

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

CASE NO.: 08 CA 11315

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

Plaintiffs,)

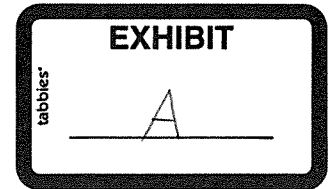
vs.)

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.)
_____)

DEPOSITION OF MARK P. BARNEBEY, ESQ.

TAKEN BY: Plaintiffs Herein
DATE: Friday, April 17, 2009
TIME: Commencing at 10:14 a.m.
PLACE: Kirk Pinkerton, P.A.
1301 Sixth Avenue West, Suite 401
Bradenton, Florida 34205
REPORTED BY: Laura S. Eder, RMR
Notary Public
State of Florida at Large



1 should not testify to it.

2 A. I don't believe there was any time when the
3 board declined to do it. I know there were times they
4 suggested putting it off either because of an election
5 or until people were in town.

6 MR. HENNESSY: Let's go ahead and have
7 this marked Exhibit 2 to the deposition.

8 (Exhibit Number 2 marked for identification.)

9 BY MR. HENNESSY:

10 **Q. I'm showing you what's been marked as**
11 **Exhibit 2 to the deposition, a memo from you to Trailer**
12 **Estates Board of Trustees, regarding inquiry by Mary Lou**
13 **Smith. Do you see that document?**

14 A. I do.

15 **Q. Do you recognize that document?**

16 A. Yes.

17 **Q. Is that, in fact, a document that you**
18 **prepared?**

19 A. I believe Mr. Scott Rudacille and I worked on
20 this together.

21 **Q. All right. Are those your initials next to**
22 **your name?**

23 A. Yes, they are.

24 **Q. Do you see in the first sentence where it**
25 **states, under "Sunshine Law Issues," "Many of 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 A. Yes.

2 Q. Do you see there's handwriting at the top
3 about "8/16/07 mailed a copy to each committee member
4 and Bernie Dent"?

5 A. Yes.

6 Q. Do you know whose handwriting that is?

7 A. No.

8 Q. And then "8/16/07 gave a copy to each
9 trustee," do you know whose handwriting that is?

10 A. No.

11 Q. Next to your name, those are your initials?

12 A. Yes.

13 Q. And do you know what prompted the creation of
14 this memorandum?

15 A. I believe based on the e-mail -- based on the
16 memo, it's an e-mail that Bernie Dent sent to Janet
17 Jones and Pam Cole.

18 Q. Do you know who Bernie Dent was or is?

19 A. My understanding was he was a member of the
20 future planning committee.

21 Q. On the last page of this document is a copy of
22 an e-mail from berndog2@juno.com. Is that the --
23 referenced at the bottom, "Bernie Dent as an owner." Is
24 that the e-mail that you're referring to?

25 A. I don't know this was the e-mail.

1 this marked Exhibit 9.

2 (Exhibit Number 9 marked for identification.)

3 BY MR. HENNESSY:

4 **Q. Showing you what's been marked Exhibit 9, a**
5 **memorandum from Scott Rudacille, through you, to Janet**
6 **Jones, do you recognize Exhibit 9?**

7 A. Yes.

8 **Q. Do you know what prompted the generation of**
9 **this memo?**

10 A. No.

11 **Q. I see in the memo it says, "A question has**
12 **been raised regarding use by the public of the Trailer**
13 **Estates e-mail address to make records requests." Do**
14 **you know who raised that question?**

15 A. No.

16 **Q. Are you aware of any public records requests**
17 **that had been ignored because they had been -- they had**
18 **come in through Trailer Estates' e-mail?**

19 A. No.

20 **Q. Are you aware of any public records request, a**
21 **response to which was delayed while this question that**
22 **had been brought to your attention was answered by you?**

23 A. I'm not aware of any delay. There may have
24 been -- there may have been a -- they may have waited to
25 see what our response was, but I don't remember any

1 delay per se.

2 MR. HENNESSY: Okay. Let's go ahead and have
3 this marked Exhibit 10.

4 (Exhibit Number 10 marked for identification.)

5 BY MR. HENNESSY:

6 Q. I've shown you what's been marked Exhibit 10
7 to the deposition, a memo from Scott Rudacille, through
8 you, to Janet Jones, dated October 19th, 2007. Do you
9 recognize that memorandum?

10 A. Yes.

11 Q. Is that a memorandum you assisted in
12 preparing?

13 A. I think Mr. Rudacille prepared it, but I --
14 Mr. Rudacille prepared it.

15 Q. Do you recall seeing it before today?

16 A. Yes.

17 Q. It indicates that, "Questions have been raised
18 regarding how to respond to continuing records requests
19 from Mary Lou Smith." Do you recall that issue?

20 A. I recall it from this. I don't recall it
21 separately.

22 Q. Okay. Are you aware of any delay or refusal
23 of production of public records to Ms. Smith because of
24 the concern someone in the District had of pending
25 litigation?

1 A. I'm not aware of any delay because of the
2 threat of litigation.

3 **Q. Are you aware of any delay due to the**
4 **existence of litigation in the District's response to**
5 **public records requests?**

6 A. No.

7 MR. HENNESSY: Let's go ahead and have
8 this marked Exhibit 11.

9 (Exhibit Number 11 marked for identification.)

10 BY MR. HENNESSY:

11 **Q. I'm showing you what's been marked Exhibit 11**
12 **to the deposition, a memo from you to Janet Jones, dated**
13 **October 22nd, 2007. Do you recognize this memorandum?**

14 A. I believe the memo is from actually
15 Mr. Rudacille to Janet Jones, through me. I do -- but I
16 do recognize the memo.

17 **Q. Okay. Do you recall what the reason was for**
18 **generating this memorandum?**

19 A. I believe a question was raised by Ms. Jones
20 in regard to the -- well, two questions: One,
21 whether -- the first question, whether two trustees may
22 attend the same meeting of a Trailer Estates committee;
23 the second is whether it is advisable to have spouses of
24 trustees on a Trailer Estates committee.

25 **Q. And you provided answers to both of those**

1 A. Yes.

2 **Q. Which committees?**

3 A. Policies and procedures, I believe. I think
4 that's the only one.

5 **Q. How many of the policy and procedure**
6 **meeting -- committee meetings did you attend?**

7 A. I believe two.

8 **Q. Now, the committee meetings that you attended,**
9 **to your knowledge were those open to the public?**

10 A. To my knowledge, yes.

11 **Q. And do you know how many board members were**
12 **present?**

13 A. I was not at at least one of them.

14 **Q. Someone else from your firm was?**

15 A. Yes.

16 **Q. Who was that?**

17 A. Mr. Rudacille. There were not more than one
18 board member at any of the meetings I was at.

19 **Q. Okay. So you were at one policy and procedure**
20 **committee meeting?**

21 A. Yes.

22 **Q. And you saw only one board member at that**
23 **meeting?**

24 A. That's correct. I was also at a meeting --

25 **Q. Who was that board member?**

1 A. I do.

2 Q. Do you know whose handwriting that is?

3 A. No.

4 Q. It then indicates it was completed 3/18/09.

5 Do you know whose handwriting that is?

6 A. No.

7 MR. SHULTS: I will just object to the
8 recitation of the date in the top left-hand corner.
9 I think that's unclear what that date is in the top
10 left-hand corner.

11 MR. HENNESSY: I will agree that the number
12 "16" is not all that clear, but it looked to me
13 like it was either a "16" or a "10," and since it
14 was dated March 12th, I assumed it was a "16."

15 MR. SHULTS: I can't tell what the number is.

16 MR. HENNESSY: Okay.

17 BY MR. HENNESSY:

18 Q. Do you have any knowledge as to what that
19 number is on the left-hand side --

20 A. No.

21 Q. -- that we're referring to?

22 Okay. Mr. Barnebey, what was your role,
23 then, in responding to this public records request?

24 A. I asked Mr. Rudacille and my staff to get
25 together with Ms. Miller and -- T.J. Miller, the records

1 custodian, and get this information together.

2 **Q. All right. And if, in fact, this request was**
3 **responded to and completed by 3 -- or, first of all, do**
4 **you know if the public records request was responded to**
5 **by 3/18/09?**

6 A. I do not know.

7 **Q. Do you know when it was responded to?**

8 A. No.

9 **Q. Do you know how long it took to respond?**

10 A. No.

11 **Q. There's a stamp of March 18th, 2009, a.m.**
12 **9:03. Do you know whose stamp that is?**

13 A. No.

14 **Q. Is that a stamp from your firm?**

15 A. No.

16 **Q. It then says "Entered March 26th, 2009." Do**
17 **you know whose stamp that is?**

18 A. No.

19 **Q. Do you know -- so, to your knowledge,**
20 **Mr. Rudacille of your office assisted Ms. Miller in**
21 **responding to this public records request?**

22 A. I think he had discussions with Ms. Miller,
23 yes.

24 **Q. Okay. Do you know -- or did you personally**
25 **have any involvement in the response?**

1 A. I didn't have any discussions with Ms. Miller.
2 I had some discussions with Mr. Rudacille.

3 **Q. Okay. To your knowledge, did you or he visit**
4 **the Trailer Estates to assist in reviewing Trailer**
5 **Estates' records for production of these documents?**

6 A. I did not as to -- as to those documents. I
7 don't know whether he did or not.

8 **Q. Okay. Do you know why -- are you aware of any**
9 **reason for delay in responding to these public**
10 **records -- to this public records request?**

11 MR. SHULTS: Object to form.

12 A. As with all public records requests, we have
13 to go through the documents to see if there are any
14 confidential matters. There was also a large number of
15 them, and we have a large number of people involved in
16 public records requests, including members and trustees
17 that are no longer on the board.

18 BY MR. HENNESSY:

19 **Q. Okay. So to your knowledge, board members are**
20 **involved in assisting in responding to public records**
21 **requests?**

22 A. Your request includes information that is
23 needed from board members, so to that extent, yes, they
24 should be.

25 **Q. Okay.**

IN THE CIRCUIT COURT OF THE
TWELFTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA IN AND FOR MANATEE COUNTY

CIRCUIT CIVIL CASE NO. 2008-CA-11315

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:
MARY LOU SMITH, an individual, and :
SHARON DENSON, an individual,      :
:
:           Plaintiffs,              :
:           CONTINUING                :
:           DEPOSITION OF            :
vs.                                   :
:           MARK P.                  :
:           BARNEBEY, ESQUIRE       :
TRAILER ESTATES PARK AND            :
RECREATION DISTRICT, an            :
independent special taxing district, :
JANET JONES, an individual,        :
JOHN VANDER MOLEN, an individual,   :
JOSEPH SALERNO, an individual, and  :
MARY LOU McNULTY, an individual,    :
:
:           Defendants.              :
:
- - - - - X

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TAKEN BY: THE PLAINTIFFS HEREIN

BEFORE: JOANN L. ZECK
Court Reporter
Notary Public
State of Florida at Large

DATE: May 22, 2009
Commencing at 9:10 A.M.

PLACE: KIRK-PINKERTON, P.A.
1301 Sixth Avenue West
Suite 401
Bradenton, Florida 34205

1 **Adopted 1/7/2008?**

2 A Yes.

3 **Q Would that be during the time period that your**
4 **firm was retained by the District?**

5 A Yes.

6 **Q Okay. Do you recall participating in the**
7 **drafting of this Policy and Procedure?**

8 A I was not the primary attorney, although I did
9 have discussions with the attorney that was primary
10 attorney on this, yes.

11 **Q Who was the primary attorney on it?**

12 A Mr. Rudacille.

13 **Q Of your office?**

14 A Yes.

15 **Q Okay. Do you recall whether you provided any**
16 **comments to the policy during the course of its**
17 **promulgation?**

18 A My recollection was the only -- my only work
19 -- let me back up.

20 The only thing I recall specifically talking
21 about was making sure that it was clear that we could
22 not require the form, but that it would be helpful if
23 we received it so that we knew exactly what was being
24 requested by somebody.

25 I -- however.

1 A No. Not that I recall.

2 MR. HENNESSY: Let's go ahead and have this
3 marked Exhibit Sixteen to the deposition.

4 (Whereupon, Exhibit Number Sixteen was marked
5 for identification.)

6 BY MR. HENNESSY:

7 **Q I'd like you to take a look at what's been**
8 **marked Exhibit Sixteen to the deposition and tell me if**
9 **you -- after you review it if you recognize the**
10 **document.**

11 A It appears to be a memo from Mr. Rudacille
12 and I to Janet Jones, the Chair, on Public Records
13 Policy issues.

14 **Q Sitting here today, do you have any**
15 **recollection of this memo?**

16 A Not specifically.

17 **Q Do you have any general recollection of the**
18 **memo?**

19 A I recall generally questions relating to the
20 Video Club.

21 **Q Okay. Does the memo appear to be to your --**
22 **complete?**

23 **Just trying to make sure we don't have any --**

24 MR. SHULTS: Do you have an extra copy, by the
25 way?

1 MR. HENNESSY: Oh, I'm sorry.

2 BY MR. HENNESSY:

3 Q I want to make sure that we don't have any
4 missing pages or extra pages on Exhibit Sixteen.

5 A As far as I can tell.

6 Q Okay. Did you draft the memo that is Exhibit
7 Sixteen?

8 A I believe Mr. Rudacille drafted the memo.

9 Q Do you review it before it went to the client?

10 A Yes, I believe I did.

11 Q Did you participate then in any redraft or
12 other aspects of drafting this memo?

13 A I don't recall.

14 Q Do you believe that the memo is complete and
15 accurate in the advice that was given?

16 A I think the memo speaks for itself.

17 Q That's all very well and good, but I will
18 repeat the question. Do you believe the memo is
19 accurate?

20 A Yes.

21 Q Do you agree with the statements in the memo?

22 A I'd have to read it to tell you for sure. I
23 assume I did at the time that I signed the memo.

24 Q Okay. Do you know if you've ever been
25 specifically asked if the records of the Video Club are

1 Q Indicates, We have written a draft of the
2 Public Records Policy for TE. There is some discussion
3 about access and concerned about exempted materials,
4 et cetera. Could you please review this draft and make
5 recommendations.

6 Do you see that?

7 A Yes.

8 Q Do you recall in response to that question
9 from the District reviewing a draft of the Public
10 Records Policy?

11 A I believe our office did review the Public
12 Records Policy.

13 Q Do you believe that someone else took the lead
14 on that?

15 A Yes.

16 Q Mr. Rudacille?

17 A Mr. Rudacille.

18 Q Okay. Let's look at this in conjunction with
19 Exhibit Fourteen. Your first comment is a
20 recommendation of removing the description of what may
21 constitute public records in the second sentence of
22 Paragraph One.

23 A Yes.

24 Q Do you know if that change was made?

25 A To my knowledge, it was.

1 **Procedure number as indicated on Exhibit Seventeen?**

2 A That's correct.

3 Q **Okay. And looking at Exhibit Fifteen, the**
4 **fourth page of that document --**

5 A Uh-huh.

6 Q **-- again is a -- states Public Records Fees?**
7 **Is that correct?**

8 A Yes.

9 Q **But it has a different PP number, Number**
10 **Fifty-four; is that correct?**

11 A That's correct.

12 Q **Do you have any understanding or knowledge as**
13 **to why Exhibit Fifteen and Exhibit Seventeen with**
14 **regard to public records fees reference two different**
15 **Policy and Procedure numbers?**

16 A No.

17 Q **Have you been involved in the creation or**
18 **adoption of either the Fee Schedule included in Exhibit**
19 **Seventeen or the Fee Schedule included in Fifteen?**

20 A I recall seeing a Fee Schedule -- we did not
21 create it -- at some point, and I believe it was the
22 one that is Exhibit Seventeen. I believe Mr. Rudacille
23 reviewed it and he and I talked about it.

24 Q **Okay. So if such drafts were in the**
25 **possession of Kirk-Pinkerton, would they be in fact**

1 **during a public meeting?**

2 A I -- I believe there were allegations made
3 during a public meeting. I also am aware of -- that we
4 had spoken to Ms. Opper personally.

5 **Q Okay. So you had private meetings with**
6 **Ms. Opper?**

7 A We had --

8 MR. SHULTS: Object to form.

9 THE DEPONENT: We apparently had a --
10 Mr. Rudacille had a telephone call with her.

11 BY MR. HENNESSY:

12 **Q Okay. To your knowledge did you meet -- have**
13 **you ever met with Ms. Opper in person prior to her**
14 **becoming a Board of Trustees member?**

15 A No.

16 **Q To your knowledge did Mr. Rudacille meet with**
17 **Ms. Opper in person prior to her becoming a Board of**
18 **Trustees member?**

19 A No.

20 **Q Are you aware of the District maintaining**
21 **public records in its possession separately based on**
22 **claims of documents being confidential?**

23 MR. SHULTS: Again all of your questions,
24 Mr. Barnebey -- or answers to these questions
25 should be evaluated in the context of whether a

1 A No.

2 **Q Are you aware of instances where District**
3 **Board workshops did not have Minutes maintained -- or,**
4 **Minutes taken or maintained?**

5 A No.

6 **Q You've received a number of public records**
7 **requests on behalf of Mary Lou Smith or Sharon Denson**
8 **from my office?**

9 A Yes.

10 **Q Were you involved in preparing the responses**
11 **to those public records requests?**

12 A Yes. I wasn't the primary person, but yes.

13 **Q Who was the primary person?**

14 A It depended on the request. It might be
15 Mr. Rudacille or it might be my -- one of my
16 assistants.

17 **Q Does your office have a standing practice or**
18 **policy with regard to how a public records request is**
19 **responded to?**

20 A No, other than try to comply with the law.

21 **Q What is your understanding of what you have to**
22 **do to comply with the law?**

23 MR. SHULTS: We decline to answer that
24 question because it would go into his mental
25 impressions and violate work product and

1 District.

2 **Q Did you take the lead in providing the**
3 **response?**

4 A No.

5 **Q Who did?**

6 A Mr. Rudacille and Ms. Miller would have been
7 the two people taking that.

8 **Q Okay. Would that be true for all of the**
9 **public records requests that came from my office?**

10 A Yes, probably so.

11 **Q Are you aware of any mistakes that were made**
12 **in the timely response to any public records requests**
13 **made by my office to Trailer Estates?**

14 A There was one occasion when one of your
15 requests was put in a pile and I did not see it for a
16 period of time.

17 **Q Do you know how long that delay was?**

18 A Not off the top of my head.

19 **Q Is it possible that the delay was**
20 **approximately thirty days?**

21 A I don't think it was quite that long, but it
22 was -- but I don't know.

23 **Q Do you recall if that delay was several weeks?**

24 A It -- I don't recall specifically how long
25 that delay was. It was more than -- more than a couple

1 A Non-Trailer Estates information, correct.

2 Q Are these in fact copies, or originals?

3 A Those are -- well, they're copies. I'm not
4 sure I understand the question.

5 Q Well, here's my concern: I see that it
6 appears to be -- on the one that starts calendar for
7 2009 --

8 A Uh-huh.

9 Q -- it appears to be like a calendar cut and
10 pasted.

11 A Okay.

12 Q And so I'm concerned that I may have the only
13 copy of this --

14 A No.

15 Q -- if you're looking to retain a copy
16 yourself.

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

18 Q Okay. Something you guys can deal with off
19 line if you're concerned.

20 A Yeah.

21 Q There was -- all wrapped up in one pile with a
22 rubber band around it was a pile of documents and on
23 the top of it was a memo or fax memo from TJ Miller to
24 Scott Rudacille that said, Here are copies I made for
25 Jennifer Cowan on Monday, May 11th, 2009; the letter of

1 April 30th, 2009. (Handing document.)

2 Did you in fact then provide me with all of
3 the documents that were previously provided at that
4 time? Is that what was -- what makes up this large
5 stack of documents?

6 A I don't know the answer to that.

7 Q Okay.

8 A (Handing document.)

9 Q And then the last segregated pile of
10 information that I see doesn't seem to have anything
11 particular to it, so I have a couple of questions about
12 some of these documents.

13 The document here that says Telephone call
14 with John Vander Molen 9/12/07, 2:10 P.M., wants
15 answers faxed to Trailer Estates Office early next week
16 (handing document).

17 A Okay.

18 Q Was that a call to you to your knowledge?

19 A Either Mr. Rudacille or I.

20 Q Do you know who created that document?

21 A I'm guessing Cheryl Likens (phonetic).

22 Q And who is she?

23 A She is Scott Rudacille's assistant (handing
24 document).

25 Q Do you know if you answered these questions of

1 **Mr. Vander Molen (handing document)?**

2 A I believe so, but I couldn't tell you in what
3 format (handing document).

4 **Q Okay. The next I see an e-mail from Bill**
5 **Secraw to Scott Rudacille, and it appears to be in**
6 **response to an e-mail from Mr. Rudacille to Mr. Secraw**
7 **regarding invoices from your firm (handing document).**

8 Do you recognize that e-mail? Did you
9 **participate in responding?**

10 A No, I don't recall seeing this e-mail (handing
11 document).

12 **Q Do you know if your invoices have previously**
13 **been provided to any Trailer Estate resident?**

14 A I do not know.
15 Other than your client --

16 **Q Okay.**

17 A -- when they requested them, no, I don't know.

18 **Q Do you think Mr. Rudacille then would have**
19 **better knowledge than you with regard to this request**
20 **by Mr. Secraw?**

21 A He may.

22 **Q Okay. The next is an April 6, 2009 memo to**
23 **Scott Rudacille from Martha Brauer indicating, I have**
24 **prepared a document for the file but wanted to show how**
25 **I redacted the passwords, et cetera (handing document).**

1 **Mr. Vander Molen's name was not posted prior to the**
2 **Litigation Assessment Private Session with District**
3 **Counsel?**

4 A I believe it was posted.

5 Q **What is that -- what is that opinion based on?**

6 A Based on my -- I seen the notice and I
7 discussed it with Scott Rudacille.

8 Q **Okay. Did you personally see what was posted**
9 **at the District?**

10 A No, I did not.

11 Q **Do you know when that litigation meeting was?**

12 A I believe it was January 5th, 2009.

13 Q **I'm showing you a fax memo dated February 3rd,**
14 **2009, regarding ADA/letter from attorney (handing**
15 **document). Do you recognize that memo?**

16 A Yes.

17 Q **Did you respond to that memo on behalf of the**
18 **District?**

19 A I don't believe I did, and I'm -- I believe I
20 handed this to Mr. Rudacille to respond to (handing
21 document).

22 Q **Do you understand that it was a request with**
23 **regard to how the Channel 95 could be operated to be**
24 **more informative to blind people?**

25 A Yes.

1 Q And do you -- to your knowledge, did someone
2 at the District take action to improve Channel 95 for
3 those viewers who might be blind?

4 A I don't know if -- I don't know if action was
5 taken by the District or the club.

6 Q Okay. Would Mr. Rudacille know?

7 A He may.

8 Q Was he the one that you said you delegated
9 this matter to?

10 A I believe he handled the matter.
11 We may have just sent it over to -- to the
12 District for conveyance to the club.

13 Q Uh-huh. Was a transcript made of that Shade
14 meeting on January 5th?

15 A Yes.

16 Q And was that transcript provided to -- was a
17 copy of that transcript or -- yes, was a copy of that
18 transcript provided to the District?

19 A I believe so, yes.

20 Q To be held in the District records?

21 A Yes.

22 Q I want to show you a memo dated January 19th,
23 2009, to you from TJ Miller regarding Smith/Denson
24 lawsuit, apparently responding to your requests
25 (handing document). Could you look at that document

1 **and tell me what request of yours was being**
2 **responded to?**

3 A I had requested information regarding when
4 various Trustees served on the Board and served as
5 Chair (handing document).

6 Q **And that answer was provided to you by**
7 **Ms. Miller?**

8 A Yes.

9 Q **It also states that, I have attached the**
10 **Minutes of the June 6th, 2006, where Mary Lou McNulty**
11 **read the Minutes from the Executive Board meeting**
12 **(handing document). What was that about?**

13 A I don't recall.

14 Q **Do you recall requesting of her information**
15 **regarding prior Executive Board meetings?**

16 A No.

17 No, I don't recall that.

18 Huh (handing document).

19 Q **She then continues and says, As per a copy of**
20 **the Minutes I cannot find where any motion was made.**
21 **Do you know what that refers to?**

22 A No, not off the top of my head.

23 Q **I'm showing you an e-mail dated January -- or**
24 **not an e-mail, but a fax dated January 16th, 2009, to**
25 **Trailer Estate Board of Trustees and TJ Miller from**

1 **Scott Rudacille with a letter of January 16th, 2009, to**
2 **Jennifer Cowan from yourself attached (handing**
3 **document). Do you recognize this document?**

4 A Yes.

5 Q **Was that a letter that you prepared and -- to**
6 **Ms. Cowan?**

7 A No, I believe Mr. Rudacille prepared this
8 letter.

9 Q **Did you review it and sign it?**

10 A No, he signed it for me.

11 Q **Okay. Do you recall if you reviewed the**
12 **document at all before it went out?**

13 A I believe I did.

14 Q **Do you have any problems or issues with the**
15 **content of the letter?**

16 A No, I don't believe so.

17 Q **So you would agree with the statements made in**
18 **the letter prepared for your signature?**

19 A Well, I guess I'll read it again if you're
20 going to ask that question.

21 Q **It's a short letter.**

22 A Good thing.

23 I have no problems with the contents of the
24 letter (handing document).

25 Q **I'd like to show you a fax memo dated**

1 **January 15th, 2009, to you from TJ Miller regarding**
2 **pre-meetings (handing document). Have you seen this**
3 **before?**

4 A I don't recall seeing this specific fax, but I
5 may have given it to Mr. Rudacille to look at.

6 **Q I'm sorry?**

7 A I may have given it to Mr. Rudacille to
8 look at.

9 **Q Do you know what request of your office**
10 **Ms. Miller is responding to?**

11 MR. SHULTS: I'll object to the form.

12 THE DEPONENT: I think that would be
13 privileged information, attorney/client privilege
14 (handing document to Mr. Shults).

15 MR. HENNESSY: I'll need to look at it to ask
16 my next question, Mr. Shults.

17 MR. SHULTS: Okay (handing document).

18 BY MR. HENNESSY:

19 **Q In her fax memo, Ms. Miller makes the comment**
20 **that in reference to the March 21st, 2005 Board of**
21 **Trustees meeting, Minutes of the pre-meetings were not**
22 **taken as they were round table discussions with no**
23 **action taken.**

24 Did you speak to her with regard to what she
25 meant by, "round table discussions?"

1 A I did not.

2 Q Do you know if Mr. Rudacille did?

3 A I do not know.

4 Q Did you speak to anyone at the District
5 concerning pre-meetings or round table discussions?

6 A That would be attorney/client privilege.

7 Q So you spoke to a sitting Trustee
8 concerning it?

9 A That would be attorney/client privilege.

10 Q All right. So the identity of who you spoke
11 to, you are claiming attorney/client privilege?

12 A I am.

13 Q And you're not going to answer that question?

14 A I'm not.

15 MR. SHULTS: Well, is it a representative of
16 the District that you spoke to?

17 THE DEPONENT: Yes.

18 MR. SHULTS: Okay.

19 BY MR. HENNESSY:

20 Q The next I'm showing you, a memo -- fax memo
21 dated January 15th, 2009, to you from TJ Miller saying,
22 Per your request, attached are the Trailer Estates Park
23 and Recreation District PP24 Public Records Policy and
24 Procedure and a copy of the --

25 A Kevin?

1 of the documents you've produced here today in response
2 to your subpoena duces tecum?

3 A Yes.

4 Q Okay. And it then is a document that comes
5 from your firm's records?

6 A Yes.

7 Q And you don't recall seeing or reviewing
8 Exhibit Twenty-three before today?

9 A No.

10 Q "No," you don't recall seeing it before?

11 A No.

12 Q All right. This is the first time you've seen
13 it, Exhibit Twenty-three?

14 A I think I've answered that question. Yes.

15 Q It's the one word answers are concerning me.

16 A Often Trailer Estates' faxes go to Scott
17 before I get a chance to look at them.

18 Q Okay. He's your gatekeeper?

19 A Well, he -- he deals with a lot of the public
20 records requests and information relating to Trailer
21 Estates.

22 Q So he deals with a lot more of the day-to-day
23 Trailer Estate matters?

24 A Yes.

25 MR. HENNESSY: Okay. I have no further