

1 DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO

2 CASE NO. 07CV01609

3 **TRANSCRIPT OF DIGITALLY RECORDED PROCEEDINGS**

4
5 JAMES W. BURNESON,

6 Plaintiff,

7 versus

8 DAM EAST HOMEOWNERS,

9 Defendant

10
11 THIS MATTER came on for a Case Management Conference that
12 was held on February 13, 2008 before JUDGE VALERIA SPENCER.
13 The following is a complete and accurate record of the hearing
14 from that date.

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16
17 **A P P E A R A N C E S**

18
19 Plaintiff appears pro se

20
21 Counsel for Defendant: Mr. Jeffrey Lane

22 Jim Burneson is responsible for the edited comments printed in
23 red which are based on his sole opinion.

24
25

1 THE COURT: All right. We are on the record on
2 07CV1609, the matter of James Burneson versus Dam East
3 Homeowners Association, et al. I'll take entries of
4 appearances this morning.

5 MR. BURNESON: Jim Burneson is present.

6 MR. LANE: Good morning, Judge. My name is Jeffrey
7 Lane, L-A-N-E. My registration number is 11356 on behalf of
8 the served defendants.

9 THE COURT: Good morning. This matter comes for a
10 Case Management Conference today. Now, I'm newer to this case
11 than you two gentlemen, obviously, but I had an opportunity to
12 review the various paperworks and feel that I'm relatively up
13 to speed. Now, this does come on for Case Management
14 Conference today. It had initially been set in January, and
15 Mr. Burneson did not appear, and so, Judge McMullen had not
16 taken any action at that time as Plaintiff was not here. Now,
17 one of the things that happened is before the 22nd, the Court
18 had entered an order in regards to a deposition of you, Mr.
19 Burneson. Then, when you weren't here on the 22nd, Judge
20 McMullen not only didn't take action but stopped everything
21 until we had a Case Management Conference, and there is the
22 conflict in the deposition. I think we can clear those
23 matters up today and get ourselves back on track. Now, the
24 Case Management Conference, of course, turns us to Rule 16 of
25 the Colorado Rules of Civil Procedure. And subsection B
indicates that it's a presumptive Case Management Order, that

1 is a Case Management Conference is not necessary, though,
2 that the Case Management Order becomes an order of the Court
3 automatically. However, a Case Management Conference is
4 allowed and we're having that today. It could have been by
5 phone. I appreciate you both coming in by person instead.
6 And there are various things under Rule 16, subsection B and
7 that is one through ten that goes through what is the
8 responsibility of both sides and the timing of that. Now, in
9 this case, we're well past the at issue date. That is when
10 the responsive pleadings under Rule 7 are completed, the
11 complaint had been filed, an answer had been tendered as well.
12 There had been other motions in the case. Those had been
13 decided. So, the at issue case is back in October -- that is
14 October 2nd, 2007. Setting that as the at issue date puts all
15 of the dates under Rule 16 on their ear. We passed all those
16 deadlines, so, we really need to get ourselves back in line
17 now and get these dates moving. So, it should be clear to
18 both sides that we need to follow Rule 16. Now, Mr. Burneson,
19 you have elected to represent yourself, and I understand from
20 the pleadings, you're a pro se party, that is, you are not a
21 licensed attorney. Is that correct?

22 MR. BURNESON: That's correct, Your Honor.

23 THE COURT: Right. And I just want to clear with you,
24 notwithstanding that you are not an attorney, that you have
25 elected to represent yourself in this case and in doing so,
you're restricted to the same rules of procedure as a licensed

1 attorney.

2 By representing yourself, that may be at your own peril, but
3 if you see fit to rely on your own understanding of legal
4 principles, you may suffer the consequences thereto. So, the
5 Court will not be entertaining motions that not appropriately
6 captioned, that are not appropriately filed with the legal
7 support that they need, that these all need to be filed in
8 accordance with the rules of law, the statutes, and the Court
9 will rule accordingly. And so, I just want you to be clear
10 about that, Mr. Burneson. If that has not been established
11 for you before, you're on notice now. You are going to be
12 held to the same standards that any licensed attorney would be
13 in this courtroom when you are filing or when you are
14 appearing in Court. One of those things I noticed when I
15 asked for entries of appearance this morning is that you did
16 not stand. It is a custom that you stand when you address the
17 Court and I would appreciate it if you did that. That being
18 said -- you can stay seated. That being said, there are times
19 when we're in conference when you don't need to jumping up and
20 down, that the parties can just remain seated. But I want you
21 to understand that I do expect decorum in the courtroom.

22 MR. BURNESON: Yes, madam.

23 THE COURT: I do expect respect for our processes and
24 what's going on here. I say that because in having reviewed
25 some of the pleadings in this case, I find that decorum has
not been held up and there are allegations in these pleadings

1 that are no appropriate. The Court is trying to make legal
2 determinations of issues that are of dispute. Terms such as
3 liar and thief are not appropriate, and the Court does not
4 want to see those types of pleadings any more from either
5 side. All right?

6 *US Supreme Court New York Times v Sullivan, 84 S Ct. 710,*
7 *376 U.S. 254 (U.S. 03/091964) states citizens under their*
8 *right of freedom of speech has the right to criticize the*
9 *Government and Courts. If "Liar and Thief" are descriptive*
10 *words within a criticism then they are part of of a person's*
11 *Freedom of Speech and no court has the right to try and censor*
12 *these comments. Is Freedom of Speech denied in this court?*

13 MALE VOICE: Yes, madam.

14 THE COURT: In terms of the Case Management Order,
15 there was one issue and that was in regards to your
16 deposition, Mr. Burneson, and it appears that both sides have
17 agreed that the deposition should be taken at a neutral site
18 and not in Mr. Lane's law offices. Mr. Lane?

19 MR. LANE: Actually, I didn't agree to that, but the
20 Court ordered it, and I'm fine with it. I --

21 THE COURT: All right.

22 MR. LANE: -- I -- I've tried to get that set up, but
23 Mr. Burneson indicated he wouldn't appear, so, we need to -- I
24 think probably the best procedure today would just go ahead
25 and set a date for that while we're both here, so, there's no
one misunderstanding about when it's to take place.

26 THE COURT: All right.

27 MR. LANE: I think what happened last time, Judge, if
28 you'd bear with me is that I got the order from the Court that
29 said Mr. Burneson was to appear at his deposition and I could

1 chose the time and place, other than my office, and I did so,
2 and in the meantime, Judge McMullen entered an order that
3 seemed to be contradictory, although I didn't really think it
4 was that other discovery -- I thought it said other discovery
5 couldn't proceed. So, Mr. Burneson wouldn't appear for his
6 deposition. I think we need to get -- I've -- I've struggled
7 to get this case on track. We're set for trial in sixty days.
8 We haven't done anything. I -- I've got written discovery
9 out. I've got -- tried to depose Mr. Burneson and I don't see
10 how we can go to trial in sixty days. I know the Court
11 probably wants to address that issue.

12 THE COURT: Yes.

13 MR. LANE: But the case needs to get moved forward
14 and I've tried to push it forward, and it's just -- it's not
15 working.

16 THE COURT: We -- we did hit a real bump in the road,
17 and so, -- and I am, as I said, new to this case and I came
18 into this division in January, but I had Senior Judges
19 covering (inaudible) time periods, so, that's how we got a
20 little off track. Mr. Burneson?

21 MR. BURNESON: Your Honor, when I received the
22 order, I reviewed it and it mentioned that I was to appear on
23 the date and time stated by Mr. Lane for the hearing on the
24 deposition, but it still did not address the neutral location.
25 He assigned the location to be one of the fellow attorneys
that I have, within this association, great problems with.
That, to me, is not neutral. Neutral to me is this conference

1 hall out here which we've had depositions taken of me by Mr.
2 Lane. That's neutral. Not a cohort on the same legal dispute
3 that's going to go into trial.

4 THE COURT: All right. Given the nature of this case,
5 I am going to order that the deposition be held here in the
6 courthouse. That can either be in our conference room back
7 there or in our jury room if that's available depending on the
8 date and time --

9 MR. LANE: Judge,

10 THE COURT: that's picked.

11 MR. LANE: -- just so there's no misunderstanding
12 about that. That's not what the order said. The order said
13 that -- and I -- I just don't want the Court to have the wrong
14 impression cause I know you can't remember every sentence in
15 the file. But the order said that it was a place that I would
16 designate. It didn't say a neutral place, and it was another
17 attorney -- and he's not a colleague of mine. I don't work
18 with him. It's somebody that's represented this client in the
19 past. And you can't -- I don't know if Mr. Burneson
20 understands this or not, but I can't just somehow create a
21 conference room to have a deposition in and I know the Court's
22 been in private practice before. The way you do that is you
23 call somebody you know and see if you can arrange it, and
24 that's what I did. And I tried to abide to the Court's order
25 with regard to that, and I think I did to the letter of the
order.

THE COURT: And I --

1 MR. BURNESON: Your Honor, --

2 THE COURT: -- and I'm saying that you didn't, but I
3 am reframing it. I think, given the issues in this case, it
4 is best to just hold the deposition here in the courthouse.
5 Do you have some objection to that, Mr. Lane, that I'm not
6 aware of?

7 *The following wining by Lane will go on for 9 more pages of*
8 *this transcript which was totally unnecessary. An experienced*
9 *Judge would have wrapped this issue up in two pages.*

10 MR. LANE: It doesn't -- it doesn't make any
11 difference other than it -- it -- it's a chilling affect of my
12 ability to be able to schedule a deposition because my -- my
13 guess is, I don't know this for sure, but knowing how the
14 Court works, I'll have to schedule a conference room somehow
15 probably with the Court administrator. I don't know how easy
16 or how hard that's going to be or the availability of your
17 jury room or conference rooms and the trial schedule of the
18 Court. There are thousands and thousands of civil cases filed
19 in Colorado every year, and there are thousand and thousands
20 of depositions. I've attended probably three thousand
21 depositions my career. I've never had a problem in a
22 deposition, and I know Mr. Burneson thinks that's somebody's
23 going to be -- he isn't specific whether him or I that'll be
24 assaulted if we have the deposition in my office. The Court
25 made an order to accommodate that. But it seems to me as the
-- as the -- as the Court indicated at the beginning that Mr.
Burneson should be held to the same standard that every body
else is. And the standard is is that if I (inaudible) have

1 notice of deposition, I can notice it for the place that I
2 desire to notice it for. And if there's a problem, you take
3 care of it. But to have Mr. Burneson come in and with no
4 factual basis tell the Court that -- first of all, it -- it's
5 offensive to me because it -- it affects my reputation in the
6 community and I didn't respond to the motion other than I said
7 I think I get to choose the place of the deposition myself,
8 but it's offensive to me, it's offensive to anyone that reads
9 the file and it -- it's, in essence, the Court doing just what
10 the Court said it wouldn't do, which is to bend the rules for
11 Mr. Burneson. And -- all I'm trying to do is get my discovery
12 in this case. I've -- if you've been through the file, it's
13 been a battle at every turn, and I just want to get the case
14 on track, get his deposition done, and get my discovery. And
15 I think that making me jump through -- excuse me, I have a
16 very dry mouth (inaudible) some medication, but I can --

17 THE COURT: I think we've got some water (inaudible) -
18 -

19 MR. LANE: Making me jump through hoops that I
20 wouldn't have to jump through in any other case, I don't think
21 is necessarily fair unless there's a history that something's
22 happened. And nothing's happened. Now, if we have the
23 deposition and it appears to Mr. Burneson I'm harassing him
24 during the deposition, then, he can terminate the deposition,
25 and we have the Court read the transcript, and we can
determine -- make that determination just like we would in any
other case. But before the deposition's even started say on

1 Mr. Burneson's unsupported allegation something that happened
2 isn't fair to my client, it isn't fair to me to make me do
3 extra work and jump through extra hoops, and in some respects,
4 when somebody reads the file, they'll give some credence to
5 Mr. Burneson's allegation and there's no basis for it.

6 THE COURT: Mr. Burneson, what's the problem?

7 MR. BURNESON: If I may refresh the Court's memory,
8 it states here in your order, Plaintiff is to arrange an
9 alternate location for the deposition. That's me. I'll be
10 happy to arrange any one of these conference rooms. I'll go
11 through and find out who and the Court Clerk, etcetera. All
12 he needs to do is tell me the date and time and we're done.
13 We can have it. He doesn't have to be involved in arranging
14 it. But that was your order. However Mr. Burneson shall
15 submit to the time of deposition as noticed. So, I think
16 that's clear. All I'm -- I'll take that responsibility if he
17 tells me what date and time he wants to depose me.

18 MR. LANE: I had taken that as a typographical error
19 in the order. *When Lane doesn't agree with the record it's a*
20 *typo.*

21 THE COURT: And that's what your motion for
22 clarification --

23 MR. LANE: Yes, --

24 THE COURT: -- was, to who was to decide.

25 MR. LANE: -- because, quite frankly, it's -- how am
I going to notice a deposition and he's going to arrange the
time and the -- or the place for. It's just -- practically,

1 it doesn't make any sense, first of all. And secondly, if
2 you have somebody who really doesn't want to be deposed, who
3 knows where he's going to schedule it to be. I mean, I
4 scheduled it in an attorney's office in the tech center fairly
5 close to my office and convenient for Mr. Burneson. I did
6 what I could under the order. Now, I can find some other
7 attorney. He doesn't like Mr. Johnston because Mr. Johnston
8 has represented Dam East, but quite frankly, we all just have
9 circle -- we have a circle of -- of people that we know and
10 people that we can call on for a favor which is what this is
11 because I don't want to have to go rent -- I mean, I could --
12 the other problem is, if -- I could go down to -- downtown and
13 the Court's familiar, I could go down to the deposition center
14 downtown and there's -- there's commercial facilities
15 available to do this. But in this case, and generally, the
16 Court would order that the cost of that be split between the
17 parties. And nobody addressed what the cost of the conference
18 room would be. I have one in my office we can use for free.
19 I guess, we can use the facilities here at the courthouse for
20 free. But on the other hand, like I said, it's a chilling
21 effect on my ability to take a deposition and there's no
22 foundation. I mean, you just asked Mr. Burneson what the
23 foundation for it was, and we didn't hear anything.

24 THE COURT: Mr. Burneson, *-Mr. Burneson is interrupted*
25 *by a lawyer and the judge does nothing yet he is suppose to be*
treated as an equal to a lawyer. -

MR. LANE: I (inaudible), -- if I may, I'm sorry to
interrupt, but I do want to point out, I've taken -- I took

1 Mr. -- Mr. Burneson's deposition once before about five or
2 six years ago on another matter.

3 MR. BURNESON: Here.

4 MR. LANE: And it -- no. I took Mr. Burneson's
5 deposition in my office in -- in 2003. I took a debtor
6 examination of Mr. Burneson here at one time because he has an
7 outstanding judgment -- or there's an outstanding judgment in
8 favor of my client against Mr. Burneson. But I took a -- a
9 discovery deposition in my office on a prior case that Mr.
10 Burneson filed against these same clients five years ago, and
11 it went forward without any problem. Probably still have a
12 transcript of it someplace in some file somewhere. But there
13 weren't any assaults. There weren't any problems. And
14 there's no basis -- I've been in Court with Mr. Burneson
15 twenty-five or thirty times over the last five years. There's
16 never been a problem. There's never been a problem with --
17 the only problem we really have, to tell you the truth, Judge,
18 is I get very threatening letters from Mr. Burneson. I don't
19 even correspond with Mr. Burneson. I file pleadings with the
20 Court. I get letters from him that call me names. He calls
21 me a scum-bag. He calls me the scum-bag of the legal
22 profession. He does all these things and ignore him, and
23 there hasn't been any problem. And the he -- he files a
24 pleading, which quite frankly, is offensive and I didn't move
25 to strike it and I probably should have that said that there
was going to be some altercation if we had a deposition. And
there's no basis in fact for that. And when you look Rule 12,

1 it talks about motions to strike, those are the kind of
2 pleadings that really shouldn't be -- are not appropriate in a
3 lawsuit. They're not appropriate unless there's some
4 foundational basis. They go to the integrity of the Court and
5 participants in the -- in the process.

6 THE COURT: Mr. Burneson, what is the problem with the
7 deposition to be at Mr. (inaudible) offices?

8 MR. BURNESON: The last deposition, and he's
9 correct, was taken -- one of the last ones, was taken at his
10 office. I vowed I would never go there again for that type of
11 abuse. He had other people join in the deposition. He had --
12 it was like a circus. And he incensed five years has gone by.
13 We have reached an element of physical, in my opinion,
14 problems. This is -- this is extremely -- a major conflict
15 between two -- two males. We had a very nice deposition here.
16 It's free. It's a matter of just scheduling it, and I will
17 extend myself to go and get that all arranged. All I need
18 from him is a date and time. I have no interest from this
19 point on to delay any deposition whatsoever. I am open to any
20 time and date, neutral location.

21 THE COURT: All right. I've heard the arguments of
22 the parties. I think the record has been made clear. I --
23 I'm not going to hold an evidentiary hearing about what
24 happened in the deposition back in, I think, it was 2003 is
25 what the parties believe. We have diametrically opposed
representations of how that deposition went. We are -- it's
February 13th today. We are two months away, sixty days away

1 from trial. And I want to move this case along
2 expeditiously. That is a major issue in this case whether
3 things can be done before that trial date. So, in the
4 interest of judicial economy, and I'm not making any findings
5 that there's basis for your motion, Mr. Burneson, that this
6 deposition needs to be somewhere else than where Defendant has
7 noticed it to be. I am going to order that the deposition be
8 at the courthouse. And that will be done through my clerk,
9 Ms. Vandenburg here to set that up -- where it will be in the
10 courthouse. We will have a room available no matter what time
11 and day that you pick, Mr. Lane. We will be able to
12 accommodate that. We have a jury room on this floor where
13 there aren't any juries held in that courtroom, so, it will
14 be available, period, if ours is not. Or if it's felt that
15 the conference room behind us is too small, the jury rooms are
16 a little bit bigger. So, we will do that and I would like to,
17 right now, schedule that day and time so that everyone's
18 clear. Mr. Burneson, you have made yourself very clear by
19 saying you are willing -- you're ready, willing, and able to
20 accept a date and time, so, let us do that. Mr. Lane, do you
21 have your calendar?

22 Mr. Lane never has his calendar with him in any court I have
23 been involved. This means no dates can be set in any hearing
24 which is a costly delay by Mr. Lane. Sharp judges makes it
clear when you come to their court have your schedule up to
date.

25 MR. LANE: I do have my calendar. There's one other
issue with regard to timing of the deposition. When I defend
a case, I do this -- there's a procedure that I follow and one

1 of the procedures that I follow, in general, is I get my
2 written discovery out so I can have my written discovery and
3 documents when I take the plaintiff's deposition. I did
4 written discovery in this case because I, as the Court just
5 ruled today, felt that the at issue date was back in October.
6 Mr. Burneson's refused, and I -- there's a motion to compel in
7 the file, and in fact, I think I filed four or five motions to
8 compel. There's a motion to compel. Answers to the written
9 discovery, I need those documents and I need those answers
10 before the deposition. I don't know how long the Court is --
11 is inclined to give Mr. Burneson to complete his answers.
12 They're probably three months overdue now, and --

13 THE COURT: Mr. Burneson, let's address the written
14 discovery. Mr. Lane is right in terms of an orderly
15 procession. There's no need to depose once and then need to
16 depose again after documents are produced. Why haven't you
17 responded to the appropriate Rule 26 requests for production
18 of documents, answers, etcetera?

19 MR. BURNESON: I waited for this hearing which I
20 read in the law that discovery does not need or this
21 (inaudible) -- discovery can not happen until after this Case
22 Management is heard if there's a dispute. Now, I'd be very
23 happy to turn that written document to -- over to him by the
24 18th. Today's the 13th.

25 THE COURT: The 18th?

MR. BURNESON: Yes.

1 THE COURT: Monday is a Court holiday. It's a United
2 States mail holiday, as well. I don't know if Mr. Lane's
3 offices are open --

4 MR. BURNESON: 19th.

5 THE COURT: -- on the 18th. Are you saying that you
6 have the documents responsive to the request, that you have
7 done your due diligence to answer appropriately the
8 interrogatories and other requests for admissions so that you
9 are prepared within days to turn over that complete set to Mr.
10 Lane by next Tuesday?

11 MR. BURNESON: There were some documents asked for
12 in there. I will say the 20th, yes. February 20th.

13 THE COURT: Mr. Lane, February 20th, then?

14 MR. LANE: That -- that's fine with me, Judge.

15 THE COURT: All right. Then, let's be clear, then,
16 February 20th by close of business, 5 p.m., that everything
17 needs to be to Mr. Lane's offices. Not in the mail, but to
18 his offices.

19 MR. BURNESON: Yes, madam. *The written deposition*
20 *was delivered on time. But all of this is now wasted time and*
21 *effort since Mr. Lane can't represent the defendants any*
22 *further since he joined the law firm of **Springer and***
23 ***Steinberg**. This law firm once represented Mr. Burneson and*
24 *thus Mr. Lane must withdraw from representing the Dam East*
25 *HOA. No Judge will grant any motion filed by Mr. Lane to*
continue representing a client while employed by Springer and
Steinberg.

24 THE COURT: All right?

25 MR. BURNESON: (inaudible).

1 THE COURT: With that as the deadline, then, in terms
2 of how long you need to digest that material and be prepared
3 for a deposition, Mr. Lane, --

4 MR. LANE: I can do it anytime the week of March 3rd.
5 I prefer not the 3rd because I'm on vacation the weekend
6 before. But the 4th, 5th, 6th, or 7th.

7 THE COURT: Mr. Burneson?

8 MR. BURNESON: Fine.

9 THE COURT: Gentlemen, prefer a morning start?

10 MR. BURNESON: Any one of those days.

11 MR. LANE: Probably a morning start, and probably
12 later in the week's better if we're going to the courthouse
13 when there aren't trials starting.

14 THE COURT: Well, we start trials Monday, Tuesday, so,
15 that Wednesday, Thursday, or Friday.

16 MR. LANE: Why don't we do it Thursday, March 6th.

17 THE COURT: Thursday, March 6th at 8:30 in the morning?

18 MR. LANE: That's fine.

19 THE COURT: I'm going to have the --

20 MR. BURNESON: Yes, madam.

21 THE COURT: -- what I'm going to do is have Ms.
22 Vandenburg find an appropriate place, and the parties will
23 check in with our chambers at 8:30 that morning so that we
24 know for sure rather than direct you to somewhere in the
25 building that might change. We'll have you on March 6th check
in and Ms. Vandenburg will direct you to where you need to be.
In terms of spacing, we have the room right in back of our

1 courtroom that's relatively small, and if that's too small if
2 we're going through documents, having a court reporter, and
3 the parties available.

4 MR. LANE: I may want to do this by video deposition,
5 and so, --

6 THE COURT: All right.

7 MR. LANE: -- I'm going to -- I'll have to discuss
8 that with my client.

9 THE COURT: All right. All right. We'll find a jury
10 room, then. That's what we'll be looking for. Someplace
11 bigger so that there's space for everything that's needed.
12 One of the things that you had noted in your motion, Mr.
13 Burneson, in regards to Trial Management issues, I think you
14 called them -- or Case Management issues, is you had listed
15 several documents and things that you wanted. And that's not
16 really what the vehicle of the Case Management Order is for.
17 The Rule 26, notices of discovery, go to the opposing Counsel
18 for your demands of what you want.

19 MR. BURNESON: I see.

20 THE COURT: That's not through the court system. It -
21 - it's -- the way I read it, it's -- it's a little premature.
22 This case, at issue, is your demand for documents, and then,
23 you're asking the Court to order those documents now.

24 MR. BURNESON: The history requires me to do it in a
25 different manner than what we've had before. We've had three
Court orders to see these books. Three of them. And when the
books arrive, they're half there. There's missing documents.

1 The contracts aren't there, etcetera. Then, I make a list
2 and I don't ever see the full record. A Court order to see
3 the HOA records and get half of them is not sufficient. I
4 wanted to preclude that from occurring again, wherein, one,
5 the records were going to be held by Mr. Lane in his office
6 which means somebody in the trusted position of maintaining
7 the files has now lapsed. I claim any time the records are
8 kept by Mr. Lane, they will be incomplete, intentionally. I
9 want the records to be maintained at the -- the management's
10 office. I would -- that's why I requested that the Board of
11 Directors certify they're complete. I've gone three times,
12 spent weeks going through records and find they're not. I --
13 at this time, I don't want to have to go through that again,
14 so, I had no other way to reach that element. We could go on
15 trial in April and we're missing records. I'd like to get
16 that over with now. I'd like to go in and inspect the records
17 and make sure when I do, they're complete. In fact, it -- and
18 then, -- then, we take it one step further, I need the records
19 from year 2000 to -- to -- to the present. And in one of my
20 motions, it states that until the records are reviewed in
21 their entirety, there cannot be any statute of limitations
22 against review of them. I have seen the Board has the
23 records. They have them from 2000 to the present. They had
24 them when we went to inspect them with the -- Magistrate
25 Petrie's office, the Court, and we spent seven days going
through records. And then, at the date of the hearing, I
catch the property manager and the attorney where this was --

1 other -- the position (inaudible) walk in with a stack of
2 files this thick, and they start putting them back into the
3 records that we just got through reviewing.

4 MR. LANE: Judge, I hate to interrupt. He pointed at
5 me and I didn't have anything to do with that case and I don't
6 know what he's talking about.

7 THE COURT: Okay.

8 MR. BURNESON: No, I'm trying to *-Interruption by*
9 *Mr. Lane is allowed by the court because he is a lawyer and*
10 *Mr. Burneson is Pro Se.* -

11 MR. LANE: He pointed over here. It wasn't me. I
12 don't know --

13 THE COURT: Okay, Mr. Lane. I'm going to stop you,
14 Mr. Burneson, because none of that's before me.

15 MR. BURNESON: Okay.

16 THE COURT: None of that --

17 MR. BURNESON: But that's the history --

18 THE COURT: -- this is -- I am not an appellate court.
19 I am not reviewing what happened in these other cases. I am
20 aware of the nine cases in this courthouse.

21 MR. BURNESON: Okay.

22 THE COURT: That's not in front of me. You need to
23 follow the rules.

24 MR. BURNESON: Okay.

25 THE COURT: Colorado Rules of Civil Procedure 26 is
your vehicle under B2 --

MR. BURNESON: Okay.

1 THE COURT: -- that goes through what you can
2 request. You need to serve upon the adverse party the request
3 for the production of documents.

4 MR. BURNESON: Okay.

5 THE COURT: In essence, you need to start afresh here.
6 I am not taking in the ocean of other allegations and what's
7 happened there.

8 MR. BURNESON: Okay. Yes.

9 THE COURT: In this case, you need to follow the
10 procedures. Then, as Mr. Lane did, if there's something
11 missing, you file a motion to compel and you list what hasn't
12 been -- what has been refused, what's not been turned over,
13 etcetera.

14 MR. BURNESON: Okay.

15 THE COURT: But you need to do it in the appropriate
16 format. Just filing under a disputed case management that you
17 want these documents is not the vehicle. That is not the way
18 the Court is going to address this.

19 MR. BURNESON: Yes, Your Honor.

20 THE COURT: You need to serve to Counsel. They need
21 to respond. If you believe there is a problem, then, it's at
22 issue for the Court to review discovery disputes.

23 MR. BURNESON: Okay.

24 THE COURT: Read the rules. I -- just -- I urge you.
25 Read them very carefully so that you know that you're in
compliance. Otherwise, this goes nowhere and the April date

1 begins to look more and more remote as a trial date in this
2 case.

3 MR. BURNESON: Okay.

4 MR. LANE: Judge, may I say something with respect to
5 that?

6 THE COURT: Yes.

7 MR. LANE: First of all, Mr. Burneson, once again,
8 has imputed my integrity as an attorney. I've been a lawyer
9 almost thirty years -- twenty-seven years. And I handle
10 complex litigation with sometimes hundred of thousands of
11 documents. And there are ways to do this so we don't have
12 these kinds of allegations. If Mr. Burneson, if I can get a
13 discovery request from him, one that indicates that's he
14 willing to pay for the copying charges, and he always wants to
15 bring his own copier and copy our things which, really, the
16 rules don't provide for. But I'm willing to have six years of
17 documents taken to a litigation support company, have them
18 Bates stamped so there's some integrity in the documents, and
19 copied. But the -- the problem we always run into is that
20 it's not so much the -- the ultimate goal, and that is to get
21 records for Mr. Burneson to look at, but as -- as -- and I
22 don't know who -- who coined this phrase but I know Ross Perot
23 used to always say, the devil's in the details, and it's
24 always a problem with who's going to pay for it, how much the
25 copies are going to be, where are they going to be. Just as

1 you just heard him say he doesn't ever want them in my
2 office. Well, I don't know how you conduct litigation without
3 having the documents in your office at some point. And I
4 think we need some method. Maybe the Court can help us with
5 this with regard to discovery. Some method of document
6 control in this case. As I indicated to the Court, I used to
7 do construction defect litigation case with 300,000 documents.
8 And we didn't have the problems we have in this case where we
9 may have 500 homeowner files that amount to, maybe, you know,
10 maybe, 6,000 pages of documents -- maybe, 5,000. Somewhere in
11 that range. Maybe we can get some direction from the Court on
12 how to handle this and some instruction to Mr. Burneson with
13 regard to what his duties are if he requests documents under
14 discovery. And I think his -- his -- that's the irony of all
15 this is his ability to ask for documents and discovery and
16 probably far broader than his ability to ask for documents
17 under -- under the particular statute in the bylaws of the
18 Association. If he wants documents, all he has to do is send
19 me a discovery request and be prepared to follow the rules
20 with regard to his responsibility to pay for the copies and
21 we'll give him all of it.

22
23 *This is the beginning of the script written by Lane and pre-*
24 *agreed to by the court in an ex parte meeting outside of*
25 *court. Again inexperience as a judge She agrees to a Bate*
stamp function for 6 years of HOA records which has a history
of not being complete is wrong. No commercial company can
determine want records are missing and thus Bates stamping
records 1 through 3,000 with 300 records missing between
records 400 to 700 doesn't "nip these issues in the bud." The

1 *court has just been had by Mr. Lane's suggestion to Bates*
2 *stamp records that are incomplete at a major expense is a*
3 *major blunder by the court.*

4 THE COURT: Well, it certainly seems to me that one
5 way to nip these previous issues in the bud is Bates stamping.
6 Bates stamping is an electronic process where the documents
7 are numbered sequentially without regard to the numbers on the
8 documents themselves. That way, there can't be this
9 interposing of documents later because there're no longer
10 sequential. And what -- how it helps is in litigation, then,
11 everybody's looking at the same Bates number, so, there's not
12 -- well, I'm looking at November, 1987 and I'm looking at that
13 so that everybody is on the same page. It alleviates these
14 issues that you seem to be raising to send them to a
15 professional -- a litigation support company, that will Bates
16 stamp all the documents and have them all in order, and then,
17 -- and can copy them and have a set for everybody, and it's
18 done. What is -- what is the issue with doing it that way?

19 MR. BURNESON: In year 2000, in that review of those
20 records, there may be eighteen pages I need to copy, and
21 that's it. I've seen them all. But those eighteen have been
22 missing on all of the inspections. Now, --

23 THE COURT: Well, and --

24 MR. BURNESON: -- in the (inaudible) --

25 THE COURT: -- let me interrupt you, then.

MR. BURNESON: Okay.

1 THE COURT: Copying the whole set and Bates stamping
2 it alleviates the eighteen missing pages. That's -- that is
3 the operative set. That's it.

4 MR. BURNESON: No. No, the -- the eighteen missing
5 pages won't be in there. And the date stamping numbers will
6 run right along consecutive, and the eighteen never were
7 there. And I know what they are. I know what the records
8 are. I know they'll be missing cause they don't want me to
9 see them.

10 MR. LANE: Judge, then, if I have -- if I have a
11 request for production of documents that tells me what those
12 eighteen documents are, if I have them, I can produce them.
13 If I don't, that'll be our answer. But I -- it's always --
14 it's -- it's almost like there's a moving target and it's in
15 the dark. I never know what's -- quite what Mr. Burneson's
16 getting at. Today he's telling the Court that he's examined
17 all of these documents on numerous occasions, but we have a
18 petition and -- and claims against my client saying that
19 they've subverted his ability to examine them.

20 MR. BURNESON: That's right.

21 MR. LANE: If there's eighteen documents he wants,
22 give me the list of the eighteen documents. If I have them,
23 I'll produce. If I don't, I won't. I can't produce something
24 I don't have. And the other thing that I think the Court has
25 to understand is there are some documents that by statute
we're required to keep. Some documents, we don't. I don't
know what he's talking about at the present time. I don't

1 know what documents he's talking about. But if we have them,
2 we'll give them to him. We've always taken that position.
3 The problem is, I never know. That's where these requests,
4 when they come, if they don't specify the document that he
5 wants, I can't -- I can't just -- I can't produce them. Then,
6 we produce all of the documents, and then, he says, well, they
7 aren't there. I mean, it's almost like I -- I can't win. I
8 can't -- I can't satisfy what he wants. And I think through
9 discovery, if he wants to -- he can request any document he
10 wants, and I'll answer the discovery. His -- his ability to
11 request documents is much broader, but he has to understand
12 that there's some obligation to pay for the copies and the
13 Bates stamping under those circumstances that's -- that's
14 provided for in the rules.

15 MR. BURNESON: Your Honor, I want to management --
16 I'm going to give you an example. I want the copy of the
17 management agreement between Western States and the Homeowner
18 Association for year 2003. It's not in the records. Does
19 that indicate there wasn't a record or a contract? Might have
20 been. Or the excuse is we've lost it. I would go through and
21 find the eighteen pages he's claiming we'll just provide it.
22 That's the smoking gun they're not going to provide. It's
23 lost. We don't have it. I need --

24 THE COURT: So, what are you asking the Court to do?

25 MR. BURNESON: To order that -- now, I've tried it
with this, and I won't serve him with what you've required me
to do. I want a detail completed box this long with all the

1 records I know are supposed to be in there. And I'll supply
2 that. And that I need to know that they'll be there when I
3 come to see them. Now, when they're not there, we don't know
4 if there was ever a contract or not, and sometimes, it's --
5 I'll give you another example. I caught the Board, along with
6 Mr. Lane, falsifying two months of minutes. Board of
7 Director's minutes totally falsified, and I proved that the
8 dates proved they were wrong and they were false. And it was
9 to hire Mr. Lane cause they never hired him. So, they went
10 back and had a fake meeting and prepared false minutes. I
11 have copies of that. Dumb. That's what I'm faced with in
12 these records, a box this long full of paper. At one time, I
13 was given the box and I turned it all back and I said, I need
14 it totally indexed. I'm not taking it in this condition that
15 it is. I could spend hours trying to find anything. And they
16 did, and they indexed it. What Mr. Lane is trying to aim at
17 is if we took all of these records and go down and date stamp
18 them professionally (inaudible), he could present me with a
19 \$4,000 fee before I get to see them. That's not necessary.
20 That is totally unnecessary. I can inspect the records if I'm
21 told by a certification by the Board, we hereby certify these
22 records are complete and accurate. That's all I want. Now,
23 if I come across records that are missing, there may be
24 instances of that. I'll be very happy to provide a note or
25 something and -- and come back to the Court or say I need
these following records. I have letters in here of that same
nature from the previous inspections, but I never got them.

1 So, it was all a waste of time. Now, to go down and date
2 stamp everything and have portions of that record missing,
3 intentionally, doesn't solve that problem cause they're going
4 to only date stamp the pages that are in there.

5 THE COURT: All right. You -- you've plated a lot of
6 issues. I hear you saying you want complete records, and
7 then, I hear you saying you want only portions of those
8 records, so, --

9 MR. BURNESON: No.

10 THE COURT: -- you need to be very clear in your
11 request for production of documents --

12 MR. BURNESON: Okay.

13 THE COURT: -- to opposing Counsel what it is you want
14 by year, by subject, so that they can look for those
15 documents. What you're telling me is you're not satisfied
16 that when they tell you we don't have it, it's lost, it was
17 never prepared, whatever, and -- and I don't know what you
18 want me to do about that because this happens all the time in
19 the civil case. You ask for discovery; they say, here's what
20 we have, there's some missing. Depositions follow from that.
21 That's why Mr. Lane wanted his documents ahead of time so
22 then, you can ask the represented parties the -- you know, why
23 is this missing, where is this contract? And then, you get
24 your answers. I -- there -- there are consequences to parties
25 who in a legal context say we don't have these documents and
later try to come to Court and bring them in. That's the

1 process I have here. But in terms of making Mr. Lane produce
2 something that he says he doesn't have, I don't know what it
3 is you want me to do.

4
5 *Experienced judge knows the ins and outs of lost record and*
6 *how records are requested and those are the ones that get*
7 *lost. The HOA by law is held responsible to maintain accurate*
8 *records and not have lost records. Ten years and Lane has kept*
9 *the records lost that he doesn't want exposed to the public.*

10 MR. BURNESON: I don't know that I'm asking Mr.
11 Lane, basically, but I'm asking the Association. Mr. Lane
12 doesn't have these records. If he has them in his office,
13 they're incomplete.

14 THE COURT: And if Mr. Lane turns to his client and
15 says, produce these documents, and they say, we have and we
16 don't have any more -- this is it, that's the answer. And
17 what is it you're asking me to do if that's the answer?

18 MR. BURNESON: Then, when I -- I finish this lawsuit
19 and I go through and get the books and we -- we've looked at
20 everything, and I've got these answers and this -- this
21 contract is missing, and this is not -- no longer available,
22 etcetera, I can take steps in an additional litigation for the
23 cause in that. When I saw a property manager and a lawyer, an
24 officer of the Court, coming in and stuffing records back in
25 to the original boxes that made -- Magistrate Petrie ordered
us to review, I was stunned. I can't believe the gall to go
out and do something like that. And that gall is still there.
It isn't changed. And they won't allow what they deem to be
any kind of a smoking gun to be there unless I can find a way

1 to pinpoint it and ask for it. So, what my understanding,
2 what my thoughts were, I would go to the Association, I look
3 at the books, I could take one week per year because there's
4 that many pages. Not eight hours a day, but I do have other
5 things in that week to do besides just sit there for eight
6 hours. I would go through there and I would find and note
7 those records that are missing, and then, I turn to them, give
8 it to them. He wants me to go and give them the records that
9 are missing before I see them. That doesn't work.

10 THE COURT: Well, you had said you'd already seen the
11 records in previous litigation, and so, you know, eighteen
12 pages are missing.

13 MR. BURNESON: I used that as an example, Your
14 Honor. Now, if -- when I go back to look at those books, and
15 -- and I note that those eighteen pages are still missing,
16 okay? I don't know that there's eighteen, fourteen, or
17 twelve. I'm using that as an example. So, in my position,
18 when I go to review these records, that's why I bring my own
19 copier cause they want to charge me a quarter a page. That's
20 the courthouse record -- price. It's a nickel or less per
21 page, and I could have a substantial amount of -- of copies.
22 When I went to the Association in previous years and would
23 say, I'd like a copy of this, there was a nickel. Now, no
24 longer -- we're going to really -- it's all caused -- let's
25 see how much we can run the expenses up on Burneson. That's
not necessary.

1 THE COURT: Well, I take issue with that statement
2 because you've asked me to get involved in this particular
3 process. I have told you in my practice the best way to do
4 this is to have all these records Bates stamped by a
5 professional company and copies made. Then, there's no issue
6 of copies that aren't marked and whether they copied
7 everything correctly. It's done by a professional company and
8 then, a bill does issue, but then, the documents are Bates
9 stamped and we don't have this over and over and over again.

10 MR. BURNESON: Okay.

11 THE COURT: If you want to see all the records, and
12 that's what I just heard you tell me, you want to see all the
13 records, then, you'll know what's missing, then, I want these
14 records Bates stamped. And I want them to be copied by a
15 professional litigation support company and have it be done.

16 MR. BURNESON: Okay. In this case, --

17 THE COURT: And it's not because I'm trying to run up
18 your costs but because there are so many discovery disputes.
19 That's all I'm hearing this morning is dispute after dispute
20 from the past and then, it's coming to surface again here,
21 that that's a way to nip this in the bud. That means, you
22 bear some of this cost, that you will have to pay for that.

23 *Court refuses on purpose to understand Bate stamped records*
24 *do not make the records complete if Lane gets to offer the*
records he wants Bate stamped.

25 MR. BURNESON: Okay. In the trial, then, I also get
a chance to charge the Board of Directors individually for the

1 costs I have incurred to try to see these records. And
2 that's been agreed to.

3 MR. LANE: (inaudible) no that has never been agreed
4 to, Judge.

5 THE COURT: No way.

6 MR. BURNESON: I am -- I have a right --

7 THE COURT: I am -- I am not ruling on that.

8 MR. BURNESON: Okay.

9 THE COURT: If you are asking -- you're saying this is
10 -- this is what I want you to rule at trial, whoa, whoa.
11 We're not at trial, Mr. Burneson.

12 MR. BURNESON: No. *Again the court is saying I asked*
13 *for a ruling now and it was never asked for.*

14 THE COURT: We're at the discovery phase here, and
15 there are obligations when you seek documents that you have to
16 pay for those. Given the problems in this case and the
17 apparent volume of documents involved, I am ordering that they
18 be Bates stamped and that this be done.

19 MR. BURNESON: Okay. Judge Platt ordered that I
20 have the right to charge the Directors --

21 THE COURT: Judge who? I'm sorry.

22 MR. LANE: Pratt is what he's trying to say.

23 THE COURT: Judge Pratt.

24 MR. BURNESON: Pratt ruled that I have the right to
25 charge the Board of Directors when I can prove that they
willfully and wantonly denied me the right to see these books.

MR. LANE: He denied the motion to dismiss. He said
that that's an issue.

1 THE COURT: I -- I read that. If --

2 MR. LANE: He didn't say that he could do it.

3 THE COURT: Yes. He didn't say you had the right to
4 charge anybody. He said the motion to dismiss is denied, that
5 this case can go forward on these issues. There's a factual
6 issue about this wanton and willful behavior.

7 MR. LANE: He still has to prove his case.

8 THE COURT: Right.

9 MR. BURNESON: I -- I will have that opportunity,
10 though, to prove that in Court.

11 MR. LANE: And if -- if I can address -- as I said a
12 few minutes ago that's the devil is always in the details with
13 respect to this. It -- and you just heard Mr. Burneson say he
14 wanted a week per year of seven or eight years of records.
15 So, I guess, we're obligated to provide him with an officer
16 conference room for eight weeks, pay for somebody for eight
17 weeks to watch him go through records because we want to make
18 sure the record -- the integrity of the records are take --
19 are ensured. That in -- in a normal discovery dispute, in any
20 commercial litigation, I wouldn't have to bear that cost. And
21 we'd do exactly what the Court just suggested. We would send
22 the documents out, have them Bates stamped, have them copied,
23 and Mr. Burneson as a requesting party would have to pay that
24 cost. And that's all we're asking is to be treated like any
25 other litigation. I mean, no -- no -- no -- in any -- in any
commercial litigation I've ever been involved with have they -
- has a party been required to provide an officer or somebody

1 for eight weeks and somebody to oversee them to look at
2 documents. That's just not how we do it, and it doesn't make
3 any sense. It doesn't make any sense as a -- as an economic
4 point of view of -- from an economic (inaudible) --

5 THE COURT: Well, and I certainly hope I wasn't heard
6 to say that. I, you know, it was not my intent.

7 MR. LANE: You know, I think that's what Mr. Burneson
8 was asking for.

9 THE COURT: No, that is not what we're doing. With
10 having these Bates stamped and a copy made, you get the
11 copies. You can take them and review them at your leisure
12 whenever and wherever and however you wish. You're not at the
13 auspices of Mr. Lane in his offices. He's not put out by
14 having somebody watch you review the documents which may be
15 chilling for you. None of that needs to be done. The
16 documents get copied and you have your set to work with and
17 tab and write on and mark and -- and use for depositions.
18 That becomes your set, but you do have the financial
19 obligation to pay for that.

20 MR. BURNESON: Is there any estimate of cost -- what
21 -- like per copy to -- to Bates stamp this cause we're --
22 we're talking a huge number --

23 THE COURT: The -- you will find the company, they
24 come out, and as professionals, they'll review what the set of
25 documents is and give you a quote. They are very experienced

1 in this. This is how much it costs to Bates stamp and this
2 is how much it will be to make the sets of copies.

3

4 *The words professional and experienced mean nothing towards*
5 *getting accurate records stamped. Lane has pulled the wool*
6 *over the court's eyes on this matter. \$5,000 spent for Bate*
7 *stamped records does nothing to make the records accurate.*
8 *Wake up!*

9 MR. BURNESON: And this would be at the property
10 manager's office --

11 THE COURT: I don't know where the documents are.

12 MR. BURNESON: -- for the books that -- that's where
13 they are held by -- by -- by the bylaws and everything else.
14 The book are held at the office of the Association and that's
15 where the Association offices --

16 THE COURT: Mr. Burneson, I do not know where the
17 documents are. *I just got through telling the court the*
18 *records are by law held at the registered office of the HOA by*
19 *the Management company.*

20 MR. BURNESON: Okay.

21 THE COURT: If they are at legal Counsel's office, it
22 doesn't matter for the litigation company where the documents
23 are held for them to review and make a cost estimate. Then,
24 they take possession of those documents and do their work on
25 them. And it doesn't matter to them where they're taking them
26 from nor does it matter to me where the documents are
27 currently held.

28 *That's right because they are not responsible for any*
29 *accuracy of records just stamp 1 through 3,000 with any number*
30 *of records missing in between. Lane wins by hiding the records*
31 *he doesn't want exposed and the judge helped.*

1 MR. BURNESON: It matters to me that they're
2 complete when they do the date stamping, --

3 THE COURT: Yes.

4 MR. BURNESON: -- and if they're in his office,
5 they're not going to be. That's history. That's where it's
6 been. But at the property manager's office, they will be.

7 THE COURT: I don't know what you're asking me to do
8 then.

9 MR. BURNESON: I'm asking that the records be
10 maintained at the property manager's office, not Mr. Lane's
11 office.

12 THE COURT: I am not going to order that. I have no
13 authority to tell anyone where these documents should be held
14 absent any sort of showing. I am not going to do that. You
15 make your request for production of documents as complete as
16 you need it to be, and then, when those documents are
17 assembled, -- and typically, it is at Counsel's office. Then,
18 the company comes and gives the cost estimate.

19 *An experienced judge would have seen through these problems*
20 *and the court does have the authority to order the Association*
21 *to provide records to be presented complete as the Bylaws*
require the books to be kept by the Board of Directors.

22 MR. BURNESON: At this office, he'll say no, we
23 don't want that copied. Copy that one. Don't copy that one.

24 MR. LANE: Judge, you know, I -- I can only sit still
25 for so long. As I indicated to the Court, I've been involved
in litigation twenty-seven years. We don't do that.

The hell he doesn't that's what been going on all this time
and Lane has been paid over \$80,000 to keep the books hidden.

MR. BURNESON: Yes, you do.

1 MR. LANE: And Mr. Burneson can just stand up here
2 and accuse me of doing things that -- out of thin air. Of
3 course, we don't do that, and if we do, I mean, if there's
4 documents that are there, quite frankly, he's looked through
5 all of them anyway, so, it would be pretty counter productive
6 for me to say, no, only copy these and don't copy those when
7 he's already seen them at -- at some point in the past.
8 That's not going to happen. And -- and at some point, Judge,
9 the integrity of the system relies on the integrity of the
10 attorneys and the parties involved, and that's how we do this
11 -- this. That's how we work in this business. The documents
12 go to Counsel's office and they out and get sent out. To say
13 -- for Mr. Burneson to say that I'm -- I'm never allowed to
14 touch these documents with unfounded allegations just like the
15 allegation that there's going to be an altercation at the
16 deposition is crazy. Excuse me. I shouldn't use that word.
17 Is inappropriate. It's offensive to me.

18
19
20 *When the public reads this transcript on the internet they*
21 *are going to be laughing on the floor. That's exactly what*
22 *lawyers do and there is no integrity of attorneys in this*
23 *system and "That's how we work in this business."*

24 THE COURT: Well, it --

25 MR. BURNESON: Your Honor?

THE COURT: -- what Mr. Burneson?

MR. BURNESON: I repeat, history has proven Court
ordered documents are incomplete, and they will be incomplete
with they're date stamped.

1 THE COURT: Right. It -- it's Bate, just for your
word. It's B as in boy. *She still misses the point but finds*
2 *the need to correct the letter B.*

3 MR. BURNESON: Okay.

4 THE COURT: It's Bate stamped.

5 MR. BURNESON: It's Bate stamped. It will be just
6 as --

7 THE COURT: Now, I'm -- I'm going to interrupt you --
I'm going to interrupt you because as you said, you're
8 repeating yourself, and I don't need to hear it again.

9 MR. BURNESON: Okay.

10 THE COURT: I understand that there is a lot of water
11 under this bridge. I understand that. But this is litigation
12 that you have chosen to file. It is in my division, and I am
13 making rulings.

14 *What happen to the rules of law? Where are your rules*
15 *published so I can read them before trial? This is your*
16 *division where did she get that Idea?*

17 MR. BURNESON: Okay.

18 THE COURT: And I am telling when you comply with Rule
19 26 with your request for production of documents and you have
20 your operative list of what documents you want, and Mr. Lane
21 assembles those, then, the professional company can come to
22 Mr. Lane's office and review those and make the cost estimate
23 of how much it will be to copy and Bates stamp. If, upon
24 review of documents, you feel that they are incomplete, Rule
25 26 gives you those vehicles for what you need to do to take
steps if you believe those to be incomplete. And that can be
in the form of a depositions of where are these documents and

1 why are these missing, etcetera. I am not going to give you
2 a legal primer on the steps that you can take.

3 *"Legal primer" is a prejudicial statement against a pro se*
4 *litigate who has explained the crooked operation of Bate*
5 *stamping incomplete documents which is a joke and expense not*
6 *needed since it will not add to any accuracy in this trial*

7 . What I'm trying to do is forestall some of these issues
8 here. I -- you are shaking your head and telling me you do
9 not believe in any way, shape, or form that this can happen,
10 but this is the process that we have.

11 MR. BURNESON: Yes, madam.

12 THE COURT: What is in front of me is water under the
13 bridge but not at issue in front of me. *Where does this water*
14 *come from?* We are at a discovery phase only. Your request
15 for production of documents hasn't even been firmed up, and
16 you're asking, really, for an advisory opinion from this Court
17 about how it's not going to be completed. I am not going to
18 go down that road.

19 *There is no advisory opinion asked for it's a request of*
20 *common sense that Bate stamping will do nothing to correct 10*
21 *years of hiding the records by Lane.*

22 MR. BURNESON: Okay.

23 THE COURT: -- and start off on a bad-faith footing as
24 you are asking me to do. That is not going to happen in this
25 case. Follow the rules, and then, the repercussions will flow
from that if there are any.

MR. BURNESON: Repercussions. I don't know what
those would be. Would there be repercussions if those

1 documents are -- are proven that they had them and they
2 didn't include them in the record?

3 THE COURT: There are repercussions for parties who
4 claim they don't have documents and then later, those
5 documents surface. That is correct. There are sanctions that
6 can be imposed for discovery violations for people who
7 willfully hold back documents.

8 *How does that happen when they are the ones hiding the*
9 *records? How do the records surface when the lawyers and*
10 *Board of Directors have position of them and will not allow*
11 *them to surface?*

12 MR. BURNESON: Are they --

13 THE COURT: But I am not giving an advisory opinion
14 because I do not have anything of that nature in front of me
15 in this case.

16 *Wait a minute a litigate in your court has claimed past*
17 *history proves records ordered by court were not provided and*
18 *Bate stamping will do nothing and it is not before the court?*

19 MR. BURNESON: Right. Thank you, Your Honor.

20 THE COURT: I have given the parties some leeway to go
21 through a lot of these issues. I am not making findings that
22 anything has been (inaudible) or improper in this case. We're
23 really at the doorstep of this case, and I -- I just,
24 realistically, the April 14th date for trial is not going to
25 happen in this case, and I am seriously considering vacating
it and having it set further down the road because, as I said,
we're at the doorstep here. And Mr. Lane, you had averted to
that at the beginning of this hearing.

MR. LANE: Well, and I anticipate -- there was a
motion for summary judgment that was just ruled on, but there

1 may be another -- other dispositive motions after Mr.
2 Burneson's deposition. So, we need a time table for that. If
3 we have to go to trial in April, I can do that, but as I -- as
4 I noted for the Court earlier, I've -- I've taken every effort
5 I know what to do to push this case along, and it hasn't
6 worked. And it's not the Court's fault. Mr. Burneson hasn't
7 cooperated with anything.

8 *Mr. Burneson has been within the law in his objections to what*
9 *Lane calls push it along.*

10 And -- and I'd like to see the case get tried and get this
11 cloud taken care of, but there is a certain process in trying
12 cases and I just can't go in willy-nilly without any of my
13 discovery.

14 THE COURT: Well, neither side can. Mr. Burneson
15 needs his documents as well, and that's why I believe this
16 April 14th date is really a fiction at this point.

17 MALE VOICE: Okay.

18 THE COURT: So, I am going to vacate that trial date.
19 I'm just looking to see what else I had at -- at issue here.
20 Mr. Burneson, you have filed -- hand-delivered to the Court
21 and it had actually been in the system on Monday -- I'm -- I'm
22 not exactly sure what -- number one is, sort of, a request for
23 documents, I think. Plaintiff's motion book to be inspected,
24 open years 2000 to the present.

25 MR. BURNESON: Right. They've been telling me,
they'll only give me the last three years.

THE COURT: Right. And we've addressed that.

1 MR. BURNESON: I need 2000 --

2 THE COURT: We've addressed that, then, in Rule 26 --

3 MR. BURNESON: Okay.

4 THE COURT: -- for your request for production of
5 documents.

6 MR. BURNESON: Okay.

7 THE COURT: That will not be through this motion.

8 MR. BURNESON: Okay. The second motion --

9 THE COURT: For Defendant's Counsel to give notice who
10 he represents in this litigation. That was already at issue
11 in your, so-called, notice that Mr. Lane doesn't have
12 authority to represent the homeowner's association and he had
13 filed a response and included documentation showing that, in
14 deed, he does have authorization.

15 MR. BURNESON: I've not -- I've not received a copy
16 of that.

17 MR. LANE: I'm -- I'm sure he has. He's had it in
18 other litigation as well.

19 THE COURT: It was filed on October 15th. It was a
20 response to document filed on caption, notice -- notice
21 Jeffrey Lane does not have authority to represent the Dam East
22 Homeowner's Association as claimed.

23 MR. BURNESON: I've only -- I don't remember that
24 being -- I'm pretty good (inaudible) remember that. I'll need
25 a copy from the clerk.

THE COURT: And I'll give you the date again. That --
the filing date was October 15th, so, --

1 MR. BURNESON: Okay.

2 THE COURT: -- that's --

3 MR. BURNESON: I'll get a copy from the clerk, Your
4 Honor.

5 MR. LANE: I represent all named and served
6 defendants.

7 THE COURT: All right. And then, finally, there's a
8 motion for Mr. Lane to withdraw due to his emotional
9 involvement, wherein, you attached a few pages of a -- some
10 sort of --

11 MR. BURNESON: I have the complete transcript here
12 for the Court to review if they wish.

13 THE COURT: Well, now, that's where we go back to my
14 caution at the beginning in terms of your filing things. What
15 you want the Court to review and that you are incorporating
16 into your pleadings, you need to attach so the Court can
17 review them. When you attach a transcript that doesn't have a
18 date, it doesn't list who the -- the names are, who the Court
19 is, what the hearing is, it is of no assistance to the Court
20 whatsoever, and I, as I said before and I'll repeat again, I'm
21 not an appellate court, so, when you're giving me transcripts
22 from what purports to be a County Court hearing, that is
23 meaningless to me. It has nothing to do with this particular
24 litigation. If you are asking for relief in this case based
25 on something that's happened in this case, that's what I have
jurisdiction over.

1 *Since Mr. Lane will no longer be involved in this case this*
2 *point is now moot.*

3 MR. BURNESON: Okay.

4 THE COURT: And you know, because you've filed them
5 before, an appeals from the County Court does come to the
6 District Court and in that context, I can sit as an appellate
7 court, but not in this case. I'm sitting as the trial court
8 in this litigation in 07CV1609. So, I'm -- I'm discomforted
9 by these filings that you're asking me, apparently, to rule
10 that Mr. Lane must withdraw because there may some issue of
11 emotional involvement in a County Court case. That's just
12 denied out of hand.

13 MR. BURNESON: Okay.

14 THE COURT: You don't need to respond and that's
15 denied. And I'll caution you again, attach the attachments
16 that you wish the Court to review that are incorporated and in
17 support of your allegations, but you need to be a little bit
18 more clear, and you need to be clear what my role is as the
19 trial court in this litigation versus bringing in your eight
20 other cases that you have in this courthouse.

21 MR. BURNESON: Yes, Your Honor.

22 THE COURT: That is not going to happen here. I am
23 not reviewing other Court's rulings. All right?

24 MR. BURNESON: Yes. Yes, madam.

25 THE COURT: In terms of setting some new deadlines,
Mr. Lane, you made a comment about that in terms of having
other dispositive motions.

1 MR. LANE: Correct, Judge. Dispositive motions, I
2 anticipate there will be motions in limine, although, in the
3 Court trial, I was wondering if they'd do much good because
4 the Court knows what the issue is anyway as the finder of
5 fact. But I think we need deadlines on all the -- all the --
6 the typical deadlines we would normally have in a presumptive
7 order. Or, I guess, the Court, since you are vacating the
8 trial date, could adopt the presumptive order.

9 THE COURT: Well, and I think that's what I'm going to
10 do because it lays out all the various deadlines, and Mr.
11 Burneson, I'm referring back to Rule 16 under B, one through
12 ten, that's the presumptive Case Management Order. And it's
13 presumptive, meaning that it's applied in a case unless it
14 gets pulled out, modified, stipulated modifications, things of
15 that nature. Since we're here today, the Court does want to
16 impose those deadlines, and I think that that's really
17 operative, then, from today to use those deadlines. I'm just
18 -- I'm, sort of, reading through them to make sure they're
19 going to work with the deadlines that we've just set with the
20 deposition, and I think that they will. In terms of motions
21 in limine that Mr. Lane had brought up, I really do discourage
22 those in a trial to the Court unless there is something really
23 in particular. I can do the trial and just hear the issues as
24 they crop up.

25 MR. LANE: The only -- the only reason I would
anticipate, maybe, filing one in a trial to the Court is if it
was a motion in limine to exclude evidence because of some

1 discover violations. And I'm just off the top of my head. I
2 don't know what's going to happen, obviously, but --

3 THE COURT: All right.

4 MR. LANE: -- but evidentiary rulings, obviously, the
5 Court can make from the bench during the trial.

6 THE COURT: I'm -- I'm not disallowing them. I'm not
7 going to order that you can't file any motions in limine.
8 I'll leave the open, but I'll just, as a caveat, let you know
9 really as the finder of fact I can just rule on those as they
10 crop up. A motion in limine is really to preclude evidence
11 from coming in, and in front of a jury to taint them, but when
12 the Court is hearing them and I'm already familiar with the
13 issues in the case, it's -- it's not of the same import as it
14 would be to be preventing the tryor of facts sitting in the
15 jury box from hearing that. All right. What other deadlines
16 do we need, then?

17 MR. LANE: I think the presumptive Case Management
18 Order will cover everything. Depending on when we set our
19 trial date, I think the furthest deadline out in the
20 presumptive Case Management Order is for the endorsement of
21 Plaintiff's experts which is 120 days. So, we probably need
22 at least 120 days before we have a trial.

23 THE COURT: One hundred twenty days puts us in June.
24 The week of June 23rd is my Court trial week. The parties want
25 to pick a trial date now?

MR. LANE: I'm fine with -- well, --

THE COURT: You need to look at your calendar?

1 MR. LANE: I don't have -- I don't have all the
2 pages. It's -- they're making me not use the computer now
3 which is a frightening thought, but they -- I don't have all
4 the pages to June cause I didn't anticipate we'd be doing
5 that.

6 *Mr. Lane knew at this time he was going to work Harvey*
7 *Steinberg and his schedule would be at the order of this new*
8 *law firm. Both Lane and Steinberg knew there will be a*
9 *conflict with this association and the fact Mr. Burneson is a*
10 *client of this law firm and this will cause Mr. Lane to*
11 *withdraw from this case.*

12 THE COURT: All right. Well, --

13 MR. LANE: And so, I don't remember what I have. I
14 think it's okay, but --

15 THE COURT: The parties can do a notice to set. I'm
16 just telling you and looking at my calendar up there now, the
17 week that doesn't have any highlight on it -- on it, June 23rd,
18 that week or the next week available is July 21st for Court
19 trials.

20 MR. LANE: We have one other matter, if I could
21 address the Court. I met with my clients last night, and they
22 asked me to request of the Court to order that there be some
23 sort of ADR in this case prior to trial.

24 MR. BURNESON: What is that?

25 THE COURT: That is alternative dispute resolution.
That is ordered as a matter of course in cases that the
parties go to an alternative dispute resolution setting to
have a neutral person try and mediate the case. And it -- it
doesn't help smooth the course if you --

MR. BURNESON: We've had three mediations.

1 THE COURT: -- if you laugh.

2 MR. BURNESON: No. We've had three mediations. I
3 have ten years of this war. Ten years to see the books.

4 THE COURT: All right. And the three mediations did
5 not result in any resolutions at all?

6 MR. BURNESON: No. You know what they did? They --
7 we had them at mediation and they dragged it out for two
8 years, and then, when it came time to draw it up by the
9 attorney that it was all agreed and everybody's happy, he goes
10 to draw it up and he submits it to the Board for signature and
11 one Board member objected at that time.

12 MR. LANE: I -- actually, Judge, --

13 MR. BURNESON: And it was withdrawn, so, we lost two
14 years. And that --

15 MR. LANE: Actually, --

16 MR. BURNESON: -- happened three times.

17 MR. LANE: Judge, that's not -- that's not what
18 happened. This Association sued Mr. Burneson's wife for back
19 assessments about seven or eight years ago. That was referred
20 to mediation. There was an agreement -- a tentative agreement
21 reached in mediation subject to the approval of full Board of
22 Directors, and the Board of Directors didn't approve the
23 agreement. That's in -- and I've represented this Association
24 in all the District Court litigation with -- and in fact, I --
25 I finally tried that case as well, but in all of it's District
Court litigation with Mr. Burneson for the last -- at least
since 2002, I believe. For five or six years, and we've never

1 had a mediation of any kind. My clients feel, and -- and I
2 think that the -- that -- that there may be some progress that
3 a mediator could -- could make, and it would avoid the cost
4 and -- and burden of a trial.

5 THE COURT: Mr. Burneson, I know that you're feeling
6 that that would not help, but a mediator is a trained
7 professional to help bring the parties to even minimal
8 agreements on some issues, to narrow the issues down, and I do
9 find that it is very helpful to do that.

10 *Here we go again inexperienced judge hasn't considered Lanes*
11 *ex parte suggestion to order mediation on a subject that can't*
12 *be mediated. How do you mediate the opening of the books or*
13 *keep the books closed? It can't be done. If the issue was*
14 *money then mediation on how much money will be paid or not*
paid can be mediated. This is another effort by Lane to stop
the court from holding a trial and cause expense and delay for
Mr. Burneson.

14 MR. BURNESON: Is this a --

15 THE COURT: It may be that nothing comes of it, but it
16 may be that some of the issues in this case can be narrowed
17 substantially.

18 MR. BURNESON: And this would be an attorney -- the
19 mediator?

20 THE COURT: The -- excuse me, most of the alternative
21 dispute resolution handlers are former judges or attorneys,
22 yes. They are licensed.

23 MR. BURNESON: It would not a city official of
24 Aurora or something like that because that's what I've heard
25 some of this mediation ends up with, and I would not agree to
that. I prefer if there is to be this -- I'll take a chance

1 on it. My problem is is how can it be enforced? Even if we
2 both agree and then, one of the Board members two months later
3 disagrees. That's what happens. And -- and they walk away
4 from it. Now, in what citing he has, we had a settlement with
5 this Association. I insisted upon it. We got up to \$5,000 in
6 legal fees, and I said, this is ridiculous, over a \$300
7 assessment we did not owe. Now, --

8 THE COURT: Okay. I don't -- I don't want to go
9 through all the past.

10 MR. BURNESON: Okay. I just wish a -- illustrate.
11 We had an agreement, \$2,000 pay. I gave them a check for
12 2,000 certified. And I said, what I require is you file a
13 motion invoked by the Board and accept this settlement. They
14 didn't. Six months later, they refused to just vote on the
15 acceptance of the settlement with a cashier's check in their
16 hand.

17 THE COURT: Well, what you're dealing with is a
18 homeowner's association and a Board and the Board will have to
19 approve and ratify a decision, so that -- that is the caviar
20 when you're dealing with an entity.

21 MR. BURNESON: And that's the problem with
22 mediation. Total problem.

23 THE COURT: Explain what's your reaction to that.

24 MR. LANE: I mediate with corporate clients weekly.
25 I mean, that's what we do and there's ways to -- to take care
of that one. Probably (inaudible) of those have the Board
appoint somebody with authority to go to the mediation is

1 probably what we'll do, and then, -- and then, ratify that
2 person's actions afterwards. We can either do that in a Board
3 meeting or do it in -- and this is something that comes up all
4 the time is a non-profit -- a non-profit corporation can take
5 action without meeting. There doesn't necessarily have to be
6 a meeting every time something happens and Mr. Burneson, what
7 happens is he looks through the minutes to see if there's
8 authority for everything they do when on occasions, they do
9 things outside the meeting and then, they sign a document that
10 indicates they took action without meeting. And it's all
11 legal pursuant to the statute, but that's one of the things
12 when Mr. Burneson says there -- there's faked minutes or
13 there's things missing, that's -- I don't think he totally
14 understands the -- the procedure that happens. But
15 nonetheless, I can get someone with authority to come to the
16 mediation, and I prefer, quite frankly, I don't have a lot --
17 I -- I think with respect to mediation and I've done hundreds
18 of mediations, you -- and with respect to the mediator, you,
19 kind of, get what you pay for. And I don't have a lot of
20 confidence in these municipal -- Aurora and Jefferson County,
21 I think, has a mediation office. It's, kind of, a community
22 outreach thing. And on something that's as complicated as
23 this, I don't think there necessarily would be the best
24 choice. And I would suggest a professional mediator such as
25 someone from JAG or JAMS or -- or there's a -- it's a cottage
industry. There's a lot of mediators out there, but I think

1 we need a professional and I think we do need somebody who's
2 an attorney.

3 *Lane wants mediation because he knows it will fail but he can*
4 *make more money and then on to a trial where he would be paid*
5 *more money to keep the books hidden.*

6 THE COURT: The Judicial Arbiter Group is JAG is what
7 Mr. Lane is referring to, Mr. Burneson, and that's all former
8 judges, all retired judges. So, with just a wealth of
9 experience in (inaudible) matters.

10 MR. BURNESON: Been there.

11 THE COURT: And so, I -- I'm not going to direct you
12 where to go, but I just am giving you some background. So, it
13 sounds like we've cut off the issue of going to one of those
14 municipal groups and --

15 MR. BURNESON: Right.

16 THE COURT: -- going to a professional group with Mr.
17 Lane's assurances that somebody who has authority, then, to
18 representing the homeowner's association coming to the table,
19 it may be fruitful, and the Court will order --

20 MR. BURNESON: This will be --

21 THE COURT: -- that APR is done.

22 MR. BURNESON: -- expensive. JAG is expensive.

23 THE COURT: But worth it rather than going to full --

24 MR. BURNESON: If no --

25 THE COURT: -- litigation. That --

MR. BURNESON: -- if no -- no resolve has occurred,
it's still expensive.

1 THE COURT: I understand. That's what -- that's how
2 the parties come to the table in good-faith, knowing that
3 they're spending some money for it and not just doing it as a
4 stop-gap measure just to please the Court.

5 *The Board of Directors have never come to any court in good
6 faith with Lane representing them. How can a court understand
7 the main purpose of the board and lane is to hide the books
8 and go along with it?*

9 MR. BURNESON: Your Honor, I am spending the money.
10 They are not. They're spending the Association funds. Those
11 individual Board of Directors aren't spending a dime. So,
12 they don't care.

13 THE COURT: And that's the protection they have under
14 the Board of Directors mandate, so, --

15 MR. BURNESON: Right.

16 THE COURT: -- I'm not even going there.

17 MR. BURNESON: Okay. I'll go one other place
18 briefly. The Association has two Court orders by Judge Stuart
19 and Judge Hickman. Judge Stuart gave them twenty points that
20 they had to follow and one of them was, all actions of the
21 Board must be recorded in the minutes, not a garage meeting
22 somewhere. Hickman also put in an order that as both still
23 standing that any action taken must be recorded in a minutes,
24 meaning if it is not in the minutes, the action is illegal.
25 And that's the point they have to live with, and that's why he
says to them, you don't have to abide by that. One -- one --
one time I heard the statement, Hickman retired so her order
is not valid anymore. Don't understand that.

1 THE COURT: I -- I don't even know what case it is
2 that you're talking about and -- and what you're asking me to
3 do.

4 *This is unbelievable since these two cases which the court*
5 *has never heard of were made a part of the Complaint with*
6 *copies attached to the Complaint. Exhibit 6 Judge Hoffman and*
7 *Judge Stuart Court Orders. This proves Judge Spencer never*
8 *read the Complaint much less the file. Why should she read*
9 *the file when Lane gave her a verbal update ex parte the*
10 *morning of the trial? This further proves Mr. Burneson cannot*
11 *get a fair trial with this court. This is also further proof*
12 *that all the judges who become involved with Mr. Lane end up*
13 *getting their reputation slammed and disgraced. Mr. Lane*
14 *doesn't care what he does to the judge just so long as he gets*
15 *to hide the books of the Dam East Homeowner Association.*

16 MR. BURNESON: There's a previous lawsuit that was
17 held that Judge Stuart ruled and ordered the Board to follow
18 these items.

19 THE COURT: Well, there are -- within our computer
20 system, there's ten cases with you on them.

21 MR. BURNESON: No. No. 1993 --

22 THE COURT: There's ten active cases.

23 *Here the court is arguing with the facts and she went to the*
24 *computer instead of the court file.*

25 MR. BURNESON: -- and -- and this brings up the
other point, this was a case in 1993 and I will --

THE COURT: More than that, then.

MR. BURNESON: -- I will file this notice with your
Court so that you're up to date on that.

THE COURT: Are you --

MR. BURNESON: I -- I have ran --

THE COURT: -- let me stop you. Are you saying that
Judge Stuart's order from 1993 binds this action in this

1 Court? *See how she jumps to the wrong conclusion to prevent a*
2 *known past court case to have relevancy over the action of the*
3 *Board of Directors?*

4 MR. BURNESON: No. No. Not -- no. Binds the
5 Association on the records.

6 THE COURT: Forever?

7 MR. BURNESON: Yes.

8 THE COURT: Well, I don't have any of that in front of
9 me, and we're *-YES YOU DO IT'S IN THE FILE ATTACHED TO THE*
10 *COMPLAINT. -*

11 MR. BURNESON: I will provide that for you.

12 THE COURT: -- what -- what we're talking about was
13 ADR, --

14 MR. LANE: Right.

15 THE COURT: -- and I'm ordering that. In terms of
16 this other issue, that is not in front of me.

17 MR. BURNESON: I will -- I will get you a copy.

18 MR. LANE: Once again, with regard to ADR, I'm afraid
19 the devil will be in the details and the choice of the
20 mediator. And would suggest is that Mr. Burneson and I
21 exchange lists of three mediators each and then, if we can't
22 agree on the three that we submit that to the Court to make a
23 determination and that the Court order that the costs of the
24 mediation be divided equally between the plaintiff and the
25 defendants. So, he pays half and we pay half. And you know,
Mr. Burneson talks about expense, he -- he comes to Court here

1 today and it doesn't cost him anything and it costs my
2 clients thousands and thousands and thousand and thousands of
3 dollars,

4 ***Paid to the person speaking now and it's his profit to keep
5 the war going on by hiding the books.***

6 and my clients are -- are individuals that are not paying out
7 of pocket and the Association's indemnifying them. But that
8 indemnity is coming from Mr. Burneson's neighbors, and this
9 costs tens of thousands of dollars. It's probably over the
10 last ten years cost \$100,000 to litigate with Mr. Burneson.
11 So, this is expensive for everybody and mediation is a way for
12 the Association to, hopefully, reduce their expense in
13 litigation.

14 THE COURT: All right. This is expensive. In terms
15 of the mediation, that's exactly what I'm going to do. You
16 can prepare a list of three, and Defense can prepare a list,
17 and if you can't agree, there's no cross over on that list,
18 submit them to the Court and I will chose. And the cost will
19 be borne 50/50 between the Plaintiff and Defense.

20 MR. BURNESON: Okay. The expense in the past and
21 Mr. Lane's correct, --

22 THE COURT: Okay. I do not want to go down that road.

23 MR. BURNESON: Okay.

24 THE COURT: I do not want to hear any more about
25 expense.

MR. BURNESON: Okay.

1 THE COURT: As I said, there's so much water under
2 the bridge, it's -- it's a flood in here, and -- and it is not
3 helpful to this Court in ruling on the issues before me to
4 hear every detail of what happened. Litigation is expensive.
5 I clearly understand that. And I'm ordering the mediation to
6 be done. That was what was requested of me. I ruled on that.
7 That issue is finished. Mr. Burneson, other issues before the
8 Court today?

9 MR. BURNESON: I had a request for a subpoena to be
10 issued. That has not been accomplished as yet.

11 THE COURT: All right. The motion for subpoena duces
12 tecum to serve on Homeowner's Association Bank for the bank
13 records. I don't know that I have a copy of that.

14 MR. LANE: I -- I've never seen a copy of that,
15 Judge.

16 THE COURT: Did you serve that on the opposing side?

17 MR. BURNESON: No, I did not, Your Honor.

18 THE COURT: Okay. The rule requires that you --

19 MR. BURNESON: I have copies here that --

20 THE COURT: -- you do that.

21 MR. BURNESON: -- I can -- I have copies here that I
22 can provide him.

23 THE COURT: Okay. When you are issuing a requesting
24 to issue a subpoena duces tecum, you do need to serve the
25 other side so that they are aware of that and can file an
appropriate motion to quash if they feel that's necessary.

MR. BURNESON: Okay.

1 THE COURT: Since Mr. Lane has not had notice and I
2 don't have a copy of it up here, I'm not going to rule on
3 that.

4 MR. BURNESON: I have --

5 THE COURT: But provide a copy to Mr. Lane, if you've
6 got a copy now --

7 MR. BURNESON: I will. I have copies here.

8 THE COURT: -- so that he can see that, and I'll
9 review that as well. And Mr. Lane, you can file a response if
10 necessary. I have no idea what it is.

11 MR. BURNESON: May I approach?

12 THE COURT: Yes, please. Is this a copy for the
13 Court, then? Thank you. Mr. Lane, any response?

14 MR. LANE: Well, having just seen this, I don't know
15 what my response is quite yet.

16 THE COURT: All right. I won't order you --

17 MR. LANE: Generally, a subpoena to a bank and for
18 financial records, if this were an individual, there would be
19 a privacy privilege issue. I don't know that the bank's going
20 to comply with this subpoena without moving to quash it
21 anyway. And there's a less -- less invasive way to get these
22 documents and that's -- that -- and that is that first, Mr.
23 Burneson should make a discovery request of us for it. And
24 then, if we have it, we can provide it rather than just a
25 blanket request for all bank -- from -- from the bank. My
guess is, the bank's going to come in and move to quash it
which is what usually happens. So, what I would suggest that

1 the outset is is that Mr. Burneson do his discovery with
2 regard to the Association. Lane's guess was wrong on purpose
3 since the bank had agreed to supply the records if subpoenaed.
4 If there are banks records that he feels he doesn't get, then,
5 we can address the issue and subpoena the bank. And -- and --

6 THE COURT: What --

7 MR. LANE: -- aside from that, you can't -- you can't
8 -- you can't issue a subpoena unless there's a trial
9 deposition or hearing. And this isn't a records deposition
10 subpoena, so, you can't just subpoena records. It's -- it's -
11 - and there's (inaudible) ethics opinion with regard to that
12 with regard to attorneys. In Federal Court, you can. State
13 Court, you can't.

14 THE COURT: Well, this will be denied, and one thing,
15 for the future that you need to consider, if when this may
16 become appropriate is when you're asking for seven years of
17 checks on an account, the bank will scream bloody murder.
18 That is a huge burden on them.

19 *Judge is prejudice by her opinion which about the bank was*
20 *wrong. But that's how she makes rulings without any basis or*
material facts.

21 MR. BURNESON: I've already talked to them. I had
22 arranged -- already talked to them. Sixty-five dollar charge
23 administrative and then, there's a charge -- what, something
24 per page with three checks. And they said no problem.

25 THE COURT: The Court's going to deny this at this
point. Do your discovery requests, and then, --

MR. BURNESON: Okay.

1 THE COURT: -- you can renew this as appropriate
2 under the rules.

3 MR. BURNESON: Okay.

4 THE COURT: Mr. Burneson, anything else that you feel
5 is outstanding still?

6 MR. BURNESON: No, Your Honor.

7 THE COURT: Mr. Lane?

8 MR. LANE: No, Judge. Thank you very much.

9 THE COURT: All right. Thank you, gentlemen. If
10 we've got some dates that are outstanding, I'll issue an order
11 with all these dates just so everyone's clear again. And
12 we'll get that out this week. We'll be in recess. Thank you,
13 gentlemen.

14
15
16 *Judge Spencer has a motion to recuse herself from this*
17 *case which with this review of her mistakes and wrong rulings*
18 *must take herself out of this litigation. A new experienced*
19 *Judge needs to be appointed that will not allow any attorney*
20 *to coach him ex parte.*

21
22 *Harvey Steinberg must require Mr. Lane to withdraw as counsel*
23 *from this case as he is in violation of Rules 1.13 1.7, 1.9*
24 *1.10. Mr. Steinberg should not ask the courts to help him*
25 *manage his law firm.*

1 *News article Rocky Mountain News 4/10/08 DA Chambers, Judge*
2 *at odds in trial still to come. Judge Brinkley ruled that*
3 *Prosecutors violated ethical rules by using two prosecutors*
4 *who formerly represented the Defendant or other witnesses in*
5 *the case. Does this mean other judges are aware of the same*
6 *violation by Mr. Lane is against State ethical rules.*

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13 **CERTIFICATE**

14
15 I, Sheree L. Mack, certify that I transcribed this
16 record from the digital recording of the above-entitled matter
17 which was heard on February 13, 2008 before Judge Spencer of
18 the Arapahoe County District Court.

19
20 I further certify that the aforementioned transcript
21 is an accurate and complete transcript of the proceedings
22 based upon the audio facilities of these tapes and my ability
23 to understand them. Inaudibles are due to microphones not
24 working properly, excessive noises or muffled voices.

25
Signed this 11th day of April, 2008 in Aurora, Colorado.

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Sheree L. Mack

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