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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
11 IN AND FOR THE COUNTY OF MARICOPA

12 Desert Mountain Club, Inc.,  
13 Plaintiff,

14 vs.

15 Thomas Clark and Barbara Clark, husband  
16 and wife,  
17 Defendants.

18 ) No. CV2014-015334

19 ) **Defendants' Motion to Strike and**  
20 ) **Response to Non-Party Robert Jones, II**  
21 ) **Motion for Protective Order**

22 ) (Assigned to the Honorable Dawn Bergin)

23 **I. IMPROPRIETY OF MOTION—MOTION TO STRIKE**

24 Please strike the motion for protective order filed by Christopher A. LaVoy on behalf of  
25 Robert Jones, II. The motion is ethically improper because a member of Desert Mountain Golf Club  
26 met with Mr. LaVoy in January 2015 to see if Mr. LaVoy would represent him against the club for  
27 the same claims that are being asserted in this lawsuit against the defendants.

28 Exhibit A to this response is a declaration by this other member, Ron Yelin, that describes  
the particulars of his interaction with Mr. LaVoy. An attorney/client relationship was established  
that renders Mr. LaVoy's joinder with Fennemore Craig and the golf club against members like Mr.  
Clark and Mr Yelin traitorous. The ethical rule is E.R. 1.9, ARIZ. S.CT. R. 42, and a case describing  
an indistinguishable situation and the resulting ethical prohibitions for Mr. LaVoy's conduct is  
*Foulke v. Knuck*, 162 Ariz. 517, 784 P.2d 723 (App. 1989). A highlighted copy of this decision is  
attached for ease of the court's convenience.

Mr. LaVoy's motion must be stricken from the record. This court may not countenance Mr.  
LaVoy's ethical improprieties by giving any consideration to this motion.

1 **II. THE MERITS OF LaVOY’S MOTION**

2 Mr. LaVoy’s motion is about as meritorious as his ethical compass. He wants a general  
3 confidentiality restriction without (A) dealing with the applicable standards or (B) showing  
4 examples of the chief operating officer “in a difficult position.” The motion is hypothetical.

5 A. Applicable Standards

6 ARIZ. R. CIV. P. 26(c) allows the court to enter protective orders. The comment to this rule  
7 says “trial judges also should look to federal case law to determine whether to permit non-parties  
8 . . . access to information protected [by a confidentiality order]. . . . trial judges should look to  
9 federal case law to determine what factors, including the three listed in the rule, should be weighed  
10 in deciding whether to grant . . . a confidentiality order where parties contest a need for such an  
11 order.” ARIZ. R. CIV. P. 26(c), cmt. to 2002 amendment..

12 The important part of the protective-order rule is the part that requires the proponent of a  
13 confidentiality order to show good cause in order to get one:

14 (2) Before entering an order in any way restricting a party or person  
15 from disclosing information or materials produced in discovery to a  
16 person who is not a party to the litigation in which the information or  
materials are being discovered or denying an intervener’s request for  
access to such discovery materials, a court shall direct:

- 17 (a) the party seeking confidentiality to show why a  
18 confidentiality order should be entered or continued; and  
19 (b) the party or intervener opposing confidentiality to show why  
20 a confidentiality order should be denied in whole or part,  
modified or vacated.

21 **The burden of showing good cause for an order shall remain with  
the party seeking confidentiality.**

22 The court shall then make findings of fact concerning any relevant  
23 factors, including but not limited to:

- 24 (i) any party’s need to maintain the confidentiality of such  
information or materials;  
25 (ii) any nonparty’s or intervener’s need to obtain access to such  
information or materials; and  
26 (iii) any possible risk to the public health, safety or financial  
27 welfare to which such information or materials may relate or  
28 reveal.

1 Any order restricting release of such information or materials to  
2 nonparties or interveners shall use **the least restrictive means to**  
3 **maintain any needed confidentiality.**

4 ARIZ. R. EVID. 26(c)(2) (bolding added).

5 Mr. LaVoy has made a motion but he does not demonstrate any good cause. All he says is:

6 [Mr. Williams] questioned Mr. Jones about matters  
7 arguably within the scope of the confidentiality clause.  
8 These included questions about his former employer's  
9 internal policies and procedures, sensitive personnel  
10 matters, and dealings with other golf club members.

11 Motion at 1:26 through 2:4.

12 What Mr. LaVoy does not do, however, is identify the specific questions in the deposition  
13 he believes arguably fall within confidentiality clauses proscribing disclosure. There is not one  
14 example of a question describing information sought about some internal policy or procedure. There  
15 is not one question identified that supposedly solicited information about "sensitive personnel  
16 matters." Mr. LaVoy does not point to a single question that somehow implicates confidential  
17 information regarding "dealings with other golf club members." There were no such questions in  
18 the deposition, but even if there were, there is no showing that such questions would really be the  
19 sort of confidential business information a court should protect. A complete transcript of the  
20 deposition and associated video is attached to this response.

21 B. Concrete Examples.

22 A good faith basis for any type of protective order can only be shown with concrete examples  
23 of the need for a confidentiality order. Mr. LaVoy neither points to any nor are there any. This is  
24 witnessed by what happened at the deposition: the transcript and video.

25 Mr. LaVoy and the court may search this transcript in vain to find any offensive question.  
26 Here are some examples of supposedly confidential information that was sought in the deposition,  
27 information so confidential that Mr. LaVoy and the attorney for the golf club directed the witness  
28 not to answer.

Q. You signed this letter that begins on CL01449 and ends of CL01450,  
didn't you?

A. On advice of counsel, I can't answer the question.

1 Q. Is that your signature on CL01450?

2 A. On advice of counsel, I can't answer your question.

3 MR. LAVOY: Yeah, go ahead and—Bob, if that's your signature—

4 THE WITNESS: Answer it?

5 MR. LAVOY: Yeah, that—that's fine.

6 MR. CALLAHAN: You can tell him that.

7 THE WITNESS: That is my signature. On advice of counsel, I just  
8 answered your question.

9 BY MR. WILLIAMS:

10 Q. Now, without looking at this document, [which describes the price  
11 of a deferred equity golf membership from January 1, 2015, until the  
12 takeover] don't you understand that from January 1, 2005, until the  
13 takeover, the price of a deferred equity golf membership was  
14 \$325,000.00? [*Takeover* refers to the transfer of the golf club  
15 ownership from the developer to the deferred equity members of the  
16 club, who then became the members of the club.]

17 MR. LAVOY: Same instruction.

18 THE WITNESS: Advice of counsel, I can't answer the question.

19 BY MR. WILLIAMS:

20 Q. Well, can't or won't?

21 A. On advice—

22 MR. LAVOY: Mr. Williams, we've tried to raise this issue with—with  
23 you in advance repeatedly, and you did not respond. It might be helpful  
24 if we adjourn the deposition and took he matter up with the court so  
25 that all parties could have guidance on what Mr. Jones can testify to.  
26 But please stop harassing him about this. You had fair notice.

27 MR. WILLIAMS: Please tell me, Mr. LaVoy, what's confidential about  
28 the price of a deferred equity golf membership from January 1, 2005,  
until the turnover?

MR. LAVOY: What I have told you and will repeat is that Mr. Jones is  
subject to an employment agreement with a confidentiality clause, that  
is information—or the information you're requesting could fall into.  
And if he were to answer your question, he would be exposing himself  
to civil liability to his former employer. In fairness, you should have  
taken up our offer to resolve this in advance. And we ask you again to  
take it up with the judge so that he can confidently answer your  
questions without fear of civil liability to his former employer. Will you  
do that?

1 MR. WILLIAMS: How, Mr. LaVoy, do you think telling me what the  
2 price of an equity golf membership club was during a period of time  
can run afoul—

3 MR. LAVOY: I would—

4 MR. WILLIAMS:—of a membership confidentiality agreement?

5 MR. LAVOY: Mr. Williams—

6 MR CALLAHAN: Counsel, it doesn't matter what Mr. LaVoy or I  
7 think. It matters what the former employer thinks. Mr. LaVoy is  
8 advising his client as to how to avoid civil liability to the former  
9 employer. We tried to get this resolved in advance to eliminate any  
concerns the former employer would have. You did not take us up on  
that.

10 BY MR. WILLIAMS:

11 Q. Mr. Jones, between January 1, 2005, and the date of the turnover,  
was it public knowledge what the price of a deferred equity golf  
membership was.

12 MR. CALLAHAN: Foundation.

13 THE WITNESS: Mr. Williams, Desert Mountain Club, Inc. was formed  
14 January 1 of 2011. When that was formed, the membership price was  
140.

15 BY MR. WILLIAMS:

16 Q. What was it the day before?

17 A. The day before at the closing it was 1—the new entity, Desert  
18 Mountain Club, Inc., was 140. I cannot—as I've already gone on record  
19 here only solely to protect myself to something I signed and agreed to  
from civil liability from a third part—answer any questions about any  
documents prior to January 1, 2011.

20 Q. I'm not asking you about a document.

21 A. This is a document, is it not?

22 Q. Let me take that off the screen.

23 A. I don't know. I don't have it in front of me. But—

24 Q. Let me take it off the screen then. My question is what was the price  
of a deferred equity golf membership the year before the turnover?

25 A. Same issue.

26 MR. LAVOY: Again, Mr. Williams, it may make sense for us to take  
27 this issue up with the court so that it can decide what should be treated  
28 as confidential and alleviate Mr. Jones' concerns about potential civil  
liability. We're necessarily going to err on the side of breadth in our

1 reading of the clause given that potential civil liability. And that's the  
2 reason we tried to work with you to resolve this in advance.

3 Jones Depo at 71–75.

4 The foregoing is a rather long but typical example of the instructions given to the witness not  
5 to answer. The question did not ask about anything remotely confidential. The court may find  
6 instructions not to answer at pages 24, 25, 26, 31, 32, 40, 57, 65, 66, 67, 68, 71, 72, 74, 75, 76, 77,  
7 79, 80, 81, 82, and 83.

8 The foregoing quote underscores another disruptive, abusive, obstructionist tactic by Mr.  
9 LaVoy and his compatriot, Chris Callahan. Mr. Callahan is the attorney-of-record for the plaintiffs  
10 in this case, but he and Mr. LaVoy had this sort of tag-team approach: one objected and the other  
11 piled on.

12 The objections were almost always speaking objections, too. The effect of the speaking  
13 objections on the transcript is remarkable. There is a total of 2,102 lines of transcript in this  
14 deposition and 881 of those lines are the speeches and speaking objections by the Callahan/LaVoy  
15 tag team. Forty-two percent of the transcript is blather from Mr. LaVoy and Mr. Callahan.

16 The rules proscribe what the tag-team did:

17 (D) Objections to the form of the question or responsiveness of the  
18 answer shall be concise, and shall not suggest answers to the witness.  
19 No specification of the defect in the form of the question or the answer  
20 shall be stated unless requested by the party propounding the question  
21 Argumentative interruptions shall not be permitted.

22 (E) Continuous and unwarranted off the record conferences between  
23 the deponent and counsel following the propounding of questions and  
24 prior to the answer or at any time during the deposition are prohibited.  
25 This conduct is subject to the proscriptions of Rule 32(d)(3)(D) and the  
26 sanctions prescribed in Rule 37.

27 Ariz. R. Civ. P. 32(d)(3)(D), (E)

28 Both Mr LaVoy and Mr. Callahan disregarded rule 32 with impunity; hence the 42% of the  
transcript filled with their obfuscations. They were petulant, condescending, and disdainful. For  
example, Mr. LaVoy said the undersigned's questions were shameful.

MR. WILLIAMS: Read the last question back.

MR. LAVOY: I—I heard his last question.

1 THE WITNESS: Okay.

2 MR. LAVOY: I heard your last question. And my comment was the  
3 same. He's not going to answer it because he doesn't want to be put at  
4 risk of civil liability. Frankly, shame on you for trying to put him in that  
5 pinch. And let's move on.

6 Jones depo 79:5–12.

7 The question that elicited this shame-on-you scorn was:

8 (The record was read by the court reporter as follows:

9 QUESTION: Is it accurate to say, Mr. Jones, that on January 1, 2004,  
10 the price of an equity golf membership went up to 275,000 from the  
11 previous price of \$225,000?)

12 Jones depo 79:16–21.

13 Mr. Callahan, likewise, could not control himself when reminded of the limitations on  
14 objections imposed by the rules:

15 MR. CALLAHAN: Mr. Williams, if I might, let me say that—

16 MR. WILLIAMS: Is this an objection or is this—which you get—you  
17 get to instruct him not to answer or say “form.”

18 MR. CALLAHAN: What I get to do—

19 MR. WILLIAMS: You want to take a rest—you want to take a recess,  
20 you may do that too.

21 MR. CALLAHAN: No. I'd like to make a brief statement that it would  
22 be over if you would just let me make it. So I wanted to let you know  
23 that Mr. Jones—Mr. Jones' employment contracts does include a non-  
24 disclosure provision.

25 Jones depo 22:10–23.

26 MR. WILLIAMS: You know, Mr. Callahan, I think you get to say  
27 “form.” That's all.

28 MR. CALLAHAN: I can say “form.” I can say “foundation.” I'll  
defend this deposition as I deem appropriate without your advice.  
Thank you, counsel.

Jones depo 28:12–16.

Form objections were almost never limited to the word *form* as the rules require. Form  
objections appear on the following pages of the transcript: 16, 30–36, 38–41, 43, 45, 46, 48, 50–52,  
56, 59, 61, 64, and 91. Some of these pages have two and three form objections on them with  
lengthy explanations and speeches even though undersigned counsel never once asked what the form

1 objection was; after all, none of them were truly form objections. The response when undersigned  
2 counsel requested opposing counsel to limit their objections as required by the rules was, "I'll  
3 defend this deposition as I deem appropriate without your advice. Thank you, counsel."

4 Many objections were openly suggestive of answers, and the witness was smart enough to  
5 take the cues.

6 Q. Did you anticipate that people would rely upon this document:

7 A. I—

8 MR. CALLAHAN: Object to the form.

9 MR. LAVOY: Form. foundation. And when you say "this document,"  
10 do you mean the entire bylaws or do you mean this segment that you've  
elected to put on the screen?

11 BY MR. WILLIAMS:

12 Q. Do you have any concerns about what I'm asking here? Are you  
confused?

13 A. Yes, I am.

14 Q. Well, I'm talking about these bylaws keypoints.

15 A. Okay.

16 MR. CALLAHAN: Just the keypoints?

17 THE WITNESS: And your question was?

18 BY MR. WILLIAMS:

19 Q. Did you expect members to rely upon these?

20 A. We expect members, by membership agreement to—they agree to  
21 abide by the full bylaws of the club. These are only page—which I have  
clearly answered—is index to the bylaws.

22 Q. So you wouldn't expect members to rely upon the bylaws keypoints?

23 A. I would expect members to rely on the full bylaws, the full set.

24 Q. So the answer is no, you wouldn't expect them to rely upon this?

25 A. Please don't answer the question for me. I—By membership  
agreement, the members agree to abide by the club bylaws.

26 Q. Do you—

27 A. The full club bylaws.

28 Q. You know, I appreciate that.



1 A. Okay.

2 Q. I know that they do that.

3 A. I'm just trying to help you, Mr. Williams.

4 Q. Well, you're not answering my question. So you're not helping me.

5 A. Yes, sir, I am.

6 Q. The question is did you expect—you personally—that members  
7 could rely upon the bylaws keypoints that were prepared?

8 MR. CALLAHAN: You're asking that independent of the bylaws?

9 THE WITNESS: My personal opinion—

10 MR. CALLAHAN: Objection. Form. Foundation.

11 THE WITNESS: Yes. I think everyone expected members, who sign  
12 the membership agreement, to abide by—and who agreed to abide by  
13 the club bylaws, to abide by them as they were in force.

14 BY MR. WILLIAMS:  
15 Q. Mr. Jones, we're having trouble communicating.  
16 A. I'm not having any trouble.

17 Q. You're answering questions I'm not asking. So I'm objecting as  
18 non-responsive. My question is limited to the bylaw keypoints that  
19 begin on CL00081. Did you, in your opinion, think it was okay for  
20 members to rely upon what was stated in the bylaws keypoints?

21 A. And my answer is—

22 MR. CALLAHAN: Asked and answered.

23 THE WITNESS: Asked and answered. My answer—my—asked and  
24 answered.

25 MR. LAVOY: Go ahead and tell him again, Bob.

26 MR. WILLIAMS: Now, just limit it to the bylaws keypoints, because  
27 that's my only question.

28 MR. CALLAHAN: Mr. Williams, I'm sorry, that question makes  
absolutely no sense. Are you asking him do you—did you expect the  
members would rely on the bylaws keypoints, not read the by—

MR WILLIAMS: would you—would you—

MR. CALLAHAN: No. I'm trying to understand our question.

MR. WILLIAMS: Well, you don't have to. It's the witness. You get to  
say form or instruct him not to answer. Please be quiet. Otherwise—if  
you would be so kind.

1 MR. LAVOY: And you get—

2 MR. CALLAHAN: Mr. Williams—

3 MR. LAVOY: —to answer your question once and not harass him  
4 when you don't get—harass him when you don't get the answer you  
5 want. He said repeatedly—

6 MR. WILLIAMS: Listen—listen—

7 MR. LAVOY: Mr. Williams, he has repeatedly told you that a member  
8 may rely on the entirety of the bylaws, not just a select portion that you  
9 think is advantageous to your client for some reason. He's answered the  
10 question. You don't like it move on.

11 BY MR. WILLIAMS:

12 Q. My question is limited to the bylaws keypoints. Did you, in your  
13 opinion, think that this was something on which members could rely?

14 A. Members have signed a membership agreement. That membership  
15 agreement, they agree to abide by the bylaws. The club bylaws are in  
16 force, the full set. That's my answer to your question.

17 Q. Well, why did you do bylaws keypoints then?

18 MR. LAVOY: Asked and answered.

19 THE WITNESS: I've—I've already answered that question.

20 BY MR. WILLIAMS:

21 Q. That's just a table of contents?

22 A. Yeah—no, it's a—it's a table of contents, a an index guide. I've  
23 seen this, Mr. Williams, in many club bylaws. It's just a form how the  
24 bylaws were presented, as if there was a cover page with a logo on it  
25 that said "Desert Mountain Club."

26 Q. You know, I'm not interested in any other clubs. Thank you for that,  
27 so many times that you're said it.

28 A. I know. I'm trying to help you.

Q. My question is why were the bylaws keypoints prepared if you  
expected the members to rely on the bylaws?

MR. CALLAHAN: Objection. Misstates testimony.

THE WITNESS: I've already asked and answer this question. These are  
part of the bylaws. Therefore, the whole bylaws are in force. That's my  
answer to your question.

BY MR. WILLIAMS:

Q. Being part of the bylaws then, the bylaws keypoints can have the  
same level of credibility and ability of the members to rely upon them  
as the actual formal bylaws themselves?

1 A. No sir.

2 MR. CALLAHAN: Object to the form. foundation.

3 THE WITNESS: I did not say that the first time you asked. The entire  
4 bylaws are what the members have agreed to abide by in their  
5 membership agreement. That's the full context of the bylaws from page  
6 one to ending.

7 Jones depo at 43-48.

8 Another example of the witness playing off the lawyers' suggestions is as follows:

9 Q. Sure. Because under what's happening at the club now, they've got  
10 to pay a transfer fee too. And if the new member's contribution is less  
11 than the transfer fee, then to get out of this club, the member's got to  
12 pay money?

13 MR. CALLAHAN: Object to the form.

14 THE WITNESS: Is that a question?

15 MR. WILLIAMS: Yes.

16 THE WITNESS: Can you restate the question?

17 MR WILLIAMS: Sure I'll have him read it back.

18 MR. LAVOY: He asked for it to be restated, no reread,

19 (The record was read by the court reporter as follows:

20 QUESTION: Sure. Because under what's happening at the club now,  
21 they've got to pay a transfer fee too. And if the new ember's  
22 contribution is less than the transfer fee, then to get out of this club, the  
23 member's got to pay money?)

24 MR. CALLAHAN: Those are two declaratory statements. There's no  
25 question in there. There's no question pending, Mr. Jones

26 MR. WILLIAMS: There's a question mark at the end of that. Please  
27 answer that question.

28 MR. CALLAHAN: Are you asking him if he agrees with your  
statement? Is that the question, counsel?

MR. WILLIAMS: I'm going to have you reread again.  
There's a question mark at the end because the intonation went up. It's  
part of communicating. And so answer the question, please.

THE WITNESS: As long as its grammatically a question, I'll do so.

MR. WILLIAMS: Okay. It is grammatically a question.

MR. CALLAHAN: It is not a grammatically a question. Are you asking  
for his agreement with your declaratory statement, counsel?

1 MR. WILLIAMS: Please read the question.

2 MR. CALLAHAN: There's no question what the statement was,  
3 counsel. I'm asking what you're asking him. He's entitled to a question,  
4 not a statement.

4 MR. WILLIAMS: Please read the question.

(The record was read by the court reporter as follows:

5 QUESTION: Sure. Because under what's happening at the club now,  
6 they've got to pay a transfer fee too. And if the new member's  
7 contribution is less than the transfer fee, then to get out of this club, the  
8 member's got to pay money?)

8 THE WITNESS: Doesn't sound like a question, counsel, to me. Sounds  
9 like an opinion.

9 Jones depo at 52–54.

10 There are many more examples, but here, *in nuce*, is what was going on. The lawyers  
11 repeatedly breached the rules; one-word objections are anathema to them. They gave lengthy,  
12 speaking objections that gave the answer to the witness, and then the witness would repeat it. Very  
13 cute. Very wrong. They instructed the witness not to answer innocuous questions. They did not want  
14 this deposition to go forward, so they blocked it and, eventually, walked out.

### 15 III. CONCLUSION—REQUEST FOR FEES

16 More concrete examples of the disingenuous nature of Mr. LaVoy's motion could be  
17 presented, but the foregoing suffices. The court may listen to the witness and the lawyers as they  
18 obstructed this deposition. The tone and the manner of speaking bespeaks the condescension, hubris,  
19 sarcasm, petulance, and disregard of the rules by both counsel.

20 ARIZ. R. CIV. P. 30(d) provides that a deposition can be suspended if someone wants an order  
21 from the court. The same rule says that the provisions of Rule 37(a)(4) applies the award of  
22 expenses in relation to the motion. Rule 37(a)(4) says:

23 The court "shall, after affording an opportunity to be heard, require the  
24 moving party or attorney filing the motion or both of them to pay to the  
25 party . . . who oppose the motion the reasonable expenses incurred in  
26 opposing the motion, including attorneys fees, unless the court finds  
27 that the making of the motion was substantially justified or that other  
28 circumstances make an award of expenses unjust.

27 Here's what happened in this deposition. A non-profit corporation with an annual operating  
28 budget in excess of \$30 million has its chief operating officer appear at a deposition represented by

1 both the corporate lawyer and a personal attorney, and both bollix the deposition. Sanctions are  
2 mandatory.

3 Furthermore, this court has the power to enter an order excluding Chris LaVoy from any  
4 further proceedings in this case whatsoever. His presence is a violation of the ethical rules. The court  
5 should, also, order that any lawyer who appears at a deposition abide by the rules: a one-word  
6 objection, *form*, or a good faith assertion of a privilege subject to payment of attorneys' fees and  
7 costs if that assertion turns out to be unjustified. Any lawyer representing Mr. Jones individually  
8 should be required to hold his peace—say nothing—during the deposition. This is the deposition of  
9 a corporate officer, and the corporation's lawyer is certainly able to make whatever record is  
10 required.

11 Respectfully submitted this 4th day of June 2015.

12 /s/ Daryl M. Williams  
13 Daryl M. Williams  
14 Baird, Williams & Greer, LLP  
15 6225 North 24<sup>th</sup> Street, Suite 125  
16 Phoenix, Arizona 85016  
17 Attorneys for plaintiff

18 Original eFiled with the Clerk's ECF  
19 filing system this 4th day of June, 2015

20 Copy mailed this same day to:

21 The Honorable Dawn Bergin  
22 Maricopa County Superior Court  
23 201 W. Jefferson (CCB #7D)  
24 Phoenix, AZ 85003-2243

25 and copies mailed this same day to:

26 Christopher L. Callahan  
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33 attorneys for plaintiff

34 /s/ Diana L. Clark

# Exhibit A

## DECLARATION OF RONALD J. YELIN

I, Ronald J. Yelin, declare under penalty of perjury:

1. I received a collection letter from the law firm of Fennemore Craig in January 2015 telling me I owed the Desert Mountain Club money because I could not just quit being a member without following a procedure that would obligate me to pay the club tens of thousands of dollars while remaining obligated to pay dues and thousands of dollars of assessments until the club transferred my membership to someone else. This letter concerned me, so I wanted the advice of a lawyer.

2. I was referred to Chris LaVoy at the law firm of Tiffany & Bosco.

3. I called Chris LaVoy on January 22, 2015. I left a message for him. He called me back.

4. I described to Chris LaVoy Desert Mountain Club's claims related to my membership in the club during our phone call; I told him about the collections letter I had received from Fennemore Craig.

5. Chris LaVoy agreed to meet with me, so we set up a meeting at his office for January 27, 2015.

6. On January 23, 2015, I emailed Chris Lavoy documents he requested. A copy of my email to him is attached as Exhibit A. My email included the letter from Fennemore Craig and other documents I thought would be helpful for a defense against claims asserted by Desert Mountain through Fennemore Craig.

7. I knew that the claims asserted against me were the same or similar claims asserted by Desert Mountain through Fennemore Craig against Tom and Barbara Clark. Indeed, one of the documents I emailed to Chris LaVoy is titled "Points Favoring the Defendants—Desert Mountain

Club, Inc. v. Thomas Clark and Barbara Clark,” which sets forth “points [that] could be helpful in forming a defense strategy.”

8. The Clarks and I have defenses, I believe, to the claims asserted by Desert Mountain against us. I explained my beliefs when I met with Chris LaVoy at his office on January 27, 2015, at 2:00 in the afternoon. We discussed the information I provided to him, including Fennemore Craig’s collection letter. I told him that I understood Desert Mountain was using Fennemore Craig to assert virtually identical claims against several members of the club who did not agree with the club’s “you-can’t-just-quit” position.

9. Chris LaVoy commented on the nature of Desert Mountain’s claims and our defenses, meaning mine and others at Desert Mountain—like the Clarks—who do not agree with the position taken by Desert Mountain.

10. Near the end of our meeting, Mr. LaVoy brought another person into our meeting.

11. I left Chris LaVoy’s office confused as to what to do, so I decided to get a second opinion.

12. I am presently represented by two lawyers with regard to this Desert Mountain matter: David Weissman of Rose Law Group and Daryl Williams of Baird, Williams & Greer.

13. I am one of several people Daryl Williams represents relative to Desert Mountain’s claims, all of whom have contributed money to fund the defense to Desert Mountain’s claims, which I understand are virtually identical claims against all of us. Daryl Williams, therefore, keeps me informed about proceedings in the *Clark* case.


14. I was surprised when I found out from Daryl Williams that Chris LaVoy attended the deposition Mr. Williams was taking of Robert Jones, the COO for Desert Mountain, in the



*Clark case.* My understanding is that the *Clark* case is substantially similar, if not identical, to the claims Desert Mountain is asserting against me and others at Desert Mountain who disagree with the club's "you-can't-just-quit" position. It seemed unusual to me that Mr. LaVoy was representing Mr. Jones at his deposition after having met with and received information from me about the Clark case and Desert Mountain's claims against me.

15. On May 29, 2015, I received a call from someone at the law firm of Tiffany & Bosco. I was unable to answer that call, so I called back the number on my caller ID, explained that someone had called my phone and asked who it might be. The person with whom I spoke told me that there are many lawyers who work there and it could have been any one of them. I thanked her and hung up.

Dated this 3rd day of June, 2015.

  
\_\_\_\_\_  
Ronald J. Yelin



As of: May 21, 2015 11:21 AM EDT

## *Foulke v. Knuck*

Court of Appeals of Arizona, Division Two, Department A

December 15, 1989

No. 2 CA-SA 89-0142

### Reporter

162 Ariz. 517; 784 P.2d 723; 1989 Ariz. App. LEXIS 355; 50 Ariz. Adv. Rep. 67

Donald Gardner FOULKE, Petitioner, v. The Honorable Theodore KNUCK, a Judge Pro Tempore for the Superior Court of the State of Arizona, County of Pima, Respondent, and Mary E. ELLINGSEN, Real Party in Interest

**Prior History:** [\*\*\*1] SPECIAL ACTION PROCEEDINGS, RELIEF GRANTED.

### Core Terms

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disqualification, consultation, former client, confidences, disqualify, divulged, ethical, dissolution, attorney-client, services, conflicting interest, appearance of impropriety, expertise, appears, secrets, advice, argues, issues

### Case Summary

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#### Procedural Posture

Petitioner husband sought special action relief from the Superior Court of the State of Arizona, County of Pima, denial of his motion for disqualification of counsel for real party in interest respondent wife in the underlying marital dissolution action.

#### Overview

Petitioner husband sought special action relief from the denial of his motion for disqualification of counsel for respondent wife in the underlying marital dissolution action. Petitioner claimed that he enjoyed an attorney-client relationship with

respondent's counsel based on a brief initial consultation for which respondent's counsel was paid. Petitioner claimed that respondent's counsel's representation of respondent in the marital dissolution action was a conflict of interest. The court found that petitioner was respondent counsel's former client as contemplated by Ethical Rule 1.9(a) (ER 1.9(a)), *Ariz. Sup. Ct. R. 42*. The court concluded, therefore, that respondent's counsel's representation of respondent in the underlying proceeding presented a conflict of interest under ER 1.9(a). The court found that disqualification was the only appropriate resolution in light of the blatant violation of ER 1.9(a). The court granted special action relief and vacated the trial court's order and remanded for further proceedings.

#### Outcome

The court granted petitioner husband's request for special action relief, vacated the trial court's order, and remanded for further proceedings because respondent wife's counsel's representation of respondent violated ethical rules prohibiting conflict of interest, and the trial court abused its discretion in denying petitioner's motion seeking the disqualification.

### LexisNexis® Headnotes

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Legal Ethics > Client Relations > Conflicts of Interest

*HNI* Ethical Rule 1.9(a), *Ariz. Sup. Ct. R. 42*, provides as follows: A lawyer who has formerly

represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation.

Legal Ethics > Client Relations > Conflicts of Interest

**HN2** The existence of an attorney-client relationship is proved by showing that the party sought and received advice and assistance from the attorney in matters pertinent to the legal profession. The test is a subjective one; the court looks to such things as the nature of the services rendered, the circumstances under which the individual divulges confidences, and the client's belief that he is consulting a lawyer in that capacity and his manifested intention to seek professional legal advice.

Legal Ethics > Client Relations > Conflicts of Interest

**HN3** Although it is not necessary for the individual to pay the attorney a fee for the services rendered in order for the relationship to be established, where payment for legal services has been made it is persuasive evidence that an attorney-client relationship was established. The fact that a consultation is relatively brief does not negate the establishment of an attorney-client relationship.

Legal Ethics > Client Relations > Conflicts of Interest

**HN4** Whether one seeks legal information or legal advice from an attorney, the attorney is being consulted for his or her professional, legal expertise.

Governments > Courts > Rule Application & Interpretation

Legal Ethics > Client Relations > Conflicts of Interest

**HN5** Ethical Rule 1.9(a), Ariz. Sup. Ct. R. 42, does not require that confidences and secrets be divulged in order for a conflict to exist or for disqualification to be proper.

Legal Ethics > Client Relations > Conflicts of Interest

**HN6** Regardless of what was communicated during the representation of the former client, Ethical Rule 1.9(a), Ariz. Sup. Ct. R. 42, prohibits subsequent representation of an individual whose interests are substantially adverse to those of the former client.

Civil Procedure > Attorneys > General Overview

**HN7** Disqualification is an ethical, not a legal matter, and does not require a showing that confidences have been divulged.

**Counsel:** Robert L. Barrasso, Tucson, for petitioner.

Ann M. Haralambie, P.C. by Ann M. Haralambie, Tucson, for real party in interest.

**Judges:** Roll, Presiding Judge. Hathaway and Howard, JJ., concur.

**Opinion by:** ROLL

## Opinion

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[\*519] [\*\*725] OPINION

Petitioner Donald Gardner Foulke (Foulke) seeks special action relief from the denial of his motion for disqualification of counsel for real party in interest Mary E. Ellingsen (Ellingsen) in the underlying marital dissolution action. Because we conclude that the respondent judge abused his discretion and because petitioner has no equally plain, speedy and adequate remedy by appeal, we accept jurisdiction and grant special action relief. *Ariz.R.P.Spec. Actions 1* and *3, 17B A.R.S.*; see also *Alexander v. Superior Court, 141 Ariz. 157,*

[685 P.2d 1309 \(1984\)](#); [Sellers v. Superior Court, 154 Ariz. 281, 742 P.2d 292 \(App.1987\)](#).

## FACTS

On March 16, 1989, Foulke, a licensed attorney in this state, met with Tucson attorney Ann Haralambie. In his special action petition, Foulke alleges that in this meeting he was seeking Haralambie's professional [\*\*\*2] advice and counsel concerning matters in the upcoming divorce between himself and his wife, Mary E. Ellingsen, and that an attorney-client relationship was established between him and Haralambie. Ellingsen admits only that Foulke had an initial consultation with Haralambie concerning issues of stepparent rights and responsibilities with respect to Ellingsen's child. Although Ellingsen admits Foulke paid Haralambie for her services, she denies that an attorney-client relationship existed between the two. Foulke claims that during the meeting with Haralambie, he divulged certain confidences and secrets, specifically recalling that he commented during their meeting that there was an attorney-client privilege with regard to their discussion. Ellingsen disputes this, contending that the only information Foulke gave to Haralambie was the names of the parties, the fact that he began living with Ellingsen prior to the child's birth, and that the child had no relationship with the natural father. Ellingsen claims these facts are now matters of record and were not privileged when Ellingsen subsequently retained Haralambie.

## PROCEDURAL BACKGROUND

On March 29, 1989, Ellingsen, through her [\*\*\*3] attorney Stefani Gabroy, filed a petition for dissolution of her marriage to Foulke. It appears that on October 4, 1989, Ellingsen met with Haralambie. The following day, Foulke learned that Haralambie intended to substitute as counsel for Ellingsen, and through his counsel he requested that Haralambie withdraw from her representation of Ellingsen based upon a conflict of interest.

Apparently, when Haralambie initially met with Ellingsen, she was unaware that Ellingsen's husband was Foulke. On October 12, 1989, Haralambie notified Foulke's counsel that she did not intend to withdraw. In its October 13, 1989 minute entry, the respondent judge overruled Foulke's objection to Haralambie's representation of Ellingsen, stating that he was "not convinced that there is any real detriment to [Foulke] or any real advantage to [Ellingsen]." Foulke filed a motion to disqualify Haralambie on October 16, 1989. At a hearing on October 23, 1989, Foulke avowed to the court that confidences had been divulged to Haralambie. The respondent judge, however, refused to reconsider the decision not to disqualify Haralambie and denied Foulke's motion. This special action followed.

## ISSUES

The general [\*\*\*4] question raised by this special action is whether the respondent judge abused his discretion in denying Foulke's motion to disqualify Haralambie. In answering this question, we address the following issues: (1) whether Haralambie's representation of Ellingsen violates Ethical Rule 1.9 (ER 1.9) of the Arizona Rules of Professional Conduct, [Ariz.S.Ct.R. 42, 17A A.R.S.](#); (2) if the representation is an ethical violation, is disqualification appropriate; and (3) may disqualification under ER 1.9(a) be avoided either by Foulke's alleged failure to establish specific harm resulting from the conflict or by hardship which Ellingsen claims she will suffer if Haralambie is disqualified.

[\*520] [\*\*726] CONFLICT OF INTEREST

**HNI** ER 1.9(a), the provision through which Foulke clearly sought Haralambie's disqualification, provides as follows:

Conflict of Interest: Former Client

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation;

In determining [\*\*\*5] whether a conflict exists, we must first determine whether Foulke is Haralambie's former client. **HN2** The existence of an attorney-client relationship "is proved by showing that the party sought and received advice and assistance from the attorney in matters pertinent to the legal profession." *Matter of Petrie*, 154 Ariz. 295, 299, 742 P.2d 796, 800 (1987). The test is a subjective one; the court looks to such things as the nature of the services rendered, the circumstances under which the individual divulges confidences, *Alexander v. Superior Court*, 141 Ariz. 157, 162, 685 P.2d 1309, 1314 (1984), and "[t]he client's belief that he is consulting a lawyer in that capacity and his manifested intention to seek professional legal advice." C. McCormick, Law of Evidence § 88 at 208 (3d ed. 1984); see also *Petrie*, 154 Ariz. at 300, 742 P.2d at 801; *Alexander*, 141 Ariz. at 162, 685 P.2d at 1314.<sup>1</sup> **HN3** Although it is not necessary for the individual to pay the attorney a fee for the services rendered in order for the [\*\*\*6] relationship to be established, *Petrie*, 154 Ariz. at 299, 742 P.2d at 800, we believe that where payment for legal services has been made it is persuasive evidence that an attorney-client relationship was established. The fact that a consultation is relatively brief does not negate the establishment of an attorney-client relationship. See Arizona Ethics Opinion 74-10.

[\*\*\*7] Although Ellingsen admits that Foulke paid Haralambie for the March consultation, she argues that Foulke never retained Haralambie's

services, and that the provision of legal information under the facts of this case did not constitute the formation of an attorney-client relationship. Ellingsen's own argument belies her conclusion that the relationship was not established. If, in fact, all Foulke received from Haralambie was "legal information" as opposed, presumably, to legal advice, it is a distinction without a difference. **HN4** Whether one seeks legal information or legal advice from an attorney, the attorney is being consulted for his or her professional, legal expertise. The fact that Foulke paid her for that information after a one-hour consultation only reinforces the conclusion that the relationship was established.

Ellingsen suggests that because Foulke is an attorney, the consultation was nothing more than a sharing of legal information, implying that this is somehow distinguishable from discussions between attorneys and their non-lawyer clients. This notion is untenable. It is immaterial that Foulke is licensed to practice law in this state. Based upon the record before [\*\*\*8] us, it is clear that the consultation was personal in nature, that Foulke was seeking, at the very least, legal information on matters pertaining to him, not to a client of his. We find that Foulke is Haralambie's former client as contemplated by ER 1.9.

Our second inquiry in determining if a conflict exists under ER 1.9(a) is whether, in representing Ellingsen in the underlying dissolution action, Haralambie is representing someone in the same or a substantially related matter whose interests are materially [\*521] [\*\*727] adverse to Foulke's interests. Although Foulke claims that the consultation focused on his rights in light of the anticipated dissolution proceeding, Ellingsen

<sup>1</sup> *Alexander* was decided based upon the Arizona Code of Professional Responsibility which, effective February 1, 1985, was replaced by the Rules of Professional Responsibility, this state's adoption of the Model Rules of Professional Conduct of the American Bar Association. Ariz.St.Ct.R. 42, 17A A.R.S. We find, however, that *Alexander* and other pre-rules decisions continue to be good law with regard to the evaluation of questions of ethics because much of the principles of the code and certainly its spirit have been encompassed by the rules. See generally Preamble and Scope to Rules of Professional Conduct, Ariz.S.Ct.R. 42, 17A A.R.S.; Code Comparison, ER 1.9, Ariz.S.Ct.R. 42, 17A A.R.S. *Alexander* is particularly instructive because of its discussion of Model Rule ER 1.9, the very same rule that is before us.

contends that it concerned his legal rights and responsibilities as a stepparent. She argues that the dissolution proceeding had not yet been filed and that the issues relevant to that litigation are entirely different, citing, by way of example, allegations of child molestation. Ellingsen admits that Foulke discussed the fact that he began living with Ellingsen before the child's birth and that the child had no relationship with the natural father. Even based on Haralambie's characterization of [\*\*\*9] the consultation, the general subject matter is substantially related to the issues which must necessarily be resolved in the dissolution action. Further, it is self-evident that Ellingsen's interests in the dissolution proceeding are materially adverse to Foulke's. We conclude, therefore, that Haralambie's representation of Ellingsen in the underlying proceeding presents a conflict of interest under ER 1.9(a).

In arguing that a conflict does not exist under ER 1.9, Ellingsen raises additional arguments related to the nature of the communication which appear to be directed to ER 1.9(b). We need not address these arguments, however, as it is clear that Foulke's motion to disqualify Haralambie was based upon ER 1.9(a) as opposed to the use of information obtained from a prior client to that client's disadvantage, under ER 1.9(b). Moreover, having determined that a conflict exists under ER 1.9(a), we need not consider whether one exists under ER 1.9(b).

#### DISQUALIFICATION UNDER ER 1.9(a)

##### A. Disqualification is appropriate.

Ellingsen argues that Foulke has failed to establish a sufficient basis for requiring Haralambie to withdraw, and relies upon the following Comment to ER 1.7 which [\*\*\*10] is referred to in the Comment to ER 1.9:

Resolving questions of conflict of interest is primarily the responsibility of the lawyer

undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the lawyer has neglected the responsibility . . . . Where the conflict is such as clearly to call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment.

Heeding the admonition expressed in the Comment and recognizing that "whenever possible the courts should endeavor to reach a solution that is least burdensome upon the client or clients," [\*Alexander\*, 141 Ariz. at 161, 685 P.2d at 1313](#); see also [\*Sellers v. Superior Court\*, supra](#), we find that disqualification is the only appropriate resolution here in light of the blatant violation of ER 1.9(a). We reach this conclusion based on the fact that the motion was brought by counsel for the former client with whom there is a direct conflict [\*\*\*11] and the rule's absolute prohibition against such representation. As such, the conflict in the case before us is distinguishable from the conflict in [\*Sellers\*, supra](#). In *Sellers*, opposing counsel sought to disqualify an attorney, representing multiple defendants, after a conflict arose between one defendant and the attorney, resulting in the attorney's withdrawal from representation of that one defendant. [\*154 Ariz. at 282, 742 P.2d at 293\*](#). Unlike the present case, where the conflict directly involves Foulke, the conflicts in *Sellers* did not pertain to the opposing party who sought the disqualification. We believe that under the circumstances of this case, disqualification, as opposed to directing the issue to the appropriate disciplinary board as Ellingsen suggests, is necessary to promote the "fair or efficient administration of justice."

We find no support in the record before us for Ellingsen's contention that the conflict has been raised for purposes of harassment. Specifically, we find no support for Ellingsen's charge that,

because of Haralambie's expertise, Foulke arranged the [\*\*\*12] consultation with Haralambie as a calculated maneuver to disqualify her from representing Ellingsen.

[\*522] [\*\*728] B. Disqualification cannot be avoided.

Ellingsen's argument in this regard is interwoven with her more general argument that this matter is simply not one in which disqualification is appropriate, discussed above. For purposes of clarity, however, we address this argument separately.

Ellingsen appears to contend that disqualification is not necessary because (1) no confidences or secrets were divulged, except perhaps those which are now a matter of public record and no longer privileged, and therefore no "true conflict" exists, (2) Foulke has shown no harm resulting from representation of Ellingsen by Haralambie notwithstanding his consultation with Haralambie, and (3) disqualification of Haralambie would result in hardship to Ellingsen.

Ellingsen's first contention fails to recognize the mandatory nature of ER 1.9(a). **HN5** The rule does not require that confidences and secrets be divulged in order for a conflict to exist or for disqualification to be proper. *State v. Allen*, 539 So.2d 1232, 1234-35 (La.1989); see also *Arkansas v. Dean Foods Products Co.*, 605 F.2d 380, 383 (8th Cir.1979); [\*\*\*13] *United States v. Kitchin*, 592 F.2d 900, 904 (5th Cir.), cert. denied, 444 U.S. 843, 100 S.Ct. 86, 62 L.Ed.2d 56 (1979). **HN6** Regardless of what was communicated during the representation of the former client, the rule prohibits subsequent representation of an individual whose interests are substantially adverse to those of the former client. In *T.C. Theatre Corp.*

*v. Warner Brothers Pictures, Inc.*, 113 F.Supp. 265, 268-69 (S.D.N.Y.1953),<sup>2</sup> the court stated:

[T]he former client need show no more than that the matters embraced within the pending suit wherein his former attorney appears on behalf of his adversary are substantially related to the matters or cause of action wherein the attorney previously represented him, the former client. The Court will assume that during the course of the former representation confidences were disclosed to the attorney bearing on the subject matter of the representation. It will not inquire into their nature and extent. **Only in this manner can the lawyer's duty of absolute fidelity be enforced** and the spirit of the rule relating [\*\*\*14] to privileged communications be maintained.

See also *Arkansas v. Dean Foods, supra*; *Cord v. Smith*, 338 F.2d 516, 524-25 (9th Cir.1964); *Matter of Evans*, 113 Ariz. 458, 462, 556 P.2d 792, 796 (1976).

The "shall not" of ER 1.9(a) "incorporates the *T.C. Theatre* presumption of receipt of confidential information; **the attorney is not given the option of showing that there is no danger of misuse of confidential information because he never received any.**" *Subsequent Representation and the Model Rules of Professional [\*\*\*15] Conduct: An Evaluation of Rules 1.9 and 1.10*, 1984 Ariz.State L.J. 161, 180-81.

Ellingsen contends and the respondent judge clearly agreed that disqualification may be avoided for the reason that Foulke failed to establish that he has suffered or will suffer harm as a result of the consultation with Haralambie. She argues that no confidences and secrets were disclosed and that any which were disclosed are now matters of public record. As to the first point, we have already determined that this is irrelevant. Second,

<sup>2</sup> *T.C. Theatre* is the seminal case in the area of former client representation. As the *Alexander* court noted, the substantially related test of *T.C. Theatre* was codified in Rule 1.9 of American Bar Association Model Rules of Professional Conduct adopted by the House of Delegates on August 2, 1983. *Alexander*, 141 Ariz. at 164, 685 P.2d at 1316.

the mere fact that such confidences may have become public record over Foulke's objection does not change their character. Mere litigation does not change the fact that he divulged confidences which he continues to seek to protect. Ellingsen bolsters her argument with the unsupported contention that during a discussion involving Foulke's prior counsel, Haralambie and the court, counsel was unable to state what harm had or would result from Haralambie's representation of Ellingsen. She then cites Gomez v. Superior Court, 149 Ariz. 223, 717 P.2d 902 (1986) for the proposition that [\*523] [\*\*729] under the new ethical [\*\*\*16] rules disqualification by court order requires some actual detriment and is not to be ordered *ipso facto*.

Reliance upon *Gomez* is misplaced. *Gomez* applies to those cases where disqualification is sought based upon the appearance of impropriety, a principle previously set forth in Canon 9 of the Code of Professional Responsibility, although still a viable ethical principle. The *Gomez* court stated:

It would appear, however, that "appearance of impropriety," however weakened by case law and its omission in the new Rules of Professional Conduct, survives as a part of conflict of interest and an appearance of impropriety should be enough to cause an attorney to closely scrutinize his conduct. It does not necessarily follow that it must disqualify him in every case. Where the conflict is so remote that there is insufficient appearance of wrongdoing, disqualification is not required.

Id. at 225, 717 P.2d at 904 (citations omitted).

The blatant violation of ER 1.9(a) that exists before us presents a conflict that is anything but remote. As recognized in *In re Ethics Opinion* 74-28, 111 Ariz. 519, 522, 533 P.2d 1154, 1157 (1975) [\*\*\*17] (Cameron, J., concurring), while there is concern for the appearance of impropriety, "it is actual unethical conduct which is our primary

concern." The representation of an individual in a divorce proceeding against a former client who sought legal information on substantially related matters is contrary to the clear terms of an ethical rule and is actual unethical conduct. While it may be necessary to establish harm where disqualification is based upon nothing more than the appearance of impropriety and although we will consider the least burdensome solution in resolving this problem, Alexander, 141 Ariz. at 161, 685 P.2d at 1313, we do not believe specific harm must be established to justify disqualification where there has been a violation of ER 1.9(a).

Because of the mandatory nature of ER 1.9(a), the presumption that confidences have been divulged, the nature of Foulke's consultation, and Foulke's vigorous opposition to Haralambie's representation of Ellingson, we believe Foulke has sufficiently established that the denial of Haralambie's disqualification is burdensome and harmful to Foulke and the integrity of the profession. We [\*\*\*18] do not believe that any more harm than this need be shown. **HN7 "Disqualification is an ethical, not a legal matter,"** Dean Foods, 605 F.2d at 384, and does not require a showing that confidences have been divulged. State v. Allen, 539 So.2d at 1235. To require Foulke to show more would place former clients in a "Catch-22," requiring that they divulge the very same confidences and secrets which they seek to protect, disclosure of which is, in part, the reason for the discomfort of having a prior attorney represent an adversary.

We also find Ellingsen's final contention to be without merit. To avoid disqualification because of hardship to the new client, the burden must far outweigh the injustice to the former client who requested the disqualification. We find that Ellingsen is unable to meet this difficult test. Ellingsen claims that because of Haralambie's expertise in the area of domestic relations and, in particular, cases involving allegations of sexual abuse, she will suffer great hardship if her counsel



is disqualified. She argues that there are few, if any, attorneys with Haralambie's expertise in the Tucson area. [\*\*\*19] In addition, she claims she will suffer financially because of the expense of services already provided by Haralambie.

Ellingsen's claims are not sufficient to justify Haralambie's continued representation of her. Immediately after Haralambie met with Ellingsen and as soon as Foulke learned of Haralambie's intention to substitute as Ellingsen's counsel, his counsel notified Haralambie of Foulke's adamant opposition. This is not a situation where disqualification is sought after months or years of representation in a complicated litigation. It appears that the majority of Haralambie's work has involved the issue now before us. If indeed the dissolution action has progressed, Haralambie continued to render legal services after she and her client were fully aware that the appropriateness

[\*524] [\*\*730] of the representation was being contested. Both counsel and client proceeded at their own risk. As for Ellingsen's claim that Haralambie's expertise is so specialized that other competent counsel in the Tucson area would be difficult to find, it is not sufficient to avoid Haralambie's disqualification.

#### CONCLUSION

We conclude that Haralambie's representation of Ellingsen violates [\*\*\*20] ER 1.9(a). Under the circumstances of this case, the trial court abused its discretion in denying Foulke's motion seeking Haralambie's disqualification. We therefore grant special action relief, vacate the trial court's order and remand for further proceedings consistent with this opinion.

00001

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

)  
Desert Mountain Club, Inc., )

)  
Plaintiff, )

)  
vs. ) No. CV2014-01533

)  
Thomas Clark and Barbara Clark, )  
husband and wife, )

)  
Defendants. )

)  
\_\_\_\_\_  
VIDEOTAPED DEPOSITION OF ROBERT EDWARD JONES II  
VOLUME 1

Phoenix, Arizona  
May 20, 2015

Prepared by:  
Gerard T. Coash, RPR, RMR  
Certified Reporter  
Certification No. 50503

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1 I N D E X

2 WITNESS PAGE

3 ROBERT EDWARD JONES II, VOL. 1

4 Examination by Mr. Williams 12

5

6

7 EXHIBITS MARKED

8 EXHIBIT DESCRIPTION PAGE

9 (None offered.)

10

11

12 INSTRUCTIONS NOT TO ANSWER

13 Page 24 Line 13

Page 24 Line 20

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15 Page 40 Line 18

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16 Page 65 Line 11

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17 Page 65 Line 21

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20 Page 77 Line 6

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1 VIDEOTAPED DEPOSITION OF ROBERT EDWARD JONES II, VOL. 1  
2 was taken on May 20, 2015, commencing at 9:02 a.m., at the  
3 law offices of Baird, Williams & Greer, LLP, 6225 North  
4 24th Street, Suite 125, Phoenix, Arizona, before Gerard T.  
5 Coash, a Certified Reporter in the State of Arizona.

6

7

8 \* \* \*

9 APPEARANCES:

10 For the Plaintiff:

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15

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20 For the Witness:

TIFFANY & BOSCO, PA

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602-255-6000

23 cal@tblaw.com

24 Also present: Jerry Coash, videographer

25

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1 TRANSCRIPT OF PROCEEDINGS

2 THE VIDEOGRAPHER: We are on the record.

3 The time on the video monitor is 9:02 a.m. Here begins  
4 volume 1, video number one, in the deposition of Robert  
5 Jones, in the matter of Desert Mountain Club versus Clark,  
6 in the Superior Court of the State of Arizona, in and for  
7 the County of Maricopa, case number CV2014-015334.

8 Today's date is March 20th, 2015. Our court  
9 reporter is Gerard Coash. My name is Jerry Coash,  
10 certified videographer, representing Coash & Coash. This  
11 video deposition is taking place at 6225 North 24th  
12 Street, Phoenix, Arizona.

13 Counsel, please identify yourselves and  
14 state whom you represent.

15 MR. CALLAHAN: Christopher Callahan, joined  
16 by Seth Schuknecht, from Fennemore Craig on behalf of  
17 plaintiff Desert Mountain Club, Inc.

18 MR. LAVOY: Chris LaVoy on behalf of Robert  
19 Jones in his individual capacity.

20 MR. WILLIAMS: Daryl Williams for the  
21 defendants.

22 THE VIDEOGRAPHER: Would the court reporter  
23 please swear in the witness.  
24 (Witness sworn.)

25 MR. LAVOY: So, Daryl --

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1 MR. WILLIAMS: Mr. Williams, please.

2 MR. LAVOY: Okay. Based on our discussion  
3 moments ago, it's my understanding that your clients, the  
4 defendants, are not willing to stipulate to any of the  
5 proposed terms of confidentiality that were communicated  
6 to you by plaintiff's counsel and by me in written  
7 communications last week. We didn't get a response from  
8 you. And -- and as we explained, given that, we're going  
9 to need to adjourn this deposition and take these issues  
10 up with the court to resolve the confidentiality issues,  
11 and we'll proceed upon direction from the judge.

12 MR. WILLIAMS: Mr. Callahan, do you have  
13 something to say?

14 MR. CALLAHAN: Absolutely. We had proposed  
15 last week to you, Mr. Williams, in light of the  
16 confidentiality obligations imposed upon Mr. Jones by  
17 virtue of his employment with the club, Mr. LaVoy pointed  
18 out by virtue of his employment with the predecessor to  
19 the club, where Mr. Jones also has confidentiality  
20 obligations, that we would allow this deposition to  
21 proceed, we would propose that it be designated as  
22 confidential, preserving fully your right to challenge  
23 that designation as to some or all of the testimony taken,  
24 at a later date, so that you could proceed this morning.  
25 Both Mr. LaVoy and I sent letters to you

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1 last week. We did not receive the courtesy of a response  
2 from your office to either of those letters. When we came  
3 in this morning, we asked whether you were willing to  
4 agree and you said, quote, Daryl Williams does never agree  
5 to confidentiality agreements because I've been wrapped  
6 around the axle before.

7 It would have been nice to know that in  
8 advance so we could see if we could have gotten ahold of  
9 Judge Bergin and resolved this today. But we are standing  
10 on the confidentiality objection.

11 MR. WILLIAMS: Well, I can imagine there's  
12 one thing that I'm going to ask today that would fall  
13 within the ambit of any confidentiality agreements here.  
14 I certainly would respect confidentiality. And if you  
15 want to make an objection during the course of this that  
16 you think one question or another of mine falls within the  
17 limits of a confidentiality agreement, that seems to be an  
18 appropriate way for me to proceed.

19 But to simply agree that carte blanche, in  
20 general, these very general letters that were sent to  
21 you -- sent to me by you and Mr. LaVoy, that is very  
22 imprudent of me as a lawyer. And so I do not do general  
23 carte blanche confidentiality agreements. I'm willing to  
24 proceed and give you an opportunity, when you get the  
25 transcript, to say, "This is confidential for these

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1 reasons," showing me the particular confidentiality  
2 agreements -- clauses and explaining why it's  
3 confidential. That seems to me to be the more efficient  
4 way to proceed. Then we have something to fight about  
5 instead of just a bag of smoke.

6 MR. LAVOY: Daryl --

7 MR. CALLAHAN: I appreciate your views,  
8 Mr. Williams. But the problem is you and/or your clients  
9 have elected to try this lawsuit through a website run by  
10 Mr. Gary Moselle. While you didn't send me a complete  
11 copy of the original notice for Mr. Jones' deposition, I  
12 was able to get one through the Gary Moselle website.  
13 I've also gotten, through the Gary Moselle  
14 website, your strategy letter to your clients, the Clarks,  
15 as to how you intend to defend this lawsuit.

16 My assumption, since the videotape  
17 deposition notice was put up there, if this deposition  
18 proceeds without a confidentiality notice, we will see a  
19 link to the video being prepared today as soon as it is  
20 prepared on that website.

21 That causes problems for the club. That is  
22 why we sent the letter we did.

23 MR. WILLIAMS: What kind of problems does  
24 that cause for the club if that happens? And believe you  
25 me, I am not a party to anything being posted on the



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1 website. Anybody's website.

2 But please explain to me, Mr. Callahan, what  
3 kind of problems this could possibly cause for the club?

4 MR. CALLAHAN: If you go into any club  
5 confidentiality issues, which includes anything regarding  
6 club operations, that creates a problem. Because there is  
7 a confidentiality agreement between the club and  
8 Mr. Jones. There is a confidentiality agreement between  
9 Desert Mountain Properties Limited Partnership, the  
10 developer, the predecessor, and Mr. Jones, that is similar  
11 in scope.

12 Obviously, we are willing to waive it for  
13 purposes of this litigation so long as the transcript is  
14 kept to this litigation.

15 You're out soliciting a class action or a  
16 mass action among the Desert Mountain members against the  
17 club, that is well-known. I assume that you will use this  
18 for it. That's the only purpose I can think of for  
19 accelerating this deposition the way you have. And that  
20 is an improper use of a deposition, that is an improper  
21 use of a transcript, and we will resist that.

22 MR. WILLIAMS: Well, I'm trying to do a  
23 deposition to get some discovery in the case, and I think  
24 I'm entitled to that. I think you're entitled to say this  
25 position -- this part here, these questions here, they

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1 relate to something that is confidential. And then we can  
2 have something to discuss.

3 MR. CALLAHAN: If it relates to club  
4 operations, it is confidential under the agreement and  
5 cannot be publicly disseminated.

6 MR. WILLIAMS: Club operations as in hours  
7 of operations, their dealings with my client, Mr. Clark,  
8 his notice of resignation and Mr. Jones' reaction to that,  
9 those are club operations and confidential?

10 MR. CALLAHAN: There are questions you can  
11 no doubt ask. But we're not going to let him ask anything  
12 that goes into club operations. Mr. LaVoy and I can  
13 confer on that. If you want to proceed that way, we can  
14 do that.

15 MR. WILLIAMS: Well, let's proceed. Then if  
16 we --

17 MR. LAVOY: Well, hold on a second, Daryl.

18 MR. WILLIAMS: Yeah, let's proceed.

19 MR. LAVOY: No, no, Daryl.

20 MR. WILLIAMS: Mr. Williams, please,  
21 Mr. LaVoy.

22 MR. LAVOY: Okay. Okay. Thank you,  
23 Mr. Williams.

24 So the issue is not just you and your  
25 clients publishing this deposition, along with the other

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1 case materials that are being disseminated. The issue is  
2 that -- is that Mr. Jones has contractual confidential --  
3 confidentiality obligations with third parties that are  
4 fairly broad and continuing with the deposition could  
5 expose him to civil liability under those agreements.  
6 And we attempted to resolve this issue with  
7 you in advance to avoid what, frankly, is turning into a  
8 circus, and you didn't respond. You just ignored the  
9 issue, and hence we find ourselves.  
10 So, you know, if you're going to inquire  
11 into anything having to do with the policies and practices  
12 of this golf club, it's just going to be a non-starter  
13 under these confidentiality agreements.  
14 Now, it may very well be that the court  
15 narrows the scope of those obligations or releases  
16 Mr. Jones to some extent from them. And at that point,  
17 Mr. Jones will be happy to appear and answer those  
18 questions. But he should not have to be exposed to  
19 potential civil liability at this moment, and that should  
20 be resolved by the judge in our view.  
21 So if you're willing to -- to go ahead and  
22 assure us at the outset that you're not going to inquire  
23 into these areas that we described in our written  
24 communications, then, yes, let's -- let's proceed. But if  
25 you just want to take this question by question with an

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1 avalanche of objections each time as you try and needle  
2 your way into these practice and procedure issues, let's  
3 save ourself some time and go resolve this with the court.

4 MR. WILLIAMS: I propose that we proceed.

5 And if you desire to -- either of you -- instruct the  
6 witness not to answer, then there's nothing I can do about  
7 that.

8 MR. LAVOY: Are you saying that you're going  
9 to be inquiring in the club's practices and procedures?

10 It's a simple question, Daryl, yes or no.

11 MR. WILLIAMS: I do not know what you mean  
12 by "club's practices and procedures."

13 MR. LAVOY: Well, I think -- I think -- I  
14 don't think you're being candid there.

15 MR. WILLIAMS: And Mr. -- Mr. LaVoy, please,  
16 I have not given you permission to use my given name, and  
17 I would appreciate it if you would refer to me formally.

18 MR. LAVOY: Okay. Mr. Williams.

19 MR. WILLIAMS: Thank you.

20 MR. LAVOY: Okay. So, Mr. Williams, can you  
21 give us a direct answer to our direct question?

22 MR. WILLIAMS: If I knew what was involved  
23 with your -- what was defined by "policies and  
24 procedures," I could answer that. I do not.

25 So let's go question by question and you can

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1 then tell me, "Well, that's a policy or procedure. Don't  
2 answer that question." What's wrong with that?

3 MR. LAVOY: So let's take a short break  
4 and -- and let the attorneys confer regarding how to  
5 proceed.

6 Let's go off the record for a moment,  
7 please.

8 THE VIDEOGRAPHER: Off the record at  
9 9:13 a.m.

10 (A recess ensued.)

11 THE VIDEOGRAPHER: Back on the record at  
12 9:21 a.m.

13

14 ROBERT EDWARD JONES II,  
15 the witness herein, having been first duly sworn by the  
16 Certified Reporter, was examined and testified as follows:

17

18 EXAMINATION

19 BY MR. WILLIAMS:

20 Q. Mr. Jones, would you please state your name?

21 A. Robert Jones.

22 Q. Is that your full name, Mr. Jones?

23 A. No, it's not.

24 Q. What is your full name?

25 A. Robert Edward Jones II.

00013

- 1 Q. Where did you graduate from high school?
- 2 A. Dallas, Texas.
- 3 Q. What year?
- 4 A. 1976.
- 5 Q. Did you go to college?
- 6 A. Yes, I did.
- 7 Q. Where?
- 8 A. I went to Florida International University, FIU,
- 9 in Miami, Florida.
- 10 Q. What did you study?
- 11 A. Hotel, restaurant, and club management.
- 12 Q. When did you graduate from there?
- 13 A. 1978.
- 14 Q. What was your degree?
- 15 A. My degree is in hotel, restaurant, and club
- 16 management.
- 17 Q. Associate's degree? Bachelor's degree? Master's
- 18 degree?
- 19 A. Bachelor --
- 20 Q. Doctorate?
- 21 A. I didn't understand that question.
- 22 Bachelor of science.
- 23 Q. You got a bachelor of science in two years?
- 24 A. Yeah, sure did.
- 25 Q. Congratulations.

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1 How many hours were involved in that  
2 curriculum?

3 A. I don't recall. But I have a bachelor of science  
4 in hotel and restaurant, club management.

5 Q. What was your first job after you graduated in  
6 1978?

7 A. My first job was in -- was running a restaurant  
8 for a company.

9 Q. Where?

10 A. In Houston, Texas.

11 Q. Name of the company?

12 A. Foley's, F-o-l-e-y-s. Owned by Federated  
13 Department Store.

14 Q. And is Foley's the name of the restaurant?

15 A. No. I think the restaurant was called -- I'm  
16 really -- I can't recall the name of the restaurant.

17 Q. How long did you run that restaurant in Houston?

18 A. I ran it until 1981.

19 Q. Why did you quit?

20 A. I didn't quit. I was --

21 Q. Were you terminated?

22 A. No, I wasn't terminated.

23 Q. What happened?

24 A. I've never been terminated.

25 I was recruited to get into the club field,

00015

1 and I went to work for Blue Collar Golf Club in Dallas,  
2 Texas.

3 Q. Isn't that quitting? You quit the restaurant to  
4 do something else?

5 A. I've answered your question.

6 Q. Did you quit the restaurant?

7 A. I left the restaurant's employ to take another  
8 job, yes.

9 Q. And where did you go to work?

10 A. I went to work for Blue Collar Golf Club.

11 Q. Where is that?

12 A. In Dallas, Texas.

13 Q. What did you do there?

14 A. I was the assistant club manager.

15 Q. What did the assistant club manager do?

16 A. Ran all the operations of the club, reported to  
17 the general manager of the club.

18 Q. Give me an idea of the things that are involved  
19 in the operations of a club.

20 MR. CALLAHAN: I'm sorry. Mr. Williams, are  
21 you referring to golf clubs in general or in particular  
22 for a club Mr. Jones worked for?

23 BY MR. WILLIAMS:

24 Q. I'm interested in what you did in charge of  
25 operations for Blue Collar Golf Club in Dallas?



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1 A. I was assistant club manager responsible for food  
2 and beverage, housekeeping, maintenance, general member  
3 satisfaction, operation of the club.

4 Q. How long did you work there?

5 A. Until approximately 1984.

6 Q. Why'd you leave?

7 A. I was recruited/promoted to a general manager of  
8 my first club as a GM called El Dorado Country Club.

9 Q. When you say your first club, I thought Blue  
10 Collar was your first club?

11 A. First club as GM, general manager. General  
12 manager is the highest position you can have in a club as  
13 an employee.

14 Q. So what was the name of this club where you were  
15 general manager?

16 A. El Dorado Country Club in McKinney, Texas.

17 Q. And why did you say it was your first club?

18 MR. LAVOY: Object to the form. Misstates  
19 testimony.

20 BY MR. WILLIAMS:

21 Q. Did I misunderstand you? Why did you say it was  
22 your first club?

23 A. I said it was my first general manager's job.

24 Q. Okay.

25 A. As general manager, reporting directly to the

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1 board.

2 Q. How long did you work at El Dorado?

3 A. I was there until, let's see, 19 -- approximately  
4 1991. This is also on my LinkedIn page, you can find it  
5 there. It's also on the club website.

6 Q. Why did you leave El Dorado in 1991?

7 A. To take a better job called Dallas Athletic Club,  
8 a 36-hole golf experience in Dallas, Texas.

9 Q. How long were you at the Dallas Athletic Club?

10 A. I was at the Dallas Athletic Club until  
11 approximately '93, I think in that zone.

12 Q. What did you do at the Dallas Athletic Club?

13 A. I was the general manager of the club, reporting  
14 to the board of directors.

15 Q. Were both El Dorado and Dallas Athletic Club for  
16 profit entities?

17 A. El Dorado was a developer for profit entity.  
18 Dallas Athletic Club was a private member owned club, and  
19 therefore was a -- was a non-profit club.

20 Q. A 501(c)3?

21 A. Yes.

22 MR. CALLAHAN: Object to the form.

23 BY MR. WILLIAMS:

24 Q. Why did you leave Dallas Athletic Club in 1993?

25 A. I went to work for Northwood Club in Dallas,

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1 Texas. It was a larger club, a promotion, became general  
2 manager. And Northwood's in Dallas, Texas.

3 Q. How big is the Northwood Club?

4 A. 575 members, approximately 8 million in volume.

5 Q. How many holes?

6 A. 18 holes.

7 Q. How many members at Dallas Athletic Club?

8 A. Dallas Athletic Club had 2800 members.

9 Q. You just told me a minute ago that Northwood was  
10 a larger club, had 575 members as opposed to Dallas  
11 Athletic's 2800, had 18 holes as opposed to Dallas  
12 Athletic's 36 holes.

13 Why, in your estimation, was Northwood Club  
14 a larger club?

15 A. It's a higher volume, \$12 million or more. It  
16 was considered one of the top clubs in Dallas, Texas in  
17 stature, brand, reputation.

18 Q. How long did you stay at the Northwood Club in  
19 Dallas?

20 A. I stayed until 1997, when I was recruited by a  
21 member to come to Desert Mountain Properties.

22 Q. Did you start working for Desert Mountain  
23 Properties in 1997?

24 A. No. I had an agreement with my club, which  
25 required me to stay until January 19th of 1998. And that

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1 was my first day of employment in the position of  
2 vice-president of operations.

3 Q. So you actually stayed with Northwood from 1993  
4 until you began working at Desert Mountain in 1998?

5 A. Right. Mr. Williams, this is my 36 years of  
6 being a private club or development club manager.

7 Q. Your job as vice-president at Desert Mountain  
8 Properties involved what?

9 MR. LAVOY: Objection.

10 MR. WILLIAMS: Is that a form objection or  
11 are you going to direct him not to speak? You get to do  
12 one or the other.

13 MR. LAVOY: So can you be more specific than  
14 that so we can evaluate whether you're probing into  
15 information that would be subject to his contractual  
16 confidentiality obligations?

17 BY MR. WILLIAMS:

18 Q. What was your job as vice-president at Desert  
19 Mountain Properties starting in 1998?

20 A. I was responsible for all the operations of the  
21 club.

22 Q. And when you say "operations of the club," what  
23 do you mean?

24 A. That would be all the operating departments,  
25 golf, food and beverage, maintenance, membership.

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- 1 Q. Did people work under you at the time?  
2 A. Yes.  
3 Q. How many?  
4 A. I don't recall the exact number.  
5 Q. Approximately?  
6 A. I would say approximately, you know, in the 400  
7 range, 400 people.  
8 At that time, we only had two clubs --  
9 houses -- three clubhouses at Dallas -- at Desert Mountain  
10 at the time.  
11 Q. You continued then as vice-president of  
12 operations throughout your employment by Desert Mountain  
13 Properties?  
14 A. No. In '05, I was promoted to senior  
15 vice-president of the company. In '07, I was promoted as  
16 co-president. And at that time, the club was owned by  
17 Morgan Stanley.  
18 Q. By whom was Desert Mountain Properties originally  
19 owned?  
20 A. It was owned in a partnership with Crescent Real  
21 Estate REIT out of Fort Worth, Texas, Richard Rainwater's  
22 company, and Lyle Anderson of Anderson Companies based in  
23 Scottsdale.  
24 MR. CALLAHAN: And, counsel, just for  
25 clarification, when you say "originally," you mean when

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1 Mr. Jones first joined their employ, correct?

2 MR. WILLIAMS: Well, I'm sure that he  
3 wouldn't have any information prior to that.

4 BY MR. WILLIAMS:

5 Q. After the Crescent REIT owned it, was Morgan  
6 Stanley the next owner of Desert Mountain Properties?

7 A. Yes. They bought Crescent, the entire REIT, in  
8 2005. That was widely publicized in all the -- all the  
9 trade publications, news about publicly traded companies.  
10 They bought the entire asset from Crescent and took the  
11 REIT off the stock exchange.

12 Q. Did Morgan Stanley continue to own Desert  
13 Mountain Properties until it was sold to the members?

14 A. No. They owned it for approximately 18 months.  
15 And now we're approaching 2008, the financial fallout of  
16 this country -- you know, the stock market. They  
17 defaulted to Barclays. And Barclays had the note. And,  
18 therefore, I started working for Barclays Bank.

19 Q. Did you continue on as the co-president of Desert  
20 Mountain Properties as an employee of Barclays Bank?

21 A. Yes. I was a W-2 employee all the way through  
22 this employment relationship.

23 Q. Did you have an employment contract with Barclays  
24 Bank?

25 A. I've had an employment agreement ever since I

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1 arrived to Desert Mountain Properties.

2 Q. Is there a confidentiality agreement or clause in

3 your employment agreement with Barclays Bank?

4 A. Barclays bought the assets of Desert Mountain

5 Properties. Lyle Anderson Co, which is represented by

6 Sonoran Partners, still maintained his ownership position.

7 So my contract and my confidentiality agreement, as well

8 as all the employees, all our -- all our personnel records

9 stayed the same during that period of time.

10 MR. CALLAHAN: Mr. Williams, if I might, let

11 me say that --

12 MR. WILLIAMS: Is this an objection or is

13 this -- which you get -- you get to instruct him not to

14 answer or say "form."

15 MR. CALLAHAN: What I get to do --

16 MR. WILLIAMS: You want to take a rest --

17 you want to take a recess, you may do that too.

18 MR. CALLAHAN: No. I'd like to make a brief

19 statement that would be over if you would just let me make

20 it.

21 So I wanted to let you know that

22 Mr. Jones -- Mr. Jones' employment contract does include a

23 non-disclosure provision.

24 BY MR. WILLIAMS:

25 Q. You got a W-2 from Barclays Bank?

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1 A. No. I got a -- they bought -- and I've been  
2 clear with you on this -- they bought Crescent REIT out.  
3 Therefore, they bought the company. Right? So I stayed  
4 an employee of Desert Mountain Properties until the  
5 members bought the club.

6 Q. And when did the members buy the club?

7 A. They bought the club in -- January 1 of 2011.

8 Q. At the time the members bought the club, you were  
9 still the co-president?

10 A. That's correct.

11 Q. Who was your co-president?

12 A. The co- -- the other co-president was our ex-CFO  
13 Richard Yehling.

14 Q. Would you spell Mr. Yehling's last name?

15 A. I may not have this right.

16 MR. LAVOY: Y-e-h-l-i-n-g.

17 THE WITNESS: Yeah, that is correct.

18 BY MR. WILLIAMS:

19 Q. Where's Mr. Yehling now?

20 A. I am not aware of where he's employed. Last time  
21 I knew he was with Pacific Links, but I'm not aware where  
22 he's employed today.

23 Q. Where is Pacific Links?

24 A. Pacific Links is an entity that has bought  
25 several golf clubs. They have a website. But, again, I'm



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1 not -- I'm not on a personal friendship basis or knowledge  
2 base as to where Mr. Yehling is. I don't know.

3 Q. Did he continue on with Desert Mountain, the  
4 member owned entity, that acquired the golf course in  
5 2011?

6 A. He did continue on for a period of time. I think  
7 he was there approximately 90 days, but I'm not --  
8 approximate, I'm not sure exactly.

9 Q. Do you know why Mr. Yehling left?

10 A. Yes. He -- because -- the reason --

11 MR. LAVOY: Well, hold.

12 THE WITNESS: Yeah.

13 MR. LAVOY: I'm going to object and instruct  
14 you not to answer regarding any personnel matters of the  
15 club.

16 THE WITNESS: I can't com- -- comment on  
17 that.

18 BY MR. WILLIAMS:

19 Q. Okay. Why do you think he left?

20 MR. LAVOY: Same.

21 THE WITNESS: No comment.

22 BY MR. WILLIAMS:

23 Q. Was Mr. Yehling terminated?

24 MR. LAVOY: Same.

25 THE WITNESS: No comment.

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1 MR. WILLIAMS: And so let me see if I  
2 understand, Mr. LaVoy. You think this is somehow in  
3 violation of a confidentiality agreement about club  
4 businesses and policy as to why Mr. Yehling left?  
5 MR. LAVOY: Mr. Jones is subject to an  
6 employment agreement with broad confidentiality  
7 protections for the club and the question you've asked  
8 could be construed as asking him to provide confidential  
9 information regarding personnel matters and internal  
10 management of the company. And, therefore, to avoid civil  
11 liability, Mr. Jones is -- is not going to answer. But we  
12 welcome that the issue be raised with the court and --  
13 MR. WILLIAMS: Well Mr. --  
14 MR. LAVOY: -- we'll proceed as -- as  
15 ordered.  
16 MR. WILLIAMS: Mr. Callahan, as the club's  
17 lawyer, are you going to sue Mr. Jones if he answers this  
18 question?  
19 MR. CALLAHAN: Mr. Williams, you can't  
20 possibly intend that question the way you asked it. As  
21 you know, there's a predecessor entity. Mr. LaVoy and  
22 Mr. Jones have been very clear that the predecessor entity  
23 has the rights that Mr. LaVoy is here talking about. I  
24 don't represent that entity.  
25 MR. WILLIAMS: Do you, as the representative

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1 of the plaintiffs in this case, have any objection if  
2 Mr. Jones says his opinion of why Mr. Yehling left after  
3 the present entity succeeded ownership?  
4 MR. CALLAHAN: Absolutely. I join  
5 Mr. LaVoy's objection. Mr. Jones has a confidentiality  
6 obligation. We provided you with a mechanism to get this  
7 all resolved. With an order from the court, that would  
8 clarify things, would protect Mr. Jones, would allow you  
9 to take this testimony. You declined that. That's why we  
10 are where we are.  
11 MR. WILLIAMS: And what is confidential  
12 about this question, Mr. Callahan?  
13 MR. CALLAHAN: You would have to ask  
14 Mr. LaVoy that, Mr. Williams. There is a confidentiality  
15 obligation. Mr. LaVoy is protecting his client and his  
16 obligations under a contract.  
17 MR. WILLIAMS: From the standpoint of the  
18 plaintiffs, is there anything obligation -- anything  
19 confidential about this question?  
20 MR. CALLAHAN: I have no idea, Mr. Williams.  
21 And I'm not under oath here. This is counting against  
22 your four hours, so use it as you will.  
23 MR. WILLIAMS: So you are just also  
24 instructing your client not to answer this question?  
25 MR. CALLAHAN: Mr. LaVoy took care of that.

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1 I'm not instructing him to do anything on this question.

2 MR. WILLIAMS: Do you agree that he is

3 permitted to answer this question?

4 MR. LAVOY: Mr. Williams, I think

5 you have --

6 MR. CALLAHAN: I don't think --

7 MR. LAVOY: -- sufficient guidance --

8 MR. CALLAHAN: -- I'm under oath here.

9 Proceed.

10 BY MR. WILLIAMS:

11 Q. Did you have another co-president after

12 Mr. Yehling left in the first part of 2011?

13 A. No.

14 Q. Did you become the president?

15 A. No, I did not.

16 Q. Who became president?

17 A. The member -- board members elected an advisory

18 board of the club. The president, at that time, became

19 David White.

20 Q. Was he president of the board -- pres- --

21 president of the company that owned all the assets at

22 Desert Mountain?

23 A. That's correct.

24 Q. Well, that was a -- that was disjunctive.

25 Was he president of the board?

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1 A. He was president of the board. It was a member  
2 board.

3 Q. Was he president of the entity that owned all the  
4 assets?

5 MR. CALLAHAN: Objection. Foundation.

6 THE WITNESS: Can you repeat the question?

7 BY MR. WILLIAMS:

8 Q. Was he president of the entity that owned the  
9 assets?

10 A. He was --

11 MR. CALLAHAN: Same objection.

12 MR. WILLIAMS: You know, Mr. Callahan, I  
13 think you get to say "form." That's all.

14 MR. CALLAHAN: I can say "form." I can say  
15 "foundation." I'll defend this deposition as I deem  
16 appropriate without your advice. Thank you, counsel.

17 BY MR. WILLIAMS:

18 Q. Was he president of the entity that owned the  
19 assets?

20 A. He was --

21 MR. CALLAHAN: Objection. Foundation.

22 MR. WILLIAMS: Go ahead.

23 THE WITNESS: I'm not going to answer the  
24 question. Move on.

25 MR. CALLAHAN: Bob, you can answer that.

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1 The problem is it becomes a member owned club. He's  
2 president of the board.

3 MR. WILLIAMS: No speeches. Please, no  
4 speeches. No speeches, please.

5 THE WITNESS: He's -- he's the president.

6 MR. CALLAHAN: You're wearing on my  
7 patience, Mr. Williams, very quickly.

8 THE WITNESS: He's the president of the  
9 member elected board. He's the president of the club.

10 He's the president that represents the members in all the  
11 assets that the members own, yes.

12 BY MR. WILLIAMS:

13 Q. And the members do own all the assets, correct?

14 A. That's correct.

15 Q. Have owned all the assets since turnover in --  
16 January 1, 2011 to the present?

17 A. From January 1, 2011, at the closing, which  
18 happened on the 31st, yes, they do. They own all the  
19 assets.

20 The -- actually, the corporation owns the  
21 assets, and then they own that corporation. And that  
22 corporation is called Desert Mountain Club, Inc.

23 Q. Desert Mountain Club, Inc. is owned by every  
24 member of the golf club or just the equity members?

25 A. Just the equity members, yes.

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1 Q. That includes, does it not, both the golf equity  
2 and the club equity members?

3 A. That's -- yes.

4 Q. Are there any other equity members, other than  
5 golf equity and club equity members?

6 A. No.

7 Q. Has the club recently added any new equity  
8 members to the membership at Desert Mountain?

9 A. Yes.

10 Q. When was the last time an equity member was  
11 added?

12 A. This month.

13 Q. What did that --

14 A. By the membership committee and board approval.

15 Q. Was it an equity member who succeeded to interest  
16 on the surrender list?

17 MR. CALLAHAN: Object to the form.

18 THE WITNESS: Could you be more specific?

19 BY MR. WILLIAMS:

20 Q. Yeah. You've got a surrender list out there for  
21 people who want to get out, correct?

22 A. We have a member resale program. And that is the  
23 only way you can come in or out of the club, yes.

24 Q. Well, my question was the recently added equity  
25 member -- most recently one -- was it added, this new

00031

1 member, because they participated in the resale program?

2 A. All membership issues since turnover have come  
3 through the membership resale program. The most current  
4 one that we're talking about this month, yes, membership  
5 resale program.

6 Q. Who was that?

7 MR. CALLAHAN: Object to the form.

8 Can we -- can you give me any theory as to  
9 how this is relevant to the claims of Mr. Clark?

10 BY MR. WILLIAMS:

11 Q. Who was that?

12 A. That's confidential information.

13 MR. CALLAHAN: Bob --

14 BY MR. WILLIAMS:

15 Q. How much did that member pay?

16 MR. CALLAHAN: Objection. That's not  
17 relevant. We're not doing a fishing expedition for your  
18 mass action, Mr. Williams. Move on.

19 BY MR. WILLIAMS:

20 Q. How much did that member pay?

21 A. I can't answer the question.

22 Q. You're not answering the question?

23 MR. LAVOY: I'm instructing Mr. Jones not to  
24 answer the question. The -- the terms of the club with  
25 new equity members who have no involvement in this lawsuit



00032

1 is confidential information. Those terms represent the --  
2 represent the policies of the club and how it accepts  
3 members. And so my instruction stands.

4 BY MR. WILLIAMS:

5 Q. Since January 1, 2011, what is it exactly that an  
6 equity member owns?

7 A. They own --

8 MR. CALLAHAN: Object to the form. Lack of  
9 foundation.

10 MR. WILLIAMS: Go ahead.

11 THE WITNESS: Why don't you restate the  
12 question again?

13 MR. WILLIAMS: Sure. Read that -- read that  
14 back.

15 (The record was read by the court reporter  
16 as follows:

17 QUESTION: Since January 1, 2011, what is it  
18 exactly that an equity member owns?)

19 MR. CALLAHAN: Same objection, form and  
20 foundation.

21 THE WITNESS: All members that have joined  
22 the club own a ownership share of the corporation that  
23 owns the club, which we've talked about, called Desert  
24 Mountain Club, Inc. That's what they own. That gives  
25 them -- they sign a membership agreement, gives them the

00033

1 right to use the club on a recreational and social basis.

2 BY MR. WILLIAMS:

3 Q. Take my clients, the Clarks, for example --

4 A. Uh-huh.

5 Q. They were equity golf members, correct?

6 A. Correct.

7 Q. They owned part of the club, correct?

8 MR. CALLAHAN: They own part of the club.

9 THE WITNESS: They -- as an equity member,  
10 they owned a share of ownership of the club.

11 BY MR. WILLIAMS:

12 Q. What was their share of ownership of the club?

13 A. Well, if the club dissolved, all dissolved, then  
14 they would have whatever the financial gain of that asset  
15 would be if it was sold to a secondary market. That  
16 happens in all private clubs.

17 If any private club was to dissolve, the  
18 equity members would own whatever was the return from that  
19 or the liability from that.

20 Q. So what was the Clarks' interest -- ownership  
21 interest in the club?

22 MR. CALLAHAN: Objection. Form and  
23 foundation.

24 THE WITNESS: I have no calculation. I have  
25 no bearing on that question because it's a dissolution

00034

1 question.

2 If the company was to dissolve -- as I

3 explained further of all private clubs, if the club

4 dissolved, they would have whatever the proceeds of the

5 sales of the asset and the land, would be distributed

6 equally per each ownership share.

7 BY MR. WILLIAMS:

8 Q. Is it your testimony, Mr. Jones, that the only

9 equity interest that an equity member has is equity if

10 there is a dissolution and distribution and liquidation?

11 A. No, sir.

12 MR. CALLAHAN: Objection. Form and

13 foundation.

14 THE WITNESS: Didn't say that. That's not

15 what I said.

16 BY MR. WILLIAMS:

17 Q. Well, correct me with what I said was incorrect

18 there.

19 MR. CALLAHAN: Objection to the form.

20 You're asking all sorts of legal occlusions here, counsel.

21 It's inappropriate for this witness.

22 MR. WILLIAMS: Go ahead.

23 THE WITNESS: I'm -- really, I'm unsure

24 where you want to go with this or what you're trying to go

25 to this.

00035

1 These individuals were equity members.  
2 They're owners of the club. We have clearly answered that  
3 question. So I don't -- you know, I'm not sure what else  
4 you want to know in that regard.

5 BY MR. WILLIAMS:

6 Q. Let's take the Clarks for example. They paid  
7 several hundred thousand dollars to become an equity  
8 owner, did they not?

9 MR. CALLAHAN: Object to the form.

10 THE WITNESS: No, they did not. They joined  
11 Desert Mountain Club January 1st of 2011 in a member  
12 conversion agreement that converted them to a new entity  
13 called Desert Mountain Club, Inc. The assets in that  
14 transaction came over, but the club, Desert Mountain  
15 Properties, did not. New entity. New EIN, new employer  
16 number.

17 In that conversion agreement that your  
18 client signed, clearly states the membership relation and  
19 ownership relation with it. If you want to show me that  
20 doc, I'll answer questions about that doc. But your  
21 client signed that doc.

22 BY MR. WILLIAMS:

23 Q. Is it your understanding that my client became a  
24 member of the new -- an owner of the new corporate entity?

25 A. Became a member owner, equity owner of the new

00036

1 entity, yes.

2 Q. That means, does it not, that he owned an  
3 interest, a proportionate interest, in all the assets of  
4 the new entity, indirectly, as his -- him being an owner  
5 of the company?

6 MR. CALLAHAN: Objection. Form and  
7 foundation.

8 THE WITNESS: The equity members elect a  
9 board to govern. This is the same in all private clubs,  
10 Mr. Williams. You may or may not have experience with  
11 private clubs, but that's how private clubs operate.

12 MR. WILLIAMS: Would you repeat my question,  
13 please?

14 MR. LAVOY: Repeat his answer.

15 MR. WILLIAMS: Just the question.

16 MR. LAVOY: Both.

17 MR. WILLIAMS: Just the question.

18 (The record was read by the court reporter  
19 as follows:

20 QUESTION: That means, does it not, that he  
21 owned an interest, a proportionate interest, in  
22 all the assets of the new entity, indirectly, as  
23 his -- him being an owner of the company?)

24 MR. CALLAHAN: And what was the answer to  
25 that question, Mr. Coash?

00037

1 MR. WILLIAMS: Don't read that. Let him  
2 answer this one first.  
3 MR. CALLAHAN: Counsel, I want to hear the  
4 answer to the last question. That is my right.  
5 MR. WILLIAMS: Go ahead.  
6 (The record was read by the court reporter  
7 as follows:  
8 ANSWER: The equity members elect a board to  
9 govern. This is the same in all private clubs,  
10 Mr. Williams. You may or may not have  
11 experience with private clubs, but that's how  
12 private clubs operate.)  
13 MR. WILLIAMS: Now, read my question so the  
14 answer -- witness can answer my question.  
15 MR. CALLAHAN: Mr. Williams, you're  
16 harassing this witness at this point. It's discourteous.  
17 MR. WILLIAMS: My objection is  
18 non-responsive. I get to have an answer to my question.  
19 Please read my question so the witness can  
20 answer my question.  
21 (The record was read by the court reporter  
22 as follows:  
23 QUESTION: That means, does it not, that he  
24 owned an interest, a proportionate interest, in  
25 all the assets of the new entity, indirectly, as

00038

1 his -- him being an owner of the company?)  
2 MR. CALLAHAN: And show an objection to form  
3 and foundation.  
4 THE WITNESS: In private clubs, equity  
5 members elect a board to govern the club. They are the  
6 owners of the club, that is the same case for Desert  
7 Mountain Club, Inc.  
8 So your client signed a membership  
9 agreement, a conversion agreement, supersedes all other  
10 agreements, and is a member, was vetted by the membership  
11 committee and approved to join the new entity, and join  
12 the new entity and became an equity owner of the club, as  
13 all private clubs, to my knowledge, are operated in that  
14 fashion.  
15 BY MR. WILLIAMS:  
16 Q. And as an equity owner, he owned assets of the  
17 club?  
18 MR. CALLAHAN: Object to the form. Lack of  
19 foundation.  
20 MR. LAVOY: Mr. Williams, you're asking this  
21 lay witness questions of law for a lawyer or a judge.  
22 It's harassing. You know better. Please stop it.  
23 MR. WILLIAMS: Please answer the question,  
24 your opinion, not a legal opinion.  
25 THE WITNESS: I've --

00039

1 MR. CALLAHAN: Same objection.

2 THE WITNESS: I've given my opinion. My  
3 opinion's on record. We can read it back if you'd like.

4 But I've answered the question.

5 BY MR. WILLIAMS:

6 Q. So equity members do own assets or not?

7 MR. CALLAHAN: Object to the form. Calls  
8 for a legal conclusion.

9 THE WITNESS: I've answered the question,  
10 sir.

11 Ask your next question.

12 BY MR. WILLIAMS:

13 Q. It's a yes or no. Does an equity member own any  
14 assets at the club?

15 A. All --

16 MR. CALLAHAN: That depends on the club  
17 structure, Mr. Williams. And we're not talking about this  
18 particular club structure because that's going to violate  
19 the confidentiality provision.

20 MR. WILLIAMS: Are you instructing --

21 MR. CALLAHAN: You've asked this question.

22 Move on.

23 MR. WILLIAMS: Are you instructing the  
24 witness not to answer that question?

25 MR. LAVOY: Mr. Williams, more fundamentally



00040

1 this is a question of law, what -- who formally owns an  
2 asset, the entity, the shareholder, directly, indirectly.  
3 You're trying to box him in on a question of law that as a  
4 layperson he's not in a position to answer. I know you're  
5 hoping for a sound byte, but it's harassing. And that's  
6 separate and apart from the confidentiality. Please be  
7 respectful of the rules and move on.

8 MR. WILLIAMS: Are you instructing the  
9 witness not to answer this question?

10 MR. LAVOY: What's your question?

11 MR. WILLIAMS: Please read the question  
12 back.

13 (The record was read by the court reporter  
14 as follows:

15 QUESTION: It's a yes or no. Does an equity  
16 member own any assets at the club?)

17 MR. CALLAHAN: Form and foundation.

18 MR. LAVOY: I'm instructing you not to  
19 answer.

20 THE WITNESS: I can't answer the question  
21 based on advice of counsel.

22 MR. WILLIAMS: I've placed on the screen --

23 THE WITNESS: Mr. Williams, can I have  
24 another bottle of water, if you'd be so kind?

25 MR. WILLIAMS: I've placed on the screen a

00041

1 document, which is CL008 -- Let me come back.

2 THE WITNESS: Thank you, sir.

3 BY MR. WILLIAMS:

4 Q. I've placed on the screen a document, has a Bates

5 label CL triple zero 80 -- CL00080. These are the bylaws

6 of the Desert Mountain Club dated July 1, 2013.

7 Are you familiar with these bylaws?

8 MR. CALLAHAN: Object to the form.

9 THE WITNESS: I am familiar with the club

10 bylaws, yes.

11 BY MR. WILLIAMS:

12 Q. The first page in these bylaws, CL0001 -- let me

13 state that this way -- CL00081, has bylaw keypoints. Have

14 you seen these bylaw keypoints before?

15 A. Can you raise the font on this?

16 Q. Sure.

17 A. Thank you.

18 The page that you asked me to look --

19 identify has disappeared.

20 I'd like to see the bottom of the document,

21 please. There's a footer on the bottom.

22 Okay. Yes, I've seen those.

23 Q. What was telling about the footer at the bottom

24 of CL00081?

25 A. Nothing. That would just give me an idea was

00042

1 this a legitimate document or not.

2 Q. What about that footer tells you whether this is  
3 a legitimate document?

4 A. Shows that it came from one of the individuals  
5 that works in our company.

6 Q. Which individual is that?

7 A. C Hillis.

8 Q. Does that mean that this document, CL00081, was  
9 prepared by C Hillis?

10 A. No. You want to show me the whole document  
11 and -- So what was your question, Mr. Williams, about the  
12 document?

13 Q. My question initially was whether you were  
14 familiar with it. But we got off on a --

15 A. But I -- I said -- No, sir, I did answer the  
16 question. I am familiar with the document.

17 Q. Who prepared this bylaws keypoints?

18 A. Our club counsel.

19 Q. Who was that at the time?

20 A. It was a combination of Randy Addison -- '13 --  
21 2013. Randy Addison of Addison Law in Dallas, Texas. It  
22 could have been Quarles & Brady, or it was Fennemore Craig  
23 together. I'm not sure when Fennemore Craig retook over  
24 legal -- lead on our legal work.

25 Q. What was the reason for preparing this little

00043

1 summary at the beginning of the bylaws that kind of  
2 summarize these things here?

3 A. I think it's like -- this is very prevalent in  
4 all club bylaws, many club bylaws that I've seen through  
5 the years. This is just a simple summary page, like an  
6 index, for the reader of the document.

7 Q. Did you anticipate that people would rely upon  
8 this document?

9 A. I --

10 MR. CALLAHAN: Object to the form.

11 MR. LAVOY: Form. Foundation.

12 And when you say "this document," do you  
13 mean the entire bylaws or do you mean this segment that  
14 you've elected to put on the screen?

15 BY MR. WILLIAMS:

16 Q. Do you have any concerns about what I'm asking  
17 here? Are you confused?

18 A. Yes, I am.

19 Q. Well, I'm talking about these bylaws keypoints.

20 A. Okay.

21 MR. CALLAHAN: Just the keypoints?

22 THE WITNESS: And your question was?

23 BY MR. WILLIAMS:

24 Q. Did you expect members to rely upon these?

25 A. We expect members, by membership agreement to --

00044

- 1 they agree to abide by the full bylaws of the club.  
2 These are only pages -- which I have clearly  
3 answered -- is index to the bylaws.  
4 Q. So you wouldn't expect members to rely upon the  
5 bylaws keypoints?  
6 A. I would expect members to rely on the full  
7 bylaws, the full set.  
8 Q. So the answer is no, you wouldn't expect them to  
9 rely upon this?  
10 A. Please don't answer the question for me.  
11 I -- By membership agreement, the members  
12 agree to abide by the club bylaws.  
13 Q. Do you --  
14 A. The full club bylaws.  
15 Q. You know, I appreciate that.  
16 A. Okay.  
17 Q. I know that they do that.  
18 A. I'm just trying to help you, Mr. Williams.  
19 Q. Well, you're not answering my question. So  
20 you're not helping me.  
21 A. Yes, sir, I am.  
22 Q. The question is did you expect -- you  
23 personally -- that members could rely upon the bylaws  
24 keypoints that were prepared?  
25 MR. CALLAHAN: You're asking that

00045

1 independent of the bylaws?

2 THE WITNESS: My personal opinion --

3 MR. CALLAHAN: Objection. Form.

4 Foundation.

5 THE WITNESS: Yes. I think everyone

6 expected members, who sign the membership agreement, to

7 abide by -- and who agreed to abide by the club bylaws, to

8 abide by them as they were in force.

9 BY MR. WILLIAMS:

10 Q. Mr. Jones, we're having trouble communicating.

11 A. I'm not having any trouble.

12 Q. You're answering questions I'm not asking. So

13 I'm objecting as non-responsive.

14 My question is limited to the bylaw

15 keypoints that begin on CL00081.

16 Did you, in your opinion, think it was okay

17 for members to rely upon what was stated in the bylaws

18 keypoints?

19 A. And my answer is --

20 MR. CALLAHAN: Asked and answered.

21 THE WITNESS: Asked and answered. My

22 answer -- my -- asked and answered.

23 MR. LAVOY: Go ahead and tell him again,

24 Bob.

25 MR. WILLIAMS: Now, just limit it to the

00046

1 bylaws keypoints, because that's my only question.

2 MR. CALLAHAN: Mr. Williams, I'm sorry, that

3 question makes absolutely no sense.

4 Are you asking him do you -- did you expect

5 the members would rely on the bylaws keypoints, not read

6 the by- --

7 MR. WILLIAMS: Would you -- would you --

8 MR. CALLAHAN: No. I'm trying to understand

9 your question.

10 MR. WILLIAMS: Well, you don't have to.

11 It's the witness. You get to say form or instruct him not

12 to answer. Please be quiet. Otherwise -- if you would be

13 so kind.

14 MR. LAVOY: And you get --

15 MR. CALLAHAN: Mr. Williams --

16 MR. LAVOY: -- to answer your question once

17 and not harass him when you don't get -- harass him when

18 you don't get the answer you want. He said, repeatedly --

19 MR. WILLIAMS: Listen -- listen --

20 MR. LAVOY: Mr. Williams, he has repeatedly

21 told you that a member may rely on the entirety of the

22 bylaws, not just a select portion that you think is

23 advantageous to your client for some reason. He's

24 answered the question. You don't like it, move on.

25

00047

1 BY MR. WILLIAMS:

2 Q. My question is limited to the bylaws keypoints.

3 Did you, in your opinion, think that this

4 was something on which members could rely?

5 A. Members have signed a membership agreement. That

6 membership agreement, they agree to abide by the bylaws.

7 The club bylaws are in force, the full set. That's my

8 answer to your question.

9 Q. Well, why did you do the bylaws keypoints then?

10 MR. LAVOY: Asked and answered.

11 THE WITNESS: I've -- I've already answered

12 that question.

13 BY MR. WILLIAMS:

14 Q. That's just a table of contents?

15 A. Yeah -- no, it's a -- it's a table of contents, a

16 an index guide. I've seen this, Mr. Williams, in many

17 club bylaws. It's just a form how the bylaws were

18 presented, as if there was a cover page with a logo on it

19 that said "Desert Mountain Club."

20 Q. You know, I'm not interested in any other clubs.

21 Thank you for that, so many times that you've said it.

22 A. I know. I'm trying to help you.

23 Q. My question is why were the bylaws keypoints

24 prepared if you expected the members to rely only on the

25 bylaws?



00048

1 MR. CALLAHAN: Objection. Misstates  
2 testimony.

3 THE WITNESS: I've already asked and  
4 answered this question. These are part of the bylaws.  
5 Therefore, the whole bylaws are in force. That's my  
6 answer to your question.

7 BY MR. WILLIAMS:

8 Q. Being part of the bylaws then, the bylaws  
9 keypoints can have the same level of credibility and  
10 ability of the members to rely upon them as the actual  
11 formal bylaws themselves?

12 A. No, sir.

13 MR. CALLAHAN: Object to the form.  
14 Foundation.

15 THE WITNESS: I did not say that the first  
16 time you asked.

17 The entire bylaws are what the members have  
18 agreed to abide by in their membership agreement. That's  
19 the full context of the bylaws from page one to ending  
20 page.

21 MR. CALLAHAN: Go ahead, Bob. I'm sorry.  
22 Let me further offer an objection to the  
23 manner in which you're presenting exhibits here. You're  
24 cherry picking pages out of a document. You're not  
25 showing the witness the entire document. You're trying to

00049

1 trip him up on questions. If you want to ask him  
2 questions about a document, I would ask that he be shown  
3 the entire thing.

4 BY MR. WILLIAMS:

5 Q. Let me now show you this page from the bylaws  
6 keypoints. This is page Roman numeral III of that,  
7 CL00083.

8 A. I've asked you before, but would you please make  
9 the entire page bigger for me or give me the ability to  
10 scroll down or give me the ability to see the actual  
11 document?

12 MR. LAVOY: Mr. William, would you be  
13 willing to provide the witness with a full copy of the  
14 document, hard copy, so that we can move along here?

15 MR. WILLIAMS: I'm going to do the  
16 deposition the way that I wish to do it. You guys --

17 MR. LAVOY: Let the record reflect you won't  
18 provide the witness with a hard copy of the document in  
19 full.

20 BY MR. WILLIAMS:

21 Q. So --

22 A. I have vision issues, sir, that's why I'm asking  
23 the question.

24 Q. Well, I do, too. So --

25 A. I understand.

00050

1 Q. I'm going to stop at the top here -- start at the  
2 top here of this page, which is marked CL00083. And I'm  
3 just going to ask you questions here about -- well, let's  
4 go to the prior page. Let's go to the prior page, Member  
5 Benefits Highlights, refundable membership contributions.  
6 I'm going to highlight some language here.  
7 What does that mean, "refundable membership  
8 contributions," as you understand it?

9 MR. CALLAHAN: Object to the form. You  
10 won't even give him the entirety of the provision you're  
11 asking him about, counsel.

12 BY MR. WILLIAMS:

13 Q. Would you like to see the next page, too? I can  
14 show you the next page if you'd like.

15 A. I would prefer, sir, to see whole document.

16 Q. Go ahead and answer my question with regard  
17 what's on the screen, please.

18 MR. CALLAHAN: Form and foundation.

19 BY MR. WILLIAMS:

20 Q. I'm showing you CL00082. I've highlighted  
21 refundable membership contribution. I'm asking you  
22 what -- what is your understanding of what that means?

23 MR. CALLAHAN: Form and foundation.

24 THE WITNESS: It simply means that -- you  
25 know, the membership, once it's transferred through the

00051

1 club, that the equity members would be entitled to any  
2 equity -- any refund of that number, if they sold it for  
3 more than what -- what the club established transfer rate  
4 or fee would be.

5 That help you?

6 BY MR. WILLIAMS:

7 Q. That's your understanding, correct?

8 A. That's my general understanding of this small  
9 segment of an entire document, but it does not speak for  
10 the entire document. The entire document is in force.

11 Q. To be eligible to receive a refund of their  
12 membership contribution, they would have to have submitted  
13 their membership to the club for reissuance, correct?

14 A. That's correct.

15 MR. LAVOY: Object to the form.

16 THE WITNESS: That's the -- that is what the  
17 bylaws require, that's what the membership agreement  
18 requires, that's what the conversion agreement requires,  
19 that your client signed, yes.

20 BY MR. WILLIAMS:

21 Q. So in order to get some sort of refund of  
22 membership contributions, they have to -- members have to  
23 comply with the procedures for becoming a member of the  
24 membership reissuance list?

25 MR. CALLAHAN: Object to the form.

00052

1 BY MR. WILLIAMS:

2 Q. Correct?

3 A. Yes. And the word -- the optimum word is  
4 "eligible." It says "eligible." That's the optimum word  
5 there, "eligible."

6 Q. Sure. Because under what's happening at the club  
7 now, they've got to pay a transfer fee too. And if the  
8 new member's contribution is less than the transfer fee,  
9 then to get out of this club, the member's got to pay  
10 money?

11 MR. CALLAHAN: Object to the form.

12 THE WITNESS: Is that a question?

13 MR. WILLIAMS: Yes.

14 THE WITNESS: Can you restate the question?

15 MR. WILLIAMS: Sure. I'll have him read it  
16 back.

17 MR. LAVOY: He asked for it to be restated,  
18 not reread.

19 (The record was read by the court reporter  
20 as follows:

21 QUESTION: Sure. Because under what's  
22 happening at the club now, they've got to pay a  
23 transfer fee too. And if the new member's  
24 contribution is less than the transfer fee, then  
25 to get out of this club, the member's got to pay

00053

1 money?)

2 MR. CALLAHAN: Those are two declaratory  
3 statements. There's not a question in there. There's no  
4 question pending, Mr. Jones.

5 MR. WILLIAMS: There's a question mark at  
6 the end of that. Please answer that question.

7 MR. CALLAHAN: Are you asking him if he  
8 agrees with your statement? Is that the question,  
9 counsel?

10 MR. WILLIAMS: I'm going to have you reread  
11 again.

12 There's a question mark at the end because  
13 the intonation went up. It's part of communicating. And  
14 so answer the question, please.

15 THE WITNESS: As long as it's grammatically  
16 a question, I'll do so.

17 MR. WILLIAMS: Okay. It is grammatically a  
18 question.

19 MR. CALLAHAN: It is not a grammatically a  
20 question. Are you asking for his agreement with your  
21 declaratory statement, counsel?

22 MR. WILLIAMS: Please read the question.

23 MR. CALLAHAN: There's no question what the  
24 statement was, counsel. I'm asking what you're asking  
25 him. He's entitled to a question, not a statement.

00054

1 MR. WILLIAMS: Please read the question.

2 (The record was read by the court reporter

3 as follows:

4 QUESTION: Sure. Because under what's  
5 happening at the club now, they've got to pay a  
6 transfer fee too. And if the new member's  
7 contribution is less than the transfer fee, then  
8 to get out of this club, the member's got to pay  
9 money?)

10 THE WITNESS: Doesn't sound like a question,  
11 counsel, to me. Sounds like an opinion.

12 MR. WILLIAMS: It is a question. Would you  
13 like me to put it in a question form for you?

14 THE WITNESS: Sure. I mean, you're --  
15 you're asking --

16 MR. WILLIAMS: Does the question --

17 THE WITNESS: You're asking me questions,  
18 and I'll answer the question --

19 MR. WILLIAMS: Does --

20 THE WITNESS: -- when you answer -- ask me.

21 BY MR. WILLIAMS:

22 Q. Today and at the time --

23 THE WITNESS: I want to be helpful to you,  
24 counsel.

25 MR. WILLIAMS: What we're going to do is

00055

1 when I'm speaking you don't.

2 MR. LAVOY: And vice versa, Mr. Williams.

3 MR. WILLIAMS: And when you're speaking, I

4 won't.

5 THE WITNESS: Sounds like a very

6 professional way to handle yourself.

7 BY MR. WILLIAMS:

8 Q. At the time the Clarks decided they didn't want

9 to be a member of this club, the club's deal was is they

10 couldn't sell their membership, correct?

11 A. No. They could sell their membership. It's a

12 market based pricing. They can set the price. The club

13 has set the price at 65,000. If the member wants to set

14 the price lower than 65,000, they can do that.

15 Mr. Clark obviously does not want to go

16 through that process as required by his conversion

17 agreement, by his membership agreement, and by the club

18 bylaws.

19 Q. So if Mr. Clark were to agree to proceed with

20 this procedure, and he sold the club membership for

21 \$10,000, would he have to pay money to get out?

22 A. Yes. The club has established that the

23 membership transfer fee and price is 65,000. If he wants

24 to sell it quicker, faster, control his own destiny,

25 replace himself, he could sell it for a dollar if he wants



00056

1 to do it. But it must go through the club.

2 Q. So if he wants to sell the membership for a  
3 dollar, somebody's getting a real deal, aren't they?

4 MR. CALLAHAN: Object to the form.

5 THE WITNESS: I'm not sure what you mean by  
6 "real deal."

7 BY MR. WILLIAMS:

8 Q. They're getting something that's worth a whole  
9 lot more than a dollar, aren't they?

10 A. I'm not -- who -- who is getting more?

11 Q. The guy who buys Mr. Clark's membership for a  
12 buck.

13 A. So how do I know the buyer isn't subsidizing the  
14 price with Mr. Clark? I don't know that.

15 Mr. Clark sets his price under the  
16 membership resale program. He decides what the number is.  
17 The club has a transfer fee, like all private clubs has.  
18 If he sets the price lower, in order to get out of the  
19 club quicker, that's his choice. It's a market based  
20 program.

21 Q. So what is the market for an equity membership  
22 like Mr. Clark's right now?

23 MR. CALLAHAN: Object to the form.

24 THE WITNESS: We believe the price is 65,000  
25 in the marketplace today.

00057

1 BY MR. WILLIAMS:

2 Q. Have you sold a single new equity membership in  
3 the last three years for 65,000 or more?

4 A. Yes, sir, we have.

5 Q. To whom?

6 MR. CALLAHAN: Objection.

7 MR. LAVOY: That's sort of information we  
8 believe would be fall within the confidentiality provision  
9 of Mr. Jones' employment agreement and, therefore,  
10 instruct you not to answer.

11 BY MR. WILLIAMS:

12 Q. Tell me how many.

13 MR. CALLAHAN: At a price of 65 or above is  
14 the question?

15 MR. WILLIAMS: Yes.

16 THE WITNESS: I'm not sure I have that on  
17 the top of my head, but -- I would be speculating as to  
18 the answer, but we sold --

19 MR. CALLAHAN: Don't -- don't guess.

20 THE WITNESS: Right.

21 MR. CALLAHAN: If you can give him a  
22 ballpark, he's entitled to that.

23 THE WITNESS: I would say, you know, 14  
24 months ago membership was selling for 72-, 74,000. You  
25 know, might have sold 10 to 11 in that zone -- 8 to 11, I

00058

1 would say. Not sure, have to look at the numbers.

2 BY MR. WILLIAMS:

3 Q. Today what are they selling for?

4 A. Today they're in a marketing range between 32,000  
5 and 54,000.

6 Q. Has the value of the membership gone down?

7 A. No, sir, not in the club's opinion. But the  
8 members have control of getting out of the club. They  
9 have certainty to set their price at a market base, which  
10 many clubs have this program today, including two in town  
11 off the top of my head. They can choose to replace  
12 themselves and sell it whatever the price they want to  
13 sell it for, as long as it comes through the club.

14 Q. Why do you feel compelled in your answers to  
15 always refer to other clubs when I'm only talking about  
16 Desert Mountain?

17 A. It's my opinion, my personal belief. I'm just  
18 expressing my belief. But if you don't like it, I'll try  
19 to restrict it going forward.

20 Q. Well, thank you. Because I'm only asking  
21 questions about Desert Mountain.

22 A. Okay.

23 Q. I don't really care about any other clubs.

24 A. I care about all clubs. I care about the club  
25 industry.

00059

1 Q. So it is your opinion that the value of a club  
2 membership remains at, let's say, \$325,000 today?

3 MR. CALLAHAN: Object to the form.

4 THE WITNESS: You'll have to restate that or  
5 I'll have to have it read back to me.

6 BY MR. WILLIAMS:

7 Q. I can restate that one, I think. It's --

8 A. Okay.

9 Q. I'll try to quote myself.

10 A. Thank you.

11 Q. So it is your opinion, as you sit here today,  
12 that the value on an equity golf membership remains at  
13 \$325,000?

14 A. The value that the club has set is 65,000, which  
15 the bylaws clearly allow the club to set and the board to  
16 set. So the value is 65,000.

17 A member, as I've already answered, can  
18 choose to set the price, whatever they want, but they  
19 still must come through the club and pay the 65,000.

20 Q. Well --

21 A. And that is called a market based resale program.  
22 That's -- that is the title we gave it. That is the title  
23 that's referred to out in the industry.

24 Q. Well, you keep talking about the industry. I'm  
25 not interested in the industry.

00060

1 A. Okay. That's our -- that's what we refer to it  
2 here.

3 Q. I'm interested in what happens here at Desert  
4 Mountain.

5 I'm going to show you this document. This  
6 is --

7 A. The conversion agreement.

8 Q. This is CL01505.

9 MR. CALLAHAN: It is a portion of a  
10 document. Show my prior objection to the manner in which  
11 exhibits are being presented to this witness.

12 BY MR. WILLIAMS:

13 Q. And the last page of this document is CL01506,  
14 which is now -- both of these are on the screen before  
15 you.

16 A. Counsel, I would request a hard copy again to  
17 help me read the -- the full package of what you're  
18 showing me. I'm not sure what, you know, these pieces  
19 are. I'm requesting again a hard copy of it.

20 Q. Well, this document is a page and a half long.  
21 Do you have any trouble reading this --

22 MR. LAVOY: Mr. Williams, he's stated that  
23 he has vision issues and that seeing a hard copy would  
24 help him read it.

25

00061

1 BY MR. WILLIAMS:

2 Q. I'm going to ask you a question here on page 2.

3 And I'm going to help you here. I'm going to box question  
4 and answer 4. I'll blow that up for you.

5 Do you know who wrote this revised  
6 membership marketing program information sheet?

7 A. You keep overlaying multiple things here. So  
8 maybe just stop and let me look at what you've got  
9 presented. Again, would rather have a hard copy in front  
10 of me.

11 Okay. Could you please reread your question  
12 so I can answer appropriately?

13 MR. WILLIAMS: Go ahead, read that question  
14 back.

15 (The record was read by the court reporter  
16 as follows:

17 QUESTION: Do you know who wrote this  
18 revised membership marketing program information  
19 sheet?)

20 MR. CALLAHAN: Show an objection to the  
21 question, form, based on the manner in which the evidence  
22 is presented to this witness. I'm not sure it's possible  
23 for him to tell what he's -- from what he is able to read.

24 BY MR. WILLIAMS:

25 Q. Let me restate the question for you.

00062

1 You've seen documents called "frequently  
2 asked questions" as they relate to memberships at the golf  
3 club before, haven't you?

4 A. Yes.

5 Q. This one is called "Revised Membership Marketing  
6 Program Frequently Asked Questions." Does this look like  
7 a document familiar to you?

8 A. Again, I'd like to see it in the full context.

9 But some of this looks like it is. I'd have to see the  
10 full doc.

11 Q. Well, this is the full doc. It's two pages.

12 A. Okay. I'll rely on the fact that you're telling  
13 me it's two pages.

14 Q. Okay.

15 A. Okay.

16 MR. CALLAHAN: Counsel, let me interpose an  
17 objection. As you pointed out, in the way you just  
18 started the question you just asked, there are a number of  
19 these documents. You're asking him who prepared this  
20 specific one.

21 Mr. Jones has testified he has vision  
22 problems. He needs to see the whole document. In order  
23 to understand which of the various documents you have now  
24 put in front of him, it would be helpful for him to see  
25 the entire document so we can put it into context and

00063

1 maybe answer your question. We have asked on a number of  
2 occasions for this witness to be shown hard copies of the  
3 complete document to accommodate his vision issues. You  
4 have refused to do that. And I assume you're continuing  
5 to refuse to do that.

6 Show a continuing objection to this manner  
7 of questioning. It's unfair to this witness in light of  
8 his vision issues.

9 Bob, to the extent you can answer based upon  
10 what Mr. Williams has elected to show you, you can do so.  
11 But please do not speculate. If you don't know, tell  
12 Mr. Williams that.

13 THE WITNESS: Counsel is correct. There  
14 were multiple documents, so I would need to see the hard  
15 copy. I'd be spec- -- I would just be guessing if, in  
16 fact, as to what this document is.

17 So if you want to show me a hard copy, I'll  
18 answer your question.

19 BY MR. WILLIAMS:

20 Q. Well, I'm not going to show you a hard copy.

21 A. Okay.

22 Q. Answer my question. Who do you think wrote  
23 things like these frequently asked questions things, as a  
24 matter of routine at the Desert Mountain Club?

25 A. Mr. Williams --



00064

1 MR. CALLAHAN: Form and foundation.

2 THE WITNESS: Mr. Williams, all documents,  
3 as to our -- as to our membership agreements, bylaws, any  
4 and all communication goes through counsel. Likely, this  
5 document you're showing me was assisted counsel, written  
6 by the board, provided to the membership.

7 BY MR. WILLIAMS:

8 Q. So you think this is written by counsel then?

9 MR. CALLAHAN: Objection to the form.

10 THE WITNESS: I said "likely." Likely  
11 they've reviewed it, likely they -- as -- as all our  
12 documents are.

13 But this is a communication piece, I  
14 believe -- again, not seeing the whole doc -- I believe  
15 from the board to the membership about the revised  
16 membership marketing program.

17 BY MR. WILLIAMS:

18 Q. Did you review it before it went out?

19 MR. CALLAHAN: Object to the form.

20 Foundation.

21 THE WITNESS: Likely. I review all  
22 documents before they come out. I'd have to identify what  
23 document you're talking about for me to give you that  
24 answer.

25 But as to this, I believe I have reviewed

00065

1 this as part of the review process.

2 BY MR. WILLIAMS:

3 Q. What does it mean here when it says \$140,000 is  
4 the current membership contribution amount for an equity  
5 golf membership?

6 A. At turnover, the board of directors set the  
7 membership price -- this was in -- January 1 of 2011 -- at  
8 \$140,000.

9 Q. Why?

10 MR. CALLAHAN: There you're going to draw an  
11 objection and instruction not to answer from me. That  
12 goes clearly into club polices and procedures. And that  
13 is what the club has offered to allow him to testify to  
14 subject to your agreement, which you refused to give.

15 MR. LAVOY: And for that reason, I instruct  
16 the witness not to answer.

17 BY MR. WILLIAMS:

18 Q. Do you have an understanding of why the required  
19 contribution went from \$375,000 for an equity golf  
20 membership to \$140,000 on January 1, 2011?

21 MR. LAVOY: Same.

22 MR. CALLAHAN: The whys and wherefores draw  
23 same objection and the same instruction.

24 MR. WILLIAMS: This is -- are you going to  
25 tell him not to answer if he has an understanding?

00066

1 MR. LAVOY: He would have that  
2 understanding --

3 MR. CALLAHAN: The only basis for him to  
4 have an understanding, counsel -- you can't be serious  
5 about that question -- is based on his knowledge as the  
6 COO of the club and its policies and procedures. So  
7 asking what his understanding is no different than asking  
8 what the club policy or procedure is.

9 MR. WILLIAMS: If you would listen to the  
10 question, Mr. Callahan, you'll see I didn't ask him what  
11 his opinion was.

12 MR. CALLAHAN: You asked him what his  
13 understanding was.

14 MR. WILLIAMS: Please, Mr. Callahan --

15 MR. LAVOY: The only source --

16 MR. WILLIAMS: Please --

17 MR. LAVOY: -- of that understanding would  
18 be the company's policies and procedures.

19 MR. WILLIAMS: Mr. LaVoy.

20 MR. LAVOY: Mr. Williams, we tried to  
21 resolve this prior to the deposition. You didn't respond,  
22 for whatever reason. And so now we're confronted with  
23 this situation. It's one of your own making.  
24 Do not answer the question.

25 MR. WILLIAMS: Gentlemen, please listen to

00067

1 the question. You'll see I don't ask him --  
2 MR. LAVOY: He's been instructed not to  
3 answer. Move on.  
4 MR. WILLIAMS: Please read the question back  
5 and see if these gentlemen are going to hang to this  
6 instruction not to answer, because I do not ask his  
7 opinion.  
8 MR. CALLAHAN: You asked his understanding.  
9 MR. WILLIAMS: Please read that.  
10 THE WITNESS: Could we take a break, please?  
11 MR. CALLAHAN: Let's -- let's get the  
12 pending question.  
13 THE WITNESS: Okay.  
14 MR. CALLAHAN: Let's resolve this.  
15 (The record was read by the court reporter  
16 as follows:  
17 QUESTION: Do you have an understanding of  
18 why the required contribution went from \$375,000  
19 for an equity golf membership to \$140,000 on  
20 January 1, 2011?)  
21 MR. CALLAHAN: Same objection. Same  
22 instruction.  
23 MR. WILLIAMS: You're not going to let me  
24 know if he even has an understanding?  
25 MR. LAVOY: He cannot answer that question.

00068

1 The only way that he -- he would have that information is  
2 through the confidential information he acquired through  
3 his employment.

4 Again, we attempted to resolve this with you  
5 in advance, Mr. Williams, and you declined to do that. So  
6 here we are. Same instruction.

7 BY MR. WILLIAMS:

8 Q. In your opinion, did the value of a golf --  
9 equity golf membership drop from \$375,000 to \$140,000 on  
10 January 1, 2011?

11 A. Mr. Williams, the Desert Mountain Club, Inc. was  
12 formed January 1 of 2011, and the price that was released  
13 as part of those docs was \$140,000 bucks. I have no  
14 opinion about what it was prior.

15 Q. It was \$375,000?

16 A. No, sir. It was never 375,000. Your information  
17 is incorrect.

18 However, on January 1, 2011, \$140,000 was  
19 presented to the membership as the initiation price under  
20 the new entity called Desert Mountain Club, Inc., which  
21 has a separate EIN number, is a separate corporation from  
22 Desert Mountain Properties.

23 Q. Well, I appreciate that. Let me show you just  
24 another letter and then we can take your break --

25 A. Thank you.

00069

1 Q. -- that you're interested in.

2 A. Appreciate that.

3 Q. I'm going to show you CL01449. It is a form

4 letter. And the second page of this form letter is

5 CL01450. You see both pages of this document on the

6 screen.

7 My question relates to on page 1. It says,

8 "The Desert Mountain Club Membership Contribution for

9 Deferred Equity Golf clubs will increase to 325,000 from

10 \$275,000, effective January 1, 2005." [Quoted as read.]

11 A. Mr. Williams, you said --

12 MR. CALLAHAN: There's not -- there's not a

13 question.

14 THE WITNESS: Yeah, right.

15 MR. CALLAHAN: He's read something to you.

16 THE WITNESS: Right.

17 BY MR. WILLIAMS:

18 Q. Did you just tell me that the contribution for

19 the deferred equity golf membership was never \$325,000?

20 MR. CALLAHAN: You asked 375,000, counsel.

21 THE WITNESS: You said 375.

22 MR. WILLIAMS: Oh, okay. I'm sorry.

23 THE WITNESS: Could we read that back,

24 please?

25 MR. WILLIAMS: No.

00070

1 THE WITNESS: Okay.

2 BY MR. WILLIAMS:

3 Q. Was this --

4 A. I want to get it right, that's all.

5 Q. You understood --

6 A. Uh-huh.

7 Q. -- that at one point in time the deferred equity

8 golf membership sold for \$325,000, did you not?

9 A. Mr. Williams, this document that you're showing  
10 me is for another member, which is a confidential matter  
11 unrelated to your case here. And, therefore, it also is  
12 in a time frame of November 11th, '04, which was -- the  
13 club was owned by Desert Mountain Club, Inc. -- I mean,  
14 Desert Mountain Properties. I cannot speak about those  
15 documents at that time -- at this time.

16 Q. My question is you understood, do you not,  
17 Mr. Jones, that between January 1, 2005 and the turnover  
18 of the club, the deferred equity golf membership price was  
19 \$325,000?

20 A. Mr. Williams, all I can speak to is January 1st,  
21 2011. The Desert Mountain Club, Inc. started their  
22 membership at \$140,000.

23 Sir, as I've already answered, I can't talk  
24 about -- this is another person, John W. Dillon. It's not  
25 your client. And the date is -- happened when Desert

00071

1 Mountain Properties owned the deal, which I have a  
2 confidentiality agreement that I can't talk about those  
3 documents or those policies and procedures at that time.  
4 MR. LAVOY: Mr. -- Mr. Williams, Mr. Jones'  
5 concern is that this document and your questions may fall  
6 within the scope of his confidentiality obligation under  
7 his prior employment agreement and expose him to civil  
8 liability were he to answer your question. That's the  
9 reason we raised the issue with you in advance, but you  
10 did not respond.  
11 So don't answer the question.  
12 BY MR. WILLIAMS:  
13 Q. You signed this letter that begins on CL01449 and  
14 ends on CL01450, didn't you?  
15 A. On advice of counsel, I can't answer the  
16 question.  
17 Q. Is that your signature on CL01450?  
18 A. On advice of counsel, I can't answer your  
19 question.  
20 MR. LAVOY: Yeah, go ahead and -- Bob, if  
21 that's your signature --  
22 THE WITNESS: Answer it?  
23 MR. LAVOY: Yeah, that -- that's fine.  
24 MR. CALLAHAN: You can tell him that.  
25 THE WITNESS: That is my signature. On



00072

1 advice of counsel, I just answered your question.

2 BY MR. WILLIAMS:

3 Q. Now, without looking at this document, don't you  
4 understand that from January 1, 2005 until the takeover,  
5 the price of a deferred equity golf membership was  
6 \$325,000?

7 MR. LAVOY: Same instruction.

8 THE WITNESS: Advice of counsel, I can't  
9 answer the question.

10 BY MR. WILLIAMS:

11 Q. Well, can't or won't?

12 A. On advice --

13 MR. LAVOY: Mr. Williams, we've tried to  
14 raise this issue with -- with you in advance repeatedly,  
15 and you did not respond. It might be helpful if we  
16 adjourn the deposition and took the matter up with the  
17 court so that all parties could have guidance on what  
18 Mr. Jones can testify to. But please stop harassing him  
19 about this. You had fair notice.

20 MR. WILLIAMS: Please tell me, Mr. LaVoy,  
21 what's confidential about the price of a deferred equity  
22 golf membership from January 1, 2005 until the turnover?

23 MR. LAVOY: What I have told you and will  
24 repeat is that Mr. Jones is subject to an employment  
25 agreement with a confidentiality clause, that this

00073

1 information -- or the information you're requesting could  
2 fall into. And if he were to answer your question, he  
3 would be exposing himself to civil liability to his former  
4 employer.

5 In fairness, you should have taken up our  
6 offer to resolve this in advance. And we ask you again to  
7 take it up with the judge so that he can confidently  
8 answer your questions without fear of civil liability to  
9 his former employer.

10 Will you do that?

11 MR. WILLIAMS: How, Mr. LaVoy, do you think  
12 telling me what the price of an equity golf membership  
13 club was during a period of time can run afoul --

14 MR. LAVOY: I would --

15 MR. WILLIAMS: -- of a membership  
16 confidentiality agreement?

17 MR. LAVOY: Mr. Williams --

18 MR. CALLAHAN: Counsel, it doesn't matter  
19 what Mr. LaVoy or I think. It matters what the former  
20 employer thinks. Mr. LaVoy is advising his client as to  
21 how to avoid civil liability to the former employer. We  
22 tried to get this resolved in advance to eliminate any  
23 concerns the former employer would have. You did not take  
24 us up on that.

25

00074

1 BY MR. WILLIAMS:

2 Q. Mr. Jones, between January 1, 2005 and the date  
3 of the turnover, was it public knowledge what the price of  
4 a deferred equity golf membership was?

5 MR. CALLAHAN: Foundation.

6 THE WITNESS: Mr. Williams, Desert Mountain  
7 Club, Inc. was formed January 1 of 2011. When that was  
8 formed, the membership price was 140.

9 BY MR. WILLIAMS:

10 Q. What was it the day before?

11 A. The day before at the closing it was 1 -- the new  
12 entity, Desert Mountain Club, Inc., was 140. I cannot --  
13 as I've already gone on record here, only solely to  
14 protect myself to something I signed and agreed to from  
15 civil liability from a third party -- answer any questions  
16 about any documents prior to January 1, 2011.

17 Q. I'm not asking you about a document.

18 A. This is a document, is it not?

19 Q. Let me take that off the screen.

20 A. I don't know. I don't have it in front of me.

21 But --

22 Q. Let me take it off the screen then.

23 My question is what was the price of a  
24 deferred equity golf membership the year before the  
25 turnover?

00075

1 A. Same issue.

2 MR. LAVOY: Again, Mr. Williams, it may make  
3 sense for us to take this issue up with the court so that  
4 it can decide what should be treated as confidential and  
5 alleviate Mr. Jones' concerns about potential civil  
6 liability. We're necessarily going to err on the side of  
7 breadth in our reading of the clause given that potential  
8 civil liability. And that's the reason we tried to work  
9 with you to resolve this in advance.

10 MR. WILLIAMS: Do you wish to take a break  
11 right now, Mr. Jones?

12 THE WITNESS: Yes, please. I asked for one  
13 about five, 10 minutes ago. Thank you.

14 MR. WILLIAMS: I'm agreeable.

15 THE VIDEOGRAPHER: Off the record at  
16 10:38 a.m. This ends tape one.

17 (A recess ensued.)

18 THE VIDEOGRAPHER: We are back on the  
19 record. The time is 10:50 a.m. This begins disk two.

20 BY MR. WILLIAMS:

21 Q. Is it accurate to say, Mr. Jones, that the price  
22 of a golf equity membership increased from \$75,000 to  
23 \$175,000 on January 1, 1998?

24 A. Counsel, as you know, I've been advised by my  
25 counsel I can't answer the question because it goes to a

00076

1 separate entity.

2 On January 1 --

3 MR. LAVOY: Bob, hold on one second.

4 Can you read the question back?

5 I want to see if this falls within the scope

6 of this confidentiality clause. So if you could read the

7 question back.

8 (The record was read by the court reporter

9 as follows:

10 QUESTION: Is it accurate to say, Mr. Jones,

11 that the price of a golf equity membership

12 increased from \$75,000 to \$175,000 on January 1,

13 1998?)

14 MR. LAVOY: That relates to information that

15 may fall within the confidentiality clause of Mr. Jones'

16 employment agreement with the prior club owner. And to

17 answer it, he'd be putting himself at risk of civil

18 liability. So I'm instructing you not to answer.

19 We encourage you to take the matter up with

20 the judge so that he's relieved of that risk and can

21 answer all your questions fully if the judge deems that

22 appropriate.

23 BY MR. WILLIAMS:

24 Q. Is it accurate -- Are you going to follow your

25 counsel's advice and not answer that question?

00077

1 A. Yes. I'm following my counsel's advice.

2 Q. Good decision.

3 Is it accurate to say, Mr. Jones, that on

4 January 1, 2000, the price to have an equity golf

5 membership went from 175,000 to \$225,000?

6 MR. LAVOY: Same.

7 THE WITNESS: Advice of counsel, I'm not --

8 cannot answer the question.

9 BY MR. WILLIAMS:

10 Q. Is it accurate to say that on January 1, 2005,

11 the price of an equity golf membership went from \$275,000

12 to \$375,000?

13 MR. LAVOY: What was the time range on that

14 one, Mr. Williams?

15 MR. WILLIAMS: This is -- I'll restate the

16 question in case I flubbed that number.

17 MR. CALLAHAN: Well, you misstated it again.

18 You said 375. And I think we established earlier you

19 meant to say 325. So that at least is correctible.

20 MR. WILLIAMS: Oh, you know, I see the

21 problem here. My bookmark is wrong. I'm going to change

22 my bookmark so I don't foul this up again.

23 MR. CALLAHAN: Best of luck.

24 MR. WILLIAMS: I foul up everything,

25 Mr. Callahan. I'm not a very smart man, as you figured

00078

1 out.

2 MR. CALLAHAN: I doubt that from the bottom  
3 of my heart, Mr. Williams. I think you're very smart.

4 BY MR. WILLIAMS:

5 Q. Is it accurate to say, Mr. Jones, that on

6 January 1, 2005 -- Let's go back one more.

7 Is it accurate to say, Mr. Jones, that on

8 January 1, 2004, the price of an equity golf membership

9 went up to 275,000 from the previous price of \$225,000?

10 MR. LAVOY: Same.

11 And just to give you advance warning,

12 Mr. Williams, any questions that you have that relate to

13 the internal policies and procedures and operations of the

14 prior club, we're going to have the same concern and

15 objection.

16 We just can't -- he could be put at civil

17 liability. And that's the reason we tried to resolve this

18 with you in advance and -- and, if needed, go to the

19 court. But you didn't respond. So please don't ask those

20 questions.

21 If -- if you'd like to go to the court after

22 today and let's get this resolved, we can resume the

23 deposition depending on the ruling of the court. And

24 everything will go a lot smoother.

25

00079

1 BY MR. WILLIAMS:

2 Q. Is it accurate to say -- Well, you're not going  
3 to answer the last question, right?

4 A. I'm not sure what your question was.

5 MR. WILLIAMS: Read the last question back.

6 MR. LAVOY: I -- I heard his last question.

7 THE WITNESS: Okay.

8 MR. LAVOY: I heard your last question. And  
9 my comment was the same. He's not going to answer it  
10 because he doesn't want to be put at risk of civil  
11 liability. Frankly, shame on you for trying to put him in  
12 that pinch. And let's move on.

13 MR. WILLIAMS: Okay. For my purposes,  
14 Mr. Court Reporter, would you please read back the last  
15 question?

16 (The record was read by the court reporter  
17 as follows:

18 QUESTION: Is it accurate to say, Mr. Jones,  
19 that on January 1, 2004, the price of an equity  
20 golf membership went up to 275,000 from the  
21 previous price of \$225,000?)

22 MR. WILLIAMS: Okay. We know you're not  
23 going to answer that one because you were instructed not  
24 to answer that question. So let me ask you the next one.

25



00080

1 BY MR. WILLIAMS:

2 Q. Is it accurate to say, Mr. Jones, that on  
3 January 1, 2005, the price of an equity golf membership  
4 went up to \$325,000 from \$275,000?

5 MR. LAVOY: Same.

6 THE WITNESS: Advice of counsel, I cannot  
7 answer the question as it goes to the prior entity, which  
8 I've instructed you multiple times that I couldn't answer  
9 it.

10 MR. WILLIAMS: You instructed me or just  
11 told me?

12 THE WITNESS: I just told you.

13 MR. WILLIAMS: Okay.

14 THE WITNESS: Same as instructed.

15 MR. WILLIAMS: Well, actually, it's not an  
16 instruction.

17 THE WITNESS: Okay. Told.

18 MR. LAVOY: Could we stop the bickering,  
19 Mr. Williams?

20 MR. WILLIAMS: It's more badinage than  
21 bickering.

22 MR. LAVOY: What is it?

23 MR. WILLIAMS: Badinage.

24 BY MR. WILLIAMS:

25 Q. Is it accurate to say, Mr. Jones, that on

00081

1 January 1, 2011, the price of an equity golf membership  
2 went from \$325,000 to \$140,000?

3 MR. LAVOY: Same.

4 THE WITNESS: Can't answer that question on  
5 advice of counsel. Goes to the prior entity, not Desert  
6 Mountain Club, Inc., which was started 1-1 of 2011. The  
7 purchase was approved by the members. The members  
8 approved the bylaws. And they signed the conversion  
9 agreement. They joined a new entity. The membership  
10 price approved by the members and the board of directors  
11 was 140,000 bucks.

12 BY MR. WILLIAMS:

13 Q. Prior to that, it had been 325,000, hadn't it?

14 A. I cannot answer that question on advice of  
15 counsel, as it goes to the prior entity.

16 Q. And the price today for a golf equity membership  
17 is?

18 A. Today the trailing rate is around 45- to 53,000.

19 Q. When you say the trailing rate, what do you mean?

20 A. It changes every month because members get to set  
21 their price, whatever they want to sell it for. If they  
22 want to sell it below the established transfer fee price  
23 and initiation price of 65,000, they can do that.

24 Q. What does the transfer fee cover?

25 MR. CALLAHAN: Object to the form.

00082

1 THE WITNESS: Transfer fee pays for debt.  
2 We have a -- a debt for the club. It pays for capital.  
3 MR. CALLAHAN: Now, let's -- let's stop this  
4 for a minute. Because you're now going into current --  
5 the answer you're getting -- and the reason for my  
6 objection -- was it potentially called for policies and  
7 procedures. The answer you're getting is policies and  
8 procedures of the current club. We've given you a lot of  
9 leeway on this.  
10 I hadn't stood on my very reasonable request  
11 that we get a temporary confidentiality designation, give  
12 you a chance to raise the proprietary. We could read this  
13 in ordinary course with the judge.  
14 I'm going to instruct him not to answer that  
15 question in that way. If you want to clarify what you  
16 mean by what it covers, and it means something else, maybe  
17 he can answer.  
18 BY MR. WILLIAMS:  
19 Q. Is it accurate to say that if I ask you questions  
20 about how the club uses transfer payments, you're not  
21 going to tell me?  
22 A. On advice of counsel --  
23 MR. LAVOY: Well, and just for the record,  
24 Mr. Williams, I'd like to clarify that Mr. Jones is  
25 subject to an employment agreement with a confidentiality

00083

1 clause, not only with respect to the prior entity, but  
2 with respect to the current entity. And you did not seek  
3 to resolve these issues in advance of the deposition. And  
4 asking him these questions now puts him at risk of civil  
5 liability. It's unfair. And he's not going to answer.

6 MR. WILLIAMS: Well, Mr. Callahan, are you  
7 objecting to your chief operating officer telling me how  
8 transfer fees are used today?

9 MR. CALLAHAN: In light of your  
10 unwillingness to abide by the confidentiality provision  
11 that is in Mr. Jones' contract, your unwillingness to work  
12 that out with the judge, yes.

13 MR. WILLIAMS: You represent the entity  
14 that's got the confidentiality clause. So you're --

15 MR. LAVOY: Mr. Williams, he proposed --

16 MR. WILLIAMS: Correct?

17 MR. LAVOY: He made a proposal to you in  
18 writing that would have allowed you to ask questions of  
19 unlimited scope with regard to the current entity that  
20 would have given you open -- you know, open range to ask  
21 everything you wanted to ask with regard to the new  
22 entity. You did not even dignify that with a response.  
23 You did not even attempt to work that out. You snubbed  
24 everybody's efforts to try to resolve these issues in  
25 advance. And today you're feigning indignancy.

00084

1 This -- this is wrong, Mr. Williams. The  
2 lack of professionalism in you not responding to our  
3 pre-deposition communications and trying to work this out,  
4 which is what judges expect lawyers to do, it's wrong.  
5 You know better. You knew what you were doing in not  
6 responding. You wanted this controversy today.  
7 So if you're not willing to give him the  
8 reasonable reassurances that were requested in writing,  
9 with respect to the current entity so that you could have  
10 open questioning on all these issues, he's not going to  
11 answer. And that's your decision for -- for choosing not  
12 to have the discussion or not to go to the judge.  
13 MR. WILLIAMS: Mr. LaVoy, let me disabuse  
14 you of the notion that I am feigning indignity or that I  
15 am trying to portray myself as being the least bit  
16 indignant. I'm not. I just take things as they come.  
17 MR. LAVOY: Well, that's the problem. You  
18 take them -- you kick the can down the road and take them  
19 as they come and not deal with them in advance, as all the  
20 other attorneys in this case asked you to do last week.  
21 You chose not to respond and that's why we're here today.  
22 MR. WILLIAMS: Isn't there only one other  
23 lawyer in this case, Mr. Callahan?  
24 MR. LAVOY: I'm his personal counsel. And  
25 the counsel for the entity wrote you as well.

00085

1 MR. WILLIAMS: Did you --

2 MR. LAVOY: And you responded to neither of  
3 us.

4 MR. WILLIAMS: Did you ask Mr. Callahan if  
5 there was going to be a problem if the client individually  
6 answered questions like this? Or did you sort of --

7 MR. LAVOY: Do you recall two written  
8 communications from each of us raising these  
9 confidentiality issues with respect to the old entity and  
10 the current entity and proposing conditions that would  
11 allow you to ask and receive answers for these types of  
12 questions? Do you recall those communications that you  
13 did not respond to?

14 MR. WILLIAMS: Mr. Callahan, do you care if  
15 he answered these questions I'm asking him?

16 MR. CALLAHAN: Do I care as a --

17 MR. WILLIAMS: As the lawyer for the entity.

18 MR. CALLAHAN: Whether I care or not is  
19 about as irrelevant as most of the questions you presented  
20 this morning, Mr. Williams.

21 What the club has instructed is that there  
22 is a confidentiality provision, which they offered to  
23 waive so long as you were willing to agree to reasonable  
24 restrictions that allowed you full and unfettered use of  
25 this transcript in connection with the litigation

00086

1 involving the Clarks that prohibited its dissemination  
2 outside. There's no way in which you or your clients  
3 could potentially be prejudiced by that agreement, yet you  
4 not only refused to agree to it, you refused to even  
5 respond, putting us into this lovely mess we're in this  
6 morning.  
7 I agree with Mr. LaVoy, that causes a lack  
8 of professionalism. There is an agreement between  
9 Mr. Jones and the current entity. Mr. LaVoy is here as  
10 Mr. Jones' personal counsel to advise him. You know the  
11 conditions on which the club is able to waive it. I think  
12 your question has been fully answered in this regard. If  
13 you have more questions for the witness, you might want to  
14 focus your efforts there.  
15 MR. WILLIAMS: Who should I ask at the  
16 Desert Mountain Club about the reasons for this concern?  
17 MR. LAVOY: Okay. We're adjourning the  
18 deposition. We're going to take this issue up with the  
19 judge. This is a waste of time.  
20 MR. WILLIAMS: Are you adjourning this  
21 deposition, Mr. Callahan?  
22 MR. CALLAHAN: Mr. LaVoy just did.  
23 MR. LAVOY: I'm adjourning for --  
24 MR. CALLAHAN: He represents Mr. Jones  
25 personally.

00087

1 MR. LAVOY: Mr. Jones in his individual  
2 capacity. The rules allow a deposition to be adjourned to  
3 address these kinds of issues. And at this point, I think  
4 that's appropriate. We've given you a fair opportunity to  
5 handle this professionally and you've declined. So we're  
6 going to go to the judge.

7 MR. WILLIAMS: Well, okay. I do not agree  
8 with the adjournment. I'd like to continue --

9 MR. LAVOY: I'm not asking for your  
10 agreement.

11 MR. WILLIAMS: Okay. You'll file your  
12 motion soon then?

13 MR. LAVOY: I'll talk with Mr. Callahan  
14 about the motion.

15 MR. WILLIAMS: Are you going to coordinate  
16 with Mr. Callahan about this motion? Is that what you do?

17 MR. CALLAHAN: How we choose to handle it is  
18 absolutely none of your concern. There will be an  
19 appropriate motion filed, whether it's filed by Mr. LaVoy  
20 or by the club.

21 MR. WILLIAMS: Okay. But you two will work  
22 that out, correct?

23 MR. CALLAHAN: Well, we tried to work it out  
24 with you, and you declined. So --

25 MR. LAVOY: Yeah, I guess we'll --



00088

1 MR. CALLAHAN: We'll try and work it out and  
2 then take it up with the court.  
3 MR. WILLIAMS: Well, okay. Mr. -- Mr. LaVoy  
4 has left the room with the witness.  
5 Are you, likewise, going to leave the room,  
6 Mr. Callahan?  
7 MR. CALLAHAN: If there's something you'd  
8 like to discuss, I'm happy to stay and discuss it with  
9 you.  
10 MR. LAVOY: Mr. Williams --  
11 MR. CALLAHAN: But I don't think we're going  
12 to be having a deposition here. We don't have a witness.  
13 MR. WILLIAMS: Well, I guess we'll -- I  
14 guess we'll have to conclude because the witness left.  
15 MR. CALLAHAN: It makes it very hard to take  
16 a deposition.  
17 MR. WILLIAMS: It does.  
18 MR. CALLAHAN: Shall we go off -- shall --  
19 MR. LAVOY: There's something we can agree  
20 on, Mr. Williams. I knew it was possible.  
21 MR. WILLIAMS: Should we go off the record,  
22 Mr. Callahan?  
23 MR. CALLAHAN: Probably.  
24 MR. WILLIAMS: Okay.  
25 THE VIDEOGRAPHER: We are off the record.

00089

- 1 The time is 11:05 a.m. This ends tape one.
- 2 (The deposition was adjourned at 11:05 a.m.)
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ROBERT EDWARD JONES II

00090

1 STATE OF ARIZONA )  
COUNTY OF MARICOPA )

2

BE IT KNOWN that the foregoing proceedings  
3 were taken before me; that the witness before testifying  
was duly sworn by me to testify to the whole truth; that  
4 the foregoing pages are a full, true, and accurate record  
of the proceedings all done to the best of my skill and  
5 ability; that the proceedings were taken down by me in  
shorthand and thereafter reduced to print under my  
6 direction.

7

I CERTIFY that I am in no way related to any  
8 of the parties hereto nor am I in any way interested in  
the outcome hereof.

9

Review and signature was requested.

10

Review and signature was waived.

Review and signature was not required.

11

I CERTIFY that I have complied with the  
12 ethical obligations set forth in ACJA 7-206(F)(3) and  
ACJA 7-206 (J)(1)(g)(1) and (2). Dated at Phoenix,  
13 Arizona, this 20th day of May, 2015.

14

15

---

16 Gerard T. Coash, RMR  
Certified Reporter

17 Arizona CR No. 50503

18 I CERTIFY that Coash & Coash, Inc., has  
complied with the ethical obligations set forth in  
19 ACJA 7-206 (J)(1)(g)(1) through (6).

20

21

22

23

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24 COASH & COASH, INC.  
Registered Reporting Firm

25 Arizona RRF No. R1036

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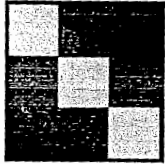
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Clark adv. Desert Mountain  
Case No. CV2014-015334

Videotaped Deposition of  
Robert Jones  
05/20/15