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**Respondent/Cross-Appellant.**

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Electronically Filed  
Jun 29 2018 01:07 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

## Volume 4

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CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

9 RICHARD SCOTT KILGORE, )

10 Plaintiff, )

11 vs. )

12 ELENI KILGORE, )

13 Defendant. )

CASE NO. D-12-459171-D

DEPT. I

14  
15 BEFORE THE HONORABLE CHERYL B. MOSS  
DISTRICT COURT JUDGE

16 TRANSCRIPT RE: EVIDENTIARY HEARING

17 MONDAY, JULY 25, 2016

18 APPEARANCES:

19 The Plaintiff:  
For the Plaintiff:

RICHARD KILGORE  
BETSY ALLEN, ESQ.  
.P.O. Box 46991  
Las Vegas, Nevada 89114  
(702) 368-9700

22 The Defendant:  
For the Defendant:

ELENI KILGORE  
FRED PAGE, ESQ.  
6145 Spring Mountain Road, #201  
Las Vegas, Nevada 89146  
(702) 469-2378



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1 LAS VEGAS, NEVADA

MONDAY, JULY 25, 2016

2

P R O C E E D I N G S

3

(THE PROCEEDINGS BEGAN AT 14:08:28)

4

5

THE CLERK: We are on.

6

THE COURT: All right. This is Case D459171,  
7 Richard and Eleni Kilgore. Counsel, your appearance and bar  
8 numbers?

9

MS. ALLEN: Betsy --

10

MR. PAGE: Good afternoon -- go ahead.

11

MS. ALLEN: Betsy Allen, Bar Number 6878 on behalf  
12 of Mr. Kilgore, Plaintiff.

13

THE COURT: Thank you.

14

MR. PAGE: Good afternoon, Your Honor, Fred Page,  
15 Bar Number 6080, on behalf of the Defendant, Eleni Kilgore,  
16 who is present.

17

THE COURT: You're both retained for this trial; is  
18 that correct?

19

MR. PAGE: Yes.

20

THE COURT: I have a Defendant's exhibit notebook, A  
21 through H. Anything from the Plaintiff?

22

MS. ALLEN: Pardon me --

23

THE COURT: No exhibits?

24

MS. ALLEN: -- Your Honor, oh, I do -- actually did

1 -- Mr. Kilgore filed an updated --  
2 MR. PAGE: FDF.  
3 MS. ALLEN: Thank you. FDF. I still say AFC and  
4 Mr. Willick --  
5 THE COURT: Oh, AFC's --  
6 MS. ALLEN: -- shamed me.  
7 THE COURT: -- long gone, Ms. Allen.  
8 MS. ALLEN: I know, he shamed me. I don't know if  
9 the Court wants a copy. I did file provide a copy --  
10 THE COURT: Sure. As long as Mr. Page got one.  
11 MS. ALLEN: I was shamed on my age, that's not very  
12 nice especially when you're dealing with a female.  
13 THE COURT: My calendar says evidentiary hearing on  
14 PERS payments, survivor beneficiary, and child support. Any  
15 procedural matters before we begin, any rules to be invoked,  
16 do we want to do opening statements or get right down to  
17 testimony and just save it all for closing?  
18 MS. ALLEN: I have nothing, Your Honor, and I would  
19 be happy just to get straight to testimony.  
20 MR. PAGE: I am happy to jump right into it.  
21 THE COURT: Who's the moving party?  
22 MS. ALLEN: Ah --  
23 MR. PAGE: My client is.  
24 THE COURT: Because you would go first.



1 MS. ALLEN: I -- well, I think it was both. I think  
2 my client had filed an original motion for modification of  
3 child support --  
4 THE COURT: What do you want to do, toss a coin --  
5 MS. ALLEN: No, he can --  
6 THE COURT: -- who wants to go first?  
7 MS. ALLEN: -- go first.  
8 MR. PAGE: This way we can get Mr. Willick on the  
9 stand --  
10 MS. ALLEN: That's fine.  
11 MR. PAGE: -- and get him off so he can go back to  
12 his office.  
13 MS. ALLEN: I have no problem with that.  
14 THE COURT: He's a neutral court-appointed?  
15 MR. PAGE: Um --  
16 THE COURT: He is hired by Mom?  
17 MR. PAGE: Ultimately hired by Mom.  
18 THE COURT: It's your witness.  
19 MR. PAGE: Yes.  
20 THE COURT: Let's begin -- who else is sitting in  
21 the courtroom?  
22 MS. ALLEN: These are just some --  
23 THE COURT: Family members or friends?  
24 MS. ALLEN: These are family members of my client,

1 they're not testifying.

2 THE COURT: No objection?

3 MR. PAGE: As long as they're not testifying, no  
4 objection.

5 THE COURT: They're not testifying. Okay.  
6 Exclusionary rule invoked. All right. Mr. Willick? Just to  
7 save time, are we stipulating that he's an expert on this PERS  
8 law, survivor beneficiary law, child support law?

9 MS. ALLEN: Well, Your -- on the -- oh, on the PERS?  
10 The --

11 THE COURT: Yeah.

12 MS. ALLEN: -- pensions? I haven't seen a copy --

13 THE COURT: In his capacity --

14 MS. ALLEN: -- of his CV, but I would --

15 THE COURT: You want to voir dire?

16 MS. ALLEN: -- trust -- no, Your Honor, that's fine.

17 THE COURT: Okay. He's stipulated to as an expert.  
18 Let's swear him 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 MR. WILLETT: I do.

23 THE CLERK: Please be seated.

24 MARSHAL WILICK

1 called as a witness on behalf of Defendant, having been first  
2 duly sworn, did testify upon his oath as follows on:

3 DIRECT EXAMINATION

4 THE COURT: Okay. So, my computer screen is here,  
5 pardon if I'm looking away, but I'm typing trial notes as  
6 you're probably used to that.

7 THE WITNESS: Oh, yes.

8 THE COURT: Your witness, Mr. Page.

9 MR. PAGE: Thank you.

10 THE COURT: Okay.

11 BY MR. PAGE:

12 Q Could you state your name for the record, please?

13 A Marshal S. Willick, W-i-l-l-i-c-k.

14 THE COURT: Marshal with one L.

15 THE WITNESS: Marshal with one L.

16 THE COURT: Defendant's case in chief. Do you have  
17 notes with you? Do you have notes with you?

18 THE WITNESS: I do.

19 THE COURT: Have the attorneys been provided or  
20 they're just your notes?

21 THE WITNESS: No, what I've got is a copy of the  
22 pleading file, so I would know what the orders in question  
23 said and a couple of scratch notes which anybody that wants  
24 can have as a copy to me just so I could keep track of some of

1 the names because I forget.

2 MS. ALLEN: The only thing I would ask is that he --  
3 pro -- sorry, I would ask that proper evidentiary rules be  
4 followed insofar as if he is asked a question and he can't  
5 remember it that they refresh his recollection with whatever  
6 he's referring to, and he just not be allowed to refer to his  
7 notes. That way I know he's going to I guess is what I'm  
8 saying.

9 THE WITNESS: Sure. I won't refer to anything  
10 unless --

11 THE COURT: I think he --

12 THE WITNESS: -- somebody asks me.

13 THE COURT: -- follows what you're saying. And I  
14 do, too.

15 MS. ALLEN: Okay.

16 THE COURT: Duly noted. Mr. Page, you're -- you  
17 ready to begin?

18 MR. PAGE: I am ready to begin.

19 THE COURT: Okay. You may commence.

20 BY MR. PAGE:

21 Q One of the issues that we're today on, Mr. Willick,  
22 deals with my client's portion of the retired pay that is in  
23 Mr. Kilgore's name and her first eligibility to receive that.  
24 Can you explain to the Court what the law is in that regard?

1           A     Sure. Started in 1989 with the Gemma opinion the  
2 Uni -- the Nevada Supreme Court issued a series of decisions.  
3 Gemma, Fondi, Sertic, and Wolff which collectively stand for  
4 the proposition that the normal date for payment of a  
5 retirement benefit to a spouse is upon eligibility of an  
6 employee's retirement regardless of whether or not the  
7 employee chooses to retire.

8                     That rule was slightly modified in Henson about two  
9 years ago, three years ago, I forget where the Court said,  
10 well, we're going to look at the California rule and decide  
11 that in order to actually get a flow of payments that either  
12 has to be provided for in the underlying court order, or you  
13 have to file a motion to document that you're requesting  
14 payment at that time. As soon as there's a trigger in some  
15 court filing, then the payment stream is to begin to the out  
16 spouse in the amount that the spouse would have received had  
17 the employee retired.

18           Q     In front of you is a exhibit book. Could you turn  
19 to Exhibit D, please?

20                     THE COURT: D as in?

21                     MR. PAGE: D as in dog.

22                     THE COURT: Thank you.

23                     THE WITNESS: I'm there.

24 BY MR. PAGE:

1 Q This is an estimate calculation for service  
2 retirement for Richard Kilgore.

3 A Okay.

4 Q About a third of the way down from the top it gives  
5 a retirement date for Mr. Kilgore of 20 -- August 1, 2011.

6 A Yes.

7 Q If the decree of divorce was filed in October of --  
8 I'm sorry, in March of 2013, would Mr. Kilgore then be  
9 obligated under your understanding of the law to begin paying  
10 Ms. Kilgore her portion of the retirement benefits that would  
11 otherwise be due to her if you retired at normal -- normal  
12 retirement age?

13 A If provided by the court order or upon request of  
14 the out spouse, yes.

15 Q So, just to clarify, as soon as the out spouse makes  
16 the request, Mr. Kilgore is obligated to commence paying her?

17 A I'm sorry, I didn't quite catch that.

18 Q As soon as the out spouse cor -- requests, the  
19 working spouse, the PERS spouse, would begin -- would be  
20 obligated to begin paying the out spouse?

21 A Yes.

22 Q The next thing I'd like to ask you about is the  
23 survivor beneficiary designation. Have you reviewed the  
24 decree of divorce in this case?

1 A I have.

2 Q Is there any designation for a survivor beneficiary  
3 in that decree?

4 A No.

5 Q In your opinion, does the lack of a designation of a  
6 survivor beneficiary mean that it's an omitted asset?

7 A Yes.

8 Q When I say it's an omitted asset, is a survivor  
9 beneficiary designation a valuable component of the retirement  
10 income stream?

11 A Yes, there's no -- as -- as set out in my various  
12 CLE articles and in my submissions to the Supreme Court in a  
13 series of cases, there is no other reasonable interpretation  
14 of the meaning of a survivorship interest other than a  
15 property interest. It has to classify as something, and it  
16 classifies as property.

17 Q Okay. What would the consequence to be to someone  
18 like Ms. Kilgore if Mr. Kilgore retired and then he passed  
19 away without her being designated the survivor beneficiary?

20 A If -- if he -- well, if he retired and then died  
21 without her being named as a survivor beneficiary, all  
22 benefits to the spouse would stop.

23 Q Now, if Mr. Kilgore died before he retired, would it  
24 be necessary for Ms. Kilgore to have the right to seek an



1 insurance policy for the value of the death benefit should  
2 Mr. Kilgore predecease her?

3 A Well, actually the life benefit is what she would be  
4 securing as well as the potential death benefit. PERS is one  
5 of the systems under which there is no -- and this is a term  
6 of art -- pre-retirement survivor annuity. Meaning until he  
7 actually retires and the flow of benefits to the out spouse  
8 start, the survivorship benefits even if they've been ordered  
9 don't attach. So, if he manages and -- and I mean no  
10 disrespect, sir, I have to talk about that, sorry. But if he  
11 dies --

12 MR. KILGORE: He does it all the time.

13 THE WITNESS: If he dies before he retires, the --  
14 the benefits never vest and the out spouse or for that matter,  
15 the employee spouse, because you can't retire until you  
16 retire. So, if you died before you retire, there is no  
17 retirement. Until there's a retirement, there's survivorship.  
18 So, the survivorship never comes into existence.

19 The only way of securing what would otherwise be a  
20 lifetime stream of payments to the out in the out spouse is  
21 through a policy of private life insurance. It's the only way  
22 of securing that interest. Interestingly, it's an artifact of  
23 the PERS system, the reverse is not true. PERS is one of  
24 those systems where he has an automatic cost-free survivorship

1 interest in her life. If she should die, the entire amount  
2 that was ordered to go to her, reverts to him automatically.  
3 The Court can't affect it, the Court can't change it -- I mean  
4 no disrespect to the Court, it's just you -- you can't change  
5 that. It's an artifact of the system, and it effectively  
6 gives him a survivorship interest in her life but not the  
7 reverse.

8 BY MR. PAGE:

9 Q The next thing I'd like to talk about is omitted  
10 vacation and sick pay for Mr. Kilgore. Could you turn to  
11 Exhibit C, please?

12 A I'm there.

13 THE COURT: By the way, did you object to Exhibit D?  
14 You didn't move its admission, Mr. Page.

15 MS. ALLEN: Oh, he did? I didn't hear him --

16 THE COURT: No, he --

17 MS. ALLEN: -- I apologize.

18 THE COURT: -- did not move for its admission. Are  
19 we moving for its admission?

20 MR. PAGE: I'll move for its admission upon your --

21 THE COURT: An objection --

22 MR. PAGE: -- prompting.

23 THE COURT: -- to D?

24 MS. ALLEN: No, Your Honor.

1 THE COURT: D will be admitted. Thank you.

2 (Defendant's Exhibit D admitted)

3 THE COURT: Now, we're onto C.

4 BY MR. PAGE:

5 Q In Exhibit C, there is something circled there  
6 called terminal sick leave and terminal vacation leave and  
7 amounts to those. Do you see that?

8 A I do.

9 Q Could you indicate what the state of law is  
10 regarding omitted vacation and sick pay?

11 A Well, first as to the status of vacation and sick  
12 pay, the issue has not been squarely addressed in those terms  
13 by the Nevada Supreme Court. So, there is no controlling case  
14 that I can point you to a cite to -- that'll tell you exactly  
15 the answer.

16 Q Thank you.

17 A Because vacation and sick pay classify as assets  
18 accrued during marriage, the presumption is that they will  
19 analyze like all other property interests that accrue during  
20 marriage, which means if they are omitted, the partition  
21 statute should apply to it like it applies to anything else.

22 Q Have you conducted research into community property  
23 states -- other community property states other than Nevada to  
24 see how they treat the issue of vacation and sick pay?

1           A     I have. I've actually comprehensively reviewed the  
2 entire United States. I keep the footnotes updated and they  
3 are reflected for anybody that wants to review them in at  
4 least one and I think two of my currently posted CLE articles.  
5 I know the entire laundry list of citations is posted in  
6 Divorcing the Military: How to Attack and How to Defend. I  
7 believe that footnote is replicated in Retirement Benefits in  
8 Nevada Divorces, What Every Nevada Divorce Lawyer Needs to  
9 Know.

10                   The current state of the law nationally is that  
11 there is a split of opinion, there's 50 states. The bulk of  
12 the -- I think all of the community prop -- I'd have to look  
13 at my notes to be sure, but I think certainly the bulk and  
14 possibly all of the community property states, I know  
15 including Washington and California have come down on the side  
16 of saying that they are property like all other property and  
17 if omitted from distribution, constitute property to be  
18 partitioned upon request.

19           Q     You've obviously reviewed the decree of divorce in  
20 this case?

21           A     Yes.

22           Q     You did not see any reference to the vacation or  
23 sick pay in the decree?

24           A     No.

1 Q Also in the decree of divorce, there was no  
2 reference to any deferred compensation account?

3 A No. Un -- unless the -- the only reference to  
4 retirement benefits of any kind was a -- if I can refer to a  
5 copy of the decree? Because I can't quote it from memory.

6 MS. ALLEN: Of course.

7 THE WITNESS: The only reference was on page three  
8 starting at line 25. And on line 26 is the recitation, there  
9 are three retirement accounts. But the accounts aren't named.  
10 So, since I can't tell you for sure what was in the drafter's  
11 mind, I can't tell you for sure that he wasn't referring to a  
12 deferred comp account, there's no way for me to know from the  
13 words used what the author -- I believe that was Attorney Lou  
14 Schneider was thinking when he wrote that.

15 MR. PAGE: All right. With that, I'll pass the  
16 witness.

17 THE COURT: Cross examination, Ms. Allen?

18 MS. ALLEN: Thank you. Does the Court mind if I  
19 stand up and walk around?

20 THE COURT: You may move about the well.

21 MS. ALLEN: Thank you.

22 CROSS EXAMINATION

23 BY MS. ALLEN:

24 Q Mr. Willick, you were retained by the Defendant; is

1 that correct?

2 A True.

3 Q And how much were you paid?

4 A To date, nothing.

5 Q Okay. So, you're doing this out of the kindness of  
6 your heart?

7 A No, no. I actually presumed I would total up my  
8 time at the end of this and send Mr. Page a bill, and I would  
9 really appreciate it if somebody paid it.

10 Q Okay. You make a considerable amount of money as an  
11 expert testimony, you testify frequently?

12 A I wouldn't call it frequently, but more than  
13 occasionally. It's -- let's call it once a month, once very  
14 couple of months.

15 Q Okay. All right. And you're generally paid for  
16 your services, it's not as if you -- again, you do this out of  
17 the kindness of your heart?

18 A It depends on the case.

19 Q Okay.

20 A My -- my -- my office policy is that for anything  
21 for which a -- an attorney is doing pro bono work, our work in  
22 support of that attorney is pro bono. We do for instance all  
23 the retirement orders for all of the Legal Aid attorneys in  
24 the state of Nevada. So, if they have a pro bono case, they

1 simply send us a request and they get their QDRO's or military  
2 orders or whatever they need for free. So, ditto on the  
3 expert witness work where I'm called in on a pro bono case, I  
4 do testify for free or I supply opinion letters for free,  
5 whatever they need.

6 Q Okay. All right. And those are for people who are  
7 -- don't have a lot of money --

8 A It should --

9 Q -- is that correct?

10 A Yes, that --

11 Q Okay.

12 A -- normally would be why they're at Legal Aid,  
13 right.

14 Q Okay. You -- and obviously you're well-versed in --  
15 in the PERS issue when it relates to domestic relations; is  
16 that correct?

17 A I believe so, yes.

18 Q You -- you've been dealing with this for a long  
19 time?

20 A Many years.

21 Q You testified I think at various congressional  
22 things about retirements and benefits and things --

23 A That of course --

24 Q -- like that?



1           A     -- wasn't PERS, that was military.  
2           Q     Okay. Well --  
3           A     Be -- because the fed -- the federal government  
4 doesn't care about Nevada PERS, it's exempt from ERISA --  
5           Q     Right.  
6           A     -- it's not part of the federal scheme.  
7           Q     But you -- again, you -- you testified and did all  
8 these things when it comes to -- whether it's military pension  
9 or PERS and you -- how many divorces have you done where  
10 you've had to deal with this?  
11          A     Thousands.  
12          Q     And post judgment motions -- or post divorce motions  
13 and things such as that; is that right?  
14          A     At least hundreds, maybe thousands.  
15          Q     Okay. So, let's talk about the decree that was  
16 entered in this case. And feel free to refer to that, yeah,  
17 if you -- if you could.  
18          A     Okay.  
19          Q     You -- you've reviewed it for the purposes of coming  
20 in here today; is that correct?  
21          A     I have.  
22          Q     You did not do that decree, did you?  
23          A     Oh, no.  
24          Q     Okay. But you mentioned things that were cited to

1 in there such as retirement accounts; is that correct?

2 A Yes.

3 Q Are you aware that my client works for the City of  
4 Las Vegas?

5 A I don't know where he works right now, I saw  
6 something in the paperwork indicating he used to have a -- a  
7 police-fire job, but he's no longer in that position. So, I  
8 don't know what he's doing today.

9 Q Okay. Well, according to his retirement, right,  
10 that we're talking about, was that a -- a PERS or a City  
11 retirement, something to do with government?

12 A Yeah, it would be -- PERS is administered by the  
13 State not the City --

14 Q Right.

15 A -- but so it's --

16 Q Government.

17 A -- technically a State retirement. I'm sorry, I  
18 don't mean to quibble --

19 Q No, that's okay.

20 A But I wouldn't call it a City retirement, I'd call  
21 it at State retirement.

22 Q Okay. And do you know about the Defendant and  
23 whether or not she has a retirement through the State or  
24 through the -- the government?

1           A     Yes, I believe my office was retained separately at  
2 different years to draft a PERS QDRO for each party relating  
3 to the other party's PERS benefits.

4           Q     Okay. So, you actually drafted QDRO's in this case?

5           A     Me personally, no. I had staff that -- that does  
6 that, they are all attorney-reviewed.

7           Q     Okay.

8           A     But, yes, both -- both existing QDRO's that I know  
9 of were written by the retirement benefit drafting arm of my  
10 office which is called QDRO Masters.

11          Q     Okay. And so do the same rules then apply to her?

12          A     Not exactly. If I rem -- if I remember -- I'm doing  
13 this from memory and I -- I've got notes but I'm not looking  
14 at them per your direction. My recollection is that Mr. --  
15 and if you don't mind, I'll use names Richard.

16               THE COURT: Dad or Mom.

17               THE WITNESS: Okay. Was police-fire.

18 BY MS. ALLEN:

19          Q     Okay.

20          A     And that Eleni is non-police-fire.

21          Q     Okay.

22          A     There are similar but different rules. They have  
23 different ages for retirement, they have different  
24 survivorship options.

1 Q Okay.

2 A They have -- I don't believe there is a deferred  
3 comp account for someone in non-police-fire. So, I mean  
4 there's some distinctions between the retirement systems but  
5 there's -- all within PERS.

6 Q Okay. You said there was deferred comp for Dad but  
7 potentially not for Mom, because she's not police-fire; is  
8 that right?

9 A I don't believe that the teachers have negotiated at  
10 -- through their bargaining unit a deferred comp account.

11 Q A deferred comp account but do they have something  
12 similar?

13 A Not to the best of my recollection. I don't know  
14 that she has one.

15 Q Okay. You're not sure of that, but there  
16 potentially could be something out there --

17 A Yeah, if not --

18 Q -- like that?

19 A -- through the state, then there would be the  
20 eligibility for a 401(k) or an IRA, some -- some similar  
21 vehicle --

22 Q Okay.

23 A -- for a defined contribution account. But I don't  
24 believe there's a PERS-supplied defined contribution account

1 for her job category.

2 Q Okay.

3 MR. KILGORE: I believe it was an IMA that's  
4 sponsored through them.

5 MS. ALLEN: Okay.

6 BY MS. ALLEN:

7 Q Would that -- and so you said that you think that  
8 there was some sort of -- there could be some sort of 401(k)  
9 or something that -- that's --

10 A She might --

11 Q -- sort of similar?

12 A -- have one.

13 Q Okay. Well, that -- it would be similar to deferred  
14 comp?

15 A It -- sure, anybody can have a 401(k) from prior  
16 employment or an IRA, lots of people do and a lot of people  
17 have multiple retirement accounts.

18 Q Right. Okay. And you said in the decree which  
19 we're referring to that there are retirement accounts listed;  
20 is that correct?

21 A Well, not listed. That was my problem. It merely  
22 recites -- this is page three starting at line 25 going  
23 through page four line eight. And actually it says three and  
24 then it talks about four.

1 Q Okay.

2 A Ah --

3 Q Could you read that into the record for me -- the --

4 A The paragraph?

5 Q -- the part that deals with the retirement accounts?

6 A Sure.

7 Q Can you read that into the record for me?

8 A It is further ordered, adjudged, and decreed that  
9 the parties' retirement accounts will be divided via Gemma v.  
10 Fondi. There are three retirement accounts that need to be  
11 addressed, Marvin Schneider shall prepare and complete the  
12 QDRO's with each party paying one-half of the expenses. All  
13 three QDRO's must be complete within 90 days of the filing of  
14 the decree of divorce. Mr. Schneider shall inquire about  
15 Plaintiff's military retirement with regard to its value prior  
16 to the preparation of the QDRO.

17 The parties agree that a military QDRO or similar  
18 instrument shall be prepared for purposes of dividing the  
19 community interest in Plaintiff's retirement. If it is  
20 determined that there is a value of zero in the Plaintiff's  
21 military retirement, then Defendant shall pay for the entire  
22 expense in the QDRO. However, in the event there is a  
23 community interest in Plaintiff's military retirement  
24 regardless of the amount, then Plaintiff shall pay for the

1 entire expense of the QDRO. So, it's unclear to me looking at  
2 that language whether they're talking about three or four.

3 It --

4 Q Okay. All right. But they -- they do at least --  
5 they do at least address three, I mean we're talking about at  
6 least three, possibly four retirement accounts, correct?

7 A Right. But you asked if they were -- I think you  
8 said listed and they're -- they're not --

9 Q Right.

10 A -- listed.

11 Q What -- I just mean -- when I say specifically I'm  
12 not talking about a name, it just refers to. So, they were at  
13 least when they -- when they -- this decree was drafted, they  
14 did refer specifically not by name but to retirement accounts;  
15 is that correct?

16 A Yes.

17 Q And we know there's at least two, correct? One for  
18 Dad and one for Mom?

19 A You're talking about the defined benefit PERS plans?

20 Q Correct.

21 A Yes.

22 Q We know at least two --

23 A Right.

24 Q -- exist? Okay. So, going back to the decree, did



1 you review the rest of it? I mean --

2 A The rest of what?

3 Q The decree.

4 A Yes.

5 Q Not just the PERS part or the retirement --

6 A I did.

7 Q Okay.

8 A I read the whole thing.

9 Q Do they address like child support and --

10 A I believe so and child custody --

11 Q -- custody?

12 A -- support, personal property --

13 Q Visitation?

14 A I think so. There was a waiver of alimony. I mean

15 there's -- there -- it -- it dealt with the divorce.

16 Q It dealt with everything -- I mean it -- it --

17 everything that you would normally see in a marriage -- or a

18 divorce with children and custody issues and it -- it dealt

19 with all that stuff; is that correct?

20 A To my recollection. I wasn't looking for anything

21 except retirement.

22 Q Okay. Well, but you did review it?

23 A I did.

24 Q Okay. And in fact you did the QDRO's in this case;

1 is that correct?

2 A Again, not me --

3 Q Not you personally.

4 A -- but my office, yes.

5 Q Right. Of course. Okay. When you're looking to --  
6 I'll give you a minute, go ahead.

7 A No, no.

8 Q When you -- you testified regarding PERS and -- and  
9 the other party being able to collect on -- on the retirement  
10 at the eligibility -- Dad's eligibility. Like Mom can collect  
11 upon Dad's eligibility; is that correct?

12 A The other spouse and it --

13 Q Right.

14 A -- it goes in both directions.

15 Q Correct.

16 A -- should be able to make a claim upon the employee  
17 spouse's eligibility for regular retirement without early  
18 retirement penalty.

19 Q Right. Okay. And per Henson, someone has to file a  
20 motion for that?

21 A That's what Henson says but there's an exception,  
22 because if the decree al -- for instance, our form decrees if  
23 I -- I did not write this one. But if we had, there would be  
24 a provision in there already making that election.

1 Q Okay. But it's not in there?

2 A It's not in here.

3 Q Right. So, in this case, you would have to file a  
4 motion?

5 A Right.

6 Q Correct. You'd have to properly notice it and the  
7 other party would have an opportunity to respond and --

8 A Right.

9 Q -- there's all those issues associated with it. So,  
10 that's the exception when it comes to Henson. Under Henson is  
11 if it's already in the decree?

12 A Yes.

13 Q But it's not here?

14 A Right.

15 Q So, it requires a motion?

16 A Right.

17 Q Are you aware when the motion was filed in this  
18 case?

19 A I don't have it memorized, I think it's March of  
20 2015, but I couldn't give you the date off the top of my head.

21 Q Okay. So, in March of 2015 someone filed the motion  
22 to have this -- this benefit paid out?

23 A I think so. I could look at the index, but I don't  
24 remember the date.

1 Q Okay. And your testimony today is that it goes back  
2 to 2011 upon his eligibility?

3 A No. No, no, that's not what I said.

4 Q Okay.

5 A If -- if I understand Henson correctly, and I think  
6 I do --

7 Q Okay.

8 A -- the eligibility for a stream of retire -- of  
9 retirement payments doesn't begin until the -- until it's  
10 provided to in a court filing. Either by order or by motion.

11 Q Okay. So, then the benefit would begin to pay out  
12 then upon filing the motion?

13 A Yes.

14 Q We wouldn't go retroactively?

15 A No -- not under current law.

16 Q Under Henson it does not --

17 A And the reason I say that --

18 Q -- allow for that to --

19 A -- Henson -- I'm sorry, I did not mean to interrupt  
20 you.

21 Q Yeah, that's okay. Under Henson it does not  
22 anywhere in the decision allow for retroactivity?

23 A It doesn't.

24 Q In fact the -- the exact wording is that they -- the

1 spouse must first file a motion in District Court requesting  
2 immediate receipt of those benefits?

3 A Right.

4 Q Not -- not in any way alluding to retroactivity?

5 A That's true.

6 Q Okay. So, in this case she would be -- the mom  
7 would be entitled to some benefit of his PERS retirement  
8 assuming he was eligible and assuming all the other things  
9 fall into place upon the date of filing of the motion?

10 A Right.

11 Q Not going back five years?

12 A Whatever year it was, right, yeah.

13 Q Okay. All right. Just -- I just wanted to be clear  
14 about that. With regard to PERS, and you'll have to excuse  
15 me, I'm self-employed much as you are so I don't know much  
16 about PERS -- and no offense I hope to never know that much  
17 about PERS as much as you do anyhow. Is -- is -- when you  
18 start receiving that money, are you taxed on it?

19 A Oh, yes.

20 Q Okay. Is it considered income?

21 A Yes.

22 Q Okay. So, whatever Mr. Kilgore receives under his  
23 PERS -- part of PERS QDRO split, he would be taxed on that?

24 A Yes.

1 Q What about Mom? When Mom starts to receive the PERS  
2 benefit does that -- is that considered income?

3 A , Yeah, I -- I should cau -- I should start all of my  
4 responses with I do not give tax advice. I'll answer your  
5 questions because I'm under oath and that's my -- my job  
6 here --

7 Q Okay.

8 A -- today. But I am not a tax advisor.

9 Q Right.

10 A And the tax laws are changing all the time. So, I  
11 do not take --

12 Q I hope to never know about those either.

13 A I -- there's a reason I don't do tax law.

14 Q Right.

15 A Okay. And this is the reason. But to -- to the  
16 best of my understanding, yes, whatever each party gets out of  
17 the retirement or survivorship interest.

18 Q Okay.

19 A And if they actually receive it under current law,  
20 my understanding is, it's treated as normal income.

21 Q Okay. All right. So, based upon that answer then,  
22 whatever money she receives from his portion of the  
23 retirement, he's not paying her taxes on that, she would pay  
24 her taxes on that?

1           A     That -- that is how it go -- I can't tell you how he  
2 needs to fill out the forms or --

3           Q     Right.

4           A     -- anything else --

5           Q     No.

6           A     -- but the net effect should be he pays taxes on  
7 what he gets, she pays taxes on what she gets.

8           Q     Okay. And so that would be included then when she  
9 files her taxes presumably she would include that in her --

10          A     You don't.

11          Q     -- in her W2 or --

12          A     Right. Well, not W2.

13          Q     Not the W2 but whatever you file 1040.

14          A     1040.

15          Q     Thank you. Okay. So, that would be included in  
16 that; is that correct?

17          A     Should be.

18          Q     And that's different than child support, right?  
19 Child support is not considered income?

20          A     Under current law, child support is not deductible  
21 to the payor or includable by the recipient.

22          Q     Okay. Right. So, again it's not considered income.

23          A     Right.

24          Q     Okay. Okay. So, I'd like to move to this -- the



1 death benefit that you discussed previously. You indicated  
2 that unless specifically set forth in the decree a motion or  
3 some -- there has to be some catalyst to this death benefit  
4 survivorship; is that correct? Under PERS?

5 A I'm not exactly sure I understood that question.  
6 I'm sorry, would you mind rephrasing?

7 Q Sorry, I'm an attorney, we don't always ask the best  
8 questions. Okay. So, let's start with the death benefit  
9 survivorship that you were -- that you were talking about.

10 A And -- and I'm sorry, I really don't mean to quibble  
11 but you just said two things --

12 Q Okay.

13 A -- and you said them in the alternative but they're  
14 -- they're two things.

15 Q Okay.

16 A There is a statutory --

17 Q So --

18 A If I may?

19 Q Yeah, of course.

20 A There's a statutory death benefit under PERS.

21 Q Right.

22 A It's -- it's statutory, it's not a matter of  
23 election or court order. And it follows according to a  
24 certain checklist of potential beneficiaries.

1 Q Okay. And you said that's statutory?

2 A Yes.

3 Q Okay. Can you exp -- before we move forward, can  
4 you explain that then? How does that work?

5 A If a employee dies prior to retirement --

6 Q Okay.

7 A -- there is a statutory benefit payable to certain  
8 named survivors. If you are -- if you currently have a spouse  
9 and I believe that spouse is the number one choice. I don't  
10 have that statute memorized because I never -- I can't affect  
11 it. So, I don't spend a lot of time --

12 Q Okay.

13 A -- dealing with it. Unfortunately, the rocket  
14 scientists who wrote the PERS statute decided to call it a  
15 survivorship interest which is actually what they call the  
16 survivorship interest --

17 Q Okay.

18 A -- which is why so many people get confused about  
19 which one is what, they have the same name, but they're two  
20 different things.

21 Q Okay.

22 A Did -- did that make --

23 Q Yes.

24 A Okay. So, there's the statutory death benefit which

1 is what I call it to make it distinct --

2 Q Which is under NRS?

3 A NRS 286.

4 Q Okay.

5 A Chapter 286.

6 Q And then --

7 THE COURT: Is that a one-time?

8 THE WITNESS: What?

9 THE COURT: Is that a one-time payment, the  
10 benefits?

11 THE WITNESS: I think so. I -- I'm sorry, I -- I  
12 don't re -- as I said, I never -- I never have to manipulate  
13 that one, because it's not court-orderable. So, I don't spend  
14 a lot --

15 THE COURT: It is --

16 THE WITNESS: -- of time --

17 THE COURT: -- like it is what it is?

18 THE WITNESS: It is what it is. And it -- it's like  
19 social security, you have to know about it.

20 THE COURT: Yeah.

21 THE WITNESS: But you can't kind of -- with due  
22 respect, Your Honor, you can't order somebody to get somebody  
23 else's social security benefits, we're not allowed --

24 THE COURT: Of course.

1 THE WITNESS: -- to do that. So, you need to --

2 THE COURT: It's federal law.

3 THE WITNESS: -- know about it, but you can't affect  
4 it.

5 THE COURT: Right.

6 THE WITNESS: So, there's that benefit. Then  
7 there's a survivorship benefit under the retirement portion of  
8 Chapter 286 dealing with retirement division.

9 BY MS. ALLEN:

10 Q Okay.

11 A And I'm not sure I answered your question because I  
12 don't remember exactly what it was.

13 Q That's okay -- that's okay. So, let me start -- let  
14 me ask you this: Mr. Kilgore let's say he retires and they're  
15 both get -- receiving whatever portion of the -- the PERS that  
16 they're entitled to per the divorce decree, he passes away.  
17 His benefits -- whatever is left of what he is receiving go --  
18 should go to his estate; is that correct?

19 A No. There is no heritable portion of the PERS  
20 benefit. The two possibilities are death and divorce.

21 Q Right.

22 A That can happen in any order. If as here the  
23 parties divorce and then he retires and then he dies --

24 Q Right.

1           A     -- his portion of the benefit ends. Her portion of  
2 the benefit ends. Because the only thing that PERS allows is  
3 a divided benefit string. The only way that any money goes to  
4 anybody after death of the employee is if there has been an  
5 election of a survivorship benefit. It creates an  
6 independently payable income stream also from PERS to the  
7 recipient spouse.

8           Q     Okay. Or whoever they elect?

9           A     I don't know that it's a wide open election, I think  
10 there are classes of eligible beneficiaries. You can't simply  
11 name --

12          Q     Just Joe Shmoe.

13          A     -- your -- your dog or --

14          Q     But your children --

15          A     Yes.

16          Q     -- potentially could be on that; is that right?

17          A     I believe -- I -- I -- you know, I -- I think we  
18 looked this up and I don't ever -- we haven't done one of  
19 these in years. I believe children are eligible beneficiaries  
20 but I'm not sure.

21          Q     Okay. And again this is one of those situations --  
22 this is one of those situations that if it's not set out in  
23 the divorce decree, it wasn't contemplated at the time of  
24 divorce for whatever reason; is that correct?

1           A     Well, you just -- again, you just asked two  
2 questions and equa --

3           Q     Okay. I'll --

4           A     -- and equated them.

5           Q     So, if it's --

6           THE COURT: Nothing like asking a lawyer -- a lawyer  
7 asking a lawyer a question.

8           THE WITNESS: I'm sorry.

9           MS. ALLEN: I'll tell you what, the worst is cops so  
10 -- dealing with --

11          THE WITNESS: I won't take that real personally.

12          MS. ALLEN: No, don't.

13          THE WITNESS: Okay.

14          MS. ALLEN: Cops is a lot worse. So -- no offense.

15          THE WITNESS: That's fine.

16          THE COURT: We were on compound question?

17          MS. ALLEN: Something like that.

18 BY MS. ALLEN:

19          Q     Okay. So, let me -- let me go back. So, let me  
20 start with this. It's not in this decree; is that correct?

21          A     What?

22          Q     Survivor benefits.

23          A     There are no explicit survivorship benefit  
24 provisions in this decree.

1 Q Okay. And in order to go per -- per Henson I  
2 believe, in order to go back or maybe even the statute, I  
3 think it's -- what is it --

4 A It was 83.62.

5 Q Well, I was going to 125.150. I mean --

6 A Oh.

7 Q -- something like that, there needs to be fraud or  
8 mistake; is that correct? There needs to be showing of fraud  
9 or mistake as to why it was left out of the decree?

10 A No. There -- there is a new statutory provision in  
11 place since --

12 THE COURT: It was Doan.

13 THE WITNESS: Who's Doan. And I -- and I'm sorry,  
14 the reason -- and I -- I hope you don't mind, I am not  
15 laughing at you.

16 MS. ALLEN: No, it's fine.

17 THE WITNESS: This is almost a private joke --

18 THE COURT: It was my case.

19 THE WITNESS: -- there's a private joke between me  
20 and -- and the judge, not that we've discussed this case --

21 THE COURT: No, no, we had a case --

22 THE WITNESS: -- but it's -- actually it's public I  
23 supposed.

24 THE COURT: Published, Doan v. Doan.

1 THE WITNESS: Doan v. Wilkerson.  
2 THE COURT: Mr. Page knows that case, too.  
3 THE WITNESS: Yes. Doan v. Wilkerson came out in  
4 2013 I think, could be 2014.  
5 THE COURT: Wilkerson was the estate person --  
6 THE WITNESS: Right.  
7 THE COURT: -- because Ms. Doan died in the middle  
8 of --  
9 THE WITNESS: Yes.  
10 THE COURT: -- the appeal.  
11 THE WITNESS: She died during the pendency of the  
12 appeal.  
13 THE COURT: Right.  
14 THE WITNESS: And basically it stood -- you know,  
15 short version is the new statute which was passed in 2015 --  
16 MS. ALLEN: Correct.  
17 THE WITNESS: -- is specifically designed to reverse  
18 the holding in Doan v. Wilkerson, Tomlinson, and Taylor. And  
19 it did so finally by saying that there is an explicit right to  
20 partition of omitted assets.  
21 BY MS. ALLEN:  
22 Q Right. Upon what finding?  
23 A Well, it says anything omitted by either or mistake.  
24 Q Wasn't that I just asked?



1 A And I'm sorry, I thought you said 125 --

2 Q Did I not ask that?

3 A I'm -- I -- well, I -- I guess --

4 THE COURT: No, you're both right, you're both  
5 right.

6 THE WITNESS: I'm not -- I'm not arguing with you,  
7 Counsel, but you said 125 --

8 MS. ALLEN: No, I understand.

9 THE WITNESS: -- 150 and I didn't want -- well, I  
10 guess it's now part of 125.150, because it's been added as a  
11 subsection --

12 MS. ALLEN: Right.

13 THE WITNESS: -- within that provision.

14 BY MS. ALLEN:

15 Q So, let me go back. Maybe I'm -- and maybe I was  
16 wrong, I have no idea.

17 A No, you're -- you're probably --

18 THE COURT: You're correct. We both agree --

19 THE WITNESS: -- reading from the current version.

20 THE COURT: -- with you on the law.

21 MS. ALLEN: Okay.

22 BY MS. ALLEN:

23 Q Okay. So, and it -- it talks about omitted be --  
24 due -- as a result of fraud or mistake; is that correct?

1 A Yes.

2 Q Okay. So, we're talking about two -- there are two  
3 reasons under the statute, correct, in which the Court can  
4 find that something maybe should have been adjudicated in the  
5 decree and it wasn't and then allows for reopening things; is  
6 that correct?

7 A Yes, there is an explanation to the language, but  
8 that's not what you asked.

9 Q Okay. Well, all right, so and you aren't here to  
10 testify as to whether or not there was fraud or mistake in  
11 this case; is that correct?

12 A I wasn't there at the original.

13 Q You wouldn't know?

14 A I -- I wouldn't -- well, I wouldn't know what was  
15 going through the minds of either the lawyers or the  
16 litigants. I do know what was intended by the legislation, I  
17 have a rather intimate knowledge of the legislative intent  
18 behind it.

19 Q Well, I'm not talking about legislative intent, I'm  
20 talking about the parties and the decree that was entered in  
21 this case. And you certainly weren't the attorney that did  
22 it?

23 A True.

24 Q You are not Dad or Mom I'm assuming?

1 A Right.

2 Q Okay. And so you cannot speak to fraud or mistake  
3 in this particular case?

4 A Not unless I'm asked a question which would allow me  
5 to answer, no.

6 Q Well, do you have any sort of intimate knowledge of  
7 the parties' intents either Dad or -- maybe Mom's but  
8 certainly not Dad's nor the attorney and do you have any  
9 intimate knowledge of any of these parties as to what would --  
10 what they were doing when they did this decree?

11 A No. But because of what I was telling you, that's  
12 not necessary.

13 THE COURT: Do you have the NRS, it's 83.62 --

14 THE WITNESS: It's now been codified --

15 THE COURT: -- 439?

16 THE WITNESS: -- 125.150 sub --

17 MS. ALLEN: (3).

18 THE WITNESS: -- I think (3). Ah.

19 MS. ALLEN: I have --

20 THE COURT: Thank you.

21 MS. ALLEN: -- it right here, Your Honor.

22 THE COURT: Okay. Thank you. I was just trying to  
23 track it down.

24 MS. ALLEN: If the Court wants to see it --

1 THE COURT: Got it.

2 MS. ALLEN: -- with my purple pen.

3 THE COURT: Everything's codified now.

4 BY MS. ALLEN:

5 Q So, this again, we go back to the idea, this was an  
6 omitted -- this was omitted, it was not part of the decree for  
7 whatever reason; is that correct?

8 A Right.

9 Q With that being said, Dad has a right to assign  
10 survivor benefits as he sees fit?

11 A Ah --

12 Q He's under no court order; is that right?

13 A In -- well, to the best of my knowledge there's no  
14 court order on point. I think that's the point of the current  
15 proceeding.

16 Q And you haven't been provided some other court order  
17 that shows he had to do one thing or another?

18 A No, I haven't.

19 Q Okay. And Mom would be the under same rules  
20 presumably on survivor benefits then --

21 A Yes --

22 Q -- is that correct?

23 A -- in the absence of a court order at the moment of  
24 retirement an employee can elect any of the available options

1 for the retirement plan.

2 MS. ALLEN: I apologize. Your Honor, if I can just  
3 have a moment.

4 THE COURT: No problem.

5 (COUNSEL AND CLIENT CONFER BRIEFLY)

6 BY MS. ALLEN:

7 Q Are you aware of the site called Transparent Nevada?

8 A Yes, we use it.

9 Q Okay. What -- can you just explain briefly what it  
10 is?

11 A I -- it's not my site. So, I'm not going to take  
12 any response --

13 Q No, but --

14 A Well, I'm not --

15 Q -- you use it?

16 A Yes.

17 Q Okay.

18 A To the best of my knowledge and I don't know who  
19 created it, it could be the State, it could be somebody else,  
20 it is a listing of retire -- of payment -- of salary available  
21 to state employees.

22 Q Okay.

23 A I think by name.

24 Q So, anybody who is paid by the State theoretically

1 is on that site and how much they make --

2 A That --

3 Q -- is that correct?

4 A That's my understanding.

5 Q And you said you use it?

6 A Well, that -- again, not personally, but my staff  
7 utilizes it and I've seen reports from them referencing it.

8 Q Do you rely on it when you come into court?

9 A Me, personally? I never have but I see no reason  
10 not to.

11 Q You've never let's -- had any experiences with that  
12 Transparent Nevada that were -- where there was some gross  
13 discrepancy that you ever figured out; is that correct?

14 A Not that I know of, but I've never done the  
15 evaluation to try to figure that out.

16 Q And did you -- did you -- based upon -- well, let me  
17 go back to PERS for just a minute. Your knowledge of the PERS  
18 system, I'm going to ask you some questions based upon  
19 retirement because you talked about his retire -- Dad's  
20 retirement date, correct?

21 A Well, I -- I'm not personally familiar with his  
22 retirement date, but --

23 Q Based upon the --

24 A But I -- yes, from --

1 Q Okay.

2 A -- the paperwork I've seen.

3 Q Did you review any of the PERS documents for Mom in  
4 this case?

5 A No, I don't think I reviewed any of the PERS for Dad  
6 either.

7 Q Okay. Just the ones you were provided?

8 A Just -- well, again, I haven't seen these exhibits  
9 before right now.

10 Q Okay. This is --

11 A The only thing that I have seen is the divorce file  
12 -- or pieces of the divorce file meaning the decree, a couple  
13 of pretrial memos, and a couple of orders that have been  
14 issued by this court over the last year and a half I think.

15 Q Okay. Do people in the PERS system if they retire  
16 early, are they penalized?

17 A The short answer is yes; there's a longer answer.

18 Q Okay.

19 A If you retire at a date before your eligibility for  
20 retirement without an early retirement penalty --

21 Q Okay.

22 A -- then, yes, there is a reduction in the monthly  
23 payments payable to you for the life of the benefits that you  
24 claim.

1 Q Okay. And what is meant by the term like fully  
2 vested?

3 A Different -- different animal entirely.

4 Q Okay.

5 A Vestedness and maturity are two different concepts.  
6 Vestedness has to do with that point in your employment after  
7 which you have benefits that cannot be taken away from you.  
8 Usually -- the typical vesting period is five years under  
9 modern law. And typically once you've been an employee for  
10 five years, it means that no matter what you do, you quit, you  
11 retire -- well, die is a different thing. But if you quit,  
12 you retire, no matter what happens that you leave employment,  
13 at some point you'll be eligible to get some benefit. And  
14 that can't be taken away from you by the State or anybody  
15 else.

16 Maturity is what you were just referring to which is  
17 eligibility for current payments. In other words, you've  
18 reached whatever magic point in life --

19 Q Right.

20 A -- you get to where if you say give me my money,  
21 they will give you your money.

22 Q Okay. Okay. No, no, I understand. You looked at  
23 this Nevada PERS sheet -- well, let me ask you this: Are  
24 there certain things that affect your -- your vesting date?



1 Are there -- are there -- could there be certain things that  
2 affect your vesting date?

3 A The things are only length of service that affect  
4 vesting date.

5 Q What if per -- per the City, let's say if you're  
6 terminated from your position for a year and a half and you  
7 then regain that emp -- that -- that position with no back-  
8 pay, would that affect your retirement?

9 A It wouldn't have anything to do with your  
10 vestedness. I think you may be referring to maturity.

11 Q Maturity, apol -- I apologize.

12 A And I'm sorry, I'm not -- I'm not trying to argue  
13 with you, Counsel, I'm trying to answer your question.

14 Q Again, I deal with cops.

15 A Okay. But if you're talking about maturity --

16 Q Correct.

17 A -- if you're eligible for retirement at some point  
18 without an early retirement penalty, you're eligible and you  
19 won't lose that eligibility by going back to work for a  
20 covered employer. But they will probably suspend your flow of  
21 retirement benefits during the time that you return to covered  
22 employment, because they've got -- I believe still in effect  
23 an anti-double-dip provision. So, you can't -- oddly enough  
24 and I mean no disrespect --

1 THE COURT: Uh-huh (affirmative).

2 THE WITNESS: -- some judges are exempt. Judges  
3 have the ability to retire as senior judges, get full  
4 retirement pay and still be on the state payroll --

5 THE COURT: And then come back as seniors.

6 THE WITNESS: -- as senior judges. That was not a  
7 dig, I'm trying to answer your question --

8 MS. ALLEN: I -- I --

9 THE COURT: No.

10 THE WITNESS: -- appropriately. But it doesn't work  
11 for most categories of PERS employees.

12 BY MS. ALLEN:

13 Q Okay.

14 A For instance teachers. And I've had this, guys. If  
15 you're a teacher and you've hit eligibility for retirement and  
16 you choose to retire and start claiming benefits and you go  
17 back to work as a teacher, your retirement benefits to my  
18 knowledge are suspended.

19 Q Okay. The retire -- would -- you leave and come  
20 back for it -- it -- there is a time frame where that --  
21 that's -- they suspend it, nothing --

22 THE COURT: Avoids the double-dip.

23 MS. ALLEN: -- goes into it, nothing happens; is  
24 that right?

1 THE WITNESS: I -- I'm sorry, I --

2 THE COURT: I'm sorry, it avoids the double-dip.

3 THE WITNESS: Right. You -- you can get one or you  
4 can get the other meaning current employment --

5 MS. ALLEN: Right.

6 THE WITNESS: -- income or retirement income. But  
7 you can't get both.

8 MS. ALLEN: Okay. All right.

9 (COUNSEL AND CLIENT CONFER BRIEFLY)

10 BY MS. ALLEN:

11 Q Okay. In reference to retirement in general I guess  
12 under the PERS system, can you explain what maxing out the  
13 retirement is?

14 A Sure. And it's a moving target.

15 Q Right.

16 A I -- at the risk of being terribly personal, my  
17 exwife was a member of PERS in the state prison system, and  
18 she started long enough ago that she had the -- I think it was  
19 90 percent eligibility rules. They've amended it at least  
20 once, I think twice, and they've chopped away the maximum  
21 amount that you can ever become eligible to retire -- I mean  
22 receive. I believe that amount is now 75 percent of your  
23 current income.

24 Q Okay.

1           A       And I think that's at 30 years, but I -- I'm doing  
2 that off of the top of my head. And I don't remember how the  
3 math works.

4           THE COURT: Back up again, 75 percent of your --

5           THE WITNESS: 75 percent of your maximum salary.

6 So, if you're making 100 grand a year, you would max out at  
7 75,000.

8           THE COURT: Right. That would be your retirement.  
9 If you --

10          THE WITNESS: Your maximum retirement.

11          THE COURT: -- put in 30 years?

12          THE WITNESS: And if you continue working after you  
13 hit that eligibility --

14          THE COURT: You're getting more than that, yeah.

15          THE WITNESS: You can still keep working and you can  
16 still accrue retirement credits, but they won't give you any  
17 more money for them when you ultimately retire.

18          THE COURT: The maximum would be 75 percent of  
19 your --

20          THE WITNESS: Right --

21          THE COURT: -- that would be your retirement.

22          THE WITNESS: -- so if I understood your question  
23 correctly, maxing out the retirement would be the place at  
24 which depending on when you started and which category --

1 MS. ALLEN: Right.

2 THE WITNESS: -- you're in when you hit your maximum  
3 eligibility as one of that class of PERS employees for  
4 retirement income.

5 BY MS. ALLEN:

6 Q Okay. And -- and -- I guess in theory most people  
7 want to max out their retirement, correct? Because they want  
8 the most money out of it?

9 MR. PAGE: Objection --

10 THE WITNESS: Well, they may --

11 MR. PAGE: -- speculation.

12 THE COURT: You can ask a expert hypotheticals.

13 MR. PAGE: Yeah, okay.

14 THE COURT: Do you understand the question?

15 THE WITNESS: I did.

16 THE COURT: Overruled.

17 BY MS. ALLEN:

18 Q For once, right?

19 A I'm just -- I'm just not going to give you a great  
20 answer, because I can't tell you what most people want. I  
21 mean I'm sure if I had to say most people want as much money  
22 as they can get.

23 Q Right.

24 A But I can't -- I don't know the PERS statistics, but

1 the last time I looked at them, my recollection is that the  
2 majority of PERS employees actually retire significantly  
3 before hitting their maximum eligibility. For whatever  
4 reason. It could be disability, it could be old age, it could  
5 be other job -- I mean I can't tell you why --

6 Q Right.

7 A -- but I did once look at the PERS statistics, and I  
8 don't believe that most employees get to their max.

9 THE COURT: Thirty years, right, most?

10 THE WITNESS: I -- I think so.

11 THE COURT: Most county --

12 MS. ALLEN: Thirty years. Does --

13 THE COURT: -- employees?

14 MS. ALLEN: -- and the question I asked you before  
15 about leaving the system for a year and coming back, does that  
16 affect your max-out date?

17 THE WITNESS: Yeah, it'll -- it'll affect the date,  
18 because during the time you were not working, you're not  
19 accruing any retirement credits --

20 MS. ALLEN: It's suspended?

21 THE WITNESS: -- and -- well, yeah, it's -- it's  
22 suspended as far as there's nothing to accrue.

23 THE COURT: It become more --

24 MS. ALLEN: Right.

1 THE COURT: -- if you max out.

2 THE WITNESS: I'm sorry?

3 THE COURT: The one and a half years that you  
4 weren't working until you got your job back, it comes moot if  
5 you max out.

6 THE WITNESS: Yeah. If you're maxed out --

7 THE COURT: It becomes moot --

8 THE WITNESS: -- you're maxed out.

9 THE COURT: As far as the number, you'll get your  
10 full 75 percent?

11 THE WITNESS: Right.

12 BY MS. ALLEN:

13 Q But if you were -- if -- so hypothetically if you  
14 were to max -- if you were set to max out in 2015 but you --  
15 18 months of that is gone because you're not -- you're not  
16 with the City, you're not in the -- the retirement system,  
17 that would push that back to late 2000 -- some time in 2016  
18 depending on the 18 months?

19 A Well, if I understand your math, it would be 2018  
20 but I may have --

21 Q Oh -- well --

22 A -- misheard you. But, yes, it would push -- every  
23 month that you're not working -- let's deal with months not  
24 years.

1 Q Okay.

2 A Because that's how PERS accrues retirement credits  
3 is in whole month increments. Every month you're not working  
4 is one more month that you're not accruing.

5 Q Right.

6 A So, if you have to work, let's call it, 360 months  
7 and you've only worked 300 months and then for whatever reason  
8 you're not working for PERS, you still have 60 months to go  
9 whenever you get back in.

10 Q Okay.

11 A If you want to maximize the benefit.

12 Q Okay.

13 A Did that --

14 Q Yes. My last question I think. The -- you -- again  
15 you've been doing this a long time and you're well aware of  
16 the all the cases that deal with division of the assets and  
17 community property and you actually write things on it, you're  
18 very knowledgeable about it; is that correct?

19 A Well, ye -- yes.

20 Q Okay. Well, if you said no --

21 THE COURT: Sure.

22 MS. ALLEN: -- you'd be in trouble, right?

23 THE WITNESS: Yes.

24 BY MS. ALLEN:



1 Q Can you just generally give me an idea of why these  
2 laws are in place?

3 A Which laws?

4 Q All of them. Community property, the -- the  
5 division of the assets, things such as that. Why do we do  
6 this?

7 A Well, that's a pretty big question. The underlying  
8 -- I actually have studied this. I've started but not  
9 finished a comprehensive treatise on the actual theoretical  
10 information for why these laws exist. So, if I can paraphrase  
11 the opening to my Mason treatise, it has to do with the common  
12 law as developed by the Barbarian tribes of the Iberian  
13 Peninsula.

14 Q All right.

15 A During the fall of Rome. But following forward from  
16 there you get the community property system as it evolved in  
17 Western Europe specifically France and Spain, transported to  
18 the New World, and it came through South America what we now  
19 think of as Mexico --

20 Q I'm not talking about the map and how it got here.

21 A Okay.

22 Q What is the purpose of it?

23 A The purpose. The purpose is provide a regime for  
24 the logical distribution of assets and responsibilities upon

1 divorce.

2 Q Okay. And it -- does -- is it based on equity?

3 A Ah --

4 Q An equitable distribution?

5 A That's a harder question to answer because the  
6 community property's state split almost equally.

7 THE COURT: Nevada's an equal law state not --

8 MS. ALLEN: How about --

9 THE WITNESS: Yeah.

10 MS. ALLEN: -- I was going to say --

11 THE COURT: -- an equitable state.

12 MS. ALLEN: -- how about Nevada, let's --

13 THE WITNESS: Nevada is --

14 THE COURT: We are equal --

15 THE WITNESS: -- on the side of the -- as I --

16 THE COURT: We're on the equal not equitable.

17 THE WITNESS: She stole my -- my expert witness  
18 thunder.

19 THE COURT: Now I feel like I'm back --

20 THE WITNESS: But --

21 THE COURT: -- in law school.

22 MS. ALLEN: Well, then you should probably write her  
23 a check for your furnishing the testimony.

24 THE WITNESS: No, no, that looks bad, that looks

1 very bad. So, no, that won't happen. But, yes, Nevada with  
2 California and some of the other community property states  
3 it's a presumptive equal division state.

4 MS. ALLEN: Okay.

5 THE WITNESS: In the absence of certain findings and  
6 extraor -- in Nevada they call it compelling circumstances.

7 THE COURT: Compelling circumstances, yeah.

8 THE WITNESS: There's a requirement of equal  
9 division. So, the legislature has made the determination that  
10 equal means equitable. Nevada was not always this way. We  
11 switched about 25 years ago from equitable distribution to  
12 equal distribution.

13 BY MS. ALLEN:

14 Q Okay. So, obviously this wasn't my last question.  
15 Fifty, 60 years ago, would you agree that women were sort of  
16 in -- sort of a less equal position to men generally, women --  
17 some states didn't allow for them to have their own bank  
18 accounts or they -- women were generally not the breadwinners  
19 of the family; is that correct? Fifty, 60 years ago?

20 A Yeah. If you're talking about pre-1975, Nevada was  
21 not an equal management and control state. I -- I mean I  
22 can't speak for every state in the Union although I have  
23 studied it nationally. But speaking specifically to the  
24 Nevada experience before 1975, the husband was by statute the

1 managing conservator of the marital estate with sole  
2 responsibility and authority to do various acts. That got  
3 changed in 1975 as part of the Equal Rights Amendment fallout.  
4 So, that we now are a -- a joint and equal management and  
5 control state.

6 Q And -- but -- and would you agree that a lot of  
7 these -- these things that we discussed, like the community  
8 property and it -- it is to make both parties sort of equal in  
9 the event that they go separate, right? We -- we want to keep  
10 them in the same positions as if they were married but now  
11 we're talking about a divorce?

12 A I -- I -- I -- I would greatly hesitate to say we  
13 want to keep them in the same position to which they would be  
14 in if they were married. Because there's all kinds of things  
15 that they don't.

16 Q Well, we don't want, you know, one party whether  
17 it's the man or the woman to have this outstanding, you know,  
18 windfall of this huge retirement that has been contributed to  
19 by both parties throughout the marriage and he gets to keep it  
20 and -- or she, either one, and the other party walks away with  
21 nothing.

22 A Yes. The underlying purpose of NRS 125.150 is to  
23 make an equal distribution of marital assets and debts in the  
24 event of divorce.

1           Q     Right. So, we're not -- we're trying -- not we, but  
2 the courts are gen -- and the legislature, they're generally  
3 trying to prevent huge windfalls in these types of  
4 proceedings, they want to keep things as equal as possible,  
5 and there are little things that come up here and there that  
6 will obviously make them not equal, but they really try -- try  
7 through statute and case law to try to keep them as equal as  
8 possible?

9           A     And -- yes. Avoiding unjust enrichment and --

10          Q     Thank you.

11          A     -- unjust enrichment and wrongful deprivation are  
12 the two poles of the public policy that our statutes are  
13 trying to avoid.

14          Q     Perfect. Done.

15          A     Thank you.

16          Q     Thank you.

17                 THE COURT: Redirect, Mr. Page?

18                 MR. PAGE: Yes.

19                         REDIRECT EXAMINATION

20 BY MR. PAGE:

21          Q     Opposing counsel was asking you before about  
22 125.150(3) that anything could be divided if it was left out  
23 by fraud or mistake. You wanted to give some explanation to  
24 that language but you were never given an opportunity.

1 A Yes, there is an explanation.

2 Q What would that explanation be?

3 A There was some sentiment in legislative circles to  
4 make the partition remedy a remedy only for fraudulent  
5 omission. I testified on behalf of the legislation including  
6 an explanation of the Carlson case which I'm sure you're  
7 familiar with and Carlson case is actually a 60(b) case and it  
8 stands for the proposition that -- it's kind of funny, because  
9 the litigants were then attorney Fran Fine and then attorney  
10 Bob Lueck who later became Judge Fran Fine and her immediate  
11 successor, Judge Bob Lueck, in the same department.

12 But the -- the irony aside, the principle of the  
13 case is that -- well, the litigation history of the case is  
14 that the benefits -- retirement benefits in that case were  
15 grossly misdistributed. It was a question that there was no  
16 certain answer to because it had to do with what was in  
17 somebody's head as to whether it was intentionally omitted or  
18 a screw-up.

19 And so the holding of the Carlson case is that it  
20 makes no difference. If you file a 60(b) motion relating to  
21 misdistribution of assets, it doesn't make any difference  
22 whether somebody was attempting to pull a fast one or not  
23 attempting to pull a fast one and it was a mistake. No matter  
24 how or why the misdistribution happens, it is to be addressed.

1 So, the explanation I was giving is that the reason I don't  
2 need to know the specific intention of the parties in the --  
3 the case is that it doesn't make any difference why.

4 If you get to Waldman, you get to Cook, the line of  
5 authority and that was the line of authority that we embodied  
6 in the statute, it doesn't make any difference why it happens,  
7 the only question is whether it happened. And if you are sure  
8 that it did happen, it's partitionable.

9 Q In this case, we're sure that the survivor benefit  
10 was never listed?

11 A Well, again, I only have the decree. But to the  
12 best of my knowledge, that's true. Well, one of the two  
13 survivorship benefits. Remember, he's got an automatic  
14 survivorship benefit in her life. She just doesn't have one  
15 for his life. So, half of the survivorship benefits that are  
16 possible have never been formalized and they can't be  
17 formalized because the structure of the plan without an --  
18 without an order of a court granting a survivorship interest  
19 prior to actual retirement. If all of those things don't  
20 happen, she doesn't get one.

21 Q As long as it's not there for her, that's all we're  
22 looking at, her half. That one half of the reciprocal  
23 survivorship benefit that's not listed there for her, it's  
24 simply omitted?

1           A     Right.  There -- there's literally no way to omit  
2 his, because it's built into the structure of the plan.

3           Q     Correct.  Now, as far as the selection of a survivor  
4 beneficiary, that can be selected and changed at any time  
5 before a working spouse retires; is that correct?

6           A     Yes.  While an employee remains unretired and that's  
7 whether you're currently working or not working, but until you  
8 formally retire, the option selection can be altered.  There  
9 was some questions that you were asked --

10           THE COURT:  Any time unless there's a court order.

11           THE WITNESS:  Hmm?

12           THE COURT:  No?

13           THE WITNESS:  I'm sorry, Your Honor, yes.  Obviously  
14 the party's freedom to select an option changes if there's a  
15 court order requiring an option selection at which point the  
16 employee -- whichever employee loses the ability to change it,  
17 because it's locked by court order, but the court order could  
18 be changed again until retirement.

19           THE COURT:  Does the SBP -- the court's authority  
20 come from a statute?

21           THE WITNESS:  I think it's the plenary power of the  
22 court to order.  I don't know that there's anything in 286  
23 explicitly stating.

24           THE COURT:  Maybe just 125.150?



1 THE WITNESS: I think so.

2 MS. ALLEN: 040?

3 THE WITNESS: And -- well, 125 -- the other one  
4 relating to do PERS which is about three statutes later. I  
5 forgot the number, 125 --

6 THE CLERK: (Indiscernible) that's 1(b).

7 THE WITNESS: I'm sorry?

8 THE CLERK: Oh, I was talking to Counsel.

9 THE WITNESS: Okay.

10 THE COURT: Do you believe in your expert legal  
11 opinion that under 125.150 SBP's are property interest based  
12 on your review of the 50 states and that community property  
13 law states the majority of them hold it as such as a property  
14 interest?

15 THE WITNESS: That was talking about the vacation  
16 and sick.

17 THE COURT: Oh, vacation and sick pay. Okay. So,  
18 back to the SBP and because this is new to post-Doan and  
19 everything, as far the Court's authority to order it, the  
20 Court orders it under like -- are you familiar 155 --

21 THE WITNESS: That's it, that was the --

22 THE COURT: -- 125.155?

23 THE WITNESS: -- statute number I couldn't  
24 remember --

1 THE COURT: 120 --  
2 THE WITNESS: 125.150 --  
3 THE COURT: -- that's the new one here.  
4 THE WITNESS: -- and 125.155.  
5 THE COURT: This just got in here, right?  
6 THE WITNESS: No, 155's been there since 1992.  
7 THE COURT: So, the Court on its own -- on its own  
8 motion or pursuant to a stipulation agreement of the  
9 parties --  
10 THE WITNESS: Right.  
11 THE COURT: -- may require to furnish a life  
12 insurance, a surety bond --  
13 THE WITNESS: Right. Basically, I'm -- I'm  
14 intimately -- I don't want to stand on a soapbox for too long,  
15 but I'm intimately familiar with that history, too. All the  
16 provisions you're reading now do is memorialized the common  
17 law power of a court to make those orders anyway.  
18 THE COURT: Yeah.  
19 THE WITNESS: In -- in other words, the court power  
20 existed before the statute existed. But in any case the  
21 statute's been on the books since 1990 -- whatever it was '80s  
22 -- I think it's '92. And the court certainly has the power to  
23 either order a survivorship interest or anything you can do  
24 you can not do.

1 THE COURT: This is just the -- the vehicle, the  
2 process by we do it. But this case appears to be a case of  
3 first impression, post-Doan --

4 THE WITNESS: No.

5 THE COURT: -- omitted asset.

6 THE WITNESS: No, no.

7 THE COURT: Are you aware of any precedent or  
8 unpublished opinion?

9 THE WITNESS: Yes.

10 THE COURT: You are?

11 THE WITNESS: Yes --

12 THE COURT: Are we allowed to --

13 THE WITNESS: -- I argued a case --

14 THE COURT: -- cite to unpublished --

15 THE WITNESS: -- I argued a case before the Nevada  
16 Supreme Court about a year ago called Holyoak --

17 THE COURT: Unpublished?

18 THE WITNESS: It was recently an unpublished --

19 THE COURT: Are we allowed to cite to unpublished?

20 THE WITNESS: Yes, now.

21 MS. ALLEN: We can. But I can't read this right  
22 now.

23 THE COURT: Huh?

24 MS. ALLEN: I can't read this right now.

1 THE WITNESS: Well, I think that's the brief. There  
2 -- there -- there is an opinion --

3 THE COURT: I haven't read it.

4 MS. ALLEN: Yeah, I can't read this right now, Your  
5 Honor.

6 THE COURT: Holyoak.

7 MS. ALLEN: So, I would -- I would object -- will  
8 object to this, just because I don't have -- this is trial by  
9 ambush, and I can't read this right now.

10 THE WITNESS: Well, for the record the court has got  
11 access to that brief and to the opinion because this court is  
12 on the MLAW (ph) system and both the briefs --

13 THE COURT: What is it on the Nevada Supreme Court  
14 website?

15 THE WITNESS: It's on -- well, it's on the Nevada  
16 Supreme Court website, too, but it's also --

17 THE COURT: You go into case lookup and then you can  
18 pull the brief. Just because she hadn't -- I haven't looked  
19 at it either.

20 MS. ALLEN: I don't -- yeah --

21 THE WITNESS: Yeah, but the --

22 THE COURT: Objection duly noted.

23 THE WITNESS: -- but the -- the -- the unpublished  
24 decision came out about three months ago, four months ago, I

1 don't remember the date. I can look at it, I have it in my  
2 notes, but I don't want to consult my notes.

3 MS. ALLEN: I -- no, no, no, I just -- I --

4 THE WITNESS: Okay. May I?

5 MS. ALLEN: -- as long as I know what you're  
6 consulting --

7 THE WITNESS: I'm looking --

8 MS. ALLEN: -- I'm okay.

9 THE WITNESS: -- at a copy of the opinion.

10 THE COURT: Maybe you could look at it at the break  
11 or something or we could pull --

12 MS. ALLEN: I would --

13 THE COURT: -- we can pull the decision right off  
14 the --

15 MS. ALLEN: Yeah, if I get --

16 THE COURT: -- Nevada Supreme Court's --

17 MS. ALLEN: -- the actual opinion would be easier  
18 than just --

19 THE WITNESS: Yeah, here.

20 MS. ALLEN: -- the Respondent's answering brief.

21 THE WITNESS: The date on it is May 19, 2016.

22 THE COURT: 5-19 --

23 THE WITNESS: Unpublished order of affirmance now  
24 citable under the repeal of SER 123.

1 MS. ALLEN: Right.

2 THE COURT: And as you were saying, Holyoak  
3 represents what?

4 THE WITNESS: You -- you asked whether this was a  
5 case of first impression and my answer was no. In the Holyoak  
6 case, we had exactly the provision of an omitted survivorship  
7 interest and the question was whether to formally repeal  
8 Henson based on the passage of the partition statute relating  
9 to an omitted survivorship interest.

10 THE COURT: Okay.

11 THE WITNESS: The Supreme Court by footnote in that  
12 decision, first the members of the Supreme Court made a point  
13 of telling me after CLE's to make a point of telling them if a  
14 case ever went up on this issue so that they would have a  
15 chance to address the anomalies in the case law. I did so in  
16 the routing statement when this case went up.

17 THE COURT: Okay.

18 THE WITNESS: Then they said it -- they not only  
19 didn't send it to the Court of Appeals which they otherwise  
20 would have done, they set it for hearing before the Supreme  
21 Court and en banc. So, I had all seven of them --

22 THE COURT: Wow.

23 THE WITNESS: -- and then they decided not to reach  
24 the issue by a footnote which says that because the appellant

1 chose not to -- the respondent chose not to file a formal  
2 cross appeal, they were not going to deal with the  
3 survivorship issues at all.

4 THE COURT: In other words, it wasn't before them?

5 THE WITNESS: Right. The holding of the case is  
6 that if you have an unclear divorce decree, it is to be  
7 construed in accordance with Walsh to comply with the law  
8 which requires an equal distribution of assets. So -- and it  
9 requires distribution of first eligibility. That's the  
10 holding of the case.

11 THE COURT: Okay.

12 THE WITNESS: They never reached the survivorship  
13 interest at all.

14 THE COURT: Thank you for the reference. Okay.

15 THE WITNESS: I'm sorry, that was a very long answer  
16 to a very short question.

17 THE COURT: Kind of came close but really we hadn't  
18 -- we didn't --

19 THE WITNESS: I --

20 THE COURT: -- get a decision. So --

21 THE WITNESS: -- I tried.

22 THE COURT: -- this case is probably a case of first  
23 impression.

24 THE WITNESS: Well, that's why when you said first

1 impression, I -- I --

2 THE COURT: Well, not technically.

3 THE WITNESS: -- again, I don't want to argue with  
4 you but --

5 THE COURT: Came close but --

6 THE WITNESS: -- in terms of -- if you're asking if  
7 there's controlling precedent on the point, I have to tell you  
8 no.

9 THE COURT: Okay. All right. Mr. Page, back to  
10 you.

11 BY MR. PAGE:

12 Q Based upon your review of the decree, is it clear in  
13 the decree as to whether there's a survivor benefit being  
14 divided?

15 A No. As I told counsel, I don't see any explicit  
16 reference to a survivorship benefit.

17 Q And one of the issues that was raised by opposing  
18 counsel was whether one would have to max out their retirement  
19 and whether one could retire early and the impacts on the  
20 income stream itself. As someone who is police-fire,  
21 Mr. Kilgore, he can retire after 20 years of full eligibility  
22 when he turns age 50?

23 A I'm doing this from memory, but I think that's the  
24 rule, yes.



1 Q So, upon Mr. Kilgore reaching age 50 with 20 years  
2 of service, he's reached his normal retirement age? He's  
3 reached his first eligibility --

4 A His eligibility for --

5 Q -- for retirement?

6 A -- full retirement without an early retirement  
7 penalty.

8 Q Could I have you turn to Exhibit B, please?

9 A Yes.

10 Q That is Mr. Kilgore's financial disclosure form?

11 A D?

12 Q It is A (sic).

13 A Oh, I'm sorry, I thought you said --

14 Q B. B as in boy.

15 MS. ALLEN: B as in boy?

16 MR. PAGE: Yes.

17 THE WITNESS: I'm sorry, I misheard you. It appears  
18 to be, yes.

19 BY MR. PAGE:

20 Q Now, in that financial disclosure form, what is  
21 Mr. Kilgore's age?

22 A He discloses 54. Page one.

23 Q And if we look at the bottom of the page, it says  
24 his date of hire was April 8th, 1989?

1           A     That's what he says, yes. I have no personal  
2 familiarity with the record.

3           Q     If one goes from 2009 and subtracts 1989, that would  
4 be 20 years, correct?

5           A     I think so.

6           Q     So, at the time of the decree -- at the time of the  
7 filing of the decree in May -- March of 2013, Mr. Kilgore  
8 would have been in excess of approximately 50 years of age and  
9 would be eligible retirement?

10          A     I don't think that was the decree date; I think that  
11 was the motion date, but yes.

12          Q     2013 was the when the decree was filed, the motion  
13 date would have been March of 2015.

14               THE COURT: All right. Back up a --

15               THE WITNESS: Oh, I'm sorry, yes.

16               THE COURT: -- second though.

17               THE WITNESS: -- 2013, 2015, you're right.

18               THE COURT: I'm slow on the math here. So, let's  
19 see he was born on 4-20-61, right?

20               MR. PAGE: Right.

21               THE COURT: And he would reach age 50 on 4-20-2011?

22               MR. PAGE: Yes.

23               THE COURT: And he was hired on 4-8-89 and 20 years  
24 in would be 4-8-2009?

1 MR. PAGE: Yes.

2 THE WITNESS: Assuming continuous service, yes.

3 THE COURT: So, if he hit 50 years old in 2011,  
4 April, he already had 22 years in service?

5 MR. PAGE: Yes.

6 THE COURT: So, he would eligible for full  
7 retirement?

8 MR. PAGE: Yes.

9 THE COURT: At age 50 with 20 years of service.

10 THE WITNESS: With more -- yes, 20 or more. You  
11 have to have both qualifications so it's the later of the two.  
12 Either when you hit the age date or when you hit the service  
13 date. In this case I think he had 22 years when he hit the  
14 age date.

15 THE COURT: Which came first, the chicken or the  
16 egg?

17 THE WITNESS: Well, you don't get -- you don't get  
18 -- you can't retire without early retirement penalty until  
19 you've done both those things. And he did both of those  
20 things when he turned age 50 --

21 THE COURT: Oh, he was way -- he was over 50, right,  
22 he --

23 THE WITNESS: Excuse me --

24 THE COURT: -- 4-8-89 with 20 years --

1 THE WITNESS: But excuse me.  
2 THE COURT: -- would be 4-8-2009.  
3 THE WITNESS: Right.  
4 THE COURT: So, he was 52 years -- 51, 52.  
5 THE WITNESS: And at that moment, he was eligible to  
6 retire.  
7 THE COURT: So -- wait, I'm bad with math.  
8 MS. ALLEN: So, am I.  
9 THE COURT: Richard on April 8th, 2009, 20 years  
10 later, how old were you?  
11 MR. KILGORE: In 2009?  
12 THE COURT: Yeah, 20 years.  
13 MR. KILGORE: I would've been 48. What's odd  
14 counted on here, Your Honor, I received a 400 hour  
15 suspension --  
16 THE COURT: That's what I thought, he was 48 years  
17 old --  
18 THE WITNESS: That was --  
19 MR. KILGORE: -- and that took me to -- July of '89  
20 is my actual hire date.  
21 THE COURT: We're going to get to your testimony.  
22 MS. ALLEN: Yeah, that's what I said.  
23 THE COURT: Unless you want to present any  
24 recross --

1 MS. ALLEN: I'm going recross, yes.  
2 THE COURT: -- a hypothetical to Mr. Willick --  
3 THE WITNESS: I'm sorry --  
4 MS. ALLEN: I'm going to.  
5 THE COURT: -- since we've got him --  
6 THE WITNESS: And -- and I'm sorry --  
7 THE COURT: -- here anyway.  
8 THE WITNESS: -- if I was unclear. That was what I  
9 meant by continuous, unbroken service.  
10 MS. ALLEN: Right.  
11 THE COURT: So, at 20 years on April 8th, 2009, he  
12 was 48 years old. And then we'll get to the 400 hours of  
13 missed time. Okay. So, if he was 48 years old on his 20th  
14 year, you've got to wait until you're 50, so he wait -- he  
15 turned 50 on April 20th, his birthday, 2011.  
16 THE WITNESS: So, the question is whether on his  
17 50th birthday he got 20 years of creditable service. If so,  
18 he was eligible to retire on that date. If not, he would have  
19 to go until he did have that much service.  
20 THE COURT: So, the latter -- the latter happened?  
21 THE WITNESS: Right.  
22 THE COURT: And then -- okay. If he chose to retire  
23 on his birthday in 2011, he would've gotten --  
24 THE WITNESS: Exactly 20 --

1 THE COURT: -- well, 20 out of 30.

2 THE WITNESS: Yeah, it would've been --

3 THE COURT: He was eligible to retire, but he  
4 would've gotten 20 out of -- or whatever it's calculated based  
5 on 20 years. But he didn't --

6 THE WITNESS: Yeah, however --

7 THE COURT: -- max out at 30.

8 THE WITNESS: -- however many service credits he had  
9 on the date that he retired, yes.

10 THE COURT: Right. But he didn't max out. Because  
11 maxing out would be -- oh, wait, for police -- non-police-  
12 fire?

13 THE WITNESS: Ah --

14 THE COURT: Do you know what his category --

15 THE WITNESS: -- the -- the max-out date --

16 THE COURT: -- was 20 or 30?

17 THE WITNESS: -- is not a matter of your job  
18 category, it's a matter of when you started service. And I  
19 don't have those rules memorized, but I think it shifted from  
20 90 percent to 75 percent.

21 THE COURT: Judges are different, too.

22 THE WITNESS: And judges are different.

23 THE COURT: Court clerks, they got to do 30 years to  
24 get the full.

1 THE WITNESS: To get the max.

2 THE COURT: The max --

3 THE WITNESS: But not to be eligible --

4 THE COURT: -- the 75 percent.

5 THE WITNESS: -- to retire without an early  
6 retirement penalty, there's a difference.

7 THE COURT: Okay. So, when he hit -- he hit 50  
8 years old, he was eligible to retire?

9 THE WITNESS: He was eligible to retire --

10 THE COURT: Not max-out, so he'd get lesser than 75  
11 percent?

12 THE WITNESS: Right.

13 THE COURT: I gotcha. And if you look at his --  
14 that's Exhibit D. I -- I can't do the math in my head, but I  
15 believe that is less than 75 percent.

16 MS. ALLEN: That's a big penalty.

17 THE WITNESS: But it's not a penalty.

18 THE COURT: No, it's a reduction.

19 THE WITNESS: It's -- it's just not --

20 THE COURT: A percentage.

21 THE WITNESS: -- enough service for the most you  
22 could possibly get but it's not a penalty. The early  
23 retirement penalty has to do with choosing to retire and get  
24 an immediate stream of payments prior to your eligibility for

1 regular retirement, and if you do that, there'd be a line --

2 THE COURT: Richard was eligible at age 50 with 20  
3 years in --

4 THE WITNESS: Right.

5 THE COURT: -- but if the max was 30 years, he  
6 didn't max out so --

7 THE WITNESS: Didn't max out but that's --

8 THE COURT: -- he'd be getting a lesser check.

9 THE WITNESS: He'd be getting a lesser check than he  
10 could have --

11 THE COURT: Right.

12 THE WITNESS: -- if he continued to serve.

13 THE COURT: Right.

14 THE WITNESS: And he was eligible at that moment to  
15 take it without a penalty. If there had been an early  
16 retirement penalty, there'd be an extra line on this PERS  
17 estimate.

18 THE COURT: Right.

19 THE WITNESS: Which would say --

20 THE COURT: Small reduction.

21 THE WITNESS: -- well, a reduction based on --

22 THE COURT: Or reduction.

23 THE WITNESS: -- whatever your estimated --

24 THE COURT: Every year you're under.



1 THE WITNESS: Right.

2 THE COURT: Yeah.

3 (COUNSEL CONFER BRIEFLY)

4 THE WITNESS: I'm sorry that was an extended  
5 colloquy -- I don't even remember your question.

6 MR. PAGE: That was the --

7 THE COURT: We were on that math --

8 MR. PAGE: -- it was -- it was the --

9 THE COURT: -- calculation that I had to slow  
10 down --

11 MR. PAGE: -- 50 years of age, 20 years of  
12 service --

13 THE COURT: -- on because I'm bad at math.

14 MR. PAGE: -- question.

15 THE COURT: Okay. So, follow -- you have following  
16 up on that --

17 BY MR. PAGE:

18 Q Sertic indicates it's not whether someone can max  
19 out their retirement but as to whether they're first eligible  
20 to retire without early retirement penalty; is that --

21 A Yeah, the -- the words without early retirement  
22 penalty don't exist in the Sertic opinion. That is my  
23 interpretation. When we did the advanced level CLE at Ely  
24 about five years ago between me and Barbara DiFranza, we came

1 to the conclusion that that's the most logical construction of  
2 the language, because it didn't make sense in the context of  
3 the opinion for it to mean anything else. But those words  
4 don't appear in the opinion.

5 Q So, just upon first eligibility --

6 A Eligibility for retirement.

7 Q -- for retirement?

8 A Theoretically, I mean you could for work for PERS  
9 for five years --

10 Q And be eligible to retire.

11 A -- and be eligible to retire because you had a  
12 vested benefit at that time. It would be silly to do it --

13 THE COURT: It'd be a very tiny check, but you would  
14 get a check.

15 THE WITNESS: Exactly. So --

16 THE COURT: Right.

17 THE WITNESS: -- our interpretation of the words of  
18 the Sertic opinion meant without an early retirement penalty.

19 BY MR. PAGE:

20 Q Now, there was some discussion there about taxes and  
21 you don't given an opinion as to who should be responsible for  
22 the taxes upon receipt whether that should be Mr. -- whether  
23 Mr. Kilgore should deduct for taxes or whether Ms. Kilgore  
24 should pay for taxes?

1           A     Well, I -- I don't give tax advice, but I'll just  
2 tell you that my understanding from the -- all the retirement  
3 cases -- and I do military, civil service, state PERS, private  
4 retirement -- is that it -- people are taxed on what they  
5 ultimately receive. If she gets the money, she pays taxes on  
6 the money. If he gets the money, he pays taxes on the money.  
7 That -- it used to be different for military cases, but that's  
8 been the rule since the mid-80's.

9           MR. PAGE: I'll pass the witness.

10          THE COURT: Recross.

11          MS. ALLEN: Just briefly.

12                       RE CROSS EXAMINATION

13 BY MS. ALLEN:

14          Q     You mentioned the Carlson decision --

15          A     Yes.

16          Q     -- correct? Okay. And that was a 1992 decision,  
17 correct?

18          A     I think so.

19          Q     I have your introduction to pensions and in a  
20 footnote it lists 1992 as the year that --

21          A     I just know better --

22          Q     -- Carlson was --

23          A     -- than to recite these things from memory without  
24 looking at them.

1 Q I -- believe I understand. The statute we were  
2 referring to the, 125.150(3) that talks about fraud or  
3 mistake, that is a 2015 statute --

4 A Yes.

5 Q -- is that correct? Okay. So, the legislature in  
6 their infinite wisdom went back and codified I guess what they  
7 felt were the important points of this particular issue; is  
8 that correct?

9 A That was -- that was essentially the intention.  
10 Every other community property state has a -- either common  
11 law or statutory law of partition of omitted assets. Nevada  
12 has had a singular and rather awful history on that subject.

13 Q And your opinion is, it's awful?

14 A The history?

15 Q Yes.

16 A Yes.

17 Q Okay. But nonetheless as we sit here today under  
18 this 200 -- or 2015 statute, the legislature essentially  
19 allows you to go back if you can show fraud or mistake; is  
20 that correct?

21 A If you could show the omission of a --

22 Q Right.

23 A -- of an asset of value --

24 Q Right.

1           A     -- and assert that it was omitted by fraud or  
2 mistake in the original underlying document, then yes, you  
3 have a right to partition it. There are exceptions, the Court  
4 can choose not to for various reasons.

5           Q     Okay. They can choose not to do it, correct?

6           A     Right. It's not totally discretionary. But the  
7 Court upon making certain findings -- I can't recite the  
8 statutory language off the top of my head --

9           Q     I --

10          A     -- but you have it there in front of you.

11          Q     I do.

12          A     The Court can choose to not partition an omitted  
13 asset upon the making of certain findings.

14          Q     Okay.

15                THE COURT: If it was included in a prior equal  
16 disposition of the community property or in an unequal  
17 disposition of the community property, the parties which is  
18 made pursuant to written findings of a compelling reason for  
19 making the unequal disposition. Or (b) the Court determines a  
20 compelling reason in the interest of justice to make an  
21 unequal disposition of the community property or liability and  
22 it sets forth in writing the reasons for making the unequal  
23 disposition.

24                THE WITNESS: Yes. That's the language I could not

1 repeat from memory.

2 MS. ALLEN: Okay.

3 BY MS. ALLEN:

4 Q And you -- you were talking about Holyoak which I'm  
5 completely unprepared to discuss, because I don't know  
6 anything about it obviously. But --

7 THE COURT: Neither have I, I haven't read it yet.

8 THE WITNESS: I was trying to answer the Court's  
9 question.

10 MS. ALLEN: I get it.

11 THE COURT: Right.

12 BY MS. ALLEN:

13 Q But what I'm going to is you -- you mentioned  
14 something about a footnote from the Supreme Court, they  
15 mentioned something in -- in a footnote; is that correct?

16 A In the decision they elect not to address  
17 survivorship benefits at all.

18 Q Correct.

19 A In that case.

20 Q Right. And they -- they did -- so they didn't even  
21 go to where we are today as far as discussing it; is that  
22 correct?

23 A Oh, we discussed it at great length that was the --

24 Q What I'm saying is the Supreme Court didn't go

1 there. They didn't --

2 A I -- I'm talking about it --

3 Q Right.

4 A -- in the Supreme Court we discussed it at great  
5 length in the papers and in oral argument. They just elected  
6 not to rule on the subject.

7 Q That's what I meant.

8 THE COURT: They kind of pulled --

9 MS. ALLEN: When I said they --

10 THE WITNESS: Okay.

11 MS. ALLEN: -- they elected not to --

12 THE COURT: -- they pulled the veil on us again.

13 BY MS. ALLEN:

14 Q When I said they elected not to go there, it's kind  
15 of a --

16 A Okay.

17 Q -- they elected not to say anything about it?

18 A Right.

19 Q They just didn't want to deal with it --

20 A It is not addressed --

21 Q -- at that point?

22 A -- in the disposition other than in the footnote.

23 Q Okay. But you did say something about -- they  
24 mentioned something about following the law or per --

1           A     Sure. It's the Walsh case. I urged the Court  
2 during oral argument to utilize and rely upon Walsh, they  
3 recited it on page I think three of the draft decision. It  
4 says because the District Court in this case merely  
5 interpreted the decree and enforced its terms rather than  
6 modifying the parties' interests, the time requirements of  
7 60(b) don't apply, Walsh v. Walsh. That had to do not with  
8 the survivorship interest --

9           Q     Right.

10          A     -- issue which they're not addressing.

11          Q     Correct.

12          A     But with the question of eligibility -- payment upon  
13 eligibility which was the issue that they did address in the  
14 case.

15          Q     But does Holyoak overturn 125.150(3)?

16          A     No.

17          Q     Okay. So, it -- that's still good law?

18          A     Yes.

19          Q     Based upon your reading of Holyoak?

20          A     No, I'm -- I'm intimately familiar with both of  
21 them, but -- and yes.

22          Q     All right.

23                THE COURT: Back up a second, I --

24                MS. ALLEN: Briefly --



1 THE COURT: -- was trying to print the order.

2 THE WITNESS: I'm sorry.

3 THE COURT: Walsh stood for?

4 THE WITNESS: Walsh:

5 THE COURT: Yeah.

6 THE WITNESS: Walsh is a case from the '80s I  
7 think --

8 THE COURT: I remember it, yeah.

9 THE WITNESS: -- in which the underlying divorce  
10 decree said Wife gets half of the retirement. In fact, Wife  
11 is only eligible for about 20 percent of the retirement.  
12 Because they weren't married for the full time that the  
13 retirement had accrued.

14 THE COURT: Correct.

15 THE WITNESS: So, it went to the Supreme Court and  
16 the husband said that's unfair, she shouldn't get half the  
17 retirement. She says that's what it says. And then what the  
18 Supreme Court said is, look, if you're going to interpret a  
19 divorce decree and you don't have explicit findings on the  
20 face of the decree telling you that you're doing something  
21 other than what the law provides --

22 THE COURT: You can do over.

23 THE WITNESS: -- you should construe it that what  
24 you intended by whatever language you used was to do what the

1 law provides. And what the law provides is that a spouse has  
2 an interest in one-half of the marital portion of a  
3 retirement --

4 THE COURT: Gemma v. Fondi, right.

5 THE WITNESS: -- not one-half of the entire  
6 retirement, so she was only entitled to her time-rule portion  
7 of the retirement benefits not one-half --

8 MS. ALLEN: Right.

9 THE WITNESS: -- despite the bad language of the  
10 decree.

11 BY MS. ALLEN:

12 Q Right. So, Walsh didn't deal with an omitted asset,  
13 they -- they addressed the asset, it's just the Supreme Court  
14 found it was addressed unfairly?

15 A Yeah, again, it was not survivorship, it was just  
16 the retirement benefit.

17 Q Correct. But it wasn't an omitted asset?

18 A Right. That's not an omitted asset case.

19 Q Right. Okay. Next -- and this is just about the  
20 retirement issue. You were -- you were talking about the  
21 potential dates for retirement and you keep referring to fire-  
22 police and they -- they have -- it's 20 years I believe is  
23 what you were saying?

24 A That -- it -- Mr. Page actually suggested that, and

1 I told him that sounds right from memory. There's a --  
2 there's a block and you have to -- and it's in the article  
3 that you just cited. I could show it to you in the article  
4 but I don't have it memorized. Police-fire is earlier dates  
5 than non-police-fire. They can retire at earlier dates than  
6 non-police-fire PERS employees.

7 Q Okay.

8 A With similar amounts of service. So -- and again  
9 I'm doing the numbers off the top of my head, because I don't  
10 remember them, that's why I write them down. If non-police-  
11 fire was at 60 with 20 years for police-fire it'd be age 50 --

12 Q Okay.

13 A -- with 20 years.

14 Q So, they got essentially a better ben -- a better  
15 retirement?

16 A Yes. In -- in several ways.

17 Q Okay.

18 A Survivorship, retirement, yes.

19 Q And are you -- as you sit here today, are you aware  
20 if the City of Attor -- or City of Las Vegas marshal's office  
21 which is where my client's employed, if that falls under  
22 police-fire?

23 A Off the top of my head, I -- I don't know. I -- I'm  
24 sure I've got it referenced at my office, but I don't -- I

1 don't have memorized every job classification and --

2 Q So, he may not qualify under that specific job?

3 A Currently, I have no idea. Not off the top of my  
4 head.

5 Q All right. And back to -- he was referencing hours  
6 that he was suspended, if there were 400 hours of suspension  
7 here and 18 months of suspension there, that would push back  
8 these eligibility dates; is that correct?

9 A Normally, yes.

10 Q Okay.

11 A There are ways of coming up with what's called air-  
12 time, buying back --

13 Q Buy-back.

14 A -- but I'm -- I'm -- you didn't ask that question  
15 precisely.

16 Q Okay. All right.

17 (COUNSEL AND CLIENT CONFER BRIEFLY)

18 Q Non -- non-police-fire which you sort of separated  
19 the two, would -- a schoolteacher would fall under non-police-  
20 fire --

21 A Right.

22 Q -- is that correct? Okay. So, theoretically if Mom  
23 has been working for 25 years, she's eligible to retire now as  
24 well?

1 A It depends on her age.

2 Q Okay.

3 A Again, you have to have both.

4 Q Well, no, but you -- I think you just said that you  
5 could retire for five years --

6 A But you -- you can -- I'm sorry, the -- I  
7 misunderstood your question. You can retire, but you can't  
8 starting getting payments.

9 Q Okay. So, she --

10 A Until -- until -- until you get to a certain point  
11 at least not without an early retirement penalty.

12 Q Okay.

13 A So, I -- maybe I'm misunderstanding your question.

14 Q She'd be eli -- she'd be -- she works for the 25 --  
15 in the school district for 25 years, she'd be eligible to  
16 retire --

17 A At a certain age.

18 Q Right. Well -- and but -- and you said she might  
19 come under some penalty if she begins drawing?

20 A Before she hits that magic age whatever it is. And  
21 again, it's in the article but I think it's age 60 with 20  
22 years, it's any age with 30 years is -- I'm doing this from  
23 memory but I think it's some rule like that.

24 Q Okay.

1           A     So, if you started work -- if you started to work  
2 for PERS at age 18 which you could do.

3           Q     Correct.

4           A     Then at age 48 you would have 30 years of service.

5           Q     Correct.

6           A     And at that point you could retire immediately  
7 without an early retirement penalty because you would have --

8           Q     The 30 years.

9           A     -- completed the -- that term of service. You have  
10 to look at how long the service is and when the birthdays are  
11 and as soon as both eligibility criterion are reached  
12 whichever way they mix and match, you can retire without an  
13 early retirement penalty.

14                MS. ALLEN: Okay. Thank you very much.

15                MR. PAGE: There was a question raised as to whether  
16 in fact Mr. --

17                THE COURT: You only get one redirect. Is it  
18 important?

19                MR. PAGE: I'm sorry?

20                THE COURT: You only get one redirect, but if it's  
21 important, I'll let you ask.

22                MR. PAGE: Well, there was I think an attempt to  
23 muddy the record, I'd like to clear that up if I may, and  
24 it'll just take a couple minutes.

1 THE COURT: Is that okay with you, Mr. Willick?

2 THE WITNESS: I'm -- I'm at the court's pleasure.

3 THE COURT: Is he staying for their testimony in  
4 case you need him to testify?

5 THE WITNESS: I'll leave that to counsel for both  
6 parties.

7 MR. PAGE: I'll discuss that with my client.

8 THE COURT: Let me know, because then we'll finish  
9 up with him, take a little break, and then --

10 MS. ALLEN: Yeah, I need a break.

11 THE COURT: -- you'll call are there part -- I'm  
12 sure just the parties. Probably Richard's going to be the  
13 main --

14 MR. PAGE: Right.

15 THE COURT: -- witness with all the info. Okay.

16 REDIRECT EXAMINATION CONTINUED

17 BY MR. PAGE:

18 Q There was some attempt to muddy the waters I believe  
19 by -- re -- regarding whether Mr. Kilgore is a member of  
20 police-fire. Could you turn to Exhibit D, please?

21 A 8?

22 Q D as in dog.

23 A D.

24 THE COURT: D as in dog.

1 THE WITNESS: Got it.

2 THE COURT: By the way, did B come in? It's a  
3 pleading I know, but I admit those.

4 MR. PAGE: Yes.

5 THE COURT: B is in. No objection, right --

6 MS. ALLEN: B --

7 THE COURT: -- Ms. Allen?

8 MS. ALLEN: -- or D?

9 THE COURT: B is -- B, boy, is FDF.

10 MS. ALLEN: Okay. We're going to B. Got it. Thank  
11 you.

12 THE COURT: Did C come in?

13 MR. PAGE: No, but I'll go ahead and move for that.  
14 Does anyone have an objection?

15 THE COURT: The pay slip, City -- the terminal,  
16 vacation, sick leave.

17 MR. PAGE: This is the old one. The -- Your Honor,  
18 just for the Court's --

19 THE COURT: I think she didn't object to C.

20 THE CLERK: He didn't offer.

21 THE COURT: Or you didn't move --

22 THE CLERK: I don't have --

23 THE COURT: Any objection to C?

24 MS. ALLEN: To which one?



1 THE COURT: C.  
2 MR. PAGE: C as in cat.  
3 MS. ALLEN: C now?  
4 THE COURT: You don't have a notebook? You just  
5 have a clip?  
6 MS. ALLEN: I just have this. I know he's --  
7 THE COURT: We get the fancy notebooks.  
8 MS. ALLEN: Yeah, I'm --  
9 MR. PAGE: I -- I did the economy way for both of  
10 us.  
11 THE COURT: You get the economy.  
12 MS. ALLEN: I'm nowhere near fancy. C, no I have no  
13 objection to that.  
14 THE COURT: Okay. B is in, C is in.  
15 (Defendant's Exhibits B & C admitted)  
16 MS. ALLEN: Yeah, B -- but just for the Court's  
17 edification on B, my client filed an updated one.  
18 THE COURT: Oh, duly noted, you can --  
19 MS. ALLEN: Okay.  
20 THE COURT: -- you can move for that --  
21 MS. ALLEN: Yeah. I'm just --  
22 THE COURT: -- admission.  
23 MS. ALLEN: -- letting you know. Okay.  
24 THE COURT: And D's already in. Anything else that

1 came in, Ms. Clerk?

2 THE CLERK: B, C, D, is in.

3 THE COURT: Okay.

4 THE WITNESS: And you're referring I believe,  
5 Mr. Page, to D as in David?

6 THE COURT: So, you were on D.

7 MR. PAGE: Yes.

8 MS. ALLEN: We're on D. Okay.

9 THE COURT: And that's in. Okay.

10 THE WITNESS: But you asked a question and I don't  
11 remember what it was.

12 BY MR. PAGE:

13 Q The member is listed as being who on there; is that  
14 Richard Kilgore?

15 A That's what it says.

16 Q And then if you look about halfway down, it has --  
17 or I'm sorry, a little bit farther down, it says a retirement  
18 eligibility date of August 1, 2011. Do you read that?

19 A I'm not sure exactly where you're looking at. The  
20 benefit calculation effective dates, termination, 7-31;  
21 retirement date, August 1st, 2011. So, this is a -- an  
22 estimate if the retirement date chosen had been August 1st,  
23 2011.

24 Q And then if we look halfway down the page to V, it

1 -- what employee group does it show Mr. Kilgore being as part  
2 of?

3 A Police-fire.

4 Q If there's any question as to whether Mr. Kilgore's  
5 part of police-fire, would you think that would resolve it?

6 A Well, certainly, unless it's an error, certainly. I  
7 -- I think the question I was asked had to do with his current  
8 employment though and which unit is part of what. And I --  
9 there are certain law enforcement officers in the state of  
10 Nevada that are not in PERS and others that are. And I don't  
11 have the lists memorized. So, I don't know -- I don't know  
12 where he's working at the moment, and I don't know whether --  
13 where ever he's working at the moment is part of PERS. I just  
14 don't know that information.

15 MR. PAGE: I'll pass the witness.

16 MS. ALLEN: Your Honor, I just have one quick  
17 follow-up if I may?

18 THE COURT: Yes, you may.

19 MS. ALLEN: Thank you.

20 RE CROSS EXAMINATION CONTINUED

21 BY MS. ALLEN:

22 Q Do you know when this was issued, this estima --  
23 estimate calculation for service retirement?

24 A Yeah, if you look at the lower right hand corner, I

1 believe it has a --

2 Q 1-11 --

3 A What?

4 Q 1-11-2011?

5 A That's -- that's my belief from the form, and again  
6 I -- I did not produce this form.

7 Q Right.

8 A I only receive them. But by the looks of it, this  
9 was a benefit estimate requested in January of 2011 with a  
10 hypothetical termination date of July of 2011 and a  
11 hypothetical retirement date of August of 2011.

12 Q Okay.

13 MR. PAGE: I do have just one more --

14 MS. ALLEN: Oh, I wasn't done.

15 MR. PAGE: -- follow-up.

16 THE COURT: Oh, wait, she wasn't done yet.

17 MR. PAGE: Go ahead.

18 MS. ALLEN: Thank you.

19 BY MS. ALLEN:

20 Q So, if this was issued in 2011 and today is --

21 A With any luck at all 2016.

22 Q Okay. Approximately five years ago; is that  
23 correct?

24 A Right.

1 Q And you're aware that these sorts of PERS -- the  
2 categorizations and things that happen with PERS and just --  
3 other things and -- and benefits are contractual? Generally  
4 the police have a con -- they have a union, there's a contract  
5 with the State or the County; is that correct?

6 A I can't answer that it's a yes or no; can I give you  
7 more words?

8 Q Sure.

9 A Okay. Well, you asked if it's strictly a matter of  
10 contract, not really. There's a statute which -- which  
11 governs how bargaining units can be involved with PERS. There  
12 are various units.

13 Q Okay.

14 A And they each have contractual obligations which  
15 accord to their members varying sets of benefits. So, I'm  
16 sorry, that was a longer answer, but I don't want to be  
17 accused of being imprecise.

18 Q No, no, no. With regard to his employee group  
19 police-fire, that was the case in 2011 according to this; is  
20 that correct?

21 A That -- that's -- that's the unit he was in, yes.

22 Q Okay. And certainly things change in five years?

23 A Well, they can.

24 Q Okay. So, as you sit here today, you have no idea

1 if he falls under that same employee group?

2 A I don't believe there's a way that you can lose that  
3 eligibility. Let's suppose he quit as a police-fire member  
4 and went to work as a schoolteacher, he would then have non-  
5 police-fire credits in the PERS system, but I -- and you know  
6 I -- in my entire career, I don't know that I've ever seen  
7 that fact pattern. So, I can't tell you off the top of my  
8 head whether those credits could fall into the preexisting  
9 police-fire eligibility or whether they would have some sort  
10 of split retirement.

11 Q Well, no, what I'm asking though is can -- can that  
12 employee group change?

13 A I don't believe so, I've never seen it.

14 Q You've never seen it change? Okay.

15 A Not -- not to my knowledge in -- in the years I've  
16 done this.

17 Q Okay.

18 (COUNSEL AND CLIENT CONFER BRIEFLY)

19 THE COURT: All right. You said you had one more  
20 thing, Mr. Page?

21 MR. PAGE: Yes.

22 REDIRECT EXAMINATION CONTINUED

23 BY MR. PAGE:

24 Q Go back to Exhibit D as in dog. And we take a look

1 at VI.

2 A Yes.

3 Q There's a sentence in the middle there that says  
4 benefit minus early retirement reduction?

5 A Right.

6 Q The number is \$5,228.03 and then there's a minus of  
7 zero percent.

8 A Right.

9 Q Would that indicate to you that there is no  
10 reduction for early retirement.

11 A As of 2011 on the benefit -- on the estimated  
12 retirement date. They -- PERS calculated that there was no  
13 early retirement penalty.

14 Q Okay. Very good.

15 THE COURT: There was none because?

16 THE WITNESS: He had reached all eligibility  
17 criterion for regular retirement based on age and years of  
18 service to eliminate application of the penalty. Again  
19 according to PERS. If you look at the fine print they say we  
20 feel free to make errors on these things --

21 THE COURT: Sure.

22 THE WITNESS: -- your actual retirement may be  
23 different than what we tell you. They don't make any  
24 promises, you can't hold them to what's on a benefit estimate.

1 The actual number is whatever they calculate when you actually  
2 retire.

3 THE COURT: If his actual retirement age, age 50 but  
4 his -- oh, beneficiary actual -- what is beneficiary actual  
5 retiree, the spouse?

6 THE WITNESS: Ah --

7 THE COURT: Or the beneficiary or --

8 THE WITNESS: -- I don't know who -- I don't know  
9 who in their records is the named beneficiary. Whoever was  
10 the named beneficiary --

11 THE COURT: Behind it are the three designations  
12 that he made over the years.

13 THE WITNESS: Behind it?

14 THE COURT: Behind the document. Pages two --

15 THE WITNESS: Oh.

16 THE COURT: -- three, and four --

17 THE WITNESS: Okay.

18 THE COURT: -- and five.

19 THE WITNESS: I'm sorry I did not -- I've never seen  
20 these documents before.

21 THE COURT: I just noticed these. He made one in  
22 '05, '11, '13, and '15. So, originally you named Eleni, the  
23 wife, then Eleni again, then he changed it to the kids, the  
24 two twin boys, and then he didn't do one -- oh, he left it



1 with the boys.

2 THE WITNESS: Okay. I have never examined these  
3 documents, Your Honor, and I --

4 THE COURT: Me, too.

5 THE WITNESS: -- I can't --

6 THE COURT: It's the first time I've seen them.

7 THE WITNESS: Okay. Yeah, so I'm sorry, I wasn't  
8 asked any questions about those.

9 THE COURT: Right.

10 THE WITNESS: But to answer the question you asked  
11 whoever the named beneficiary was on the date that PERS  
12 performed this benefit estimate calculation that -- that  
13 beneficiary was age 42 to his age 50 at that moment.

14 THE COURT: Page 111.

15 THE WITNESS: They do have an actuarial table which  
16 PERS uses to figure out how much money would go to a survivor  
17 and if you change the age of the beneficiary, that number  
18 changes a lot.

19 THE COURT: Who is Alexandra Kilgore?

20 THE WITNESS: I can't answer that question.

21 MS. ALLEN: His daughter.

22 MR. KILGORE: That is my daughter.

23 THE COURT: Gotcha. Okay. Is she -- how old is she  
24 now?

1 MR. KILGORE: He's 20, she'll be 21 next month.  
2 THE COURT: Okay. Daughter from a prior  
3 relationship?  
4 MR. KILGORE: No, Your Honor. It's --  
5 THE COURT: It's your daughter with Eleni?  
6 MR. KILGORE: -- with Eleni.  
7 MS. KILGORE: Yes, that's our daughter.  
8 THE COURT: Okay.  
9 MS. KILGORE: He took her off.  
10 THE COURT: Anything else? We're going to take a  
11 little break and come back and you let me know if Mr. Willick,  
12 he's free to stay and watch.  
13 MR. PAGE: I don't believe I --  
14 THE COURT: I'd like to get this done --  
15 MR. PAGE: -- have anything further.  
16 THE COURT: You're going to have relief? Because  
17 you got to leave right at 5:00. I'm trying to get done at  
18 5:00 but --  
19 MS. ALLEN: I don't --  
20 THE COURT: Do you think we can get this done at  
21 5:00 or do we need a day two?  
22 MR. PAGE: I'll do everything I can to get it done  
23 at 5:00.  
24 THE COURT: I don't like to rush people but if you

1 want to finish in one day -- I don't know if I can get to an  
2 oral decision. Maybe, maybe not. Okay.

3 MS. ALLEN: Your Honor, I don't see any reason why  
4 Mr. Willick needs to stick around.

5 THE COURT: Their witness sometimes --

6 MS. ALLEN: Oh, I know I'm just saying --

7 THE COURT: -- you know you let your experts sit  
8 and --

9 MS. ALLEN: -- for -- for the purposes of whatever  
10 -- we're done, we're good.

11 THE COURT: Sometimes they let him sit in and then  
12 they call him back on the stand based on what you heard, what  
13 your expert opinion on this.

14 THE WITNESS: I can volunteer to the Court as the  
15 Court knows, my office is across the street. If by whatever  
16 happenstance someone decides that you need me back, call me.  
17 But otherwise, if I'm released, then I will -- I will leave.

18 MR. PAGE: Would --

19 THE COURT: Other option is he can watch the video  
20 later and then if you go to a day two, and you can bring him  
21 back on that just from watching the video.

22 MR. PAGE: Or if he wants to --

23 THE COURT: That probably makes sense. He's got a  
24 very busy schedule, he'll probably go back to his office.

1 MR. PAGE: Right. And he could also make himself  
2 available by telephone and I think -- I think --

3 THE COURT: No, he can just --

4 MR. PAGE: -- we're probably get --

5 THE COURT: -- get the flash drive and watch the  
6 rest of the trial on video at his leisure.

7 MR. PAGE: Yeah, yeah, I'm -- I see what you're  
8 saying.

9 THE COURT: Yeah. Okay. Thank you, Mr. Willick.  
10 No other -- further questions.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Appreciate your time.

13 THE WITNESS: It's a pleasure.

14 THE COURT: Okay. Same here.

15 (COURT RECESSED AT 15:42 AND RESUMED AT 15:57)

16 THE CLERK: We're back on record.

17 THE COURT: Okay. So, Mr. Willick left and went  
18 back to his office across the street. I'll give you the  
19 option if you need him to look at anything, even watch the  
20 video later, we've got pretty much Dad and Mom left to  
21 testify, right?

22 MR. PAGE: Yes.

23 THE COURT: Dad's maybe going to be more of the bulk  
24 of it. No -- any other witnesses? We're like close to 4:00,

1 I can't guarantee -- and I owe you guys a half hour from this  
2 afternoon, because I had a real long morning and then an  
3 attorney didn't show up for the 10:30, so I said just have  
4 them come back at 1:30. It's not your fault. And I don't  
5 like to rush people, I don't put you guys on stopwatches. If  
6 we need to come back, day two, on you know, a money issue, I'd  
7 rather give you guys a day two. I'd stay late but I'm not the  
8 midnight judge no more. And County don't want to pay overtime  
9 and she's got to leave at 5:00.

10 MS. ALLEN: Your Honor, I can't, I have a child at  
11 home.

12 THE COURT: Yeah, yeah --

13 MS. ALLEN: And she's 13 but --

14 THE COURT: -- we'll get a half --

15 MS. ALLEN: -- she's got a bad --

16 THE COURT: -- start looking --

17 MS. ALLEN: -- attitude.

18 THE COURT: -- for a date.

19 THE CLERK: That one.

20 (COUNSEL AND CLIENT CONFER BRIEFLY)

21 THE COURT: Something? What do you got?

22 THE CLERK: August 15th.

23 THE COURT: Did you run it by the lawyers?

24 THE CLERK: No, I just now found it because --

1 THE COURT: Oh, the 16th, too, I think opened up  
2 maybe, that was a number two. For sure?  
3 THE CLERK: August 15th is wide open.  
4 THE COURT: Check your calendar, August --  
5 MS. ALLEN: I'm sorry, what day is it?  
6 THE COURT: August 15th like two, three weeks out.  
7 THE CLERK: Three weeks from today.  
8 MS. ALLEN: Let me see.  
9 THE COURT: Which is super good, because right now  
10 we're out to November, December --  
11 MS. ALLEN: What time?  
12 THE COURT: -- for half a day.  
13 THE CLERK: 1:30.  
14 MS. ALLEN: I'm in.  
15 THE COURT: That just -- you can do it?  
16 MS. ALLEN: I'm in.  
17 THE COURT: Mr. Page?  
18 MR. PAGE: Give me one moment.  
19 THE COURT: Okay. Hope so. You know, I'm not going  
20 to get you guys in until November or December, that's really  
21 where I'm at right now.  
22 MR. PAGE: It appears to be open.  
23 THE COURT: Appears to be? So far so good. Okay.  
24 Good. Good thing that opened up. Did I give you the Holyoak

1 order of affirmance? This might --  
2 MS. ALLEN: You did.  
3 THE COURT: -- is there a footnote in there? What  
4 page is the footnote?  
5 MS. ALLEN: And, Your Honor, what time would we be  
6 resuming on --  
7 THE COURT: I'm looking for their footnote.  
8 THE CLERK: 1:30.  
9 MS. ALLEN: Yeah. Okay.  
10 THE COURT: No other settings, right?  
11 THE CLERK: No.  
12 THE COURT: No other settings. We just had one that  
13 -- that footnote's on page three. Mr. Willick has a good  
14 memory.  
15 MS. ALLEN: I believe --  
16 THE COURT: I don't think it's like -- he -- he  
17 knows it's not on all fours, but it might discuss other case  
18 law in there so --  
19 MS. ALLEN: I think he was actually --  
20 THE COURT: We'll read --  
21 MS. ALLEN: -- returning --  
22 THE COURT: -- we'll read it at our leisure.  
23 MS. ALLEN: I think he was returning to -- Your  
24 Honor, I think he was returning to -- referring actually to

1 footnote one on page two --

2 THE COURT: There is one.

3 MS. ALLEN: -- to be trying to sort of say that that  
4 may have been more controlling in this case. Because he kept  
5 referring to Walsh.

6 THE COURT: Yeah.

7 MS. ALLEN: I think he was referring to that one,  
8 Your Honor.

9 THE COURT: Yeah, we'll just take a look at it.  
10 Okay. Anything else? Who do you want to call first, the mom  
11 or the dad?

12 MR. PAGE: I'd call Mr. Kilgore first.

13 THE COURT: Okay. So, we'll start off with Dad and  
14 see how far we go for the next one hour.

15 All right. Mr. Kilgore, I believe we haven't sworn  
16 you in yet, so remain standing.

17 THE CLERK: You do solemnly swear the testimony  
18 you're about to give in this action shall be the truth, the  
19 whole truth, and nothing but the truth so help you God?

20 MR. KILGORE: I do.

21 THE COURT: I'm sure you're familiar with being in a  
22 courtroom.

23 MS. ALLEN: May I, Your Honor?

24 MR. KILGORE: Just a little.



1 THE COURT: A little, right, except you didn't know  
2 you had to sit in the hot seat.

3 MS. ALLEN: May I?

4 THE COURT: You can.

5 MS. ALLEN: Thank you.

6 THE COURT: Okay. All right. So, he's been sworn  
7 in, and Mr. Page, this is your direct examination.

8 MS. ALLEN: Oh, yeah. Your Honor, I apologize, one  
9 more. May I?

10 THE COURT: Those? Yeah, I need them, too. So --

11 MS. ALLEN: I'm not there yet but I'm sure I'm  
12 slowly approaching on it.

13 THE COURT: Lucky you.

14 MR. PAGE: You'll wake up one morning --

15 THE COURT: You can look forward to that.

16 MS. ALLEN: I know. I'm sure it'll happen.

17 Especially the children driving me over the edge.

18 THE COURT: Okay. Mr. Page, I believe we're ready  
19 whenever you're ready.

20 RICHARD KILGORE

21 called as a witness on his own behalf, having been first duly  
22 sworn, did testify upon his oath as follows on:

23 DIRECT EXAMINATION

24 BY MR. PAGE:

1 Q All right. Mr. Kilgore, could you state your name  
2 for the record, please?  
3 A Richard Scott Kilgore.  
4 Q You are the Plaintiff in this matter?  
5 A Yes, I am.  
6 Q Mr. Kilgore, could you go ahead and turn to Exhibit  
7 C as in cat, please?  
8 A C?  
9 Q C. Are you there?  
10 A I am there.  
11 Q Okay. Could you identify this document, please?  
12 A It appears to be a City of Las Vegas pay stub.  
13 Q And it appears that the pay slip is from October  
14 17th, 2014?  
15 A That was the pay period.  
16 Q The employee for whom this pay slip references is  
17 Richard S. Kilgore?  
18 A Yes.  
19 Q Richard S. Kilgore is you?  
20 A Correct.  
21 Q You work in the marshals unit of Municipal Court?  
22 A Correct.  
23 Q I'd like you to take a look down here toward the  
24 bottom where it's -- some words are circled, do you see that?

1 A Yes, I do.

2 Q Okay. You see that there was a terminal sick leave?

3 A Yes, I do.

4 Q If you go off to the right there and it says the

5 year to date amount of -- your -- the terminal sick leave was

6 \$8,510.45?

7 A That's what it says.

8 Q Then you also look at the line right below terminal

9 sick leave it says, what, terminal vacation leave?

10 A Yes.

11 Q If you go ahead and look off to the right there, the

12 amount of the terminal vacation leave was \$6,808.36?

13 A Correct.

14 Q For a time you were terminated from the marshal's

15 office with the City of Las Vegas; is that correct?

16 A Pardon me, I didn't --

17 Q You were terminated from the City of Las Vegas

18 marshal's office for a time?

19 A Correct. On that date.

20 Q As part of your --

21 THE COURT: No date of termination?

22 THE WITNESS: That was the date. October 17th.

23 THE COURT: 10-17. Well, the pay period ending was

24 10-25, but it was -- the termination was during that time.

1 THE WITNESS: The 17th I believe was the actual  
2 termination date.

3 THE COURT: Okay. Thank you.

4 MR. PAGE: Now, as -- made me lose my train of  
5 thought.

6 THE COURT: I apologize.

7 BY MR. PAGE:

8 Q When you were terminated you received your terminal  
9 sick leave?

10 A Yes.

11 Q When you were terminated you also received your  
12 terminal vacation leave?

13 A Yes.

14 Q Now, your decree of divorce, that was filed March  
15 13, 2013?

16 A The decree?

17 Q The decree of divorce, yes.

18 A We filed for divorce back in 2012 that we filed for  
19 divorce. It was finished in 2013.

20 Q When I suggest to you that the decree of divorce was  
21 filed May 13, 2013, you don't have any issue with that date?

22 A No.

23 Q In that decree of divorce, the accrued sick pay,  
24 that was never addressed, was it?

1 A No, it was not.

2 Q When we take a look at the decree, the accrued  
3 vacation pay, that was never addressed, was it?

4 A No, it was not.

5 Q You and Ms. Kilgore were married to each other when?

6 A We were married in December of -- gosh, I don't  
7 remember now, 20 years ago, 22 years ago now. '95-ish.

8 Q You and Ms. Kilgore remained married to each other  
9 the entire time from when you first got married to when the  
10 decree of divorce was filed on March 13, 2013?

11 A Legally we were married, we were separated for over  
12 two years pending divorce.

13 Q Now, that vacation time that was accrued, that was  
14 accrued during the course of your marriage to Ms. Kilgore,  
15 right?

16 A Correct.

17 Q The vacation pay that was accrued, that was accrued  
18 during the course of you marriage to Ms. Kilgore, correct?

19 A Correct. Not -- well, technically not all of it,  
20 not from the -- because this is based off of 2014. So,  
21 there's more accrued to it than -- than what was there when we  
22 got divorced.

23 Q There may have been a year and a half or so that  
24 wasn't included that was acquired by you post-divorce?

1 A Correct.

2 Q You would agree that there was never any check that  
3 was written to Ms. Kilgore for the accrued sick time from the  
4 time you were married through March 13, 2013?

5 A No.

6 Q You also agree that there was no check written to  
7 Ms. Kilgore from the date you were married through March 13,  
8 2013?

9 A No.

10 Q On the same lines of things that have been omitted,  
11 I would like to discuss with you the survivor benefit that you  
12 have with Nevada PERS. You do have a potential survivor  
13 benefit with Nevada PERS, correct?

14 A Correct.

15 Q You would agree that the survivor benefit that you  
16 had with Nevada PERS was never addressed in your decree of  
17 divorce?

18 A Correct.

19 Q You would agree that the survivor benefit with  
20 Nevada PERS is still waiting to be adjudicated by this court?

21 A Well, I have a survivor benefit, you're trying to  
22 have a modification.

23 Q Right. But I'm talking about survivor benefit that  
24 will take effect upon your retirement from the City of Las

1 Vegas.

2 A I have one in place right now.

3 Q You agree though that's never been divided yet or  
4 signed yet between you and Ms. Kilgore by this or any other  
5 court?

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

7 Q No judge has come in and said that Mr. Kilgore, you  
8 need to keep a survivor beneficiary or you need to assign it  
9 to Ms. Kilgore or some other third option?

10 A Correct. That was never addressed in our divorce.

11 Q Right. And never addressed by the judge in -- in  
12 the courtroom?

13 A Never addressed by anybody.

14 Q Now, the next thing I'd like to discuss,  
15 Mr. Kilgore, is the defined benefit plan that you have with  
16 Nevada PERS, and I mean by defined benefit basically I mean  
17 the pension plan, okay? Mr. Kilgore, I think you mentioned  
18 earlier when you were not under sworn testimony that you  
19 received -- reached 20 years of service in about 2009?

20 A Twenty years?

21 Q Yes.

22 A Thereabouts.

23 Q You -- you were hired in 2 -- in 1989; is that fair  
24 to say?

1 A Correct.

2 Q So, if we add on 20 years to, say, April 8th, 1989,  
3 20 years would be April 8th, 2009?

4 A Well, I'll clarify the April date. That's my hire  
5 date. My official start date for the City of Las Vegas was  
6 May 7th is when I first received my first paycheck.

7 Q Okay.

8 A So, it doesn't start until then and there was a 400-  
9 hour suspension which takes my actual hire date out to July  
10 and then with the recent termination of 14 months --

11 Q That -- that's --

12 A -- that's going to take that out to whatever.

13 Q Mr. Kilgore, regardless if you were suspended for  
14 400 hours, that's 10 weeks, right?

15 A Correct.

16 Q Okay. So, if we take a look here at your hire date  
17 of -- we call it May 1, 1989, 20 years is going to be May of  
18 2009, correct?

19 A Correct.

20 Q And you agree that we're seven years removed from  
21 May of 2009?

22 A Correct.

23 Q Your birth date is April 20, 1961, right?

24 A Correct.



1 Q You turned age 50 on April 20, 2011?

2 A Correct.

3 Q So, we're basically at this point five years beyond  
4 your 50th birthday?

5 A Correct.

6 Q Under Chapter 286 for police-fire, you were first  
7 eligible for retirement at age 50 with 20 years of credible  
8 service, correct?

9 A That remains to be seen, because there's been some  
10 changes in the law.

11 Q Could I have you turn to Exhibit D, please? Are you  
12 there?

13 A I'm there.

14 Q Okay. You agree that this is an estimate  
15 calculation for service retirement for you?

16 A Correct.

17 Q You agree that under V, your total service credit at  
18 this point is 22.08 years?

19 A This is their estimate.

20 Q And you agree that the calculation appears to have  
21 been done on January 11, 2011?

22 A If that's what it says on the bottom.

23 Q So, by the time we would've got to October of 2014,  
24 that would've been another three years, so you'd be up to

1 about 25 years?

2 A Roughly.

3 Q If we go ahead and take a look at VI, you see that  
4 there is no minus for any early retirement reduction for the  
5 estimated retirement allowance for you; is that correct?

6 A Their estimate, correct.

7 Q If I suggested to you that you and Ms. Kilgore were  
8 married to each other in December of 1992, that would sound  
9 about correct?

10 A Correct.

11 Q And then if you were divorced in about March of  
12 2013, that would have made your marriage to Ms. Kilgore be  
13 about 21 years?

14 A I believe it was 20.

15 Q You would also agree that you were hired with the  
16 City of Las Vegas as you've indicated in May of 1989?

17 A Correct.

18 Q And then you were originally terminated in October  
19 of 2014, that's also correct?

20 A Well, the first time I was terminated was October of  
21 2001, and that's where the 400 hour suspension comes from

22 Q That's at -- that's 10 weeks. So, if we're just  
23 doing some relative math here, you've been with PERS give or  
24 take, 25 years?

1 A Correct.

2 Q So, you were married to Ms. Kilgore for 20 of those  
3 25 years?

4 A Correct.

5 Q So, you and Ms. Kilgore were married to each other  
6 through -- at least through the decree of divorce about 80  
7 percent of your time with the City Marshal Service?

8 A Probably somewhere between 75 and 80.

9 Q If -- if I go ahead and call it 80 for -- because  
10 that's what the math shows here, Ms. Kilgore would be entitled  
11 to about 40 percent of an unreduced retirement benefit does  
12 that -- would you agree with that?

13 A According to PERS.

14 MS. ALLEN: And, Your Honor, at this point the only  
15 objection I would have -- or I would have an objection --

16 THE COURT: Yes.

17 MS. ALLEN: -- it calls for a -- sort of a legal  
18 conclusion. I think he's asking him questions that relate to  
19 the legality of community property --

20 THE COURT: Possibly.

21 MS. ALLEN: -- I don't think my client is in a  
22 position to answer.

23 MR. PAGE: I'm just asking whether the -- the math  
24 adds up to him and sounds about right and it does.

1 THE COURT: Yeah. Overruled. Not in a legal --  
2 legalese type, only what his lay person understanding is.  
3 I'll put it in that context.

4 MS. ALLEN: Thank you.

5 THE COURT: I think I can sort the difference.  
6 Okay. Did you get an answer on that question?

7 MR. PAGE: Yeah. He --

8 THE COURT: Okay.

9 MR. PAGE: -- agrees with --

10 THE COURT: Okay.

11 MR. PAGE: -- you know, the math appears to be about  
12 correct.

13 BY MR. PAGE:

14 Q So, if we take \$5,228.03 times 40 percent that would  
15 come out to be about \$2,091 is what would be due to  
16 Ms. Kilgore?

17 A Oh, I couldn't answer that.

18 Q Would you agree that the -- if you take 40 percent  
19 times \$5,223 --

20 A I'm not a math person.

21 Q I understand. If I walked up to you with a  
22 calculator and did the math for you, would you have any  
23 dispute with that?

24 A No, I'm not going to dispute with it, and I'm not a

1 math person.

2 Q Okay. If I ask you here if you're a math person,  
3 I'll ask you if you're a math person. I just want to ask if  
4 the math sounds right to.

5 A Well, it's the amount you're giving me so we're  
6 going to go with your amount --

7 Q Okay.

8 A -- because that's what you're saying.

9 Q Okay. So, about \$2,091 is what goes to Ms. Kilgore.  
10 Now, you would agree that since the decree was entered, you  
11 haven't made any of those payments to Ms. Kilgore?

12 A I haven't been required to.

13 Q Again, I'm not asking as to your perceived ability,  
14 I'm asking as to whether you've actually made the payments.

15 A She hasn't made none of my payments to me --

16 Q Again --

17 A -- of hers so --

18 Q -- Mr. Kilgore, I'm not asking you whether she's  
19 made any payments to you, I'm asking whether you've made any  
20 payments to her.

21 THE COURT: Yes or no.

22 THE WITNESS: No.

23 THE COURT: Yes or no.

24 THE WITNESS: No.

1 THE COURT: Your attorney will follow up later.

2 BY MR. PAGE:

3 Q MR. Kilgore, do you recall the February 9, 2016,  
4 hearing?

5 A Not really.

6 Q Do you recall at that February 9, 2016, hearing that  
7 you were ordered to commence paying Ms. Kilgore \$1,200 a month  
8 for her share of the --

9 A No.

10 Q -- retirement benefits?

11 A No.

12 Q Ms. Kil -- Mr. Kilgore you had an -- you had a  
13 counsel at that time, correct?

14 A Correct.

15 Q Okay. And you are -- you agree that your counsel  
16 reviewed and signed off on the order that required you to do  
17 so?

18 A I have no knowledge of that.

19 Q And you're also aware that a notice of entry -- this  
20 order was sent to your counsel again advising you of your duty  
21 to make those payments as ordered by the Court?

22 A It's the first time I heard of it.

23 Q But you were in court on February 9th, yes?

24 A We asked for a continuance --

1 Q Sir --  
2 A -- because --  
3 Q Okay. I didn't ask you --  
4 A Yes, I was here.  
5 Q Sir --  
6 A And I wanted a continuance.  
7 THE COURT: Hang on --  
8 MR. PAGE: -- I didn't ask you whether you asked for  
9 a continuance. I asked you as to whether you were in court  
10 that day.  
11 THE WITNESS: For part of it.  
12 THE COURT: Part of it?  
13 MR. PAGE: You were there at the --  
14 THE COURT: You walk in late?  
15 MR. PAGE: -- beginning, correct?  
16 THE WITNESS: I was there at the beginning.  
17 BY MR. PAGE:  
18 Q You were there at the end, right?  
19 A I was not.  
20 THE COURT: Where were you at? You had to leave  
21 early?  
22 THE WITNESS: You said we were getting a continuance  
23 date and my attorney said go ahead and leave and I walked out.  
24 THE COURT: Oh, okay. Will you bring me the

1 minutes?

2 BY MR. MR. PAGE:

3 Q Mr. Kilgore, could you turn to Exhibit H, please?

4 You agree that that's labeled schedule of arrears?

5 A Correct.

6 Q Do you agree that that is for this particular case  
7 number?

8 A Yes.

9 Q I'm going to have you turn to page two, please. Are  
10 you there?

11 A Yes.

12 Q Okay. And that shows that there were certain  
13 amounts due on the months of February through July, right?

14 A Correct.

15 Q Those amounts that were due were \$1,200, right?

16 A Correct.

17 Q You would agree that the total amount of arrears  
18 through July is \$7,200?

19 A That's what it says here.

20 Q Yes? Yes, you agree that that's what it says?

21 A That's what it says there.

22 Q You also have no dispute with the amount being paid  
23 for any of those months as being zero?

24 A I do not.



1 MR. PAGE: Move for admission of Exhibit H.

2 THE COURT: Any objection?

3 MS. ALLEN: No, Your Honor.

4 THE COURT: Okay. It's a pleading, yeah, it'll be  
5 admitted.

6 (Defendant's Exhibit H admitted)

7 BY MR. PAGE:

8 Q Well, you have no dispute that there -- despite  
9 there being a court order of you to make payments of \$400 a  
10 month that you have failed to make any?

11 A Correct.

12 Q Mr. Kilgore, could you turn to Exhibit F, please?

13 A F?

14 Q F as in Frank. Could you identify this document,  
15 please?

16 A It says it's a Hart -- Hartford enrollment record,  
17 deferred compensation.

18 Q This enrollment record is for Richard Kilgore?

19 A Correct.

20 Q That Richard Kilgore is you?

21 A Correct.

22 Q Now, you indicated that your employee contribution  
23 was going to be \$538.46 per paycheck, right?

24 A Correct.

1 Q For a total of \$14,000 per year?

2 A Correct.

3 THE COURT: By the way, can we cross off his social?

4 MR. PAGE: Yeah, I was going to get to that, I'm  
5 sorry.

6 THE COURT: That's fine, my clerk will do it on the  
7 original. So, 26, that's every pay period.

8 BY MR. PAGE:

9 Q Mr. Kilgore, you would agree that that Hartford  
10 deferred compensation -- or any deferred compensation account  
11 for that matter was never listed in your financial disclosure  
12 form?

13 A No, it was not.

14 MS. ALLEN: And I would object to clarification as  
15 to which financial disclosure form.

16 THE COURT: Right. Timing's everything. Post-  
17 divorce, pre-divorce.

18 MS. ALLEN: Thank you, Your Honor.

19 MR. PAGE: You would also agree that the --

20 THE COURT: Which FD -- sustained foundation. Which  
21 -- never listed on his FDF.

22 BY MR. PAGE:

23 Q You would agree that this was never listed on any  
24 FDF filed by you before the decree of divorce was filed?

1 A Correct.

2 Q You would agree --

3 THE COURT: Pre-divorce.

4 BY MR. PAGE:

5 Q -- that there was no Hartford deferred compensation  
6 fund or any deferred compensation plan mentioned in the decree  
7 of divorce?

8 A Correct.

9 Q When Mr. Willick testified as to there being  
10 possibly a fourth retirement account being referenced in the  
11 decree of divorce, was it possibly this compensation account  
12 that was being referenced?

13 A I have no idea.

14 Q You would also agree that the -- that a deferred  
15 compensation account was not listed in any financial  
16 disclosure form by your post-decree?

17 A Correct.

18 Q Is it fair to say, Mr. Kilgore, that at no point  
19 during the divorce proceedings did you mention any deferred  
20 compensation account to your wife?

21 THE COURT: At any point -- so from the filing of  
22 the Complaint until today?

23 MR. PAGE: Right.

24 THE WITNESS: No. But she was aware that we had a

1 deferred comp. She was more than aware of that.

2 MR. PAGE: Move to strike as being non-responsive.

3 THE COURT: Granted. Your attorney will get to  
4 that.

5 THE WITNESS: Okay.

6 BY MR. PAGE:

7 Q This deferred compensation account, is it still with  
8 Hartford, or did it move to another entity?

9 A That was cashed in when we filed bankruptcy in 2010.

10 THE COURT: (Indiscernible) 2010. Cashed out?

11 THE WITNESS: Cashed out.

12 THE COURT: With the penalties and everything?

13 THE WITNESS: Yes.

14 THE COURT: Do you know how much was in there and  
15 how much you got out of it?

16 THE WITNESS: I don't remember, Your Honor.

17 MR. PAGE: Move for admission of Exhibit 7, please.

18 MS. ALLEN: 7?

19 MR. PAGE: 7.

20 THE COURT: No. F.

21 MR. PAGE: I'm sorry, I'm sorry, F.

22 THE COURT: You're letters.

23 MS. ALLEN: No objection.

24 THE COURT: Okay. It's in.

1 (Defendant's Exhibit F admitted)

2 MR. PAGE: Why'd I say 7?

3 THE COURT: Because your F looks like a seven? I

4 don't know, a backwards seven.

5 MR. PAGE: There -- there's no connection there.

6 THE COURT: How long you been a lawyer? Defendant's

7 always letters. Believe me, some lawyers can't figure out

8 letters and numbers. Just kidding. All right. F is in.

9 MR. PAGE: May I approach the witness?

10 THE COURT: You may approach the witness, yes.

11 BY MR. PAGE:

12 Q Mr. Kilgore, the documents contained within

13 Defendant D were documents that were received via subpoena

14 sent to PERS. For some apparent reason the cover page that

15 PERS sent to us was not included in the exhibit so I would

16 like to show you this.

17 MS. ALLEN: Yeah, I -- I have --

18 THE COURT: Uh-huh (affirmative).

19 MS. ALLEN: -- yeah, thanks. (PAUSE) I'm still

20 reading. Okay.

21 THE COURT: How come you didn't have a hard copy?

22 MR. PAGE: I don't know.

23 THE COURT: Okay. As long as opposing counsel saw

24 it. This is an exhibit or just something -- just to show him?

1 MR. PAGE: I'll show him and question him, and if  
2 it's possible to make it an exhibit I will. But right now, I  
3 just want to elicit the testimony from him if I may?

4 THE COURT: Okay. Let me know.

5 BY MR. PAGE:

6 Q Mr. Kilgore, would you agree that this is a letter  
7 from PERS dated February 4, 2016?

8 A It's a letter that appears to be from PERS.

9 Q And it was sent to myself, correct?

10 A (NO AUDIBLE RESPONSE)

11 Q Now, the correspondence indicates that PERS received  
12 a subpoena for records pertaining to the retirement account of  
13 Richard Kilgore, do you presume that Richard Kilgore is you?

14 A I guess.

15 Q Okay. Now, it indicates that I requested copies of  
16 records reflecting when Mr. Kilgore's first eligible to retire  
17 from the City of Las Vegas and records reflecting how much he  
18 would have received on a monthly basis if he retired upon his  
19 first eligibility for particular. Do you agree that the  
20 sentence says that?

21 A Yeah.

22 Q And you also agree that the next sentence states  
23 that the records indicate that Mr. Kilgore was a participant  
24 un -- in this system under the police-firefighter retirement

1 fund. He was not -- he was eligible to retire with an  
2 unreduced benefit at age 50, however an estimate of his  
3 benefits based upon retirement, this 50th birthday is not on  
4 file. Do you agree that the letter says that?

5 A That's what it says.

6 Q You also agree the letter says they're enclosing a  
7 copy of the remaining documents requested and to assist with  
8 the request made by me, they are enclosing a cost estimate on  
9 file based upon terminated on July 31, 2011, and retiring on  
10 August 1, 2011.

11 A Okay.

12 Q Okay. And then you recall the -- it's by Sonya  
13 Hellwinkel, the director of employment production services at  
14 PERS?

15 A Okay.

16 Q Yes? Then the next document attached was the  
17 estimate calculation for service retirement that Mr. Willick  
18 testified to earlier today regarding how much you would be  
19 receiving and whether there was any early retirement penalty?

20 A Correct.

21 Q Okay. So, this document that was -- has a  
22 calculation date of January 11, 2011, for August 1, 2011,  
23 appears to have been generated by Nevada PERS?

24 A Correct.

1           Q     Does it appear to you based upon that  
2 correspondence, Mr. Kilgore, that you are currently and have  
3 been eligible for retirement for an unreduced benefit at your  
4 30th (sic) birthday?

5           THE COURT: Thirtieth?

6           MR. PAGE: Fiftieth --

7           THE COURT: Fiftieth.

8           MR. PAGE: -- thank you.

9           THE WITNESS: Under that guidelines, it's a  
10 possibility. There's a law that came out --

11          MR. PAGE: Move to --

12          THE WITNESS: -- recently --

13          MR. PAGE: -- strike anything after that. Just  
14 that's what it appears.

15          THE COURT: Yes or no.

16          THE WITNESS: It appears.

17          THE COURT: It appears, yes, okay.

18 BY MR. PAGE:

19          Q     So, as we stand here today, Mr. Kilgore, you are not  
20 of any -- in possession of any piece of document, any piece of  
21 paper that would contradict what is indicated here by Nevada  
22 PERS?

23          A     Not to contradict anything that they have written on  
24 that date in 2011.



1 Q I'm sorry, what?

2 A Whatever that document is, 2011, I don't have a  
3 current one.

4 MR. PAGE: May I -- may I approach him again,  
5 please?

6 THE COURT: Sure. You may.

7 BY MR. PAGE:

8 Q Sir, do you agree that this letter from PERS is  
9 dated February 4, 2016?

10 A It's a copy of the scanned letter that can possibly  
11 be from PERS.

12 Q Do you have --

13 A I don't know the authenticity (sic) of it, if it's  
14 been cut, paste, messed with.

15 Q But you agree according to Ms. Hellwinkel that is  
16 her --

17 A I don't --

18 Q -- that appears to be a signature of hers?

19 A It appears to be a signature.

20 Q Yes. And that you were eligible to retire with an  
21 unreduced benefit at age 50 and that was in the letter --

22 A According to the letter that's written there, that's  
23 what it says.

24 THE COURT: You want that in evidence? And I don't

1 know if Ms. Allen's going to object.

2 MR. PAGE: I'll move it be put into evidence.

3 MS. ALLEN: I would object to the letter. We  
4 haven't been provided copies of it. In fact, I still don't  
5 have one.

6 THE COURT: Was it obtained back in February? It  
7 should have been available in discovery.

8 MR. PAGE: It was -- it was part of the records  
9 they've subpoenaed, they've never done any discovery in this  
10 case --

11 THE COURT: Prove to me that they've had it in their  
12 possession or they had access to it between --

13 MR. PAGE: Yeah.

14 THE COURT: -- while this thing was in discovery.  
15 So, you obtained this letter at your request?

16 MR. PAGE: Subpoena.

17 THE COURT: By subpoena. And normally don't you  
18 send your subpoenaed stuff to opposing counsel or opposing  
19 party? You got it back in February --

20 MR. PAGE: If they --

21 THE COURT: -- it's now July --

22 MR. PAGE: -- request it pursuant to a request for  
23 production of documents, sure. It's not -- it's --

24 THE COURT: Yeah, but when you --

1 MR. PAGE: -- not automatic.

2 THE COURT: -- got it from -- when they sent you the  
3 stuff, you didn't send it over to Mr. Kilgore if he was -- he  
4 was represented by what, Jan Jacovino back at that time?

5 THE WITNESS: Correct.

6 THE COURT: No? Good basis to sustain the objection  
7 if it was available and was not produced to opposing counsel.

8 MS. ALLEN: Your Honor, it's not even included in  
9 the exhibits for today.

10 THE COURT: No.

11 MR. PAGE: And I don't know --

12 THE COURT: And he knew that.

13 MR. PAGE: -- why it's --

14 THE COURT: Okay. I got to go with what --

15 MR. PAGE: -- not there but --

16 THE COURT: -- I have, but I think he had access to  
17 it and it should have been turned over at that time.

18 Sustained.

19 MR. PAGE: I'm sorry?

20 THE COURT: Sustained.

21 MR. PAGE: I've got -- I guess did I did find the  
22 letter here.

23 THE COURT: Did you have -- did you attach it to any  
24 motion or give it to me at any motion hearing as well? If you

1 recall. Maybe you can look at the videos later.

2 MR. PAGE: It's -- it's not the -- it's not the rule  
3 that they -- if they want to have something pursuant to an  
4 upcoming evidentiary hearing, they're more than welcome to go  
5 ahead and --

6 THE COURT: Were pretrial memos mandated? Sometimes  
7 they're optional with me.

8 MR. PAGE: No. The -- the pretrial -- the pretrial  
9 memo was done.

10 THE COURT: Okay. Sometimes they attach it to the  
11 pretrial memo, that would have been at least fair game and  
12 attach it like a week before trial. Maybe I would've let that  
13 slide. But this -- this -- rules are if you get something in  
14 discovery, a subpoena, you're supposed to turn over any of  
15 that to the other side, because you plan on bringing it with  
16 you to trial.

17 MR. PAGE: One more just a minute.

18 THE COURT: If you had any mention of it or gave a  
19 copy in the middle of a motion hearing prior to getting to  
20 trial, let me know, check the videos or you referenced it or  
21 you actually attached it to a pleading an opposition and  
22 countermotion.

23 MR. PAGE: One moment.

24 THE COURT: Yeah. Maybe. When were the

1     countermotions filed? Do you have a reg -- you can't print  
2     the registry of actions, can you?

3             MS. ALLEN: If I may suggest, it looks like we may  
4     be coming back anyhow, maybe he could look for it on --

5             THE COURT: Sure. That's what I'm saying.

6             MS. ALLEN: -- and continue with his examination of  
7     my client, and then we can deal with that the next time we  
8     come back.

9             MR. PAGE: I don't necessarily see the letter but I  
10    do see the other documents.

11            THE COURT: That's very kind of you, Ms. Allen would  
12    have time by the time we come back in two weeks, maybe she  
13    won't have a problem with it or maybe they'll found out it's  
14    useful for them, too, or useful for the Court. Let them  
15    evaluate it as well.

16            MR. PAGE: Otherwise I can bring Ms. Hellwinkel in  
17    just like I brought Mr. Willick in.

18            THE COURT: You know, I was going to say was one of  
19    you going to bring a PERS person in?

20            MR. PAGE: We had -- we had the option of --

21            THE COURT: Have we ever had one in before?

22            MR. PAGE: -- either doing Mr. Willick or  
23    Ms. Hellwinkel as an expert, we chose to do Mr. Willick just  
24    because he's across the street.

1 THE COURT: You got -- you got the \$48 witness fee?  
2 You can bring Ms. Hellwinkel in, anything helps and we can ask  
3 her about it.

4 MR. PAGE: I can bring her back next time.

5 THE COURT: Yeah, these people are supposed to --  
6 sure, I think that'd be important, wouldn't it? I think if I  
7 had time to serve her with a subpoena and pay her the 40  
8 dollar plus fee --

9 MR. PAGE: And quite honestly --

10 THE COURT: -- it would help.

11 MR. PAGE: -- I thought that -- I thought  
12 Mr. Kilgore based upon the calendar call was going to bring  
13 Ms. Hellwinkel and we were going to bring Mr. Willick.

14 THE COURT: I'm going to play the guessing game with  
15 you guys but --

16 MR. PAGE: At least we brought someone.

17 THE COURT: -- do you want to do it -- you want to  
18 do it? Bring Ms. Hellwinkel in. Or PER -- what do you call  
19 it, PMK, person --

20 MS. ALLEN: Person most knowledgeable.

21 THE COURT: -- most knowledgeable at PERS.

22 MR. PAGE: I mean we would you have any objection to  
23 maybe limit her inconvenience, have her testify by telephone.

24 THE COURT: You stipulate? Or video conference, we

1 have the BlueJeans program.

2 MS. ALLEN: Um --

3 THE COURT: They can -- they can testify from the  
4 comfort of their office desk. And then I'll know what they  
5 look like. Or where do they work, in the Sawyer building?  
6 They can just come on over two blocks from here --

7 MS. ALLEN: If I can --

8 THE COURT: -- two miles from here.

9 MS. ALLEN: -- Your Honor, before I do anything  
10 actually I would want to confer with my client, so if the  
11 Court would just allow me --

12 THE COURT: Right now we'll assume live unless they  
13 stipulate in writing and you guys can shoot an email to my --  
14 call my JEA or shoot an email. I'll even use stip an order.  
15 If you guys just say give the green light and give this lady  
16 a --

17 MS. ALLEN: That's fine.

18 THE COURT: -- chance to just make it easy for her  
19 and then they're more willing to testify when they do it at  
20 their office. Or -- like I said they work down at the Sawyer  
21 building, I'm sure. It's only two miles from here, and they  
22 don't mind getting out of work if they've got to comply with a  
23 court-ordered subpoena.

24 MS. ALLEN: Yeah. Of course.

1 THE COURT: Okay. Right now we'll assume live  
2 unless you talk to Ms. Hellwinkel or whoever they're going to  
3 designate and if they want to testify from her desk, that's  
4 fine. Okay. I'm easy. Make it easy. Okay. So, I was going  
5 to print the registry of actions, that's what I was going to  
6 do. Because somehow you can't figure -- you used to be able  
7 to.

8 THE CLERK: I know, and I don't know --

9 THE COURT: You used to be able to.

10 THE CLERK: -- how to do it anymore.

11 THE COURT: Weird. We were talking about when they  
12 got divorced and then when Mom filed her motion --

13 MR. PAGE: Well, we raised it in --

14 THE COURT: -- that got me to printing --

15 MR. PAGE: -- approximately March of 2015. Our  
16 hearing was March --

17 THE COURT: You had 111-page opposition and  
18 counter-motion. No, she filed it pro per maybe. Maybe she  
19 filed it pro per. Yeah. The question will be does it go from  
20 time of divorce, does it go retroactive from the time of the  
21 motion when she made a request orally or -- or by way of a  
22 formal --

23 MR. PAGE: That's -- that's an open question --

24 THE COURT: It is and I --



1 MR. PAGE: -- under Henson.

2 THE COURT: -- can't -- of course I won't -- I can't  
3 answer because that is the issue today. And I do note her  
4 111-page opposition was filed around -- yeah, December 28th,  
5 2014. She -- did she represent herself at that time?

6 MR. PAGE: She was represented by Leo Flangas at  
7 that time. I was asked to --

8 THE COURT: But the motion was --

9 MR. PAGE: -- sub in.

10 THE COURT: -- the opposition was pro per.

11 MR. PAGE: That may be but I --

12 THE COURT: And the reason is --

13 MR. PAGE: -- came in right about that time.

14 THE COURT: We -- I have to decide after  
15 Mr. Willick's testimony, and then I have to apply the law and  
16 figure out -- maybe it's a case of first impression where we  
17 go back retroactive if she's entitled -- first of all, is she  
18 entitled with fraud -- you have the fraud, mistake under  
19 125.150, you have the post-Doan issues. And then I decided  
20 it's from the time of divorce or when she filed her opposition  
21 and countermotion or I heard Willick say something about March  
22 2015 and then Mr. Page is telling me --

23 MR. PAGE: That --

24 THE COURT: -- it was raised at a March 2015

1 hearing.

2 MR. PAGE: It was -- I'm -- I'm probably off on my  
3 dates a little bit. I first came into the case on December  
4 30, 2014.

5 THE COURT: Okay.

6 MR. PAGE: During that hearing I raised the issue of  
7 there being -- of omitted benefits and also the fact that  
8 Mr. Kilgore was not paying my client her community property  
9 share of the PERS retirement benefits at that time. You  
10 directed me to file a brief on it --

11 THE COURT: Then that would be her --

12 MR. PAGE: -- which I did.

13 THE COURT: Yeah.

14 MR. PAGE: And then I filed a brief --

15 THE COURT: March 10th, 2015.

16 MR. PAGE: -- on March 10th.

17 THE COURT: So --

18 MR. PAGE: So everyone was on notice effective  
19 December 30th.

20 THE COURT: Okay. Just putting dates for the record  
21 here. Yeah, and that brief was filed March 10th, 2015.  
22 Plaintiff filed a responsive brief on March 24th, 2015. Okay.  
23 Duly noted.

24 MR. PAGE: And since that time we've been trying to

1 get to the point that we're at here today.

2 THE COURT: That's what I got to rule on. Okay.

3 MR. PAGE: I believe I will go ahead and turn the  
4 witness over to opposing counsel.

5 THE COURT: Do you have a lot, are you going beyond  
6 the scope? I'm assuming right now we're not. So, when you  
7 get to call -- you get to call in your own direct.

8 MS. ALLEN: Okay.

9 THE COURT: So, we'll just stick to that -- only the  
10 topics that he talked about on his direct.

11 MS. ALLEN: Thank you.

12 THE COURT: Okay. Cross exam? Yeah, we'll make use  
13 of our time.

14 MS. ALLEN: Pardon, Your Honor?

15 THE COURT: Yeah, we got about --

16 MS. ALLEN: Twenty minutes.

17 THE COURT: -- 20 minutes left.

18 MS. ALLEN: Correct.

19 THE COURT: All right. Cross.

20 MS. ALLEN: All right.

21 THE COURT: Oh, 15 minutes, I'm sorry, because it  
22 takes time to clean up, too --

23 MS. ALLEN: Okay.

24 THE COURT: -- and we've got to shut this thing down

1 by 5:00.

2 CROSS EXAMINATION

3 BY MS. ALLEN:

4 Q All right. Mr. Kilgore, Mr. Page asked you  
5 questions about when you were divorced and the actual decree.  
6 I think he said it was March --

7 MR. PAGE: 13, 2013.

8 MS. ALLEN: -- 2013; is that correct? Pardon?

9 MR. PAGE: March 20 -- March 13th, 2013.

10 BY MS. ALLEN:

11 Q March of 2013, correct?

12 A Correct. That's my recollection.

13 Q You know you were divorced in March of 2013?

14 A I know I was divorced in 2013.

15 Q Yeah. And you remember putting that divorce decree  
16 together with either the attorney you had at the time and now  
17 exwife, you sat down and you -- you all put that together; is  
18 that correct?

19 A Yeah, with her attorney Roger Giuliani and --

20 Q Okay. And you had an attorney at the time?

21 A Yes.

22 Q Okay. Both represented by counsel, correct?

23 A Correct.

24 Q All right. And in that decree you set out child

1 custody, correct?

2 A Correct.

3 Q And visitation, child support, who was taking what  
4 items from the home; is that correct?

5 A Correct.

6 Q All right. All those things are in there?

7 A Correct.

8 Q All right. And the idea that you left out -- or the  
9 Defendant, they're raising the idea that you left out deferred  
10 comp and this vacation time, and you're aware of that; is that  
11 correct?

12 A The issue that they're raising, correct.

13 THE COURT: Oh, that happens, I apologize.

14 BY MS. ALLEN:

15 Q You okay?

16 A No. Not at all.

17 THE COURT: Oh, sorry, yeah, we've called IT four  
18 times to fix this and it just -- it just pops up.

19 THE WITNESS: Yeah, that about blew my ears out.

20 THE COURT: You're right there.

21 MS. ALLEN: No, he has a hearing aid.

22 THE COURT: Oh, gosh --

23 MR. PAGE: Is that what did it?

24 THE COURT: -- that is bad.

1 THE WITNESS: That was bad.  
2 THE COURT: Sorry.  
3 MS. ALLEN: You all right?  
4 THE COURT: It just came out of nowhere.  
5 MS. ALLEN: Need a minute?  
6 THE WITNESS: I'll be all right.  
7 THE COURT: We asked to have them turn it down, they  
8 turn it now -- this is bad, it keeps happening. It's like it  
9 pops up whenever it wants to.  
10 MS. ALLEN: All right. I'm going to go back.  
11 THE COURT: Tell IT, tell Susanna to tell IT we had  
12 the problem again or tell IT.  
13 MS. ALLEN: May I proceed?  
14 THE COURT: Yeah. Sorry.  
15 MS. ALLEN: That's okay.  
16 THE COURT: Six times it's happened.  
17 BY MS. ALLEN:  
18 Q I'm going to just go back briefly to the time period  
19 in which you were married. At any point in time during your  
20 marriage you were deployed to the Middle East?  
21 A Correct.  
22 Q Okay. When was that?  
23 A 2003 to 2004.  
24 Q Okay.

1 A Deployed. My first --  
2 Q While you were gone --  
3 THE COURT: Deployed? Belize?  
4 MS. ALLEN: Pardon?  
5 THE WITNESS: Deployed Operation --  
6 MS. ALLEN: The Middle East.  
7 THE WITNESS: -- to the Middle East.  
8 THE COURT: Middle East.  
9 MS. ALLEN: I said Middle East, not Belize.  
10 THE WITNESS: Belize would be nice.  
11 MR. PAGE: It sounded like Belize to me quite  
12 honestly.  
13 THE COURT: It sounded like Belize.  
14 MS. ALLEN: I talk --  
15 MS. KILGORE: It did sound like Belize.  
16 THE WITNESS: It's an Air Force gig.  
17 MS. ALLEN: I talk really fast.  
18 THE COURT: Is it military?  
19 THE WITNESS: Correct.  
20 THE COURT: Were you a reservist?  
21 THE WITNESS: I'm Army Reserves.  
22 THE COURT: Army Reserves. 2003. Got it.  
23 BY MS. ALLEN:  
24 Q (Indiscernible) you were deployed to the Middle

1 East, correct?

2 A Africa to be specific.

3 Q Okay. And during that time frame, married to the

4 Defendant --

5 A Correct.

6 Q -- correct? And did -- was there documentation that

7 you executed while you were gone on deployment to help her

8 facilitate continuing to run the home?

9 A Correct.

10 Q And what was that?

11 A Power of attorney.

12 Q What kind of power of attorney did you give her?

13 A Unlimited power of attorney.

14 Q So, she had access to anything and everything --

15 A Every bank account, every loan, every asset.

16 Q Okay. Do you get statements from the City on things

17 such as deferred compensation --

18 A Correct.

19 Q -- vacation time, all of those?

20 A Yes.

21 Q Okay. Did you -- during that time frame you were

22 gone, did you get information about -- would there have

23 statements come to the home regarding things such as deferred

24 comp?



1 A They came to the home.

2 Q Okay. So -- and those would have been in the actual

3 sole care and custody of the Defendant?

4 A Correct.

5 Q Okay. At the time --

6 THE COURT: How long were you gone, six months?

7 THE WITNESS: Gone 13.

8 THE COURT: Thirteen months. And back in the day,

9 2003, City -- you were City --

10 THE WITNESS: City of --

11 THE COURT: -- Las Vegas?

12 THE WITNESS: -- Las Vegas.

13 THE COURT: You got hard paper paychecks? No longer

14 on online?

15 THE WITNESS: We had deferred -- or direct deposit.

16 THE COURT: But the direct deposit -- sometimes they

17 give it to you in the courthouse, they just hand it to you.

18 Yours came in by mail?

19 THE WITNESS: Yeah, they would mail the --

20 THE COURT: They mailed yours.

21 THE WITNESS: -- the --

22 THE COURT: The stub.

23 THE WITNESS: -- the stub to the house.

24 BY MS. ALLEN:

1 Q And this was the home you were living in with her?

2 A Correct.

3 THE COURT: Thirteen months, your deferred comp's  
4 from Hartford, they usually -- because I had the same thing,  
5 but we're not with them no more. They'd come in quarterly.

6 THE WITNESS: That'd be about right.

7 THE COURT: So, it'd be about 13 months, she  
8 would've gotten -- and you tell -- did you tell her go ahead  
9 and open my mail?

10 THE WITNESS: She was running the household, she had  
11 full access to everything to make sure everything was running  
12 right and --

13 THE COURT: You know for sure she opened the mail?  
14 I don't know, I'm married, and I don't know if my husband lets  
15 me open his mail.

16 MR. PAGE: I think it's implied when you're married.

17 THE WITNESS: She had access, I never stopped her,  
18 the whole time we were married, she opened the mail so --

19 BY MS. ALLEN:

20 Q So, before you -- you left was she the one that  
21 opened the mail anyway?

22 A Correct.

23 Q And when you came back, she was the one who opened  
24 the mail?

1           A     She still opened the mail.

2           Q     Okay. But beyond that, you went through a

3 bankruptcy in 2011; is that correct?

4           A     2010.

5           Q     2010. And your deferred comp was part of that;

6 isn't that correct?

7           A     Correct.

8           Q     All right. In discussions with your attorney at the

9 time regarding your bankruptcy, did issues of deferred comp

10 and your vacation come up?

11          A     The deferred comp did, the vacation did not.

12          Q     Okay. As you sit here today, was there a reason why

13 those items were not in your decree? Deferred comp and

14 vacation?

15          A     The deferred comp was cashed in, in 2010.

16          Q     Okay.

17          A     The vacation was not an asset, you know, never

18 addressed and she knew --

19          Q     Did you both agree to sort of keep your own?

20          A     Yeah, it was -- we talked about when we got

21 divorced --

22               MR. PAGE: Objection, mis --

23               THE WITNESS: -- you keep yours, I keep mine.

24               MR. PAGE: -- misstates trial records that --

1 misstates prior testimony.

2 THE COURT: Misstates prior test -- we haven't had a  
3 trial.

4 MR. PAGE: Well, the original divorce trial.

5 MS. ALLEN: And it's leading, Your Honor, so I'm  
6 allowed to --

7 THE COURT: Oh, I mean that -- okay. I don't know,  
8 I mean that trial was like how many years ago?

9 MR. PAGE: I know.

10 THE COURT: Any response?

11 MS. ALLEN: Well, I wouldn't know anything about  
12 that --

13 THE COURT: And how would you know?

14 MS. ALLEN: -- trial, because I wasn't here.

15 THE COURT: Did you actually watch the entire --

16 THE WITNESS: We didn't have a trial.

17 THE COURT: -- trial?

18 MR. PAGE: Or she -- she --

19 THE COURT: Let me sustain and --

20 MR. PAGE: -- she's kind of leading him into the --

21 THE COURT: -- maybe rephrase it.

22 MR. PAGE: -- answer she wants him to give.

23 MS. ALLEN: Oh, well -- okay.

24 THE COURT: Sustained because I don't know, I don't

1 have the --

2 MS. ALLEN: I mean I'll ask -- I'm leading so I'll  
3 ask a leading question.

4 BY MS. ALLEN:

5 Q Did you and your now exwife agree that those items  
6 will be left separate?

7 A Vacation, sick time was never addressed.

8 Q Okay.

9 A It -- what was addressed was I don't want anything  
10 from you, you keep your retirement, I keep my retirement and  
11 we go our separate ways.

12 Q And let me ask this, does she have a form of  
13 deferred comp? It's not called deferred comp but does --

14 A Correct.

15 Q -- she have something like that?

16 A She did.

17 Q Okay.

18 A She actually had two.

19 Q Okay. And does she have a form of vacation time as  
20 -- or not vacation -- sick days as well as --

21 A She --

22 Q -- vacation time?

23 A Teachers get special days or something and they also  
24 get sick days that they can occur (sic) and carry over.

1 Q Okay.

2 A The professional days they cannot carry over, but  
3 their sick days they can.

4 Q Are those addressed in your divorce decree?

5 A No, they are not.

6 Q Because she kept those?

7 A Correct.

8 Q And you kept yours?

9 A Correct.

10 Q Okay.

11 THE COURT: This was before the trial?

12 MS. ALLEN: Pardon?

13 THE COURT: This was before the trial, they -- they  
14 talked about this? Right? Then we went to trial or was it  
15 settled up? I don't remember. I mean am I going to pull the  
16 minutes from the trial? Did we do the trial?

17 THE WITNESS: No, we settled before the trial.

18 THE COURT: So, like the two attorneys came in, they  
19 talked, and then they talked to you guys and they say we  
20 agree, we're not going to do the trial?

21 THE CLERK: (Indiscernible) trial January 10th,  
22 2013.

23 THE COURT: January 10th, 2013? What -- it came to  
24 a resolution.

1 THE CLERK: Unh-unh (negative).  
2 THE COURT: We actually took testimony, exhibits?  
3 THE CLERK: There's long minutes for that hearing.  
4 THE COURT: What?  
5 THE CLERK: But it's not my name but --  
6 THE COURT: No, counsel indicated that the parties  
7 stipulated, they agreed to not do the trial, they made an  
8 agreement. That was -- who was it then Giuliani and  
9 Schneider?  
10 THE WITNESS: Correct.  
11 MR. PAGE: Lou Schneider.  
12 THE COURT: And Giuliani? She had --  
13 MR. PAGE: And Roger Giuliani.  
14 THE COURT: Yeah, I could see that. Okay. I'm  
15 sorry, Ms. Allen, continue, I'm just -- this case goes back  
16 years and --  
17 MS. ALLEN: Very stream of consciousness.  
18 THE COURT: -- and my age and like short term memory  
19 and --  
20 MS. ALLEN: Okay.  
21 THE COURT: -- let me print those minutes.  
22 BY MS. ALLEN:  
23 Q Okay. With respect to the beneficiary on your PERS,  
24 the beneficiary issue, and Mr. Page asked you a number of

1 questions about that. You listed your -- your latest  
2 beneficiary as your son; is that correct?

3 A Correct.

4 Q Okay. To your knowledge, does Defendant have the  
5 same option in her PERS retirement?

6 A Correct. She can list her beneficiary with whoever  
7 she wants.

8 Q With whoever she wants. And this was not addressed  
9 in your divorce decree?

10 A No, it was not.

11 Q Okay. And you intentionally didn't address it in  
12 your divorce -- it was intentionally left out of your divorce  
13 decree because you each agreed you'd go separate on that; is  
14 that correct?

15 A Correct.

16 Q You could do what you wanted?

17 A Correct.

18 Q Correct? And she could do what she wanted?

19 A Correct.

20 Q And as you sit here today, are you the beneficiary  
21 of her PERS?

22 A I have no idea and I would seriously doubt it.

23 Q Okay. On your -- a lot has been made about your  
24 possible retirement date. You were initially in -- some time



1 at the beginning of your employment there, you were suspended  
2 or for a certain -- 10 weeks or 40 hours -- 400 hours; is  
3 that --

4 A 400 --

5 Q -- correct?

6 A -- hours.

7 Q Okay. And then there was an additional termination  
8 that lasted approximately 13 months?

9 A Correct.

10 Q Okay. Did all of those things push back your  
11 projected retirement date?

12 A Correct.

13 Q Okay. Would that be reflected in a statement from  
14 2011?

15 A No, it --

16 MR. PAGE: Objection --

17 THE WITNESS: -- would not.

18 MR. PAGE: -- foundation.

19 MS. ALLEN: Well, he asked --

20 MR. PAGE: Calls for speculation.

21 THE COURT: Well, first she's just asking would it  
22 be in there and if he say --

23 MR. PAGE: Exactly.

24 THE COURT: -- he'll say either yes or no and then

1 she'll have to prove that.

2 MS. ALLEN: No, I said would it be reflected in his  
3 -- a statement from 2011 from PERS.

4 MR. PAGE: Object --

5 THE COURT: Foundation.

6 MS. ALLEN: Oh, let me -- let me go -- let me say  
7 this --

8 THE COURT: Rephrase.

9 BY MS. ALLEN:

10 Q When was your suspension or termination with the  
11 City?

12 A Roughly October 17th of 2013.

13 Q So, after --

14 A Or '14.

15 THE COURT: Is it two separate things, 400 hours and  
16 then 13 --

17 MS. ALLEN: Yes.

18 MR. PAGE: Yeah, his (indiscernible).

19 THE COURT: -- 13 months?

20 THE WITNESS: Yes.

21 MS. ALLEN: Yes, Your Honor. When was --

22 THE COURT: Which one is which?

23 BY MS. ALLEN:

24 Q When was the 400 hours?

1 A That was in October of 20 -- 2001.  
2 Q Okay. So, that was the 10 weeks?  
3 A Yeah.  
4 Q When was the 13 months?  
5 A That was on -- October again of 2014.  
6 Q Okay. So, October of 2014, you were terminated,  
7 correct?  
8 A Correct.  
9 Q And then when did you go back to work?  
10 A January of 2015.  
11 Q All right.  
12 A Or '16.  
13 Q Okay. And is January -- or October of 2014 after  
14 January of 2011?  
15 A Yes.  
16 Q Okay. So, the Defendant showed you a PERS statement  
17 from 2011, correct?  
18 MR. PAGE: No.  
19 BY MS. ALLEN:  
20 Q Based upon --  
21 THE COURT: Is this an -- that exhibit you're  
22 talking about?  
23 MS. ALLEN: Yes, it's an admitted --  
24 MR. PAGE: It's not from --

1 MS. ALLEN: -- exhibit.  
2 MR. PAGE: -- it's not from 2011.  
3 THE COURT: Yeah, it --  
4 MS. ALLEN: That's what Willick testified to.  
5 MR. PAGE: It was attached to the letter.  
6 MS. ALLEN: Well, their expert --  
7 THE COURT: That letter doesn't come in yet but are  
8 you saying it's the same exact thing --  
9 MS. ALLEN: Their --  
10 THE COURT: -- that you guys are talking about?  
11 MS. ALLEN: Their -- actually, Your Honor, their  
12 witness, Mar -- their expert testified this was calculated on  
13 January 11th, 2011.  
14 MR. PAGE: No, he said the calcul -- that they  
15 listed the calculation --  
16 THE COURT: Estimated.  
17 MR. PAGE: -- date is October 11, 2011, not that it  
18 was done on that date. He doesn't know that. If we had this  
19 letter here from Sonya Hellwinkel, she would indicate that she  
20 did this currently, that they are to assist with your request,  
21 we're enclosing a copy of an estimate on file based upon  
22 terminating July 31, 2011, and retiring August 2011.  
23 MS. ALLEN: And I appreciate Mr. Page's response,  
24 however, I specifically asked Mr. Willick when this was

1 generated and he said --

2 THE COURT: D, Exhibit D.

3 MS. ALLEN: -- he -- I specifically said, do you  
4 know when this PER statement was generated and he said go down  
5 to the right hand corner --

6 THE COURT: 1-11-11.

7 MS. ALLEN: -- 1-11-11. I -- I asked him twice --

8 THE COURT: Generated.

9 MS. ALLEN: -- when it was generated, and their own  
10 expert said that's when it was generated.

11 MR. PAGE: That's the calculation --

12 MS. ALLEN: So, I'm going --

13 MR. PAGE: -- date, that doesn't mean when it's  
14 generated.

15 MS. ALLEN: And that's lovely, but I'm going based  
16 upon the testimony of their expert --

17 THE COURT: What's your objection? It misstates  
18 something or is incorrect?

19 MR. PAGE: Well, they're trying to say that this  
20 statement was generated in January of 2011. I believe that to  
21 be incorrect based upon what Ms. Hellwinkel has indicated in  
22 her --

23 THE COURT: So, you have a rebuttal exhibit?

24 MS. ALLEN: Do -- do I?

1 THE COURT: No, now he's trying to rebut that.  
2 MS. ALLEN: Well, I --  
3 THE COURT: So --  
4 MS. ALLEN: -- this is -- I'm going based upon their  
5 expert, Your Honor.  
6 THE COURT: Okay.  
7 MS. ALLEN: He specifically testified that was --  
8 THE COURT: Okay. When you --  
9 MS. ALLEN: -- generated date.  
10 THE COURT: -- when you do your redirect, you can  
11 use that as a rebuttal exhibit then.  
12 MR. PAGE: Okay.  
13 THE COURT: It could come in for rebuttal, but just  
14 that --  
15 MR. PAGE: All right.  
16 THE COURT: -- purpose unless we come back on day  
17 two if they want the whole thing in for whatever purpose --  
18 MR. PAGE: We'll --  
19 THE COURT: -- that'd be fine, let me know.  
20 MR. PAGE: -- solve the problem real easily, this  
21 may be much ado about nothing --  
22 THE COURT: But you -- but to address the objection  
23 you want to --  
24 MR. PAGE: -- because when we have Ms. Hellwinkel

1 here -- when we have Ms. Hellwinkel here, she's going to --

2 THE COURT: It's good to --

3 MR. PAGE: -- resolve this anyway.

4 THE COURT: -- deal with that now, because if this  
5 testimony comes in without you being able to rebut it, you can  
6 always file a -- an oral motion to just have the court  
7 disregard the -- his statement of when it was generated. So,  
8 we can just take care of that later.

9 MR. PAGE: Yes.

10 THE COURT: I think I'm fine. So, if I have to  
11 either accept it or ignore it later because of the -- or  
12 disregard it because they have a rebuttal, we'll deal with  
13 that later.

14 MS. ALLEN: Um --

15 THE COURT: But for now, his testimony is and I was  
16 writing this down, suspended 400 hours in October 2001 that  
17 was a 10-weeker, he got terminated on 10-17-14 for 13 months,  
18 went back to work January something 2016?

19 THE WITNESS: 2016.

20 MS. ALLEN: 2016.

21 THE COURT: Do you know the exact date? Date of --  
22 start date?

23 THE WITNESS: Right around the --

24 THE COURT: 2nd?

1 THE WITNESS: -- 16th I want to say, but I'm not --

2 THE COURT: The middle?

3 THE WITNESS: -- positive.

4 THE COURT: Mid-January?

5 THE WITNESS: Mid-January. I know it was a couple  
6 weeks after --

7 THE COURT: And then you were talking about pushing  
8 back his retirement. So, then you went into this Exhibit D --

9 MS. ALLEN: Right.

10 THE COURT: -- and right now he'll -- he'll say it  
11 says calculation date 1-11-11.

12 BY MS. ALLEN:

13 Q So -- but I -- but -- so the question I was asking  
14 is if this was generated in 2011 as it says, as their witness  
15 testified to, then your 13-month termination, suspension would  
16 not reflect in this statement; is that correct?

17 A Correct.

18 THE COURT: Suspension -- susp -- oh, not the termin  
19 -- the 13-month?

20 MS. ALLEN: Thirteen months.

21 THE COURT: Not the 10-weeker. So, the --

22 BY MS. ALLEN:

23 Q There's -- under benefit calculation which is V, it  
24 talks about employee group and it says police-fire. Are you



1 -- do you -- to your knowledge are you still under that  
2 employee group police-fire?

3 A No.

4 Q Okay. When was that changed if you know?

5 A We just found out recently within the last few  
6 months that the state legislation had removed us out of  
7 police-fire, and all of our retirement is in question now.  
8 And the union is looking into why, when, how --

9 Q Okay.

10 A -- and how that's going to affect us.

11 Q To your knowledge then is your include -- being  
12 included in that group -- that police-fire group, then that's  
13 a product of the negotiations your union has under your  
14 contact?

15 MR. PAGE: I'm going -- objection, foundation --

16 MS. ALLEN: I said --

17 MR. PAGE: -- hearsay.

18 MS. ALLEN: -- to his knowledge.

19 THE COURT: Sustained, because well, we're two  
20 minutes away from -- yeah, we've got to -- let me just finish  
21 up on this. Take notes where you left off. We're going to  
22 pick up on this. Judges are sort of kind of aware with it,  
23 because we have the same thing, I don't know, going on with  
24 our deputy marshals. I don't know if there's an actual union.

1 So, that could be sustained on the foundation. Are you  
2 actually in a union, you guys unionized?

3 THE WITNESS: We are part of --

4 THE COURT: That's what our guys are --

5 THE WITNESS: -- we are part of the Police  
6 Protection Association.

7 THE COURT: PPA.

8 THE WITNESS: PPA.

9 THE COURT: Yeah. Okay. Well, the PPA is just kind  
10 of like your advocate? They're not an actual -- are they an  
11 actual union?

12 THE WITNESS: They're an actual union.

13 THE COURT: So, you're different than the Clark  
14 County --

15 THE WITNESS: Correct.

16 THE COURT: -- they're County employees, you're  
17 City?

18 THE WITNESS: I'm City.

19 THE COURT: So, City people belong in the PPA.  
20 That's only -- City only --

21 THE WITNESS: Correct.

22 THE COURT: -- PPA.

23 THE WITNESS: Correct.

24 THE COURT: Okay. We're going to leave off with

1 that. I just want to make sure I'm on the same page.

2 MS. ALLEN: Okay.

3 THE COURT: When you say union it's like you open up  
4 another can of worms with the judicial marshals from County as  
5 opposed to City. Yeah, we've got our own thing we're dealing  
6 with. Okay. We'll leave off from there. That's a good  
7 question but I think PERS, don't they have the ultimate say,  
8 are they -- they PF or not?

9 MR. PAGE: Right. What does --

10 THE COURT: Please get somebody from PERS to come in  
11 and say that --

12 MR. PAGE: That's why we -- we'll probably get  
13 Sonya --

14 THE COURT: -- then we'll get into union issues.

15 MR. PAGE: -- Hellwinkel next time we show up.

16 MS. ALLEN: And, Your Honor, I would -- I don't know  
17 if this was --

18 THE COURT: PERS has got to follow their own rules  
19 so if PERS --

20 MS. ALLEN: I don't know if this was part of the  
21 Court's --

22 THE COURT: -- I think we --

23 MS. ALLEN: -- trial --

24 THE COURT: -- really need a PERS person next time.

1 Can you get --

2 MS. ALLEN: I don't know if this was part of the  
3 Court's initial pretrial order --

4 THE COURT: Yeah.

5 MS. ALLEN: -- but just because I was looking at  
6 this, it appears that the Defendant hasn't filed an updated  
7 financial affidavit since 2014, almost two years. I would  
8 request she file one before we come back.

9 THE COURT: Money issues, rules require it.  
10 (Indiscernible) 5.32. Just have it filed.

11 MS. ALLEN: Thank you.

12 MR. PAGE: If -- if nothing has changed --

13 MS. ALLEN: Well, Your Honor --

14 THE COURT: It's been three years, you haven't got a  
15 pay raise or changed jobs are you still at the same --

16 MR. PAGE: It's not much of a pay raise.

17 MS. ALLEN: In July they had a --

18 THE COURT: You're in the school district, still?  
19 They haven't given you a little slight increase in the last  
20 three years?

21 MS. KILGORE: I'm -- I'm --

22 THE COURT: Or are you topped out?

23 MS. KILGORE: The problem with me is, and it just  
24 pisses all us teachers off is I'm at the top, so they're

1 giving all these signing bonuses to all these new teachers --

2 THE COURT: And you're --

3 MS. KILGORE: -- and the ones that have been  
4 teaching --

5 THE COURT: -- you're maxed out.

6 MS. KILGORE: -- you know, for a long time. I'm at  
7 the very top, I'm at Master's plus 32.

8 THE COURT: Yeah.

9 MS. KILGORE: And in July or something --

10 THE COURT: Well, you know, maybe your living  
11 expenses change and all that. We need to --

12 MS. KILGORE: That's fine --

13 THE COURT: -- get it as up to date as possible.

14 MS. KILGORE: -- I'll do an updated.

15 MS. ALLEN: Update it and can we also, yeah, make  
16 sure that the --

17 THE COURT: Mr. Page, have her file an FDF.

18 MS. ALLEN: -- and a most recent pay stub.

19 THE COURT: When can you -- we're coming back in  
20 like two weeks.

21 MS. ALLEN: Three.

22 THE CLERK: Three.

23 THE COURT: Is it three -- it's three? Good.

24 THE CLERK: Three.

1 THE COURT: In a week can you get her FDF in so they  
2 can prepare?

3 MR. PAGE: I'm sure I can.

4 MS. ALLEN: Thank you.

5 THE COURT: And then that's number one. Mom to file  
6 an FDF within one week and serve it on Ms. Allen. Number two,  
7 will you guys talk about the PERS Hellwinkel exhibit? We'll  
8 call your next letter I?

9 MR. PAGE: Yes.

10 THE COURT: H?

11 MR. PAGE: It is I.

12 THE COURT: Defendant's proposed Exhibit I. Do you  
13 have a formal copy for me?

14 MR. PAGE: I have the --

15 THE COURT: We can just --

16 MR. PAGE: -- original.

17 THE COURT: -- hang onto it. I'll take it and then  
18 make copies next time.

19 MR. PAGE: If Johnny wants to make --

20 THE COURT: You need a copy though then, right?

21 MS. ALLEN: Of what?

22 THE COURT: Because he found it -- well, it was on  
23 his --

24 MS. ALLEN: I don't have a copy of it, no.

1 THE COURT: Was that what was on your laptop?  
2 MR. PAGE: Yes.  
3 MS. ALLEN: What I would ask --  
4 THE COURT: Send it.  
5 MS. ALLEN: -- I would just ask --  
6 THE COURT: One copy, Johnny, please. Two copies  
7 then. We'll take two. You got to hurry up and pack up,  
8 because she's got to go. Will -- you'll let me know if you  
9 don't object to it, or he's going to bring it in as a  
10 rebuttal.  
11 MS. ALLEN: Just, yeah, --  
12 MS. KILGORE: Well, they have -- they have one --  
13 MS. ALLEN: -- email me the FDF and I -- I'm -- I  
14 consent to service by email.  
15 THE COURT: Electronic service?  
16 MS. ALLEN: Yes.  
17 THE COURT: That's item number three. Proposed I.  
18 One is FDF. Two is proposed I. Three is consent. Likewise?  
19 Both of you?  
20 MR. PAGE: I'm sorry.  
21 THE COURT: Serve each other by email.  
22 MR. PAGE: Yes, Judge.  
23 THE COURT: Okay. And then number three, the  
24 Hellwinkel -- I believe Mr. Page volunteered to do the

1 subpoena and pay the \$40 fee --

2 MR. PAGE: I didn't volunteer --

3 THE COURT: -- to get Hellwinkel.

4 MR. PAGE: -- to pay the \$40 fee.

5 THE COURT: Huh?

6 MR. PAGE: I just paid for Willick, I don't want to  
7 pay for anything more.

8 THE COURT: It doesn't matter who brings in  
9 Hellwinkel, but who can draft a subpoena pretty quick and  
10 serve Hellwinkel?

11 MS. ALLEN: I -- I know --

12 MR. PAGE: I actually since it's --

13 MS. ALLEN: -- I know that --

14 MR. PAGE: -- ultimately her testimony is going to  
15 be beneficial to my client, I'll go ahead and do it.

16 THE COURT: Thank you.

17 MS. ALLEN: I guess it ultimately is important.

18 THE COURT: Mr. Page and Ms. Allen doesn't have any  
19 objection to Mr. Page subpoenaing the person most  
20 knowledgeable at PERS, probably Ms. Hellwinkel. And counsel  
21 will discuss if they will stipulate, they are to email my JEA  
22 that they agree to stipulate. I need to know a week before,  
23 because IT will -- or we will help set up the video  
24 conferencing, we will get her email and she's at her desk,



1 they just press a button, they come right up on my screen.  
2 But I need to at least -- like kind of a week before if you  
3 guys say she wants to do it by video. She'll come right up on  
4 that big screen there.

5 Okay. We're good. See you August 15th, 1:30,  
6 apologize for the half hour delay today, but you will be the  
7 only one on my calendar so we'll start promptly at 1 --

8 (PROCEEDINGS CONCLUDED AT 17:03:20)

9 \* \* \* \* \*

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ATTEST: I do hereby certify that I have truly and  
correctly transcribed the digital proceedings in the above-  
entitled case to the best of my ability.



---

Tami S. Ondik, CET

*Heather S. Linn*  
CLERK OF THE COURT

**OPPC**

FRED PAGE, ESQ.  
Nevada Bar: 6080  
PAGE LAW OFFICE  
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Las Vegas, Nevada 89146  
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Facsimile: (702) 628-9884  
E-mail: [fpagelawoffices.com](mailto:fpagelawoffices.com)  
*Attorney for Defendant*

**DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA**

RICHARD KILGORE,

Plaintiff,

vs.

ELENI KILGORE,

Defendant.

CASE NO.: D-12-459171-D  
DEPT. NO.: I

**Hearing Date: August 2, 2016**

**Hearing Time: 10:30 a.m.**  
~~1:30 p.m.~~

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S OBJECTION TO THE HEARING  
MASTER'S REPORT AND RECOMMENDATIONS  
AND  
COUNTERMOTION FOR ATTORNEY'S FEES**

COMES NOW, Defendant, ELENI KILGORE, by and through her counsel Fred Page,  
Esq. and hereby files her Opposition to Plaintiff's Objection to the Hearing Master's Report and  
Recommendation. This Opposition and Countermotion is based upon the papers and pleadings  
on file, the attached Points and Authorities and any oral argument that the Court may wish to

///

///

///

entertain.

DATED this 27<sup>th</sup> day of July 2016.

PAGE LAW OFFICE

FRED PAGE, ESQ.

Nevada Bar No. 6080

6145 Spring Mountain, Suite 201

Las Vegas, Nevada 89146

(702) 469-3278

Attorney for Defendant

## POINTS AND AUTHORTIES

### I.

#### FACTUAL BACKGROUND

##### A. Introduction

Defendant, Eleni Kilgore (hereinafter "Eleni") and Plaintiff, Richard Kilgore, (hereinafter "Richard") were divorced from each other on March 13, 2014. The parties have two remaining minor children. Eleni has primary physical custody of Nicholas and has had primary physical custody of Nicholas for approximately the last two years. The parties have shared physical custody of Richard.

##### B. Factual and Procedural History

The case has a long litigation history of which the Court is already familiar and need not be recited here.

On February 9, 2016, Richard was ordered to commence paying Eleni \$1,200 per month for her partial share of her interest in the PERS defined benefit plan in Richard's name as Richard first became eligible for retirement in October 2011. Richard was also ordered to commence paying Eleni \$1,500 per month as and for child support.

1 Immediately after those orders were entered, Richard began trying to evade the Court's  
2 orders. Richard filed a request with the child support hearing master in the R case, case number  
3 R-13-180572-R, to modify his child support.

4 On June 14, 2016, Richard's modification request came on for hearing. Richard's child  
5 support obligation remained at \$1,500 per month. The child support arrears were not  
6 determined. Richard's prior sentence of incarceration for 25 days in the Clark County Detention  
7 Center issued at the January 28, 2016, hearing was continued.

8 Richard was handed a copy of the Report and Recommendations at the conclusion of the  
9 hearing. The Report and Recommendations contained within it a notice that Richard had ten  
10 days from the receipt of the Master's Recommendation to serve and file written objections to it.  
11 The notice further stated that "[a] failure to file and serve written objections will result in final  
12 Order/Judgment being entered by the District Court.

13 The Objection had to have been filed by June 28, 2016. Richard failed to file his  
14 Objection until June 30, 2016. The hearing was only known about by the undersigned due to a  
15 random review of the case on Odyssey. Richard has never served anyone, not Eleni, not the  
16 office of the District Attorney, with a notice of hearing for the Objection whatsoever, at least in  
17 the "D" case number where the Objection is being heard.<sup>1</sup>

## 18 19 20 21 22 II. OPPOSITION

### 23 A. The Court Lacks Jurisdiction To Consider Richard's Objection

24 In *Winston Products Co. v. Deboer*, 122 Nev. 517, 134 P.3d 726 (2006), the Supreme  
25 Court concluded that pursuant the plain reading of NRCP 6(a) that when a time period is less  
26

27  
28 <sup>1</sup> A telephone call was had with Richard's current counsel, Betsy Allen. Ms. Allen indicated that she is not representing Richard for the Objection.

1 than 11 days, intermediate weekends and holidays are not included. When one removes  
2 weekends and the date of service, the Objection should have been served and filed by no later  
3 than June 28, 2016.

4 Not only was Richard late in filing the Objection, Richard also never served the  
5 Objection on anyone. The requirement to timely file is jurisdictional. For Richard's failure to  
6 timely file, the Court lacks jurisdiction to consider the matter.

7  
8 The Court also lacks jurisdiction because it appears that there has been no proper notice  
9 of the hearing which may constitute a violation of Eleni's due process rights to notice and an  
10 opportunity to be heard.

11 **B. Richard Has Failed To Allege That The Hearing Master's Recommendations Were**  
12 **Clearly Erroneous**

13 Notwithstanding the fact that there is no jurisdiction because Richard failed to timely file  
14 an Objection, under NRCP 52(e)(2),<sup>2</sup> the master's findings of fact must be accepted unless  
15 clearly erroneous.<sup>3</sup>

16  
17 Applying the legal standard set out by the United States Supreme Court as to how clearly  
18 erroneous should be defined, it should be agreed by everyone that there is no "definite and firm  
19 conviction that a mistake had been committed"

20 Richard's objection should be disregarded under any substantive analysis as well. Eleni  
21

22 \_\_\_\_\_  
23 <sup>2</sup> NRCP 53(e)(2) states,

24 In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly  
25 erroneous. Within 10 days after being served with notice of the filing of the report any party may serve  
26 written objections thereto upon the other parties. Application to the court for action upon the report and  
upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after  
hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further  
evidence or may recommit it with instructions.

27 <sup>3</sup> "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire  
28 evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. Gypsum*  
*Co.* 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 1147 (1948).

1 should be awarded her attorney's fees for having to respond as set forth below.

2 **III.**  
3 **COUNTERMOTON**

4 Eleni should be awarded her attorney's fees for having to respond. The Court may award  
5 Eleni fees from Mark under *Brunzell v. Golden Gate National Bank*.<sup>4</sup> Eleni's Opposition and  
6 Countermotion is being filed solely due to Richard's failure to adhere to the rules and failure to  
7 provide any cogent Objection. In brief, the undersigned is well experienced in the area of family  
8 law, the work is relatively straightforward, the undersigned has performed 100 percent of the  
9 work, and the result should be considered as being favorable to Eleni.  
10

11 It is asked that Richard be ordered to pay Eleni \$750 in attorney's fees for having to draft  
12 the Opposition and Countermotion and appear at the hearing.

13 **IV.**  
14 **CONCLUSION**

15 WHEREFORE, Defendant, ELENI KILGORE, respectfully requests that the Court enter  
16 the following orders.

- 17 1. Denying Richard's Objection in its entirety.  
18  
19 2. Awarding Eleni \$1,500 in attorney's fees, and;

20 ///

21 ///

22 ///

23 ///

24 ///

25 <sup>4</sup> 85 Nev. 345, 455 P.2d 31 (1969). In *Brunzell*, the Court held that a district court should consider in awarding  
26 attorney's fees the following factors (1) the qualities of the advocate; his ability, his training, education, experience,  
27 professional standing and skill, (2) the character of the work to be done; its difficulty its intricacy, its importance,  
28 time and skill required, the responsibility imposed and the prominence and character of the parties where they affect  
the importance of the litigation; (3) the work actually performed by the lawyer; the skill, time and attention given to  
the work; and (4) the result; whether the attorney was successful and what benefits were derived.

1 3. For any further relief the Court deems proper and just.

2 DATED this 27<sup>th</sup> day of July 2016.

3 PAGE LAW OFFICE

4  
5   
6 FRED PAGE, ESQ.

7 Nevada Bar No. 6080

8 6145 Spring Mountain Road, Suite 201

9 Las Vegas, Nevada 89146

10 (702) 469-3278

11 Attorney for Defendant



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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 27<sup>th</sup> day of July 2016, that the foregoing  
OPPOSITION and COUNTERMOTION was served pursuant to NRCP 5(b) by placing a true  
and correct copy in the United States mail, postage prepaid, to the following:

Richard Kilgore  
6509 Columbia Falls Court  
Las Vegas, Nevada 89149



An employee of Page Law Office

MOFI

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

RICHARD KILGORE

Plaintiff/Petitioner

V.

ELENI KILGORE

Defendant/Respondent

Case No. D-12-459171-D

Dept. I

**MOTION/OPPOSITION  
FEE INFORMATION SHEET**

**Notice:** Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

**Step 1.** Select either the \$25 or \$0 filing fee in the box below.

- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
- OR-
- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
  - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
  - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on \_\_\_\_\_.
  - ☐ Other Excluded Motion (must specify) Objection to child support hearing master decision.

**Step 2.** Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
  - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
- ☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
- OR-
- ☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

**Step 3.** Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☒ **\$0** ☐ **\$25** ☐ **\$57** ☐ **\$82** ☐ **\$129** ☐ **\$154**

Party filing Motion/Opposition: Eleni Kilgore

Date 7-27-16

Signature of Party or Preparer

FDF

Name: FRED PAGE, ESQ.  
Address: 6145 SPRING MOUNTAIN #201  
LAS VEGAS, NEVADA 89146  
Phone: (702) 469-3278  
Email: fpagelaw@pageslaw.com  
Attorney for Defendant  
Nevada State Bar No. 6080

  
CLERK OF THE COURT

EIGHTH Judicial District Court  
CLARK, Nevada

<u>RICHARD KILGORE</u> Plaintiff,  vs. <u>ELENI KILGORE</u> Defendant.	Case No. <u>D-12-459171-D</u>  Dept. <u>I</u>
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GENERAL FINANCIAL DISCLOSURE FORM

A. Personal Information:

1. What is your full name? (first, middle, last) Eleni Kilgore
2. How old are you? 46
3. What is your date of birth? 8-22-1969
4. What is your highest level of education? Master's Degree

B. Employment Information:

1. Are you currently employed/ self-employed? (☒ check one)  
☐ No  
☒ Yes If yes, complete the table below. Attached an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)
2-16-93	CCSD	Teacher	M-F	8:20 - 3:36

2. Are you disabled? (☒ check one)

☐ No

☒ Yes

If yes, what is your level of disability? \_\_\_\_\_

What agency certified you disabled? \_\_\_\_\_

What is the nature of your disability? \_\_\_\_\_

C. Prior Employment: If you are unemployed or have been working at your current job for less than 2 years, complete the following information.

Prior Employer: \_\_\_\_\_ Date of Hire: \_\_\_\_\_ Date of Termination: \_\_\_\_\_  
Reason for Leaving: \_\_\_\_\_

## Monthly Personal Income Schedule

### A. Year-to-date Income.

As of the pay period ending 8-10-10 my gross year to date pay is 49,478.10

### B. Determine your Gross Monthly Income.

Hourly Wage

\$0.00	X		=	\$0.00	X	52	=	\$0.00	÷	12	=	\$0.00
Hourly Wage		Number of hours worked per week		Weekly Income		Weeks		Annual Income		Months		Gross Monthly Income

Annual Salary

70,105.92	÷	12	=	\$5841.66
Annual Income		Months		Gross Monthly Income

### C. Other Sources of Income.

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income			
Bonuses			
Car, Housing, or Other allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay			
Pension/Retirement:			
Social Security Income (SSI):			
Social Security Disability (SSD):			
Spousal Support			
Child Support	Monthly	\$1500	\$1500 (March-July)
Workman's Compensation			
Other:			
Total Average Other Income Received			\$1500

Total Average Gross Monthly Income (add totals from B and C above)	\$7384.166
--	------------

### D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (automatically deducted from paycheck)	
2.	Federal Health Savings Plan	
3.	Federal Income Tax	\$ 525.16
4.	Health Insurance Amount for you: \$0.00 For Opposing Party: 0 For your Child(ren): <input checked="" type="checkbox"/>	\$ 440.00
5.	Life, Disability, or Other Insurance Premiums	\$ 329.70
6.	Medicare	\$ 78.30
7.	Retirement, Pension, IRA, or 401(k)	—
8.	Savings	0
9.	Social Security	—
10.	Union Dues	\$ 65.14
11.	Other: (Type of Deduction)	—
Total Monthly Deductions (Lines 1-11)		\$ 1438.30

### Business/Self-Employment Income & Expense Schedule

A. Business Income: N/A

What is your average gross (pre-tax) monthly income/revenue from self-employment or businesses?  
\$ \_\_\_\_\_

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising			
Car and truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and professional			
Mortgage or Rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and licenses (include est. tax payments)			
Utilities			
Other: Form 1065 from taxes			
Total Average Business Expenses			—

### Personal Expense Schedule (Monthly)

A. Fill in the table with the amount of money you spend each month on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me ☐	Other Party ☐	For Both ☐
Alimony/Spousal Support	0.00			
Auto Insurance	\$ 750.00	✓		
Car Loan/Lease Payment	\$ 650.00	✓		
Cell Phone	\$ 320.00	✓		
Child Support (not deducted from pay)	—	—		
Clothing, Shoes, Etc...	\$ 200.00	✓		
Credit Card Payments (minimum due)	\$ 300.00	✓		
Dry Cleaning	\$ 50.00	✓		
Electric	\$ 400.00	✓		
Food (groceries & restaurants)	\$ 1800.00	✓		
Fuel	\$ 400.00	✓		
Gas (for home)	\$ 50.00	✓		
Health Insurance (not deducted from pay)	—	—		
HOA	—	—		
Home Insurance (if not included in mortgage)	\$ 36.00	✓		
Home Phone	—	—		
Internet/Cable	\$ 400.00	✓		
Lawn Care	\$ 30.00	✓		
Membership Fees	—	—		
Mortgage/Rent/Lease	\$ 1505.00	✓		
Pest Control	—	✓		
Pets	\$ 100.00	✓		
Pool Service	—	—		
Property Taxes (if not included in mortgage)	—	—		
Security	\$ 40.00	✓		
Sewer	\$ 40.00	✓		
Student Loans	—	—		
Unreimbursed Medical Expense	\$ 400.00	✓		
Water	\$ 32.00	✓		
Other: <u>Alexandra's College</u>	\$ 319.00	✓		
<b>Total Monthly Expenses</b>	<b>\$ 7822.00</b>			

### Household Information

- A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attached a separate sheet if needed.

	Child's Name	Child's DOB	Whom is this child living with?	Is this child from this relationship?	Has this child been certified as special needs/disabled?
1 <sup>st</sup>	Richard Kilgore	02-29-2000	Mom/Dad	Yes	No
2 <sup>nd</sup>	Nicholas Kilgore	02-29-2000	Mom	Yes	No
3 <sup>rd</sup>					
4 <sup>th</sup>					

- B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	1 <sup>st</sup> Child	2 <sup>nd</sup> Child	3 <sup>rd</sup> Child	4 <sup>th</sup> Child
Cellular Phone				
Child Care				
Clothing	\$100	\$100		
Education				
Entertainment	\$125	\$125		
Extracurricular & Sports	\$250	\$250		
Health Insurance (if not deducted from pay)				
Summer Camp/Programs				
Transportation Costs for Visitation	\$25	\$25		
Unreimbursed Medical Expenses	\$100	\$300		
Vehicle				
Other:				
Total Monthly Expenses	\$1000	\$800		

- C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of eighteen. If more than 4 adult household members attached a separate sheet.

Name	Age	Person's Relationship to You (i.e. sister, friend, cousin, etc...)	Monthly Contribution
Alexandra Kilgore	20	Daughter	0-
Timothy Rowe	44	Fiance	0-



### Personal Asset and Debt Chart

A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

Line	Description of Asset and Debt Thereon	Gross Value	Total Amount Owed	Net Value	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$ -	\$ -	= \$ 0.00	
2.		\$ -	\$ -	= \$ 0.00	
3.		\$ -	\$ -	= \$ 0.00	
4.		\$ -	\$ -	= \$ 0.00	
5.		\$ -	\$ -	= \$ 0.00	
6.		\$ -	\$ -	= \$ 0.00	
7.		\$ -	\$ -	= \$ 0.00	
8.		\$ -	\$ -	= \$ 0.00	
9.		\$ -	\$ -	= \$ 0.00	
10.		\$ -	\$ -	= \$ 0.00	
11.		\$ -	\$ -	= \$ 0.00	
12.		\$ -	\$ -	= \$ 0.00	
13.		\$ -	\$ -	= \$ 0.00	
14.		\$ -	\$ -	= \$ 0.00	
15.		\$ -	\$ -	= \$ 0.00	
<b>Total Value of Assets (add lines 1-15)</b>		<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>= \$ 0.00</b>	

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than 5 unsecured debts, attach a separate sheet.

Line #	Description of Credit Card or Other Unsecured Debt	Total Amount owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$ 0.00	
2.		\$	
3.		\$	
4.		\$	
5.		\$	
6.		\$	
<b>Total Unsecured Debt (add lines 1-6)</b>		<b>\$ 0.00</b>	

## CERTIFICATION

Attorney Information: Complete the following sentences:

1. I (have/have not) have retained an attorney for this case.
2. As of the date of today, the attorney has been paid a total of \$ 11000 on my behalf.
3. I have a credit with my attorney in the amount of \$ \_\_\_\_\_.
4. I currently owe my attorney a total of \$ TBD.
5. I owe my prior attorney a total of \$ 0.00.

IMPORTANT: Read the following paragraphs carefully and initial each one.

x I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

\_\_\_\_\_ I have attached a copy of my 3 most recent pay stubs to this form.

\_\_\_\_\_ I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed.

\_\_\_\_\_ I have not attached a copy of my pay stubs to this form because I am currently unemployed.

Eleni Kilgore  
Signature

8-10-16  
Date

## CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury of the State of Nevada that the following is true and correct:

That on (date) \_\_\_\_\_, service of the General Financial Disclosure Form was made to the following interested parties in the following manner:

☐ Via 1<sup>st</sup> Class U.S. Mail, postage fully prepaid addressed as follows:

☒ Via Electronic Service, in accordance with the Master Service List, pursuant to NEFCR 9, to:

☐ Via Facsimile and/or Email Pursuant to the Consent of Service by Electronic Means on file herein to: \_\_\_\_\_

Executed on the 10th day of August, 2016.

  
\_\_\_\_\_  
Signature

## CCSD Employee Self Service

July 25, 2016

## DEPOSITED

**\$2,223.15**

JULY 25, 2016

TO: CHASE (C)

## Overview

## GROSS EARNINGS

Current

2,942.33

YTD

46,536.16

## TOTAL DEDUCTION

Current

-719.18

YTD

-11,051.02

## NET PAY

Current

**2,223.15**

YTD

**35,485.14**

## Earnings

LOCATION: 204

SALARIED/DAILY

H/D

Rate

Current

YTD

1.00

2,942.33

2,942.33

40,109.23

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H/D = Hours/Days

**GROSS EARNINGS**

**OTHER EARNINGS**

H/D	Rate	Current	YTD
			6,426.93

H/D = Hours/Days

**GROSS EARNINGS**

Current	YTD
<b>2,942.33</b>	<b>46,536.16</b>

**Tax/Deductions**

**DEDUCTIONS**

Description	Current	YTD
FED TAX M02	262.58	4,581.16
MEDICARE TAX	39.18	625.98
AM FID ACC	20.50	287.00
SEC125 INS	220.00	3,080.00
DISAB AM FID	66.60	932.40
LIF INS AM FID	77.75	1,088.50
DUES-CCEA	32.57	455.98

**TOTAL DEDUCTION**

Current	YTD
<b>-719.18</b>	<b>-11,051.02</b>

Clark County School District  
5100 West Sahara Ave.  
Las Vegas, NV 89146 USA

8/11/16, 1:47 PM

## CCSD Employee Self Service

August 10, 2016

## DEPOSITED

**\$2,223.15**

AUGUST 10, 2016

## Overview

## GROSS EARNINGS

Current

2,942.33

YTD

49,478.49

## TOTAL DEDUCTION

Current

-719.18

YTD

-11,770.20

## NET PAY

Current

**2,223.15**

YTD

**37,708.29**

## Earnings

LOCATION: 204

SALARIED/DAILY

H/D

Rate

Current

YTD

1.00

2,942.33

2,942.33

43,051.56

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H/D = Hours/Days

**GROSS EARNINGS**

**OTHER EARNINGS**

H/D	Rate	Current	YTD
			6,426.93

H/D = Hours/Days

**GROSS EARNINGS**

Current	YTD
<b>2,942.33</b>	<b>49,478.49</b>

**Tax/Deductions**

**DEDUCTIONS**

Description	Current	YTD
FED TAX M02	262.58	4,843.74
MEDICARE TAX	39.18	665.16
AM FID ACC	20.50	307.50
SEC125 INS	220.00	3,300.00
DISAB AM FID	66.60	999.00
LIF INS AM FID	77.75	1,166.25
DUES-CCEA	32.57	488.55

**TOTAL DEDUCTION**

Current	YTD
<b>-719.18</b>	<b>-11,770.20</b>

Clark County School District  
5100 West Sahara Ave.  
Las Vegas, NV 89146 USA

8/11/16, 12:15 PM