
3 MR. SOLOMON: Offer 6, Your Honor.
4 MS. FORSBERG: No objection.
5 MR. DICKERSON: No objection.
6 THE COURT: Admitted as Intervenor's Exhibit 6.
7 (Whereupon, Intervenor's Exhibit No. 6 is admitted
8 into evidence.)
9 MR. SOLOMON: Thank you.
10 BY MR. SOLOMON:
11 Q And Exhibit 8, is that the corollary assignment of
12 asset document that your office prepared to help Eric assign
13 his assets into his separate property trust?
14 A Yes.
15 MR. SOLOMON: Offer 8, Your Honor.
16 MS. FORSBERG: No objection.
17 MR. DICKERSON: No objection.
18 THE COURT: Admitted as Intervenor's 8.
19 (Whereupon, Intervenor's Exhibit No. 8 is admitted
20 into evidence.)
21 BY MR. SOLOMON:
22 Q All right. Let's move forward in time, 1999 comes
23 around and some significant bill comes into effect in Nevada,
24 does it not, with respect to asset protection?

1 A Yes.
2 Q And did your office make that statute and the law
3 known to your clients?
4 A Yes.
5 Q Did you send out a circular or a letter?
6 A We sent out a letter, yes.
7 Q Did either Eric or Lynita respond to that?
8 A Yes, to the best of my recollection.
9 Q And what do you recall, was it Eric who responded?
10 A Yes, that's the best of my recollection.
11 Q Okay. And what do you recall happening in that
12 regard?
13 A My recollection is that we just discussed the new
14 law and now it would be more protective than what they already
15 had because if they had self settled spendthrift trusts that
16 qualified under the law, there would be additional protection
17 for the trusts.
18 Q How so?
19 A Well, the trusts -- the trusts were divided -- the
20 property was divided into two parts, into two separate
21 property pieces, but Eric still -- Eric's assets still
22 remained liable for any debts that he incurred individually;
23 however, if he were to transfer those assets into Nevada asset
24 protection trust and two years elapsed from the transfer, then

1 even if he had an individual liability that the creditors
2 couldn't reach his separate property. So it was more to
3 protect each individual from creditors that they had that were
4 separate and distinct from the community.
5 Q And would that, a similar trust for Lynita work the
6 same way for her own creditors?
7 A Yes.
8 Q So it would protect her separate property trust
9 assets from her own creditors after a couple of years?
10 A Yes.
11 Q Okay. Would you turn to Exhibit 20. Are these
12 notes that you took at some meeting on or about January 9,
13 2001?
14 A It appears so, yes.
15 Q Have you had a chance to look at those?
16 A Yes.
17 Q I just wanted you to skim over those to refresh your
18 recollection. It looks like you're getting into some details
19 of what the assets might be in the trust, is that what's
20 happening here?
21 A It happens that's what I'm doing, yes.
22 Q Do you recall after the first meeting that you had
23 with Eric about this topic, you met with Eric and Lynita?
24 A I eventually did meet with both of them, yes.

1 MR. SOLOMON: Oh, I'm sorry, I forgot to move to
2 admit Exhibit 20.
3 MS. FORSBERG: No objection.
4 MR. DICKERSON: I object on the ground of relevance.
5 I really don't really understand it to be honest was.
6 MR. SOLOMON: It sets a time of when he met with
7 them.
8 MR. DICKERSON: Pardon me?
9 MR. SOLOMON: It sets a time of when he met with
10 them.
11 MR. DICKERSON: Then you've got your time set that
12 he met with them on April 9th of 2001.
13 MR. SOLOMON: That's what I've got and discussed
14 assets that might go into the trust. They show what they
15 show.
16 MR. LUSZECK: It's not April 9th; it's January 9th.
17 MR. SOLOMON: January 9th, I'm sorry.
18 THE COURT: January 9th, that's, what, 20?
19 I hereby admit it as Exhibit 20.
20 (Whereupon, Intervenor's Exhibit No. 20 is admitted
21 into evidence.)
22 BY MR. SOLOMON:
23 Q And in the meeting that you had with both Lynita and
24 Eric, did you, again, recognize that you were representing

1 both of them?
2 A Yes.
3 Q Did you satisfy your ethical obligation to explain
4 the nature of this trust and how it might work for them?
5 A Yes.
6 Q Do you recall going over the advantages of this type
7 of vehicle with respect -- in your meeting with Lynita?
8 A Yes.
9 Q Did -- do you recall talking to her about how they
10 had created this separate property regime prior and this was
11 going to allow that to flourish and improve it?
12 A I focused more on the individual protection that she
13 would get, yeah, from the assets in her trust.
14 Q Well, this wasn't inconsistent at all from the prior
15 plan; is that true?
16 A No.
17 Q In fact, it was consistent with it?
18 A Yes.
19 Q Supercharged, in essence, right?
20 A Yes.
21 Q And did you explain that concept to her?
22 A Yes.
23 Q And in that meeting did you talk about the other
24 advantages that you just mentioned here that you had talked to

1 Eric about, including in two years that it would provide them
2 credit protection plan or creditor protection they didn't
3 otherwise have?
4 A Yes.
5 Q And did you explain how that worked?
6 A Yes.
7 Q What would be required to do that, to get that
8 protection?
9 A Yes.
10 Q And from your best knowledge and belief, did Lynita
11 understand that concept?
12 A Yes.
13 Q These trusts are somewhat complex, are they not?
14 A Yes.
15 Q As a result of that, what do you do -- what do you
16 recall doing in this case, let's put it that way -- what do
17 you recall doing in this case to try and get your clients to
18 understand what was happening?
19 A As best you can do is try to break down the trust
20 and walk them through the provisions and hope that they will
21 that the trust has and help answer any questions they might
22 have regarding the trust.
23 Q And did you do that in this case?
24 A To the best of my recollection, yes.

1 Q You do it in every case, I assume?
2 A Yes.
3 Q That's your custom habit to do that?
4 A Yes.
5 Q Now, in connection with the concept of
6 supercharging, the plan that they had come to you in 1993, was
7 it your understanding that Eric's self settled spendthrift
8 trust was to be funded with the assets that were in his
9 separate property trust?
10 A Yes.
11 Q And was it also your understanding that Lynita's
12 self settled spendthrift trust was to be funded with the
13 assets in her separate property trust?
14 A Yes.
15 Q So they would be the successors in essence?
16 A Yes.
17 Q Now, there's a significant difference in legal
18 theory between a revocable trust that they had before and an
19 irrevocable trust that you were proposing, correct?
20 A Yes.
21 Q And did you do your best to explain those
22 differences to both Eric and Lynita?
23 A Yes.
24 Q And one I think would be a consequence, did you

1 explain to them that when you fund a self settled spendthrift
2 trust, you're giving away some amount of control that they
3 otherwise had before?
4 A Yes.
5 Q And did you explain that when you fund the self
6 settled spendthrift trust, they don't legally own the assets
7 anymore, the trust does?
8 A I would say that technically that's correct, but I
9 also, with my clients, explain to me all of the flexibilities
10 associated with the trust that allow them incidents of
11 ownership, even though titling might not be in their name.
12 Q Okay. But did you explain to them that the reason
13 this plan works in the first place under our law is that they
14 are giving up ownership of a property, although they can
15 maintain control?
16 A Yes, the titling of the assets and the ownership
17 would be in an entity and not in their individual names, yes.
18 Q And did you explain to them that distributions back
19 out of the trust to them would require the consent of another
20 individual, person or entity?
21 MR. DICKERSON: Object to the form of the question.
22 BY MR. SOLOMON:
23 Q What did you explain to them with respect to how
24 they could get distributions back out?

1 A I told them that one of the requirements of the
2 statute is that a trustor, before property can be distributed
3 to them, has to get the approval of another trustee.
4 Q And did you discuss with them in this case who that
5 distribution you call them a distribution trustee under
6 your trust, right?
7 A Yes.
8 Q They're also known as independent trustees,
9 sometimes, and different names in different trusts, sometimes,
10 right?
11 A Yes.
12 Q And did you discuss with them who that distribution
13 trustee could be?
14 A Yes.
15 Q And what did you tell them in that regard, just
16 generically?
17 A Just the statute says another person, so it doesn't
18 have to be an independent trustee, so I just said someone they
19 feel that they could trust or they worked with could be a good
20 choice.
21 Q And eventually do you recall who both parties
22 decided to use?
23 A I would have to look at the documents. I don't
24 recall specifically.

1 Q I'll represent to you Lana Martin in the initial
2 draft.
3 A Okay.
4 Q Do you recall discussing her with both parties?
5 A I recall that she was involved with them in the
6 management of their assets, so I remember that she was
7 discussed as a choice for that.
8 Q Okay. And was her choice -- was that choice
9 acceptable to both Eric and Lynita?
10 A Yes.
11 Q Did you tell Lynita and Eric about the discretion
12 that a distribution trustee had to have to make this plan work
13 in terms of the ability not to make a distribution?
14 A I recall telling her that the distribution trustee
15 had to give approval. I don't know if we talked a lot about
16 discretion or not, but just that they had to give approval.
17 Q Between 1993 and 2001 when you did the separate self
18 settled spendthrift trust, did you have any consultation with
19 either of the parties with respect to how their, either the
20 separate property agreement was working or their separate
21 property trusts were being administered?
22 A Not that I recall, no.
23 Q Specifically, do you recall whether you knew that
24 Eric had gifted some of his assets and his 1993 separate

1 property trust to Lynita's separate property trust?
2 A No, I don't recall.
3 Q But you had told them before that they could do
4 that?
5 A Yes.
6 Q If that had been done, that would have been
7 consistent with your advice and recommendation to them if they
8 wanted to achieve that?
9 A Yes.
10 Q Do you recall whether you told them that if they had
11 made those gifts, that that would be another transmutation
12 from the separate property from the giftor to the separate
13 property of the giftee?
14 A I don't recall having that discussion.
15 Q Is that what you understand it to be?
16 A Yes.
17 MR. DICKERSON: Objection. Objection and move to
18 strike the last question.
19 THE COURT: Sustained.
20 BY MR. SOLOMON:
21 Q Did you have any understanding whether Eric or
22 Lynita intended to ignore the separate property agreement in
23 the event of a divorce?
24 A There were discussions had regarding that fact, if

1 that's what you mean.
2 Q Turn to page 74, volume 1, and read to yourself
3 lines 3 through 13.
4 (Pause.)
5 A Yeah, I have no -- I don't have any knowledge of an
6 agreement they had, no.
7 Q In fact it was your understanding they had no such
8 agreement at that point; is that correct?
9 A When they formed the separate property agreement?
10 Q Yes.
11 A They didn't have an agreement, no.
12 Q Now, back to the self settled spendthrift trusts.
13 I'm going to get a couple more documents into the record here.
14 Would you turn to 22.
15 MR. SOLOMON: Is this --
16 MR. LUSZECK: That's 21.
17 BY MR. SOLOMON:
18 Q Oh, I'm sorry. I missed one. I apologize.
19 This is your handwritten notes dated January 15th,
20 2001?
21 A Yes.
22 Q All right. And it concerns consultations that you
23 were having with the parties with respect to their self
24 settled spendthrift trusts?

1 A Yes.
2 MR. SOLOMON: Offer 21, Your Honor.
3 MS. FORSBERG: No objection.
4 MR. DICKERSON: No objection.
5 THE COURT: Hereby admitted as Intervenor's 21.
6 (Whereupon, Intervenor's Exhibit No. 21 is admitted
7 into evidence.)
8 BY MR. SOLOMON:
9 Q Okay. Here you say, "Molina, we need two new
10 trusts"
11 A Nevada trusts.
12 Q Oh, thank you.
13 And does that mean self settled spendthrift trust?
14 A Yes.
15 Q Okay. "One for Eric and one for Lynita to be
16 standard?"
17 A Standard, yes.
18 Q "With blank for distribution trustee." So at that
19 point they hadn't decided?
20 A Right.
21 Q They want to see drafts when they return. Does that
22 indicate to you that you had talked to both of them prior to
23 this?
24 A It would appear so, yes.

1 Q Make me trust consultant.

2 And the role of trust consultant is to do what,

3 Mr. Burr?

4 A Trust consultant, it depends on each agreement, I

5 would have to review it, but the trust consultant has the

6 power to remove and replace the distribution trustee, for one,

7 and typically to make technical corrections or amendments to

8 the trust.

9 (Counsel confer.)

10 Q Would you look at Exhibit 22, and do you recognize

11 that as a letter from your office to Eric -- Mr. and Mrs. Eric

12 Nelson?

13 A Yes.

14 Q And in this you quoted them -- in the first line it

15 says it's follow up to your meeting with you and Molina and to

16 confirm the fees for the services, do you see that?

17 A Yes.

18 Q Does that reflect that you had met with them prior

19 to this letter?

20 A Yes.

21 Q And then you quote them in the next paragraph $3500

22 per trust for a flat fee of $7,000?

23 A Yes.

24 MR. SOLOMON: Move to admit, Your Honor.

1 MR. DICKERSON: No objection.
2 THE COURT: I hereby admit it as Exhibit 22.
3 (Whereupon, Intervenor's Exhibit No. 22 is admitted
4 into evidence.)
5 BY MR. SOLOMON:
6 Q Then the next Exhibit, 23, now, do you recall that
7 the parties actually signed these trusts in May of 2001?
8 A I don't recall, no.
9 Q Well, take a look at the very next exhibit and
10 you'll see
11 A Twenty four?
12 Q Yeah, 25, it's the LSN Nevada Trust, dated May 30th,
13 2001.
14 A Yeah, I see it was executed in May.
15 Q Now back to Exhibit 23. Does this appear to be a
16 letter from your office forwarding drafts of those trusts to
17 them both in February of 2001?
18 A Yes.
19 Q And you indicated or your paralegal indicated when
20 they were ready to schedule an appointment with you and
21 Molina, they should contact the office and they eventually did
22 that?
23 A Yes.
24 Q And that resulted in the documents being signed in

1 May of 2001?
2 A Yes.
3 MR. SOLOMON: Move to admit 23.
4 MS. FORSBERG: No objection.
5 MR. DICKERSON: No objection.
6 THE COURT: I hereby add it as Intervenor's 23.
7 (Whereupon, Intervenor's Exhibit No. 23 is admitted
8 into evidence.)
9 BY MR. SOLOMON:
10 Q Okay. Can you turn to Exhibit 24.
11 A Yes.
12 Q And do you recognize whose notes those are?
13 A These appear to be Molina Barr's notes.
14 Q Does that represent that your office provided these
15 in response to a subpoena for the files on this matter? Can
16 you tell from the context of the notes that they involved
17 these self settled spendthrift trusts that we are talking
18 about?
19 A Yeah, the date was the same date that the trusts
20 were signed, but it appears that these were issues that came
21 up at the signing, at the review and signing. So, yes, they
22 do appear to concern the self settled trusts.
23 MR. SOLOMON: Offer 24.
24 MS. FORSBERG: No objection.

1 MR. DICKERSON: Can I just inquire a voir dire?
2 THE COURT: Sure.
3 **VOIR DIRE EXAMINATION**
4 BY MR. DICKERSON:
5 Q Mr. Burr, are you familiar with what's written on
6 these notes?
7 A What's that?
8 Q Are you familiar with what is written on these
9 notes? Do you review them? Do you know what is being talked
10 about here?
11 A In just looking at them right now, it's difficult to
12 decipher exactly what is here without having more time.
13 Q Is there any way you can explain to us anything on
14 these notes?
15 A Down at the bottom, "Can they put 'entrust' so that
16 brother's creditors can't take property if he gets sued. He
17 wants to preserve 1031."
18 Again, without the context and further discussion I would
19 have had with her, it's hard to decipher what we were trying
20 to accomplish.
21 Q So you're not able to -- if I asked you questions in
22 here with respect to gal's blue water (ph), you would not be
23 able to answer those?
24 A I would have a difficult time answering them with

1 specificity.

2 MR. DICKERSON: Your Honor, I object to the

3 admission of 24 then.

4 MR. SOLOMON: I don't believe that's a test. If

5 they're a business record, they come in as such and they come

6 in the purpose all I'm trying to produce them for is the

7 fact that obviously there was discussions with the parties at

8 or about the time they signed these about how they were going

9 to fund them.

10 THE COURT: I'm not going to admit it at this time.

11 I think Mr. Burr talked about conversations they had. If

12 Ms. Molina needs to come here to see what they're talking

13 about, but I think he's already testified that he has had

14 meetings with them, and that would have been the date about

15 they would have signed it, so obviously they came in and

16 signed paperwork and had several meetings with the parties on

17 that, but I don't need Exhibit 24 in there. I don't think it

18 adds anything to -- it's already been testified to, so I'm not

19 going to admit it at this time.

20 **DIRECT EXAMINATION (CONTINUED)**

21 BY MR. SOLOMON:

22 Q Let me ask it a different way then. Mr. Burr, do

23 these notes help refresh your recollection other than just

24 signing the documents on May 30th, discussions were had with

1 the parties regarding the operations of the same?
2 A It certainly appears from the notes that discussions
3 were going on with my paralegal and the Nelsons at that date
4 the trusts were signed.
5 Q At the date that those self settled spendthrift
6 trusts were signed on May 30th, 2001, were you aware of any
7 express or implied agreement between Lynita and the designated
8 distribution trustee, that any distribution would be made
9 let me rephrase that. On the date that Lynita's self settled
10 spendthrift trust was signed on May 30th, 2001, were you aware
11 of any explicit or implied agreement between Lynita and the
12 distribution trustee that the distribution trustee would make
13 any distributions directed by Lynita?
14 A That was the hope of course. That's why someone
15 close to them was selected.
16 Q That's not the question, though.
17 MR. DICKERSON: That was the question.
18 MR. SOLOMON: That wasn't the question.
19 MR. DICKERSON: Absolutely. You asked implied.
20 MR. SOLOMON: I asked if it was an specified
21 agreement.
22 THE WITNESS: I don't know of any express agreement
23 in writing to that effect and I believe in the trustor's mind,
24 she would have been thinking that Lana would cooperate with

her in her requests. That's about the best answer that I can give.

BY MR. SOLOMON:

Q By that's different than an agreement, correct?

MR. DICKERSON: Object to the form of the question. That's for the Court to determine.

THE WITNESS: It's different.

MR. SOLOMON: No, the question is whether or not he knew they had an agreement.

MR. DICKERSON: Objection, Your Honor.

THE COURT: I think he's already answered the question (indiscernible - 11:56:36). I think the answer speaks for itself. He knew of no written agreement as far as that, you figure he you'd pick the trustor so they would cooperate with you, but -- so I think it speaks for itself. He's already answered it.

BY MR. SOLOMON:

Q Upon the execution of the self settled spendthrift trust in 2001, did you believe them to be valid and enforceable under Nevada law in accordance with their terms?

A Yes.

Q Other than as set forth in the terms of the ELN Trust, Eric's trust, self settled spendthrift trust, are you aware of any legal obligations that trust has to Lynita?

1 A Other than what's set forth in the trust agreement,
2 no.
3 Q On the date Lynita signed her self settled
4 spendthrift trust, on May 30th, 2001, did you believe that she
5 had a fundamental understanding of its terms?
6 A Yes.
7 (Counsel confer.)
8 MR. SOLOMON: Your Honor, I'm almost done. I was
9 going to ask for five minutes to look through my notes. Is
10 this an appropriate time to break for lunch?
11 THE COURT: How long do you think you're going to
12 take, Mr. Dickerson, as far as cross? How long do you think
13 that you're going to take on Mr. Burr?
14 MR. DICKERSON: Close to an hour.
15 THE COURT: It's a good time to take lunch break,
16 sir?
17 THE WITNESS: Sure. Yes, Your Honor. Thank you.
18 THE COURT: Okay. Why don't we take a lunch break
19 and be back at 1:30 and have a lunch break.
20 MR. SOLOMON: Thank you, Your Honor.
21 MR. DICKERSON: Thank you, Your Honor.
22 (Break taken from 11:59:36 13:36:42)
23 THE COURT: This is reconvening the matter of Eric
24 Nelson and Lynita Nelson, case number D-411537.

1 I hope everybody had a nice lunch and we'll pick up
2 where we dropped off. I think you were looking to see if you
3 had any last minute questions.
4 MR. SOLOMON: I do. I have a few more minutes of
5 questions. Thank you. Appreciate it.
6 MR. DICKERSON: Can you call time out?
7 MR. SOLOMON: Sure.
8 MR. DICKERSON: Just one second, Your Honor. I know
9 I have them here.
10 THE COURT: I think we need more paper in this case.
11 We need more documents.
12 (Laughter)
13 MR. DICKERSON: Sorry, I did.
14 THE COURT: We were just saying, Mr. Dickerson, that
15 we need more documents in this case; we need more paperwork.
16 Are you all set?
17 MR. DICKERSON: Yes.
18 **JEFFREY BURR,**
19 called as a witness on behalf of the Intervenors, testified as
20 follows on:
21 **DIRECT EXAMINATION (CONTINUED)**
22 BY MR. SOLOMON:
23 Q Mr. Burr, are you aware of any enforceable agreement
24 between the parties in this case that the separate property

1 agreement would not control in the event that the parties were
2 divorced?
3 MR. DICKERSON: I'm sorry. What was the question?
4 MR. SOLOMON: Sure. I asked him if he is aware of
5 any enforceable agreement between the parties that the
6 separate property agreement would not control in the event
7 that the parties were divorced.
8 MR. DICKERSON: Object to the form of the question.
9 It calls for a legal conclusion.
10 MR. SOLOMON: No, it doesn't. I asked if he knows
11 about it.
12 MR. DICKERSON: Enforceable? That's for a Court to
13 determine.
14 THE COURT: Are you aware of any agreement. Leave
15 it at that.
16 MR. SOLOMON: All right.
17 BY MR. SOLOMON:
18 Q Amend it to any agreement that it would not do
19 you understand the question?
20 A I'm sorry. You'll have to ask one more time. I'm
21 sorry.
22 THE COURT: That's what happens when you have six
23 attorneys.
24 Questions get tossed.

1 BY MR. SOLOMON:
2 Q Are you aware of any agreement that you believe to
3 be enforceable between the parties that the separate property
4 agreement would not control in the event that the parties were
5 divorced?
6 A I know of no written agreements to that effect, no.
7 Q Or oral agreement to that effect; isn't that true?
8 Would you like to look at your deposition, page 196,
9 volume, 2.
10 A I haven't answered yet.
11 Q Oh, I'm sorry.
12 A So I'll think of an answer that's consistent and I
13 won't have to look at it.
14 Q That's true.
15 A I'm -- I know of no agreement specifically that they
16 have that would render the separate property agreement
17 ineffective upon divorce.
18 Q In fact that's why you counseled them about making
19 equalizing gifts if they wanted to keep their properties in
20 line; isn't that true?
21 A I told them that was the safe way to go, yes.
22 Q Okay. But you also told them, did you not, that it
23 would -- those equalizing gifts would be in the discretion of
24 the giftor?

1 MR. DICKERSON: Object to the form of the question;
2 it's leading.
3 BY MR. SOLOMON:
4 Q What did you tell them with respect to whether the
5 gifts would be in the discretion of the
6 MR. DICKERSON: Objection without him laying the
7 foundation as to how he got them.
8 MR. SOLOMON: I thought we did that this morning,
9 Your Honor?
10 MR. DICKERSON: No, I don't think that you have
11 really gone into all of the discussions. You keep cutting him
12 off when he goes into the discussions for it, but go ahead.
13 MR. SOLOMON: You know, Mr. Dickerson can handle
14 that in cross.
15 MR. DICKERSON: My objection is made, Your Honor.
16 THE COURT: Can you answer the question or do you
17 want him to repeat the question?
18 THE WITNESS: Can you please repeat the question,
19 Counsel.
20 BY MR. SOLOMON:
21 Q Do you recall telling the parties that in making
22 equalizing gifts that it would be in the discretion of the
23 giftor?
24 A I remember telling them that this they wanted to

1 make -- that to maintain the balance 50/50, that the best way
2 to do that was through gifting, yes.
3 Q Did you explain what gifting means?
4 A I thought everybody knows what gifting means; it's
5 disinterested generosity. So I didn't explain it probably in
6 detail. I thought it spoke for itself.
7 Q Okay. So you knew -- you had discussions with Eric
8 and Lynita at the time that the separate property agreement
9 was executed about their intentions in the future with respect
10 to equalizing their separate property; is that correct?
11 A I had discussions with them regarding the fact that
12 they represented to me that this -- these agreements were done
13 to protect primarily against third party creditors and they
14 were not doing these to try to alter community property
15 rights, although that's the effect that the agreement had.
16 Q Right. Did you explain that to them?
17 A The one downside is if they got out of balance, the
18 safest way to get back in balance was to do gifts.
19 Q Okay. So they knew, based on what you advised them
20 or at least what you advised them, whatever they knew, that
21 despite that intention, this agreement provided otherwise, and
22 so you needed to do gifting if you wanted to accomplish that,
23 is that what you're saying?
24 MR. DICKERSON: Object to the form of the question.

1 How would he know what they knew? He has no idea what they
2 knew.
3 MR. SOLOMON: I changed the question to him advising
4 them that, so ...
5 THE COURT: You can answer it.
6 THE WITNESS: Can I advise them in order to keep
7 things 50/50, the best way to do that was gifting.
8 BY MR. SOLOMON:
9 Q Right. Because the agreement itself would not
10 was going to be enforceable in case of divorce, too, unless
11 they did that. That's what you told them; isn't that true?
12 MR. DICKERSON: To which I object.
13 THE WITNESS: I didn't tell them -- I couldn't tell
14 them that. I didn't know -- when the divorce occurred, I
15 wouldn't know the circumstances surrounding the attempted
16 enforceability of the agreement.
17 BY MR. SOLOMON:
18 Q Did you know the separate property agreement created
19 separate property for all purposes by its own terms?
20 A At that point in time when it was done, yes.
21 Q And that that would include -- if they had gotten
22 divorced the next day, that would have included the divorce,
23 correct?
24 A If it would have been the next day, yes.

1 Q And you don't know what happened to the property
2 after that, that's why you're limiting it after that, right?
3 A Correct.
4 Q So if they don't want a document that purports to
5 divide property for all purposes including divorce, how did
6 you they will them they could get around that if they wanted
7 to, was that the gifting?
8 A Again, I don't want to pretend that I had this real
9 lengthy discussion about all aspects of divorce because that
10 wasn't the intent of our meeting. I just told them that the
11 best way to keep the property equal was through gifting and I
12 really don't -- that's all I basically told them and explained
13 that was the best way to do it.
14 Q Okay. And, in fact, you created a form for them to
15 make gifts?
16 A Yes.
17 MR. SOLOMON: What exhibit is that?
18 MR. LUSZECK: Eleven.
19 BY MR. SOLOMON:
20 Q Would you look at -- do you have the binder, still?
21 A No.
22 THE MARSHAL: I'll get it for you.
23 MR. SOLOMON: Can I see it?
24 MR. LUSZECK: Oh, sorry.

1 BY MR. SOLOMON:

2 Q All right. Showing you what's been marked as

3 Intervenor's Exhibit 11. Do you recognize that to be a copy

4 of the letter that your office sent to Lynita and Eric Nelson

5 on or about June 19th, 1980 with a declaration of gift form?

6 A Yes.

7 Q And do you recall why that was done?

8 A I don't really recall why it was done, whether it

9 related to a gift that involved the separate property trust or

10 it involved a gift that Eric wanted to make to a family

11 member. I don't recall.

12 Q Well, the form says "hereby gifts to Lynita"; do you

13 see that?

14 A Oh, that helps. Yeah, it appears that this one is

15 done to make a gift to Lynita.

16 Q I would recognize so.

17 MR. LUSZECK: Move to admit?

18 MR. SOLOMON: What's that?

19 MR. LUSZECK: Move to admit?

20 MR. SOLOMON: Move to admit 11.

21 MS. FORSBERG: No objection.

22 MR. DICKERSON: No objection.

23 THE COURT: Hereby admitted as Intervenor's 11.

24 (Whereupon, Intervenor's Exhibit No. 11 is admitted

1 into evidence.)
2 BY MR. SOLOMON:
3 Q Do you have volume 2 of your deposition?
4 A Yes, volume 2.
5 Which page?
6 Q Volume 2?
7 A Oh, yeah.
8 Q Would you turn to page 204.
9 MR. DICKERSON: Can I look over your shoulder?
10 MR. SOLOMON: Sure.
11 MR. LUSZECK: It's separated by the blue piece of
12 paper.
13 BY MR. SOLOMON:
14 Q All right. The bottom of page 204 at line 24 and
15 read over to page 205, line 15.
16 A I'm sorry, go over -- line 24
17 Q Page 204, line 24 --
18 A Okay.
19 Q -- to page 205, line 15.
20 A Okay.
21 Q Okay. Is it
22 A Line 15 you said, right?
23 Q Yes, and if you start back at page 205 at line 2,
24 does this refresh your advice that you gave Lynita and Eric

1 advice that because of the structure of what you had done and
2 the possibilities that occur in a divorce court that the best
3 thing to do was to make sure if they really wanted to
4 accomplish levelling off their trust was to make sure that
5 they periodically gifted or made gifts to each other?
6 MR. DICKERSON: And I objected to the form of the
7 question.
8 THE WITNESS: Again, the best thing to do is what I
9 thought I just said earlier.
10 BY MR. SOLOMON:
11 Q I just wanted to refresh your recollection. You
12 gave them that advice?
13 A Oh, yes.
14 Q Because you couldn't remember that a minute ago and
15 you said
16 A Oh, no, I always said that I gave them the advice,
17 that the best thing to do was the gifting.
18 Q Was because of the structure that you had set up?
19 A Yes.
20 Q Okay. Thank you.
21 Now, the 1993 separate property trust that you
22 created were fully amendable and revocable, correct?
23 A Yes.
24 Q And as such, both Lynita and Eric had the right to

1 change the beneficiaries in any way they wanted to?
2 A Yes.
3 Q And, in fact, you helped Lynita to that sometime in
4 2009?
5 A Yes.
6 Q Can you turn to Exhibit 14.
7 A Yes.
8 Q Okay. And is that a trust that you drafted -- a
9 restatement of the trust, I should say -- of the separate
10 property trusts dated July 13th, 1993 that you drafted for
11 Lynita on or about February 17, 2009?
12 A Yes.
13 Q And did you personally consult with Lynita in
14 connection with the revisions?
15 A Yes.
16 Q And isn't it true that you did not confer with Eric
17 of how Lynita was going to dispose of her assets in this
18 trust?
19 A Yes.
20 Q Do you recall that at least one of the changes made
21 in here is Lynita removed Eric as the beneficiary of any of
22 her separate property?
23 MR. DICKERSON: Object to the form of the question.
24 MR. SOLOMON: I'll rephrase it.

1 BY MR. SOLOMON:
2 Q Isn't it true that -- well, what change did this
3 trust have relative for Eric by this restatement?
4 A I tend to believe, like you said, that it removed
5 Eric as the beneficiary.
6 Q Do you recall whether it removed Eric as a trustee
7 or successor trustee also?
8 A To the best of my recollection it did, yes.
9 Q And on page 3 -- well, first of all, let me
10 MR. SOLOMON: Move to admit 14.
11 MR. DICKERSON: No objection.
12 MS. FORSBERG: No objection.
13 THE COURT: Hereby admit it as Intervenor's 14.
14 (Whereupon, Intervenor's Exhibit No. 14 is admitted
15 into evidence.)
16 BY MR. SOLOMON:
17 Q The bottom of page 3, does that indicate that the
18 property in the trust retains its character as Lynita's
19 separate property?
20 A That's what it says, yes. As designated on the
21 document, it would transfer conveyance.
22 Q Now, did you -- did you also assist Lynita in making
23 changes in or about 2009 to her self settled spendthrift
24 trust?

1 A Yes.
2 Q Can you take a look at 81.
3 Is this a document that you prepared on behalf of
4 Lynita?
5 A Yes.
6 Q And is this an exercise of her power of appointment
7 under her self settled spendthrift trust?
8 MR. DICKERSON: I'm sorry. Which exhibit?
9 MR. SOLOMON: It's eighty one.
10 THE WITNESS: Yes.
11 MR. SOLOMON: Are you there?
12 MR. DICKERSON: Yes.
13 MR. SOLOMON: Okay. I would offer 81.
14 MS. FORSBERG: No objection, No, Your Honor.
15 MR. DICKERSON: No objection.
16 THE COURT: Hereby admitted as Intervenor's 81.
17 (Whereupon, Intervenor's Exhibit No. 81 is admitted
18 into evidence.)
19 BY MR. SOLOMON:
20 Q You worked with Lynita personally on this document,
21 did you not?
22 A Yes.
23 Q And what was the effect of what she was doing here?
24 A The effect was to remove Eric as the beneficiary and

1 successor trustee, I believe it was.
2 Q Is there a separate document for the latter? Let's
3 turn
4 A Oh, I see.
5 Q Well, before I get to that one -- just so make sure
6 that we understand what's happening here, in the LSN Nevada
7 Trust, what right had Lynita reserved in terms of being able
8 to control the disposition of all the property that was in
9 that trust at her death?
10 A She has testamentary power of appointment which gave
11 her the right to change beneficiaries at her death.
12 Q And this document, 81 that's now in evidence,
13 exercised that so as to say all the property in the LSN Trust
14 will go to beneficiaries that don't include Eric?
15 A Yes.
16 Q Would you turn to 77. Do you recognize your
17 signature on that document?
18 A Yes.
19 Q It says a change of distribution trustee for the LSN
20 Trust and it's dated January 27th, 2009.
21 MR. SOLOMON: We would offer 77, Your Honor.
22 MS. FORSBERG: No objection.
23 MR. LUSZECK: I think it's already in.
24 THE COURT: Seventy seven is already in.

1 MR. LUSZECK: That's my fault.
2 MR. SOLOMON: Let's talk about it then.
3 BY MR. SOLOMON:
4 Q As the -- I think you previously testified that as
5 the trust consultant of the LSN Trust, you have the right to
6 change the distribution trustee and/or successor trustee?
7 A Yes.
8 Q And how did it come about that this document was
9 prepared by you?
10 A In discussions I had with Lynita, due to the divorce
11 proceedings, she suggested and desired that the distribution
12 trustee be changed. I decided to go along with that change.
13 Q So that was done at her request and you consented to
14 it; is that correct?
15 A After a mutual discussion we had, yes.
16 Q And did Eric -- I'm sorry -- with respect to the
17 change of the separate property trust that we just looked at,
18 the change of the power of appointment that we looked at and
19 with respect to this change of trustee, that was all Lynita
20 approaching you initially, correct?
21 A Yes.
22 Q And Eric wasn't part of any of that?
23 A No.
24 Q Can you turn to Exhibit 19. Is -- do you recognize

1 this is a copy of Lynita's last will and testament that she
2 did during the time period of February 17th, 2009?
3 A Yes.
4 Q Your office drafted this for her?
5 A Yes.
6 Q At her request?
7 A Yes.
8 MR. SOLOMON: Is this admitted?
9 MR. LUSZECK: No.
10 MS. FORSBERG: No objection.
11 MR. DICKERSON: No objection.
12 THE COURT: Hereby admitted as Intervenor's 19.
13 (Whereupon, Intervenor's Exhibit No. 19 is admitted
14 into evidence.)
15 BY MR. SOLOMON:
16 Q And do you recall what the major change was from her
17 last will?
18 A The major one was removing Eric as an heir and I
19 believe successor executor, also.
20 Q And under the terms of her will that you advised in
21 '09, the beneficiary of her estate, if any, is who?
22 A The LSN Nevada Trust.
23 Q Would you turn to page 4.
24 MR. DICKERSON: Which exhibit?

1 MR. SOLOMON: Same exhibit.
2 MR. DICKERSON: At where, 19?
3 MR. SOLOMON: Yes.
4 BY MR. SOLOMON:
5 Q On paragraph Roman numeral nine, it says a few
6 names, Nola Harper -- Harber (phonetic) -- I'm sorry, as the
7 legal guardian of her children while they were still minors?
8 A Yes.
9 Q Is that something that Lynita directed you to put in
10 this instrument?
11 A To the best of my recollection.
12 MR. DICKERSON: Is this Exhibit 19?
13 MR. SOLOMON: Yes.
14 MR. DICKERSON: I'm missing
15 MR. SOLOMON: It's the last will and testament.
16 MR. DICKERSON: It appoints Eric that.
17 MR. SOLOMON: Go down one paragraph.
18 BY MR. SOLOMON:
19 Q Would you turn to Exhibit 27. Is this a letter that
20 you signed and sent to Lynita Nelson on May 30th, 2001?
21 A Yes.
22 Q And the third paragraph of that letter -- well,
23 first of all, what's the purpose of this letter?
24 A It's just an instruction letter to the client

1 instructing them as to how to fund the trust and how to
2 accomplish the transfers that are needed into the trust.
3 Q The third paragraph on the first page says, "It is
4 very important that all of the assets that you want are
5 protected from potential future creditors' claims must be
6 transferred to your NOST. Only those transfers to your NOST
7 will be protected from creditors' claims once the two year
8 statute of limitations has run from the date you transferred
9 assets into your NOST."
10 Do you recall having, outside of this letter, discussions
11 where Lynita and Eric that one of the benefits of, what you
12 call here a NOST, a self settled spendthrift trust that it
13 would terminate claims within two years after it transfers?
14 A Yes.
15 Q And at the end of this letter, page 4, it appears
16 that Lynita signed and dated that under the line, "I hereby
17 understand and acknowledge receipt of this letter and I accept
18 responsibility for the transfer of my assets into the trust."
19 Is that language that you put in?
20 A Yes.
21 Q And you request the client to sign and return it?
22 A Yes.
23 MR. SOLOMON: Move to admit.
24 MS. FORSBERG: No objection.

1 MR. DICKERSON: This is, again, 19?
2 MR. SOLOMON: This is 27.
3 THE COURT: Twenty six.
4 MR. DICKERSON: I have no objection.
5 THE COURT: Hereby admitted as Intervenor's 27.
6 (Whereupon, Intervenor's Exhibit No. 27 is admitted
7 into evidence.)
8 BY MR. SOLOMON:
9 Q Okay. Would you turn to Exhibit 32. Do you recall
10 whether your office prepared documents for Lynita to certify
11 that she was doing business under the LSN Nevada Trust in a
12 fictitious name?
13 A No, we did not do that.
14 MR. SOLOMON: No further questions.
15 MS. FORSBERG: One second, Your Honor. If I could
16 take a look at my notes and make sure I covered everything.
17 THE COURT: Sure.
18 MS. FORSBERG: No, Your Honor. I don't think I have
19 any more questions.
20 MR. DICKERSON: Your Honor, may we take a brief
21 recess so I can use the restroom and then I'll
22 THE COURT: Sure. We'll recess for five, ten
23 minutes.
24 (Break taken from 14:08:21 - 14:16:31)

1 THE COURT: We're going back on the record as to the
2 matter of Eric and Lynita Nelson, case number D-411537.
3 You can pick back up where you left off, if you're
4 ready to proceed, Mr. Dickerson.
5 MR. DICKERSON: Thank you.
6 **CROSS-EXAMINATION**
7 BY MR. DICKERSON:
8 Q Mr. Burr, you testified before this Court on
9 November 22nd, 2010, do you recall?
10 A Yes.
11 Q And, sir, do you change any of your testimony that
12 you gave to the Court at that time?
13 A No.
14 Q You stand by what you told the Court that day?
15 A As far as I recollect, yes.
16 Q Now, if you would, sir, please turn to Exhibit 1.
17 You had mentioned in your direct testimony to Mr. Solomon that
18 these are notes that you wrote to your assistant Molina?
19 A Yes.
20 Q And the second one it indicates -- I believe your
21 words, "Please also prepare a marital property separation
22 agreement."
23 A Yes.
24 Q These parties weren't coming to you to separate,

1 were they?
2 A No.
3 Q They weren't coming to you to seek divorce advice?
4 A No.
5 Q What do you mean there, a marital property
6 separation agreement?
7 A Just an agreement that would change the character of
8 the property they owned from community to separate property.
9 Q So you weren't talking about putting together
10 something that -- for the purpose of their separation; is that
11 correct?
12 A No.
13 Q Is that true?
14 A Yes.
15 Q Now, when they came to you, would you tell the Court
16 what they explained to you their goal was to accomplish. What
17 was their goal that they wanted to accomplish?
18 A They wanted to have Lynita not be involved with the
19 gaming operation and they were concerned about potential
20 liabilities that Eric was incurring. So Lynita wanted her
21 property protected from potential liabilities that Eric was
22 going to be incurring.
23 Q And did Lynita express to you that she did not want
24 to enter into any agreement that would essentially be like a

1 divorce agreement or that they are separating their property.
2 Did she explain that to you?
3 MR. SOLOMON: Separating their what?
4 MR. DICKERSON: Their property, as if they were
5 getting a divorce.
6 BY MR. DICKERSON:
7 Q Do you recall that, sir?
8 A We had a discussion about that. In fact, I always
9 discuss that with the clients because if there is any inkling
10 that this is being done with any intent to dissolve a
11 marriage, then I quickly refer them to separate counsel for
12 divorce advice.
13 Q And you did not get that inkling; is that correct?
14 A Yes.
15 Q In fact, you specifically explained to them what
16 they could do for the purposes of equalizing their two trusts;
17 is that correct?
18 A Yes.
19 Q And Eric Nelson expressed to you to do the same
20 thing, to equalize the two trusts; is that correct?
21 A Yes.
22 Q And wasn't that the intent of these parties, is what
23 they wanted to do was to put the safe assets in Lynita's
24 Trust, the risky assets in Eric's Trust, so if they lost

1 everything in Eric's trust, the family would have everything
2 in Lynita's Trust?
3 A Yes.
4 Q Do you have your deposition transcript?
5 A Volume 1.
6 Q Yes, let's look at volume 1. Now, you did appear at
7 Mr. Solomon's office for your deposition on two occasions; is
8 that correct?
9 A Yes.
10 Q You were there -- the first occasion was February
11 22nd, 2012?
12 A Yes.
13 Q Could you turn you to page 35. What I would like to
14 do is go through some of the questioning of you by Mr. Solomon
15 and your answers.
16 MR. SOLOMON: Hold on. Mr. Dickerson already
17 accurately objected on the grounds that deposition transcripts
18 can be used to refresh and they can be used to impeach and you
19 cannot take a deposition when you have a live witness here and
20 start reading it as if he's a party and it can be used for any
21 purpose.
22 He's not a purpose. It cannot be used for any
23 purpose. It can only be used for impeachment or to refresh
24 your recollection.

1 MR. DICKERSON: And it can be used for purposes of
2 clarifying what he said earlier, because I think it is a form
3 impeachment.
4 MR. SOLOMON: You can ask him a question and he ask
5 answer, and if you need to impeach him, then he can do that.
6 He can't use it the way he's trying to. He knows that.
7 THE COURT: Why don't you ask the question first and
8 see if he needs to read that to clarify that and we'll move
9 forward on it.
10 MR. DICKERSON: All right.
11 BY MR. DICKERSON:
12 Q Mr. Burr, did you have any discussions in 1993,
13 prior to the execution of this separate property agreement
14 that was executed by the Nelsons with Eric and Lynita about
15 what they could do in the future should one trust become more
16 or less valuable than the other party's trust?
17 A Yes.
18 Q Did you have that discussion?
19 A Yes.
20 Q And what did you tell them?
21 A I, again, told them that they could equalize the
22 trust by having transfers between themselves, gifts.
23 Q And did you tell them that since it was not divorce
24 or dissolution planning, that it was their intent to pretty

1 much keep their assets pretty much equally owned, is that what
2 you told them is that what you understood?
3 MR. SOLOMON: Hold on. It's impossible that he
4 could tell them what their intent was.
5 BY MR. DICKERSON:
6 Q Isn't that what you understood?
7 THE COURT: I don't know if you know their intent,
8 but can you answer the question -- did you understand the
9 question?
10 THE WITNESS: Could you -- I'm sorry -- can you
11 repeat it?
12 BY MR. DICKERSON:
13 Q Did you understand that it was their intent that
14 since they were not there for a divorce or dissolution
15 planning, it was there intent at that time to keep their
16 assets pretty much equally owned and that it would be
17 important to periodically re-balance the trusts; is that
18 correct?
19 A Yes. Yes.
20 Q And it was their intent and it was expressed to you
21 at that time that they wanted to keep the assets mainly equal
22 value throughout their marriage; is that right?
23 A Yes.
24 Q And you explained to them that they could accomplish

1 that by making gifts?
2 A Yes.
3 Q And, in fact, sir, you know that during the course
4 of their marriage since 1993, there have been several
5 properties transferred back and forth between the trusts going
6 in and out and going from one trust to the other, are you
7 aware of that?
8 MR. SOLOMON: (Indiscernible - 14:23:34.)
9 THE WITNESS: I am aware -- I'm aware of it. I've
10 been told that's happened and I've seen different schedules
11 that indicate that that's happened, yes.
12 BY MR. DICKERSON:
13 Q But you were also for a short period of time
14 representing Lynita Nelson with the consent of Eric Nelson for
15 the purposes of attempting to divide up their assets; is that
16 correct?
17 A Yes.
18 Q And so you were aware that there were assets that
19 went back and forth; is that correct?
20 A I know that there were transfer documents prepared
21 and that -- that were meant to transfer assets back and forth.
22 I just don't recall if the documents were actually signed and
23 completed.
24 Q Now, if you'll please turn to page 74, Mr. Solomon

Eric's trust?

A I don't -- I don't recall.

Well, it wouldn't be signed by Lynita.

Q Why not?

A Oh, I'm sorry.

Q Why wouldn't the promissory

A Oh, I had it backwards.

Q All right. Exhibit 143, this purports to be a meeting on May 15th, 2005, between you and Eric. Did this meeting actually occur?

A I don't recall.

Q But you did not sign these minutes; is that right?

A Yes.

Q Nor did Eric, is there a reason why?

A No, unless, like I said before, it wasn't complete or it wasn't decided on completely.

Q Now we move to the month of May and now we're ten days from the previous one. This is another meeting again, so you apparently had two meetings on May 15th, one at 9:00 a.m. and one at 10:30 --

A Which is possible.

Q -- and we are approximately ten days from the previous one where we talked about the loan to the LSN Nevada Trust for $175,000, and now this one indicates that there

1 apparently the trust will loan more money to Lynita's Trust
2 for the purchase of vacant lots in Arizona, commonly referred
3 to as "Gateway lots." Do you recall that discussion with
4 Eric?
5 A I don't recall it.
6 Q And do you know why it would be an interest free
7 loan payable in six months?
8 A I don't recall.
9 Q Was a promissory note ever prepared?
10 A I don't recall that either. I would have to look at
11 the books, too. That might be a duplicate, that 175.
12 Q Pardon me?
13 A The 175 might be a duplicate. It might be the same
14 loan.
15 Q Exhibit 145 appears to be minutes for some meeting
16 that purportedly occurred on July 8th, 2005, but, again, these
17 notes are not signed. These minutes are not signed; is that
18 correct?
19 A That's correct.
20 Q Do you recall ever having this discussion with Eric?
21 A That transaction happened, so I'm sure that we
22 discussed it.
23 Q Okay. Exhibit 146 appear to be notes -- minutes
24 signed by both you and Eric for a meeting that purportedly

1 occurred

2 MR. SOLOMON: What exhibit is this?

3 THE WITNESS: 146.

4 MR. SOLOMON: Pardon me?

5 THE WITNESS: 146.

6 MR. DICKERSON: 146, yeah.

7 BY MR. DICKERSON:

8 Q And this is on February 25th, 2006, at Eric's office

9 and it appears that you are now authorizing $25,000 a month or

10 $300,000 a year to be distributed to Eric; is that correct?

11 A That's correct.

12 Q Okay. Exhibit -- now did that meeting actually

13 occur?

14 A I don't recall it.

15 Q Okay. Exhibit 147 appear to be minutes between you

16 and Eric on August 30th, 2006, wherein the two of you discuss

17 making a loan to Chad Ramos; is that correct?

18 A That is correct.

19 Q Okay. Do you recall that discussion?

20 A Not specifically.

21 Q Do you recall what the $9,000 was for?

22 A I don't.

23 Q Was a promissory note actually prepared as the

24 minutes reflect that it was to be done?

1 A There were promissory notes to Chad Ramos. I'm
2 unsure if that was one of the amounts. That might be why that
3 is unsigned.
4 Q Okay. Have you seen a note signed by Chad Ramos for
5 $9,000?
6 A I don't recall the amount exactly.
7 Q Or if the distribution or this loan was ever made?
8 A I don't recall that either.
9 Q Is there a reason why these notes -- these minutes
10 were not signed?
11 A Something may have changed. The amount may have
12 changed, time, I don't know.
13 Q Okay. Exhibit 148 purports to be another meeting on
14 September 19th, 2006, between you and Eric at Eric's office
15 and you're apparently authorizing the release of -- or the
16 distribution of $25,000 to Eric for the payment of the 2005
17 taxes on the parties' joint return; is that correct?
18 A That's correct.
19 Q And so you did authorize that distribution, correct?
20 A That's correct.
21 Q If I can direct you to Exhibit 164. Now, looking
22 back just one second to that 148, those are the last minutes
23 that I believe that we have that are signed by you and those
24 appear to be representing that you signed them September 19th,

1 2006; is that correct?
2 A It looks like that's correct.
3 MR. SOLOMON: Are you representing that's the last
4 one?
5 MR. DICKERSON: No, the last one signed by her prior
6 to this year or last year. I'm sorry.
7 BY MR. DICKERSON:
8 Q Your first stint as the distribution trustee, this
9 appears to be your last one; is that right?
10 A Yes, that looks true.
11 Q Do you know when you were removed as the
12 distribution trustee?
13 A February, '07.
14 Q Okay. But then do you recall when you came back on
15 as the distribution trustee?
16 A June 11th or June, 2011. I believe the 8th.
17 Q So that is why you are doing these minutes that are
18 in Exhibit 164 reflecting the meeting purportedly occurred on
19 June 16th of 2011; is that right?
20 A That's right.
21 Q Did you actually have this meeting with Eric?
22 A Yes.
23 Q And did he discuss with you about a $3,000 loan that
24 he is going to make to the Oasis Baptist Church?

1 A It was talked about. I don't know if it actually
2 happened.
3 Q What did he tell you?
4 A That's basically it, that they sold improvements for
5 the church.
6 Q Okay. Does Eric have a personal credit card or a
7 credit card through the trust?
8 A I believe so.
9 Q Does he have a debit card for any of the accounts?
10 A I believe so.
11 Q Let's talk about that for a second. What credit
12 cards does Eric have?
13 A You know, I don't know if it changed, so I can't
14 tell you right now exactly. It might be a Bank of America.
15 Q And what debit cards does he have, do you know?
16 A No, not exactly what account it's on.
17 Q Okay. I would like to direct your attention, if we
18 may. Some of those letters that you indicated that you
19 receive in March of every year that you've indicated that you
20 read those every year when they come in; is that correct?
21 A I try to, yes.
22 Q Pardon me?
23 A I make an attachment to, yes.
24 Q And you attempt to comply with everything that

1 Mr. Burr tells you you should be doing?
2 A Yes.
3 What number is that?
4 Q Let's see, we've got -- take a look at Exhibit 115.
5 Now, if we take a look at Exhibit 115, Exhibit 122,
6 Exhibit 135, and Exhibit 161, these all appear to be fairly
7 identical letters.
8 A I don't believe 115 is correct.
9 MR. SOLOMON: Yeah, you've got me confused. You
10 started with 115 and that's not even a -- I can't get past
11 that.
12 MR. DICKERSON: Oh, did I? 114, I'm sorry.
13 MR. SOLOMON: Can you read the list again?
14 BY MR. DICKERSON:
15 Q Well, let's start with 114. 114 is the letter that
16 you received in 2002 and read; is that correct? That was
17 received in 2002?
18 A Correct.
19 MR. DICKERSON: Move for the admission of
20 Exhibit 114.
21 MR. SOLOMON: No objection.
22 MS. FORSBERG: No objection.
23 THE COURT: Go ahead and admit it as Exhibit 114.
24 (Whereupon, Defendant's Exhibit No. 114 is admitted

1 into evidence.)
2 BY MR. DICKERSON:
3 Q Exhibit 122 is essentially the identical letter that
4 you received and read in March of 2003; is that correct?
5 A That's correct.
6 MR. DICKERSON: Move for the admission of
7 Exhibit 122.
8 MS. FORSBERG: You said 122, Bob?
9 MR. DICKERSON: Yes, 122.
10 MR. SOLOMON: No objection.
11 MS. FORSBERG: No objection.
12 THE COURT: Okay.
13 (Whereupon, Defendant's Exhibit No. 122 is admitted
14 into evidence.)
15 BY MR. DICKERSON:
16 Q 135 appears to be virtually the identical letter
17 that you received in May of 2004 and read; is that correct?
18 A Yes. I can't -- yes.
19 Q Okay. And Exhibit 161 appears to be virtually
20 well, a similar letter. It looks like you may have at least
21 changed the formatting or something, but this was a letter
22 that you received in 2011; is that right?
23 A Yes. I most likely didn't receive this one, though,
24 because it was prior to me coming back on.

1 Q Oh.
2 A It may have just been put in there.
3 Q So you may not have seen that?
4 A I may have not, yeah. If this is any different, I
5 may have not looked at this one.
6 MR. DICKERSON: Move for the admission of 135.
7 MR. SOLOMON: No objection.
8 MS. FORSBERG: No objection.
9 THE COURT: So admitted.
10 (Whereupon, Defendant's Exhibit No. 135 is admitted
11 into evidence.)
12 BY MR. DICKERSON:
13 Q You don't believe you've ever seen 161 before?
14 A Well, that's my handwriting on there. I know I
15 wrote down the times we were trustees, but I don't know if I
16 read this in the entirety.
17 Q But that's your handwriting?
18 A Yes.
19 Q And what's it doing on there?
20 A I wrote it on there so I would know the dates.
21 Q Why? When did you write that?
22 A I don't know. I don't recall.
23 Q Does that indicate that you read it?
24 A No, it just indicates that I was writing down on

1 something in the book, the dates of my -- that I was
2 distribution trustee.
3 Q Okay. Let's go back to, then, Exhibit 135.
4 A Okay.
5 Q And we are in agreement that all these letters read
6 the same, correct?
7 A Correct.
8 Q And we've already confirmed that you have read them
9 when they come in each year, correct?
10 A Correct.
11 Q And we have already confirmed that you, generally,
12 as best you can, follow Jeff Burr's instructions, correct?
13 A Correct.
14 Q Now, we see from this letter in the second
15 paragraph, the last sentence that what he's telling you in
16 addition to the form Lynita's that he's sending over, he is
17 enclosing a distribution authorization form which should be
18 executed by your distribution trustee prior to a distribution
19 occurring, and you read that, did you not?
20 A I must have, yes.
21 Q Okay. And those are -- those distribution
22 authorizations are what we have gone through here today that
23 reflect the distributions that you authorized for Eric; is
24 that correct?

1 A That's correct.
2 MR. DICKERSON: I have nothing further, Your Honor.
3 THE COURT: Redirect.
4 **REDIRECT EXAMINATION**
5 BY MR. SOLOMON:
6 Q Well, let's work backwards a little bit here from
7 somewhere where I can find several places you testified in my
8 notes here. If you're on Exhibit 135, and I know it's also in
9 114 and 122, it says in the first sentence, "An important
10 aspect of the Nevada on shore trust is holding annual
11 trustee's meeting, as I explained in the annual meeting
12 instruction letter."
13 Let's turn to that annual meeting instruction
14 letter. Can you turn to Exhibit 26 for the one relating to
15 Lynita's Trust.
16 MR. LUSZECK: Do you want the one relating to his?
17 MR. SOLOMON: Yeah, that's Exhibit 88.
18 THE WITNESS: Do you want me to go to 88 then?
19 MR. SOLOMON: Either of these in?
20 MR. LUSZECK: I don't believe so?
21 MR. DICKERSON: Which one are you referring to, 88
22 or both?
23 MR. SOLOMON: It doesn't matter. They're both
24 copies with different names.

1 BY MR. SOLOMON:
2 Q Twenty six, do you have that?
3 A Twenty six, I have that.
4 Q Are you there?
5 A Yeah, but they -- oh, they want attached. I'm
6 sorry, I didn't see that. Okay, yes?
7 Q Why don't you turn to the first page of Exhibit 26,
8 which is the May 30th, 2001, letter from Mr. Burr to
9 MR. SOLOMON: Do you have any objection to this?
10 MR. DICKERSON: No objection to that and no
11 objection to 88.
12 MS. FORSBERG: No objection, Your Honor, either one.
13 THE COURT: I hereby admit Exhibit 26 and
14 Exhibit 88.
15 (Whereupon, Intervenor's Exhibit Nos. 26 and 88 are
16 admitted into evidence.)
17 BY MR. SOLOMON:
18 Q The third paragraph reads, "Although Nevada law does
19 not require that these trustee's meetings be held, we believe
20 that the meetings are an integral part of your NOST's
21 effectiveness as an asset protection tool."
22 Do you see that?
23 A Yes.
24 Q Was it your understanding that minutes or that

1 meetings are absolutely necessary?
2 A No.
3 Q In fact do you even know why Eric would involve you
4 in meetings and you would sign them as distribution trustee
5 when nothing about distributions was particularly discussed in
6 a put together meeting?
7 A No.
8 Q You understood that your role was just to approve
9 distributions?
10 A Yes.
11 Q And you didn't believe that, because you were
12 signing off on minutes occasionally that had nothing to do
13 with distributions, that that was part of your role as
14 distribution trustee, did you?
15 A No.
16 (Counsel confer.)
17 BY MR. SOLOMON:
18 Q Mr. Dickerson asked you questions regarding a
19 document admitted into evidence as Intervenor's 165, which is
20 called delegation of Lana A. Martin?
21 A Yes.
22 Q You had indicated that -- or at least some point in
23 time you had read the Eric L. Nelson Nevada Trust?
24 A Yes.

1 Q Would you turn to Exhibit 86. Now, this is Eric's
2 MR. LUSZECK: This may not be admitted. I don't
3 have them marked as admitted.
4 MR. DICKERSON: It's been admitted.
5 MR. SOLOMON: It has been admitted?
6 MR. DICKERSON: I have no objection to it.
7 It's also Exhibit 80, Plaintiff's Exhibit 80.
8 MS. FORSBERG: Objection, Your Honor.
9 THE COURT: It will be admitted as Exhibit 86, the
10 Eric L. Nelson Nevada Trust, dated May 30th, '01.
11 (Whereupon, Intervenor's Exhibit No. 86 is admitted
12 into evidence.)
13 BY MR. SOLOMON:
14 Q Would you turn to page 20.
15 (Counsel confer.)
16 MR. SOLOMON: LSN is Exhibit 25, do you have any
17 objection to that being in at the same time?
18 MR. DICKERSON: No, and LSN is Plaintiff's
19 Exhibit 81.
20 MS. FORSBERG: No objection.
21 THE COURT: Number 25 will be admitted as well, no
22 objection.
23 (Whereupon, Intervenor's Exhibit No. 25 is admitted
24 into evidence.)

1 THE CLERK: What number, Judge?
2 THE COURT: Twenty five. That's Plaintiff's -- it's
3 already been Plaintiff's 81.
4 BY MR. SOLOMON:
5 Q Now, Lana, on page 20, subsection Z, towards the
6 bottom is one of the trustee's powers that are spelled out
7 starting on section 12.1 on page 17, and I'll represent to you
8 that this is the same language that is in Lynita's or the LSN
9 Trust. It says that, "The investment trustee shall have the
10 following powers, all of which will be exercised in a
11 fiduciary capacity." And then you get down to Z, "To employ
12 and compensate out of the principal income or both as the
13 trustee shall determine. Such agents, persons, corporations
14 or associations, including accountants, brokers, attorneys,
15 tax specialists, certified financial planners, realtors, and
16 other assistants and advisors, deemed needful by the trustee,
17 even if they are associated with the trustee, for the proper
18 settlement, investment, and overall financial planning and
19 administration of the trust, and to do so without liability
20 for any neglect, omission, misconduct, or default of any such
21 person or professional representative provided such person
22 with selected and retained with reasonable care."
23 Was it your understanding that Eric, in fact, as
24 investment trustee of this trust, exercised that power, not

1 only to delegate to you the authority to bring this claim in
2 this case, but also to help him administer the trust?
3 A Yes.
4 MR. DICKERSON: Object to the form of the question.
5 It's vague, ambiguous, compound, leading, and whatever I want.
6 THE COURT: It is definitely leading.
7 Do you want to just rephrase it?
8 MR. SOLOMON: Yes.
9 THE WITNESS: Go ahead.
10 BY MR. SOLOMON:
11 Q Did you believe Eric had authority to designate you
12 to handle this litigation as a result of his conflict herein?
13 A Yes.
14 Q And did you believe that Eric had the authority to
15 use you and other people in his office to assist him in the
16 managers of his trust?
17 A Yes.
18 Q And did you believe that Lynita had the authority
19 under her trust to use you and others to assist her in the
20 administration of her trust?
21 A Yes.
22 Q Would you turn to page 25 of that trust. I'm
23 referring to, in this case, Exhibit 86, but for Eric's L.
24 Nelson Trust, but it represents the same language in 12.6 of

1 the LSN Trust.

2 At 12.6 it says, "The trustee is authorized to

3 employ attorneys, accountants, investment managers,

4 specialists, and other agents as the trustee shall deem

5 necessary or desirable. The trustee shall have the authority

6 to appoint an investment manager or managers to manage all or

7 any part of the assets of the trust and to delegate to such

8 investment manager, the discretionary power to acquire and

9 dispose of the assets of the instruction. The trustee may

10 charge a compensation such attorneys, accountants, investment

11 managers, specialists, and other agents against the trust

12 including any other related expenses."

13 Did you understand from these provisions what Eric

14 had the power to do in his trust and what Lynita had the power

15 to do in her trust?

16 A Yes.

17 Q You have in your hand DDDD and EEEE?

18 A Yes.

19 Q All right. Do you recall the I may have to stand

20 over your shoulder.

21 MR. SOLOMON: Is that okay, Your Honor?

22 We weren't provided copies of these.

23 MR. DICKERSON: I will make copies for you.

24 THE COURT: Yeah, we'll make copies at the end for

1 you.

2 MR. SOLOMON: Thank you. I don't want to mix them

3 up. It's likely what I'll do if I don't see them at the same

4 time as you do.

5 BY MR. SOLOMON:

6 Q All right. I want to see if we can clarify what

7 these are and what they represent. The DDDD is a promissory

8 note dated January 28th, 2005, for the principal sum of

9 $105,000 that says, "For value received Eric L. Nelson or Eric

10 L. Nelson Nevada Trust programs to pay you the sum of

11 $105,000."

12 Do you have any recollection as to why it says both

13 Eric L. Nelson or Eric L. Nelson Nevada Trust?

14 A I don't remember why, no.

15 Q Okay. Had you had any discussion with Eric as to

16 whether he was going to personally guarantee that obligation

17 to you?

18 A I do not remember that exactly.

19 Q Do you -- the bottom of this exhibit shows that the

20 money or the check was written out of an account with you and

21 your husband and made payable to Nelson & Associates, which I

22 think you said was a DBA for his asset protection trust?

23 A Yes.

24 Q And do you know if that money was, in fact, as a

1 result -- in fact, you were doing the bookkeeping at this time
2 period -- do you know if, in fact, that money was deposited
3 into the trust?
4 A Yes, I deposited that.
5 Q Okay. Now, let's move to the second note which is
6 EEEE. It says -- it's dated June 1, 2006 and it's in the
7 principal amount of $200,000 and it says that Eric L. Nelson,
8 a married man, promises to pay -- this would be your husband
9 Robert A. Martin, the sum of $200,000?
10 A Yes.
11 Q Okay. Were you involved in this transaction?
12 A Not specifically.
13 Q Do you know what it was for?
14 A No, I don't recall.
15 Q Okay. The check is written off of your account,
16 too, is it not?
17 A Yes.
18 Q Okay. Was this a loan that you and your husband
19 made?
20 A Yes.
21 Q And, again, you were the bookkeeper for Eric's trust
22 during that time period, do you know whether that money was
23 deposited into his trust?
24 A At the time I didn't, but now I do because we had to

1 order copies of checks and that went into his Bank of America
2 trust account.
3 Q And that was for the ELN Trust?
4 A Yes.
5 Q Now, at the time that that was extended, was it your
6 understanding that that was a loan to whom?
7 A Well, I don't know specifically what it was used
8 for. I'm confused.
9 Q Let me re ask the question.
10 A Okay.
11 Q Did you have any understanding that that was a loan
12 to Lynita?
13 A Oh, no. No.
14 Q Did you have any understanding that that was a loan
15 to the marital community of Eric and Lynita?
16 A No.
17 MR. DICKERSON: This is the loan that's on the
18 promissory note signed by her husband?
19 THE WITNESS: Yes.
20 MR. SOLOMON: That's not signed by her husband.
21 THE WITNESS: The check is signed by her husband.
22 BY MR. SOLOMON:
23 Q Did you or your husband have any expectations that
24 Lynita would pay back this money?

1 MR. DICKERSON: Objection to the form of the
2 question.
3 THE COURT: Overruled.
4 MR. DICKERSON: She has personal knowledge of her
5 husband? Okay.
6 THE WITNESS: No.
7 BY MR. SOLOMON:
8 Q Did you or your husband, to your knowledge, have any
9 expectation that the marital community of Lynita and Eric
10 would pay that back?
11 MR. DICKERSON: Same objection. She can only speak
12 on behalf of herself.
13 MR. SOLOMON: You said to her knowledge on him.
14 THE COURT: You can answer to your knowledge.
15 THE WITNESS: No.
16 THE COURT: We can bring him here if we need to.
17 BY MR. SOLOMON:
18 Q Now, your direct -- I'm sorry, cross examination
19 with Mr. Dickerson, you indicated something that I was not
20 clear on and maybe you're not clear on, so let's find out.
21 You indicated that there was some understanding that
22 this loan might be converted to an equity position somewhere,
23 is that what I understood?
24 A Yes.

1 Q And equity position would be in what entity?
2 A Dynasty Development Group, LLC.
3 Q Dynasty Development Group, LLC was owned by whom?
4 A The Eric L. Nelson Nevada Trust.
5 Q And do you know whether or not that ever, in fact,
6 occurred, whether it was converted, got that far?
7 A Not exactly, no.
8 Q There's a lot of questions on -- a lot of questions
9 asked about distributions in your cross examination and I
10 don't want to go through all of those minutes again, so let me
11 just lump them.
12 A Okay.
13 Q Do you know of any distribution that was ever made
14 to Lynita while you were distribution trustee that you didn't
15 approve of?
16 A No.
17 Q Do you know of any distribution that was made to
18 Eric from his self settled spendthrift trust while you were
19 the distribution trustee that you didn't approve of?
20 A No.
21 Q Do you know of any distribution made to Lynita from
22 her self settled spendthrift trust while you were distribution
23 trustee that she didn't approve of?
24 A No.

1 Q Do you know of any distribution made to Eric from
2 his self settled spendthrift trust that he didn't approve of?
3 A No.
4 Q Can you turn back to Exhibit 86.
5 A I'm there.
6 Q And specifically, page 3.
7 MR. DICKERSON: What are we on, Exhibit 86?
8 MR. SOLOMON: Exhibit 86 at page 3.
9 BY MR. SOLOMON:
10 Q Do you recognize this as the provision that says
11 that the distribution trustee needs to approve a distribution
12 to the trustor?
13 A Yes.
14 Q All right. The second paragraph says,
15 "Notwithstanding the foregoing " which is talking about
16 meetings, "a meeting of the trustee shall be effective,
17 whether in person or by telephone or by electronic means."
18 Do you see that?
19 A Yes.
20 Q And you indicated you've read that?
21 A Yes.
22 Q Does that require, if, take for example -- well, any
23 of those -- but by telephone, by way of example, does that
24 require a writing?

1 A No.

2 Q You indicated either on my direct or Mr. Dickerson's

3 cross that other people in the office would write checks,

4 actually write the checks on Lynita's self settled spendthrift

5 trust or Eric's self settled spendthrift trust and you did

6 that, yourself, on occasions?

7 A Correct.

8 Q And one of the persons I that I you named was

9 Rochelle --

10 A Yes.

11 Q -- was a signatory.

12 Do you have any knowledge of her ever writing a

13 distribution check to Eric on his trust or Lynita on hers

14 without you having given prior authorization for the

15 distribution?

16 A No.

17 MR. SOLOMON: I have nothing further, Your Honor.

18 THE COURT: (Indiscernible - 15:31:10). I'll just

19 give you a couple because I don't want to go back and forth,

20 so

21 MS. PROVOST: They're done.

22 THE COURT: They're done.

23 MR. DICKERSON: No, I'm entitled to have a

24 surebuttal.

1 MR. SOLOMON: Only if he says you do.
2 THE COURT: Yeah, we'll give you a few. I don't
3 want to keep going back and forth, but I'll give you a few and
4 then I'll give you a few as well.
5 MR. DICKERSON: I just need to go over these
6 provisions.
7 **RECROSS EXAMINATION**
8 BY MR. DICKERSON:
9 Q Looking at page 3 of Exhibit 86 the distribution of
10 trustor, it sets out the procedure that you are to follow
11 before distribution can be made to Eric; isn't that correct?
12 A Can you point out exactly -- oh, do you want me to
13 read through this?
14 Q 3.3, yes.
15 A 3.3, okay.
16 Q Well, let's -- I'll read it with you, okay?
17 A Okay.
18 Q "Notwithstanding anything above to the contrary, any
19 decision to make a distribution to the trustor --" that would
20 be Eric; is that correct?
21 A Correct.
22 Q "-- may not be made to the trustor --"
23 A "Made by the trustor."
24 Q Pardon me?

1 A You said "to."
2 Q "May not be made by the trustor, even though the
3 trustor may be serving as a trustee hereunder. Prior to any
4 distribution to the trustor of either income or principal of
5 the trust estate, a meeting of the majority of the trustees,
6 which majority must include the distribution trustee shall be
7 held. At such meeting the trustees shall discuss the
8 advisability of making a distribution to the trust estate
9 of the trust estate to the trustor. Upon the vote of the
10 distribution trustee and the majority of the other trustees in
11 attendance at such a meeting which vote must in all event
12 include an affirmative vote of the distribution trustee, the
13 trustees may authorize and carry out the distribution of trust
14 income and/or principal to the trustor."
15 Now, did I read that correctly or reasonably
16 correctly?
17 A Yes.
18 Q Okay. Now, you conducted those meetings almost on
19 annual basis as we have gone through and seen in the minutes;
20 is that correct?
21 A That's correct.
22 Q And those are reflected where you're giving Eric X
23 number of dollars per month or per year; is that correct?
24 A Yes.

1 Q Now, you followed that provision, did you not?
2 A Yes, I did. To the best I could, yes.
3 Q Now, did you ever have any other telephone or
4 electronic meetings with Eric where you discussed the
5 distribution of either income or principal to him?
6 A Oh, I'm sure I talked to him on the phone before,
7 yes.
8 Q But where you discussed distribution of income or
9 principal to him?
10 A Yes.
11 Q Okay. And how did you document those meetings?
12 A I most likely didn't, unless I wrote it down on a
13 piece of paper or did the check.
14 Q Let me ask you, if a creditor of Eric's decided that
15 he wanted to attack this trust, how would you prove to the
16 creditor that you authorized every distribution that was made
17 to Eric, how would you do that, ma'am?
18 A I guess on the ones that weren't in writing, he
19 would just have to believe what I told him.
20 Q So he would just have to believe you and take you at
21 your word?
22 A Yes.
23 Q Okay. Now, the next sentence says, "In
24 addition --" so that's in addition to what we have discussed

1 here, "-- the trustees may also effect a valid meeting
2 hereunder by execution of a written consent in lieu of trustee
3 meetings."
4 Now, do you have any of those written consents?
5 A Not that I -- no.
6 Q And those written consents shall specifically state
7 the amount of the trust estate to be distributed to the
8 trustor; is that right? Correct?
9 A I guess I'm wondering if a check is sufficient for
10 that.
11 Q If you signed the check that would be arguable.
12 A If I signed the check.
13 Q I will concede that. If you signed the check, I'll
14 give it to him.
15 A Okay.
16 Q All right. You agree?
17 A Yes.
18 Q Now, can you tell us how much did you authorize to
19 be distributed to Eric Nelson in the year 2001?
20 MR. SOLOMON: Asked and answered.
21 MR. DICKERSON: It's not been asked.
22 THE COURT: I think we went through all of the
23 distributions.
24 MR. DICKERSON: Went through every one?

1 MR. SOLOMON: We went through every one of those.
2 My word.
3 MR. DICKERSON: Whoa, whoa, whoa, wait. We went
4 through every one?
5 I'm asking her how much -- she's now saying that she
6 could have done it orally. I want to know how much she's
7 authorizing.
8 THE COURT: If she knows?
9 THE WITNESS: I don't recall.
10 How would I remember that?
11 BY MR. DICKERSON:
12 Q Well, if a creditor of Eric's asked you, what would
13 you tell him?
14 A I don't recall exactly.
15 Q Okay. Do you know how much you authorized to be
16 distributed to Eric in 2002?
17 A I don't recall.
18 Q How about in 2003?
19 A I don't recall.
20 Q How about in 2004?
21 A I don't recall.
22 Q How about in 2005?
23 A I don't recall.
24 Q How about in 2006?

1 A I don't recall.
2 Q How about during the period of time in 2011 since
3 you've taken over, how much have you authorized to be taken by
4 Eric during -- since you took over in 2011 up until the
5 current date?
6 A Up until the current date, I don't know exactly.
7 What -- did I do minutes?
8 Q Pardon me?
9 A Those would be on my minutes.
10 Q Would all of them be on your minutes?
11 A For this year, yes.
12 Q Would all of your authorizations be in your minutes?
13 A For this -- for this year, yes.
14 Q How about in the past, would all of your
15 authorizations be in your minutes?
16 A Not necessarily.
17 Q Where would they be?
18 A Verbal or in the form of a check.
19 Q And that is notwithstanding those letters that we
20 went over that you read, received, and attempted to follow
21 every May that you got from Jeff Burr; is that correct?
22 A (No audible response.)
23 Q If I may direct you to Lynita's Trust, that's
24 Exhibit 25, and turn to page 2. I'd like to direct your

1 attention to Section 3.2. It starts, "Veto rights ..."
2 Do you see that?
3 A Yes.
4 Q Okay. What do you understand that provision to
5 require you to do?
6 A Require me to do or her to do?
7 Q Require you to do.
8 A "Advise the trustor or trustees of the trustee's
9 intention to pay over or apply income or principal to a
10 beneficiary other than the trustor." That's what it says.
11 Q What does that mean to you?
12 A Notify her of payments going out.
13 Q So do you understand that to mean that if any
14 distribution is made to any other beneficiary named in the
15 trust that you are required to give her at least 10 days prior
16 notice and allow her to veto that distribution, do you
17 understand that?
18 A Yes.
19 Q Did you follow that provision?
20 MR. SOLOMON: Well, that assumes that anything was
21 ever distributed to him.
22 MR. DICKERSON: Is there an objection to be made?
23 MR. SOLOMON: Yes, the question is ambiguous and
24 vague and assumes facts not in evidence because it would be

1 irrelevant unless there were distributions to other people
2 than the trustor. It would be totally irrelevant.
3 THE COURT: Why not just ask the question if there
4 had been any payments made under that provision.
5 MR. DICKERSON: Actually, if I may, what I'm asking
6 her is if she ever complied with that, and then my next
7 question would be
8 MR. SOLOMON: How could she comply to it unless they
9 were -- and it would be irrelevant unless there were
10 distributions.
11 THE WITNESS: The answer is no.
12 MR. DICKERSON: Well, that would be her answer.
13 THE WITNESS: Then the answer is no.
14 BY MR. DICKERSON:
15 Q Ma'am, have you ever complied with this provision in
16 which a distribution was made to any other beneficiary allowed
17 under this trust; so that would be a distribution to Eric or
18 any of the Nelson children and provide Lynita with a ten day
19 notice required hearing?
20 A I believe so, yes.
21 Q So you have provided her with the 10 day notice?
22 A I don't know exactly -- depending on the
23 transaction, I believe.
24 Q Well, can you tell us when you did that and how you

1 documented that? I mean to protect yourself as the
2 distribution trustee, how would you protect yourself if you
3 were to make a distribution to Eric, for example, what would
4 you do?
5 A Well, I would get her approval before I would do
6 that.
7 Q And how would you do that?
8 A Probably in the minutes for a meeting.
9 Q Now, we have gone through all of the minutes and
10 meetings that I have seen, okay, and are those the ones that
11 you're relying upon?
12 A As far as I know.
13 MR. DICKERSON: I have nothing further, Your Honor.
14 MR. SOLOMON: Let's clean that up.
15 **FURTHER REDIRECT EXAMINATION**
16 BY MR. SOLOMON:
17 Q Same thing, Exhibit 25, 3.2, this is Lynita's Trust,
18 do you understand that?
19 A Yes.
20 Q So while you were distribution trustee of Lynita's
21 Trust, did you ever make distribution to anybody other than
22 Lynita as a beneficiary?
23 A No.
24 MR. SOLOMON: Nothing further.

1 THE COURT: All right. We'll take a -- it's about a
2 quarter to four. Do you want to take a few minute break and
3 get some -- I think you said that your plan was to call
4 Ms. Lynita next, is that -- we can get about an hour of
5 testimony. Why don't we take a break for about five, ten
6 minutes, give yourself a chance stretch and pick up.
7 Thank you, Ms. Martin.
8 THE WITNESS: Thank you.
9 (Break taken from 15:41:45 - 15:53:19)
10 THE COURT: We're going back on the record. This is
11 Eric Nelson and Lynita Nelson, case number D 411537.
12 I think we finished up, and are you ready to call
13 your next witness, Mr. Solomon?
14 MR. SOLOMON: Yes, I call Lynita Nelson to the
15 stand.
16 THE COURT: Watch your step when you get up there.
17 Remain standing and raise your right hand and
18 they'll swear you in.
19 THE CLERK: You do solemnly swear the testimony
20 you're about to give in this action shall be the truth, the
21 whole truth and nothing but the truth, so help you God?
22 THE WITNESS: Yes.
23 THE CLERK: At the, you may be seated.
24 THE COURT: State and spell your first and last

1 name, just to make sure that we got it right for the record.
2 THE WITNESS: Oh, okay.
3 It's Lynita Sue Nelson. That's L-Y-N-I-T-A and then
4 Sue, S-U-E, and then N-E-L-S-O-N.
5 THE COURT: Okay. You may proceed.
6 MR. SOLOMON: Thank you, Your Honor.
7 **LYNITA SUE NELSON,**
8 called as a witness on behalf of the Intervenor, testified as
9 follows on:
10 **DIRECT EXAMINATION**
11 BY MR. SOLOMON:
12 Q Lynita, when were you born?
13 A October 5th, 1961.
14 THE COURT: I would have given you coverage on that.
15 If you didn't want to give your age, I would have covered you
16 on that answer.
17 MR. SOLOMON: Are you saying that we can seal that
18 one?
19 (Laughter)
20 BY MR. SOLOMON:
21 Q What's the extent of your education?
22 A A little bit of college.
23 Q Okay. So you graduated high school in what year?
24 A 1979.

1 Q Which high school is that?
2 A Las Vegas High School.
3 Q And you said you attended some college, which
4 college did you attend?
5 A Brigham Young University.
6 Q And during what years?
7 A '80 and '81.
8 Q So were you there approximately two years?
9 A Uh huh -- yes.
10 Q And what type of courses did you take at BYU?
11 A I was going into horticulture, so some of them were
12 just regular GED classes and then some were in that
13 horticulture degree division.
14 Q When did you marry Eric?
15 A In 1983.
16 Q After you stopped taking courses at BYU, were you
17 employed in any capacity?
18 A I was, yes.
19 Q Where were you first employed at that time?
20 A I was employed at a mortgage company at Norwest
21 Mortgage, and then after that, Stanwell Mortgage. I may have
22 been, prior to that, I'm not sure if I worked in a clothing
23 store at the Fashion Show Mall before that or not when I was
24 married, but for sure those mortgage companies.

1 Q You indicated Norwest Mortgage was one of them, and
2 how long, approximately, did you work there?
3 A I really couldn't tell you.
4 Q Was it more than a year?
5 A I can tell you that at Stanwell Mortgage I became
6 pregnant with my first born who was born in '86. Other than
7 that, I couldn't tell you those other dates.
8 Q Okay. And Norwest Mortgage, you worked at prior to
9 Stanwell?
10 A Yes, sir.
11 Q And when you left Norwest, did you start working at
12 Stanwell?
13 A Yes, I left Norwest to go work at Stanwell.
14 Q Okay. And what were you -- were your job
15 responsibilities similar in the two mortgage companies?
16 A They were similar enough, uh-huh.
17 Q And what did you do?
18 A I was the receptionist and did the paperwork for the
19 loan officers. That's not what I originally applied for, but
20 that's what they had available.
21 And then when I went to Stanwell Mortgage, I was a
22 receptionist, as well, and the office jobs that they needed
23 done at the time.
24 Q So you did paperwork for the loan officers, is that

1 loans? We're talking loans and processing loans?
2 A Pretty much just typing.
3 Q Do you consider yourself a reasonably smart person?
4 A Of course.
5 Q Do you read and write the English language?
6 A Yes.
7 Q All right. After you had your first child, was that
8 in 1986?
9 A Yes.
10 Q Is it true that you had no further jobs outside of
11 the home after that date or did you?
12 A Well, I considered being a mom a job, and then I
13 would work at the auctions. Whatever Eric would allow me to
14 do, I would work in the auctions, and actually at the office.
15 I worked at the office helping Eric with -- he did appraisals
16 for awhile, but that was before I had the baby, before I had
17 Amanda.
18 Q Okay. And Amanda is your first child?
19 A Yes.
20 Q Okay. So other than working as a housewife -- and I
21 understand that that is working, I'm not saying otherwise
22 did you work outside after the birth of Amanda?
23 A I did not, sir.
24 Q Do you have recall there came some time that you and

1 Eric did some estate planning?
2 A I recall -- yes.
3 Q Do you have that in 1991, you and he did a revocable
4 trust?
5 A I recall being told to go -- that we had a meeting
6 with Jeff Burr and that's what we were going to do.
7 Q Did you ever work at a law office?
8 A I did. I forgot about that.
9 Q All right. And what law office did you work about
10 at?
11 A I worked at -- let me think of the name -- Cromer,
12 Barker, Gilloch, & Rawlings (ph). I think they were on 4th
13 Street, but that was before we got married; that's when we got
14 married.
15 Q Okay. But that was after you no longer were taking
16 classes at BYU; is that correct?
17 A That's correct, sir.
18 Q And what did you do at Cromer Barker?
19 A I was a runner, which is not what I applied for
20 either, but I took it.
21 Q All right. Back to the estate planning --
22 A Yes?
23 Q -- you indicated that that was done by Mr. Burr?
24 A It was, yes.

1 Q And was that the first time that you did any estate
2 planning?
3 A Yes.
4 Q And do you remember the purpose of doing estate
5 planning?
6 A I just remember Eric saying we had to do that.
7 Q And you had no understanding that the purpose of
8 doing the estate planning was to provide for the disposition
9 of your assets upon your death?
10 A I really had no clue why it was important to go
11 there.
12 Q You never had an understanding of why it was
13 important to do estate planning?
14 A I understand now the importance of a will.
15 Q Okay. In 1991, do you recall going to see Mr. Burr?
16 A I know -- I know we went. I know that we went. I
17 can't recall if I went to sign or if I went for him to explain
18 it to me.
19 Q Okay. Do you recall what you signed in 1991?
20 A I signed a trust.
21 Q Did you also sign a will at that time?
22 A I believe I did and also how I, like, upon me not
23 being able to physically being able to take care of myself
24 I forgot what the name of that is.

1 Q Durable healthcare power of attorney?
2 A Healthcare, I think I signed that, as well.
3 Q Okay. And do you recall -- let's just take that
4 instrument -- do you recall if that said that you were in
5 capable of taking care of your own medical decisions that you
6 were appointing somebody to do that for you?
7 A I remember that you chose -- that you had a choice
8 of several things and one of them was whether or not you
9 wanted to be on life support and those types of things.
10 Q Okay. So you read through that form and made your
11 choices that you thought were appropriate to your situation
12 and signed it, correct?
13 A I'm sure I did. Uh-huh.
14 Q And do you recall that the trust that you did
15 provided for what would happen to your property if you should
16 die?
17 A I don't know that I remember -- I don't know that I
18 remember that to be honest with you. I think it was, what I
19 understood it to be was just that Eric and I had property and
20 it was ours.
21 Q Okay. Was it ever important to you what would
22 happen to your property after your death?
23 A It was, but I really wasn't afforded any information
24 about it. It wasn't -- I mean it wasn't something that was

1 discussed with me. It was just, "This is what we're doing.
2 This is what's going to be done. Here's and appointment and
3 come." And if I was to ask anything about it, it was just
4 like I was told several different things and
5 Q Mr. Burr, are you referring to Mr. Burr that he
6 wasn't explain it to you?
7 A I am referring to my husband.
8 Q Are you suggesting that Mr. Burr --
9 A I'm not.
10 Q Let me finish the question and you can answer it,
11 okay?
12 You're not suggesting, are you, that when Mr. Burr
13 consulted with you, with respect to a joint trust that you did
14 with your husband in 1991, that he didn't give you an
15 opportunity to, one, understand what was being set forth in
16 that document, and, two, to make sure that you were in
17 consent?
18 A I'm sure that he asked if I understood it; however
19 Q Did you lie so him?
20 MR. DICKERSON: May she finish the question, Your
21 Honor?
22 THE COURT: Sure.
23 THE WITNESS: In the situation that I was in, in the
24 relationship that Eric and I had, you just didn't ask -- you

1 didn't ask questions. You just went and did what he asked you
2 to do and I don't -- I never asked why can't I ask questions.
3 It was just a situation -- the situation was that I knew that
4 it was in my best interests to go ask questions, just go do
5 what he asked you to do.
6 BY MR. SOLOMON:
7 Q Okay. Do you recall whether the disposition of your
8 estate upon your death as provided for in the 1991 revocable
9 trust was contrary to your wishes?
10 A I was told by Eric
11 Q That's a yes or no.
12 A Okay. Would you mind repeating the question then,
13 again?
14 Q Yes. I would be happy to.
15 A Thank you.
16 Q Were the disposition of your estate, as set forth in
17 the 1991 revocable trust contrary for your wishes, yes or no?
18 A I understood that they were in my best interests. I
19 was told that they were in my best interests, so yes. That's
20 what I was told.
21 Q Do you recall Mr. Burr explaining the terms of that
22 trust to you prior to your execution of the same?
23 A I don't remember specifically, but I think that he
24 would have done that.

1 Q Now, in 1993, do you recall that you had meetings
2 again with Jeff Burr with respect to additional estate
3 planning issues?
4 A I do know that we went back there. I only know now
5 because of looking at paperwork that it was in '93.
6 Q Okay. You have a binder in front of you, can you
7 turn to Exhibit 4.
8 A Sure.
9 Q When's the last time you read the separate property
10 agreement?
11 A This particular one?
12 Q I don't know what you mean by that. This is a copy
13 of the only one I know about. Do you know of any other one?
14 A Well, there was a revised one, I believe, right?
15 Q A revised separate property agreement?
16 A There's one in 2001.
17 Q This is a separate property agreement, not a trust.
18 Are you aware of any other version of a separate property
19 agreement other than Exhibit 4?
20 A Not that stated in '83.
21 Q Any time, ma'am?
22 A I don't know.
23 Q Okay. Is that your signature on the bottom of
24 page 2?

1 A Yes.
2 Q All right. And on page 3 it indicates that you
3 executed that before a notary public on July 13, 1993.
4 A Okay.
5 Q First of all, recall executing it in front of a
6 notary public?
7 A I remember the name. It sounds familiar to me, so I
8 would say that I would have signed this, yes.
9 Q Okay. Turn to page 1 of that document?
10 MR. DICKERSON: Your Honor, may I interpose an
11 objection? My objection deals withstanding of the trust to be
12 able to address any issues prior to the establishment of the
13 trust. They don't have any standing to go into any issue that
14 relates to prior to the establishment of the trust.
15 What we are hearing so far, we have already heard
16 before. I'm assuming he read the transcript and we didn't
17 really need to go through the history of who she was, but
18 THE COURT: Tony Burris (ph) testified for several
19 days on the different documents.
20 MR. DICKERSON: Right. So she's previously
21 testified to this. But anything relating to events that
22 occurred prior to the establishment of the trust, this trust
23 has no standing to even go into those areas.
24 MR. SOLOMON: Are you done?

1 MR. DICKERSON: I am.
2 MR. SOLOMON: Thank you.
3 Contrary, it's our position in and what we're
4 proving here is that when the separate property agreement was
5 funded in 2001, the property was Eric's separate property and
6 was not community property and, therefore, she has no claim to
7 try and reach into our trust and take the property back.
8 MR. DICKERSON: Now
9 MR. SOLOMON: Let me finish.
10 MR. DICKERSON: Please do.
11 MR. SOLOMON: In order to prove that, we are showing
12 and have been showing and will continue to show, that the
13 property was traceable back to the separate property agreement
14 and, therefore, it's relevant to establish that it was
15 separate property starting at this point and it didn't change
16 its character at any time prior to the time the rents issues
17 and proceeds thereof were placed into the self settled
18 spendthrift by Eric in 2001.
19 Under Nevada law, and contrary to what was argued in
20 opening argument, once we establish a separate property source
21 and demonstrate that it's been kept separate, then it is their
22 burden to come back and show that somehow the assets got
23 transmuted back to community property, so it is extremely
24 relevant and the theory of our case to go back to the separate

1 property agreement as the source of what the separate property
2 was and follow it through into our trust and negate that they
3 have any claim to it. That's what we plan with respect to
4 our -- in our pleading -- and they pled the contrary in their
5 pleading. So it's highly relevant.
6 And we're not here to try and undo this agreement.
7 There's no claim to undo this agreement. They have never
8 asserted a claim to undo this agreement.
9 MR. DICKERSON: That's incorrect.
10 MR. SOLOMON: You can show me in the pleadings.
11 It's nowhere in the pleadings that I can see, Your Honor.
12 MR. DICKERSON: It's in your first complaint. It's
13 the counterclaim in our complaint
14 MR. SOLOMON: In any case
15 MR. DICKERSON: which has never been replied to,
16 which everything is deemed admitted.
17 MR. SOLOMON: I wasn't a party to -- our trust
18 wasn't a party to that, Your Honor, so that doesn't even make
19 sense.
20 MR. DICKERSON: The settler of the trust was and the
21 settler of the trust has already told the Court what the
22 intent was, as did the attorney who drafted this document, as
23 did she, when she testified before. So they take it -- they
24 take the property as it is when that trust was created in

1 2001, they're stuck with whatever occurred in 2001, so now the
2 question becomes -- and the only purpose of the trust is to
3 save the trust; let's not have the trust set aside. That's
4 why the trust is involved in this case.
5 But they are stuck with the property that went in
6 there in 2001. You've already heard the testimony from both
7 settlers and the attorney that drafted these documents, what
8 the intent was.
9 MR. SOLOMON: We were not parties to that, Your
10 Honor. He can't be res judicata against us when we haven't
11 had an opportunity to participate in that. That's why we are
12 calling Mr. Burr back, for example.
13 We are stuck. Admittedly, we are stuck with the
14 character of the property going into the trust, but we have a
15 right to show what that is and that is what we are doing here.
16 That's the whole purpose of this trial.
17 THE COURT: I'll note the objection. It's
18 overruled. We'll get everybody out there, get everything on
19 the table, I'll make my findings on the law, so we'll get
20 everything out there. We need to get this case resolved and
21 move on up. I will note the objection on that.
22 I reviewed all the testimony of attorney Burr and he
23 testified under oath with questions on that, so did Ms. Lynita
24 and so did Mr. Eric on that, as the intent, what it was, but

1 as I said, the trust wasn't party at that time, so I'll give
2 you a chance to develop your theory on that and we'll deal
3 with it issue by issue or collateral estoppel issues come up,
4 I want to give you your fair chance to, you know, so the trust
5 can be heard on their issue because it does impact the
6 decision will impact the trust one way or the other. But I
7 note that objection for the record.
8 You may proceed.
9 MR. SOLOMON: I appreciate it, Your Honor.
10 BY MR. SOLOMON:
11 Q Back on Exhibit 4, you signed this document on July
12 13th, 1993 and on the first page thereof it says, "Each party"
13 and you were a party to this agreement, correct?
14 A I don't know if I know what that means.
15 Q It's an agreement that concerned you?
16 A Yes.
17 Q All right. The second "whereas" -- well, the first
18 "whereas" -- I'm sorry, it would be the second "whereas" on
19 page 1 it says, "Whereas, the parties hereto desire to split
20 the commune estate into the sole and separate property of each
21 spouse in accordance with and for the purposes contained in
22 NRS 123.130 through 123.170 inclusive."
23 Did Mr. Burr, prior to the time that you signed this
24 agreement, explain this agreement to you?

1 A When I -- when I went
2 Q Yes or no, did Mr. Burr, prior to the time that you
3 signed this agreement, explain it to you?
4 A Well, like I said previously, I believe that he felt
5 that he explained it how he needed to with my concerns.
6 Q Okay. Did you ask him any question that he didn't
7 answer that you can recall?
8 A No, but I didn't ask very many questions.
9 Q Okay. It says in the second "whereas," "Each party
10 acknowledges that this agreement has been entered into freely
11 and with full knowledge of the facts and each party agrees to
12 sign and exchange any papers that may be needed to complete
13 and effectuate this agreement."
14 When you read that agreement, did you understand
15 that sentence?
16 A I actually didn't read this agreement that day.
17 Q Did you ever read it?
18 A Over the years -- you mean up until today --
19 Q Yes?
20 A -- have I read it? I have.
21 Q Okay. In paragraph one on page 1 it says, "The
22 parties declare that each has retained independent counsel and
23 fully understands the facts and has been fully informed of all
24 legal rights and liabilities, that after such advice and

1 knowledge, each believes agreement to be fair, just, and
2 reasonable, and that each signs this agreement freely and
3 voluntarily."
4 That was true, is it not?
5 A I had to sign the agreement.
6 Q Somebody put a gun to your head to sign it?
7 A Did I say that?
8 Q So the answer is no?
9 A Absolutely not.
10 Q Now, your counsel argued in opening argument that
11 Mr. Burr selected or had you go see Richard Coke as your
12 independent retained counsel and that he was a tenant. In
13 fact that's not what happened. Mr. Burr provided you with a
14 list of several attorneys and you chose which attorney to go;
15 isn't that true?
16 A No.
17 Q If you testified that way in your prior testimony
18 under oath would that be wrong?
19 A I don't know if it would be wrong or not. It maybe
20 a different understanding of what happened.
21 (Counsel confer.)
22 Q Do you recall that you met with Mr. Coke?
23 A I do.
24 Q And do you recall that he explained the legal

1 significance of this agreement to you?
2 A He asked me if I had any questions.
3 Q And he asked you if you had any questions?
4 A He asked me if I had any questions.
5 Q Okay.
6 A He didn't explain it to me. He asked me if I had
7 any questions.
8 Q So your -- when Mr. Coke certified on page 4 of this
9 document that he has advised Lynita Sue Nelson with respect to
10 this agreement, and has explained to her the legal effect of
11 it and that you acknowledge -- well, let me just stop there,
12 that he explained to her the legal effect of it. You're
13 saying that that's not true?
14 A He asked me if I had any questions.
15 Q That's not my question to you. Did you hear my
16 question?
17 A I probably heard it. Maybe you could repeat it.
18 Q All right. Is it your testimony here that when
19 Mr. Coke certified that he explained to you the legal effect
20 of this agreement, he did not, in fact, do so?
21 A I can't say what he thought. Maybe he thought that
22 was explaining it to me. I can't speak for him.
23 Q So your testimony is all he did is this, "Do you
24 have any questions?"

1 A All I recall
2 Q Well, that's different.
3 A Oh, okay.
4 Q Are you testifying that Mr. Coke
5 A All I recall is that he asked me, "Do you have any
6 questions -- you've been over at Jeff Burr's office, do you
7 have any questions?"
8 Q And this certification also says right after that,
9 that you acknowledged your full and complete understanding of
10 the agreement and its consequences. Did you do that to
11 Mr. Coke?
12 A Did I do what, I'm sorry?
13 Q Did you acknowledge your full and complete
14 understanding of the agreement and its legal consequences?
15 A I would have signed it and that would have suggested
16 that.
17 Q Did you also acknowledge that you freely and
18 voluntarily executed the agreement?
19 A I'm sorry, could you repeat that?
20 Q Did you also acknowledge to Mr. Coke that you were
21 freely and voluntarily executing the agreement?
22 A By signing it, would that be doing that?
23 Q I'm asking you. I can't answer for you.
24 A I didn't -- I never would have spoken to him that

way. No, I wouldn't have. I probably would have signed it and probably left. I wasn't there very long. I didn't even sit down, I don't believe.

Q Isn't it true that on page 1 of this agreement, paragraph two, you agreed that -- this agreement, this separate property agreement will be controlling in determining the ownership of each parties' property, regardless the manner in which the property was previously held or titled?

A So, I'm not sure that I understand what you're asking me. Sorry.

Q Isn't it true that by signing this document, you knew you were agreeing that this agreement, this separate property agreement, would be controlling in determining the ownership of each of your properties?

A It was all

Q It's a yes or no.

MR. DICKERSON: It's not. Can she answer?

THE COURT: You can answer the question.

THE WITNESS: It was our property. I mean it was we were married. Eric and I were married, everything was ours. It's -- it's -- it was never going to be separate. If I signed this and it says it's separate, Jeff told me it was ours; Eric told me it was ours. He just assured me we were doing this because this is what we needed to do.

1 I don't know if it says it's separate. That's not
2 how I understood it. Eric told me that all of our stuff was
3 ours. If it wasn't ours together, I never -- there was no
4 reason for me to be married.
5 MR. SOLOMON: Your Honor, this is totally non
6 responsive to my question and I move to strike it.
7 THE COURT: It's so stricken.
8 MR. DICKERSON: It wasn't non responsive.
9 MR. SOLOMON: The question was --
10 THE COURT: You can state the question and she can
11 answer --
12 MR. SOLOMON: -- very specific.
13 THE COURT: -- and I'll give you some time on cross
14 to develop that in more detail.
15 MR. DICKERSON: Why doesn't counsel just rely on the
16 agreement. I mean the agreement speaks for itself. The Court
17 has already heard what the intent was.
18 MR. SOLOMON: Your span of what the intent was.
19 THE WITNESS: Well, I think Mr. Jimmerson was the
20 one that asked me before.
21 MR. DICKERSON: I haven't even started my case. I
22 haven't even begun my case. It was Eric's attorney.
23 THE COURT: Is Eric's Mr. Jimmerson?
24 MR. SOLOMON: Mr. Dickerson cross examined way

1 outside of the scope of
2 MR. DICKERSON: Holy
3 THE COURT: I'm not so sure it's not an issue.
4 (Indiscernible - 16:23:22) morphed, as Ms. Forsberg said
5 (indiscernible - 16:23:23) it might be settled and we made
6 some progress on that, but didn't get settled on that, but
7 they haven't started their case in chief at all.
8 MR. DICKERSON: I know you've already ruled, but
9 just for the record, so it's clear that I am not waiving
10 anything.
11 THE COURT: Yeah.
12 MR. DICKERSON: I raise the same objection of
13 standing, he has no standing to attempt to even invalidate
14 this agreement, zero. They have no standing to do that.
15 THE COURT: Well, no, you'll want to keep raising it
16 because I believe the Supreme Court said you can't have a
17 standing objections so you want to keep putting it in there so
18 we can save it for the record.
19 You can continue, Mr. Solomon.
20 MR. SOLOMON: I would be happy to stipulate, Your
21 Honor, and then the Supreme Court can accept that. He can
22 have that standing objection.
23 THE COURT: Okay.
24 MR. SOLOMON: And we'll litigate that in the Supreme

1 Court in this case.

2 MR. DICKERSON: That's great. I will accept that

3 standing objection, Counsel.

4 MR. SOLOMON: You got it.

5 MR. DICKERSON: I look forward to it.

6 THE COURT: Let's be pleasant, boys.

7 MR. DICKERSON: And the objection is that in light

8 of that assignment to Lana Martin saying that she's here to

9 protect her claims because some sort of purported conflict of

10 interest, she has no claim in any of this property, as being

11 referenced in 1993.

12 MR. SOLOMON: So, if it doesn't say that at all, so

13 THE COURT: Just for clarity of your objection, it

14 would be a lack of standing and that Lana Martin has no claim

15 on behalf of the estate and the trust in that case. I'll just

16 get it clear, lack of standing and they have no claim, the

17 trust or Ms. Martin. I'll just note that for the record as

18 the on going objection.

19 BY MR. SOLOMON:

20 Q Would you turn to Exhibit 5.

21 MR. SOLOMON: Do you want to do that?

22 MR. LUSZECK: Yeah.

23 MR. SOLOMON: Is it set up?

24 MR. LUSZECK: No, we with got to get it set up.

1 MR. DICKERSON: Which one?

2 MR. SOLOMON: Exhibit 5, can we set that up while

3 we're doing it?

4 MR. LUSZECK: Yeah, we can do that.

5 BY MR. SOLOMON:

6 Q Isn't it true, Lynita, that you understood that one

7 of the purposes of the separate property agreement was to

8 place assets owned free and clear into your separate property

9 trust and the risky assets into Eric's separate property

10 trust?

11 A It wasn't defined that way to me.

12 Q Okay. Weil we're waiting for that to be set up, can

13 I turn your attention to Exhibit 5. Is that your signature on

14 page 25 and 26?

15 A Oh, I wasn't looking at that page.

16 Yes, it looks like it.

17 Q And would you turn to page 2 of that exhibit. Are

18 you there?

19 A (No audible response.)

20 Q All right. At the top it says, "The property

21 comprising the original trust estate during the life of the

22 trustor shall retain its character as her separate property as

23 designated on the attached schedule A or document a transfer

24 or conveyance."

1 Do you see that?
2 A I do.
3 Q You understood, did you not, that the property that
4 you had divided with your husband in the separate property
5 agreement was the separate property that was being used to
6 fund this trust?
7 A I wasn't aware of what the property was, so ...
8 (Counsel confer.)
9 (Pause.)
10 (Break taken from 16:30:33 - 16:35:51)
11 THE COURT: We're going back on the record as Eric
12 Nelson and Lynita Nelson, case number D 411537.
13 We went off the record while we are trying to hook
14 up some electronic equipment. While that is still being
15 worked on, we'll proceed since it's getting late now.
16 Mr. Solomon, you can pick up where you left off.
17 MR. SOLOMON: Thank you, Your Honor.
18 **DIRECT EXAMINATION (CONT'D)**
19 BY MR. SOLOMON:
20 Q Would you thank you, Your Honor to Exhibit 6,
21 please.
22 A Sure.
23 Q Do you recognize this? This is a document called
24 assignment of assets signed by you on July 13th, 1993?

1 A I see it here, yes.
2 Q And you did sign it?
3 A That's my signature, yes.
4 Q And by this document you transferred assets held by
5 you, which would otherwise be subject to probate into your
6 trust, did you not?
7 A I'm sorry, what did you say it says?
8 Q Let's take a look at the second paragraph where it
9 starts, "Promissory notes," and then the end of it says, "And
10 any other assets held by trustor, which otherwise would be
11 subject to probate," do you see that?
12 A Uh huh, yes.
13 Q So this was a document by which you assigned to your
14 separate property, the trust, all assets held by you, which
15 otherwise would be subject to probate, correct?
16 A That's what it says, yes. I wouldn't have known
17 what goes where.
18 Q I'm sure you wouldn't.
19 Can you turn to Exhibit 7.
20 A Okay.
21 Q Do you recall that Eric did a separate property
22 trust at the same time that you did one?
23 A Yeah, I was told that he did one.
24 Q And you understood, did you not, that that was to

1 hold the property that had been divided under the separate
2 property agreement; isn't that true?
3 A I understood that that's what we agreed on. There
4 were certain properties that he was going to put into mine and
5 certain properties that he was going to put into his.
6 Q And you participated in that process, did you not?
7 A I did not.
8 Q You didn't sign the documents necessary to do that?
9 A I thought you were referring to that I participated
10 in transferring those properties over.
11 Is that not what you said?
12 Q Did you not participate in the process of dividing
13 you assets in two and funding them into separate property
14 trusts?
15 A I signed this document.
16 Q Thank you. And you were aware, if you turn to
17 Exhibit 8, that Eric had signed his assets into his separate
18 property trust which would otherwise be subject to probate,
19 correct?
20 A Well, they were ours. Somehow he had to -- I guess
21 he was going to decide how it was going to be divided, but
22 they were still ours.
23 Q If you would only answer my question, maybe it would
24 help. I'm sure your counsel will allow you to try to spin

1 your theory on your case.
2 MR. DICKERSON: Objection to that -- objection to
3 that comment, Your Honor.
4 THE COURT: Sustained.
5 MR. SOLOMON: Your Honor, she's not answering my
6 question.
7 MS. PROVOST: She's answering it to the best of her
8 ability.
9 THE COURT: You need to answer the question.
10 Mr. Dickerson will get a chance to expand more on your answer.
11 MR. DICKERSON: You're asking technical questions.
12 MR. SOLOMON: Then tell me I don't if you don't
13 understand the question, tell me you don't understand it and
14 I'll make it real simple for you.
15 THE WITNESS: I thought I understood it really well.
16 BY MR. SOLOMON:
17 Q Isn't it true that you knew that Eric was
18 transferring into his separate property trust the assets that
19 were divided between you in the separate property trust, yes
20 or no?
21 A Can you restate it -- I mean repeat it, again?
22 Q Isn't it true that you understood that Eric was
23 going to be transferring and did transfer into his separate
24 property trust the assets that had been divided to him under

1 the separate property agreement, yes or no?
2 A I can't answer that yes or no, Your Honor.
3 Q Okay.
4 THE COURT: That's her answer.
5 BY MR. SOLOMON:
6 Q Did you understand that he was going to be funding
7 his separate property trust with assets?
8 A Yes.
9 Q Did you understand that he was going to be funding
10 into his separate property assets that had been divided in the
11 separate property agreement?
12 A I can't answer yes or no to that, as well.
13 Q Okay. That wasn't explained to you by Mr. Burr?
14 A I think I was trying to explain that to you about
15 what -- but you said you wouldn't let me explain that.
16 Q All right. Yes or no, did Mr. Burr explain to you
17 that after he divided your assets with Eric, pursuant to the
18 separate property agreement, each of your respective assets,
19 so divided would be placed into your own separate property
20 trust?
21 A Yeah, I understood that that would be the process,
22 uh huh.
23 MR. LUSZECK: (Indiscernible - 16:41:18), whenever
24 you're ready.

1 MR. SOLOMON: Let's go ahead and play it back.
2 MR. LUSZECK: Oh, he just left. I don't know how to
3 do volume on that.
4 MS. FORSBERG: It's at the top.
5 MS. PROVOST: We are all lawyers because if we
6 understood this technology stuff, we wouldn't be sitting here.
7 THE COURT: That will be a joke: How many lawyers
8 does it take to hook up a video? That will be a joke
9 somewhere.
10 MS. FORSBERG: Can we add a judge in the mix?
11 (Laughter)
12 THE COURT: Exactly. It would probably be more
13 judges than lawyers.
14 (Counsel confer.)
15 THE COURT: For the record, what are you referring
16 to? I'll need the hearing date just so we get it for the
17 record.
18 MR. SOLOMON: November 17th is the hearing date.
19 THE COURT: November 17th?
20 MR. SOLOMON: Do you know how to turn the volume up
21 on this?
22 THE COURT: You said the hearing date November 17th,
23 2010?
24 THE WITNESS: You're going to have to get a remote

1 so you can do it from over there.
2 MS. FORSBERG: They have a remote; it's really
3 fancy.
4 THE COURT: That would be 2010, I think is when the
5 testimony was.
6 BY MR. SOLOMON:
7 Q Would you turn to Exhibit 11 while we are waiting
8 for the remote.
9 A Sure.
10 Q Exhibit
11 (Pause.)
12 MR. SOLOMON: I think we're going backwards.
13 THE COURT: (Indiscernible - 16:43:35.)
14 (Laughter)
15 MR. KARACSONYI: They just erased everything you
16 did, Jeff.
17 (Laughter)
18 THE COURT: It's about ten to five. I don't know
19 how long you're going to spend on the video.
20 MR. SOLOMON: If we can get this going, it will be
21 the last thing.
22 MR. DICKERSON: Do you want to work on it tomorrow?
23 MR. SOLOMON: No, I want to get done with it today.
24 MR. DICKERSON: You're going to get done with her

1 today?

2 MS. FORSBERG: Not her, just this.

3 MR. SOLOMON: The video.

4 MR. DICKERSON: It's taken me ten minutes to get

5 here.

6 (Break taken from 16:44:05 - 16:46:02)

7 THE COURT: Just for the record on it, this is the

8 video from the court hearing of what, November?

9 MR. SOLOMON: Seventeenth.

10 THE COURT: November 17th, 2010.

11 MR. SOLOMON: All right. You can start it.

12 MR. LUSZECK: Can you hear it?

13 MS. FORSBERG: Not yet.

14 MR. SOLOMON: Not yet.

15 MR. LUSZECK: Are you kidding me?

16 THE WITNESS: Maybe I could just read it and it

17 would be like I was really saying it on there.

18 MS. FORSBERG: Actually, I think it went back down

19 whenever you re turned on the TV.

20 MR. SOLOMON: Do you remember which one was the

21 volume button?

22 (Laughter)

23 THE COURT: Oh, geez.

24 MR. SOLOMON: How high can you turn it up on there?

1 MR. LUSZECK: It's up as high as it will go.
2 MR. SOLOMON: All righty.
3 THE COURT: It looks like we are still experiencing
4 some technical difficulties.
5 Are you getting any volume?
6 MR. KARACSONYI: Is it on mute?
7 THE WITNESS: Can you put it up to the microphone?
8 MR. DICKERSON: That's not a
9 THE COURT: No, it's through the computer on there.
10 It's something with the hookup. If to TV is up, volume, then
11 it's got to be hookup's not -- the volume's not hooked up.
12 MR. SOLOMON: Is this a good time to break for the
13 night?
14 THE COURT: Why don't we -- yeah, why don't we break
15 for the day and then we'll figure it out in the morning.
16 MS. FORSBERG: We'll figure it out in the morning.
17 THE COURT: I'll go play with it now.
18 (Laughter)
19 THE COURT: Can I see the attorneys in the back for
20 a second before we break?
21 (Proceedings concluded at 16:47:58)
22
23
24

1 * * * * *

2 ATTEST: I do hereby certify that I have truly and
3 correctly transcribed the digital proceedings in the
4 above-entitled case to the best of my ability.
5
6 William J. Garling
William J. Garling, CET
7 Certified Electronic Transcriber
CET**D-543
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TRANS

FILED
JUL 23 2014
CLERK OF COURT

COPY

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

ERIC L. NELSON,	)	
Plaintiff,	)	
vs.	)	CASE NO. D-09-411537-D
LYNITA NELSON,	)	DEPT. L
Defendant.	)	**(SEALED)**

BEFORE THE HONORABLE FRANK P. SULLIVAN
DISTRICT COURT JUDGE

TRANSCRIPT RE: NON-JURY TRIAL

WEDNESDAY, JULY 18, 2012

APPEARANCES:

THE PLAINTIFF:	ERIC L. NELSON
FOR THE PLAINTIFF:	RHONDA K. FORSBERG, ESQ. 64 North Pecos Road Suite 800 Henderson, Nevada 89074 (702) 990-6468
THE DEFENDANT:	LYNITA NELSON
FOR THE DEFENDANT:	ROBERT P. DICKERSON, ESQ. KATHERINE L. PROVOST, ESQ. JOSEF M. KARACSONYI, ESQ. 1745 Village Center Las Vegas, Nevada 89134 (702) 388-8600
THE INTERVENOR:	LANA MARTIN
FOR THE INTERVENORS:	MARK A. SOLOMON, ESQ. JEFFREY P. LUSZECK, ESQ. 9060 West Cheyenne Avenue Las Vegas, Nevada 89129 (702) 853-5483

WITNESSES

FOR THE INTERVENORS:	DIRECT	CROSS	REDIRECT	RECROSS
Richard Coke	5	17	--	--
Jeffrey Burr	23,65,69	88	129	--
Dan Gerety	141	--	--	--

EXHIBITS

FOR THE INTERVENORS:	ADMITTED
Intervenor's - 1	28
Intervenor's - 3	8
Intervenor's - 4	10
Intervenor's - 6	48
Intervenor's - 7	47
Intervenor's - 8	48
Intervenor's - 11	76
Intervenor's - 14	80
Intervenor's - 19	84
Intervenor's - 20	51
Intervenor's - 21	60
Intervenor's - 22	62
Intervenor's - 23	63
Intervenor's - 27	27
Intervenor's - 81	81
Intervenor's - 168	178

1 LAS VEGAS, NEVADA WEDNESDAY, JULY 18, 2012

2 **P R O C E E D I N G S**

3 (THE PROCEEDINGS BEGAN AT 09:44:49)

4

5 THE COURT: This is the time set in the matter
6 continuation of Eric Nelson versus Lynita Nelson, case number
7 D-411537.
8 Let me have everybody's appearances for the record
9 and we'll get this show on the road. We'll start with
10 Mr. Solomon.
11 MR. SOLOMON: Mark Solomon, bar number 418 on behalf
12 of Lana Martin, distribution trustee.
13 THE COURT: Thank you.
14 MR. LUSZECK: Jeff Luszeck, bar number 9619 on
15 behalf of Lana Martin, distribution trustee.
16 MS. FORSBERG: Rhonda Forsberg, 9557, on behalf of
17 Eric Nelson, who is present to my right.
18 THE COURT: It's good to see you, Mr. Nelson. Also,
19 Ms. Lana, it's good to see you, as well.
20 MR. LUSZECK: Katherine Provost, bar number 8414,
21 and Robert Dickerson, bar number 945, on behalf of Lynita
22 Nelson, who is also present.
23 THE COURT: Good to see you as well, Ms. Nelson.
24 And I guess you're ready to go forward at this time,

1 Mr. Solomon?

2 MR. SOLOMON: Yes, Your Honor.

3 I call Mr. Richard coat.

4 THE COURT: I'm going to have you please stand up

5 and we'll get you sworn in and try to get you out as soon as

6 we can.

7 THE CLERK: You do solemnly swear the testimony

8 you're about to give in this action will be the truth, the

9 whole truth and nothing but the truth, so help you God?

10 THE WITNESS: Yes.

11 THE CLERK: Thank you. You may be seated.

12 **RICHARD COKE,**

13 called as a witness on behalf of the Intervenor, testified as

14 follows on:

15 **DIRECT EXAMINATION**

16 BY MR. SOLOMON:

17 Q Good morning, would you give us your full name,

18 please.

19 A Richard Allen Coke.

20 Q Mr. Coke, you are an attorney licensed to practice

21 law in Nevada?

22 A Yes.

23 Q And how long have you been such?

24 A Since the 1975.

1 Q And can you tell us between 1985 when you were
2 admitted after -- I'm sorry, you were admitted in 1975, did I
3 hear you right?
4 A Yes.
5 Q What type of practice did you engage in since 1975
6 up until 1993?
7 A I call it a general civil practice. I did a lot of
8 business litigation. I did a lot of domestic law, some
9 contracts and real estate.
10 Q So you did a lot of domestic cases what type?
11 A Divorce.
12 Q And did you, during that time period try divorce
13 cases involving community property issues?
14 A Yes.
15 Q Did you also in that time period do marital
16 settlement agreements?
17 A Yes.
18 Q There was some division of community property?
19 A Yes.
20 Q And did you also prepare premarital agreements?
21 A I did.
22 Q And you felt competent to prepare the same?
23 A Yes.
24 Q And as a result of your education and experience

1 between, prior to 1993, did you believe you knew and
2 understood at a professional ethical level the law of the
3 community property in the state of Nevada?
4 A Yes.
5 Q Did you also, prior to 1993, prepare wills and
6 trusts?
7 A Yes.
8 Q And in connection with that type of work, did that
9 require you to have an understanding and employ you knowledge
10 with respect to separate property and community property?
11 A Yes. I didn't do a lot of trusts; I did some. Most
12 of them were simple estates with wills.
13 Q (Indiscernible - 10:25:31.)
14 Can you turn to tab 4, which is Exhibit --
15 MR. DICKERSON: Mine is 3.
16 MR. SOLOMON: I'm sorry, is it 3?
17 MR. DICKERSON: Yeah.
18 MR. SOLOMON: It's Exhibit 3.
19 Do you guys have any objection to admitting this?
20 MR. DICKERSON: No.
21 MS. FORSBERG: No objection.
22 MR. SOLOMON: We offer 3.
23 THE COURT: It's hereby admitted, Exhibit 3 without
24 objection.

1 (Whereupon, Intervenor's Exhibit No. 3 is admitted
2 into evidence.)
3 BY MR. SOLOMON:
4 Q Mr. Coke, did there come a time in 1993 that you
5 were asked to be involved in connection with advising Lynita
6 Nelson in connection with a separate property agreement?
7 A I have no recollection, except of the documents that
8 have been shown to me.
9 Q Now, you were asked to locate, were you not, any
10 records that you might have with respect to that engagement?
11 A Yes.
12 Q And you were unable to locate any documents in your
13 office; is that correct?
14 A I have nothing in my office about this case.
15 Q And that's as a result of your
16 MR. DICKERSON: Objection to the leading nature of
17 the question.
18 BY MR. SOLOMON:
19 Q Why don't you have the documents in your office
20 anymore?
21 A From time to time we purge all the cases and this
22 was quite old. I have no recollection of purging this file.
23 We just don't have it.
24 Q All right. Would you turn to Exhibit 4.

1 MR. SOLOMON: Is this it?
2 THE COURT: Exhibit 4 is not in yet.
3 (Counsel confer.)
4 BY MR. SOLOMON:
5 Q Would you turn to page number 4 of that document
6 writ says, "A certification of attorney at the bottom."
7 Do you see that?
8 A I'm there.
9 Q Is that your signature?
10 A Yes.
11 Q Okay.
12 MR. SOLOMON: Do you have any objection to 4.
13 MR. DICKERSON: I have no objection to 4.
14 MS. PROVOST: I think it's 210.
15 MR. DICKERSON: I do want to express an objection,
16 however, to this line of reasoning. The same objection that
17 was made yesterday in that the trust has no standing to do
18 anything with respect to this particular agreement.
19 THE COURT: Thank you, Counsel. I'll note the on
20 going objection.
21 MR. DICKERSON: And by the way, that is Plaintiff's
22 Exhibit 210, also.
23 THE COURT: Thank you.
24 Exhibit 4 will be admitted. We'll note the

1 objection from Mr. Dickerson.
2 (Whereupon, Intervenor's Exhibit No. 4 is admitted
3 into evidence.)
4 MR. DICKERSON: Thank you.
5 BY MR. SOLOMON:
6 Q Now, before I get into a little bit more into that
7 document, you do know an attorney by the name of Jeff Burr?
8 A Yes.
9 Q And when did you meet Mr. Burr?
10 A Probably in the '70s, maybe early '80s.
11 Q Did you ever have any relationship with Mr. Burr?
12 A I sublet some space from him on Flamingo Road years
13 ago and I've known him for quite a while.
14 Q Okay. And in connection with that, were you offices
15 ever combined?
16 A We had an office within his office. It was kept
17 separate financially and every other way, except we sublet
18 space.
19 Q So you had no connection with his practice of law,
20 other than the fact that you were subletting space?
21 A Correct.
22 Q And where do you currently practice law?
23 A My office is on 4520 South Pecos, in Las Vegas.
24 Q And when did you move into these premises?

1 A January of 1993.
2 Q So that would have been prior to this separate
3 property agreement?
4 A (No audible answer.)
5 Q You've already indicated that you have no
6 independent recollection of this matter; is that correct?
7 A That's correct.
8 Q Do you have any independent recollection of meeting
9 or speaking with Lynita?
10 A No.
11 Q Do you have any independent recollection of meeting
12 or speaking with Jeff Burr about this matter?
13 A No.
14 Q Now, if you turn to your certificate it says that
15 the undersigned hereby certifies that he an attorney at law
16 duly licensed and admitted to practice in the state of Nevada;
17 that he has been employed by Richard Coke, Esquire; and that
18 he has advised Lynita Sue Nelson with respect to this
19 agreement and has explained to her the legal effect of it;
20 that Lynita Sue Nelson has acknowledged her full and complete
21 understanding of the agreement and its consequences and has
22 freely and voluntarily executed the agreement in the
23 undersigns presence.
24 Would you have executed that certification of

1 attorney if all the statements there were not true and
2 correct?
3 A I would say no, except I wasn't employed by Richard
4 Coke. I don't know why that language -- I noticed it's the
5 same in Mr. Burr's certification as well.
6 Q In executing -- certifications of attorneys are
7 commonly used, are they not, in premarital agreements?
8 A Typically.
9 Q And did you understand at the time that you signed
10 that certification of attorney that you had an ethical
11 obligation to explain the attributes and what the legal effect
12 of this document was to your client?
13 MR. DICKERSON: Objection that the leading nature of
14 the question.
15 THE WITNESS: I have no recollection of this
16 document or anything surrounding it. I generally would have,
17 at that time, understood an obligation to explain, especially
18 if I signed something like this.
19 BY MR. SOLOMON:
20 Q What would have been your custom and habit in
21 explaining things about the nature of this agreement to your
22 client?
23 MR. DICKERSON: Objection. Custom and habit is
24 irrelevant any proceedings. You have to specifically make

1 reference to what he advised Ms. Nelson.

2 MR. SOLOMON: That is not true, Your Honor.

3 NRS 48.059 specifically says that the habit of a

4 person in routine practice is relevant to prove the conduct on

5 a particular occasion and the Nevada Supreme Court ruled on

6 that very issue in Thomas v Hardwick, M.D.; that would be at

7 231 P 3rd 1111, 2010. In that case, a physician was allowed

8 to testify as to his custom and habit when he couldn't

9 remember the patient at all as to why he advised -- why his

10 records reflected what they did.

11 THE COURT: Overruled. I think the certification

12 speaks for its and Mr. Coke is not on trial here. I think

13 it's a fair case and kind of speaks for itself own what he

14 does on that, but overruled. You can go forward with that.

15 THE WITNESS: I guess I'd like to know the question

16 again.

17 THE COURT: Yeah, would you restate it.

18 BY MR. SOLOMON:

19 Q When you certified that you had advised Lynita with

20 respect to this agreement and explained to her the legal

21 effect of it, I know you can't -- you've already testified

22 that you can't remember explicitly what you said to her. You

23 don't remember that conversation at all, correct?

24 A Yes.

1 Q So I'm asking you what your custom and habit would
2 have been in order to satisfy yourself that you could
3 ethically sign this certificate, what would you have done?
4 A With a certification of this nature, I would
5 typically explain basically how separate and community
6 property work and I would have reviewed the language with the
7 client and discussed it with them, and attempted to satisfy
8 myself that they understood it.
9 Q And it says that she acknowledged her full and
10 complete understanding of the agreement and its legal
11 consequences, how would you typically assure yourself that
12 that was something that you could certify to?
13 A A conversation with her. I don't have anything more
14 specific than that. I would talk about it and see if she
15 seemed to understand.
16 Q Okay. And then you also certify that you believe
17 she freely and voluntarily executed the agreement in your
18 presence. How would you ascertain that to be able to certify
19 that?
20 A I'd only have it signed. I typically meet with a
21 client privately, the two of us, and make sure that there was
22 no one in the room influencing her or him and I would just
23 attempt to make sure that it was something that they wanted to
24 do.

1 Q Would you try to find out why they were doing it and
2 what their benefits and disadvantages would be?
3 A I don't know how to comment on that. I think every
4 case would be different depending on the circumstance and how
5 I perceived the client and their ability to understand and the
6 nature of the agreement. I don't know how to give you a
7 routine, typical response on that.
8 Q Okay. Now, in 1993, were you familiar with the law
9 regarding the so called parole evidence rule in Nevada?
10 MR. DICKERSON: Objection, Your Honor; relevancy.
11 THE COURT: (No audible response.)
12 THE WITNESS: I suppose. If I sit here now, I'm
13 trying to remember what parole evidence rule is, so I'm not
14 sure what I knew in 1993.
15 MR. DICKERSON: The objection is relevancy.
16 MR. SOLOMON: If you can't answer it then I'm not
17 going to pursue it, but the next question would have been
18 relevant.
19 BY MR. SOLOMON:
20 Q Let me ask it this way: If you had read this
21 agreement and then the client told you that there was some
22 side agreement or something inconsistent with what you
23 perceived the terms of the agreement to do, what would be your
24 custom and habit with respect to how to deal with such

1 knowledge?
2 A I don't know that I have a custom and habit for
3 that. It would have alarmed me, I suppose, and I would have
4 expressed some concern about and talked about the importance
5 of having every part of the agreement in writing, but I don't
6 have any recollection of what my practice might have been on
7 something like that. I don't recall it happening commonly in
8 my practice.
9 Q Now, you've already indicated that you would have
10 discussed what the nature of the community and separate
11 property was and the distinction between them, correct?
12 A Yes.
13 Q Would part of that discussion have been how property
14 would be divided upon divorce?
15 A Typically that would be part of it.
16 Q Would one of the elements you would discuss in
17 explaining the separate property and community property be
18 each party's right to control their own separate property?
19 A I suppose. I don't know how to answer that either.
20 I don't know what my typical instruction was in '93. I'm
21 aware of the concept. I don't know what I would have told
22 her.
23 MR. SOLOMON: I have nothing further, Your Honor.
24 MS. FORSBERG: No questions.

1 MR. DICKERSON: No questions?
2 MS. FORSBERG: No questions.
3 **CROSS-EXAMINATION**
4 BY MR. DICKERSON:
5 Q Good morning, Mr. Coke. I am Bob Dickerson; I
6 represent Lynita Nelson.
7 How are you?
8 A Good.
9 Q You indicated that you have no recollection of the
10 case and you have no records pertaining to this case; is that
11 correct?
12 A That's correct.
13 Q Do you have a conflict check system in your office
14 that you would be able to go back and determine whether you
15 even had a client to -- or even met with Lynita Nelson?
16 A I have no records that would indicate anything back
17 in 1993.
18 Q What type of conflict system do you have?
19 A Well, we're a two man office and we don't handle the
20 same types of law, my partner and I, so we typically just keep
21 our own internal records. We have a database that keeps track
22 of your clients.
23 Q Say, for example, Eric Nelson would have called you
24 and wanted to retain you to hire you for a divorce, would you

1 have done some type a conflict check to determine whether you
2 have a conflict in this case?
3 A Typically if I thought there might be a conflict, I
4 would talk to him about the parties and see if anybody might
5 have been a client of mine, but, again, it was a small office
6 and I don't know if I had any form of real procedure.
7 Q How would you do that? How would you determine
8 if --
9 A Memory, talking to my staff and looking at our
10 files.
11 Q And in doing that, have you talked to your staff,
12 looked there your files, and you have nothing in your office
13 to indicate that you even opened the file; is that correct?
14 A That's correct.
15 Q Now, is it possible, sir, under the circumstances
16 that we see here that Lynita Nelson came to your office with
17 that letter from Jeff Burr and you gave her advice and decided
18 not to even open up a file; is that possible?
19 MR. SOLOMON: Calls for speculation.
20 THE COURT: Overruled. He can answer.
21 THE WITNESS: Well, I think probably not because I
22 signed the certification. If she came in and decided not to
23 handle a case or accept it, I would not have signed it. That
24 would have been my assumption, but I don't know -- can't say

1 what we did or didn't do with the file. My thought is it was
2 a very brief consultation. I would have kept a very slim
3 file.
4 BY MR. DICKERSON:
5 Q Now, how would you have handled the situation if you
6 were informed by Jeff Burr or Lynita Nelson that the purpose
7 of this agreement that you have signed that we have referenced
8 here as Exhibit 4, the purpose of that was to simply protect
9 the parties from creditors, it wouldn't intended to create
10 separate property for the purposes of divorce because she
11 wasn't there so see you for divorce, she was there to see you
12 for estate planning, would you handle that situation any
13 differently?
14 MR. SOLOMON: Same objection; calls for speculation.
15 THE COURT: Overruled.
16 THE WITNESS: I can only suppose. It would have
17 made me pretty nervous hearing a representation like that, and
18 I may have done some documentation, but, again, I don't have
19 that file.
20 BY MR. DICKERSON:
21 Q You would have done some documentation?
22 A I mean I may have expressed some notes or concerns
23 or letters, who knows what I did. It's been so long, I just
24 don't remember.

1 MR. DICKERSON: I have nothing further, Your Honor.
2 MR. SOLOMON: Nothing further.
3 MS. FORSBERG: Nothing further, Your Honor.
4 THE COURT: Thank you, Counsel. I'm sorry you had
5 to come down here and get caught up in this. I apologize for
6 bringing you down here today. Pleasure to meet you, though.
7 THE WITNESS: Thank you, Your Honor.
8 MR. SOLOMON: I have Jeff Burr outside. Jeff Burr.
9 MR. DICKERSON: Your Honor, before we call Mr. Burr,
10 I would like to renew the objection to the testimony from
11 Mr. Coke. We are going to seek to have that stricken.
12 MS. PROVOST: I pulled, while Mr. Coke was
13 testifying, the case that was cited by Mr. Solomon, which is
14 the Thomas versus Hardwick 2010 case, and in Thomas versus
15 Hardwick was such that you had a medical doctor working for
16 you and seeing who testified that he saw over 70,000 patients
17 and kept hospital records, but wouldn't remember any
18 particular one. And in that particular case, the question
19 came up as to whether or not custom and habit would be allowed
20 to be introduced.
21 And the Supreme Court in that particular case
22 indicated that -- sorry, I just lost my place, Court's
23 indulgence for a moment -- with respect to medical
24 practitioners, Courts in many jurisdictions have allowed

1 evidence of medical practitioner routine as practice evident
2 relevant to what the practitioner did on occasion. Trial
3 courts have considerable discretion in determining the
4 evidence and admissibility of evidence.
5 Although NRS 48.059 dispensed with the one time
6 common law requirement for corroboration, the fact that the
7 chart notes that were introduced in that case corroborated
8 Dr. Hardwick's testimony as to his habit and routine is what
9 made Dr. Thomas' challenge to this testimony a hard sell, and
10 is why the Court allowed the introduction of Dr. Thomas'
11 custom and habit.
12 The Court continued to say that much of
13 Dr. Hardwick's testimony dealt with the chart notes as past
14 recollection evidence under NRS 51. To the extent that
15 Dr. Hardwick matched his recorded notes to his habit and
16 routine that they were shorthand for, this district court
17 would not have used its discretion in admitting that
18 testimony.
19 THE COURT: So noted. I mean the reality is that
20 Mr. Coke's testimony, basically on the certification, he had
21 no personal memory of the case, no files. He signed the
22 certification. I think it speaks for itself as far as what he
23 does on individual cases. Who knows? But I thought the value
24 of his testimony was the certification itself. It pretty much

spoke for itself. As far as he was very honest and direct, he had no recollection of this case or file. He had no recollection as to what he would have done in 1993, but he signed the certification and I think it speaks for itself, but I will so note that objection.

THE CLERK: Sir, please stand and raise your right hand.

Do you solemnly swear the testimony you're about to give in this action shall be the truth, the whole truth and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. You may be seated.

THE COURT: It's kind of like the Mafia, Counsel. Just when you thought you were out, they pull you back in. It's good to see you again, Counsel.

THE WITNESS: Thank you. Good to see you, Your Honor.

THE COURT: We used to have big bottles of water, but they were afraid that the attorneys would throw them at me, so they thought these smaller ones wouldn't hurt as much.

You may proceed at your pleasure, Counsel.

MR. SOLOMON: Thank you, Your Honor.

JEFFREY BURR,

called as a witness on behalf of the Intervenor, testified as

1 follows on:

2 **DIRECT EXAMINATION**

3 BY MR. SOLOMON:

4 Q Mr. Burr, I know you've testified before in this
5 case, so let me see if I can get to it instead of going back
6 too much. I do want to establish a little chronology, though.
7 You first -- I think you previously testified that you
8 began your representation with the Nelsons in or about 1991?
9 A Yes.
10 Q And you had done a standard estate plan of a
11 revocable trust and wills and durable healthcare powers at
12 that time, right?
13 A I believe we did the trusts and wills, but I don't
14 know if we did the durable power of attorney for healthcare,
15 but we did do the trust and wills.
16 Q And you didn't recall having any conversations with
17 them prior to that engagement; is that correct?
18 A Yes.
19 Q In connection with that engagement, do you recall
20 meeting with both of them?
21 A Yes.
22 Q And do you recall how many times you met?
23 A I don't.
24 MR. SOLOMON: Why don't you hand him his deposition.

1 Do we have it here?
2 MR. LUSZECK: We probably should.
3 MR. SOLOMON: Is that both volumes?
4 MR. LUSZECK: One and two.
5 MR. SOLOMON: I would like to publish both of his
6 depositions.
7 MR. DICKERSON: For what purpose?
8 MR. SOLOMON: To refresh his recollection.
9 THE COURT: Okay. Well, if he needs it, yeah. I
10 mean if he does I don't know if he's going to need it to
11 refresh his recollection or not, but do you want to publish at
12 this time and you can still object to see if he needs it?
13 MR. DICKERSON: Just so as long as they're not
14 attempting to have the deposition made any part of the
15 evidentiary value. I have no problem with them publishing as
16 they please if they want to try to refresh his recollection,
17 but his deposition is hearsay and he's here on the stand to
18 testify.
19 Now, if they want to impeach him from it, they can
20 do that.
21 MR. SOLOMON: I can also used it to refresh his
22 recollection. That's all I want to do.
23 THE COURT: You can use anything to refresh
24 whatever. It will be so published.

1 Why don't we get our clerk to
2 MR. SOLOMON: You want your clerk to open it?
3 THE COURT: Yeah, that way you won't cut yourself,
4 sir.
5 THE CLERK: Oh, but I can cut myself?
6 THE COURT: Yeah, but if you cut yourself you'll get
7 Workers' Comp. Mr. Solomon won't get Workers' Comp.
8 I'm watching out for you LaTosha, right? She would
9 get on the job injury, and if not, I'm sure that one counsel
10 could pick up her case and she would be okay.
11 THE CLERK: Do you want me to remove them both?
12 THE COURT: Yeah, remove them both. I just
13 (indiscernible - 10:48:08) just so we can keep the case moving
14 if they need it.
15 THE CLERK: Got it.
16 MR. SOLOMON: Yeah, you can have them both.
17 BY MR. SOLOMON:
18 Q Mr. Burr, I'd like you to take a look at your
19 deposition transcript, dated February 22, 2012.
20 Do you have that one? Do you see where it's dated?
21 A February 22nd?
22 Q Volume one?
23 A Oh, here we go, volume, one, yes.
24 Q All right. It makes it easier.

1 Take a look at 14, page 14.
2 A Okay.
3 Q Just read to yourself lines 20 to the next page,
4 line 1.
5 A Okay.
6 Q Does that refresh your recollection that you met
7 with the Nelsons on two occasions in connection (indiscernible
8 10:49:35) in 1991, prior to their execution?
9 A Yes, that was the best to my recollection.
10 Q Okay. And how long -- you said that this were two
11 meetings that you can recall. One was a lengthy meeting?
12 A Yes, the initial consultation.
13 Q And you met with them again when they came back to
14 sign the trust; is that correct?
15 A Yeah, I said I believe. That would have been my
16 standard procedure. I don't have a real firm recollection,
17 but that would have been my standard procedure.
18 Q Was it your impression in that meeting that both
19 Eric and Lynita were able to understand the process that you
20 were going through?
21 A Yes.
22 Q And then after you had done that initial estate
23 planning in 1991 they came to see you again in 1993, correct?
24 A Yes.

1 Q And what was the impetus for that?
2 A To do further planning regarding their estates.
3 Q What specifically do you recall that was at issue
4 then?
5 A The issue at the time was the fact that Eric wanted
6 to get involved in some gaming ventures and Lynita was
7 concerned about it and not all that thrilled about him doing
8 that and then their and in conjunction with the gaming
9 ventures, there was going to be a lot of potential liability
10 associated with it and then wanted to talk about ways they
11 could protect their estates.
12 Q Okay. What did Lynita tell you about her concern
13 about gaming?
14 A The best of my recollection is she had a moral
15 concern just about the whole idea of being involved in gaming
16 and also just the complexity of the venture.
17 Q Was she reluctantly willing to allow Eric to be
18 involved, but not herself; is that what was going on?
19 A She came to me to see if there was some middle
20 ground, if there was some way to design a plan where she would
21 not have to be involved in that particular part of their
22 investments.
23 Q And do you recall approximately how many times you
24 met with Lynita and Eric with respect to that?

1 A I don't recall.
2 Q Would you turn to page 17, lines 9 through 18.
3 A Okay.
4 Q Does that recall -- refresh your recollection that
5 there were several meetings with both of them?
6 A Again, I said I don't recall specifically, but I do
7 recall having that one lengthy meeting initially where the
8 plan was proposed and then another meeting to review the plan,
9 and so I know there were at least those two meetings and there
10 would have been a signing and execution of the documents.
11 Q All right. Can you -- do you have a book of
12 exhibits up there?
13 A Yes.
14 Q Okay. Take a look at Exhibit 1.
15 A Yes, it's in front of me.
16 Q Do you recognize those?
17 A Yes.
18 Q What are they?
19 A These are notes that I prepared to my paralegal.
20 MR. SOLOMON: I'd offer 1.
21 MS. FORSBERG: No objection.
22 THE COURT: Hereby admitted as Exhibit 1,
23 Intervenor's.
24 (Whereupon, Intervenor's Exhibit No. 1 is admitted

1 into evidence.)
2 BY MR. SOLOMON:
3 Q Appeared they reflect minutes that you took on
4 July 5th, 1993?
5 A Yes.
6 Q And that relates to your meeting with the Nelsons?
7 A Yes.
8 Q Now, what does that first sentence say?
9 A "Please do two separate property trusts for them."
10 Q And what's the second one?
11 A "Also please to marital property separation
12 agreement."
13 Q All right. What was the advice that you gave Lynita
14 and Eric of how they might accomplish what they came to talk
15 to you about?
16 A The advice I gave for them to consider was to create
17 to separate trusts, one for each of them and to have the
18 assets divided and to have Eric then take his separate
19 property trust and use it as the investment vehicle for his
20 gaming ventures and Lynita would have her separate property
21 trust wherein the assets would be more vanilla safe type
22 assets.
23 Q Okay. And did you tell them why that might protect
24 Lynita from -- or accomplish the goals that you had advised

1 them on?
2 A Yes.
3 Q What did you tell her?
4 A Well, first of all, because gaming is a licensed
5 industry, it would allow Eric to be the one that could apply
6 for and obtain gaming licenses and Lynita would not have to do
7 that.
8 Q Did you explain how the fact that dividing the
9 property
10 MR. DICKERSON: Objection, Your Honor. He didn't
11 finish his answer.
12 BY MR. SOLOMON:
13 Q I'm sorry. Go ahead.
14 A And then just how Eric would have to sign various
15 loan documents or guarantees that those would be isolated in
16 his trust and shouldn't flow through to the assets that Lynita
17 was taking in her trust.
18 Q Did your explain to Lynita how or why it was
19 necessary to divide their property into community to separate
20 to accomplish those goals?
21 A Yes.
22 Q What did you tell her?
23 A I just mentioned that Eric's activities while
24 married would deemed to be in furtherance of the community and

1 community property would be vulnerable to creditor attack and
2 the way for her to protect her assets would be for her to
3 convert community property to separate, by so doing, if he
4 incurred a liability, either separately or in furtherance of
5 the community, her separate property could not be reached.
6 Q Did -- was the fact that you were suggesting a
7 division of separate property, how did that play with respect
8 to her aversion to gaming?
9 A She felt more comfortable is my recollection.
10 Knowing that she would not be the one going into the gaming
11 venture, that would be Eric, and she could have her own
12 assets.
13 Q Now, were there occasions prior to 1993 that you had
14 done other estate plans involving separate property agreements
15 for asset protection purposes?
16 A Yes.
17 Q And in 1993, were there many other avenues to
18 explore in terms of asset protection to meet a goal like that
19 set forth in this case?
20 A No, this was more of the prevailing plan when you
21 were looking for some asset protection.
22 Q Did you explain to Lynita and Eric what would have
23 to be done in order to effectuate a plan like this?
24 A Yes.

1 Q And what did you tell them?
2 A I just told them that they'd have to go through the
3 formalities in order for it to be effective; that they would
4 need to enter into a written separate property agreement that
5 each of them would have to be represented by separate counsel.
6 That would be the first step, and then the trusts would be
7 funded.
8 Q Okay. And did you explain to them that it was
9 necessary for both spouses to understand the nature and
10 consequences of the separate property agreement?
11 A Yes.
12 Q And you were initially -- I just lost my pen. And I
13 think I was at the point where you understood that at least at
14 the start of this initiation, you had already been
15 representing both of them since 1991, right?
16 A Yes.
17 Q All right. And at least at the initiation of this
18 plan, you were representing both of them?
19 A Yes.
20 Q All right. So you understood that you were
21 representing both of them at that point?
22 A Yes.
23 Q And did you believe as a result of that, you had an
24 ethical obligation to make sure that they had understanding of

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATT KLABACKA, Distribution Trustee of the Eric L. Nelson Nevada Trust dated May30, 2001, Appellant/Cross Respondent. vs. LYNITA SUE NELSON, Individually and in her capacity as Investment Trustee of the LSN NEVADA TRUST dated May 30, 2001; and ERIC L. NELSON, Individually and in his capacity as Investment Trustee of the ELN NEVADA TRUST dated May 30, 2001; Respondents/Cross-Appellants.	**Supreme Court Case No. 66772** **District Court Case No. D-09-411537** Electronically Filed Dec 01 2015 10:34 a.m. Tracie K. Lindeman Clerk of Supreme Court
MATT KLABACKA, as Distribution Trustee of the Eric L. Nelson Nevada Trust dated May30, 2001, Appellants, vs. ERIC L. NELSON; LYNITA SUE NELSON, INDIVIDUALLY; AND LSN NEVADA TRUST DATED MAY 30, 2001, Respondents.	**Consolidated With:** **Supreme Court Case No. 68292**

RECORD ON APPEAL
VOLUME 14

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Supreme Court Case 66772 Consolidated with 68292 In the Matter of: Klabacka v. Nelson et al.

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1 A I can't say I haven't had a conversation, no.
2 Q Can you tell us whether you have had -- can you tell
3 us
4 A Does she own snowmobiles? I don't know. I mean she
5 obviously knows she has snowmobiles there. What do you want
6 me to tell you?
7 Q Did you have any discussion with Lynita
8 A I do not recall. Thank you. God.
9 Q Exhibit 54. Exhibit 54 is very similar, neither you
10 nor Lynita signed these minutes of some purported meeting at
11 Jeff Burr's office on December 12th, 2004, wherein this stuff
12 is all discussed and Rochelle McGowan is supposed to be there
13 and you're supposed to be there and Lynita is supposed to be
14 there.
15 This never occurred, did it?
16 A Nope.
17 Q And the discussion that purportedly happened between
18 you three women who have never met at Jeff Burr's office
19 A This isn't mine. I told you I don't recognize this.
20 Q I understand
21 A We can go on
22 Q I'm not -- listen.
23 A Okay. I'm kidding. Go ahead.
24 Q Ms. Martin, I'm not criticizing you. I'm just

1 you were not at any such meeting, were you?
2 A No.
3 Q That's true, you were not at this meeting, correct?
4 A No.
5 Q I think it needs to be answered in the affirmative.
6 A No, I was not at Jeff Burr's office on that date.
7 Q So there was no discussion at any time, whether it
8 be December, 2004; at any time in 2004; at any time prior to
9 2004; or at any time after 2004, in which you and Lynita
10 discussed the RV purchased -- the RV park purchase from ELN
11 Trust will be the owner of the park, but will conduct business
12 as a DBA, Paradise Bay RVP Park, and has authority to purchase
13 assets and other items and conduct business.
14 You never had that discussion with Lynita, did you?
15 A Nope.
16 Q Is that true, you didn't?
17 A True, I didn't.
18 Q Okay. Exhibit 55, again, we have another purported
19 meeting that occurs at Jeff Burr's office on January 17th,
20 2005, and it was purportedly Rochelle is present; you were
21 present; Lynita is present. It's not for lunch, and you guys
22 with discussing the Gateway Acres in Arizona, purchasing 77
23 lots, so the jointly owned with other parties.
24 You never had such a discussion with Lynita, did

1 you?
2 A No.
3 MR. SOLOMON: Is it at that meeting? At that
4 location?
5 THE WITNESS: Right. I
6 BY MR. DICKERSON:
7 Q You have never, at any time, in your entire
8 lifetime -- let's go back to your childhood -- you have never
9 had a conversation with Lynita about this?
10 THE COURT: We don't -- we don't need to get that
11 way. I mean, yes, you just asked the question on that. I
12 know it's difficult. Your name is on it.
13 MR. SOLOMON: It was ambiguous, Your Honor.
14 THE COURT: Yeah, I know. That's fine.
15 Why don't you clarify your question.
16 MR. DICKERSON: I said, "any time."
17 MR. SOLOMON: I asked, "Any location?" Because you
18 started with a location at Jeff Burr's or wherever this was.
19 THE COURT: Let's first deal with that meeting and
20 follow up with if you had any time prior since.
21 BY MR. DICKERSON:
22 Q Have you ever had a meeting with Lynita at any time
23 in your life where you discussed Gateway Acres in Arizona and
24 the purchase of any type of lot, have you ever had that type

1 of discussion with her?
2 A No.
3 Q All right. Exhibit 56, these minutes, were they
4 prepared by you?
5 A I don't recall. I don't know.
6 Q This purports to be a meeting at Eric's office on
7 February 20th, 2005 at 2:00 p.m. where, again, Rochelle is
8 supposed to be present, you're supposed to be present, and
9 Lynita is supposed to be present and, again, it doesn't
10 indicate that it's for lunch, and all of you discussed the
11 things set forth in these minutes.
12 This meeting never occurred, did it?
13 A I don't recall.
14 Q Now, according to these minutes, you are now
15 authorizing, for the year 2005, the release of $20,000 per
16 month, including all personal expenses paid by the trust until
17 the next meeting; is that right?
18 A It appears so, yes.
19 Q So if we read all of these minutes together, it
20 appears that Lynita was entitled to take $20,000 per month or
21 $240,000 for every 12 months all the way from the last meeting
22 of February 25th, 2004, until February 20th of 2005; is that
23 right?
24 A That's correct.

1 Q And you were continuing that $240,000 a year for her
2 to pay her personal expenses for the next year; is that right?
3 A That's correct.
4 Q And you determined that amount because Eric told you
5 that's how much to give to her; isn't that true?
6 A That's -- I don't recall.
7 Q All right. Exhibit 58, do you know who prepared
8 these minutes?
9 A No, I do not.
10 Q Now, this meeting that purportedly occurred at Jeff
11 Burr's office on May 25th, 2005, which, again, involved you,
12 Rochelle McGowan, and Lynita, never occurred, did it?
13 A No.
14 Q That's true, this meeting never occurred; is that
15 right?
16 A Correct.
17 Q And at no time have you, at any time in your life,
18 had a discussion with Lynita about Gateway Acres in Arizona,
19 have you?
20 A No, I did not.
21 Q That's a true statement; is that true?
22 A That's a true statement.
23 Q Okay. Exhibit 59, all right. We now have another
24 purported meeting at Jeff Burr's office on June 15th, 2005,

1 again, Rochelle, you, Lynita, purportedly having a meeting
2 about the purchase of new MS -- that's probably Mississippi?
3 A I would guess so.
4 Q New MS land only.
5 You never had this meeting, did you?
6 A No.
7 Q In fact at no time in your life have you ever had a
8 discussion with Lynita about the property in Mississippi; is
9 that correct?
10 A That's correct.
11 Q Okay. Exhibit 60, we now have another purported
12 meeting at Jeff Burr's office on August 3rd, 2005, again,
13 where Rochelle is purportedly present, you're present, and
14 Lynita's present, and another discussion occurs about how all
15 the Mississippi property was destroyed by Hurricane Katrina
16 and lost all houses and only land remains.
17 Now, this meeting never occurred, did it?
18 A No.
19 Q Is that true?
20 A True.
21 Q Okay. And you've never, again, had any conversation
22 with Lynita about Hurricane Katrina or the Mississippi
23 property; isn't that true?
24 A I may have had a discussion about Hurricane Katrina,

1 but

2 Q Tell us, what did you discuss with Lynita about

3 Hurricane Katrina?

4 A I don't remember.

5 Q All right. Exhibit 61, we now see that about eight

6 days later in August, ya'll apparently got together again at

7 Jeff Burr's office, Rochelle, you, and Lynita, and this time

8 you discussed matters of revising the Arizona properties, and

9 as a result of that meeting, it was resolved that sold Tierra

10 del Sol shopping center in Arizona, along with all assets and

11 do you know what that stands for?

12 A I have no clue.

13 Q $3.5 million dollar note carryback at 5 percent

14 interest. Buyers will make interest only payments and will

15 pay in full. Due in 12 months.

16 This meeting never occurred, did it?

17 A No.

18 Q And you have never ever had a conversation with

19 Lynita about revising the Arizona properties, have you?

20 A Revising, what do you mean by that?

21 Q Well, it says up here --

22 A It looks like they sold it, so

23 Q -- during the meeting the trustees discussed matters

24 revising Arizona properties?

1 A No, I didn't. No.
2 Q You didn't discuss anything about Arizona properties
3 with you, did you?
4 A No, I don't know what that means.
5 Q And do you know where Tierra del Sol shopping center
6 was located?
7 A In Arizona.
8 Q And that was an asset that was, at least at one
9 time, was owned a hundred percent by Lynita's Trust; is that
10 correct?
11 A That's correct.
12 Q And so apparently this was sold, and do you know
13 where this money went?
14 A I do not. I don't have signing authority to
15 delegate where that would go, so I couldn't tell you.
16 Q Okay. Now, we see Exhibit 62, you guys wait
17 purportedly a couple of months until November 8th of 2005 and
18 this meeting, again, was at Jeff Burr's office's and, again,
19 for some reason, it would show that you and Lynita are all
20 purportedly together again at this meeting.
21 This meeting never occurred, did it?
22 A No.
23 Q Is that true, it did not occur?
24 A It did not occur.

1 Q And you purportedly discussed revising Mississippi
2 properties and as a result, it was involved to purchase new
3 Mississippi land only.
4 This discussion never occurred between you and
5 Lynita, did it?
6 A No.
7 Q All right. Exhibit 64, again, we have another
8 purported meeting at Jeff Burr's office on May 10th, 2006,
9 where, again, Rochelle is purportedly present, you're present,
10 and Lynita is present and you guys have some discussion,
11 again, about revising the Arizona properties and it was
12 resolved that sold two lots of Gateway, Arizona.
13 That -- this meeting never occurred, did it?
14 A No.
15 Q Is that -- it's true, it never occurred, correct?
16 A It never occurred.
17 Q Exhibit 65, now we have another purported meeting at
18 Jeff Burr's office and it says July 8th and then it said 2005
19 and then the six is crossed out.
20 Is that your handwriting?
21 A No.
22 Q Okay. Do you know whose handwriting that is?
23 A I don't.
24 Q Have you ever seen that before?

1 A This form? I've never even seen this form before.
2 Q Have you ever seen a six written that way before?
3 A Probably, but I don't know who did it.
4 Q So purportedly on July 8th, 2006, again, you,
5 Rochelle, and Lynita have all gotten together to talk about
6 the sale of the Indian School condo in Arizona.
7 This meeting never occurred, did it?
8 A No.
9 Q I'm asking that question in the negative and you're
10 answering in the negative, so --
11 A Oh, I'm sorry. No, it never -- it never occurred.
12 Q Okay. All right. Exhibit 66, again, another
13 purported meeting at Jeff Burr's office on August 28th, 2006,
14 in which Rochelle was present, you were present and Lynita was
15 present and we know that this meeting never occurred, did it?
16 A No, it did not.
17 Q And there was -- you've never had any discussion
18 with Lynita about revising the Mellon account?
19 A No, I have not.
20 Q Now, tell me, what Mellon account was revised?
21 A I have no idea what that means.
22 Q Okay. Now, you've never had a discussion with her
23 about a $3 million dollar note paid off and wired to LSN in
24 the -- in LSN Nevada Mellon Trust account and will make

1 monthly disbursements to LSN out of the account?
2 A No.
3 Q Do you know what that even means?
4 A I have no idea.
5 Q Okay. Exhibit 67, you have another purported
6 meeting at Jeff Burr's office on October 15th, 2006, again,
7 you, Rochelle, and Lynita.
8 This meeting never occurred, did it?
9 A No.
10 Q And you've never had any discussion at all with
11 Lynita about the Arnold Avenue property, have you?
12 A No, not that I can remember.
13 Q And, again, what does the Arnold property have to do
14 with revising Arizona property?
15 A I don't know. It looks like I redid it and kept
16 leaving that line in.
17 Q So you continued to use the same form throughout,
18 right?
19 A Yeah.
20 Q Now, did you collect all of the rents for the Arnold
21 property?
22 A At a period in time, I think I did.
23 Q Okay. Now, let's talk about the Arnold property.
24 A Okay.

1 Q The Arnold property is held in the name of the
2 Lynita's Trust; is that right?
3 A I believe so.
4 Q Okay. But all the rents from the Arnold property
5 went into Eric's Trust, didn't it?
6 A I believe so, yes.
7 Q Exhibit 68, you, again, have another purported
8 meeting at Jeff Burr's office on November 5th, 2006 where,
9 again, Rochelle is supposed to be present, you were supposed
10 to be present, and Lynita present.
11 This never occurred, did it?
12 A No.
13 Q And you never had a discussion with Lynita about her
14 trust loaning almost $13,000 to the Wyoming Horseracing at 6
15 percent interest to be paid back in 12 months, did you?
16 A No.
17 Q That didn't occur, did it?
18 A No, it did not.
19 MR. DICKERSON: May I ask Madam Clerk: Was Exhibit
20 69 admitted during her testimony?
21 THE CLERK: It is not.
22 MR. DICKERSON: Then I made a mistake then.
23 I was going to say, how did we get Exhibit 69 in
24 through her.

1 BY MR. DICKERSON:
2 Q Okay. Exhibit 70, again, Ms. Martin, we have
3 another meeting purported meeting at Jeff Burr's office with
4 you, Rochelle, and Lynita, on November 22nd, 2006.
5 This meeting never occurred, did it?
6 A No.
7 Q That's correct?
8 A That's correct. Sorry.
9 It's like Jeopardy.
10 THE COURT: Yeah, it's like Jeopardy.
11 BY MR. DICKERSON
12 Q I should ask the question differently so your noes
13 make sense, okay.
14 Now, I want you to tell us what is WYHR, what is
15 that?
16 A Wyoming Horseracing.
17 Q Okay. And it apparently paid amount due of the
18 $12,937 note?
19 A Looks like it, yes.
20 Q Do you know what any of this means?
21 A No, but it probably has to do with paying back the
22 note from the previous where they made the loan -- did you see
23 that one -- double?
24 Q It looks like an exchange -- it paid off that note

1 by exchanging a bond, a gravel pit bond in the amount of
2 $11,700. They will accrue interest on the bond.
3 So it appears as if what somebody is attempting to
4 accomplish here is that whatever loan was made by Lynita's
5 Trust to this company that is owned by Eric's Trust is going
6 to be paid by some bond; is that right?
7 A Looks like it, yes.
8 Q And, again, you never had any discussion with Lynita
9 about anything dealing with this transaction that's sets out
10 here, did you?
11 A No.
12 Q That's a true statement, correct?
13 A That's a true statement.
14 Q I asked you a question earlier and I just want to
15 give you a chance to correct it, because it's my
16 understanding -- it's my understanding that no creditor claims
17 have been filed in Eric's bankruptcy, so you
18 MR. SOLOMON: Eric's bankruptcy?
19 THE WITNESS: Oh, the Dynasty?
20 BY MR. DICKERSON:
21 Q In Dynasty's bankruptcy.
22 You testified earlier about you and your husband
23 submitting a creditor's claim. Can you tell us how did you do
24 that, if you did do it, because it's not showing up on record.

1 A I may not have done it yet. I think they extended
2 it.
3 Q So why did you tell us earlier that
4 A I thought I did because we did it before and they
5 had to redo it.
6 Q Oh, you did it when he filed bankruptcy in
7 Mississippi?
8 A Yeah, right.
9 Q The one that got dismissed because of fraud?
10 A I don't know what happened with that one.
11 MR. SOLOMON: Object to the form of the question.
12 THE COURT: Sustained.
13 MR. DICKERSON: Well, to the form of the question
14 it's a true statement.
15 MR. SOLOMON: Well, you're not testifying, Counsel,
16 last time I knew.
17 THE COURT: I don't know if she knows it's true or
18 not. I don't know if she's
19 MR. DICKERSON: Well, maybe -- then, should I show
20 her the judge's decision?
21 THE COURT: I think she needs to be the one -- I
22 think you can get that in with the authentication of a judge's
23 statement. I don't know she's the right person to get that
24 through.

1 MR. SOLOMON: I'm sure it's really relevant, too.
2 BY MR. DICKERSON:
3 Q Now, Ms. Martin, isn't it true that at no time have
4 you ever handed any document to Lynita Nelson to be signed by
5 her?
6 A Is that true that I have
7 Q It's a true statement: You have never handed
8 A That's not a true statement.
9 Q Okay. So tell us, what documents, if any, have you
10 handed to Lynita for her to sign?
11 A I can't tell you specifically.
12 Q And isn't it true that Lynita Nelson has never
13 signed a document in your presence?
14 A That's not true either.
15 Q Tell us what document she had signed in your
16 presence?
17 A I can't tell you exactly. I don't know. I don't
18 recall.
19 MR. DICKERSON: Does Your Honor want -- well, I
20 guess we want to continue. We don't need to take any break.
21 THE COURT: Yeah, we'll probably take a lunch break
22 in a few minutes anyway, so -- unless someone
23 MR. SOLOMON: Which I've had a witness here since
24 10:30 waiting.

1 THE COURT: Do you want to tell him to come back
2 after lunch?
3 How much longer do you think it will take so
4 MR. DICKERSON: Well, I'll be with her. I'm going
5 to go through Eric's minutes.
6 MR. SOLOMON: Well, the way you've been going,
7 Eric's minutes would have to be another couple of hours, so
8 what do you want to do, shall we excuse her and come back or
9 do you want to let her do it and go intervene after lunch so
10 she doesn't have to come back?
11 MR. DICKERSON: Who is it?
12 MR. SOLOMON: Shelly.
13 THE COURT: Rochelle McGowan?
14 MR. SOLOMON: No, she's missing her employment to do
15 this; that's the problem.
16 MR. DICKERSON: Did you want to start her then right
17 after lunch?
18 MR. SOLOMON: If you'll consent to that, I would.
19 MR. DICKERSON: Yeah, yeah, I have no problem.
20 THE COURT: Yeah, why don't we take five so you can
21 tell them if they're out there do you want to go out there
22 and tell her to come back about 1:30.
23 MR. SOLOMON: What time will be come back from
24 lunch?

1 THE COURT: 1:30.

2 MR. SOLOMON: I appreciate that, Your Honor.

3 THE COURT: I didn't realize that someone was

4 waiting out there. We'll take a

5 (Break taken from 11:33:20 - 11:41:30)

6 THE COURT: This is the continued matter of Eric

7 Nelson and Lynita Nelson, case number D 411537.

8 We took a brief recess and, Ms. Lana, you're still

9 under oath, so we're going to pick up where we left. We're

10 going to pick up where we left off. We'll go about the next

11 15 minutes and take a break for lunch. I'm sure you could use

12 a break anyways.

13 THE WITNESS: Okay.

14 THE COURT: Do you want to pick up where you left

15 off, Mr. Dickerson?

16 **CROSS EXAMINATION (CONT'D)**

17 BY MR. DICKERSON:

18 Q Ms. Martin, if we could now go through I believe the

19 exhibits that were discussed with you yesterday concerning

20 Eric Nelson's trust. I believe we started with 99. Ninety

21 nine is a waiver of notice and consent, very similar to the

22 one that we saw earlier. In fact, it's identical to the one

23 that we saw earlier except the reference to the trust, do you

24 agree?

1 A I agree, yes.
2 Q And, again, this one makes reference, again, to the
3 foregoing minutes, but there are no minutes attached. There
4 were never any minutes attached; is that true?
5 A That's not true.
6 Q That's not true?
7 A I don't know if there were
8 Q No, no. Minutes attached to this document?
9 A I couldn't tell you. I don't recall.
10 Q Well
11 A I mean there were none given to you?
12 Q The trust was formed on May 30th, 2001, and this was
13 signed by you on June 1st, 2001. So what minutes were
14 produced in the two days prior to this?
15 A Were there minutes on June 1st?
16 Q I'm asking you.
17 A I don't know. Are they in this book?
18 Q I don't find any, no.
19 A Okay.
20 Q I'm being candid with you; no, they're not?
21 A Then I don't recall if there was some done and
22 they're not in the book.
23 Q It just appears that this is a form that Jeff Burr
24 gave you and you guys signed it and there really were no

1 minutes prior to this, do you agree?
2 A I can't agree with that. I don't know. I don't
3 recall.
4 Q Exhibit 101, now, these are minutes of a meeting you
5 purportedly had with Eric at Eric's office on July 3rd, 2001.
6 Did you prepare these minutes?
7 A I don't recall.
8 Q In fact, Ms. Martin, it was not unusual for minutes
9 such as this to be drafted and handed to you. I'm presuming
10 that you read it and then signed your name; is that true?
11 A That's true.
12 Q And you did that on several occasions even though it
13 represented that on a particular date you had a meeting. You
14 didn't really have a meeting on that particular date, it's
15 just you signed the minutes when they were given to you, do
16 you agree with that?
17 A The day may have been off. I can't tell you
18 exactly.
19 Q Well, let's put it this way, and I don't know
20 whether it's this one, but taking a look at this, this
21 purports that you and Eric had a meeting at his office on July
22 3rd. It was some type of formal meeting where he's presiding
23 over it and these matters were discussed.
24 You never really had a formal meeting with Eric where the

1 two of you sat down and discussed these matters with respect
2 to, this is what we're doing for the trust, do you agree with
3 that?
4 A No, I don't agree with that. Yes, we did.
5 Q You actually had meetings?
6 A Yes, we did.
7 Q Okay. So tell me about what do you recall about
8 this meeting on July 3rd, 2001. Did it occur on that date?
9 A I don't recall what date exactly.
10 Q Okay.
11 A I don't recall exactly what was discussed. I can
12 read this to you, if you'd like.
13 Q Well, let's start with the discussion. It says that
14 the two of you discussed matters relating to distribution of
15 principal and income from the trust and the administration
16 matters relative to those matters held in the trust.
17 So can you tell us what did you discuss that you're
18 referencing there, the administration of and administrative
19 matters, do you recall what you discussed?
20 A I don't.
21 Q Okay. And this one says that you discussed with him
22 all of the eligible assets held in Eric L. Nelson's separate
23 property trust and Eric Nelson be transferred to his new
24 trust; is that right?

1 A That's correct.
2 Q And then the investment trustee and the distribution
3 trustee are authorized to collect rents associated with the
4 39th Avenue warehouse property?
5 A 39th Avenue, yes, correct.
6 Q That was in Arizona?
7 A Yes.
8 Q So you were just authorizing yourself to collect the
9 rents, correct?
10 A Correct.
11 Q No big deal?
12 A No big deal.
13 Q And then you were authorized that Eric could receive
14 $5,000 a month from his trust; is that right?
15 A That's right.
16 Q So at that point in time, you were limiting Eric to
17 $60,000 a month that you authorized him to take from his
18 trust; is that right?
19 A $60,000 a year?
20 Q $60,000 a year -- yeah, I'm sorry -- correct.
21 A Correct.
22 Q And now is it your testimony that this meeting
23 actually did occur on July 3rd?
24 A I don't recall.

1 Q Okay. Exhibit 103, now, this again, purports to be
2 a meeting between you and Eric at Eric's office on
3 August 31st, 2001; is that correct?
4 A That's correct.
5 Q And it purports that only you and Eric are present,
6 correct?
7 A Yes.
8 Q Did this meeting actually occur?
9 A I don't recall.
10 Q If this meeting actually occurred, Lynita was not
11 there, was she?
12 A Not according to this, no.
13 Q So apparently, at this meeting, you, again,
14 discussed the distribution of principal income and the
15 administrative matters like you do at every meeting, but then
16 it gets down and it's resolved that there was going to be a
17 loan from Lynita's Trust to Eric's Trust in the amount of
18 $440,000 at 15 percent interest on or before January 1 of 2007
19 for the purpose of investing in Viva Gaming Management, Inc.,
20 a gaming facility opening in New Mexico in Mexico City,
21 Mexico.
22 Now, this is a loan coming from Lynita's Trust to
23 Eric's Trust; is that right?
24 A That's correct.

1 Q So Lynita, as the investment trustee of LSN Trust,
2 would have to authorize that loan, would she not?
3 A She would.
4 Q So what are these doing in the minutes for Eric's
5 Trust? What does it matter that this trust, Eric's Trust is
6 borrowing money from Lynita's Trust?
7 A I don't know. I don't recall.
8 Q I noticed that there are no corresponding minutes in
9 Lynita's minutes that we went through anywhere around August
10 31st, 2001, in which you had any discussion with her about her
11 trust loaning $440,000 to Eric's Trust. That's nowhere in any
12 of the documents that we've seen today, right?
13 A I didn't see them; that's right.
14 Q In fact you have never had a discussion with Lynita
15 about her trust lending Eric's Trust $440,000 sometime in
16 2001; isn't that true?
17 A No, that is the not true. I don't recall.
18 Q You just don't recall having a conversation?
19 A Correct.
20 Q Okay. It says that in the event of default, Eric
21 Nelson has agreed to grant the LSN Nevada Trust stock
22 equivalent to the amount of the note plus interest or all
23 property owned in Hancock County, Mississippi, by Lucky,
24 Lucky, Lucky, Inc. in which Eric is the sole shareholder and

1 officer.
2 Okay. Was there ever a promissory note issued for this
3 $440,000 note?
4 A Yes.
5 Q Did you prepare it?
6 A I don't know if it prepared it, but I just saw it
7 the other day and I don't know if it's in your paperwork.
8 Do you not have it, because I can get it to you.
9 Q Okay. So you're telling me that there is a
10 promissory note?
11 A Yes.
12 Q And do you know if that promissory note has been
13 paid back?
14 A I believe it was paid back with the transfer of
15 property.
16 Q Okay. Exhibit 105 I'm sorry -- yeah, 105. This
17 is one of your distribution authorization forms for $5,000 to
18 be given to Eric Nelson on October 1st of 2001; is that
19 correct?
20 A That is correct.
21 Q Now, is this simply one of the $5,000 per month
22 payments that you were to give him or is this in addition to
23 the $120,000?
24 A I don't recall.

1 Q So in the best case scenario, what we're looking at
2 is the most you authorized Eric to take during the year 2001
3 was $65,000; isn't that correct?
4 A To this date?
5 Q Yes.
6 A That would be correct, yes.
7 Q Now we go to 106, and 106 is very similar. You have
8 authorized another $5,000 to Eric Nelson in November of 2001;
9 is that correct?
10 A That's correct.
11 Q So up to this point in time, you have authorized
12 reading all of those to the best case scenario that we can for
13 Eric -- you have authorized him to take only $70,000 during
14 that year; is that right?
15 A That's right.
16 Q And then 107, we get into another meeting that was
17 apparently held at Eric's office on November 30th, 2001 in
18 which you and Eric were present.
19 Did this meeting actually occur on November 30th,
20 2001?
21 A I don't recall.
22 Q Do you have any recollection of this meeting
23 actually occurring?
24 A I don't recall at all.

1 Q Okay. Isn't it true that if this meeting ever
2 occurred, it was when Eric Nelson brought to you these minutes
3 and told you to sign the minutes?
4 A No.
5 Q According to these minutes, Eric's Trust was making
6 a loan to High Country Inn for $25,000 for LSN to -- to LSN
7 for operating costs. Now, Lynita was not present for this
8 meeting, was she?
9 A No, not according to this.
10 Q And you had no discussion with Lynita about any need
11 of her trust to borrow $25,000 for High Country Inn, did you?
12 A Me, personally, I don't recall.
13 Q And at no time that you're aware of did Lynita, as
14 the investment trustee for her trust, make the determination
15 that she needed to borrow $25,000 from Eric's Trust for
16 operating costs for High Country Inn?
17 A Restate that. What did you say?
18 Q That was pretty bad. It was pretty bad.
19 A I got confused halfway through it.
20 Q I can't repeat it because I can't remember it.
21 All right. You have no knowledge at all in any
22 discussion that you've had with Lynita, with respect to her as
23 the investment trustee making the decision that she needed to
24 borrow $25,000 from Eric's Trust so that she could cover the

1 operating costs for the High Country Inn?
2 A No.
3 Q That didn't occur, did it? You have no recollection
4 of that ever occurring, correct?
5 A Of her requesting that she needed it? No, it would
6 have been her operating, so it would have been day to day, so,
7 no.
8 Q That would have been Eric's determination of what
9 was needed, am I right?
10 A Not necessarily, no.
11 Q Whose decision would that have been?
12 A Well, I mean it could have been mine if the account
13 one overdrawn and it needed money.
14 Q As the distribution trustee for Lynita's Trust, you
15 wasn't have authorization to do that?
16 A I wouldn't have authority -- well, whoever was doing
17 the day to day, signers on the account, paying the bills, you
18 know.
19 Q Well, if we take a look at Lynita's Trust, the only
20 person that could do that and obtain the loan was Lynita as
21 the investment trustee?
22 A Okay. Then we didn't.
23 MR. SOLOMON: Hold on. That misstates -- you know,
24 she has full authority to delegate that to anybody that she

1 wants to under the terms of the trust, so I object to the form
2 of the question.
3 THE COURT: Sustained.
4 MR. DICKERSON: Sustained?
5 THE COURT: As far as asking her what her
6 understanding is what she could do. I don't know if she knows
7 she only has it. She says she didn't know if she could do
8 that or not, as far as legal conclusion.
9 Your understanding is what authority did you have
10 under LSN.
11 BY MR. DICKERSON:
12 Q All right. Exhibit 108, now we are still in 2001
13 and you're authorizing another $25,000 to go to Eric during
14 the year 2001; is that correct?
15 A Yes.
16 Q So I believe at this point you have authorized
17 $95,000 during 2001 to go to Eric; is that correct?
18 A Yes.
19 MS. FORSBERG: Your Honor, objection.
20 It misstates her testimony. Her testimony was that
21 she authorized all of those. It doesn't say a total amount.
22 THE COURT: As far as based on the distributions
23 that we have talked about, that would be the amount of the
24 distributions.

1 MS. FORSBERG: You're right in that. That's not
2 necessarily all. It doesn't
3 THE COURT: As far as the record is based on, that's
4 what we have, but if they have more distributions, but right
5 now, as far as they being based on distributions that we've
6 talked about right now, that number is about accurate.
7 MR. DICKERSON: All right.
8 THE COURT: Again, there may be other stuff that we
9 don't know that hasn't been submitted into evidence yet. I
10 don't know.
11 MR. DICKERSON: These are only the authorizations
12 that we have. These are what the Trust has submitted.
13 THE COURT: All right. Based on the authorizations
14 that we have reviewed, the numbers would be correct.
15 BY MR. DICKERSON:
16 Q All right. Now we get to Exhibit 109, and this,
17 again, purports there to be a meeting on December 31st, 2001,
18 in which you and Eric were present and the meeting was at
19 Eric's office; is that correct?
20 A Correct.
21 Q So this was on New Year's Eve at noon --
22 A Okay.
23 Q -- is that right?
24 A Sure.

1 Q The meeting didn't really occur that day, did it?
2 A I don't recall.
3 Q And according to this discussion here that the Eric
4 L. Nelson trust does not have available funds to pay back the
5 loan granted by LSN Nevada Trust on September 1, 2001, in the
6 amount of $400,000 plus interest. Eric Nelson will deed all
7 property owned in Hancock County, Mississippi, by Lucky,
8 Lucky, Lucky, Inc. listed on the promissory note to the LSN
9 Trust as soon as possible.
10 Do you recall actually having that discussion with Eric
11 at any time in 2001?
12 A I'm sure we had the discussion, I just don't know
13 the details of the discussion.
14 Q Okay. Exhibit 110, Exhibit 110 appear to be minutes
15 for January 3rd of 2002. So looking at the year 2001, it
16 appears that based upon the documents that we've seen, the
17 documents that have been provided and admit into evidence that
18 for the year 2001, you authorized Eric to withdraw from his
19 trust not more than $95,000; is that correct?
20 A Based on the documents that you've seen, yes, that's
21 correct.
22 Q And we've confirmed earlier in your earlier
23 testimony that all authorizations that you authorized Eric to
24 take were in writing by you and documented either by those

1 distribution sheets or by the minutes; isn't that correct?
2 MR. SOLOMON: That was not her testimony; that's a
3 misstatement of her testimony.
4 THE COURT: Answer the question.
5 THE WITNESS: No, it could be
6 THE COURT: (Indiscernible - 11:59:13.)
7 BY MR. DICKERSON:
8 Q Then what your testimony?
9 A It could be done by a check. It doesn't have to be
10 a written authorization. I could write him a check.
11 Q Okay. So then if you sign the check you authorize
12 it?
13 A Correct.
14 THE COURT: Okay. Is it a good time to take a break
15 now or do you -- it's five to 12:00.
16 BY MR. DICKERSON:
17 Q So other than your signing the check, it would have
18 to either be documented by way of the minutes or one of these
19 authorization sheets; isn't that correct?
20 A I don't know if it would be a verbal authorization.
21 I don't know that.
22 Q Well, you never gave a verbal authorization
23 A We talked daily. I was in the office all the time.
24 We met all the time. We met every day, sometimes twice a day,

1 so how could I not give a verbal authorization?
2 Q Is that how you interpreted your obligations as the
3 distribution trustee?
4 A What?
5 Q Does it how you do be a cavalier about it?
6 MR. SOLOMON: Hold on. I object to the form of the
7 question.
8 THE COURT: We'll strike the word -- strike the word
9 MR. SOLOMON: It specifically authorized without any
10 writing requirement, and counsel knows that.
11 THE COURT: That's right.
12 MR. SOLOMON: In the trust, to call cavalier
13 MR. DICKERSON: Her testimony earlier
14 MR. SOLOMON: To call cavalier
15 THE COURT: Is that a cavalier -- do you consider
16 yourself authorized to do verbal authorizations? You thought
17 that was within your authority?
18 MR. DICKERSON: We'll go back to the testimony
19 earlier.
20 THE COURT: We'll go through that.
21 MR. DICKERSON: Okay.
22 THE COURT: But is that your testimony that you felt
23 you were authorized to do --
24 THE WITNESS: Yes.

1 THE COURT: -- verbal authorizations?
2 THE WITNESS: Yes.
3 THE COURT: Okay. Then we'll explore that.
4 If you want to take a break for lunch, we can
5 explore that. All right. We'll be back at 1:30.
6 Now, do you want to take
7 MR. SOLOMON: Yes, I've told the witness that she'll
8 be called at 1:30, Your Honor.
9 THE COURT: Okay. Do you know how long she's going
10 to take about, I mean so I can -- for Ms. Martin's sake?
11 MR. SOLOMON: Not that long on direct. I can't
12 attest for how long his cross will take.
13 THE COURT: Okay.
14 MR. DICKERSON: Thank you.
15 THE COURT: Thanks. Reconvene at 1:30.
16 (Break taken from 12:01:11 - 13:33:58)
17 THE COURT: This is the continuation in the matter
18 of Eric Nelson and Lynita Nelson, case no. D 411537. We just
19 finished our lunch break and ready to go forward at this time.
20 I think at this time we are going to call a witness
21 out of order to accommodate Mr. Solomon.
22 MR. SOLOMON: Appreciate it, Your Honor. Thank you.
23 Shelley Newell.
24 THE COURT: Newell, okay.

1 Come on up, Ms. Shelley. Watch your step when you
2 go on that step there and I'm going to have you remain
3 standing and raise your right hand and we'll get you sworn in
4 and we'll let you get comfortable there.
5 THE CLERK: You do solemnly swear the testimony
6 you're about to give in this action shall be the truth, the
7 whole truth and nothing but the truth, so help you God?
8 THE WITNESS: I do.
9 THE CLERK: Thank you. You may be seated.
10 THE COURT: We'll actually start by spelling your
11 first and last name so we get it right, okay.
12 THE WITNESS: It's Shelley, S-H-E-L-L-E-Y, Newell,
13 N-E-W-E-L-L.
14 THE COURT: Thank you.
15 You may proceed at your pleasure, Mr. Solomon.
16 **SHELLEY NEWELL,**
17 called as a witness on behalf of the Intervenor, testified as
18 follows on:
19 **DIRECT EXAMINATION**
20 BY MR. SOLOMON:
21 Q Shelley, where do you reside?
22 A 7800 Blue Eagle Way.
23 Q Is that Clark County, Nevada?
24 A Yes.

1 Q How long have you resided in Clark County, Nevada?
2 A Since 1991.
3 Q And what is your present occupation?
4 A I'm an auditor for the State of Nevada Game and
5 Control Board.
6 Q And how long have you been such?
7 A Eight and a half years.
8 Q What is the extent of your education?
9 A Bachelor of science in accounting and I have my CPA
10 license.
11 Q And at some point in time did you work for Eric
12 Nelson or some entity associated with him?
13 A Yes.
14 Q For what period of time?
15 A Eleven, almost 12 years.
16 Q When did you start that?
17 A May of 1993.
18 Q And when did that cease?
19 A January, 2004.
20 Q And when did you get your bachelor of science
21 degree?
22 A December, 1992.
23 Q What work experience have you had -- and I don't
24 want you to go back to the time that you were a little girl

1 but immediately prior to commencing employment with Eric
2 Nelson's or one of his entities in May of '93?
3 A Well, I had been doing accounting for the
4 partnerships that Eric had with another individual or entity,
5 Berkley Enterprises, Billy Walters, and then prior to that I
6 did various accounting jobs.
7 Q And how long had you been doing accounting jobs
8 prior to May of 1993?
9 A I had been doing them prior to starting college.
10 Q And when would that be?
11 A I started college in '88.
12 Q So, if I understood your testimony, you were
13 actually working for one of Eric's partners by the name of
14 Billy Walters prior to entering into employment with
15 Mr. Nelson or one of his companies?
16 A Yes, that's correct.
17 Q Now, when you started working for Mr. Nelson or his
18 companies in or about May of 1993, did any of your
19 responsibilities include any bookkeeping for his wife Lynita
20 or Eric or their separate property trusts?
21 A Did you say before?
22 Q No, after you started working?
23 A Oh, after. Yes, I did bookkeeping for both.
24 Q If you want to take -- you have a binder in front of

1 you and it has tab numbers which correlate to exhibit numbers,
2 so if you take a look at Exhibit No. 5.
3 MR. SOLOMON: Mr. Dickerson, I understand that is
4 not in evidence, do you have any objection?
5 MR. DICKERSON: It actually is in evidence as
6 Exhibit B -- no, this one is Exhibit 222, Plaintiff's
7 Exhibit 222, but I have no objection to this coming in also.
8 THE COURT: Ms. Forsberg?
9 MS. FORSBERG: No objection.
10 THE COURT: It might have been admitted as
11 Intervenor's Exhibit No. 5 or (indiscernible - 13:39:23). It
12 looks like it's already been admitted as Plaintiff's Exhibit
13 222.
14 BY MR. SOLOMON:
15 Q Shelley, I'll represent to you that this is Lynita's
16 separate property trust and I'm showing it to you to reflect
17 that it's dated July 13th, 1993, which was apparently a few
18 months after you had started employment in May; is that
19 correct?
20 A Yes.
21 Q Okay. So you were employed doing bookkeeping for
22 this trust from ground floor, so to speak?
23 A Yes.
24 Q And for what period of time -- over what period of

1 time did you do -- handle the bookkeeping responsibilities for
2 this trust and for Eric's corresponding separate property
3 trust?
4 A Up until, I want to say right around 2000 or the end
5 of 2000. I was still employed by Eric but I had been moved
6 and I was working on Phoenix Leisure and I had more or less
7 been removed from this and it had been handed over to Lana.
8 Q So your recollection is that occurred at the very
9 end of 2000?
10 A Yes.
11 Q Now, did this come a time that you became aware that
12 Eric was exploring investing in gaming and liquor enterprises?
13 A Yes, when I took employment.
14 Q Before I ask you about communications you had be
15 Lynita, let's set a little stage about how you dealt with
16 Lynita and if you ever had occasion to speak with her and know
17 her, et cetera.
18 First of all, when did you first meet Lynita?
19 A After being employed by Eric I had met her.
20 Q And over time did you communicate with her?
21 A Yes, because she would call the office almost daily,
22 sometimes stop by the office or sometimes I would be up at
23 their house to take them documents and papers or sometimes
24 pick up their kids from school. So, yes, we all communicated.

1 Q Okay. And how did you relationship with Lynita
2 develop?
3 A Towards the end of
4 Q Well, let's start at the beginning?
5 A At the beginning I felt we had a great relationship.
6 I know I had gone to relief society. Gone to some of their
7 family functions and Christmas parties and things I had been
8 invited to at their home, at the office. And then as time
9 progressed, we didn't have a great relationship.
10 Q Okay. And when did that relationship terminate, if
11 you will, or change?
12 A I want to say about five years or so into my working
13 relationship things had started changing. I don't know the
14 exact date.
15 Q All right. At or about the time that the separate
16 property trusts were created in July of 1993, did you have any
17 occasions to discuss with Lynita about how she felt about
18 investing in gaming and liquor enterprises?
19 A When we spoke about it, I knew that Lynita wanted
20 low risk and Eric wanted high risk and that's how I understood
21 the assets to be. She wanted low risk which would be like the
22 shopping center type things that they had, the rentals. She
23 wanted to make sure that family members and other people
24 wouldn't take things, she would be always be okay for her and

1 the kids and Eric, that's what he does. He buys and sells and
2 buys and sells or invests and tries things. He wanted all
3 high risk, but they weren't on the same page with that; they
4 had different sentiments.
5 Q Okay. And where did gaming and liquor fit in that
6 equation, if you know?
7 A In my discussions with Lynita, appearances with the
8 LDS Church, somewhat, she didn't want people to think things
9 and also didn't want to be sued and lose everything, so that
10 was important to her. Church was important to her.
11 Q Do you know, as a result of your conversations with
12 Lynita and/or Eric, how they addressed Lynita's concerns with
13 respect to high risk assets and gaming and liquor, in relation
14 to how they split their assets?
15 A That was why she didn't go into gaming because
16 gaming was risky and volatile and the other things were safe
17 and secure, so there was no gaming on her side at all.
18 Q Okay. Did there come a time when you learned that
19 Eric and Lynita had converted their community property into
20 separate property by entering into a separate property
21 agreement?
22 MR. DICKERSON: Object to the form of the question,
23 Your Honor.
24 THE COURT: Overruled.

1 BY MR. SOLOMON:
2 Q Based on your understanding?
3 A I knew that they had assets when I first started
4 that would be community property and those were being put into
5 the separate trusts upon my
6 Q Okay. Were you aware that they had entered into a
7 separate property agreement?
8 MR. DICKERSON: Object to the form of the question,
9 Your Honor.
10 THE COURT: Overruled.
11 THE WITNESS: Yes.
12 BY MR. SOLOMON:
13 Q And is one of the things that you did in connection
14 with the bookkeeping that you did to determine where all of
15 their assets had been divided in that separate property
16 agreement?
17 A Can you say that one more time?
18 Q Yes. Is one of the things that you did as the
19 bookkeeper for the -- what became these two trusts, to
20 determine whether all of their property had been divided by
21 that separate property agreement?
22 A Yes, in fact, I didn't know how to take an asset
23 that was in their individual names and put it into a trust
24 name, hence, why I had conversations with Jeff Burr in his

1 office.
2 Q What was your understanding of the purpose of having
3 a separate property agreement?
4 MR. DICKERSON: Objection to the form of the
5 question. It equals for speculation without laying any
6 foundation.
7 THE COURT: In other words the more foundation is
8 the conversation would (indiscernible - 13:46:30) on that or
9 what her understanding was based on.
10 BY MR. SOLOMON:
11 Q Yes, did you have conversations with Lynita with
12 respect to why they were doing the separate property split and
13 funding their separate property agreement -- separate property
14 trust with their separate property?
15 A I had discussions with both of them and my
16 understanding was it was about risk and keeping things
17 separate and Eric wanting to be high risk and her not wanting
18 to be high risk.
19 Q And do you know who actually effectuated the
20 transfer of the assets into the separate property trust?
21 A And that means put it into the names of?
22 Q Yes.
23 A Again, I didn't know how to do that. I remember
24 thinking I could try to put one of the cars in there with the

1 DMV and I was not successful, so I let Jeff Burr know that and
2 so at that point I'm assuming that he did that because I did
3 not know how to get the property into the separate trusts.
4 Q At some point you set up books for these trusts,
5 correct?
6 A Yes.
7 Q And how did you know what assets to book into each
8 trust?
9 A Because I had a copy of the agreement with the list
10 of the different assets.
11 Q And is it true that you, in fact, did create books
12 for each of these trusts that reflected the assets that had
13 been funded therein?
14 A Did I -- say that one more time.
15 Q Yes. Is it, in fact, true that you set up books for
16 each of these trusts that reflected the assets that had been
17 funded into each of them?
18 A Yes.
19 Q Were you aware of any additional interests going
20 into Lynita's Trust during the time period, property
21 interests, during the time period that you were handling the
22 books for that trust?
23 A Additional interests?
24 Q Yeah, additional property interests going on.

1 A Not other than any that had been presented.
2 Q Okay. Well, do you recall, specifically, anything
3 about Tierra del Sol and Sycamore Plaza going into that?
4 A Yes.
5 Q What happened in that regard?
6 MR. DICKERSON: Objection to the leading, Your
7 Honor.
8 THE COURT: Overruled. Let's move on with it.
9 THE WITNESS: Because Eric had some partnership with
10 Billy, Billy owned a greater partnership than Eric did, there
11 has to be some sort of buyout going into that and the
12 percentages that were coming back in to because they had to
13 separate. When Eric went gaming, he had so separate his ties
14 with Billy Walters. They said he's not a suitable person, he
15 can have no ties to him at all.
16 So those assets, there were four that stood out in
17 my mind that Billy and Eric owned. They went this pick and
18 choose method. Bill chose his and Eric got those two. They
19 officially would have been Eric's, but they ended up being in
20 Lynita's Trust and somehow instead of like the 40 percent or
21 whatever it was that he had originally, Lynita ended up with
22 them 100 percent.
23 BY MR. SOLOMON:
24 Q Okay. What accounting software did you use to

1 create and maintain accounts for the transactions concerning
2 these separate property trusts?
3 A Peachtree.
4 Q And is that a common software used for accountings,
5 such as the ones that you set up?
6 A It was common to me. I find that other people use
7 it. Some people use QuickBooks. That's what I used.
8 Q Were you the only accountant or bookkeeper for the
9 separate property trust during the period of 1993 to the end
10 of 2000?
11 A Yes.
12 Q Did you believe that it was important to keep the
13 accounting for the separate property trusts separate?
14 A Yes.
15 Q Why?
16 A Because that's what you learn in accounting; they're
17 separate, and it was one of the last classes that I had
18 towards the end of my college was trusts, partnerships,
19 estates.
20 Q And, in fact, during the period of 1993 through the
21 end of 2000, did you ensure that all the transactions
22 concerning the assets and liabilities of each separate
23 property trust were kept separate?
24 A I made every effort to keep them separate.

1 Q During that time period, were you aware of any loans
2 made between the two separate property trusts?
3 A We didn't make -- I didn't make any loans between
4 the two trusts.
5 Q Were there any common expenses between the two
6 trusts?
7 A Yes.
8 Q And how were they paid?
9 A Generally I tried to be consistent and pay it with
10 the party that would generally incur the expense or if it's in
11 a name, a certain name, and then do allocations and then set
12 up due to and due from accounts.
13 Q So you sed up due to and due from accounts for each
14 trust?
15 A Yes.
16 Q And those would reflect monies owed back and forth
17 between those trusts for expenses that had been advanced by
18 one to the other?
19 A Yes.
20 Q Now, when property in Eric's separate property
21 trust, did you ensure that the proceeds were posted to an
22 account in his separate property trust?
23 A Yes.
24 Q And when new assets were thereafter acquired in

1 Eric's separate property trust, did you ensure that the
2 purchased funds were booked to his separate property trust?
3 A Yes.
4 Q Can you attest to this Court that all the
5 acquisitions in Eric's separate property trust during your
6 bookkeeping tenure originated from his separate property fund?
7 MR. DICKERSON: Object to the form of the question.
8 I mean she really couldn't answer that. All she can testify
9 is to what she attempted to do.
10 THE COURT: I think you can answer if she
11 MR. SOLOMON: She is attest to it if she had
12 knowledge of it and booked it, so I don't know how that's
13 THE COURT: As far as to her, I don't know if other
14 people had access to it or not. I don't know if she was the
15 only one who had access to it -- if other people could have.
16 But I think she can testify from what she had done or didn't
17 do.
18 Why don't you restate the question for her.
19 BY MR. SOLOMON:
20 Q Yeah, I'll restate it. I'll add "to your best
21 knowledge and information" if that helps.
22 A To my best knowledge?
23 Q Yes. Let me re ask the question so it's clear.
24 A Okay.

1 Q To your best knowledge and information, can you
2 attest that all of the acquisitions in Eric's separate
3 property trust during your bookkeeping tenure originated from
4 his separate funds?
5 A Yes.
6 Q Are you aware any of Eric's or Lynita's community
7 property that was injected into the separate property trust
8 during your tenure as bookkeeper for those two trusts?
9 A Am aware of what? Any
10 Q Injection or adding of the parties' community
11 property into either trust during the time period that you
12 were the bookkeeper for them?
13 A Well, I mean when I first started everything was
14 kind of a joint, then it went into the separate trusts.
15 Q I'm sorry. After the trusts got started.
16 A Oh, okay.
17 Then after that, Eric's was always volatile. There
18 were only a few things. I want to say that there was a house
19 that I think belonged to her dad that went in and out, but for
20 the most part, her assets were consistent the entire time that
21 I did her books. It was Sycamore, Tierra, Nelson Professional
22 Plaza, her house.
23 Q Okay. Let me re ask that question because I'm
24 asking --

1 A Okay.
2 Q -- because I'm asking after -- I think I confused
3 you because obviously there was community property when they
4 started.
5 After they were funded, as these separate property
6 trusts were funded, was that in 1993 when that occurred?
7 A Yes.
8 Q And then from after that period until you stopped
9 doing the bookkeeping in December or the end of 2000, were you
10 aware of any community property going into either of those two
11 trusts?
12 A No.
13 Q Okay. That was the question.
14 Did Eric, Lynita or anyone else ever advise you that
15 the separate property agreement and the separate property
16 trust were only to apply as to third party creditors, but
17 would not govern the parties, ownership of their assets in the
18 case of a divorce?
19 A No.
20 Q Would you turn to tab 9. Do you recognize that
21 document?
22 A Well, I know it's my handwriting. Yes, it looks
23 like something I wrote to Jeff Burr about the trust.
24 MR. DICKERSON: Did you say Exhibit 9?

1 MR. SOLOMON: Yes, nine.
2 BY MR. SOLOMON:
3 Q And did you dispatch that to Mr. Burr or his office?
4 A Yes.
5 MR. SOLOMON: I'd offer nine, Your Honor.
6 MS. FORSBERG: No objection.
7 MR. DICKERSON: Can we just have a little bit of
8 explanation as to what the second page is; that's her
9 handwriting on there.
10 MR. SOLOMON: Sure.
11 THE WITNESS: Do you want me to
12 BY MR. SOLOMON:
13 Q Can you tell us what the second page is?
14 A The second page -- he had given us something that
15 was supposed to be attached to maybe their tax return. I
16 couldn't read his handwriting on what was supposed to be
17 attached, so my handwriting is up at the top where it says,
18 "Will be filled in when ready to be sent in." All the other
19 stuff is from his office; it's not my handwriting.
20 Q And he sent that back to you?
21 A Yes.
22 MR. SOLOMON: Offer nine.
23 MR. DICKERSON: No objection.
24 MS. FORSBERG: No objection.

1 THE COURT: It will be admitted as Intervenor's
2 Exhibit 9.
3 BY MR. SOLOMON:
4 Q Would you take a look at Exhibit 10. Do you
5 recognize that document?
6 A Why -- I understand what it says. It looks like
7 something he would have sent to me based on what we had back
8 here because I had questions at the time about the trust and
9 the tax returns and he would have been responding to me.
10 MR. SOLOMON: Offer 10.
11 MS. FORSBERG: No objection.
12 MR. DICKERSON: No.
13 THE COURT: Intervenor's Exhibit 10 is hereby
14 entered without objection.
15 (Whereupon, Intervenor's Exhibit No. 10 is admitted
16 into evidence.)
17 BY MR. SOLOMON:
18 Q Can you read the last sentence of the schedule?
19 MR. DICKERSON: Objection. Document speaks for
20 itself, Your Honor.
21 MR. SOLOMON: That's fine. I just want to ask a
22 follow up question about it.
23 THE COURT: Would you look at it. Read it quickly
24 and I'll do a follow up question for you. Just let us know

1 when you're done reading it.
2 BY MR. SOLOMON:
3 Q Have you read it?
4 A Yes.
5 Q Was that a question that you had of how to deal with
6 the parties' separately owned property on the joint return?
7 A Yes, because I thought the trust needed to have
8 separate tax returns done, as opposed to going into a joint
9 tax return.
10 Q And Mr. Burr's office clarified that for you?
11 A Yes.
12 Q Are you familiar with an entity named, or that was
13 named Wyoming Horseracing, Inc.?
14 A Yes.
15 Q And what is that?
16 A It is a corporation that owns a racetrack in
17 Evanston, Wyoming, along with a hotel.
18 Q And did you have any understanding of whether the
19 ELN separate property trust purchased Wyoming Horseracing,
20 Inc.?
21 A That is what I understand, yes.
22 Q And do you know when that occurred?
23 A I want to say May of '98, but I am not certain on
24 the date.

1 Q Okay. To your knowledge, were any assets from the
2 LSN separate property trust used to acquire Wyoming
3 Horseracing, Inc.?
4 A No, nothing.
5 Q Now, did you have conversations with Lynita on
6 occasions regarding assets owned by her separate property
7 trust?
8 A Generally it would be about expenses because I would
9 send her documents or texts. Things like with our office,
10 she, you know, did our decorating in our office, so when
11 invoices would come in, I would talk with her for the validity
12 of them or I would get invoices, make a little Post it note
13 and send it to her about whether it was right, but we talked
14 often because she called the office all the time.
15 Q Based on your conversations with her, was she aware
16 of what her trust owned?
17 A Yes, I believe so.
18 Q And was she aware of what income was coming in from
19 her separate property trust?
20 A Yes, because I
21 MR. DICKERSON: Objection, Your Honor. Without
22 laying any foundation, I would need to know how she comes to
23 this
24 //

1 BY MR. SOLOMON:

2 Q Was this based upon your conversations with Lynita

3 that you came to that conclusion?

4 You can answer.

5 A Okay. Not just conversations, but because I would

6 cut her cash draws monthly from the entities, so she would be

7 aware because she cashed the checks.

8 Q Do you know if Eric and Lynita ever discussed issues

9 pertaining to their separate property trusts?

10 A Based on my discussions with Lynita, I know that she

11 said they would have pow-wows and have sit downs to talk about

12 everything, business, family, everything, A to Z.

13 Q Did Lynita tell you how often those pow-wows

14 occurred?

15 A At the time she said monthly and then there were

16 also meetings that Eric's siblings would have regarding

17 business that sometimes the spouses were not invited to, but

18 Lynita would sometimes go over and sometimes the other spouses

19 would go over, too. Sometimes they were invited and they

20 would go and discuss business, so ...

21 MR. SOLOMON: Nothing further.

22 MS. FORSBERG: Nothing for me, Your Honor.

23 //

24 //

1 **CROSS EXAMINATION**

2 BY MR. DICKERSON:

3 Q Good afternoon, Ms. Newell.

4 My name is Bob Dickerson and I represent Lynita

5 Nelson.

6 A You said Bob?

7 Q Bob Dickerson.

8 A Okay.

9 Q You and I have never met before; is that right?

10 A That's correct.

11 Q Okay. Are you appearing here today pursuant to

12 subpoena?

13 A Yes.

14 Q Okay. When was that subpoena served upon you?

15 A I don't know exactly.

16 Q Weeks ago? Days ago? Months ago?

17 A No, it's been a week, week and a half, two weeks.

18 Q Now, prior to that subpoena being served upon you,

19 had you had any discussions with Eric Nelson, his attorney or

20 Lana Martin or any of her attorneys with respect to this case?

21 A I received one call from Eric Nelson.

22 Q When was that?

23 A Four months ago maybe or so.

24 Q Was that -- prior to that telephone call from Eric

1 Nelson approximately four months ago, when was the last time
2 you talked to him?
3 A I had actually called him a couple of times over the
4 course of the duration of time that I did not work for him.
5 One was to ask about foreclosures and how does this work and
6 how to buy them, and then a couple of years ago I called
7 because I had a house that I didn't know whether to do a
8 bankruptcy myself or hand it over to the bank or what was the
9 best route or how do you buy a foreclosure and I called him to
10 ask for advice on how to do that.
11 Q Okay. So generally speaking financial advice from
12 him, correct?
13 A Yes, on foreclosures, yes.
14 Q So prior to the telephone conversation that you had
15 with him four months ago, you had not heard from Eric prior to
16 your calls to him?
17 A Not that I recall, no.
18 Q What did Eric discuss with you during that telephone
19 conversation -- well, first of all, how long did that
20 conversation last?
21 A It lasted about three minutes, five minutes, where
22 in there.
23 Q What did he discuss with you?
24 A He said this he was getting divorced and he might

1 ask me to be a witness and was I a witness for Lynita and I
2 said I was shocked they were getting divorced. I said, "What
3 is going on" and then I said, "Well, just so you know, I said
4 whatever happens, somebody is going to have to subpoena me
5 because I'm not going to just take off work and show up."
6 Q All right. So you received -- so prior to receiving
7 that subpoena, you had not talked to any of the attorneys in
8 this courtroom?
9 A Prior to when?
10 Q Prior to receiving the subpoena.
11 A Did I receive -- I was thinking that I received a
12 phone call asking for my address, but I don't know if it was
13 you or someone from your office. Somebody named Susan, maybe?
14 Q But you haven't spoken to any of these attorneys
15 prior to receiving the subpoena?
16 A No.
17 Q Since receiving the subpoena, have you had any
18 conversations with anybody in this room?
19 A Since receiving it?
20 Q Yes.
21 A Before receiving it or after receiving it?
22 Q After receiving it.
23 A I just spoke to Lynita out in the hall and I said hi
24 to all of them when he was making a bathroom break and Lana

1 when we were all walking down the hall and talking about my
2 medical issues.
3 Q And so you have not had any no conversations with
4 either --
5 A Lana.
6 Q -- any of the attorneys here, with respect to your
7 testimony here today?
8 A No.
9 Q Okay. Now, when did you get your CPA license?
10 A I want to say it was 2010. I had to go back to
11 school to get enough credits, because they had changed the
12 requirements.
13 Q You said it was 2010?
14 A Yes.
15 Q So you worked with Eric right after getting out of
16 college?
17 A Not right after getting out of college. No, I
18 worked for Mr. Walters. I worked with him -- I graduated in
19 December of '92. Shortly thereafter, I had left.
20 Q Where did you get your degree?
21 A UNLV.
22 Q So you worked with Mr. Walters, Billy Walters, until
23 May of 2013?
24 A Yes -- April.

1 Q April?
2 A April 30th was my last day with him.
3 Q And you began with Eric Nelson in May of 1993,
4 correct?
5 A Yes.
6 Q I'm dyslexic, so I have issues when it comes to
7 looking at notes and reading dates, but I think I said 1993 on
8 both of those times. I might have said 2003, but for clarity,
9 we are talking about the year 1993, right?
10 A Yes, that is when I left work for Mr. Walters and
11 went to work for the Nelsons.
12 Q And then if I understood your testimony correctly,
13 you did the books for -- up until some time in 2000?
14 A Around that time, yes.
15 Q So, what did you do after the year 2000 or do you
16 know when in 2000 you stop doing the books?
17 A There would have been some transitioning period, so
18 I want to say like maybe the last quarter of 2000 because I
19 didn't just hand it over and walk out the door. It was "let
20 me show you some things" and I went to a downstairs office and
21 I wasn't situated in their office. I was working out of the
22 Phoenix Leisure office.
23 Q Where was that?
24 A It was on the first floor of their Nelson

1 Professional Plaza.
2 Q Now, who did your turn over the books to in the year
3 2000?
4 A Lana.
5 Q And so you -- after the year 2000 you had no more
6 doing the bookkeeping that you described here today; is that
7 right?
8 A That's correct, because I was doing the books of
9 Phoenix Leisure.
10 Q Now, you have never been involved in any
11 conversations with Eric Nelson, Lynita Nelson, and Jeff Burr
12 together at Jeff Burr's office, have you?
13 A No.
14 Q And, in fact, you have never been involved in any
15 conversation where Lynita Nelson, Eric Nelson, and Jeff Burr
16 were together talking about their estate planning, were you?
17 A No.
18 Q Okay. That's a true statement, you never were,
19 correct?
20 A Not together with all of them.
21 Q So you're not privy to any conversation that
22 occurred between those three individuals with respect to their
23 estate planning; isn't that correct?
24 A Yes.

1 Q Did Eric Nelson have a personal checking account?
2 A Yes.
3 Q And was it in the trust?
4 A I don't know.
5 Q So you don't no if that was one of the things that
6 you booked and accounted for?
7 A They had many, many bank accounts back then. The
8 ones that I monitored and took care of were ones that related
9 were related to the specific business entities.
10 Q Okay. Do you know of any personal bank account that
11 Eric Nelson had that was not in his trust?
12 A I am not aware of any that were in or out. I knew
13 that they had many. Like they had Silver State Credit Union
14 bank accounts, both of them, one for the kids, but I did not
15 monitor those.
16 Q You only monitored the business assets; is that
17 right?
18 A The ones related to the business entities.
19 Q Was the cabin a business entity?
20 A No.
21 Q Did you do anything with respect to the cabin?
22 A Yes, but which cabin are you -- I did for both
23 cabins.
24 Q I'm only familiar with one.

1 A There was a small cabin originally that they had and
2 when there was a disagreement about who owned that cabin, I
3 think it went to Clarence Nelson.
4 Q Eric's brother?
5 A Yes, and Eric and Lynita then built their own cabin.
6 But yes, I did pay some expenses on those.
7 Q Now, it's my understanding that Tierra del Sol sold
8 in August of 2005 and according to your testimony, you were
9 not working for Eric at that time; is that correct?
10 A Eric was a shareholder of Phoenix Leisure and the
11 president and then that transferred to Gene McCarley
12 (phonetic), so, in essence, yes.
13 Q 2005?
14 A I did not work for the Trust, but I was working
15 still for Eric Nelson.
16 Q I thought -- I'm sorry, I must have misunderstood
17 you then. I thought you worked for Eric Nelson until January,
18 2004?
19 A I worked out of their offices doing their trust.
20 Eric was still the major shareholder of Phoenix Leisure,
21 therefore, I was working at the Phoenix Leisure office.
22 Q Okay. So you were still working for Eric?
23 A In a sense, yes, him and the president, Gene
24 McCarley, yes.

1 Q Okay. And so
2 A Just not for the trusts upstairs.
3 Q So how long then were you employed by Phoenix
4 Leisure?
5 MR. SOLOMON: I think the record is confused. You
6 need to fix this because she's misunderstanding.
7 MR. DICKERSON: I will do my best to fix this.
8 MR. SOLOMON: He is talking about 2005 after you
9 were already with Dean and (indiscernible - 14:12:07).
10 THE WITNESS: Oh, okay. I'm thinking up to 2004
11 when I left, so sorry.
12 2005, no, I did not work there.
13 BY MR. DICKERSON:
14 Q So if we're correct because your testimony was that
15 you worked for Eric Nelson between May of 1993 and January of
16 2004; is that a correct statement?
17 A Yes, that's correct.
18 Q So you were not working there in August of 2005 when
19 Tierra del Sol sold?
20 A Correct.
21 Q And you were not working for Eric when his
22 investment -- well, when High Country Inn sold; is that
23 correct?
24 A High Country Inn was a part of Wyoming Horseracing,

1 Inc., so while I was there, that was still on the books.
2 Q On Lynita's books?
3 A On Eric's books.
4 Q Do you know what happened in 2004?
5 A Lots of things happened in 2004.
6 (Laughter)
7 Q I'm sorry. Okay, I deserved that one.
8 Fortunately, Billy Joel's song didn't go that far.
9 So in 2004 are you aware of a transfer of 200 acres into
10 Lynita's trust?
11 A No.
12 Q So, not aware with that.
13 Are you familiar with property called Tropicana
14 Albertson's land at 5725 East Tropicana Avenue?
15 A No.
16 Q Are you familiar with the -- do you know what CJE &
17 L is?
18 A No.
19 Q Do you understand that that is an LLC that stands
20 for Clarence, Jeanette, Eric and Lynita?
21 A No.
22 Q Did you ever do any work with respect to a property
23 at 5220 East Russell Road?
24 A No.

1 Q Now, you are aware of the Lindell Professional Plaza
2 at 3611 Lindell Road; is that correct?
3 A Yes, it was being built.
4 Q And that was 100 percent in Lynita's Trust; is that
5 correct?
6 A Yes.
7 Q And were you around at any time when 50 percent
8 interest in that building was transferred to Eric?
9 A When was it transferred?
10 Q I believe it was in August, August 22nd of 2001.
11 A I would have been down at the Phoenix Leisure.
12 Q I take that back.
13 Yeah, so in 2007, you were not -- you had no
14 (indiscernible - 14:15:15)?
15 A No.
16 Q Now, Ms. Newell, it is my understanding -- you're
17 not going to get in trouble for anything -- but it is my
18 understanding that there have been occasions in which Eric
19 Nelson has asked you to sign Lynita's name; is that true?
20 A No.
21 Q Never?
22 A Eric did not ask me to sign for Lynita, no.
23 Q Were there cases in which you signed her name?
24 A No, not that I would have recalled ever needing to.

1 There were times when they took too long trips and they would
2 have been gone for three weeks or so and we would have come up
3 with a plan for how the bills would have been paid when they
4 were gone, but I don't recall signing her name.
5 Q And do you ever recall having a discussion with
6 Lynita where you told her that Eric had her sign her name?
7 A Eric did not have me sign her name and I did not
8 have a discussion with Lynita.
9 Q What was Eric's involvement in Berkley Enterprises?
10 A Eric actually wasn't involved with Berkley
11 Enterprises. It was -- they had the partnership, the American
12 Financial Partnership. That was the entity that owned
13 Sycamore Plaza.
14 Q And when you mentioned the term Phoenix Leisure,
15 what are you referring to?
16 A I am referring to Phoenix Leisure, the publicly
17 traded corporation.
18 Q And now you are currently working with the Gaming
19 and Control Board?
20 A Yes.
21 Q Did Eric Nelson have any input on getting you that
22 job?
23 A I asked him and actually a friend of his named Cliff
24 and Cliff recalled having a friend that they went to school

1 with and if one of them called, I don't know which one of them
2 called, but one of them called and spoke to one of the
3 managers or supervisors.
4 Q Is that Cliff McCarley (phonetic)?
5 A Yes.
6 MS. PROVOST: Court's indulgence for a moment.
7 BY MR. DICKERSON:
8 Q Let me ask you: What is your knowledge about the
9 Sycamore Plaza and Tierra del Sol with respect to the transfer
10 of that asset into Lynita's Trust, what is your understanding
11 and can you tell us how you got that understanding?
12 A When it was on the books of American Financial
13 Partnership, my understanding was Eric would go and do the
14 real estate -- this was with Bill Walters -- Eric would go do
15 the real estate because that was not Bill's forte. He would
16 acquire the assets and want some sort of percentage of
17 ownership.
18 Bill was fine with that, but he still wanted the
19 money for a share, a percentage of the ownership of the asset.
20 So it wasn't just Eric using his ability for real estate to
21 acquire assets, but he would have to pay X amount of dollars
22 back to Mr. Walters. So there were loans on the books and
23 Eric would not get checks because I did cut some of those
24 checks when I was doing some of the American Financial

1 Partnerships, but they were small because he needed to repay
2 the loans back to Mr. Walters because that is what he
3 insisted.
4 And there was once or twice while I was working
5 there that a couple of checks were cut to Mr. Nelson, Eric
6 Nelson. And when those came in somehow -- and I don't know
7 the specifics -- but there was a greater percentage of
8 ownership, because I knew that he only had like a 40 percent.
9 I want to say 40 percent for Sycamore Plaza, but I am not
10 certain on the percentages, but I know that Bill always took
11 the greater percentage; it's just how Bill works.
12 Q And do you know how a hundred percent of Tierra del
13 Sol was placed into Lynita's Trust?
14 A Don't know what else took place, but at some point,
15 100 percent was Lynita's.
16 MR. DICKERSON: I have nothing further, Your Honor.
17 MR. SOLOMON: Nothing further, Your Honor.
18 THE COURT: Thank you for coming down here today.
19 Sorry you had to wait this morning on that. We appreciate
20 your coming down here.
21 THE WITNESS: Thank you.
22 THE COURT: We're going to ask you to please not
23 discuss your testimony with anybody else because there may be
24 other witnesses, okay?

1 THE WITNESS: Yes, Your Honor.
2 THE COURT: Thank you, Ms. Newell.
3 (Witness excused.)
4 MS. FORSBERG: Your Honor, I know we're going to put
5 THE COURT: Do you want to take a five minute break?
6 MS. FORSBERG: Yeah, she needs a five minute break.
7 THE COURT: We'll take a five minute break and pick
8 up with Ms. Lana.
9 (Break taken from 14:21:05 14:31:28)
10 THE COURT: This is reconvening the matter of Eric
11 Nelson and Lynita Nelson, case number D 411537.
12 We will pick up on the cross examination of
13 Ms. Martin.
14 Remember that you are still under oath and we'll try
15 to get you finished, okay?
16 THE WITNESS: Yes, thank you.
17 MR. DICKERSON: Your Honor, before we start, I mean,
18 maybe just a few housekeeping issues so we can kind of figure
19 out our schedule here.
20 When Dan Gerety testifies, I would like to have Ms.
21 Antanassio and either Jo Lee Allen (phonetic) or someone from
22 his office. I don't know if Jo is back in town yet, so he may
23 need to send his assistant -- actually, it's his associate.
24 And I believe under the rules they're in title B here for that

1 testimony.
2 MR. SOLOMON: And I agree, as my expert is entitled
3 to be during yours.
4 MR. DICKERSON: Absolutely. Do you know when he's
5 going to testify? Is that probably first thing Thursday
6 morning?
7 MR. SOLOMON: I'm thinking we're going to start Dan
8 tomorrow afternoon.
9 MR. DICKERSON: All right.
10 MR. SOLOMON: And probably won't be done until
11 Thursday.
12 MR. DICKERSON: Okay. That would be perfect.
13 MR. SOLOMON: It depends on how long Burr is because
14 he's the only really long witness tomorrow.
15 MR. DICKERSON: So he would be number one?
16 MR. SOLOMON: No, we're going to put Richard Cook
17 (phonetic) first and get him out of here and then put Jeff on
18 until he's done.
19 MR. DICKERSON: And then Gerety?
20 MR. SOLOMON: And then yeah, then it will be Dan.
21 MR. DICKERSON: Okay. So then I'll have
22 Ms. Antanassio and Mr. (indiscernible - 14:32:51) or someone
23 from his office here in the afternoon.
24 THE COURT: And now as far as Mr. Birch's associate,

1 I think he's leaving Friday s that what it was? Are we going
2 to get him done on Thursday or what?
3 MS. FORSBERG: That's next week, I believe, Your
4 Honor.
5 THE COURT: Nick leaves Friday, I think.
6 MR. DICKERSON: Nick leaves on Friday, so that would
7 leave probably, if we need Nick to testify, it would be
8 Thursday afternoon.
9 THE COURT: I don't know if that is -- is that
10 realistic? I don't know with Mr. Gerety, how long that's
11 going to take.
12 MR. SOLOMON: It won't take me that long, but I
13 suspect it will be a long cross.
14 THE COURT: And then you have Mr. Birch next weekend
15 or he's leaving Thursday or something next week so he's going
16 to be done. I gave you guys Monday and Tuesday.
17 MR. DICKERSON: Yes. I don't know if we need Nick.
18 I honestly don't know if we need him. It would just depend
19 really on what Mr. Gerety has to say.
20 THE COURT: Okay. And I can give you maybe next
21 Wednesday. I don't know what your schedule looks like. If
22 you need another day, I can probably sneak another Wednesday.
23 I can't do Thursday or Friday because I have trials already
24 set on continuance of termination of parental rights that we

1 are already in the middle of, so I have to finish one up
2 Thursday and one up the following Friday, but I can squeeze
3 you Wednesday if I have to and I can bounce those things if I
4 have to. We'll just see.
5 UNIDENTIFIED FEMALE SPEAKER: Wednesday I have a
6 hearing, but
7 THE COURT: Do you? Okay.
8 Okay. We'll just say before we go that one way
9 we'll make it happen.
10 Mr. Dickerson, you can pick up where you left off at
11 your convenience.
12 **LANA MARTIN,**
13 called as a witness on behalf of the Intervenor, testified as
14 follows on:
15 **CROSS EXAMINATION (CONT'D)**
16 BY MR. DICKERSON:
17 Q Okay. Ms. Martin --
18 A Yes?
19 Q -- I believe we left off -- I had not gotten to
20 Exhibit 110 yet.
21 Are you on Exhibit 110?
22 A I am.
23 Q This purports to be a meeting between you and Eric
24 on January 3rd, 2002. This did meeting actually occur on that

1 date?
2 A I'm sure it occurred, but I'm not sure exactly on
3 that date.
4 Q And was this a meeting in which Eric simply handed
5 you the minutes, the two of you reviewed it and the both of
6 you signed it?
7 A No.
8 Q How do you know that?
9 A Well, like I said before, we met daily, if not more,
10 so I'm sure we had an actual meeting.
11 Q All right. Exhibit 111, this is an authorization
12 signed by you for the release of $2500 to Eric on January 7th,
13 2002; is that correct?
14 A Yes.
15 Q Exhibit 112, this is another distribution
16 authorization signed by you the following month, February of
17 2002, for $2500 to be distributed to Eric; is that correct?
18 A That is correct.
19 Q Exhibit 113, these are minutes reflecting a meeting
20 on April 3rd, 2002 at Eric's office between you and Eric; is
21 that correct?
22 A That's correct.
23 Q Now, it appears as if the purpose of this meeting
24 was to make a loan to PN Consulting, Inc., which is, again,

1 Paul Nelson's company; is that correct?
2 A That's correct.
3 Q And that's Eric's brother?
4 A Yes.
5 Q And the amount of the loan was $192,949.91?
6 A Right.
7 Q And this indicates that it was to be evidenced by a
8 promissory note.
9 A Yes.
10 Q Was that promissory note ever prepared?
11 A I believe it was. I just
12 Q Did you prepare it?
13 A I don't recall.
14 Q Okay. And do you know if this note this loan was
15 ever repaid by PN Consulting, Inc. or anybody?
16 A I believe it was, I just don't recall exactly when.
17 Q When was it repaid?
18 A I don't know exactly when.
19 Q Are you -- do you know for certain it was repaid?
20 A I know because I have no loans on the books for PN
21 Consulting, Inc.
22 Q So it's based on the fact that you have no loans
23 reflected on your book that you believe it was paid off; is
24 that correct?

1 A Correct.
2 Q But you have no independent recollection of this
3 note ever being paid off other than the fact that it doesn't
4 show up on your books today?
5 A Correct.
6 MR. DICKERSON: Is Exhibit 114 admitted?
7 THE CLERK: No, it is not.
8 BY MR. DICKERSON:
9 Q Have you ever seen Exhibit 114 before?
10 A Yes.
11 Q And how did you see it -- how have you seen this?
12 A I've seen -- I believe it was in my trust -- what I
13 call the trust back with all the minutes in it.
14 Q In fact you get a letter like this in May of every
15 year from Jeff Burr's office; is that correct?
16 A Right.
17 Q Both for Eric's Trust and for your trust?
18 A My trust?
19 Q Did I say your trust? Not only am I dyslexic, I'm
20 stupid, okay.
21 Eric's Trust and Lynita's Trust, correct?
22 A While I was trustee, yes.
23 Q Okay.
24 A Let me back up. It came to the house, so I can't

1 say for sure if I got it or not, depending on if they brought
2 it.
3 Q But they're in your book.
4 A If it's in my book then yes.
5 Q Yeah, but you have seen these on annual basis,
6 whether they're brought to you by Eric or brought to you by
7 Lynita or whatever; is that right?
8 A Yes. Yes.
9 Q And you read these annually?
10 A Yes.
11 Q Okay. Now, if we go to Exhibit 115, these, again,
12 are minutes reflecting a meeting on or about May 8th, 2002,
13 between you and Eric; is that correct?
14 A Yes.
15 Q And it's your testimony that this meeting actually
16 did occur; is that right?
17 A Yes, that's correct.
18 Q If we move to Exhibit 116, another meeting between
19 you and Eric and you definitely recall this meeting occurring
20 also?
21 A I don't definitely recall exactly the meeting, but
22 Q Do you recall this meeting or not?
23 A I don't recall, no.
24 Q And Exhibit 117 is another distribution from you,

again, we're in the year 2002, June, 2002, and you were authorized to release income and principal not to exceed $20,000 for each of the next 12 months to Eric Nelson; is that correct?

A That's correct.

MR. SOLOMON: Well, object to the form of the question.

MR. DICKERSON: Did I read that wrong?

MR. SOLOMON: Yeah, you read it wrong. You said, "You were authorized to release." She did the authorization.

MR. DICKERSON: Thank you.

BY MR. DICKERSON:

Q You're giving the authorization for Eric to have $20,000 -- an amount not to exceed $20,000 for each of the next 12 months; is that correct?

A Correct.

Q Okay. Exhibit 118 -- by the way, back on that letter that we talked about that you receive annually from Jeff Burr --

A Yes?

Q -- do you follow Jeff Burr's instructions?

A To the best of my ability I do.

Q Referring you to Exhibit 118, now, this appears to be another meeting, July 3rd of 2002 and there's a resolution

1 now to give Eric $5,000 per month; is that right?
2 A Yes, that looks like.
3 Q So how did that change Exhibit 117, where you were
4 authorizing him to take not more than $20,000 a month, did you
5 decrease that?
6 A You know, I don't recall. I wouldn't have decreased
7 it. I don't recall.
8 Q No recollection?
9 A No.
10 Q You weren't authorizing him to take an additional
11 $5,000 a month, were you?
12 A Most likely not, no.
13 Q So apparently at this point, as of July 2nd, 2002,
14 for the rest of the month, you were just authorizing him to
15 take $5,000 a month; is that right?
16 A That's what it looks like, but it might be a
17 mistake.
18 Q Exhibit 119, this was a meeting purporting to occur
19 on December 23rd, 2002 at Eric's office between you and Eric.
20 Did this meeting actually occur?
21 A I don't recall.
22 Q Now, it references promissory notes to Wyoming
23 Horseracing, Inc., and to Bobby DeBorde (phonetic). Do you
24 recall any discussion with Eric about that?

1 A Yes, I recall the Bobby DeBorde loan, but the other
2 one I don't recall exactly.
3 Q Were promissory notes prepared?
4 A Yes.
5 Q Have you ever seen those promissory notes?
6 A I don't know. I don't recall.
7 Q Exhibit 120, again, another meeting February 20th,
8 2003, and, again, this is just talking about general business.
9 Did this meeting actually occur?
10 A Yes.
11 Q Okay. And you recall that; is that correct?
12 A Well, I don't recall it exactly.
13 Q All right. Exhibit 121, we're now in February of
14 2003 and so apparently now instead of $5,000 a month that you
15 were authorizing for Eric you are now authorizing $10,000
16 just a $10,000 distribution?
17 A That's what it looks like, yes.
18 Q A one time distribution of $10,000; is that right?
19 A Yes.
20 Q And then Exhibit 122, again, that's just another one
21 of those letters. I'm going to come back to those, but you've
22 reviewed that one also. It's the same letter you receive in
23 March of every year, correct?
24 A Yes.

1 Q Exhibit 123 appears to be another distribution
2 authorization signed by you authorizing the distribution to
3 Eric of $8500 in June of 2003, correct?
4 A Right.
5 Q And Exhibit 124, you're now changing the monthly
6 amount that Eric is authorized to take from the previous
7 $5,000 that we discussed, now not to exceed $20,000 for the
8 next 12 months; is that right?
9 A That's correct.
10 Q And then we get for Exhibit 125 and we see later
11 that year in September you're authorizing a $3,000
12 distribution to Eric; is that right?
13 A Yes.
14 Q And Exhibit 126 is a meeting purportedly to have
15 occurred September 20th, 2003. Do you recall this meeting?
16 A No, I don't recall this meeting.
17 Q Okay. Exhibit 127, this, again, now you're
18 authorizing another $3,000 to be given to Eric on November
19 13th; is that correct?
20 A Yes.
21 Q Okay. Exhibit 128, this appeared to be a meeting
22 that occurred on December 15th, 2003, between you and Eric.
23 Did this meeting actually occur?
24 A Just a minute, I'm reading it about what happened.

1 I'm sure it was discussed. I'm not sure if it was actually
2 this day or it was --
3 Q Okay. Exhibit 129, a meeting purportedly occurring
4 on January 5th of 2004 between you and Eric. Did this meeting
5 actually occur?
6 A I don't recall.
7 Q Okay. Take a look at Exhibit 130, a meeting on
8 December 10th, 2004, between you and Eric. It appears that
9 you discussed making a hundred thousand dollar loan for
10 Clarence Nelson; is that correct?
11 A That's correct.
12 Q And then an additional loan Pony Express for
13 $70,000?
14 A Yes.
15 Q Okay. What is Pony Express?
16 A I believe it's an LLC of the Trust.
17 Q Okay. And then it appears that there were supposed
18 to be promissory notes prepared. Did you prepare the
19 promissory notes?
20 A I don't recall.
21 Q Have you ever seen a promissory note from Clarence
22 Nelson to Eric for a hundred thousand dollars?
23 A I don't recall.
24 Q Exhibit 131 purports there to be a meeting on

1 February 25th, 2004. Did this meeting actually occur?
2 A I don't recall.
3 Q All right. But at least -- you did sign this; is
4 that right?
5 A Yes, yes.
6 Q So whether you had the meeting or didn't have the
7 meeting, you are authorizing Eric to have $25,000 a month or
8 $300,000 a year for the next -- until the next meeting; is
9 that correct?
10 A Correct.
11 Q So when you mention $300,000, you are talking about
12 the next one year period?
13 A Yes.
14 Q Exhibit 133 appears to be a year later almost.
15 Let's see, now we're into -- no, we're not. This appears to
16 be the same this appears to be the same minutes, is it not;
17 is that correct?
18 A Yes, we talked about that yesterday, I believe.
19 Q But for some reason they were just signed twice?
20 Because we see this is not -- they're not a copy of each
21 other. We see Eric's signature --
22 A Yeah. Yeah, I don't recall what happened.
23 Q And your signature looks different, too, does it
24 not?

1 A A little bit. I'm better than he is.
2 Q Exhibit 134 purports to be a meeting on April 30th,
3 2004. Did this meeting actually occur?
4 A Yes.
5 Q All right. We see another letter, 125 --
6 A 135.
7 Q 135, again, this is similar to the previous letters
8 that we saw and you received that letter and read it; is that
9 correct?
10 A Correct.
11 Q All right. Exhibit 136 purports to be a meeting on
12 May 10th, 2004. Did this meeting actually occur?
13 A I don't recall.
14 Q Why don't you take a look then at Exhibit 137,
15 purporting to be a meeting between you Eric at Eric's office
16 on May 20th, 2004. Did this meeting actually occur?
17 A I don't recall.
18 Q Do you recall ever having a discussion with Eric as
19 set forth in these minutes that it was resolved by the
20 trustees, that being apparently, you and him, that you
21 discussed moving forward with the development of Paradise Bay,
22 Mississippi, which would require property transfers between
23 the LSN Nevada Trust and the Eric L. Nelson Nevada Trust, do
24 you recall that?

1 A Not specific details. I know it was something that
2 was talked about, but I don't know if it ever even happened.
3 Q Did you discuss how these property transfers were to
4 occur?
5 A Not specifically.
6 Q What does the next one read, "It was resolved that
7 deeds of trust would be completed and filed after the changes
8 are finalized between the investment trustees." What does
9 that mean?
10 A Well, that would mean that they would have to
11 approve the transfers of trusts -- I mean the transfer of
12 deeds.
13 Q Now, I notice that we don't have any corresponding
14 minutes that you did at this period of time for Lynita
15 reflecting that she had anything to do with this transaction
16 that would require transfers of property from her trust to
17 Eric's trust or vice versa. You never had such a meeting with
18 Lynita, did you?
19 A I may not have, no.
20 Q Now, Exhibit 138 are minutes that are unsigned, but
21 purporting to represent what happened on October 15th, 2004.
22 Did this meeting ever occur?
23 A I can't recall. I remember --
24 Q Is there a reason you would not have signed this?

1 A I don't know why.
2 Q Exhibit 139, this purports to be the minutes of a
3 meeting that occurred between you and Eric on November 20th,
4 2004, at Eric's office. Did this meeting actually occur?
5 A I don't recall.
6 Q And did you sign this?
7 A Yes.
8 Q And that is Eric's signature, correct?
9 A Correct.
10 Q Do you recall any discussion with Eric regarding
11 what's sets out in these minutes? Let's go over it
12 specifically.
13 A Specifically, I don't know the details.
14 Q Let's go over this. "It's resolved that all
15 Mississippi and Las Vegas properties owned by the trust ..."
16 now what trust is being referred to there?
17 A It must be the Eric L. Nelson Nevada Trust.
18 Q So all of the Mississippi and Las Vegas properties
19 owned by the trust will be transferred to the LSN Nevada Trust
20 in exchange for final payment due on loans outstanding from
21 2002 and to level off the trust; is that how it reads?
22 A That's how it reads.
23 Q Now, what does that mean there "and to level off the
24 trust"; did he discuss that with you?

1 A I put it in here he did, but I don't remember
2 specifically what that means. I can't tell you.
3 Q Thank you.
4 A Uh huh.
5 Q Exhibit 140, these purport to be the minutes of a
6 meeting on January 2nd, 2005 between you and Eric at Eric's
7 office where a number of items were discussed. Do you recall
8 this meeting actually occurring?
9 A Yes.
10 Q You do recall it?
11 A I mean not actually, but I know these things were
12 discuss.
13 Q And so apparently here -- but this is not signed,
14 this is not signed by you, right?
15 A Uh huh.
16 Q True?
17 A True.
18 Q But it says that you are authorizing no more than
19 $50,000 to be distributed to Eric in 2005 for personal
20 expenses; is that correct? The very last resolution?
21 A Yes.
22 Q All right. Is there a reason you didn't sign this?
23 A I don't recall. Maybe it's incomplete, maybe we
24 didn't finish the meeting. I don't know.

1 Q Let's move to the next one, the next one is the
2 following month which you did sign, and on February 23rd, of
3 2005 you purportedly had another meeting with Eric in which it
4 was resolved that you would give him $25,000 a month or
5 $300,000 a year and you're authorizing that; is that correct?
6 A Yes.
7 Q Do you recall that meeting?
8 A Not specifically, no.
9 Q The next exhibit, 142, purports to be a meeting
10 between you and Eric on May 5th, 2005, at Eric's office in
11 which the items set out there were discussed. Do you recall
12 this meeting at all?
13 A No.
14 Q Did this meeting actually occur?
15 A I don't recall.
16 Q Can you tell me did you ever have any discussion
17 with Eric in May of 2005 regarding the fact that his trust
18 will loan Lynita's Trust $175,000?
19 A I don't recall.
20 Q Did you prepare any promissory note, as reflected in
21 these minutes?
22 A I don't recall that either.
23 Q Have you ever seen a promissory note signed by
24 Lynita made payable to Eric, Eric's trust or any entity in