

COUNTY COURT, ARAPAHOE COUNTY, STATE OF COLORADO

Case No. B00C4042, Division B-2

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TRANSCRIPT OF PROCEEDINGS HELD DECEMBER 18, 2002 - VOL. I

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DAM EAST HOMEOWNERS ASSOCIATION,

Plaintiff,

v.

CARLA BURNESON,

Defendant.

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The above-entitled matter commenced on December 18, 2002, for hearing before THE HONORABLE STEPHEN RICHARD RUDDICK, Judge of the Arapahoe County Court.

This is a transcript of the proceedings recorded in this case on the above date.

APPEARANCES: For the Plaintiff:  
Jeffrey Lane, Esq.

For the Defendant:  
Pro Se

Transcript prepared by:

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1 r-n-e-s-o-n.

2 THE COURT: Thank you, ma'am. Are you ready  
3 to proceed?

4 MS. BURNESON: No, Your Honor. I believe  
5 there are several motions that need to be addressed  
6 before we begin.

7 THE COURT: Are you still representing  
8 yourself without an attorney, ma'am?

9 MS. BURNESON: Yes.

10 THE COURT: Okay. Who's the person with you?

11 MS. BURNESON: That is my husband.

12 THE COURT: Okay. Sir, you'll need to be  
13 seated back in the audience section with any other  
14 witnesses.

15 MS. BURNESON: Can he serve as my secretary?

16 THE COURT: No, ma'am. You need to go out and  
17 be seated back in the audience section with the other  
18 witnesses, please, sir.

19 MS. BURNESON: As -- as a pro se I have a  
20 question here then.

21 THE COURT: Absolutely, ma'am. In fact, let's  
22 start with that.

23 MS. BURNESON: As a pro se I have a right to a  
24 secretary to help me with files and documents.

25 THE COURT: No, ma'am. Not in this Court,

1 please, no.

2 MS. BURNESON: I -- I can --

3 THE COURT: I don't care whether you're pro se  
4 or not.

5 MS. BURNESON: I can also have a paralegal  
6 assisting in court or even an attorney if one were hired  
7 to just advise me in my pro se court appearance.

8 THE COURT: Do you have an attorney of record  
9 to represent you, ma'am?

10 MS. BURNESON: No. Would I be allowed to have  
11 them if they were just to give me --

12 THE COURT: If there's an attorney that's  
13 gonna --

14 MS. BURNESON: To have as a -- not to  
15 represent me, but to --

16 THE COURT: Oh.

17 MS. BURNESON: -- give me -- to handle my  
18 papers?

19 THE COURT: No, ma'am. No, ma'am. That would  
20 be mixing things that are inappropriate and could lead to  
21 the unauthorized practice of law. If you have an  
22 attorney that's on record, but I don't have one, then you  
23 have. If you don't, then you're doing it on your own.  
24 And no, I can't help you, but I can make sure that you  
25 have a fair trial, ma'am. And I will make sure that

1 you're accorded all the -- you know, if you need a break  
2 or if you have a question, you're confused about  
3 something, just say so. Just say Judge, I -- I'd like to  
4 ask a question. I'll allow the break-up of the  
5 proceedings, you don't have to worry about that.

6 MS. BURNESON: So I can --

7 THE COURT: Although we are under County Court  
8 Rules, under Rule 300 and I will apply them, I will, if  
9 you have any questions, explain anything that you need to  
10 have explained.

11 MS. BURNESON: Okay. So --

12 THE COURT: Always have, always will.

13 MS. BURNESON: So will there be times when I  
14 can call a recess to have him help me find documents?

15 THE COURT: You can ask for a recess and I can  
16 make a decision on that, ma'am, but we also need to be  
17 efficient and proceed on a -- I know you want me to  
18 proceed on a fairly efficient basis from some of the  
19 motions I read before, so I want to make sure I do that  
20 as well.

21 So anything else, ma'am?

22 MS. BURNESON: No, but you will --

23 THE COURT: How many witnesses are potentially  
24 around in this case?

25 MR. LANE: Judge, I have -- I anticipate

1 calling three witnesses.

2 THE COURT: All right.

3 MR. LANE: Maybe 40 minutes of testimony.

4 THE COURT: And ma'am, for you?

5 MS. BURNESON: I have one, two, three, four --

6 THE COURT: Approximate, ma'am.

7 MS. BURNESON: (inaudible)

8 THE COURT: Okay. You know, when I get more  
9 than two or three witnesses, I really want all of them to  
10 be able to tell their story and not just be here in court  
11 and start having me too testimony.

12 Now, when I get -- and what I mean by that in a  
13 layman sense is if I don't myself order a sequestration  
14 of witnesses, I will wind up typically hearing the  
15 witness saying well, I -- I agree with what the other  
16 witness said and I won't get their own testimony. So I'm  
17 gonna order there be a sequestration of witnesses. I  
18 will allow, (inaudible) I must, the witness that you  
19 asked to stay in Court and ma'am, you have a right to  
20 stay in Court as well throughout all the proceedings.  
21 But if there's any other people that are gonna be  
22 witnesses, they have to be outside. I don't allow people  
23 by my doorway. They would go down to the end of the  
24 hallway. Or you can put them on call if you like, either  
25 one of you, as long as when it's time to come we do it,

1 because I do -- I don't want to waste time. But I will  
2 go ahead then as we go to court and so I can hear the  
3 best testimony, I will be ordering that they be  
4 sequestered and that all witnesses be ordered not to talk  
5 to anyone except Ms. BURNESON or Mr. Lane and not to talk  
6 about comparing testimony of witnesses. And they can't  
7 listen to or be here to pay attention to other witness  
8 testimony, because I don't want them to be tainted.

9 So, now, before we do anything else, you know,  
10 I think there's -- I'm -- I ruled on a number of matters  
11 already as I went through the file. I just want to make  
12 sure we're on track for that.

13 Your motion, you had a motion to recuse and  
14 under Rule 397 as a matter of law I was obligated to deny  
15 that, ma'am. There are a number of other motions. Well,  
16 one of them, under Rule 315, was exactly opposite of what  
17 you wrote. I guess you're looking in the District Court  
18 Rules of Procedure, because you wrote a motion or someone  
19 did, asking me to do something under Rule 15. And if you  
20 read the actual Rules of Procedure that are applied in  
21 County Court, it's Rule 315 and it's the exact opposite  
22 of what you asked me to do. It's the exact totally  
23 opposite. So I had to -- I know I had to deny that  
24 motion.

25 And then all the other motions, you never asked

1 permission to file. And under Rule 307(b) I had to deny  
2 those. But I've gone through those and made sure that  
3 was all done properly for you. And that's when I was  
4 here on November 25<sup>th</sup> and had some time to look through  
5 the file and sort of be prepared as I like to be before  
6 we have trial.

7 I couldn't grant your request the subpoenas be  
8 continued because you were asking for it after the  
9 witnesses had already been released. I don't have that  
10 kind of power. But I did see that you filed some  
11 subpoenas since, ma'am?

12 MS. BURNESON: Yes, sir.

13 THE COURT: Good. Okay. So about the only  
14 thing left would be your latest motion to recuse. And  
15 I've read through that. Does the Plaintiff have any  
16 position on this, sir?

17 MR. LANE: Well, Judge, I -- I read the motion  
18 and I'm very, very familiar with the law with regard to  
19 recusal. The rule requires that a motion to recuse be  
20 supported by two affidavits that are executed with  
21 personal knowledge. I think that the -- the basis or the  
22 gravamen on the motion to recuse is that an allegation  
23 that you and myself have had telephone conversations.  
24 The Court can't conduct a mini-trial with respect to  
25 that, although it's ridiculous, but aside from that,

1       there's now way that either of the affiants would have  
2       personal knowledge of that. I think the motion itself  
3       says that somehow phone records are going to prove that.  
4       Well, it's obvious that the affiants both -- and I think  
5       the affiants were Mr. and Mrs. Burneson, and there would  
6       be no way in the world they would know whether we had  
7       phone conversations or not.

8                 THE COURT:    Oh, yeah, we only have one  
9       affiant, so I guess it just doesn't --

10                MR. LANE:    Well, if there's only one  
11       affidavit, then it has to be denied --

12                THE COURT:    Yeah.

13                MR. LANE:    -- as a matter of law. Under the  
14       rule, it requires two affidavits.

15                THE COURT:    That's really where we're at with  
16       the last one, ma'am, and there's nothing really new here.  
17       I will tell you though, quite frankly, I don't have time  
18       to call anybody for gosh sakes. I act on my own. In  
19       fact, if you asked Mr. Hazard (phonetic), my hardest  
20       problem was trying to get this case set for trial. I  
21       asked him to set it, I wanted it set in September or  
22       October because it had been sitting so long since June,  
23       but he came back, Mr. Hazard, my clerk here, and told me  
24       that you didn't want it set 'til December. So I tried to  
25       open up dates in September and October to no avail. That

1 was my own decision, ma'am. I don't let anything sit on  
2 my docket for very long. And when it's a civil case, the  
3 minute I hear it, I start bugging my staff to set it for  
4 trial immediately. We don't mess around with civil  
5 cases.

6 So I guess this is it for our proceedings then.  
7 So with that in mind, anything else?

8 MS. BURNESON: Your Honor?

9 THE COURT: Yes, ma'am.

10 MS. BURNESON: There was also one filed for a  
11 trial by jury. Did the Court see that?

12 THE COURT: No, I sure didn't see that one.

13 MR. LANE: I got mine at 4:48 yesterday.

14 THE COURT: That's right. Oh, that's why.

15 MR. LANE: If the Court needs a copy, I have a  
16 copy. If I may approach the bench?

17 THE COURT: Yes, sir.

18 MR. LANE: This is the copy I received from  
19 Mr. Burneson.

20 THE COURT: All right. Well, (inaudible) be  
21 impossible today. There's no jury showing up today. So  
22 what you're really asking me is delay this case once  
23 more. All the witnesses that have been subpoenaed would  
24 have to come back yet another time and all of this set  
25 over again in this Court. Wow. And what's the grounds?

1 Any position, Plaintiff?

2 MR. LANE: Well, the first longer paragraph,  
3 and I don't have it in front of me, on the first page, --

4 THE COURT: Yeah.

5 MR. LANE: -- in and of itself on this page  
6 says that you can't grant the motion. The rule's clear  
7 that you have to ask for a jury trial within ten days and  
8 pay the fee within ten days, you certainly don't file a  
9 motion and fax it to counsel at 4:48 the day before trial  
10 and ask for a jury trial and expect to get one. We'd ask  
11 that it be denied.

12 MS. BURNESON: Your Honor, --

13 THE COURT: Anything else, ma'am? Yes.

14 MS. BURNESON: Yes, we had requested that we  
15 receive documents. There was a subpoena, and I can't say  
16 the word correctly, but it --

17 THE COURT: Oh, no, don't worry about it.

18 MS. BURNESON: Okay.

19 THE COURT: I got my Latin once wrong before  
20 Justice Erickson one day.

21 MS. BURNESON: And we had asked for those  
22 documents and they have not been delivered five business  
23 days before the trial. They were asked before. We have  
24 never been given the documents to even prepare for it.

25 THE COURT: Who's we?

1 MS. BURNESON: No -- my -- well, my husband  
2 and I.

3 THE COURT: Well, that -- you though.

4 MS. BURNESON: We do live together.

5 THE COURT: Okay.

6 MS. BURNESON: Yes. But --

7 THE COURT: Let's not talk --

8 MS. BURNESON: But we do live together and --

9 THE COURT: -- royally.

10 MS. BURNESON: We are husband and wife. We do  
11 cohabit.

12 THE COURT: Well, don't talk royally, all  
13 right?

14 MS. BURNESON: Okay.

15 THE COURT: That we stuff doesn't make it.

16 MS. BURNESON: Most -- the requested documents  
17 are the property of the association and are to be made  
18 available to the membership as required by our bylaws.  
19 The Defendant, as a member of the association, made  
20 request for records and have been refused by the  
21 management company and the board of directors. Without  
22 these documents provided by subpoena and written request  
23 by the Defendant and member Jim Burneson, the Defendant  
24 is not prepared to go to trial until the documents are  
25 received.

1           I hereby make a motion that the list of  
2 witnesses who have refused to deliver the subpoenaed  
3 documents be held in contempt of the court and ordered to  
4 comply with our subpoenas.

5           MR. LANE:    May I address that?

6           THE COURT:   Please.

7           MR. LANE:    Real quick?  I think that Mrs.  
8 Burneson has subpoenaed maybe 12 to 15 different folks  
9 that may or may not have anything to do with this case.  
10 Most of them don't really.  And in that subpoena, those  
11 subpoenas, she has universally listed an exhibit on the  
12 back of the subpoena requesting that documents be  
13 produced five days before trial.

14           Now the Court -- as the Court's aware and I'm  
15 just looking at my book now, I think it's Rule 344, and  
16 I'm looking it up right now, with regard to subpoenas,  
17 Rule 345, Subsection (a) says the following:

18           "Subpoenas may be issued under Rule 345 only to  
19 compel attendance of witnesses with or without  
20 documentary evidence at a deposition, hearing or trial."

21           You cannot subpoena somebody to bring documents  
22 to a place certain five days before trial.  Therefore,  
23 we'd ask that each and every one of those subpoenas be  
24 quashed with respect to those folks.  Unfortunately, we  
25 have I think most of those people here unless they

1 determined not to come on their own. But those subpoenas  
2 are subject to being quashed and we'd ask the Court to  
3 quash those subpoenas at this time.

4 THE COURT: Yes, ma'am. I see you keep -- you  
5 keep reading the wrong Rules of Evidence. Sort of  
6 reminds me of the late Judge Palmeri (phonetic) of  
7 Jefferson County, who always said look, you've gotta put  
8 a 3 in front of it. And I'm gonna tell you the same  
9 thing, you -- you've missed the boat again.

10 Anything else you want me to know, ma'am?

11 MS. BURNESON: Well, I -- I believe that when  
12 serving pro se, I believe that -- I mean, if we -- if we  
13 go by everything that's been filed the wrong way or said  
14 the wrong way or done the wrong way, I mean, I would like  
15 for the truth to be gotten to. And --

16 THE COURT: Agreed.

17 MS. BURNESON: -- the witnesses -- and all the  
18 witnesses that he says know nothing, they are a part of  
19 the association and they should know something and they  
20 should know something about the documentation that needs  
21 to be brought here today. And if as a Defendant we  
22 cannot get that information which we have been trying to  
23 get --

24 THE COURT: No, don't do that we stuff again,  
25 ma'am.

1 MS. BURNESON: Okay.

2 THE COURT: There's only one of you.

3 MS. BURNESON: Okay. That I have --

4 THE COURT: Unless you've got a mouse in your  
5 pocket, there's only one of you.

6 MS. BURNESON: There is -- oh well -- that I  
7 have been trying to get. Okay.

8 THE COURT: Okay. Well, --

9 MS. BURNESON: Before -- I have another  
10 question.

11 THE COURT: All right. Well, hold on, ma'am.  
12 Let me make a ruling. I have to follow Rule 345 and deny  
13 your motion.

14 MR. LANE: And Judge, are the subpoenas  
15 quashed then?

16 THE COURT: Yes, sir.

17 MR. LANE: Thank you.

18 MS. BURNESON: The subpoenas for the  
19 documentation? We do not get any of the document in --

20 THE COURT: Well, you will as they come in for  
21 -- they're here for trial today, but to ask that there be  
22 something for sanctions for them not complying with Rule  
23 345 would be wrong. They're here and if they're  
24 subpoenaed and there are witnesses here, then yes.  
25 They're here under court order. I may have to determine

1       which witnesses are necessary for the trial and which  
2       witnesses have been inconvenienced improperly, but that's  
3       another issue whether witnesses have been needlessly  
4       brought in as an abuse of process. And that would have  
5       to be decided, probably as we go through the trial.

6                 So why don't we get going on the trial then?

7                 MS. BURNESON:   Well, because I still have  
8       another question I would like to ask you.

9                 THE COURT:    All right.

10                MS. BURNESON:   I have a legal question to ask  
11       the Court and since there's all these little rulings, I'd  
12       like to know that the hiring of Mr. Lane as the  
13       Plaintiff's Counsel, one of the main issues before the  
14       Court is whether Mr. Moeller was hired as counsel by the  
15       damaged homeowners and the board of directors by order of  
16       Judge Stewart's order requires all motions and votes be  
17       recorded in the minutes of the board meetings. There has  
18       not been any motions and votes taken at any of the last  
19       board meetings to hire Mr. Jeffrey Lane.

20                If the Plaintiff would please show for the  
21       record a copy of his agreement to be the legal counsel  
22       for the association to the Court and the minutes of the  
23       public hearing which has a recorded motion and a vote by  
24       the board of directors to hire Mr. Lane as the  
25       association attorney.

1 THE COURT: Any response, sir?

2 MR. LANE: Quite frankly, my -- my client is  
3 the association. To the extent that it's relevant, I  
4 don't think that it is, I've been hired by the  
5 association or I wouldn't be standing here. I don't  
6 spend my time in court without being hired by a client.

7 I'm satisfied that I've been hired by the  
8 association. The person who is the president of the  
9 association at that time is sitting at counsel table with  
10 me ready to go to trial. All the board members have been  
11 subpoenaed and they're here, nobody's ever objected to me  
12 representing the association and that's something that  
13 quite frankly, Mrs. Burneson wouldn't have any standing  
14 to object to.

15 THE COURT: I suppose, ma'am, I'll allow you  
16 to ask the question of the witnesses if you want about  
17 that as well during the trial. All right. Well now, for  
18 all the witnesses, you need to go out.

19 MS. BURNESON: Your Honor --

20 THE COURT: If you're potential witnesses, you  
21 need to go out and sit out. And I'm sorry, we don't have  
22 much accommodation out in that hallway, but I need you to  
23 be out there so I can have good evidence from all of you.

24 MS. BURNESON: Your Honor, can I have a break  
25 for a moment?

1 THE COURT: No, no, we need to start right  
2 now.

3 MS. BURNESON: Okay. I have a question then.  
4 How --

5 THE COURT: Well, hold on, ma'am. Let's let  
6 the witnesses go.

7 MS. BURNESON: But this pertains to them.

8 THE COURT: Well, they're going to be excluded  
9 for the trial.

10 MR. LANE: Your Honor, --

11 THE COURT: That means if they stay here, they  
12 don't get to be witnesses.

13 MR. MOELLER: I've been asked to be a witness.  
14 I've also filed a motion to quash yesterday. I'm a  
15 former attorney.

16 THE COURT: Well, okay.

17 MR. MOELLER: And I don't know if you want to  
18 address that now or later?

19 THE COURT: Yes. Absolutely.

20 MR. MOELLER: Okay.

21 THE COURT: So ma'am, you go ahead and be  
22 seated at the table here and I'll hear this motion.

23 MR. MOELLER: May I approach and provide --

24 THE COURT: Yes, sir.

25 MR. MOELLER: -- a copy to the Court?

1           THE COURT:    Sure.  And would you give a copy  
2 to each side please?

3           MR. MOELLER:   I have already provided that,  
4 Your Honor.

5           THE COURT:    Okay.

6           MR. MOELLER:   Your Honor, I understand that  
7 you must not have received this yet from --

8           THE COURT:    No.

9           MR. MOELLER:   -- the clerk downstairs, so let  
10 me just nutshell it for you.

11          THE COURT:    Okay.

12          MR. MOELLER:   Basically, I was the former  
13 attorney of Dam East Homeowner's Association.  My -- my  
14 law firm was.  And my name is Tim Moeller, registration  
15 number 31150 and I've been subpoenaed by Ms. Burneson and  
16 -- and also received a laundry list of items that -- some  
17 of which do not exist, some of which do, most of which  
18 are irrelevant and the bottom line is none of this was  
19 disclosed at a Rule 316 hearing and she's now basically  
20 fishing for discovery at this late date.  And so I would  
21 ask that -- that my subpoena be limited to testifying  
22 with regard to the attorneys fees that have been expended  
23 by myself and the members of my firm in furtherance of  
24 this matter and -- and then be released from my subpoena.  
25 And I have attorneys fees affidavits, as well as copies

1 of invoices that were sent to the association with regard  
2 to this matter. And I'd be happy to supply all of that  
3 information to the Court together with engagement letter  
4 signed by the board president of the Dam East Homeowner's  
5 Association hiring our firm. But beyond that, I'd like  
6 to limit the scope to that. That's basically what the  
7 option is.

8 THE COURT: Do you have that available for  
9 Mrs. Burneson because I think she's the one most  
10 interested in that.

11 MR. MOELLER: The attorneys fees affidavit?

12 THE COURT: Yes.

13 MR. MOELLER: I'd be happy to provide it.

14 THE COURT: Okay.

15 MR. LANE: I've got a copy, Judge. We have it  
16 marked as an exhibit.

17 THE COURT: Oh, you do. Okay. I'm sorry. Is  
18 there a copy for Ms. Burneson?

19 MR. MOELLER: We have plenty if you'd like me  
20 to --

21 THE COURT: All right.

22 MR. MOELLER: -- give a copy of that.

23 THE COURT: Okay.

24 MR. LANE: And Mr. Moeller is here on my  
25 behalf. I intended to call him first and get him on his

1 way.

2 THE COURT: That's all right.

3 MR. LANE: Mrs. Burneson, here's a copy of  
4 Plaintiff's Exhibit 10.

5 THE COURT: All right.

6 MS. BURNESON: Your Honor, we received --

7 THE COURT: We again? Oh please, ma'am.

8 MS. BURNESON: Oh.

9 THE COURT: Just try to say I, it's okay.  
10 Call the -- you know, relax. I want you to be as relaxed  
11 as possible.

12 MS. BURNESON: I'm not.

13 THE COURT: Well, --

14 MS. BURNESON: This is --

15 THE COURT: -- I'm trying to be as -- as  
16 kindly and you know, trying -- just relax. Don't do all  
17 that royal we stuff.

18 MR. MOELLER: May I approach? I have exhibit  
19 10.

20 THE COURT: Thank you, sir. You know,  
21 prosecutors run around saying we this, we that. You  
22 don't have to worry about that. You're not an attorney.  
23 I don't want you to be doing this we stuff.

24 MS. BURNESON: Well, I'd basically like for  
25 you just to be Judge Judy and let me just explain why all

1 what happened.

2 THE COURT: Well, I can't do that as a civil  
3 court judge.

4 MR. MOELLER: Your -- if --

5 THE COURT: That's all right.

6 MR. MOELLER: If I might just add also, I have  
7 a trial tomorrow in front of Magistrate Petrie --

8 THE COURT: Okay.

9 MR. MOELLER: -- on a wholly different matter.  
10 So if there's any way I could be released today --

11 THE COURT: Sure.

12 MR. MOELLER: -- at some point from my  
13 subpoena --

14 THE COURT: Well, you're gonna be the first  
15 witness.

16 MR. MOELLER: Great. Thank you.

17 THE COURT: Sir, are there opening statements  
18 to be made or do you wish to waive opening statements,  
19 Mr. Lane?

20 MR. LANE: Judge, I do have an opening  
21 statement.

22 THE COURT: Please go ahead, sir.

23 MR. LANE: Judge, this is a -- actually, a  
24 simple case, believe it or not. You may have looked at  
25 the file and thought geez, how could this -- how could

1 anybody stand up and say it's a simple case, but it is.  
2 This case is a homeowner assessment case.

3 The evidence will show that Mrs. Burneson owns  
4 a property located within the Dam East Homeowner  
5 Association. The evidence will show that there's a \$54 a  
6 month assessment that's made every month on each property  
7 in that subdivision.

8 The evidence will also show that over time  
9 there's been a couple of special assessments. The  
10 evidence will show that -- that on or about June 2000 --  
11 in about June of 2000, Mrs. Burneson was behind on her  
12 payment of assessments at about \$1000, \$1019. What  
13 happened was the association made a determination that  
14 they were going to sue Mrs. Burneson for that \$1000.

15 A lawsuit was brought in this Court and -- and  
16 if the Court eventually will take judicial notice of the  
17 complaint, I think the association asked for \$1019  
18 roughly, \$66 in costs and \$250 in attorney fees.

19 After filing the lawsuit and serving Mrs.  
20 Burneson, she began making her payments on her  
21 association dues. And, in fact, in January 2001 some six  
22 or seven months after the case was filed, Mrs. Burneson  
23 came into the management company and paid within \$10 or  
24 so of what we were -- the association was suing her for.  
25 And I think she paid \$1019.96. And I think the evidence

1 will show that she added \$10 or so for interest that had  
2 accrued. But she didn't do anything with regard to the  
3 attorneys fees we were asking for. The case was not  
4 settled, there was no release signed, nothing happened,  
5 and the check that was tendered was not made conditional.

6 The association cashed the check, but still had  
7 the lawsuit going. And during that period, maybe three,  
8 four, five, six months after that, there were no payments  
9 of association dues and it mounted up once again to two  
10 or \$300 and we'll have the bookkeeper testify as to exact  
11 -- the exact figures, and then the -- Mrs. Burneson  
12 started making her payments again. And what the -- the  
13 evidence will show is that over the two years from June  
14 of 2000, two and a half year now, to almost January 1<sup>st</sup>  
15 of 3000 (sic), this case has almost like a mushroom cloud  
16 affect.

17 We went from \$250 if the Burnesons would have  
18 come in and paid the first day, to about I assume by the  
19 time we're all done, about \$10,000 in attorneys fees,  
20 maybe more. And the Court's read some of the reasons and  
21 knows some of the reasons after you've seen the volume of  
22 the file.

23 So the issue -- there's a very simple issue.  
24 Number one, are there assessments owed and if so, how  
25 much. Number two, are there attorneys fees owed and if

1 so, how much. A subset of that question, if there are  
2 attorneys fees owed, are -- does the association have the  
3 authority to assess attorneys fees, either under its  
4 documents or under the Colorado Common Interest Ownership  
5 Act. And I would submit to the Court and will argue in  
6 closing argument the fact they do have the authority to  
7 assess the attorneys fees.

8 With respect to attorneys fees, attorneys fees  
9 were added on to the Burneson account through April 30<sup>th</sup>,  
10 2002 when Mr. Moeller was the association attorney. At  
11 that time, Mr. Moeller withdrew and under my direction  
12 the association quit just assessing my fees monthly on  
13 their billing, but rather for the time period after  
14 April, I'll have a separate affidavit to submit to the  
15 Court so we can deal with maybe --

16 THE COURT: So it's until March of 2002 and  
17 then afterwards it would be --

18 MR. LANE: Would be my fees.

19 THE COURT: Okay.

20 MR. LANE: That's correct.

21 So as I said, the very simple question, the --  
22 the problem with this trial and how this trial can get  
23 out of hand is, is if we get derailed. And I hate to  
24 use, I -- and Judge, I know that you have a sense of  
25 humor, but I hate to use a railroad metaphor simile in

1 court, but I can't think of any better one. If this case  
2 stays on track, we're gonna be fine. My case will take  
3 40 minutes, the Defendant's case may take a few witnesses  
4 and a couple of hours and we'll be done. If this case  
5 gets off track and a car load of red herrings gets  
6 delivered to this Court, we may be here for days. And I  
7 -- I can tell you that I think the evidence is going to  
8 show that the Burnesons are involved in lengthy and  
9 protracted litigation with this association in not only  
10 this case, but maybe three to four more in district court  
11 and quite frankly, this association's threatened with  
12 lawsuits constantly from the Burnesons.

13 So, if we stay on track and we talk about  
14 assessments in this case, talk about authority to assess,  
15 the amount of the assessment, authority to assess  
16 attorneys fees and the amount of attorneys fees, and the  
17 reasonable and necessariness, this is an easy case. If  
18 we get off track, that derailment is going to be a train  
19 wreck and -- and I urge the Court to -- to -- to mix my  
20 metaphors, to keep its eye on the ball and see if we can  
21 get through this case and keep on what's relevant.

22 THE COURT: Okay. Ma'am, do you wish to make  
23 an opening statement?

24 MS. BURNESON: Yes, I would.

25 THE COURT: Please, go ahead.

1 MS. BURNESON: You know, I feel that he's  
2 considered this a very simple case. I believe that in  
3 our Nation we have a right to object to certain things.  
4 We control people by assessing them fees, by threatening  
5 them with legal fees, by not opening the rules and  
6 records for them. It's a way of keeping people quiet.  
7 If you have an objection to something that is happening  
8 in your homeowner's association, something so simple as  
9 your community, which should be the safest thing, and you  
10 have an attorney that wants to make a very good living  
11 off of the homeowners, the -- it may not be so simple.  
12 And when I hear railroading it through and him kind of  
13 directing you on how to -- this case should be run and  
14 what's relevant and what's not relevant, I get a little  
15 concerned as a pro se person.

16 THE COURT: Well, what do you think is  
17 relevant, ma'am?

18 MS. BURNESON: When I -- sir?

19 THE COURT: What do you think is relevant  
20 then?

21 MS. BURNESON: I'm sorry, I didn't hear.

22 THE COURT: The opening statement is to tell  
23 me what you think is relevant, not to complaint about  
24 what they think is relevant.

25 MS. BURNESON: Oh, I -- I will.

1 THE COURT: What do you think is relevant?

2 MS. BURNESON: Well, I will, but I -- okay.

3 Well, what's relevant is, is that I get a fair trial here  
4 not knowing all the legal terms or being able to talk to  
5 you about what's relevant and what's not relevant and  
6 what you're going to railroad through and how it's going  
7 to take him 40 minutes and it should only take me two or  
8 three, you know, I -- I don't know if that is his  
9 judgment on how long this case should take or which  
10 witnesses are relevant or not relevant.

11 We have a board of directors who are not doing  
12 their job. So the attorney failed to complete the  
13 ratification of his contractor -- I will prove the  
14 claimed legal fees and association assessment are not  
15 owed for the following reasons:

16 The attorney failed to complete the  
17 ratification of his contract by the board of directors as  
18 required by the covenants and bylaws and Judge Stewart  
19 and Judge Hickman's court orders, which they have not  
20 proceeded to follow.

21 Mr. Moeller, in fact, was not aware of these  
22 court orders until he attended the annual meeting of  
23 2001. He asked Jim Burneson, my husband, to get him a  
24 copy but instead, he went to the court. So for a year or  
25 more he operated as an association attorney ignorant of

1 the District Court of Arapahoe County imposed rules to be  
2 followed by the Dam East Homeowners Association. Those -  
3 - they were found in contempt of court several times but  
4 they have never addressed those problems and have  
5 continued, and this is from a court, if they can thumb  
6 their noses at a court decision, a contempt of court, I  
7 would like to know how the Burne -- how I can be wrong  
8 when they have not followed the contempt of order (sic).  
9 Perhaps we're supposed to rollover and say oh well, we  
10 give up, we won't do anymore lawsuits and let them go  
11 ahead and thumb their noses at Judge Stewart and Judge  
12 Hickman.

13 I will show how the board of directors is  
14 abusive, vindictive and seek to bring punitive dam --  
15 charges if anyone criticizes their actions or ask what  
16 they're doing.

17 Mr. Moeller and his law firm were more than  
18 happy to be the sharp point of a stick while making  
19 excessive legal fees charges against a member of the  
20 association who they were supposed to be representing.  
21 This action is in direct violation of rules of  
22 professional conduct 1.13 and 1.7. Possibly those are  
23 different numbers for you.

24 Combine this greed --

25 THE COURT: No, those are good numbers.

1 MS. BURNESON: Okay.

2 THE COURT: Because they involve discipline.

3 Although --

4 MS. BURNESON: Okay.

5 THE COURT: -- happily I'm a Judge and we work  
6 under the judicial discipline rules. But I know the  
7 elements pretty well.

8 MS. BURNESON: Combine this greed with a board  
9 of directors where one or two directors run the show.  
10 These individuals made decisions by themselves and gave  
11 approvals without full board of directors motion and a  
12 vote at a public board meeting which is required by the  
13 bylaws and covenants.

14 The board of directors willfully and wantonly  
15 disregarded their fiduciary duties and allowed a law firm  
16 to feed upon the membership at will and no control or  
17 approval was required.

18 In our bylaws it states duties: Supervise all  
19 officers, agents and employees of this association and to  
20 see that their duties are properly performed.

21 This means the supervision of the actions of an  
22 attorney and the duties set out by the board of  
23 directors. This oversight failed here. The lawyers sent  
24 their legal fees directly to the management bookkeeper  
25 and the fees were charged to a homeowner with -- within

1 his assessment account, where any payments made were paid  
2 first to the lawyer with no review of accountability for  
3 the charges. They were never asked were these charges  
4 legitimate, were they authorized.

5 When a homeowner complied to the board he was  
6 told it was between him and the lawyer and the board had  
7 nothing to do with it.

8 Three, I will prove my assessments were brought  
9 current as of January 2001. Our payment was not applied  
10 to our assessments, but to the general fund --

11 THE COURT: I'm sorry, when, ma'am did you  
12 say?

13 MS. BURNESON: January 2001.

14 THE COURT: So until then, you're admitting  
15 that they weren't -- they weren't proper until then, but  
16 --

17 MS. BURNESON: Correct. That's correct.

18 THE COURT: -- in January 2001 you say I  
19 finally got current?

20 MS. BURNESON: We -- we were current. Our  
21 payment was not --

22 THE COURT: No, you were current I assume.

23 MS. BURNESON: I --

24 THE COURT: Thank you.

25 MS. BURNESON: Our payment was not applied to

1       our assessments, but to the general account, which  
2       included legal fees and unauthorized charges. In other  
3       words, when you paid your assessment, they did not take  
4       that off of your assessment, they applied it to legal  
5       fees which leaves the homeowner still behind in their  
6       assessments.

7                Had this payment been applied as the check and  
8       cover letter required, our assessments would be current  
9       today. Treasurer Finn Larson (phonetic) has never proved  
10      any other claimed assessments owed we -- and we have -- I  
11      have asked numerous times for it to be explained.

12               Yet the legal fees continue to be charged  
13      against my account and each charge was made without  
14      approval of the board of directors.

15               Four, I will prove excessive --

16               THE COURT:    Are you telling me that the board  
17      of directors has to approve the --

18               MS. BURNESON:    Yes.

19               THE COURT:    -- fee against you or they just  
20      have to approve there being legal action?

21               MS. BURNESON:    They have to approve any  
22      charges --

23               THE COURT:    I read through your homeowner  
24      association. I saw nothing where it said that an  
25      individual homeowner was protected by the board and the

1 board decided whether they would assess or not assess  
2 someone for legal fees if they had to prosecute them or  
3 go after other fees, ma'am. So where in the homeowners  
4 association did I miss that provision?

5 MS. BURNESON: Well, I will have to get it out  
6 and show you.

7 THE COURT: Well, I just need to -- no, I just  
8 need to tell you that.

9 MS. BURNESON: Okay.

10 THE COURT: That I'm not coming in here  
11 asleep.

12 MS. BURNESON: So where in the bylaws --

13 THE COURT: Yes, ma'am.

14 MS. BURNESON: -- does it say that they have  
15 to approve -- they have to approve -- okay. Bylaws --

16 THE COURT: Before they can assess you the  
17 legal fees for collection of the assessments unpaid.

18 MS. BURNESON: Okay. Okay.

19 THE COURT: Well, I'm sorry. Go ahead please.

20 MS. BURNESON: I will prove excessive -- okay.  
21 I will prove excessive legal fees were earned by this law  
22 firm as much as \$26,085 for a collection against  
23 delinquent assessments in year 2000 were paid to  
24 Winzenburg Leff Purvis & Payne without board approval.

25 Many of these unapproved legal fees were

1 collected in these Arapahoe County Courts and we are here  
2 today to stop this extortion.

3 Once a homeowner fell behind in his assessments  
4 the lawyer moved in for the kill. If the homeowner asked  
5 questions of his account, the lawyer would answer with  
6 \$150 letter charged to the homeowner's account which  
7 again no approval required by the board.

8 If you call the lawyer to ask or fees charged  
9 the homeowner for conversations with -- the conversation  
10 between the lawyer and the property management, you were  
11 charged for that. Garnishment is the next action to  
12 collect legal fees charged.

13 It appears that the lawyers had an expen --  
14 just a minute, I'll skip that. In fact, Mr. Lane has --  
15 as a Magistrate granted the same legal fees to attorney  
16 Edward Burns --

17 MR. LANE: Judge, I'm gonna object to that  
18 portion of the opening having anything to do with --

19 MS. BURNESON: I didn't think he could to an  
20 opening.

21 MR. LANE: Excuse me, ma'am.

22 THE COURT: Well, you have sort of gone long  
23 in your opening, ma'am.

24 MS. BURNESON: But I --

25 THE COURT: I will sustain the objection. Do

1       you want to sum up, ma'am?

2                   MS. BURNESON:     I would like to finish what I  
3       have to say.

4                   THE COURT:     Well, are you going to tell me  
5       what the evidence is gonna show, please go ahead.  But to  
6       argue the case, no, this is not a time for argument.

7                   MS. BURNESON:     The association has lien rights  
8       to record against a homeowner who is delinquent in his  
9       assessments.  With this power, the board for years never  
10      lost any money in assessment and the annual legal fees  
11      averaged less than \$4000.  The association cannot lose  
12      with the rights to file a lien against a property and  
13      foreclose if not paid.  But Winzenburg Leff Purvis &  
14      Payne can't make any money using the lien rights to lets  
15      -- so they decided that they would bring in all the legal  
16      fees.

17                   This law firm terrorized homeowners.

18                   MR. LANE:     Judge, at this point I -- we've  
19      heard about lawyers coming in for the kill, we've heard  
20      about terrorizing homeowners, that's not useful.

21                   THE COURT:     It's not.  You're not making an  
22      opening statement, you're arguing things that -- that  
23      might -- I don't even know if it's appropriate in closing  
24      statement --

25                   MS. BURNESON:     Okay.

1 THE COURT: -- but it certainly isn't in  
2 opening statement.

3 MS. BURNESON: I'm here pro se and I --

4 THE COURT: But I asked you if you had  
5 anything in opening to say about --

6 MS. BURNESON: Okay. I --

7 THE COURT: -- what the evidence would show,  
8 not -- not argument about, you know, what the evidence  
9 is, not what I might find from the evidence later on,  
10 ma'am.

11 MS. BURNESON: Well, I guess what I'm going to  
12 prove is that we were assessed illegally, that the  
13 attorney that is now sitting up here in the front was not  
14 approved by the board, he does not have a legal contract  
15 with the board because it was not voted on in a public  
16 meeting. So I do not know how he is sitting here today.

17 THE COURT: Thank you. You may call your  
18 first witness.

19 MR. LANE: We would call Mr. Moeller.

20 THE COURT: Sir, would you come up to the  
21 witness stand, but before entering please stop and raise  
22 your right hand.

23 TIMOTHY MOELLER

24 called as a witness on behalf of the Plaintiff, having  
25 been first duly sworn, did testify upon his oath as

1 follows:

2 THE COURT: Thank you, sir. Please be seated.

3 THE WITNESS: Thank you.

4 DIRECT EXAMINATION

5 BY MR. LANE:

6 Q Mr. Moeller, would you state your name and  
7 business address for the record please?

8 A My name is Timothy M. Moeller, M-o-e-l-l-e-r,  
9 my business address is 1660 Lincoln Street, Suite 1750,  
10 in Denver, 80264.

11 Q And what is your occupation?

12 A I'm an attorney.

13 Q And for how long have you been an attorney?

14 A I've been an attorney since 1999.

15 Q And are you licensed in the State of Colorado?

16 A I am.

17 Q Are you licensed in any other states?

18 A No.

19 Q And are you employed by a law firm?

20 A I am.

21 Q And what is the name of the law firm that  
22 employs you?

23 A Winzenburg Leff Purvis & Payne.

24 Q And how long have you been employed by that  
25 firm?

1           A     For about three and a half years.

2           Q     And in the employment -- your legal employment  
3 with that firm, what kind of work -- law work do you do  
4 there?

5           A     I almost exclusively do community association  
6 law.

7           Q     And is that something that your firm also,  
8 while I can only use the word specializes in, emphasizes?

9           A     That is our largest draw is community  
10 associations. We represent hundreds.

11          Q     Okay. And in your practice with that firm, do  
12 you do collections for associations?

13          A     Yes, we do.

14          Q     And are you familiar with the fees charged by  
15 attorneys in the Denver Metropolitan area engaging in  
16 collections for community associations?

17          A     I am.

18          Q     And I -- you have in front of you I believe  
19 what's been marked and the Court also has a copy and Mrs.  
20 Burneson has a copy, been marked as Exhibit 10, do you  
21 not?

22          A     You know, Mr. Lane, I think I may have left it  
23 --

24          Q     Let me hand you a copy.

25          A     -- at your table. I apologize.

1 MR. LANE: May I approach the witness, Judge?

2 THE COURT: Yes.

3 Q (By Mr. Lane) I'm handing you what's been  
4 marked as Exhibit 10.

5 A Thank you.

6 Q Do you recognize that document?

7 A Yes, this is my affidavit of attorneys fees.

8 Q Now, did you at one time or your firm represent  
9 the Dam East Homeowners Association

10 A We did.

11 Q And were you charged or was your attorney --  
12 your firm charged or hired to institute a lawsuit for  
13 collection of assessments again Ms. -- against Mrs.  
14 Burneson?

15 A Yes, sir.

16 Q And did the association hire you to do that?

17 A Yes, sir.

18 Q And was that done pursuant to a written  
19 contract of employment that you had with the association?

20 A It was.

21 Q I'm going to hand you what's been marked as  
22 Plaintiff's -- or rather Exhibit 9. Do you recognize  
23 that document?

24 A I do.

25 Q And can you tell the Court what that document

1 is?

2 A This is the agreement for legal services  
3 provided by Winzenburg Leff Purvis & Payne.

4 Q Now, in your course of representation of the  
5 Dam East, did you have a blanket agreement with regard to  
6 any collections or did you have a separate agreement with  
7 regard to each file or case?

8 A Well, we didn't have a -- we have an agreement  
9 that they will pay our hourly rates and then as the --  
10 the cases come to fruition they are forwarded to our  
11 office.

12 Q Okay. And --

13 A And requested that we proceed.

14 Q Okay. And when you receive the file from the  
15 Dam East or the Dam East -- the management company acting  
16 on behalf of the Dam East, did you then proceed with  
17 litigation?

18 A Yes.

19 Q Okay. And are the charges that are outlined on  
20 Exhibit 10 with respect to this matter consistent with  
21 what you had agreed to charge the Dam East in Exhibit 9?

22 A It is.

23 Q And is it your opinion that those charges are  
24 reasonable and necessary?

25 A It is my opinion that they are reasonable and

1 necessary.

2 Q Okay. And with respect to this particular  
3 case, I think that your affidavit says you have around 43  
4 or \$4400 in attorneys fees with respect to this case.  
5 Can you give the Judge a little picture as to why a  
6 collections case in County Court resulted in attorneys  
7 fees, not even getting to trial and only halfway through  
8 or so, in about \$4400?

9 A Yes. I -- it's -- I think it's fairly self-  
10 evident from the -- the attached Exhibit A to that  
11 affidavit, everything that was done, this has been --  
12 this trial has -- this same trial for this small  
13 collection case has been set oh, this is probably the --  
14 at least the third, probably the fourth time. It's  
15 obviously gone on since -- let's see, December of '99 and  
16 so it's gone on for several years. The association was  
17 fought every inch of the way. In fact, we had to respond  
18 even when we filed a notice to set, just a notice to set  
19 the trial, we had to respond to a -- to a motion to deny  
20 our notice to set. And -- and it was constantly a  
21 barrage of letters and motions and -- and so having to go  
22 through all that, that's why this small collection case  
23 took on a whole new life and ended up incurring more fees  
24 than -- than perhaps if there is such a thing as a normal  
25 collection case, than a normal collection case.

1           Q     Now a lot of times when I defend cases, and I'm  
2 asking if this is your experience too, you defend a case  
3 you end up in a reactive mood instead of a proactive mood  
4 and you react to things that the plaintiff does in the  
5 case.

6           A     Correct.

7           Q     Did that kind of happen in this case? Did you  
8 get into a reactive mode?

9           A     Yes, very much so. We had to respond to  
10 numerous and voluminous motions.

11           MS. BURNESON: Am I allowed to object to  
12 anything?

13           THE COURT: Sure.

14           MS. BURNESON: How is this relevant to our  
15 fees that were charged?

16           THE COURT: Well, very relevant, ma'am. If  
17 that's the reason, then I do have to overrule your  
18 objection.

19           Q     (By Mr. Lane) Now, with respect to this case,  
20 did -- did you file any motions requesting, for instance,  
21 summary judgment, a motion to dismiss, anything other  
22 than reactive type motions?

23           A     You know, it's been a while since I've worked  
24 on this. We didn't file any of the motions that you have  
25 just stated. We may have filed in -- in my brief review

1 of what I worked on here, I think we filed perhaps a  
2 motion for sanctions at one point and there may have been  
3 some other, maybe one or two other proactive motions as  
4 you were describing them, but other than that, every  
5 single thing we did was a reaction to letters and motions  
6 from --

7 Q And can you give the Court kind of a flavor of  
8 what the correspondence with respect to this case is like  
9 from the Burnesons?

10 A Mostly threatening. Threatening to myself, to  
11 Magistrate Burns, to past management companies, current  
12 management companies, threatening me with legal action,  
13 threatening me with grievances, threatening my firm,  
14 threatening partners in my firm. And threatening  
15 lawsuits against all the board members, past board  
16 members, current board members, the association. In  
17 fact, the disclosures that I was handed at the Rule 316  
18 pretrial conference which is mandatory in Division C-2  
19 was a volume about an inch thick or two inches thick that  
20 was a case that was going to be filed in District Court  
21 against the association and including myself and Tim  
22 Larson who is the former manager. I think Edward Burns,  
23 Magistrate Burns was named as a Defendant. And that's  
24 the type of materials that we received on a regular  
25 basis, almost a -- probably a weekly basis.

1           Q     Okay.  Were there days when you would receive  
2 more than one correspondence from the Burnesons with  
3 respect to either this case or other cases?

4           A     Probably, yes.

5           Q     Okay.

6           A     I'm sure there was.

7           Q     Did there come a time when the law firm of --  
8 your law firm decided it was time to withdraw from this  
9 case?

10          A     Yes.

11          Q     Okay.

12          A     We -- we did.

13          Q     And did the barrage of litigation with respect  
14 to this case have something to do with your -- or  
15 contribute to your decision to withdraw?

16          A     Well, I am an associate with the firm and so I  
17 don't have the ultimate decision to -- whether to fire a  
18 client if you will.  And so that -- that decision was  
19 made by the -- by the partners of the firm.  I imagine  
20 that that could have something to do with it.  Perhaps  
21 they were tired of receiving the threats on a daily or  
22 weekly basis.

23          Q     Now, initially --

24                   THE COURT:  I'll have to strike his last  
25 comments as too speculative for the Court to consider.

1 MR. LANE: That's fine.

2 Q (By Mr. Lane) Initially this case was filed  
3 with a request for \$250 in attorneys fees in -- in the  
4 complaint; is that correct?

5 A Correct.

6 Q And is that the standard fee that you would  
7 charge for -- for drafting a county court complaint,  
8 arranging to get it served, appearing at the return?

9 A At that date it was, yes.

10 Q Okay. And did you feel that that \$250 was  
11 reasonable and necessary in this case?

12 A Yes.

13 Q Okay. I'm going to hand you what's been marked  
14 as Plaintiff's Exhibit 13. Mrs. Burneson, here's a copy  
15 for you. And I'm going to hand the original to the  
16 Court.

17 THE COURT: Thank you.

18 Q (By Mr. Lane) Do you recognize that document?

19 A Yes. This is a, yeah, your affidavit of  
20 attorneys fees.

21 Q And I showed you that --

22 MS. BURNESON: This is not pertaining to --  
23 this is Plaintiff James Burneson, this is not me.

24 THE COURT: Okay.

25 MR. LANE: I'm going to -- Judge, --

1 MS. BURNESON: I -- that is not me.

2 MR. LANE: Well, I'm gonna clear that up in  
3 just a moment, Judge.

4 THE COURT: Please.

5 MR. LANE: Mrs. Burneson has noticed  
6 apparently, I have other litigation with the Burnesons,  
7 and apparently, when my secretary typed this morning or  
8 yesterday, she used the wrong caption. I would move to  
9 strike -- well, when I move to have the exhibit admitted,  
10 I will take care of that in my motion.

11 MS. BURNESON: I --

12 THE COURT: All right. I'll note the  
13 objection, ma'am.

14 MS. BURNESON: I'm sorry, what?

15 THE COURT: I'll note the objection at this  
16 point and without amendment I will --

17 MR. LANE: I haven't moved the exhibit yet.

18 THE COURT: So -- so what are you asking it be  
19 changed to?

20 MR. LANE: Judge, I would -- I haven't moved  
21 the exhibit yet --

22 THE COURT: Okay.

23 MR. LANE: -- because I haven't really laid a  
24 foundation for that.

25 THE COURT: All right. Go ahead, please.

1           Q     (By Mr. Lane) Mr. Moeller, have you had an  
2 opportunity to review what's been marked as Exhibit 13?

3           A     I have, yes.

4           Q     And you took a look at that this morning,  
5 didn't you?

6           A     Correct.

7           Q     And we discussed -- we discussed its contents  
8 on the phone in the last two or three days also, didn't  
9 we?

10          A     Correct.

11          Q     Okay.

12                MS. BURNESON:    Could I have a chance to read  
13 this before we --

14                THE COURT:    Well, no, ma'am. He can go ahead  
15 and lay a foundation. At the time he wants to move to  
16 admit it, then you could ask questions about it and yes,  
17 you can have time then. But he may -- he has a right to  
18 proceed and ask questions about it at this point, ma'am.

19          Q     (By Mr. Lane) And on the telephone when we  
20 discussed this I disclosed to you that I'm an attorney  
21 prac -- licensed to practice in the State of Colorado and  
22 have been for about 20 years, isn't that correct?

23          A     Correct.

24          Q     And you're somewhat familiar with my background  
25 because --

1           A     I am.

2           Q     -- I was a Magistrate in Arapahoe County for  
3 ten years, isn't that correct?

4           A     I am.

5           Q     And when I told -- talked to you on the phone,  
6 I told you that my hourly rate ranged from \$130 to \$250  
7 per hour and that I was charging \$180 per hour on this  
8 matter, isn't that right?

9           A     Correct.

10          Q     And taking into consideration your knowledge of  
11 what attorneys charge in the Denver Metropolitan area for  
12 this type of community association work, do you have an  
13 opinion as to whether \$180 per hour is reasonable?

14          A     I do. In my opinion I think it's very  
15 reasonable for your background and length of time in the  
16 -- in this type of work.

17               MR. LANE: Judge, at this time I would move  
18 for the admission of Plaintiff's Exhibit 10 first, which  
19 is the Winzenburg -- or the Winzenburg affidavit, Mr.  
20 Moeller's affidavit.

21               THE COURT: And that also includes the  
22 attachment of Exhibit A?

23               MR. LANE: Yes, it does.

24               THE COURT: Objection, questions or voir dire,  
25 ma'am?

1 MS. BURNESON: I'm sorry, what?

2 THE COURT: Objections, questions, voir dire  
3 of the document?

4 MS. BURNESON: We're talking about A or number  
5 10?

6 THE COURT: Number 10 that also includes  
7 Exhibit A.

8 MS. BURNESON: I do not have Exhibit A.

9 THE COURT: Do you have Exhibit 10?

10 MS. BURNESON: I have Exhibit 10.

11 THE COURT: Is there something attached to it?  
12 Two pages and then there's attachment behind it.

13 MS. BURNESON: Oh, (inaudible) here in the  
14 back. Yes, sir.

15 THE COURT: All right. Do you have any  
16 objections to its admission? Not saying if you agree  
17 with it, I'm asking if you have an objection to it being  
18 admitted into evidence.

19 MS. BURNESON: I don't.

20 THE COURT: It shall be admitted then without  
21 objection.

22 MR. LANE: With respect to Exhibit 13, Judge,  
23 I'm not going to move its admission at the present time,  
24 but will get the caption taken care of and probably just  
25 file that as an affidavit.

1 THE COURT: All right.

2 MR. LANE: As opposed to its use as an  
3 exhibit. I have no further questions. Thank you.

4 THE COURT: Did you want to -- what are we  
5 doing with Exhibit 9?

6 MR. LANE: Oh, excuse me. Judge, we'd move  
7 for the admission of Exhibit 9.

8 THE COURT: Ma'am, do you have Exhibit 9?

9 MS. BURNESON: Yes, sir, I do.

10 THE COURT: Any objection or questions of the  
11 witness about that?

12 MS. BURNESON: Yeah, I do have -- do I get to  
13 cross-examine through? Do I have --

14 THE COURT: On this document, as far as to its  
15 admission.

16 MS. BURNESON: Oh, I have nothing, no. It can  
17 be admitted.

18 THE COURT: All right. Exhibit 9 is admitted.

19 MR. LANE: Thank you, Judge. No further  
20 questions.

21 THE COURT: Ma'am, you may cross examine the  
22 witness.

23 MS. BURNESON: Okay.

24 THE COURT: But I -- I just want to check  
25 before we get done then.

1 //

2

EXAMINATION

3

BY THE COURT:

4

Q So the Exhibit 10, the final total bill is \$5,343.77 for up to March 15<sup>th</sup> of 2002 for your firm's actions, right?

7

A I believe that's correct, Your Honor.

8

Q Now, in here for example on page five of the Exhibit A, and I'm looking at things involving March 28<sup>th</sup>, March 30<sup>th</sup>, October 17<sup>th</sup>, none of -- and they all talk about Burneson or Jim Burneson.

12

A Uh-huh.

13

Q And some of the just say Burneson.

14

A Uh-huh.

15

Q Do you know whether it was Mrs. Burneson, Carla Burneson, or some other Burneson that's the mention of all of these calls?

18

A Well, many times I -- I don't -- I don't recall to be honest who it was I was talking to if I didn't specify in there. I know that as you can tell from -- from this -- these proceedings so far, Mr. Burneson does author a lot of the -- the pleadings, as well as letters that were sent to us. So --

24

Q Well, some places like on page four in the February 20<sup>th</sup> 2000 one, it says call to Jim Burneson, so

25

1       it's a response to him. Now I assume then the Burneson  
2       before that four days before would have been him and  
3       maybe February 15<sup>th</sup>. How does his -- maybe you can  
4       explain a little bit about if it's not her but Mr. --  
5       some Burneson, is that her husband as far as you know?  
6       So does he purport himself to be acting as her agent?

7             A       He did. He in fact would always sign  
8       everything as the attorney in fact.

9             Q       Oh, really?

10            A       And I don't know if he has one recorded with --  
11       I don't know if he's recorded that against the property,  
12       Your Honor.

13            Q       Oh, no.

14            A       But he -- he purports to be her agent, correct.  
15       And he, in fact, tendered at one point there was a -- he  
16       tried to settle the matter and -- and he tendered a  
17       letter along with a check written to himself that wasn't  
18       endorsed and -- and so he had a lot to, you know, he --  
19       he had a lot to do with -- with steering this case if you  
20       will.

21            Q       Okay. He was purporting to not only be her  
22       agent, but actually be an attorney as well as her  
23       husband, honestly?

24                    MS. BURNESON:    No.

25            A       I don't know if he was purporting to be an

1 attorney at law. He would sign things attorney in fact.

2 Q But he was --

3 A Is how he would sign things, constantly.

4 Q Did Mrs. Burneson ever disclaim him from being  
5 an actor on her behalf or --

6 MS. BURNESON: Yeah.

7 Q -- doing these things? Did she ever say oh  
8 goodness gracious, don't pay attention to Mr. Burneson,  
9 he's not working for me?

10 A No. Never.

11 Q Okay.

12 THE COURT: Ma'am, you may ask any other  
13 questions. That's interesting.

14 CROSS-EXAMINATION

15 BY MS. BURNESON:

16 Q Well, we had -- when we did have that -- when  
17 we met on the settlement and the agreement on the amount  
18 to be paid and we wrote the check and what my husband --  
19 what we agreed to was that they - the association would  
20 give --

21 THE COURT: Are you asking a ques -- are you  
22 asking a question?

23 MS. BURNESON: Well, I'm going to ask a  
24 question.

25 THE COURT: Well, please ask the question

1       then.

2                   MS. BURNESON:   Well, I have to get to that.

3           Q       (By Ms. Burneson) And so he --

4                   THE COURT:    Well, no --

5                   MS. BURNESON:    Okay.

6                   THE COURT:    Trust me on this.  Don't try to  
7       get to something, just get to it.  Just ask your question  
8       and then that'll make it a lot easier for me to  
9       understand what you're saying.

10                  MS. BURNESON:    Okay.

11                  THE COURT:    If you go off on a long diatribe I  
12       won't follow your question and you'll hurt my ability to  
13       understand what you're talking about.

14                  MS. BURNESON:    Okay.

15                  THE COURT:    So just focus on your question.

16                  MS. BURNESON:    I will try.

17                  THE COURT:    Don't do a lot of prep.

18                  MS. BURNESON:    I will try.

19                  THE COURT:    Just ask the questions.

20           Q       (By Ms. Burneson) Why did the board not cash  
21       the check that we paid to settle -- in the settlement  
22       that we had?

23                  MR. LANE:    Objection, Judge, as to relevancy  
24       with regard to settlement.  It's legally irrelevant.

25                  THE COURT:    Sustained.

1 MR. LANE: Under Rule 403.

2 MS. BURNESON: You know, sir, I -- I don't  
3 know -- I mean, maybe y'all want to just try this case  
4 because I guess I just do not understand how -- I mean,  
5 you can quote me all the laws, but he -- how can that not  
6 be relevant to this case? Because that's how the  
7 attorney -- that's how the fees got some high.

8 We are trying to prove that the board did not  
9 have the vote --

10 THE COURT: Well, there you go with that we  
11 again, ma'am.

12 MS. BURNESON: Well, we're talking about my  
13 husband and we're talking about --

14 THE COURT: No.

15 MS. BURNESON: -- how he wrote letters. So  
16 how do I leave out the we?

17 THE COURT: Well, --

18 MS. BURNESON: I mean, there is a we.

19 THE COURT: -- you know, I just want you to  
20 feel comfortable that you're the person here and I don't  
21 want other things involved, but --

22 MS. BURNESON: Then everything on here that  
23 has Burneson here is not me and let's wipe all those  
24 legal fees out.

25 THE COURT: Well, that's why I asked the

1 question because I was really surprised, I --

2 MS. BURNESON: And does he have any proof --

3 THE COURT: -- read all this stuff about  
4 somebody else.

5 MS. BURNESON: -- that that -- that's right.  
6 So --

7 THE COURT: But if he acted as your agent,  
8 ma'am, that's why I asked that.

9 MS. BURNESON: Does he have proof that he  
10 acted as my agent? Does Mr. Moeller have proof of that?

11 THE COURT: Ma'am, you're not asking him a  
12 question.

13 Q (By Mr. Burneson) Mr. Moeller, do you have  
14 proof that my husband worked as my agent?

15 A I have probably, I don't know how many letters,  
16 that he signed as your attorney in fact?

17 Q Do you have them with you here today?

18 A I may have some, I don't know. I haven't --

19 Q Would you like to find them -- or would you  
20 find them?

21 A I -- I can see if I have some in my briefcase.

22 Q Okay.

23 A I don't know if I do or not.

24 MS. BURNESON: Could he look for that?

25 THE COURT: No, go ahead and ask further

1 questions.

2 MS. BURNESON: That's what I asked him is if  
3 he has proof of that.

4 THE COURT: Well, but if he doesn't have them  
5 with him go onto other questions please.

6 MS. BURNESON: Okay. What he --

7 THE COURT: I'm not gonna have him bouncing up  
8 and down from the witness box. I don't do that to any  
9 witnesses.

10 Q (By Ms. Burneson) Okay. So do we have proof  
11 that my husband worked as an agent? Do you say yes or  
12 no?

13 A I say that he has signed many letters as your  
14 attorney in fact.

15 Q And you have proof that you have those letters  
16 that it says attorney in fact?

17 A I told you that I may or may not have some with  
18 me today.

19 Q Okay. Okay. When did you sign the contract?  
20 When you looked at, let's see, Exhibit 9, when was this  
21 contract signed?

22 A Well, I didn't sign it. So I can look at it  
23 just like you. It looks like it was signed by Greg Silva  
24 as the president of Dam East on January 2<sup>nd</sup> of 2000. And  
25 by my law firm, Winzenburg Leff Purvis & Payne on

1 December 10<sup>th</sup> of 1999.

2 Q And when was your -- when was -- as I see in  
3 here on the legal fees, they go back before that date.  
4 Were you the hired agent before that date?

5 A Before what date?

6 Q Before January 2<sup>nd</sup>, 2000?

7 A I don't recall.

8 Q Because there are legal fees in here being  
9 charged by your company back 12/1/99. I --

10 A Then --

11 Q A year prior to that.

12 A Then yes we were engaged prior to that time.

13 Q Do you have that contract?

14 A What contract are you referring to?

15 Q That you had -- we have the agreement and  
16 contract --

17 A Correct.

18 Q -- for the year 2000 -- for the year 2000  
19 beginning. We have asked repeatedly for the contract  
20 that was signed before that. This is the only contract  
21 that we have ever received. And my question is, do you  
22 have a copy of the contract you had with the board of  
23 directors as their agent prior to this time?

24 A The only contract I have is the one you have in  
25 your hands.

1           Q     So I can assume that you did not have a  
2 contract prior to that time?

3           A     We did not have a signed engaged letter prior  
4 to that time.

5           Q     And what is the difference, sir, between a  
6 contract and an engagement letter?

7           A     Well, a contract can be a verbal contract,  
8 whereas an engagement letter is as you see in your hands.

9           Q     Were you aware that the Dam East Homeowners  
10 covenants and bylaws required a vote, a public vote, in  
11 order to hire an attorney?

12           MR. LANE:    Objection to the form of the  
13 question, foundation.

14           THE COURT:   Sustained.

15           MS. BURNESON:   Okay.  Do I change my question?

16           THE COURT:    Yes, ma'am.

17           Q     (By Ms. Burneson) Were you aware --

18           MS. BURNESON:   Okay.  I don't know what was  
19 wrong with it to correct it.

20           Q     (By Ms. Burneson) Were you aware -- were you --  
21 do you know -- are you familiar with the covenants and  
22 bylaws of the Dam East?

23           A     I think at one time I was.

24           Q     Okay.  How long was it before you were aware of  
25 those from when you were hired?  How long --

1           A     Aware of what?

2           Q     Of the covenants and bylaws.

3           A     I'm not understanding your question. How long  
4 was it before I knew they existed?

5           Q     Right. Or that you -- no, not that they  
6 existed, that you knew what was in them. How -- did you  
7 follow the covenants and bylaws when you gave advice to  
8 the board of directors --

9           A     Of course I did.

10          Q     -- were you aware of that? Were you aware of  
11 Judge Stewart's contempt of court orders?

12          A     I am aware of those.

13          Q     No. Were you --

14               MR. LANE:    Objection, relevance. Objection,  
15 relevancy, Judge.

16               MS. BURNESON:   The relevancy, sir, is to show  
17 that he was -- that what they did was illegal and his  
18 fees have not been approved and they are illegal fees  
19 because they were not approved by the board of directors.  
20 They were not a hired agent.

21               THE COURT:   Well, why is it not relevant, Mr.  
22 Lane?

23               MR. LANE:    Well, I'd like to address that  
24 issue. It seems that the argument Mrs. Burneson is going  
25 to try to make is that if the board of directors has the

1 managing power for the association pursuant to the  
2 declaration, they have the authority to manage the  
3 association, the board of directors, I'm going to have  
4 the president testify and I think Mr. Moeller's already  
5 testified, the board of directors hired Mr. Moeller.

6 The Burneson argument is because the board of  
7 directors may or may not have reported that hiring as a  
8 motion and a vote in minutes of the directors meetings,  
9 that it -- it's invalid. Well, it may well be.

10 Assuming that was the case, it may well be  
11 invalid if Mr. Moeller were to sue the association and  
12 say I want my fees and the association said well, these  
13 board members are renegades. They have no authority to  
14 hire you, we're not going to pay you. Okay? In that --  
15 in that situation and in that case, that argument may be  
16 relevant.

17 But as almost always when you change the facts  
18 you change the outcome. And what we have in this case is  
19 a third party who's not in privity with the contract  
20 between Moeller and -- and the association coming in and  
21 trying to attack that agency relationship. And as an  
22 offer of proof, what I'm going to have is I'm going to  
23 have Mr. Moeller testify I worked for the association and  
24 I'm going to have the association testify he works for us  
25 and we're gonna have Burneson testify no, he doesn't.

1 Well, the only people that can testify as to the  
2 existence of that agency relationship are the agent  
3 himself and the principal, because they're the only ones  
4 that have standing to raise the issue as to whether it  
5 exists or not. Burneson doesn't have standing to raise  
6 that issue.

7 So I'm gonna object on that basis. And quite  
8 frankly, Judge, that's one of the red herrings that's in  
9 that carload careening towards the courtroom.

10 MS. BURNESON: I object to that statement.

11 THE COURT: I'll sustain objection to the red  
12 herring statement.

13 MS. BURNESON: So can I keep --

14 THE COURT: But, you know, that is -- that is  
15 something, you've admitted that there's -- you're a --  
16 you live in a homeowners association, right? And you've  
17 admitted that the homeowners association has officers,  
18 right? And you might not have voted for them, but there  
19 are duly elected association board members that make  
20 decisions.

21 I've read through Judge -- somewhere in all  
22 this stuff I remember reading something about Judge  
23 Stewart's ruling, but that dealt with those people in  
24 that case. It didn't prohibit, as I'm reading it, you're  
25 now trying to intervene and say I'm not one of those

1 parties in that action that was settled by Judge  
2 Stewart's ruling whatever it was, I'm somebody else but I  
3 want to take advantage of that ruling and I want forever  
4 and in perpetuity, whether it's a part of that case or  
5 not. I understand what you're trying to say, but as I  
6 read through the homeowners documents that were brought  
7 in, it was brought in under your motions, many of these  
8 motions that you wanted the Court to rule on, I went  
9 through your motions and then there was something here in  
10 your disclos -- there was a board of directors I think  
11 that was in the Plaintiff's disclosure statement that  
12 I've had the opportunity to read through that you didn't  
13 object to, so that's something I can look at as far as  
14 the powers of the board of directors and all. Section  
15 eight dealing with monthly assessments and their powers  
16 to do that. Section nine.

17 Quite frankly I'm dealing with covenant  
18 assessments, collection costs, interest, attorneys fees,  
19 ma'am, it sounds more like you -- you're a disgruntled  
20 citizen who's upset that the wrong party one at the polls  
21 so to speak. And so far that's sort of what you --  
22 you're giving to me.

23 I then am gonna have to sustain the objection  
24 at this point. I'll certainly here things you have  
25 later, but for this gentleman here, I've gotta agree. I

1 mean, he's not -- he's apparently -- you've not displaced  
2 the fact that he was -- you've not disputed that he was  
3 hired by these peopl -- by the homeowners association  
4 president or whatever and in fact, again, if I'm not  
5 mistaken, one of the things that you filed and I was sort  
6 of amazed that you filed it was you filed some other  
7 court case, C -- 2000 CV 1748, and in that -- I'm sorry  
8 to cut you off, you filed it, wanted me to consider it,  
9 but in that if I do the contract is signed by Mr.  
10 Lawrence Leff one of the partners of Winzenburg Leff &  
11 Purvis to represent Dam East and it's signed as of  
12 December 10<sup>th</sup>, 1999. So that takes away a lot of your  
13 complaint about when did he get it.

14 I mean you've already asked me to consider a  
15 contract and consider this as evidence in your pretrial  
16 motions that show that they had at least signed up.

17 MS. BURNESON: But --

18 THE COURT: I'm not talking about verbal  
19 agreements, but even just signing --

20 MS. BURNESON: But that was a year -- that was  
21 --

22 THE COURT: -- as of December 10<sup>th</sup> of 1999.

23 MS. BURNESON: That was years la -- that was -  
24 - the contract was signed late. They were representing  
25 the association or the association prior to that

1 contract. If the question had not been brought up --

2 THE COURT: Yeah. But now see, can --

3 MS. BURNESON: You don't --

4 THE COURT: -- the question that Mr. Lane's  
5 sort of raised is what authority do you have to challenge  
6 them --

7 MS. BURNESON: Oh.

8 THE COURT: -- to have a contract?

9 MS. BURNESON: Okay. I would tell you how. I  
10 am a member of the association, I pay dues. I have lived  
11 there for --

12 THE COURT: Now where in the homeowners  
13 association can an individual member of a homeowners  
14 association --

15 MS. BURNESON: We live by --

16 THE COURT: -- object?

17 MS. BURNESON: Okay. You have rules for this  
18 courtroom that --

19 THE COURT: No, no, no, no.

20 MS. BURNESON: -- must be followed.

21 THE COURT: I'm asking you. Where in those  
22 rules, and I'm looking at your contract.

23 MS. BURNESON: Of which rule -- there's a  
24 whole --

25 THE COURT: The homeowners rules that I have

1 here.

2 MS. BURNESON: -- homeowners that -- that --  
3 and you're asking me what? Where it says --

4 THE COURT: Where it says --

5 MS. BURNESON: Well, obviously, Judge --

6 THE COURT: -- that an individual homeowner  
7 has the authority to object to a contract between --

8 MS. BURNESON: It's not -- we're not --

9 THE COURT: -- counsel and the board?

10 MS. BURNESON: We're not objecting to that,  
11 sir. We're saying that there was not one. We are not  
12 objecting that there -- we are asking that there be a  
13 contract.

14 THE COURT: But a contract can be verbal as  
15 well as written, ma'am, can it not?

16 MS. BURNESON: It has -- in our bylaws, in our  
17 covenants, it does not say that that is so. In our  
18 covenants, it must be voted on by the members in an open  
19 meeting --

20 THE COURT: Well now show me where that is.

21 MS. BURNESON: -- and recorded.

22 THE COURT: In your board of directors meeting  
23 --

24 MS. BURNESON: Do you have Judge Stewart's --

25 THE COURT: No, I'm asking you, I have the

1 board of directors --

2 MS. BURNESON: Can I take a brief recess and I  
3 will go find it?

4 THE COURT: No, no, no, no, that's all fine.

5 MS. BURNESON: No, no, no, no, we don't want  
6 me to talk to my husband.

7 THE COURT: I've got it right here if you  
8 don't. It's what you filed.

9 MR. LANE: Judge, I'm gonna ask that the  
10 comment of Mrs. Burneson where she just said no, no, no,  
11 you don't --

12 MS. BURNESON: Excuse me, sir.

13 MR. LANE: Excuse me. Excuse me, ma'am. The  
14 comment of Mrs. Burneson where she just said on the  
15 record no, no, no, we don't want me to talk to my husband  
16 be stricken. That's not an appropriate comment to the  
17 Court, it's not an appropriate -- not appropriate  
18 objection, it's not appropriate. And if we get into  
19 that, it's a slippery slope when you start going --

20 MS. BURNESON: And he actually (inaudible).

21 THE COURT: Well, we have this declaration of  
22 covenants and restrictions is what I was referring to,  
23 ma'am.

24 MS. BURNESON: Yes, right.

25 THE COURT: Brought in by the Rider

1 Construction Corporation.

2 MS. BURNESON: Updated bylaws of September  
3 25<sup>th</sup>, 1996.

4 THE COURT: Yes. Right. Under Article III,  
5 Section I, it talks about members, you're a member. You  
6 could have one membership.

7 MS. BURNESON: Regular meetings, Section I.  
8 Regular meetings of the board of directors shall be held  
9 monthly without notice at such place or hour as they be  
10 fixed from time to time. Okay. Just a minute. Where is  
11 talking about powers. Adopt and publish rules and  
12 regulations governing the use of the common properties  
13 and facilities, exercise for the association all powers,  
14 dues vested and delegated --

15 Section II, cause to be kept a complete record  
16 of all its acts and corporate affairs and to present a  
17 statement thereof to the members at the annual meeting of  
18 the members or at any special meeting when such statement  
19 is required. Supervise all officers, agents and  
20 employees of this association and see that their duties  
21 are properly performed, fix the amount of the monthly  
22 assessment against each lot, send written notice of --  
23 okay, each assessment.

24 MR. LANE: Judge, may I address this just for  
25 a moment?

1 THE COURT: Yes.

2 MR. LANE: It's much simpler than that and  
3 it's basic -- it's basic principle/agent law.

4 Basic principle/agent law is that you cannot  
5 establish actual authority by testimony from anyone other  
6 than the principle or the agent themselves. And it's --  
7 it is the other side of that coin. The other side of  
8 that coin is you cannot attack actual authority by  
9 testimony from a third party, because if the principle  
10 testifies I gave actual authority to my agent and the act  
11 -- and the agent testifies I have actual authority, a  
12 third party can't come in and say there's no contract.

13 THE COURT: Well, I suppose there's somewhere  
14 though counsel, Ms. Burneson would be right if somewhere  
15 in these documents it restricted that right. But she's  
16 not been able to show me where it restricts that right,  
17 but --

18 MS. BURNESON: Well, I can -- I'll need time -  
19 -

20 THE COURT: -- realistically if there was  
21 something in here --

22 MS. BURNESON: There is.

23 THE COURT: -- I'd have to rule in her favor,  
24 right?

25 MR. LANE: Well, there --

1 MS. BURNESON: There is.

2 MR. LANE: If I may, Judge, not quite. And  
3 the reason is because if, in fact, the argument is, is  
4 that the board didn't report the hiring of this attorney  
5 in its minutes, is then a member able to come in and  
6 somehow attack the principle/agent relationship between  
7 the -- the attorney and the association? And the fact --

8 THE COURT: Yeah, I --

9 MR. LANE: -- of the matter is no, they can't.

10 THE COURT: That's right. You're right, Mr.  
11 Lane.

12 MS. BURNESON: Okay.

13 MR. LANE: Because it -- if the rest of the  
14 board ratifies it and the board -- and the association  
15 has acted as if they're -- they are a principle and the  
16 attorney's relied on that, he's gone out and done the  
17 work as if he were an agent, and everybody that's  
18 directly involved says there's a principle/agent  
19 relationship, we're entitled to our fees, a third party  
20 can't come in and say no, you're not.

21 Just like I couldn't come in if you hired a  
22 tree trimmer tomorrow, I couldn't come in as your  
23 neighbor and say well, Judge Ruddick, you don't have the  
24 authority to hire this tree trimmer.

25 THE COURT: It'd be none of your business,

1       wouldn't it?

2               MR. LANE:     It -- none of your business.

3               MS. BURNESON:   Okay.   Okay.

4               MR. LANE:     It's that -- that relationship and  
5       it's a standing issue.   Who has the -- who has the  
6       standing to bring up that -- that question?   And the  
7       basic principle/agent law is that in fact the only -- and  
8       when you're talking about actual authority and it's  
9       brought up by either the principle or the agent, we're  
10      not talking about apparent authority, we're talking about  
11      actual.

12              THE COURT:    Is there anything else you want me  
13      to --

14              MS. BURNESON:   Yes.   Do you have --

15              THE COURT:    -- to rule on against that --

16              MS. BURNESON:   Do you have the court order by  
17      Judge Stewart?

18              THE COURT:    Oh, I don't -- I don't know that I  
19      do.   I thought I did, but I don't know where in all this  
20      stuff it is.

21              MS. BURNESON:   Well, it has in there very  
22      specific things that were violated by, you know, because  
23      we had an order --

24              THE COURT:    Well, do you have a copy of that,  
25      ma'am?

1 MS. BURNESON: Yes, I do. It's in this book,  
2 I don't --

3 THE COURT: Can you get it for me?

4 MS. BURNESON: I will look for it.

5 MR. LANE: May I address that just for a  
6 moment, Judge?

7 THE COURT: Sure.

8 MS. BURNESON: Sir, let me --

9 MR. LANE: What happened was Judge Stewart at  
10 one time interpreted these documents as saying that --  
11 that all -- all votes, motions and votes had to be  
12 recorded in the minutes.

13 THE COURT: Oh, and I have that as Exhibit A  
14 of something else that she filed.

15 MS. BURNESON: Right.

16 THE COURT: From 2000 -- yeah, go ahead,  
17 please.

18 MR. LANE: And but the fact that the motion  
19 and vote is not recorded in the minutes doesn't -- isn't  
20 relevant as to whether there's a principle/agent  
21 relationship between the -- the association and the  
22 attorney. It may not have been recorded, the association  
23 very well may have violated Judge Stewart's order by not  
24 recording it, but the -- all the -- the board members and  
25 the attorney all come in and say we have a contract, they

1 probably still have a contract. And there may be some  
2 violation, there may be some other sanction, in fact,  
3 there's a district court case pending with respect to  
4 that right now, some other sanction, but it doesn't mean  
5 that in fact, there wasn't a contract between the  
6 association and the attorney.

7 MS. BURNESON: The question is, sir, Your  
8 Honor, is --

9 THE COURT: Are you talking about Judge  
10 Kenneth Stewart's ruling from June 30<sup>th</sup> of 1993 in the  
11 matter of 90 CV 247, which is a --

12 MS. BURNESON: Right. Correct, sir.

13 THE COURT: -- four page document? Yes,  
14 ma'am.

15 MS. BURNESON: And it has been brought again  
16 because the -- our board fails to follow the contempt of  
17 charges. I mean, how -- it -- why wouldn't, if a judge  
18 makes a ruling, whether it's 1993 or 2002, why wouldn't  
19 that still be in effect? Why --

20 THE COURT: Well, show me in the ruling where  
21 it says --

22 MS. BURNESON: -- do we have --

23 THE COURT: -- they can't do this.

24 MS. BURNESON: I'm sorry, what?

25 THE COURT: Show me, you've got it there, I'm

1 reading it, show me --

2 MS. BURNESON: Okay.

3 THE COURT: -- what paragraphs says they can't  
4 do it.

5 MS. BURNESON: Can't do what?

6 THE COURT: What you're objecting to, the  
7 hiring of this man.

8 MS. BURNESON: Okay. Well, --

9 THE COURT: Or Mr. Lane or any other attorney.

10 MS. BURNESON: The association shall report  
11 all motions and votes taken at the board of directors  
12 meeting.

13 THE COURT: Where are you reading it? I said  
14 what paragraph?

15 MS. BURNESON: That's number 11, I'm sorry,  
16 page two.

17 THE COURT: Okay. So you have board of  
18 directors meetings, all right.

19 MS. BURNESON: Associa -- okay. And that  
20 would be a vote that the attorneys have been hired, that  
21 there is a contract.

22 THE COURT: Are you assuming a fact not in  
23 evidence there, ma'am?

24 MS. BURNESON: I'm sorry, what?

25 THE COURT: Are you assuming a fact not in

1 evidence then?

2 MS. BURNESON: I didn't understand that.

3 THE COURT: Well, are you saying that a -- the  
4 association can't hire an attorney without having a  
5 motion and votes?

6 MS. BURNESON: That's correct.

7 THE COURT: Where is that?

8 MS. BURNESON: That is exactly correct. It is  
9 in our bylaws and in our covenants.

10 THE COURT: Where is that in your bylaws?

11 MS. BURNESON: Well, it -- when I put two  
12 other people on the stand I will be able to --

13 THE COURT: Well, I'm just asking you right  
14 now.

15 MS. BURNESON: All mat -- okay, then let me  
16 sit here and I will read this. I didn't mark that part.  
17 The other thing that they have not done, the treasurer  
18 shall keep proper books of account in compliance with  
19 section of the bylaws.

20 THE COURT: Well, I gotta tell you, that has  
21 nothing to do with whether they're hired. You might have  
22 a complaint against their treasurer.

23 MS. BURNESON: Okay. Just a minute. Let me  
24 go back to the bylaws.

25 THE COURT: But it wouldn't be an issue about

1 these -- about this agency relationship. Okay.

2 MS. BURNESON: The books, records and -- by  
3 not being able to -- what we always were trying to get  
4 through many of the letters to Mr. Moeller was to get  
5 access and also the letters to Mr. Lane was to get access  
6 to the books and records. And were they ever --

7 THE COURT: Well, again, that's something that  
8 doesn't affect this relationship, it affects your  
9 complaint.

10 MS. BURNESON: Well, it does on bringing the  
11 legal fees up because every time we requested to see the  
12 books and records, the managing agent would have to call  
13 Mr. Moeller or they called Mr. Lane and so the books and  
14 records were not open and that's why I incurred so much  
15 of the legal fees.

16 THE COURT: All right. Well, you can't --  
17 it's not here and I've read through here. I don't see  
18 anything about any of these matters.

19 MS. BURNESON: That they have -- okay. Just a  
20 minute.

21 THE COURT: And I don't see anything in Judge  
22 Stewart's ruling. That's why I brought it up, I don't  
23 see it.

24 MS. BURNESON: About them having to take a  
25 vote in public about the -- just a minute.

1 THE COURT: I don't know if they have a vote  
2 in public on a -- to hire an attorney.

3 MS. BURNESON: Can we take a short break while  
4 I just read this?

5 THE COURT: No, it's okay, ma'am. I'm just  
6 asking a question. Let's proceed in other areas, ma'am.  
7 The objection is sustained. You may proceed in other  
8 areas, ma'am.

9 MS. BURNESON: Well, my main -- I mean, okay.

10 Q (By Ms. Burneson) Mr. Moeller, you have at one  
11 time you -- we asked for our -- a statement of our, of  
12 the legal fees and things like this. This is Defendant's  
13 -- may I approach?

14 THE COURT: Yes, have you shown Mr. Lane what  
15 you wish to show the witness?

16 MS. BURNESON: Yes, I did. I gave him a copy.

17 THE COURT: Then you may.

18 Q (By Ms. Burneson) Mr. Moeller, --

19 MS. BURNESON: Well, here, I've got one for  
20 the Judge.

21 THE COURT: Okay. Isn't this the same as --

22 MS. BURNESON: It might be.

23 THE COURT: Yes, except you've got some notes.  
24 Ma'am, why don't you keep that. You've got some notes  
25 looks like you want to use.

1 MS. BURNESON: Oh, I can -- I have it on --

2 THE COURT: No, go ahead and take that back.

3 I've got the exhibit here already. What is that, Exhibit  
4 10? Yeah. Let's not admit another exhibit of the same  
5 thing.

6 Q (By Ms. Burneson) Would you be able to clarify  
7 we -- we did not understand how the billing and what are  
8 the blackened out things that were on the copy?

9 A Ms. Burneson, there's a thing called  
10 attorney/client privilege and so certain portions may  
11 have been redacted to protect that privileged  
12 information.

13 Q So preparation, on page three, preparation of  
14 letter to board regarding review of motion for temporary  
15 restraining order filed by Burneson regarding same,  
16 telephone -- that's -- preparation of -- you didn't mark  
17 out other things that -- preparation of correspondence to  
18 association regarding -- preparation of correspondence to  
19 association. On page four, you --

20 A Is there a question that you have for me?

21 Q I -- yeah, I just wondered why that was  
22 blackened out.

23 A I think I've answered that.

24 Q I mean, do you just kind of go through here and  
25 just randomly decide what is client privilege information

1 even though this is our bill?

2 A I don't think it's a random act, but I do  
3 decide what is client privilege.

4 Q But this was on our accounting bill on what  
5 this was for. I mean, this is how we were billed?

6 A This is how you were billed. This is a copy of  
7 those things that were billed against your account,  
8 correct.

9 Q And we did not need to know what that was  
10 regarding? Could be regarding anything.

11 A Well, it's -- I don't know what it's regarding  
12 because I blacked it out. I have a copy that is not  
13 blacked out obviously, but it is a -- there is an  
14 attorney/client privilege that I am sworn to protect.

15 Q And who's your -- and who's your client?

16 A My client is the entity, the Dam East  
17 Homeowners Association.

18 Q And I'm a part of the --

19 A It's a non-profit corporation.

20 Q -- homeowners -- and I am a part of the Dam  
21 East Homeowners Association; is that correct?

22 A You are --

23 MR. LANE: Objection to the form of the  
24 question, mis --

25 THE COURT: Sustained.

1 Q (By Ms. Burneson) Am I --

2 MS. BURNESON: What? You objected to it?

3 Sustained?

4 THE COURT: No, sustained.

5 MS. BURNESON: So I can go on?

6 THE COURT: To other areas. Sustained means  
7 that you can't -- but that question the way you asked it  
8 is not allowed.

9 Q (By Ms. Burneson) Am I a member of the Dam East  
10 Homeowners Association?

11 A I don't know.

12 Q You --

13 A When I started this lawsuit, yes, you were.

14 Q I still live there and I still pay dues, don't  
15 I?

16 A I'll take your word for that then. I -- I  
17 don't know.

18 Q That would --

19 A I haven't been in this case for over seven  
20 months.

21 Q Okay. Even -- even when -- back when this was  
22 prepared, I was a homeowners association member and you  
23 knew that?

24 A Correct.

25 Q Okay. So your client privilege is between the

1 board of directors or between the association?

2 A The entity is run by a board of directors.

3 Q So are you representing the board of directors  
4 or are you representing the association?

5 A I'm representing the association as an entity.

6 Q Okay.

7 A I did represent the association as an entity.  
8 I don't currently.

9 Q Okay. You do have a copy of the contract that  
10 was signed -- that -- that Mr. Lane gave you a copy of;  
11 is that correct?

12 A Which contract are you referring to?

13 Q The one that was signed on January 2000.

14 A Exhibit 9?

15 Q Yes, I think that's the only contract that we  
16 have.

17 A I do have a copy of that, yes.

18 Q Okay. So that's being ad -- I --

19 MS. BURNESON: If I want that admitted also in  
20 as an exhibit it doesn't have to be entered again, does  
21 it? Because it's already been done by Mr. Lane?

22 THE COURT: Exhibit 9 has been admitted.

23 MS. BURNESON: Okay. And it --

24 THE COURT: Period.

25 MS. BURNESON: -- would count -- okay. So as

1 long as we have a copy of that.

2 Q (By Ms. Burneson) Okay. The contract -- you  
3 were supposed to be representing the association and the  
4 contract states -- let me look here at the contract, just  
5 a moment.

6 MS. BURNESON: I'm looking for that contract.  
7 Maybe it's right here. I'm looking for the contract that  
8 was signed on 2001 and I'm not finding -- I know it's up  
9 here but I'm -- that's what's taking so long. If  
10 somebody would like to tell me which sheet it was on,  
11 that would speed things up. Oh, right here, I'm sorry.  
12 I found it. Okay.

13 Q (By Ms. Burneson) The contract that you have is  
14 representing the Dam East and the contract states you  
15 cannot represent the board of directors or the owners; is  
16 this correct?

17 A I don't know where you're looking so I -- I'd  
18 have to read it to see if that's what it says.

19 Q I think it's right there under services. Firm  
20 shall serve as special legal counsel to the association.  
21 We do not represent the board of directors or the owners.

22 A I think we established that already.

23 Q Is that -- is that correct?

24 A I think we already asked those questions and we  
25 represented the -- the association.

1           Q     Only the association, but you cannot represent  
2 the board of directors.

3           MR. LANE:    I'm gonna ask that that comment be  
4 stricken, that's not what it says.

5           THE COURT:   Sustained.

6           MR. LANE:    It says they don't, doesn't say  
7 they can't.

8           MS. BURNESON:   They do --

9           THE COURT:    The time really is to ask  
10 questions, ma'am, so I have to sustain the objection.

11          MS. BURNESON:   But I asked him if that was  
12 correct.

13          A     I don't know what you're referring to, but  
14 again, I represented the association as an entity.

15          THE COURT:    Asked and answered.

16          MS. BURNESON:   Okay.

17          A     I see where you're looking now and again, it  
18 does say the board -- we do not represent the board of  
19 directors or the owners. It does not say we can't.

20          Q     (By Ms. Burneson) But your contract did not  
21 include them?

22          A     The contract is at it stands. It's an exhibit.

23          Q     Okay. So it's all in how it's interpreted.

24          A     The contract says the firm shall serve as  
25 special legal counsel to the association. We do not

1 represent the board of directors or the owners, period.

2 Q We do not --

3 A That's the first sentence of the contract.

4 Q Okay. But we do not represent them. After --  
5 after a delinquent account is turned over, if you look at  
6 paragraph -- or A under 3 on page three.

7 A Okay.

8 Q It says after a delinquent account is turned  
9 over to firm, contact firm upon receipt of any and all  
10 payments from said owner and refer all contact with  
11 owners to firm. If we have not yet mailed a demand  
12 letter or filed a lien or prepared a lawsuit, we will  
13 charge for the portion of work performed by calculating  
14 the time spent by attorneys and paralegals at their  
15 hourly rate. Once we mail a demand letter, file a lien  
16 or prepare a lawsuit, we charge the full flat fee. Isn't  
17 a lien all that's necessary to protect the interest of  
18 the association?

19 MR. LANE: Object, Judge, as to relevancy.

20 THE COURT: Response, ma'am?

21 MS. BURNESON: I'm --

22 THE COURT: What relevancy does it have,  
23 ma'am?

24 MS. BURNESON: What does it have?

25 THE COURT: What relevancy does this have?

1 MS. BURNESON: Oh, why more legal fees are  
2 necessary if the amount is just charged on setting the  
3 lien, why -- why are there other necessary legal fees?  
4 If a lien can collect the past assessments that are not  
5 paid, why would that -- why would it be necessary --

6 THE COURT: Can you answer that question, sir?

7 A I'm not sure what the question is.

8 THE COURT: I'm not either. I'll sustain the  
9 objection.

10 MS. BURNESON: Okay.

11 Q (By Ms. Burneson) My question is, after you  
12 place a lien on a house for the assessments owed, why  
13 would further legal actions be necessary?

14 A Well, at the board's discretion, rather than  
15 foreclose on your home and take your property there is an  
16 option of pursuing other legal remedies personally  
17 against you.

18 Q And did the board vote to decide to go -- was  
19 there ever a vote taken by the board of directors on  
20 whether to just leave the lien or to keep charging legal  
21 fees?

22 MR. LANE: Objection, relevance.

23 THE COURT: Sustained.

24 MS. BURNESON: I'm getting confused, Your  
25 Honor.

1 THE COURT: Well, it -- it doesn't make any  
2 difference. The issue is --

3 MS. BURNESON: Does sustain mean I can go on  
4 or does sustain mean that he's right?

5 THE COURT: Yeah, you can go on other areas,  
6 but not that. I --

7 MS. BURNESON: Okay. So sustained means I  
8 can't go that way, okay. I got ya.

9 THE COURT: (inaudible).

10 Q (By Ms. Burneson) The -- the relevant -- why is  
11 it necessary to -- are legal fees used to keep homeowners  
12 from complaining?

13 A I -- I don't use them that way. I don't know  
14 what you're --

15 Q I'm sorry, go ahead.

16 A I -- I don't understand that question  
17 necessarily, but we charge legal fees because that's what  
18 I do for a living.

19 Q Right.

20 A When I do work -- when I'm hired by a client to  
21 do work, I charge that client legal fees. And it has  
22 nothing to do with trying to control owners.

23 Q But you also gave advice to the association.  
24 They looked to you for their advice, --

25 A I --

1 Q -- their legal advice?

2 A As their attorney I did give legal advice to  
3 the association.

4 Q And many times -- many times you gave legal  
5 advice without being aware of Judge Stewart's contemptive  
6 orders; is that correct?

7 A I don't know.

8 MR. LANE: Objection, relevancy.

9 THE COURT: Sustained.

10 Q (By Ms. Burneson) What -- could an association  
11 use legal fees as a way to -- as a way to not have any  
12 person complain?

13 MR. LANE: Objection, speculation, relevance.

14 THE COURT: Could, yes, anything is possible.

15 MS. BURNESON: Uh-huh.

16 THE COURT: I'll always note that, but that  
17 question would be speculative. I'll sustain the  
18 objection.

19 MS. BURNESON: Okay.

20 Q (By Ms. Burneson) Are you aware that the filing  
21 of a lien was used by the association for years before Ed  
22 Burns and you started charging additional legal fees  
23 against delinquent homeowners?

24 MR. LANE: Objection, relevancy.

25 THE COURT: What relevance would it have,

1 ma'am? If it's a legal avenue that the principle can  
2 take, --

3 MS. BURNESON: But --

4 THE COURT: -- what difference does it make  
5 what they used to do? If they have the ability to do it,  
6 they can do both, all or none of it, right?

7 MS. BURNESON: Not without a vote of the --  
8 that's the whole point, sir.

9 THE COURT: Well, I'm gonna sustain the  
10 objection. Go ahead in other areas.

11 Q (By Ms. Burneson) Where in your contract did  
12 you have, the one dated 2000, December does it spell out  
13 who has the authority to approve your legal fees?

14 MR. LANE: Objection, Judge, it assumes --

15 THE COURT: Approve legal? I'm sorry.

16 MR. LANE: Objection to the form of the  
17 question.

18 THE COURT: Sustained.

19 MS. BURNESON: Okay.

20 Q (By Ms. Burneson) Does your contract have --  
21 who -- who approves the legal fees?

22 A What legal fees?

23 Q The legal fees that you charge the homeowners  
24 if they're delinquent or for whatever reason? Who -- who  
25 approves those fees?

1           A     Well, we are hired by the association.

2           Q     Okay.

3           A     We have an engagement letter which is in front  
4 of you as Exhibit 9.

5           Q     Uh-huh.

6           A     That states what our hourly fees are, as well  
7 as our flat fees. And so by them executing that and by  
8 them hiring us, --

9           Q     And who hired you; one person or the board?  
10 Did they do it by a vote or was it one person because  
11 only one person's signature is on this contract?

12           MR. LANE:    Object to the form of the question  
13 as compound.

14           THE COURT:   Sustained.

15           MS. BURNESON:   Okay.

16           THE COURT:   You've gotta break down your  
17 question so it can be answered without having to jump  
18 several hoops. It's sort of like how people complain  
19 sometimes about those old ballots on the -- on elections  
20 and yes means no and no means yes and maybe yes means yes  
21 and no. That's the problem with a compound question,  
22 ma'am. So try to break it down.

23           Q     (By Ms. Burneson) Who authorized what -- this  
24 contract?

25           A     We have a signed contract by Greg Silva, who at

1 that time was the president of the association.

2 Q And does Greg Silva have the authority to sign  
3 a contract as an individual?

4 MR. LANE: Objection --

5 Q As the president?

6 THE COURT: Well, now you're asking two  
7 different questions, ma'am.

8 MS. BURNESON: No, I --

9 THE COURT: Do you want to know as an  
10 individual or as president?

11 MS. BURNESON: Okay. Does he have a -- so I  
12 should just say one and then the oth -- ask the other  
13 question?

14 THE COURT: No, ma'am. I don't see where it  
15 says individual. It says title, president, Dam East HOA,  
16 right?

17 MS. BURNESON: Okay. I guess what we really  
18 need to come to is --

19 THE COURT: He's not signed --

20 MS. BURNESON: -- where are the --

21 THE COURT: -- this as an individual if he  
22 signed it as president Dam East HOA.

23 MS. BURNESON: But he does not have the  
24 authority under our bylaws --

25 THE COURT: No, I'm just answering you.

1 MS. BURNESON: -- to do that.

2 THE COURT: He's not signing as an individual.

3 MS. BURNESON: But he -- he cannot --

4 THE COURT: So are you asking --

5 MS. BURNESON: -- make that --

6 THE COURT: So what question are you asking of  
7 this gentleman?

8 MS. BURNESON: Okay. Let -- okay.

9 Q (By Ms. Burneson) Mr. Moeller, as president of  
10 the association, does he have the power to sign a  
11 contract without any -- without a vote?

12 A He has --

13 MR. LANE: Objection to the form of the  
14 question as to the word power. It really doesn't make  
15 any sense in this context.

16 Q (By Ms. Burneson) Does he have the authority to  
17 do it?

18 THE COURT: I'll allow that question.

19 A Absolutely. He's the president of the entity.  
20 And the entity is just a piece of paper filed someplace  
21 and there's a board of directors that acts on behalf of  
22 that entity. He was the highest ranking authority for  
23 that entity and therefore, has the power to sign  
24 documents on their behalf.

25 Q And was -- can he sign documents without their

1 knowledge?

2 A Without whose knowledge?

3 Q The board of directors.

4 A Well, I imagine --

5 MR. LANE: I'm gonna object -- as to the --  
6 first of all, foundation, because there's no foundation  
7 that it was signed without the knowledge of the  
8 association. We have the board members --

9 MS. BURNESON: We would like proof that it was  
10 --

11 THE COURT: Sustained.

12 MS. BURNESON: -- signed with knowledge.

13 THE COURT: I'll sustain the objection.

14 Q (By Ms. Burneson) Why was your law firm paid --  
15 authorized to put your legal fees in with the membership  
16 assessment account?

17 A Because that's the law.

18 Q That is the law that you can commingle fees?

19 MR. LANE: Objection to the form of the  
20 question.

21 THE COURT: Sustained.

22 Q (By Ms. Burneson) Is that co-ming -- what law  
23 is that?

24 A Colorado --

25 MR. LANE: To the form of the que -- objection

1 to the question because the prior question was -- the  
2 objection was sustained.

3 MS. BURNESON: Okay.

4 MR. LANE: So that's -- the answer's not in  
5 the record.

6 THE COURT: Sustained. That means you don't  
7 get to answer that -- you don't get to ask that question,  
8 ma'am. So there's nothing to base your question, your  
9 second question on. When I sustain it, it means it's not  
10 there. I can't consider it.

11 MS. BURNESON: Okay.

12 THE COURT: Because I'm not allowed to use it  
13 as a fact finder.

14 MS. BURNESON: Okay.

15 Q (By Ms. Burneson) Paragraph four on page four.

16 THE COURT: Of what document, ma'am?

17 MS. BURNESON: The same thing, the contract --  
18 or the agreement.

19 THE COURT: Thank you.

20 MS. BURNESON: Or their verbal --

21 THE COURT: Thank you, ma'am.

22 MS. BURNESON: What -- whatever it was called.  
23 It's what they've signed.

24 Q (By Ms. Burneson) It says client shall pay firm  
25 all expenses related to legal services, including, but

1 not limited to, photo copying, witness fees, courier  
2 charges, filing fees, reports, long distance calls,  
3 depositions, court reporters, appraisers, investigators,  
4 surveyors, da-da. Firm is authorized to incur such  
5 expenses on your behalf as it deems advisable up to \$100  
6 and will obtain your authority to exceed individual  
7 expenses over \$100. Whose -- what do you mean by your  
8 authority? Who is your authority?

9 A The client's.

10 Q And your clients are?

11 A The entity.

12 Q The association?

13 A Correct.

14 Q Okay. And how do you get their authority?

15 A Through the board of directors.

16 Q Through the board of directors.

17 A Or their managing agent.

18 Q Does that say that?

19 A Does it say what?

20 Q Is that what that says there? Or their  
21 managing agent?

22 A It -- I don't know where you're talking --

23 Q I mean -- huh?

24 A I don't see where you're looking at, so --

25 Q I'm looking at para -- number four on page

1 four. Where does it say the managing agent or one member  
2 of the -- of -- I mean, who is your authority?

3 MR. LANE: Judge, I object to relevance. I  
4 don't think there's a charge on the bill for a cost in  
5 excess of \$100.

6 MS. BURNESON: It's where they get their  
7 authority. Where do they get the authority. That is  
8 what is in question. That is why this has gone on for so  
9 long.

10 MR. LANE: Judge, if there's no charge on the  
11 bill in excess of costs of \$100, it doesn't make any  
12 difference. It's not relevant.

13 THE COURT: Client shall pay for (inaudible)  
14 including these things. Firm (inaudible) incur expense  
15 on behalf of (inaudible) -- no, it's over \$100, ma'am.  
16 It meant that under \$100 they didn't have to tell them  
17 what it was. I'll sustain the objection.

18 MR. LANE: Look at page seven of Exhibit 10  
19 lists the costs, there's no (inaudible) over \$100.

20 MS. BURNESON: There have been charges over  
21 that.

22 THE COURT: Objection sustained. Go to other  
23 areas, ma'am. This area is not one to pursue.

24 MS. BURNESON: Okay. But there was not -- the  
25 reason it isn't is because there's nothing on there that

1 proves --

2 THE COURT: Because I made a ruling, ma'am.  
3 Please go on to other areas.

4 MS. BURNESON: Okay. You -- were you aware  
5 that -- were you aware of the charges on Judge Stewart --  
6 wait just a minute. Were you aware that your contract  
7 was not ratified by any board of directors as required by  
8 the associates (sic) covenants and bylaws and Judge  
9 Stewart's and Hickman's orders --

10 MR. LANE: Objection to the form of the  
11 question. Assumes evidence --

12 THE COURT: Sustained.

13 MR. LANE: -- not in evidence.

14 MS. BURNESON: May I ask the Court as you're  
15 reading the documents what is relevant?

16 THE COURT: All of evidence is relevant until  
17 by objection found not to be relevant, ma'am.

18 MS. BURNESON: I know, but what -- but so far  
19 it seems as if we don't have to know that the board had  
20 to have permission.

21 THE COURT: Well, what difference does it make  
22 for him? He's the attorney for goodness sakes.

23 MS. BURNESON: He's the one that represented  
24 them.

25 THE COURT: So what?

1 MS. BURNESON: The association.

2 THE COURT: I've just made my rulings, ma'am.  
3 It's irrelevant to him.

4 MS. BURNESON: So it may be irrelevant to him,  
5 but not irrelevant to other people? I could ask that of  
6 somebody else? Possible?

7 THE COURT: Ma'am, I'm not here as your  
8 attorney.

9 MS. BURNESON: No.

10 THE COURT: I can't give you legal advice.  
11 All I can do is sustain or overrule objections, ma'am.  
12 Move on to other areas if you have any other areas. If  
13 not, I'll let the witness be redirected.

14 MS. BURNESON: I'm through at this time, but I  
15 reserve the right to recall him at a later time.

16 THE COURT: Well, no, ma'am. If you have  
17 questions, please ask him now, because he has asked me  
18 because he has other trials tomorrow and I can't mess up  
19 other dockets. If you have other questions, you ask him  
20 now. I'm not gonna allow you to recall it. This is old  
21 Perry Mason where you'd ask the judge I can recall him  
22 and the judge had nothing else to do and --

23 MS. BURNESON: I thought --

24 THE COURT: -- no -- nobody else had anything  
25 else to do. If you have questions, ask the witness now.

1 MS. BURNESON: What if more questions come up  
2 later that -- from what other people have to say --

3 THE COURT: Well, he's under --

4 MS. BURNESON: -- and him to verify it?

5 THE COURT: That's why he's under subpoena,  
6 ma'am.

7 MS. BURNESON: I'm sorry, what?

8 THE COURT: He's under subpoena. But if you  
9 have any legitimate questions to ask him now, ask him  
10 now.

11 MS. BURNESON: If I -- do I still have the  
12 right to recall him at a later time if more questions  
13 arise?

14 THE COURT: If there are legitimate reasons  
15 why. It is not based on things you just forgot to ask.  
16 Yes.

17 MS. BURNESON: I would say probably --

18 THE COURT: All right.

19 MS. BURNESON: -- if (inaudible) things that  
20 were found sustained to be irrelevant might possibly be  
21 answered at a later date when they are later addressed  
22 again.

23 THE COURT: So Mr. Lane, do you have any  
24 questions of the witness on redirect?

25 MR. LANE: Yes, I do.

REDIRECT EXAMINATION

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BY MR. MOELLER:

Q Mr. Moeller, do you recall why in this case you sued Mrs. Burneson as opposed to Mr. and Mrs. Burneson both?

MS. BURNESON: Irrelevant. What has that to do with the whole case?

THE COURT: Overruled.

Q (By Mr. Moeller) Go ahead.

A Because she was the owner of the property, thereby becoming a member pursuant to the governing documents of the association.

Q And at some point did Mr. Burneson then get on title to the property also? Do you recall?

A That's my understanding.

Q And at that time did Mr. Burneson file something with Magistrate Petrie requesting that he be made a party also?

A He did.

Q And Magistrate Petrie denied that motion, isn't that correct?

A Correct.

Q Okay. And during the course of the litigation even prior to Mr. Burneson filing that motion, did it appear to you that he was directing the litigation on

1       behalf of Mrs. Burneson?

2               A       Absolutely.

3               MR. LANE:    No further questions.

4               THE COURT:   Now, this is an issue that I had  
5       left open for consideration.  That's why I allowed it,  
6       ma'am, over your objection, because my goodness, you're  
7       the one that -- or someone has to -- Mr. Burneson be  
8       brought in late as a co-defendant, which would make him  
9       legally liable I guess for the judgment as well.  So  
10      maybe I should ask without going through all of  
11      Magistrate Petrie's rulings and justification and I am  
12      not here to overturn Magistrate Petrie's ruling, counsel,  
13      what was your understanding of why Magistrate Petrie  
14      denied the inclusion of a second co-defendant so to  
15      speak?

16              MR. MOELLER:   You know, I'm trying to recall  
17      that, Your Honor, and I'm not sure if I remember exactly  
18      why.  I think that --

19              THE COURT:    I'm having difficulty now.  I'm  
20      scratching my head.

21              MR. MOELLER:   I think I wrote a motion or a  
22      response to his request to be put into the case and --  
23      and perhaps that could --

24              MR. LANE:     If I --

25              THE COURT:    I know Magistrate Petrie sent a

1 written order. Mr. Lane, do you have that?

2 MR. LANE: Well, I -- I think that the reason  
3 is, is because the Plaintiff has the right to choose who  
4 they want to sue and who they don't want to sue. And  
5 they didn't at that point want to sue Mr. Burneson.

6 This is the -- the relevancy today is and I  
7 think the Court had some questions about all of this  
8 correspondence with Mr. Burneson and what I'm trying to  
9 elicit from witnesses is the fact Mr. Burneson was  
10 pulling the strings with respect to this from the  
11 beginning. And -- and let me ask that question.

12 Q (By Mr. Lane) Did it appear to you that Mr.  
13 Burneson was pulling the strings with respect to this  
14 litigation on behalf of Mrs. Burneson from the very  
15 beginning?

16 MS. BURNESON: How is that relevant?

17 A Absolutely. He showed up at the pretrial  
18 conference.

19 MS. BURNESON: I object. Is that relevant?

20 THE COURT: Yes, ma'am. Very much so to a  
21 motion that I've held under advisement. Absolutely.

22 A He was at the pretrial conference. He held  
23 himself out as an attorney-in-fact for Ms. Burneson. He  
24 was at all time in my opinion he wrote and has written  
25 most of the correspondence and pleadings and very much

1 held himself out to be a -- a part of this and he tried  
2 his hardest to be a part of this case.

3 Q And in fact, other than the pleadings  
4 themselves, did Mrs. Burneson ever sign anything?

5 A Not that I'm aware of.

6 Q And on the mailing certificates for the  
7 pleadings, would Mr. Burneson typically sign the mailing  
8 certificates?

9 A Yes, he did.

10 Q Phone calls he received, do you recall ever  
11 receiving a call directly from Mrs. Burneson?

12 A No.

13 Q Do you recall ever receiving any written  
14 correspondence directly from Mrs. Burneson?

15 A I don't recall. Almost all of it certainly was  
16 from Mr. Burneson. I don't recall if she sent or signed  
17 any of it.

18 Q And at prior hearings that you've attended --

19 A Uh-huh.

20 Q -- has there always been an issue about Mr.  
21 Burneson sitting at counsel table with Mrs. Burneson?

22 A Absolutely.

23 Q And has it always appeared in your observation  
24 that Mr. Burneson was directing Mrs. Burneson --

25 MS. BURNESON: How --

1 Q -- with respect to litigation?

2 A I think the record will reflect that I objected  
3 many times to him directing her throughout the -- the --  
4 all the hearings that we held in this matter.

5 MR. LANE: I have no further questions.

6 MS. BURNESON: Your Honor, I have a question.

7 THE COURT: Yes, you may direct it to the  
8 witness if you have another question. Sure.

9 MS. BURNESON: If my husband had the time to  
10 be doing what I wanted -- what we did together, I mean,  
11 we are husband and wife and we agreed on these matters,  
12 is it relevant is the question?

13 THE WITNESS: Well, he was writing your --

14 MR. LANE: I think the question, Judge, is --

15 THE COURT: You're asking me the question.

16 MR. LANE: Well, and the --

17 THE COURT: I can't answer those questions  
18 because I'm not on trial, man, this gentleman's the  
19 witness.

20 MR. LANE: Well, and the -- it's not for the  
21 witness to say whether it's relevant or not. So I'll  
22 object on the basis of relevancy.

23 THE COURT: All right. Well, then there  
24 aren't any other questions. Thank you very much, sir.  
25 You may step down. What I would ask is if you would let

COUNTY COURT, ARAPAHOE COUNTY, STATE OF COLORADO

Case No. B00C4042, Division B-2

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TRANSCRIPT OF PROCEEDINGS HELD DECEMBER 18, 2002-VOL. II

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DAM EAST HOMEOWNERS ASSOCIATION,

Plaintiff,

v.

CARLA BURNESON,

Defendant.

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The above-entitled matter commenced on December 18, 2002, for hearing before THE HONORABLE STEPHEN RICHARD RUDDICK, Judge of the Arapahoe County Court.

This is a transcript of the proceedings recorded in this case on the above date.

APPEARANCES: For the Plaintiff:  
Jeffrey Lane, Esq.

For the Defendant:  
Pro Se

Transcript prepared by:

Kimberly C. McCright  
(720) 329-2207

TRANSCRIBER'S CERTIFICATION

STATE OF COLORADO        )  
                                  ) SS.  
COUNTY OF ARAPAHOE     )

I, Kimberly C. McCright, do hereby certify that I have listened to the tape recording of the foregoing; further, that the foregoing transcript, pages 1 through 163, were reduced to typewritten form from a tape recording of the proceedings held on December 18, 2002, in the Arapahoe County Court, in the matter of Dam East Homeowners Association v. Carla Burneson; and that the foregoing is an accurate record of the proceedings as above transcribed in this matter on the date set forth.

DATED this 13<sup>th</sup> day of February, 2003.

---

Kimberly C. McCright

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Transcript prepared by:

Kimberly C. McCright  
(720) 329-2207

1       either Mr. Lane or my staff know where you'll be so that  
2       if you are needed we can contact you tomorrow. You said  
3       you might be in Magistrate Petrie's division in the  
4       morning?

5               MR. MOELLER:    I will be in Magistrate Petrie's  
6       --

7               THE COURT:    Or is it the afternoon?

8               MR. MOELLER:    It was at 1:30. It's in the  
9       afternoon.

10              THE COURT:    Okay.

11              MR. MOELLER:    It's a 1:30 trial. And --

12              THE COURT:    Well, we'll be here tomorrow I  
13       suspect as well.

14              MR. MOELLER:    Okay. So I will be down two  
15       floors and down the hall tomorrow.

16              THE COURT:    All right. Okay.

17              MR. MOELLER:    But after that if I may be on  
18       call and I can give some numbers to Mr. Lane.

19              THE COURT:    All right.

20              MR. MOELLER:    Thank you, Your Honor.

21              THE COURT:    That way we preserve your request,  
22       ma'am, to --

23              MS. BURNESON:    Thank you.

24              THE COURT:    -- if you need him back. Thank  
25       you.

1 MR. MOELLER: Am I dismissed for the day?

2 THE COURT: Yes, sir.

3 MR. MOELLER: Thank you.

4 THE COURT: Next witness, sir?

5 MR. LANE: Christan Sowa, and I'll get her out  
6 in the hallway.

7 THE COURT: Now, as you come up to the witness  
8 stand, before entering please stop and raise your right  
9 hand.

10 CHRISTAN SOWA

11 called as a witness on behalf of the Plaintiff, having  
12 been first duly sworn, did testify upon her oath as  
13 follows:

14 THE COURT: Please be seated, ma'am.

15 DIRECT EXAMINATION

16 BY MR. LANE:

17 Q Would you state your name and business address  
18 for the record, please?

19 A My name is Christan Sowa, business address  
20 10020 East Girard Avenue, Suite 175, Denver, Colorado  
21 80231.

22 Q And who are you employed by?

23 A I'm employed by Western States Property  
24 Services.

25 Q And what is your occupation?

1           A     I'm the bookkeeper.

2           Q     And can you -- if you could tell the Court what  
3 your duties as a bookkeeper are.

4           THE COURT:   Hold on.  Let me have your name,  
5 ma'am.

6           THE WITNESS:  Christan, it's C-h-r-i-s --

7           THE COURT:  C-h-r-i-s --

8           THE WITNESS:  -t-a-n.

9           THE COURT:  t-a-n.

10          THE WITNESS:  Uh-huh.

11          THE COURT:  The last name?

12          THE WITNESS:  Sowa, S-o-w-a.

13          THE COURT:  All right.  Thank you, ma'am.  Go  
14 ahead, please.

15          Q     (By Mr. Lane) Can you describe for the Court  
16 what your duties as bookkeeper for Western States are?

17          A     I have numerous duties.  They go from all  
18 financial statements to preparation of dues, overlooking  
19 receivables.  Very broad.

20          Q     Is Western States the property management  
21 company that has been employed by Dam East Homeowners  
22 Association?

23          A     Yes, it is.

24          Q     Okay.  And is one of your duties with Western  
25 States to do the bookkeeping with respect to assessments

1 that come in?

2 A Yes, it is.

3 Q And how many owners does -- members does the  
4 Dam East Association have?

5 A I believe 423.

6 Q Okay. And do you maintain a ledger for each  
7 one of those owners?

8 A Each one of the units, yes.

9 Q Okay. And do you maintain a ledger for the  
10 unit that's now owned by Mr. and Mrs. Burneson at the  
11 time of these events was owned by Mrs. Burneson?

12 A Yes, I do.

13 Q Okay. And was it that Western States became  
14 the property manager for Dam East Homeowners Association?

15 A I believe the beginning of 2000, late 1999.

16 Q And are you familiar with the, and I'm gonna  
17 call it the Burneson Account?

18 A Somewhat. A lot of it is strictly handled with  
19 attorneys now.

20 Q Okay.

21 A But yes, I am familiar with it.

22 Q Have you had an opportunity in the last couple  
23 days to review the Burneson ledgers?

24 A Yes, I have.

25 Q And did you compile the results of your review

1 of those ledgers and account summary?

2 A Yes, I did.

3 MR. LANE: If I may approach the witness and  
4 the bench, Judge?

5 THE COURT: Yes, you may.

6 Q (By Mr. Lane) I'm going to hand you what's been  
7 marked as Exhibit 3.

8 MR. LANE: Actually, Judge, I think this is  
9 the original.

10 THE COURT: Thank you. Yeah, so it has the  
11 label on it.

12 MR. LANE: That's the problem with using a  
13 white label.

14 THE COURT: Yes, that's all right.

15 MR. LANE: But they are generic as to  
16 defendants or plaintiffs so it saves a little bit on  
17 overhead.

18 THE COURT: I think -- I wish I used those in  
19 court rather than the ones we have.

20 MR. LANE: Okay. I'll find out who the vendor  
21 is for you. But it won't do any good because the State  
22 doesn't have any money, so --

23 THE COURT: That's true. We'll soon just be  
24 marketing and we'll have to buy our own pencils pretty  
25 soon.

1 Q (By Mr. Lane) With regard to this account  
2 summary, are you -- do you have that in front of you,  
3 Exhibit 3?

4 A Yes, I do.

5 Q Is that a document that you prepared?

6 A Yes, it is.

7 Q And when did you prepare that document?

8 A I prepared that on December 18<sup>th</sup>.

9 Q And in order to --

10 A 19<sup>th</sup>, sorry.

11 Q -- prepare that document, what other documents  
12 did you review?

13 A Their entire ledger, account history, from the  
14 time that we picked up the association.

15 Q Okay.

16 MR. LANE: Judge, I would move for the  
17 admission of Exhibit 3.

18 THE COURT: Question or voir dire, ma'am?

19 MS. BURNESON: No.

20 THE COURT: Shall be admitted.

21 Q (By Mr. Lane) Now, you understand that there  
22 was a lawsuit originally brought against Mrs. Burneson  
23 for the collection of certain assessments?

24 A Yes, I am.

25 Q And that lawsuit was brought in May or June of

1 2000; is that correct?

2 A Correct.

3 Q Okay. Now, as we look at -- at the first few  
4 lines on Exhibit 3, I think there's five lines, and I  
5 want to walk the Court with you through this exhibit,  
6 there are five lines that total balance of \$1019.96. Can  
7 you go over for the Court what each of those five lines  
8 are?

9 A Sure. Previous management carryover balance  
10 when we picked up the association, again roughly in 1999,  
11 2000, that was their account balance. And we book that  
12 as a balance forward when we pick up the association  
13 without detail. Then there are late fees, those are late  
14 fees at \$.36 per occurrence. There are assessments at  
15 nine months at \$54. The special assessments bill is a  
16 \$300 special assessment, as well as a trash special. The  
17 amount owing there is \$157.70. And then the attorneys  
18 prepared the initial demand letter at \$72.

19 Q Now, the attorneys that prepared that demand  
20 letter were who?

21 A Winzenburg Leff Purvis & Payne.

22 Q Okay. And do you know about when that demand  
23 letter was prepared?

24 A I believe roughly in May 2000.

25 Q And when you add up those figures I believe the

1 balance is \$1019.96; --

2 A Correct.

3 Q -- is that correct? And to the best of your  
4 knowledge, was that the balance on the Burneson account  
5 at the time that this litigation started?

6 A Yes, it is.

7 Q Okay. And apparently then between June and  
8 January -- June 2000 and January of 2001, the Burneson  
9 account was kept current as to the \$54 a month payment;  
10 is that correct?

11 A Correct.

12 Q Okay. And that's the amount of the assessment,  
13 isn't it, \$54?

14 A Yes, it is.

15 Q As we go back on -- on the first five lines,  
16 excuse me, I forgot to ask a question, with regard to the  
17 special assessment, what was that for?

18 A Like again, it was \$1.70 for a one time trash  
19 special assessment and then I believe a pool special  
20 assessment at \$300. But at that time there was only \$150  
21 at (inaudible) to -- prior to June of 2000.

22 Q When this matter was referred to the Winzenburg  
23 firm for collection, was the amount of \$1019.96 the  
24 amount that was referred over?

25 A Yes.

1 Q Okay. And how did you make the decision to  
2 refer the account over to the Winzenburg firm?

3 A Once an account exceeds 90 days past due there  
4 is automatically a demand prepared.

5 Q And is that pursuant to the direction that you  
6 received in your management contract from the Dam East  
7 Homeowners Association?

8 A Yes, it is.

9 Q Were the Burnesons treated any differently than  
10 any other account?

11 A No, sir.

12 Q Okay. And as I -- and I think I asked this you  
13 already -- this of you already, but after the account was  
14 turned over to Winzenburg, did Burneson -- Burnesons then  
15 begin making payment on the monthly assessments as they  
16 became due?

17 A Sometime thereafter.

18 Q Okay. And in January 2001 what happened with  
19 respect to the account?

20 A They had made a large sum payment.

21 Q And did that pretty much pay off the balance of  
22 the assessments?

23 A Pretty much.

24 Q It looks like on the -- on Exhibit 3 they paid  
25 \$1009.70; is that correct?

1           A     Correct, with a balance owing of \$10.26.

2           Q     Okay. And was there -- that \$1009.70 was that  
3 applied to assessments or was that applied to legal fees?

4           A     We are always directed to go ahead and put the  
5 monies towards legal fees first, late fees and then  
6 assessments.

7           Q     In this particular case though, as I  
8 understand, you sued for \$1019.96?

9           A     Correct.

10          Q     \$250 attorneys fees and \$66 costs, is that your  
11 understanding?

12          A     Correct.

13          Q     And when you took in the \$1000, was there any  
14 particular notation on the payment when you received it  
15 as to where it was to be applied?

16          A     No restrictions.

17          Q     Okay. And you applied it to the account in  
18 general?

19          A     I believe so, yes.

20          Q     Okay. And did that leave a balance either in  
21 legal fees or assessments, one or the other?

22          A     Yes, it did.

23          Q     Okay. Now, this \$1019.96 or \$1009, excuse me.  
24 \$.70 payment did not take into consideration the \$250  
25 that was assessed for commencement of the lawsuit or the

1 \$66 in filing fee and service of process, did it?

2 A No.

3 Q Okay. And when you say balance due without  
4 legal fees \$1026, that's exclusive of the \$250 and \$66;  
5 is that correct?

6 A Yes.

7 Q Okay. Now, since May -- and let me ask you  
8 another question, did -- did that pay up then through May  
9 of 2000 or June of 2000?

10 A Well, it paid through May.

11 Q Okay. So June 1<sup>st</sup> there would be another  
12 assessment due?

13 A I believe there were a special assessment due,  
14 but it paid the \$54 of that June balance.

15 Q So since May of 2000 what has been assessed to  
16 the Burneson account?

17 A There's been 30 months at \$54, which total  
18 \$1620. The remainder of the special assessment, again,  
19 there was an additional \$1.80 trash special assessment.  
20 Again, if you look at the beginning portion it was a \$300  
21 pool special assessment, so you see the remainder \$150  
22 build. And then again, \$2.16 of late fees which are at  
23 \$.36 per occurrence. And that brings you to a total of  
24 \$1784.22.

25 Q Now, --

1                   THE COURT:    When you say pool (inaudible)  
2   that's the swimming pool that's like at the clubhouse or  
3   --

4           A     Yes.

5           THE COURT:    So it's fixing the pool?

6           A     Pool renovations, yes.

7           THE COURT:    Okay.  Go ahead, please.

8           Q     (By Mr. Lane) Now with respect -- the first  
9   line on the page that the previous management, the  
10  carryover balance, \$308 -- or \$302.82, have you ever  
11  received any correspondence from the Burnesons objecting  
12  to or contesting that original balance?

13          A     No.

14          Q     And when the payment was made in January of  
15  2001, was there any correspondence included in that  
16  payment which -- which would have led you to believe they  
17  were objecting to the amount of that carried over  
18  balance?

19          A     I don't believe so.

20          Q     Okay.  Now, as I read this Exhibit 3 then, the  
21  charges since May 2000, the \$1784.22, were there payments  
22  made?

23          A     Yes, there has been a total of \$1100 -- \$1,138  
24  in payments made.

25          Q     And have those payments more or less been made

1 monthly?

2 A They have been made on a monthly basis, yes.

3 Q And I assume there were a few payments that  
4 were not made for some certain months; is that correct?

5 A Yes. There were a few payments missed after  
6 January 29<sup>th</sup> of 2001.

7 Q Do you recall how many exactly?

8 A I do not.

9 Q Okay. And then at some point the payments  
10 resumed at \$54 a month?

11 A Correct.

12 Q Okay. And when you subtract the charges for  
13 the payments from the charges, is there a balance due  
14 that excludes attorneys fees?

15 A \$646.22.

16 Q Okay. And with respect to attorneys fees, have  
17 there been charges on the Burneson account for attorneys  
18 fees from June of 2000 to April 30<sup>th</sup> of 2002?

19 A Yes, sir.

20 Q And were those attorneys fees that were  
21 incurred by the association by -- through their contract  
22 with the Winzenburg firm?

23 A Yes, they were.

24 Q And can you explain to the Court how that  
25 mechanism of charging the Burneson account for those

1 attorneys fees happens?

2 A Yes. Western States receives a billing  
3 directed to Dam East Homeowners Association. When we  
4 receive that billing in our office, we go ahead, there's  
5 a complete matter recap broken down of who is charged  
6 what amount for the work that was done by the attorneys.  
7 We therefore pay the attorneys for the work that they  
8 have done and charge it back to the homeowners and wait  
9 for reimbursement.

10 Q And why do you do it that way?

11 A Because to do further work, the person  
12 performing what they're doing needs to get paid for it.  
13 The association will then wait for the funds to be  
14 received so they continue to do work for the association.

15 Q And has the Dam East Association authorized you  
16 to do it in that manner?

17 A Yes, they have.

18 Q Okay. Have they ever objected to you doing it  
19 in that manner?

20 A No, they have not.

21 Q Okay. And did you have an opportunity to total  
22 up all of the attorneys fees that were charged the  
23 Burneson account from June of 2000 through May 1<sup>st</sup> of  
24 2002 or April 30<sup>th</sup> of 2002?

25 A Yes, I did. They totaled \$5,559.93.

1           Q     So at the present time what is the total  
2 balance owed on the Burneson account?

3           A     Assessments through December of 2002 and legal  
4 fees through April of 2002 total \$6,206.15.

5           Q     Now, at some point when the Winzenburg firm  
6 left this case and my firm entered their appearance you  
7 stopped charging the account for attorneys fees on a  
8 monthly basis, isn't that correct?

9           A     Correct. Reason being is a lot since -- a lot  
10 of the legal fees have not been recouped from the  
11 Burnesons, the association is now expensing it until we  
12 come to some process that we can expense it again back to  
13 the homeowner.

14           THE COURT:    May I ask what expensing it is?

15           A     As far as putting it on the ledger to show that  
16 they have to pay the fees now that the association has  
17 already paid.

18           Q     (By Mr. Lane) And there's a reason the  
19 association made that accounting decision to take care of  
20 it that way?

21           A     Not necessarily, no.

22           Q     Okay.

23           A     I take that back. One of the main reasons is  
24 Mr. Burneson always comes in requesting a copy of the  
25 ledger. Every time he does so he causes somewhat of a

1       havoc coming in.

2               MS. BURNESON:    Objection.   How relevant?

3               THE COURT:     Explain that to me.   His coming in  
4       causing havoc.   How does this change of expensing it this  
5       way versus the old way change that?

6               MR. LANE:     Actually, Judge, I'm gonna object.

7               THE COURT:     Okay.

8               MR. LANE:     Because it's not responsive to the  
9       question.

10              THE COURT:     That's what I was trying to figure  
11       out --

12              MR. LANE:     The question was if there was an  
13       accounting reason.

14              THE COURT:     -- is how that works.   All right.  
15       Then it will be sustained.

16              MR. LANE:     And anything outside of --

17              THE COURT:     Oh, wait a minute.   Both  
18       objections win.

19              MR. LANE:     I'll withdraw the question.

20              THE COURT:     All right.

21              MR. LANE:     Okay.

22              Q     (By Mr. Lane) Does the Burneson payment that  
23       comes in now on a monthly basis, is it typically directed  
24       to be applied to a certain portion of the account?

25              A     Yes.   Every payment that we have received after

1 January 29<sup>th</sup> of 2001 does have a restricted endorsement  
2 to apply it to a specific month's maintenance fee.

3 Q And have you done that?

4 A Yes, we have.

5 Q Now, with respect to that January payment that  
6 was made, if it was applied to assessments they still in  
7 your mind owe legal fees; is that correct?

8 A Correct. You can interrupt it many ways.

9 Q And if it was applied to legal fees, in your  
10 mind they still owe assessments, isn't that right?

11 A Yes.

12 Q Okay. So, if in fact they owe the legal fees  
13 and they owe assessments, it doesn't make any difference  
14 really from an accounting standpoint which it was applied  
15 to, does it?

16 A No, it does not.

17 Q Okay. And with respect to Exhibit 3, are these  
18 figures on that exhibit true and accurate to the best of  
19 your knowledge, taking into consideration your review of  
20 the underlying documents?

21 A Yes, it is.

22 Q Okay.

23 MR. LANE: I have no further questions.

24 THE COURT: Any questions of the witness,  
25 ma'am?

1 MS. BURNESON: Yes, I do.

2 CROSS-EXAMINATION

3 BY MS. BURNESON:

4 Q Ma'am, I'm searching here for --

5 THE COURT: You have -- you have overloaded  
6 yourself with documents over there.

7 MS. BURNESON: Well, if I could have a  
8 secretary it would have helped.

9 THE COURT: My goodness.

10 MS. BURNESON: I --

11 THE COURT: There's hardly any room left on  
12 the table.

13 MS. BURNESON: I'm not as trained as the  
14 person --

15 THE COURT: No, I'm just noticing.

16 MS. BURNESON: -- (inaudible) or as confident  
17 --

18 THE COURT: That's all right. You ought to  
19 see my -- you ought to see my desk in the office, it's --  
20 it's worse than yours there. But I know where everything  
21 I have is, so I assume that's -- it helps, yes.

22 MS. BURNESON: I would too if I was in my  
23 classroom, which I would be more comfortable at than  
24 here.

25 THE COURT: Well, take your time, ma'am.

1 Q (By Ms. Burneson) How do you say your last  
2 name?

3 A Sowa.

4 Q Sowa?

5 A Sowa.

6 Q Okay. I'll try to get that right. Okay. Ms.,  
7 Mrs.?

8 A Ms.

9 Q I am confused. In fact, most of the things  
10 that we have received I'm -- the previous management  
11 carryover balance, from what -- what date did that occur?  
12 For the last two years we had paid monthly our  
13 assessments.

14 Q You would have to review a copy of your ledger  
15 from the previous management company.

16 Q For -- when did you begin covering the Dam --

17 A I believe the end of 1999 when we picked up  
18 that balance.

19 Q Okay. So from 1999 though we paid -- we're --  
20 the previous -- oh, previous management co -- okay. That  
21 was from the other one. Then we had late fees. Was that  
22 from the other? Okay, that wasn't. That was recent.  
23 Assessments. Of what date is that -- that -- you have at  
24 the top of that page, what date is that reflecting?

25 A This is a summary, so we'd have to look at a

1 complete compiled detailed ledger, but it -- they are  
2 assessments nine months prior to June of 2000.

3 Q And have we made -- has my husband made the  
4 request many times when he has come in to get a ledger  
5 report?

6 A He has received a copy of his ledger every time  
7 he has made a request.

8 Q With explanations of what it is or it looks --  
9 do you ha -- did you bring any records -- you're just  
10 speaking today from a lot of memory. I mean, I can  
11 hardly remember sometimes what happened a week ago.

12 A I have a great memory.

13 Q But you have a great memory. You can remember  
14 all the accounts in the Dam East, four hundred and thirty  
15 some odd of them and you --

16 THE COURT: No, 425 she said.

17 Q 425. You can remember 425 and you know exactly  
18 -- you know the nu -- without bringing any records with  
19 you about what -- how can you answer my questions without  
20 more records in front of you?

21 A Because I have a --

22 MR. LANE: Objection, that's argumentative.

23 THE COURT: Well, she can answer it. I'm sort  
24 of curious. I'll let her answer. I'll overrule the  
25 objection. Can you answer that, ma'am?

1           A     Yes. I sat down to compile this account  
2 summary and yes, I do have a very good memory. When you  
3 sit down to compile an account summary you are detailing  
4 specific charges.

5           Q     That's what we have been asking for is detailed  
6 specific charges for many times. Is there a reason why  
7 we --

8           THE COURT:   Well, wait a minute now.

9           MR. LANE:    I'll object to that statement and  
10 ask --

11          THE COURT:   Sustained.

12          MS. BURNESON:   Okay.

13          THE COURT:    You're not asking her a question.

14          Q     (By Ms. Burneson) Balance of June 2000 was  
15 \$1019.96 and then there was a payment made on January  
16 29<sup>th</sup>, 2001 and I believe you stated under oath to Mr.  
17 Lane that there was no direction of how that \$1009.70 was  
18 to be applied.

19          A     I don't believe so.

20          Q     See, that's why I'm wondering about, you know,  
21 how do you remember all this stuff, because there was a  
22 letter dated January 25<sup>th</sup> and it was hand delivered to  
23 the Western States Property Service, Inc.

24          MR. LANE:    We would object to the question  
25 because it's not a question.

1           THE COURT:    I lost track of that question.  I  
2   guess I have to sustain it, it was so compounded I --  
3   convoluted I couldn't remember it.

4           MS. BURNESON:   Well, I haven't really asked  
5   the question yet.  I'm trying to be aware that there was  
6   a letter --

7           THE COURT:    Why don't you ask another  
8   question, ma'am?

9           MS. BURNESON:   Okay.  How does he talk so long  
10   and I only get two seconds?  That's -- and it says --

11          MR. LANE:     Judge, I'd ask that that be  
12   stricken from the record.

13          MS. BURNESON:   Okay.  Strike it.

14          THE COURT:     Sustained.

15          Q     (By Ms. Burneson) Enclosed is my check for the  
16   amount of \$1048.70 to be credited to Carla Burneson's  
17   account to the following manner: Monthly assessment --

18          MS. BURNESON:   Oh, here, excuse me.  I'm  
19   totally wrong.  I need to give everyone a copy of this.  
20   I'm sorry.  Just a minute.  I thought I had more than one  
21   copy of it, Your Honor.  Now, I wonder if I pulled them.  
22   (inaudible) period.  May I approach?

23          THE COURT:     Yes, please.  Thank you.  You're  
24   doing very well, ma'am.

25          MS. BURNESON:   Thank you.

1           Q     (By Ms. Burneson) Does this designate where  
2 that money was to be spent?

3           A     Well, first of all, it isn't even the amount of  
4 the payment that was received.

5           Q     Very close though?

6           A     No, not at all.

7           Q     \$1019 and one thousand, what was it?

8           A     Payment --

9           Q     \$1019.96?

10          A     -- you submitted was \$1009.70.

11          Q     \$1009.

12          A     And you're saying you submitted \$1048.70.

13          Q     I'm sorry, what? You -- Could you repeat that?

14          THE COURT:    No, I heard it.

15          MS. BURNESON:   Well, I didn't hear -- I didn't  
16 hear it.

17          THE COURT:    Well, it's pretty clear, ma'am.

18          MS. BURNESON:   No, I'm -- I'm sorry --

19          THE COURT:    She said \$1009.70 you -- was  
20 submitted, but this letter says \$1048.70, so it was off  
21 by about what, \$39? \$39, I was right, huh?

22          MS. BURNESON:   Okay.

23          THE COURT:    Well, my -- my dad's controller  
24 skills come out on me every once in a while.

25          MS. BURNESON:   Well, -- okay. It's the

1 difference -- so maybe when he -- I don't under -- I  
2 don't know.

3 Q (By Ms. Burneson) Well, my question is did it  
4 say in here whether the amounts or not it was the payment  
5 that was made?

6 A I've never seen this letter before in my life.

7 Q Really? Well, then it should be something  
8 that's somewhere in there.

9 MR. LANE: Judge, I'm gonna ask that the  
10 comment really be stricken from the record. It's  
11 inappropriate.

12 THE COURT: Sustained. She says she can't  
13 identify it, never seen it before, can't bring it in  
14 through this witness.

15 Q (By Ms. Burneson) So you never saw it?

16 A I don't believe so, no.

17 Q You don't believe so or you did not see it?

18 A I do not believe I have seen this record, no.

19 Q Okay. And you do not believe that there was  
20 any letter attached to the check that specified where the  
21 money was to be spent?

22 A No.

23 Q Okay. Then when you go down to charges since  
24 May 2000, monthly assessments \$1620. That was paid or  
25 that was outstanding?

1           A     That's how many assessments were on the ledger  
2 after May 2000.

3           Q     Okay. And that means that they were paid?  
4 That they were paid --

5           A     Not necessarily.

6           Q     How do I know if they were paid or not? How  
7 can I tell on here what was paid and what wasn't paid?

8           A     You would have to look at the detailed ledger.

9           Q     That's what I was -- that's what we were  
10 wanting -- we subpoenaed to come to court. How come, you  
11 know, --

12           MS. BURNESON:   Your Honor, how do I get the  
13 ledger here at court?

14           MR. LANE:     I'd suggest maybe she ask. The  
15 rule is the summary goes into evidence if in fact it's  
16 supported by the underlying documents are available in  
17 court and I've got the ledgers right here at counsel  
18 table and ask for them.

19           THE COURT:    Well, I'll assume she did. You ay  
20 --

21           MS. BURNESON:   Okay.

22           THE COURT:    -- would you show them to the  
23 witness --

24           MR. LANE:     Sure.

25           THE COURT:    -- or show them to the Defendant

1 at this point.

2 MR. LANE: I'm handing Mrs. Burneson what's  
3 been marked as Exhibit 1 and Exhibit 2.

4 THE COURT: Based -- I assume we'd have no  
5 objection to admission of these then, ma'am?

6 MR. LANE: I haven't offered.

7 THE COURT: I know you haven't offered, but  
8 when you do, since you're gonna be looking at them,  
9 ma'am. Go ahead, please.

10 Q (By Ms. Burneson) Could you --

11 MS. BURNESON: Okay. Do I mind being -- them  
12 being admitted? Is that what you asked --

13 THE COURT: No, he hasn't moved them, but you  
14 wanted to look at the underlying documents and then you  
15 can cross-examine her based on whether the account  
16 summary matches the underlying documents or not.

17 Q (By Ms. Burneson) I guess from -- okay. See, I  
18 -- I -- maybe you could explain these documents to me.  
19 Can I --

20 MR. LANE: I have copies for the witness.

21 THE COURT: All right.

22 MS. BURNESON: Okay.

23 MR. LANE: And also I have a copy for the  
24 Court. The record should reflect I'm tendering for the -

25 -

1                   THE COURT:    But you haven't moved to admit  
2                   them, so why don't you just give her the copy and leave  
3                   me out of it at this point.

4                   MR. LANE:    I'm handing to the witness what  
5                   have been marked as Exhibit 2 and Exhibit 1.

6                   Q    (By Ms. Burneson) Now these are from '98 to  
7                   '99; is that correct?

8                   A    You're looking at the previous management  
9                   records and I believe so.

10                  Q    But I'm wanting to know how -- wait a minute,  
11                  maybe this is -- okay. Wait a minute. This is the one  
12                  on the current one, right? Okay. Could you explain  
13                  where the special assessments, that \$151.80, isn't that  
14                  added into our dues each month? Isn't that the trash  
15                  assessment?

16                  A    No.

17                  Q    What is the \$151.80?

18                  A    It is a total -- there was a pool assessment.

19                  Q    Uh-huh.

20                  A    If you look at page two on the ledger compiled  
21                  by Western States Properties Services.

22                  Q    Page two, okay.

23                  A    You'll see the first special assessment amount  
24                  in the amount of \$50 --

25                  Q    Uh-huh.

1           A     -- was applied March of 2000.

2           Q     Right.

3           A     It will continue to be expensed on the account  
4     at \$50 increments until the account reaches \$300, which  
5     is assessed to every homeowner with the Dam East.

6           Q     Wasn't that paid all -- I believe in our  
7     account all paid at one time? Does everybody pay that  
8     out every month? Is that a special assessment? I  
9     thought that was a one time assessment and it was paid  
10    \$300, it's one total fee.

11          A     What's your question?

12          Q     Was that -- was the \$300 special assessment a  
13    one time fee?

14          A     It could have been paid in increments of \$50  
15    per month.

16          Q     And how --

17          A     Or it could have been paid at one time in whole  
18    of \$300 on April 1<sup>st</sup> of 2000.

19          Q     How was it decided it would be paid? \$300 at  
20    one time or as a \$50 per month -- however -- how --  
21    special assessment, is that -- would that be how we got  
22    behind on our dues is because there was a special  
23    assessment we didn't know anything about?

24          A     No.

25                MR. LANE:    Objection to the form of the

1 question.

2 THE COURT: Sustained.

3 MR. LANE: There's no way (inaudible) thing  
4 now.

5 MS. BURNESON: Well, she said she knows all  
6 about this account.

7 THE COURT: No, she doesn't know it. You  
8 know, ma'am. or what other owners will.

9 MS. BURNESON: Well, she's the one that  
10 charges it or she's in -- was a special -- was a special  
11 payment --

12 THE COURT: No, I've sustained the objection.  
13 Stop, stop, stop, stop, stop.

14 Now, we're on tape, you can't interrupt me  
15 anymore than anyone else. You know, at least give me  
16 that respect.

17 Now, that was sustained, so you have to go to  
18 something else. Thank you.

19 Q (by Ms. Burneson) Was there a -- was there a  
20 special notice sent out each time there's a \$50 fee  
21 charges?

22 A No.

23 Q Okay. We do have a booklet that we sent in  
24 each month with our payment. Correct? We have a -- like  
25 a sub -- that we -- I have a little sheet that tells you

1 that -- that this payment is being sent in to your  
2 management company. It's a little tear off --

3 A Western States Pro -- Dam East submits 12  
4 months of coupon books to its homeowners once a year.

5 Q Okay. Okay. And they are sent to your office?

6 A Payments are received through Western States  
7 Property Services.

8 Q That's correct. On the tra -- on the special,  
9 that \$50 special assessment, what notification were --  
10 was given to homeowners on -- I know that -- I know about  
11 the \$300 assessment, but I thought that that was paid  
12 when we paid our dues. So how does a homeowner know that  
13 they had a \$50 special assessment if you didn't send  
14 notice out?

15 THE WITNESS: I don't know how to answer that,  
16 Judge. I know what she's getting to.

17 THE COURT: Well, you say she doesn't know how  
18 to answer that question, ma'am.

19 MS. BURNESON: Okay.

20 THE COURT: Do you want to reform your  
21 question?

22 MS. BURNESON: Okay.

23 Q (By Ms. Burneson) Well, I'm just asking how a  
24 homeowner knows that they owe the special assessment of  
25 \$50 when it's due?

1           A     It was a special assessment of \$300 and there  
2 was a notice of special assessment mailed to the  
3 homeowners.

4           Q     That's correct. Why on ours is it broken into  
5 \$50 increments?

6           A     Like I referenced earlier, homeowners had a  
7 choice. It was a \$300 special assessment over a period  
8 of so much time. You could either pay it in full in  
9 advance or you could make \$50 increment payments. Your  
10 account looks like everyone else's when it comes to the  
11 special assessment.

12          Q     When did we make that choice? I did not --

13          A     You --

14          Q     I never made that.

15          A     You, the board, who?

16          Q     I never -- I never made that choice. That's  
17 what I'm asking.

18               MR. LANE: I'm gonna object to the tone of the  
19 question, Judge.

20               THE COURT: Sustain the objection. Also, what  
21 relevance would it have whether you agreed to pay \$50 a  
22 month every month for x number of months or pay \$300?  
23 I'll sustain the objection.

24               MS. BURNESON: When you think that --

25               THE COURT: This is not getting us anymore.

1 Let's proceed on to other areas.

2 MS. BURNESON: Okay. When you think that  
3 you're getting -- when your account is -- when you  
4 believe that your account is current and a \$50 assessment  
5 is being added onto it without the homeowner being aware,  
6 that can incur legal fees. That is relevant.

7 THE COURT: No, ma'am. Not -- not in this  
8 situation. It -- it -- she said either pay \$300 up front  
9 or you had a choice of paying \$50 a month. You didn't  
10 pay it up front, you didn't pay it after every month.  
11 Who cares. Please go on to other areas.

12 Q (By Ms. Burneson) All right.

13 THE COURT: Sir, those comments you're making  
14 to her really aren't relevant to her testimony. It might  
15 be relevant to the final argument, but quite frankly,  
16 even on final argument they've already sort of given a  
17 hint to you. What difference does it make? So please go  
18 on to other areas with her, but remember, she's not here  
19 to be anything but a witness answering questions that she  
20 can answer.

21 MS. BURNESON: But --

22 THE COURT: And she's the bookkeeper talking  
23 about what the fees are, not those other issues that you  
24 might want to raise then.

25 Q (By Ms. Burneson) Okay. Have you ever had --

1                   THE COURT:    And all I'm telling you that is so  
2   that you can sort of get yourself on track.

3                   Q     Have you ever had accounting classes?

4                   A     Yes.

5                   MR. LANE:    Objection, irrelevant.

6                   THE COURT:   Well, asked and answered.

7                   Q     (By Ms. Burneson) When you are doing the  
8   accounting books for the Dam East Homeowners Association,  
9   are you using a software, accounting software program,  
10  that guides your entries into it?

11                  MR. LANE:    Objection, irrelevant.

12                  THE COURT:   Sustained.

13                  Q     (By Ms. Burneson) How do you know where the  
14  charges are to be put on a member's account?  Is there a  
15  program that puts it in or is there a person?

16                  MR. LANE:    Objection, irrelevant.

17                  THE COURT:   Sustained.

18                  Q     (By Ms. Burneson) Who instructed you to debit  
19  certain charges to individual homeowners?

20                  MR. LANE:    Objection, irrelevant.

21                  THE COURT:   I'll allow the question.

22                  A     Can you repeat that, please?

23                  Q     (by Ms. Burneson) Who instructed you to debit  
24  certain charges to individual homeowners?

25                  A     Always board of directors.

1 Q Who specifically with the board of directors?

2 A The board on a whole. There's never been any -  
3 - anyone individually.

4 Q The board as a whole signs the paper and ag --  
5 so the board as a whole; is that correct?

6 A Yes.

7 Q How did they do this, verbally or did they do  
8 it with a boat?

9 MR. LANE: Objection, relevance.

10 THE COURT: I'm gonna allow the question.

11 MR. LANE: Judge, I'm gonna object to the form  
12 of the question also, because it -- it -- do they do it  
13 verbally or do they do it via -- via note suggest that  
14 there's no other way could be doing it.

15 THE COURT: Well, that's true. All right.  
16 I'll sustain the objection.

17 Q (By Ms. Burneson) Do you get there -- when you  
18 find where the charges are to be, how do you -- how --  
19 how did the board report that to you?

20 A Well, the only really charges on an account are  
21 number one, maintenance fees; number two, late fees; and  
22 number three, legal fees in certain cases. Monthly  
23 maintenance fees are recurring on a monthly basis at a  
24 specific charge which is a budgetized item that's done at  
25 the beginning of a fiscal year. Late fees are set by the

1 board of directors. If an assessment is late after a  
2 certain point, it's due on the 1<sup>st</sup>, I'm referencing Dam  
3 East, late after the 29<sup>th</sup>, there's \$.36 at that time, the  
4 board has increased the late fees to \$10. They are  
5 specifically assessed.

6 The only other fee is a legal fee and I  
7 explained that earlier. When we receive a billing from  
8 the attorney, the association expenses what the attorneys  
9 have done as far as in payment and we therefore bill it  
10 out of the account.

11 Q And you have a written agreement with the board  
12 on that?

13 A I believe so.

14 Q Okay. So you have --

15 A I'm not sure.

16 Q Okay. A written agreement?

17 A I did not say I have a written agreement. I  
18 said I'm not sure.

19 Q I believe so? Is that what you said, I believe  
20 so?

21 A I don't know.

22 Q Okay. I don't know if there's a written  
23 agreement between the board and your property management,  
24 right?

25 Did you ever have a board member discuss the

1 commingling of attorney fees and the individual  
2 assessment of a homeowners account?

3 MR. LANE: Object to the form of the question.

4 THE COURT: Sustained.

5 Q (By Ms. Burneson) Did a board member ever --  
6 are attorney fees and individual assessments commingled?

7 MR. LANE: Objection to the form of the  
8 question as to what commingling means.

9 THE COURT: Sustained. I don't know what that  
10 means.

11 Q (By Ms. Burneson) The attorney -- are the  
12 attorneys being -- okay. Did you ever -- did a board  
13 member ever discuss mixing the attorney fees in with the  
14 individual assessments to where they become one charge?

15 A No.

16 MR. LANE: Objection to the form of the  
17 question. It assumes that they become one charge. That  
18 hasn't been the testimony.

19 THE COURT: Yes. But she's already answered  
20 it though and she said no.

21 MS. BURNESON: She said no?

22 THE COURT: I heard the word no.

23 MS. BURNESON: I thought she said that they  
24 were put in there and that legal fees were paid first.

25 THE COURT: No, ma'am. No, now that's not

1 what she said. That's not what you asked and that's not  
2 what she answered. Go on to other areas. We'll listen  
3 to what the answer is and what your question is.

4 Q (By Ms. Burneson) Okay. Legal fees are paid  
5 before the assessments when a -- when a payment is made  
6 and there are legal fees, the money goes first to the  
7 assess -- to the legal fees before they pay down the  
8 assessment; is that correct?

9 MR. LANE: Judge, I'm gonna object as to  
10 relevance, because the testimony is that every payment  
11 made in this particular case has gone as directed by the  
12 owner, unless there was no direction. In which case, it  
13 would go to legal fees first, costs second -- or late  
14 fees second and assessments third. Was always stamped --

15 THE COURT: Sustained then.

16 MS. BURNESON: Okay.

17 THE COURT: Doesn't seem to have any  
18 relevance.

19 MS. BURNESON: Goes to legal fees first, okay.

20 Q (by Ms. Burneson) On that accounting record  
21 that Mr. Lane gave me, is it Exhibit 2, who approved the  
22 charges against our -- against my account?

23 A Exhibit 2 is the previous management company.

24 Q Oh, I'm sorry. I'm sorry. Exhibit 1.

25 A What charges?

1 MR. LANE: Objection. Asked and answered,  
2 Judge.

3 THE COURT: Sustained.

4 MS. BURNESON: It was asked and answered?

5 THE COURT: It's already been asked, it's  
6 already been answered.

7 MS. BURNESON: On who approved the legal  
8 charges?

9 THE COURT: Yes. Isn't that what you  
10 remember, Mr. Lane?

11 MR. LANE: That's my recollection, Judge.  
12 It's all been explained how those charges came on there.

13 Q (By Ms. Burneson) Did you bring in any  
14 documents requested by the subpoena?

15 A I was never served with a subpoena.

16 Q I know, they couldn't find you.

17 MR. LANE: Objection, Judge. First of all,  
18 the question's in bad faith and I -- I think --

19 THE COURT: Yes, especially if she didn't have  
20 a subpoena.

21 MR. LANE: -- the -- that Ms. Burneson should  
22 be instructed with respect to that. And secondly, her  
23 comment certainly should be stricken from the record.

24 THE COURT: They will be.

25 MS. BURNESON: I'm through with the witness at

1 this time, but I hold them -- I'd like to be able to  
2 redirect later if I need to, when maybe we have more of  
3 the records.

4 THE COURT: Once again, you can ask them  
5 questions now, but I will not give blanket pardon to  
6 people to just bring back witnesses time again for things  
7 they forgot or things they should have asked.

8 MR. LANE: This witness is not under subpoena.

9 THE COURT: If she's not under subpoena, then  
10 I don't have any power over her, ma'am.

11 MS. BURNESON: Okay, that's fine.

12 THE COURT: I didn't realize that, because  
13 under subpoena she -- I can't keep her at all. Sir, do  
14 you have any other questions?

15 REDIRECT EXAMINATION

16 BY MR. LANE:

17 Q With respect to the Burneson account, as the  
18 bookkeeper for Western States have you ever done anything  
19 that wasn't -- that wasn't at the direction of the  
20 association through its board of directors?

21 A No.

22 MR. LANE: I have no further questions.

23 THE COURT: Ma'am, you may step down. You're  
24 free to go.

25 THE WITNESS: Thank you.

1 MR. LANE: May I have my copies of Exhibits 1  
2 and 2 back, please? Thank you.

3 MS. BURNESON: Your Honor, is she free to  
4 discuss this with the other witnesses that will be coming  
5 in?

6 THE COURT: No, she's free to go, but that's  
7 it.

8 MS. BURNESON: Oh. I thought that you said  
9 that no witnesses could be -- could discuss what was --

10 THE COURT: I just said no, she can't, but  
11 she's free to go now.

12 MS. BURNESON: Oh, I just was asking that  
13 question.

14 THE COURT: That was my order. I would assume  
15 no one would dare violate it.

16 MR. LANE: Judge, we'd call Frank Silva,  
17 unless the Court wants to take a recess. He's gonna take  
18 about 15 minutes.

19 THE COURT: Let's proceed.

20 MS. BURNESON: I need to use the restroom,  
21 sir.

22 THE COURT: Well, all right.

23 MS. BURNESON: May I have five minutes?

24 THE COURT: Five minutes. Before 4:30 comes  
25 and -- all right. When that says 4:30, let's be getting

1 back.

2 MS. BURNESON: And I also need water. I don't  
3 know where I get that.

4 THE COURT: Okay. Well, we do have a  
5 foundation outside, ma'am. It's on the north side of the  
6 building.

7 MS. BURNESON: Okay.

8 THE COURT: We'll be in recess.

9 (Recess in proceedings)

10 THE COURT: All present, we're back on record.  
11 And sir, you may call your next witness.

12 MR. LANE: Judge, I have one matter I'd like  
13 to address --

14 THE COURT: Sure.

15 MR. LANE: -- beforehand. There's around  
16 (inaudible) people out in the hallway, some of whom are  
17 under subpoena and some of whom -- I think the subpoenas  
18 are questionable, but nonetheless, they've felt the  
19 obligation to stay here. Miss, I'm gonna call Mr. Silva  
20 next, I anticipate maybe 15, 20 minutes with him. There  
21 will be some cross-examination. Can these folks get home  
22 and --

23 THE COURT: Absolutely.

24 MR. LANE: -- avoid rush hour?

25 THE COURT: Thank you for the cour -- would

1       you please tell them they all can -- we'll reconvene  
2       tomorrow at 1:30?

3               MR. LANE:     And I guess that begs another  
4       question.  I don't know how to go about this, but  
5       obviously eight people aren't gonna all testify at 1:30  
6       and we've got these folks all kind of inconveni --

7               THE COURT:    No, that sure is true.

8               MR. LANE:     Their subpoenas are all -- say be  
9       here at 1:30 Wednesday, Thursday and Friday, which is  
10       three days for five minutes of testimony.

11              THE COURT:    Well, tomorrow -- I assume this is  
12       your last witness?

13              MR. LANE:     This is my last witness.

14              THE COURT:    We'll hear -- we'll deal with that  
15       and then I'll need to have an offer of proof of what  
16       eight or 11 or however many witnesses there are, what --  
17       why they're here or what their purpose is.

18              MR. LANE:     Okay.

19              THE COURT:    And then we may just start  
20       tomorrow and decide that, because they've already been  
21       inconvenienced by being here all day today.

22              MR. LANE:     So tell them all to be back --

23              THE COURT:    But I know Ms. Burneson could not  
24       have known how long the case would take.  So I --

25              MR. LANE:     Oh, I understand that.

1 THE COURT: -- if you could just ask them --  
2 or tell -- thanks from the Court and please go home  
3 however they'd like to go for the evening and come back  
4 tomorrow and we'll -- we'll sort through who needs to be  
5 here and who doesn't.

6 MR. LANE: I'll do that. Thank you.

7 THE COURT: Thank you. And quite frankly, I  
8 appreciate you doing that, sir.

9 (Pause in proceedings)

10 MR. LANE: I told the witnesses to -- if  
11 they're under subpoena to be here at 1:30, if they're not  
12 under subpoena they're under no obligation to be here.

13 THE COURT: That's right. Thank you, sir.

14 MR. LANE: They can or not as they please.

15 THE COURT: I appreciate that very much.

16 MR. LANE: And I also informed that the Court  
17 would do -- attempt to do some scheduling at 1:30  
18 tomorrow so people would know when to be here.

19 THE COURT: All right.

20 MR. LANE: We would call Greg Silva.

21 THE COURT: Thank you. Sir, as you come up to  
22 the witness stand but haven't yet entered, please raise  
23 your right hand.

24 GREG SILVA

25 called as a witness on behalf of the Plaintiff, having

1       been first duly sworn, did testify upon his oath as  
2       follows:

3                   THE COURT:    Please be seated, sir.

4                                   DIRECT EXAMINATION

5       BY MR. LANE:

6           Q     If you'll state your name and business address  
7       for the record.

8           A     Greg Silva, and the business address we keep is  
9       the managing company's address, which is I believe on  
10      East Girard.

11          Q     And are you a member of the Dam East Homeowners  
12      Association?

13          A     Yes.

14          Q     And your membership is by virtue of the fact  
15      that you own property in that neighborhood, isn't that  
16      correct?

17          A     Yes.

18          Q     And are you -- have you been active in the  
19      board, in the management of the association?

20          A     I believe a month after I moved in I've been  
21      active since.

22          Q     And were you elected to the board of directors?

23          A     Let me clarify that.  A month after I purchased  
24      my home I've been active.

25          Q     Okay.  And -- and according to the documents of

1 the Dam East Association you can be a director but don't  
2 necessarily have to be a resident?

3 A That is correct.

4 Q So if you owned a winter property in there for  
5 instance you could still be on the board of directors?

6 A That is correct.

7 Q Have you been an officer of the corporation?

8 A Yes and again, the same answer as before; a  
9 month after.

10 Q And the Dam East Homeowners Association is a  
11 Colorado not for profit corporation, isn't it?

12 A Correct.

13 Q Okay. And as far as you understand it's in  
14 good standing, isn't it?

15 A Correct.

16 Q Okay. And when were you first elected to the  
17 board of directors of that corporation?

18 A I want to say it was either November -- I want  
19 to say November of '99. October, November of '99,  
20 because we purchased the home in September of '99, so  
21 I'll say October/November of '99 is the first time.

22 Q And after you were elected as a member of the  
23 board of directors, were you also elected by the board of  
24 directors as an officer?

25 A Correct. The board of directors appointed me

1 as president.

2 Q Okay. And when was that?

3 A That would have been December of '99.

4 Q And how did your term as -- strike that. Have  
5 you been continually since November of '99 been on the  
6 board of directors?

7 A Correct.

8 Q And have you at times been the president and at  
9 times not?

10 A I've only not been the president as of the last  
11 meeting you attended. I believe that was last -- well  
12 actually this month, December.

13 Q So you've only had the pleasure of not being  
14 the president the last week or so, isn't that correct?

15 A Correct.

16 Q And are you familiar with the declaration of  
17 covenants and restrictions with respect to the Dam East  
18 Homeowners Association?

19 A Yes.

20 Q And are you also familiar with the bylaws of  
21 the corporation?

22 A Yes.

23 Q I'm handing you what's been marked as Exhibit  
24 4. If I may approach the bench and the witness?

25 THE COURT: You may.

1                   MR. LANE:    Record should reflect I tendered to  
2 Ms. Burneson, the witness and the Court what's been  
3 marked as Exhibit 4.

4                   THE COURT:   I don't have the original.  That's  
5 okay.

6                   MR. LANE:    You know --

7                   THE COURT:   Because now you've taught me to  
8 feel the paper and see if I have the original.

9                   MR. LANE:    And I -- and I --

10                  A    I have the original.

11                  MR. LANE:    Oh, we can't have that.

12                  THE COURT:   I'll tell you, I'll switch.  I'll  
13 switch.

14                  Q    (By Mr. Lane) Do you recognize that document?

15                  A    Yes.

16                  Q    Okay.  Can you tell the Court what that  
17 document is?

18                  A    Declaration of covenants and restrictions for  
19 the Dam East Homeowners Association.

20                  Q    Okay.  And that document has a recording stamp  
21 on it indicating it was recorded January 13<sup>th</sup> 1971; is  
22 that correct?

23                  A    That is correct.

24                  MR. LANE:    We would move for the admission of  
25 Exhibit 4.

1 THE COURT: Any objection?

2 MS. BURNESON: No objection.

3 THE COURT: So granted. Exhibit 4 admitted.

4 MR. LANE: Somebody had messed with the order  
5 of my exhibits I had -- took me a second to find them.

6 A Can't imagine who that would have been.

7 MR. LANE: Mr. Silva.

8 Q I'm gonna hand the witness, if I may approach,  
9 what's been marked as Exhibit 6.

10 MR. LANE: Handing the Court the original  
11 Exhibit 6.

12 THE COURT: Thank you.

13 MR. LANE: And Ms. Burneson a copy of Exhibit  
14 6.

15 Q (By Mr. Lane) Mr. Silva, do you recognize  
16 Exhibit 6?

17 A Yes.

18 Q And can you tell the Court what Exhibit 6 is?

19 A Updated bylaws as of September 25<sup>th</sup>, 1996 of  
20 the Dam East Homeowners Association.

21 Q And have you had an opportunity in your  
22 capacity as president of Dam East Homeowners Association  
23 to review those bylaws?

24 A Yes.

25 MR. LANE: We'd move for the admission of

1 Exhibit 6.

2 A One thing, I don't recognize the Dam East Town  
3 home item that was stapled. I don't know if that was a  
4 mistake or --

5 Q That would be on page --

6 A One -- it's marked page one, it's at the end of  
7 our by -- bylaws.

8 Q Where it says Dam East Homeowners Association?

9 A The page after that it says Dam East Townhouse  
10 Association.

11 Q Resolutions relating to the board of directors?

12 A Correct.

13 Q Do you have any idea what those are?

14 A No. The only thing I can think of is if it was  
15 public record and it was pulled by mistake.

16 Q Okay.

17 MR. LANE: Judge, I would move for the  
18 admission of Exhibit 6 up to the page that says -- go up  
19 to page 20.

20 THE COURT: And then the (inaudible) resolution  
21 amendments of bylaws you're not asking to be admitted?

22 MR. LANE: I'm not asking that those be  
23 admitted.

24 THE COURT: Any objection to that limited  
25 admission?

1 MS. BURNESON: The Dam East Homeowners  
2 Association Inventory and Resolutions and Amendments to  
3 Bylaws --

4 THE COURT: Yeah.

5 MS. BURNESON: That's -- that's where it stops  
6 or is that --

7 THE COURT: Yes, that's where they want to  
8 stop and not consider the back part, just the front part.

9 MS. BURNESON: All right. Okay. So it's  
10 going to stop with page 20; is that correct?

11 THE COURT: Yes.

12 THE WITNESS: I don't have the page number,  
13 but --

14 THE COURT: Yes, that's what I'm saying.

15 MS. BURNESON: Okay.

16 THE WITNESS: Okay.

17 MS. BURNESON: Okay. Page 20 it stops. I  
18 will agree to that.

19 THE COURT: All right.

20 Q (By Mr. Lane) Now Mr. Silva, with respect to  
21 the law firm of Winzenburg Leff Purvis & Payne I believe  
22 it is, did the association hire that law firm to pursue  
23 collections for it?

24 A Yes.

25 Q And when did that take place?

1           A     At the December '99 board meeting.

2           Q     And were you present at that board meeting?

3           A     I'm sorry?

4           Q     Were you present at that board meeting?

5           A     Correct.

6           Q     Do you recall if there was a motion made to do  
7     that?

8           A     Yes.

9           Q     And do you recall who made the motion?

10          A     No, I do not.

11          Q     And do you recall what the vote on that motion  
12     was?

13          A     It was to go ahead and agree to the contract  
14     and terms.

15          Q     Okay. So the motion carried?

16          A     Correct.

17          Q     And --

18          A     And may I add it was a unanimous decision.

19          Q     And did you pursuant to that motion and vote of  
20     the board of directors sign the engagement letter with  
21     Winzenburg?

22          A     I believe it was dated January of 2000 which  
23     would have been maybe 25 days later.

24          Q     Okay. And you signed that in your capacity as  
25     president of the association; is that correct?

1           A     Correct.

2           Q     And are the other board members -- have the  
3 other board members in discussions with respect to the  
4 various litigation matters been aware that Winzenburg  
5 represents the association?

6           A     Have they been aware that they were -- they  
7 were our attorneys?  Yes.

8           Q     Correct.  And has any board member ever, ever  
9 objected to the execution of that engagement letter?

10          A     To any of the attorneys we've dealt with I've  
11 never had any objections.

12          Q     Okay.  And has any board member ever requested  
13 of you to repudiate the contract that you have or in some  
14 way tell the membership or the board that that contract  
15 doesn't exist?

16          A     No.

17          Q     And with respect to the charges that are  
18 outlined in the Winzenburg letter, is it your opinion as  
19 the president of the association and the purchaser of  
20 those services, indirectly, on behalf of the association,  
21 is it your opinion that those charges are reasonable?

22          A     Yes.

23          Q     And is it your opinion that those charges are  
24 necessary for -- in the collection of pass through  
25 assessments?

1           A     Yes.

2           Q     Now, with respect to the so called Burneson  
3     account, has this account ever been treated any  
4     differently than any other account for any other  
5     homeowner?

6           A     No, sir.

7           Q     Okay. Is it somewhat different in the manner  
8     and the course it's taken though?

9           A     Yes.

10          Q     Okay. And how is it different?

11          A     I want to be kind to my answer, but it's  
12     different in the fact that we've been harassed more by  
13     these clients than any other or I should say homeowners.

14          Q     Okay. And taking in consideration the  
15     difference between this account and other accounts, have  
16     you had any doubt that the charges by the attorneys that  
17     have been made have been reasonable?

18          A     I believe the -- all the charges have been  
19     reasonable.

20          Q     Okay. Now, does -- do the governing documents  
21     that the association give the board of directors the  
22     authority to manage the association?

23          A     Yes, they do.

24          Q     And do the governing documents also give the  
25     board of directors authority to hire management

1 companies?

2 A Yes, they do.

3 Q Do they give the board of directors the  
4 authority to hire other agents and managers?

5 A Yes, they do. In fact, I think this is what  
6 Ms. Burneson was looking for earlier when she was  
7 searching for our authority. And I believe it's Article  
8 Eight, Section 1(D).

9 Q Of the bylaws?

10 A Correct. Of the updated bylaws from '96.

11 THE COURT: Hold on just a moment.

12 A Yeah, I'm looking for it. It's Article Eight,  
13 Power and Duties of the Board of Directors, Section 1.  
14 The board of directors shall have power to -- and then if  
15 you continue to page seven, marked at the top, D, employ  
16 a manager, an independent contractor or such other  
17 employees as they deem necessary and to prescribe their  
18 duties.

19 Q Does the board of directors have the authority  
20 pursuant to the declaration to impose late fees and  
21 attorney fees on delinquent assessments?

22 A Yes, they do.

23 Q And can you point to the Court where that  
24 authority lies?

25 A It actually states it in three or four places

1 and I'm gonna go to the one that I've referenced already.  
2 And it is of the bylaws, Article 12, Section 1. And I  
3 know it repeats it also in the declaration of covenants,  
4 but I'm not exactly sure of the section. And I'm sorry,  
5 let me -- Article 12, Section 1, and I'm looking for it.

6 THE COURT: That's occasion to lien and  
7 personal obligations?

8 A Correct.

9 THE COURT: Yeah.

10 Q (By Mr. Lane) (inaudible) page 14?

11 A Yes, sir.

12 Q Okay. And does that language somewhat mirror  
13 the language that's in the declaration?

14 A It's almost verbatim.

15 Q And are you familiar with both of the  
16 declaration and bylaws, read them over before?

17 A Correct.

18 Q Is there anything in either the declaration or  
19 the bylaws that prohibits the association from assessing  
20 costs or attorneys fees with respect to the collection of  
21 delinquent assessments?

22 A No. In fact, it says that you can do that.

23 Q Okay. And Ms. Burneson raised earlier and I'm  
24 gonna ask a question about one of her questions, raised  
25 earlier the fact that the association has a lien right

1 with respect to these assessments. Is that your  
2 understanding also?

3 A Yes, it is.

4 Q Okay. And is there some reason -- had the  
5 board of directors ever discussed exercising that lien  
6 right as opposing to suing on the account?

7 A It's been discussed and I think it's -- well,  
8 I'll let you --

9 Q Have they come to a resolution with respect to  
10 that?

11 A No.

12 Q Have they ever come -- has the board ever deci  
13 -- made the decision that they're going to take this  
14 action as opposed to rest solely on the lien rights?

15 A They -- we -- well, we I should say as a board  
16 will typically take the action we think will be most  
17 effective.

18 Q Is that why you choose to take the action of  
19 retaining an attorney and suing on the account?

20 A I think the results are more immediate, whereas  
21 a lien can sit around for a while. I think the actions  
22 of an attorney would collect our fees back quicker or  
23 more quickly. I'm sorry, I'm not an English major.

24 Q To your knowledge as president of the  
25 association involved in the management of the

1 association, has the management company Western States  
2 ever acted outside the authority that the association has  
3 granted it?

4 A Not that I'm aware.

5 Q To your knowledge as the president of the  
6 association, has the law firm of Winzenburg -- I always  
7 get this confused, Winzenburg, Leff, Payne --

8 A Purvis & Payne.

9 Q -- Purvis & Payne acted outside the authority  
10 granted to it by the association?

11 A Not that I'm aware of.

12 Q And with respect to my law firm and myself,  
13 have either of us, that as an entity or myself as an  
14 individual, acted outside the scope of the authority  
15 granted to me or my firm by the association?

16 A Not that I'm aware of.

17 Q And has the association retained my firm with  
18 respect to this matter?

19 A Yes.

20 Q And can you tell the Court a little bit about  
21 in let's see, that would have been May of 2002, the  
22 effort that it took to hire an attorney to take over this  
23 case after Winzenburg withdrew?

24 A Yeah. And if I may add also, our --

25 MS. BURNESON: Excuse me, shouldn't there be a

1 question or is he just asking him to speak?

2 THE COURT: He did ask a question. You may  
3 proceed.

4 A Thank you. If I may add also, we had a similar  
5 issue with our management company as they also threatened  
6 resignation.

7 As you are well aware, our attorneys resigned  
8 as well. And in pursuing both a new management company  
9 and counsel, which was very difficult, the answer I  
10 always got was we will handle your case with the  
11 exception of the Burneson matter.

12 Q And -- and was it in May of 2002 did you have a  
13 trial pending or impending with respect to this matter?

14 A I believe that date is correct.

15 Q And it was set for trial, I believe, June 3<sup>rd</sup>;  
16 is that correct?

17 A In or around that time, correct.

18 Q And --

19 THE COURT: Court takes notice of its records.

20 Q (By Mr. Lane) And was there some exigency with  
21 respect to finding counsel to represent you on June 3<sup>rd</sup>?

22 A We had a difficult time finding counsel to  
23 represent us.

24 Q And did you understand as the president of the  
25 association and on behalf of -- and did the board

1 understand, that it might cost a little more money to get  
2 somebody to prepare for a trial in a week as opposed to  
3 somebody that had been on a trial on a case for years?

4 A Yes. And for the record, I think I contacted  
5 personally myself five different law firms and I know our  
6 secretary Jake Hummel also contacted different law firms.  
7 And we were -- nobody wanted to take the case.

8 Q And do you know approximately how much the  
9 association has paid me up through today?

10 A I don't believe we've paid you more than \$100  
11 or somewhere around there.

12 Q It's about \$4200, does that ring a bell?

13 A I'd have to go back and look at my records.

14 Q Okay.

15 A But if you say so.

16 Q Have we billed about \$4200?

17 A That's different, yes.

18 Q Okay. And as the -- the president of the  
19 association and the purchaser of those -- on behalf of  
20 the association of those attorneys services, do you feel  
21 that the fees that myself and my firm have charged have  
22 been reasonable and necessary?

23 A I'm gonna say more than reasonable.

24 Q Okay.

25 A I know what you go through.

1           Q     Do we have a lot of contact with regard to the  
2 Burneson matter?

3           A     Yes.

4           Q     How often do you and I speak about this?

5           A     I want to say every time we receive  
6 correspondence from either Carla or Jim Burneson and that  
7 could be more -- multiple times in one day.

8           Q     Now, as I understand it you have a file  
9 someplace with correspondence from Mr. Burneson; is that  
10 correct?

11          A     Yes.

12          Q     And that includes correspondence with respect  
13 to this case and with regard to other litigations that  
14 are pending or threatened, isn't that correct?

15                MS. BURNESON:   Your Honor, is this relative to  
16 the case?

17                THE COURT:    I would limit it to only matters  
18 involving this case, not other matters, counsel.

19          Q     (By Mr. Lane) With respect to this case only,  
20 MR. Silva, would it be uncommon for you to get  
21 communications from Mr. Burneson daily?

22          A     Yes. In fact, I have some -- I believe on  
23 counsel's table, from two, three days ago.

24          Q     Okay. I guess what I'm -- the question was  
25 would it be uncommon and I asked the reverse. Would it

1 be common for you to get communications daily?

2 A Yes.

3 Q And would it be common for you to get  
4 communications in excess of one communication per day?

5 A Yes.

6 Q And with regard to these communications, are  
7 they generally short or lengthy?

8 A Lengthy.

9 Q Okay. And in the course of this litigation,  
10 this county court litigation, have you ever received any  
11 communication, either by telephone or by letter, from  
12 Mrs. Burneson?

13 A No.

14 Q Have you received communications from Mr.  
15 Burneson indicating that he was acting --

16 THE COURT: Hold on. You're gonna have to ask  
17 your question once we get on tape again. (tape ends)

18 (Whereupon additional tapes for this day were  
19 not provided to transcriber; therefore, any remaining  
20 witnesses and/or evidence were not transcribed)