

**IN THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA
CIVIL DIVISION**

MARY LOU SMITH
an individual, and
SHARON DENSON,
an individual

Plaintiffs,

vs.

CASE NO.: 08 CA 11315
Division B

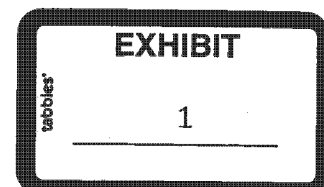
TRAILER ESTATES PARK AND
RECREATION DISTRICT,
an independent special taxing district,
JANET JONES, an individual,
JOHN VANDERMOLEN, an individual,
JOSEPH SALERNO, an individual, and
MARY LOU MCNULTY, an individual

Defendants.

AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM
(Amended as to location)

PLEASE TAKE NOTICE that counsel for the Plaintiffs, MARY LOU SMITH and SHARON DENSON, will take the following deposition:

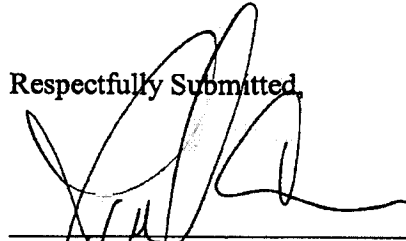
NAME: Mark P. Barnebey, Esquire
DATE: April 17, 2009
TIME: 10:00 AM
PLACE: Kirk Pinkerton, P.A.
1301 6th Avenue West
Suite 401
Bradenton, FL 34205



upon oral examination before Executive Court Reporting, a Court Reporter authorized by law in the State of Florida to take depositions. This oral examination will continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes as are permitted under the Florida Rules of Civil Procedure.

The documents listed on Exhibit "A" attached hereto shall be brought to the deposition.

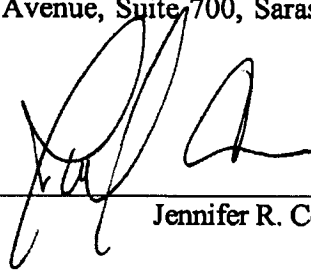
Respectfully Submitted,



KEVIN S. HENNESSY, ESQUIRE
Florida Bar No. 0602558
MAGGIE D. MOONEY-PORTALE, ESQUIRE
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to **Hunter Carroll, Esquire, Matthews, Eastmoore, Hardy, Crauwels & Garcia, P.A., 1777 Main Street, Suite 500, Sarasota, FL 34236, James D. Dye, Esquire, Dye, Deitrich, Petruff, & St. Paul, 1111 Third Ave. West, Suite 300, Bradenton, FL 34205, Robert E. Turffs, Esquire, 1444 First Street, Suite B, Sarasota, FL 34236, Robert J. Gill, Esquire, Ruden McClosky, Smith, Schuster & Russell, P.A., 1515 Ringling Blvd., Suite 700, Sarasota, FL 34236, Thomas D. Shults, Esquire, Kirk Pinkerton, P.A., 50 Central Avenue, Suite 700, Sarasota, FL 34236, by U.S. First Class Mail, this 26th day of March, 2009.**



Jennifer R. Cowan

EXHIBIT "A"

Any and all documentation in your possession including but not limited to the following:

1. Any and all letters, memos, phone messages, facsimiles, or emails between you and any previous or existing member of the Board of Trustees for Trailer Estates Park and Recreation District ("District"), that were not previously produced, whether in electronic or written format, from January 1, 2006, to the present.
2. Any and all calendars from January 1, 2006, to the present, whether in electronic or written format, depicting any meeting between you and any person who has served or is serving on the District's Board of Trustees.

1 deposed relate to any suits brought against you
2 personally?

3 A. No.

4 Q. Any of them related to suits brought in your
5 capacity representing Trailer Estates?

6 A. No.

7 Q. Okay. You're familiar with Trailer Estates?

8 A. Yes.

9 Q. What do you understand Trailer Estates to be?

10 A. Trailer Estates that we represent is a park
11 and recreation district.

12 Q. Okay. And as a park and recreation district,
13 is Trailer Estates a form of local government?

14 A. Yes.

15 Q. Is there any particular type of local
16 government that you would describe it as?

17 A. They are a special district.

18 Q. Okay. And when is it -- when did you first
19 become employed by Trailer Estates in a legal capacity?

20 A. Approximately October of 2006.

21 Q. And was your employment in response to any
22 sort of proposal for services?

23 MR. SHULTS: Let me say this before we go any
24 further, Kevin. Mr. Barnebey obviously is the
25 attorney for the District, and it's my

EXHIBIT

2

1 understanding you've noticed him here today
2 essentially as a fact witness. However, he does
3 have a duty to maintain the attorney-client
4 privilege.

5 So what Mr. Barnebey can testify about
6 today are communications that he has made to
7 the District at a public meeting and
8 communications made by members of the District
9 to him -- board members of the District to him
10 at a public meeting, as well as communications
11 that are embodied in documents, like
12 correspondence, that are public record. All of
13 those matters, he will be able to testify
14 about.

15 Anything beyond those matters, he would
16 not be able to testify about because of
17 attorney-client privilege.

18 MR. HENNESSY: Okay. I assumed that we were
19 going to arrive at some -- that concern at some
20 point.

21 MR. SHULTS: Right, and I thought it would be
22 better for me to try to define my view of it right
23 at the beginning.

24 MR. HENNESSY: Okay.

25 MR. SHULTS: And we may get into areas where

1 he'll have to speak on that subject --

2 MR. HENNESSY: All right.

3 MR. SHULTS: -- as we go along.

4 MR. HENNESSY: I appreciate that.

5 BY MR. HENNESSY:

6 Q. You were hired by Trailer Estates to be the
7 District counsel?

8 A. That's correct.

9 Q. And was that --

10 A. The firm was.

11 Q. The firm was. And that was in response to a
12 public notice that you responded to or what?

13 A. I received a phone call from the chairman of
14 the District.

15 Q. And who was that at that time?

16 A. Mary Lou McNulty.

17 Q. Okay. To your knowledge, did the District go
18 out for bids for legal services, or were you the only
19 legal counsel contacted?

20 A. I don't know the answer to that question.

21 Q. Were you asked to submit some sort of proposal
22 for services?

23 A. I was asked to attend a meeting and, yes, at
24 the meeting they asked to about my services. I don't
25 recall if I submitted something prior to that.

1 Q. All right. Now, are you familiar with the
2 organizational structure of Trailer Estates?

3 A. Generally.

4 Q. Okay. You're aware that there is a governing
5 board of nine trustees?

6 A. Yes.

7 Q. And you're aware that their bylaws also
8 provide for a subset of those trustees that they refer
9 to as -- or referred to as an administrative committee?

10 A. Yes. I'm aware that that's in the bylaws.

11 Q. Okay. And are you aware of that
12 administrative committee existing as a functioning
13 entity at Trailer Estates?

14 MR. SHULTS: Let me -- let me say this, that
15 if the answer to that question requires you to
16 convey information that you received from a member
17 of the board outside of a public meeting or outside
18 of a public piece of correspondence, then you
19 should indicate that we would claim the
20 attorney-client privilege.

21 THE WITNESS: Okay.

22 Since I've been counsel, to my knowledge
23 they have not met as administrative committee.

24 BY MR. HENNESSY:

25 Q. Okay. You're familiar, though, with the

1 administrative committee existing, though, as an entity?

2 A. I'm aware that the bylaws provide for an
3 administrative committee.

4 Q. Okay. What is your understanding of what that
5 administrative committee is?

6 A. It's a committee that deals with day-to-day
7 administrative items of the board.

8 Q. Okay.

9 A. I mean of the District.

10 Q. Of the District. Okay. And is it your
11 understanding that that administrative committee at one
12 time met to do business of the board?

13 MR. SHULTS: I have the same caution, that if
14 your answer to that question would require you to
15 reveal information that was conveyed to you by a
16 client outside of a public hearing or not contained
17 in a written communication that is a public record,
18 then it would be covered by the attorney-client
19 privilege.

20 THE WITNESS: That would be covered by the
21 attorney-client privilege.

22 MR. HENNESSY: Okay. So it's your position
23 that regardless of -- it's your position that
24 anything outside of the public sphere of -- his
25 communications with trustees outside the -- a

1 public meeting is covered by the attorney-client
2 privilege?

3 MR. SHULTS: Yes, unless that communication is
4 via a piece of paper or other record that would be
5 a public record.

6 BY MR. HENNESSY:

7 Q. Okay. And so on advice of counsel, you are
8 not going to answer questions that -- based on that
9 belief of privilege?

10 A. Yes.

11 Q. Is that -- okay.

12 Have you seen any written documents that
13 indicate that the executive committee of the --
14 well, first of all, let's start with this: What is
15 your understanding of who comprises the executive
16 committee or administrative committee of the Trailer
17 Estates?

18 A. My recollection is it's chaired by the first
19 vice chair and the second vice chair.

20 Q. Have you seen any minutes of meetings of a
21 Trailer Estates administrative or executive committee?

22 A. Not that I recall.

23 Q. Okay. Have you seen any board minutes of the
24 Trailer Estates board reflecting actions taken or
25 reports made by the administrative or executive

1 committee, as we've defined it?

2 A. Not that I recall.

3 Q. Okay. Have you had any communications with
4 individuals at Trailer Estates other than board members
5 or other individuals who at the time you spoke to them
6 were not board members, discussing activities of an
7 administrative or executive committee?

8 MR. SHULTS: Let me say this, that if the
9 person who communicated with you was a client, even
10 though they were not a board member, you should
11 indicate that and invoke the privilege. If the
12 person was not a client or not a board member, then
13 you should go ahead and answer the question.

14 THE WITNESS: What was the question again?
15 (The record was read back.)

16 THE WITNESS: Yes.

17 BY MR. HENNESSY:

18 Q. Okay. What individuals have you had those
19 conversations with?

20 A. I believe your clients.

21 Q. Okay. And that would be Mary Lou Smith or
22 Sharon Denson?

23 A. Yes.

24 Q. Okay. Other than my clients, anyone else that
25 you've had such conversations with?

1 A. I don't recall any.

2 Q. Have you given Trailer Estates advice with
3 regard to the suspension of the activities of the
4 administrative committee?

5 A. Yes.

6 Q. And you gave that advice at a public meeting
7 or a public workshop?

8 A. I know I've done it by memorandum.

9 Q. Okay.

10 A. I may have also done it at a public meeting.

11 Q. All right. What prompted that advice?

12 A. Precaution.

13 Q. Okay. Precaution for what reason?

14 MR. SHULTS: Well, let me -- let me say this,
15 that we also believe that the attorney's thought
16 process in terms of why the advice was delivered
17 would be privileged and not subject to disclosure.
18 The advice itself, as long as it's a public record
19 or made at a public meeting, is something that --
20 that is disclosed. But his thought process
21 would -- we would be claiming the privilege on
22 that.

23 BY MR. HENNESSY:

24 Q. Do you recall providing advice to Trailer
25 Estates, through Mary Lou McNulty, responding to a

1 specific concerns raised regarding Sunshine violations
2 occurred prior to our being retained to represent the
3 District"?

4 A. Uh-huh.

5 Q. What -- what Sunshine violations are you
6 referring to?

7 A. Well, there were allegations of Sunshine
8 violations raised by, I believe, your clients. I do not
9 know whether or not they were actually Sunshine
10 violations, but the -- but the -- I wanted to make sure
11 the board was aware of what their obligations were under
12 the Sunshine Law.

13 MR. GILL: Can you speak up, Mark. I can't
14 hardly hear you down here.

15 THE WITNESS: I'm sorry.

16 BY MR. HENNESSY:

17 Q. Mark, were you aware of any Sunshine
18 violations that have occurred at Trailer Estates?

19 MR. SHULTS: Mark, if the answer to that
20 question would require you to reveal information
21 that you obtained outside a public meeting or
22 outside a public record document, and if that
23 information was obtained while acting as attorney
24 for the District, then you should decline to answer
25 that question based on attorney-client privilege.

1 THE WITNESS: I'll decline to answer on
2 attorney-client privilege.

3 (Mr. Carroll entered the deposition room.)

4 BY MR. HENNESSY:

5 Q. You then state that, "Since that time, we have
6 made a presentation to Board members regarding the
7 Sunshine Laws. The Board has been working to correct
8 these issues, and much progress has been made."

9 What progress had been made at that time?

10 A. Well, the -- by the way, just know that it
11 says here that we did make a presentation November 2006.
12 So to the extent that I'm inconsistent with that, my
13 prior comments, please let me correct that.

14 I think there is a better understanding --
15 there was a better understanding of what was
16 required under the Sunshine Law and also the Public
17 Records Act than had been previously understood by
18 some of the folks at Trailer Estates.

19 Q. I'm sorry, previously understood or
20 misunderstood?

21 A. Whichever.

22 Q. Whichever. Okay. What progress had not been
23 made at that point; in other words, what problems did
24 you still see at that point?

25 A. Well --

1 MR. SHULTS: Let me pose an objection there.
2 Unless -- I think you're getting into his thought
3 process as to his evaluation of the circumstances,
4 and again, unless he conveyed this information in a
5 public meeting or in a public record document, then
6 that would be privileged. So we would -- we would
7 decline to answer that question unless that answer
8 is contained in a communication that he made
9 publicly to the board or in a document that is a
10 public record.

11 (Mr. Turfffs entered the deposition room.)

12 THE WITNESS: What was the question?

13 BY MR. HENNESSY:

14 Q. Basically, I wanted to know with regard to the
15 Sunshine Law, what problems still existed that needed to
16 be corrected?

17 MR. SHULTS: And I would have the same
18 objection, and we would claim the privilege on that
19 unless the answer would meet the criteria that I
20 just recited, that being in a public record or a
21 public meeting.

22 THE WITNESS: Well --

23 MR. HENNESSY: Why don't we give you a
24 standing objection on that, and you can state that
25 this is your privilege standing objection.

1 MR. SHULTS: Well, I think I need to say it,
2 too.

3 MR. HENNESSY: All right.

4 MR. SHULTS: I'll let Mr. Barnebey also know
5 that we're getting into that issue.

6 THE WITNESS: The purpose of the seminar was
7 to make sure that they were informed on those
8 issues, not to address any specific concerns that I
9 might have.

10 BY MR. HENNESSY:

11 Q. So now you're saying that at that time, you
12 weren't aware of any specific Sunshine Law problems?

13 A. I was aware of allegations.

14 Q. So at this time, was it your understanding
15 that Trailer Estates had decided not to have another
16 Sunshine workshop until after the 2008 elections? I'm
17 looking at that second paragraph -- or bottom paragraph
18 on the first page of Exhibit 2.

19 A. That's my understanding, that we were
20 requested to -- that the suggestion was made that we
21 wait until January of 2008.

22 Q. Okay. So you've testified that as a result of
23 the workshop, the board members now had a better
24 understanding of the Sunshine Law. What was your
25 understanding of any prior misconceptions or

1 misunderstandings they had with regard to their Sunshine
2 Law responsibilities?

3 MR. SHULTS: You know, I would have the -- I
4 would object to the form of that question, and also
5 object to the extent it goes outside of
6 Mr. Barnebey's communications contained in this
7 memo or some other discoverable communication. I
8 mean, asking a lawyer concerning, you know, what
9 understandings or misunderstandings existed with
10 his clients, that's privileged.

11 Now, the only exception to that privilege
12 in this sort of case is if that understanding
13 or if that communication or thought was
14 expressed in a public meeting or in a public
15 record document. If it's not, it doesn't meet
16 either one of those criteria, then it's
17 privileged, and Mr. Barnebey will decline to
18 answer the question. I think the best way is
19 simply to ask him if he wrote this memo, but --

20 MR. HENNESSY: Well, we've already asked that.

21 MR. SHULTS: You've already asked that, right.

22 MR. HENNESSY: I'm following up on his comment
23 about misunderstandings with the District that he
24 felt the trustees had, misunderstandings of the
25 Sunshine Law.

1 THE WITNESS: Well, I don't think I said
2 "misunderstanding." If I said that, let me correct
3 that. All I -- I think the -- there is a --
4 depending on the person, a general level of
5 knowledge of the Sunshine Law and the Public
6 Records Act, and it varies depending on the trustee
7 and how long they've been in the -- in their
8 position. In some cases, there had been some time
9 since they had been advised of the Sunshine Law.

10 BY MR. HENNESSY:

11 Q. Well --

12 A. If ever.

13 Q. -- during your public meetings to discuss the
14 Sunshine Law with -- and I think you said you'd --
15 you've had --

16 A. At least two.

17 Q. -- at least two, did any of the board members
18 object to being burdened by the obligations of the
19 Sunshine Law?

20 A. I think -- well, whatever was said, was said
21 during those hearings, so they pretty much speak for
22 themselves.

23 There were concerns with some of the
24 requirements of the Sunshine Laws expressed, I
25 believe.

1 Q. Well, did any of the trustees express that
2 they did not think that they had to follow the Sunshine
3 Law?

4 A. I don't recall that.

5 Q. Did any of them indicate to you that they were
6 aware that the legislature didn't have to follow the
7 Sunshine Law, so why should they?

8 A. They might have said that.

9 Q. Did you ever have to follow up with individual
10 trustees concerning the importance of following the
11 Sunshine Law after these workshops?

12 A. I think that might be privileged.

13 MR. SHULTS: Okay.

14 MR. HENNESSY: Okay.

15 MR. SHULTS: Can we -- let's take a
16 five-minute break so I can confer with
17 Mr. Barnebey. It might make it more efficient.

18 MR. HENNESSY: All right.

19 (There was a brief recess.)

20 MR. HENNESSY: Back on the record.

21 Can you read back the last question.

22 (The record was read back.)

23 MR. SHULTS: If the follow-up was made in
24 public or contained in a document that's otherwise
25 public record, if such a follow-up occurred, then

1 you can testify to it. If not, it would be covered
2 by the attorney-client privilege.

3 THE WITNESS: I don't recall any specific
4 follow-up except in regard to the follow-up
5 meetings we had.

6 BY MR. HENNESSY:

7 Q. Okay. In the second paragraph on the second
8 page of Exhibit 2, you've stated that, "We have
9 recommended that the meeting of the Administrative
10 Committee be suspended."

11 A. Uh-huh.

12 Q. Do you know if that recommendation has been
13 followed?

14 A. To my knowledge, there have been no meetings
15 of the administrative committee since we became general
16 counsel.

17 Q. And is that knowledge limited to what you've
18 learned in a public setting or through public documents?

19 A. That knowledge is --

20 Q. In other words, are you not disclosing, as
21 discussed earlier, communications that you've had, I
22 guess, privately --

23 A. No.

24 Q. -- with your clients?

25 A. No.

1 present for that statement?

2 A. No.

3 MR. SHULTS: Object to form.

4 MR. CARROLL: Form.

5 A. No.

6 BY MR. HENNESSY:

7 Q. Did you provide Mr. Vander Molen any advice
8 concerning that restriction on his duties, I guess, as
9 the District representative at the settlement or
10 mediation?

11 MR. SHULTS: I'll object to form. I'll also
12 invoke the attorney-client privilege unless that
13 advice was provided in a public forum or contained
14 in a public document.

15 A. I don't recall that discussion one way or the
16 other.

17 BY MR. HENNESSY:

18 Q. Well, have you advised the board or the board
19 members in any public setting that in their written
20 communications to one another, it is not -- it would be
21 a violation for them to advocate their positions?

22 MR. CARROLL: Object to form.

23 MR. SHULTS: And I'll object to form, too.

24 A. I don't recall if I have or not asked that
25 specific question.

1 BY MR. HENNESSY:

2 Q. Is it your understanding, though, that the --
3 that public officials, such as the trustees, are not --
4 it would be a violation of the Sunshine for them to
5 communicate in written form to each other advocating
6 their position on an issue that would be coming before
7 the board?

8 MR. CARROLL: Object to form.

9 MR. SHULTS: We are -- I'll object to the form
10 of that question and also invoke the
11 attorney-client privilege, because you're getting
12 into his thought process now as attorney for the
13 District, what his thought process is concerning
14 the law.

15 In addition to that, he is a fact witness.
16 He's not an expert witness, nor have you
17 noticed him as an expert witness, and he
18 couldn't be an expert and testify to you on
19 that subject because it would be privileged
20 anyway.

21 So he will decline to answer that
22 question.

23 MR. HENNESSY: So you're instructing him not
24 to answer?

25 MR. SHULTS: We're invoking the

1 attorney-client privilege.

2 BY MR. HENNESSY:

3 Q. Are you accepting advice of counsel?

4 A. I'm accepting advice of counsel, yes, I am.

5 Q. All right.

6 MR. HENNESSY: Go ahead and have this marked
7 Exhibit 5.

8 (Exhibit Number 5 marked for identification.)

9 MR. SHULTS: Before we go any further, it's my
10 understanding Mr. Barnebey needs to be someplace at
11 noon. Is that still the case?

12 THE WITNESS: Yes.

13 MR. SHULTS: So that's -- we're going to have
14 to stop at shortly before noon.

15 MR. HENNESSY: Okay. I was not aware of that.

16 MR. SHULTS: It's now ten minutes after 11:00,
17 approximately.

18 BY MR. HENNESSY:

19 Q. Okay. You have in front of you what's been
20 marked Exhibit 5, a memo from Scott Rudacille, through
21 you, to a Mr. Bernie Dent. Do you recognize Exhibit 5?

22 A. Yes.

23 Q. Have you seen it before?

24 A. Yes.

25 Q. Mr. Rudacille's an attorney with your firm?

1 wasn't -- I don't think it's comprehensive to the
2 question. To your knowledge, were e-mails being
3 retained by the District prior to this memo?

4 A. I --

5 MR. SHULTS: If your knowledge was obtained
6 during a public meeting or if it was conveyed to
7 you through a public record document, then you
8 should testify about it. If your knowledge was
9 obtained through what would otherwise be an
10 attorney-client communication, not being either of
11 those categories, you should invoke the privilege.

12 A. I don't know if I was aware of any instances
13 of that or not. I do not recall being aware of that at
14 the time.

15 BY MR. HENNESSY:

16 Q. Okay. So are you limiting your answer
17 consistent with your attorney's objection?

18 A. No.

19 Q. Or is that an answer that is unfettered by the
20 attorney-client privilege?

21 A. To my knowledge, unfettered by the
22 attorney-client privilege, I don't know that I was aware
23 of any, in answer to that question, at the time.

24 MR. CARROLL: Can I ask you to speak up a
25 little louder. It's tough to hear you down at the

1 end of this table.

2 THE WITNESS: I'll try.

3 MR. CARROLL: I have trouble hearing you.

4 MR. HENNESSY: Perhaps if you weren't playing
5 cards on the computer.

6 MR. CARROLL: I'm not. I'm taking notes. Of
7 course, Kevin was joking there, but I really am
8 taking notes.

9 MR. HENNESSY: Let's have this marked as
10 Exhibit 6.

11 (Exhibit Number 6 marked for identification.)

12 BY MR. HENNESSY:

13 Q. Mr. Barnebey, I'm showing you what's been
14 marked Exhibit 6 to the deposition, a memo to Trailer
15 Estates Board of Trustees, copying T.J. Miller, office
16 manager, from Mark Barnebey. Do you recognize this
17 memorandum?

18 A. Yes.

19 Q. Did you prepare Exhibit 6?

20 A. I believe so.

21 Q. Is that -- are those your initials on
22 Exhibit 6?

23 A. Yes.

24 Q. What was the purposing of preparing this
25 memorandum, Exhibit 6?

1 the memorandum before it went to Trailer Estates Board
2 of Trustees?

3 A. It constituted my review of the memo.

4 Q. Okay. Well, is it correct that upon your
5 signing this document, it was forwarded to the Trailer
6 Estates Board of Trustees?

7 A. Yes.

8 Q. It's got a -- some handwriting on it that says
9 "copy to trustees." Is that your handwriting?

10 A. No.

11 Q. Do you know whose handwriting it is?

12 A. No.

13 Q. The first sentence of this memorandum says,
14 "It has recently come to our attention that the
15 Architectural Review Committee has been approving permit
16 applications from compliance with the Deed Restrictions
17 by review of a single member of the committee." Do you
18 see that?

19 A. Yes.

20 Q. How did that information come to your
21 attention?

22 A. John Vander Molen told me.

23 Q. Okay. Upon learning that information, was
24 it -- did you see that as a violation of the Sunshine
25 Law?

1 MR. SHULTS: I'm going to object to that to
2 the extent it's asking him for information that's
3 not contained in this -- in this document or in
4 another document or not conveyed publicly to the
5 board.

6 A. I viewed it as a violation of their deed
7 restrictions.

8 BY MR. HENNESSY:

9 Q. Have you -- in previous memos that we've
10 looked at, you advised the board that committee meetings
11 are a delegated action of the board and must be held in
12 public; is that correct?

13 A. Yes.

14 Q. And that they need to follow the obligations
15 of public meetings by being publicly noticed and having
16 minutes taken?

17 A. Yes.

18 Q. Okay. Did you investigate whether the
19 meetings with the architectural review committee --
20 well, let me step back.

21 Would the architectural review committee
22 be one of those committees that would need to
23 have -- be followed -- follow the public meeting
24 guidelines that we've just discussed?

25 A. I believe so.

1 but it is up to the board to make that decision.

2 Q. And was that advice based on concern over
3 Sunshine violations or public records violations of
4 which you were aware?

5 A. It is --

6 MR. SHULTS: Only -- only respond to that
7 question if the response is simply conveying what
8 you publicly said to the board either in a meeting
9 or in a letter. If it goes outside that scope,
10 then just say it will go outside that scope and we
11 will claim the privilege.

12 THE WITNESS: It would go outside that scope.

13 MR. SHULTS: We will claim the privilege.

14 BY MR. HENNESSY:

15 Q. Are you aware of the Board of Trustees
16 engaging in a practice of having pre-meetings, meetings
17 of the board before the open public meeting?

18 MR. SHULTS: Again, the same rule would apply,
19 that if you obtained that knowledge from a client
20 outside of a public meeting or outside of a
21 document that is a public record, then you should
22 say so and we would claim the privilege.

23 A. While we were counsel?

24 BY MR. HENNESSY:

25 Q. While -- either before or after you were

1 counsel.

2 A. I will claim the privilege on that.

3 Q. Okay. Is it -- well, let's break it up. Are
4 you aware -- are you aware of any instances of the board
5 having pre-meetings before the public board meeting
6 while you've been counsel?

7 MR. SHULTS: Same caution.

8 A. No.

9 BY MR. HENNESSY:

10 Q. Are you aware of -- let me see. Since you've
11 been -- or your firm's been District counsel, how many
12 total board meetings has your firm attended?

13 A. Maybe 40.

14 Q. Forty. Was there a time where you were
15 attending every meeting?

16 A. Yes.

17 Q. And when was that?

18 A. From approximately October 2006 to, I believe,
19 sometime in 2007.

20 Q. Okay. So sometime in 2007, you were advised
21 that it was no longer necessary for your firm to attend
22 the regular scheduled board meetings?

23 A. Yes.

24 Q. Has your firm ever attended any committee
25 meetings?