

IN THE SUPREME COURT OF FLORIDA

Case No. SC21-1564
TFB File 2018-50,796 (15A)

THE FLORIDA BAR,
Complainants,

v.

CURTIS ALVA,
Respondent.

AMENDED APPENDIX OF RESPONDENT CURTIS ALVA

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CERTIFICATE OF SERVICE

We certify that, pursuant to and in compliance with Florida Rule Judicial Administration 9.220, this Amended Appendix of Initial Brief was e-filed via eDCA and was served via electronic correspondence and/or via US Mail on November 1, 2023, upon: Mark Lugo Mason , mmason@floridabar.com, 651 E Jefferson St, Tallahassee, FL 32399-6584 and Curtis Alva, Esq., Curtis@alvalaw.com, Law Office of Curtis Alva, 200 E 13th Street, Riviera Beach, FL 33404.

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(Before a Referee)

THE FLORIDA BAR,
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v.

CURTIS S. ALVA,
Respondent.

Supreme Court Case
No. SC21-1564

The Florida Bar File
No. 2018-50,796(15A)

Received, Clerk, Supreme Court

JUN -1 2023

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On November 10, 2021, The Florida Bar filed its Complaint against Respondent as well as its Request for Admissions in these proceedings. The Supreme Court of Florida entered an Order dated November 12, 2021, designating the Chief Judge of the Fifteenth Judicial Circuit of Florida, to appoint a referee to this case. On November 17, 2021, the Honorable Jack Tuter, Chief Judge of the Seventeenth Judicial Circuit of Florida appointed the undersigned to serve as the referee.

The final hearing proceedings were bifurcated. All final hearing proceedings were held via Zoom video conference. The final hearing began on November 14, 2022 and additional proceedings were held on November 15, 2022, November 16, 2022, January 13, 2023, January 20, 2023 and March 28, 2023. The parties presented their closing arguments on March 28, 2023. On April 10, 2023, the referee announced his recommendation that respondent was guilty of violating all of the rules charged by the bar in the complaint. On April 17, 2023, the parties appeared before the court via Zoom video conference for a hearing on sanctions and made their recommendations to the referee. At the conclusion of the sanctions hearing, the referee announced his recommendation on sanctions.

Curtis S. Alva, respondent, *pro se* was present at all of the final hearing dates, as well as the April 10, 2023 and April 17, 2023 hearing dates. Joi L. Pearsall, bar counsel, was also present on those hearing dates.

During the final hearing, The Florida Bar called the following witnesses to testify: Daniel McCool ("McCool"), Patricia Shahinian O'Rourke¹ ("O'Rourke"), and Gary Betensky ("Betensky"). Respondent testified on his own behalf during the final hearing. During the sanctions

¹ The witness formerly went by the name Tricia O'Rourke.

hearing, respondent called the following character witnesses to testify on his behalf: Robert S. Hackleman and Richard Leonard Norton.

All items properly filed including pleadings, recorded testimony (if transcribed), exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

Narrative Summary Of Case.

Respondent, Curtis S. Alva, was the lawyer for Dr. Colorchip Corp. (hereinafter referred to as "Dr. Colorchip") and Daniel McCool, the president of Dr. ColorChip. On September 19, 2016, respondent's law firm Alva & Gleizer, PLLC (A&G) was engaged to represent McCool and Dr. Colorchip in a dispute against William McLean.² The September 19, 2016 engagement with respondent was reduced to writing and signed by McCool in his capacity as the president of Dr. Colorchip.³ The engagement letter was admitted into evidence during the final hearing.

² Dr. Colorchip Corp., A Florida Corporation, Plaintiff v William McLean, Defendant, Palm Beach County, Florida Case No. 50-2016-CA-011102-XXXX-MB. W. McLean was the vice president of Dr. Colorchip Corp.

³ The September 19, 2016 engagement letter, The Florida Bar Exhibit 1.

The September 19, 2016 engagement letter (hereinafter referred to as "the engagement letter") specified that the hourly rate for attorney time was \$400.00 and the hourly rate for paralegal time was \$100.00.

Respondent testified that his normal hourly rate for attorney time was \$550.00 and his normal hourly rate for paralegal time was \$125.00.

Respondent testified that he modified the engagement letter, crossed out the typed hourly rate for attorney time and paralegal time and wrote in \$400.00 for the attorney hourly rate and \$100.00 for the paralegal hourly rate. Thus, the engagement letter gave the clients notice that they would be charged \$400.00 hourly for attorney time and \$100.00 hourly for paralegal time.

In addition to stating that amendments to the engagement letter had to be in writing and signed by all parties, the engagement letter also required the clients McCool and Dr. Colorchip to increase the amount of its retainer to respondent to \$25,000.00 if the matter progressed to the litigation stage. The engagement letter stated respondent would invoice monthly and payment would be due in 10 days. The engagement letter stated that the retainer may be applied to any invoices unpaid after 10 days. Furthermore, the engagement letter stated that the retainer was to be held in trust and any unspent and unapplied retainer was to be refunded to

review.¹⁰ On February 21, 2018, O'Rourke sent respondent another email advising respondent that she had not received his answers to the seven questions she asked about the \$25,040.00 invoice and she wanted to complete her review of the December invoice.¹¹

In his response to O'Rourke's February 21, 2018 email, respondent stated to O'Rourke and McCool that he would be happy to answer the clients' seven questions if those questions were being asked in good faith and respondent conditioned his decision to fully respond to the questions on the client first paying \$18,240.00 towards the December invoice.

However, if the clients did not pay the \$18,240.00, respondent stated he would not believe they were asking questions about the December invoice in good faith.¹² In the same February 21, 2018 email, respondent told the clients that he would either enforce the contract as written and seek \$25,040.00, or charge the client at a higher rate which would change the amount due from \$25,040.00 to \$125,000.00. Respondent also stated in his February 21, 2018 email, if there was no good faith on the clients' part, then respondent would make a claim for bad faith, misrepresentation and punitive damages, equal to treble the amount of the claim, or \$375,000.00.

¹⁰ The Florida Bar Exhibit 26.

¹¹ Respondent Exhibit 2.

¹² The Florida Bar Exhibit 25; Respondent Exhibit 2.

On February 26, 2018, McCool sent respondent an email asking questions about the December invoice. Respondent replied to McCool's questions on February 26, 2018. Respondent also sent Invoice #95 to the clients on February 26, 2018, requesting payment in the amount of \$126,650.00.¹³ In Invoice #95, respondent increased his hourly rate for attorney time by \$150.00 and his hourly rate for paralegal time by \$25.00, and billed the clients for a total of 1,032.5 hours, which covered all the hours that respondent had previously billed in the case, but at a higher rate than the hourly rates in the engagement letter. On February 27, 2018, McCool notified respondent by email that he had authorized his bank to pay the full amount of the December invoice, \$25,040.00.¹⁴ In a March 7, 2018 email, respondent thanked McCool for sending the payment for the December invoice (Invoice #90).¹⁵

Subsequently, respondent sent the clients a statement of account dated March 20, 2018, showing that the clients' \$25,000.00 retainer had been deducted from respondent's trust account and that the clients owed an overdue balance of \$101,834.95.¹⁶ On April 9, 2018, McCool sent an

¹³ Invoice #95 – The Florida Bar Exhibit 5.

¹⁴ Respondent Exhibit 2.

¹⁵ The Florida Bar Exhibit 31.

¹⁶ The Florida Bar Exhibit 6.

email to the respondent asking him to return the \$25,000.00 retainer.¹⁷ On April 10, 2018, respondent sent an email to McCool stating the following:

There is no return due. There is a balance due in excess of \$100,000.00. The \$25,000.00 retainer payment was applied to the unpaid invoice and the balance in your retainer account is \$0. Please make a check for the balance and let me know when I can pick it up. If you do not intend to pay in full, please let me know promptly so I can pursue collection.

The court also heard testimony from attorney Gary Betensky, who has been a member of The Florida Bar since 1984 and whose area of specialization is business litigation. Mr. Betensky testified that he has been board certified in business litigation since 2007. In these proceedings, Mr. Betensky testified as an expert witness on behalf of the bar in business litigation and attorney's fees. Mr. Betensky testified that in his opinion respondent should have returned the \$25,000.00 retainer to the clients. Mr. Betensky testified that once the December invoice and the January and February invoices were paid one could conclude the account was settled and the \$25,000.00 retainer should have been returned to the client pursuant to the engagement letter. Mr. Betensky testified that in his

¹⁷ The Florida Bar Exhibit 29.

opinion, the clients did not have an overdue balance of \$101,834.95, as of March 20, 2018, the clients had a zero balance. Mr. Betensky testified that in his opinion, on April 10, 2018 there was unequivocally no basis for the law firm not to return the retainer to the clients. Mr. Betensky testified that there was nothing in the engagement letter to put the clients on notice that if the clients did not pay a bill, the law firm would revert back to its standard hourly rate, instead of the discounted rate of \$400.00 an hour for attorney time and \$100.00 an hour for paralegal time. Finally, Mr. Betensky testified that it was his opinion that respondent's Invoice #95 in the amount of \$126,650.00 was clearly excessive, clearly overreaching and clearly unconscionable.

Respondent testified during the final hearing. Respondent stated that he graduated from law school in 1988 and began his legal career at a law firm in the state of Delaware. Respondent was admitted to The Florida Bar in 1999. Respondent stated that he worked at several law firms in Florida as a litigator. Respondent testified that he has his own law firm and the area of law that he specializes in is fiduciary duty and corporate control.

Respondent testified that he was hired to be legal counsel for McCool and Dr. Colorchip. Respondent testified that he had no prior relationship with the clients. Respondent testified that his normal hourly rate is \$550.00

per hour. Respondent testified that he personally scratched out the \$550.00 attorney hourly rate and the \$125.00 paralegal hourly rate on the engagement letter, and changed them to \$400.00 and \$100.00, respectively. Respondent testified that during the entirety of the litigation, the clients paid in 10 days and he would personally go to the client's office and pick up the check. Respondent stated that he filed numerous motions on behalf of the clients in the *Dr. Colorchip v. McLean* litigation.

Respondent testified that he emailed the December invoice to McCool on January 9, 2018. Respondent testified that the clients did not pay the December invoice by January 19, 2018. Respondent testified that on February 15, 2018, after the court in the *Dr. Colorchip v McLean* litigation signed the order granting the stipulation for substitution of counsel, he was no longer the clients' attorney and he did not owe the clients a duty of loyalty. Respondent testified that he is entitled to be paid for the fair value of the services he provided to the client because the clients breached the contract. Respondent testified the reasonable value of his services is \$550.00 an hour. Respondent testified that he sent Invoice #95 and the March 2018 statement of account to the client. Respondent testified that the engagement letter did not contain the phrase "time is of the essence". Respondent testified that the clients paid the December invoice after the

due date. Respondent acknowledged that the clients paid the December Invoice and the January/February 2018 bill in February 2018. Respondent testified that he did not return the \$25,000.00 retainer to the clients and the \$25,000.00 retainer is now in the civil court registry.

The Florida Bar filed a complaint charging that respondent violated Rule 3-4.3; Rule 4-1.4(b); 4-1.5(a); and Rule 4-8.4(a) of the Rules Regulating The Florida Bar.

Analysis

There was competent and substantial evidence presented in this case to show clearly and convincingly that respondent violated the Rules Regulating The Florida Bar that were charged in the bar's complaint. It is undisputed that respondent and the clients had a contract for representation which specifically stated that the rate was \$400.00 an hour for attorney time and \$100.00 for paralegal time. The undersigned finds that there was nothing in the engagement letter authorizing the rate to be increased for any reason. In fact, the engagement letter said quite the opposite. The engagement letter specifically prohibited any changes to the provisions of the contract unless agreed to by both parties in writing. In this case, there was no writing signed by the clients and the respondent to amend any of the provisions of the engagement letter.

The evidence presented in this case established that the clients paid respondent timely and in full for more than a year. The court heard testimony from McCool, O'Rourke and respondent and they all stated that the clients paid the invoices promptly. Respondent testified that after he sent the clients a bill he would go by the clients' office and just pick up a check. However, after respondent issued the December invoice, the clients informed respondent that they wanted to review that bill, which was a reasonable request for the clients to make. It is also significant that while the clients completed their review of the December invoice, respondent was still holding the clients' \$25,000.00 retainer in his trust account.

While the clients did eventually pay Invoice #90 in full, they did not pay it on January 19, 2018. Importantly, the engagement letter on its face did not state that if the clients did not pay an invoice on the due date that respondent would go back to the beginning of the legal relationship and charge the clients at an increased hourly rate notwithstanding that the clients had already paid the prior invoices at the agreed upon hourly rates of \$400.00 for attorney time and \$100.00 for paralegal time. Nor did the engagement letter put the clients on notice that they had to review an invoice by a certain date. The engagement letter said that the retainer may be applied to any invoices unpaid after 10 days. Each invoice that the

clients received from respondent was for different dollar amounts because the billable hours varied from invoice to invoice. All of the invoices admitted into evidence in this case, except for Invoice #95, listed a \$400.00 hourly rate for attorney time and a \$100.00 hourly rate for paralegal time.

Rule 4-1.4(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

An integral part to the clients having an opportunity to make informed decisions about the representation, is the engagement agreement as well as having knowledge about the costs they may incur when they decide to hire an attorney. In *The Florida Bar v. Kavanaugh*, 915 So. 2d 89, 94 (Fla. 2005), the Court cautioned that a lawyer who charges excessive fees is guilty of serious ethical breaches and this type of conduct can diminish public confidence in the legal profession. In this case, when the clients signed the engagement letter they were on notice that they would only be charged \$400.00 an hour for attorney time and \$100.00 an hour for paralegal time. The clients had not paid the December invoice by January 19, 2018. The evidence showed that McCool was out of the country around the same time that respondent emailed him the December invoice; that respondent did not send the December invoice to Dr. Colorchip's email address; that respondent did not send the December invoice to O'Rourke's

email address; that O'Rourke was undergoing treatment for cancer; and most importantly, respondent was aware that McCool traveled out of the country.

Respondent failed to put the clients on notice at the start of the representation that in the event of a breach, the client would be responsible for paying for attorney time and paralegal time at a higher hourly rate, \$550.00 and \$125.00, respectively, and that the increased hourly rate would be retroactively applied to the start of the representation. Although respondent testified that he notified the clients that he was going to bill them at an increased hourly rate, the evidence presented in this case showed that respondent gave this notice to the client over a year after they signed the engagement letter and after the due date on the December invoice had passed.

Respondent should have notified the clients about this factor prior to the engaging of the representation, not afterwards. Not only did respondent send the clients an email saying he was going to send them an invoice for payment at a higher rate, he actually sent the clients that invoice. On or about February 26, 2018, respondent sent the clients Invoice #95, demanding \$126,650.00 for 808.70 hours of attorney time at a rate of \$150.00 per hour and 226.80 of paralegal time at a rate of \$25.00 per hour.

Invoice #95 was respondent's retroactive application of his normal hourly rates to 1,032.5 hours, back to the start of the representation. However, the clients never agreed to pay respondent \$550.00 per hour for attorney time and the clients never agreed to pay respondent \$125.00 an hour for paralegal time. By this conduct, respondent violated Rule 4-1.4(b) of the Rules Regulating The Florida Bar.

Rule 4-1.5(a)[A lawyer must not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or costs, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar – A fee or cost is clearly excessive when:

(1)after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or

(2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee.

By his actions, respondent not only charged the clients twice for the same work by sending the clients Invoice #95 and the March 2018 statement of account, but he also got paid twice for Invoice #90 by keeping the clients' \$25,000.00 retainer and accepting the clients' \$25,040.00 payment for Invoice #90. The court heard testimony from expert witness Gary Betensky who stated that in his opinion there was unequivocally no basis for the law firm not to return the clients' retainer, that the clients had a

zero balance as of March 20, 2018, and that Invoice #95 was clearly excessive, clearly overreaching and clearly unconscionable.

In The Florida Bar v. Gwynn, 94 So. 3d 425 (Fla. 2012) the Court stated that a “[r]eferee in a bar disciplinary proceeding can properly rely upon facts established in orders and decisions of other tribunals to support his or her findings of fact.” In a separate proceeding, the clients brought an action in civil court against respondent and his firm A&G. On May 31, 2022, the civil court entered an order granting plaintiffs Dr. Colorchip and McCool’s Motion for Summary Judgment as to Count I and found that pursuant to the contract the plaintiffs were entitled to the return of their \$25,000.00 retainer.¹⁸ Subsequently, on June 28, 2022, final judgment was entered in favor of the plaintiffs against respondent and A&G. Respondent testified that he has appealed the ruling in the civil case and that the \$25,000.00 retainer is now in the civil court registry.¹⁹

The undersigned finds no credence in respondent’s claims that the clients were asking him questions about Invoice #90 (December invoice) in bad faith. There was an established pattern of the clients paying respondent’s invoices promptly. The clients put respondent on notice that

¹⁸ The Florida Bar Exhibit 45.

¹⁹ The Florida Bar Exhibit 47.

they needed to review one invoice because they had questions. The clients continued to communicate with respondent even after he was no longer their attorney to get answers to their questions about Invoice #90. It was more than reasonable for the clients to ask questions about the charges on the December invoice.

The clients had a contract with respondent. During the final hearing, respondent asserted that he had a right to change the rate in the contract because of the legal concept of quantum meruit. This court disagrees with respondent's assertion. The evidence in this case overwhelmingly showed that the clients paid respondent in full at the agreed hourly rate. Clearly in this case, there was a contract, there was an agreed hourly rate and respondent was paid timely. The theory of quantum meruit does not apply in this case.

Under the facts and circumstances of this case, the undersigned finds there was no basis for respondent to demand that the clients pay an increased rate retroactive to the initiation of the representation. The court does not see how the demand for this payment is any different than a person attempting to commit grand theft on their client. Furthermore, the undersigned finds that there was no basis for the upcharge to the client of \$125,000.00, and respondent's threats of litigation were baseless.

Moreover, respondent's refusal to return the \$25,000.00 retainer to the clients upon the clients' request on April 9, 2018, long after the clients had paid all outstanding balances that were due at the agreed hourly rate, was indeed the retention of a clearly excessive fee. Respondent's transmitting to the client Invoice #95 and the March 20, 2018 Statement of Account was indeed a clearly excessive charge. The undersigned finds that respondent violated Rule 4-1.5(a) of the Rules Regulating The Florida Bar.

Rule 3-4.3 The commission by a lawyer of any act that is unlawful or contrary to honesty or justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.

The evidence showed that respondent retroactively increased his hourly rates, invoiced the clients at the higher rates and requested payments at those higher hourly rates, even though the clients had not agreed to the higher rates. Respondent also threatened to seek treble damages in the amount of \$375,000.00 from the clients. In this case, despite having been paid in full for the December invoice, respondent refused to return the clients' \$25,000.00 retainer and he continued to demand payment from the clients in excess of \$100,000.00 that he was not entitled to receive. The undersigned finds that respondent violated Rule 3-4.3 of the Rules Regulating The Florida Bar.

Rule 4-8.4(a) provides that A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

Respondent was admitted to The Florida Bar in 1999. The undersigned finds that respondent has engaged in conduct that is in violation of the Rules of Professional Conduct which is a violation of Rule 4-8.4(a) of the Rules Regulating The Florida Bar.

The undersigned hereby finds that bar has met its burden of proof, there is clear and convincing evidence that respondent is guilty of violating Rule 3-4.3, Rule 4-1.4(b), Rule 4-1.5(a), and Rule 4-8.4(a) of the Rules Regulating The Florida Bar.

Character Witnesses

The respondent called Robert S. Hackleman to testify as a character witness on his behalf during the sanctions hearing. Mr. Hackleman testified that he has been a member of The Florida Bar since 1979. Mr. Hackleman stated that he met respondent in 1991 and for a period they worked at the same law firm. Mr. Hackleman stated respondent was smart, honest and had integrity. Mr. Hackleman stated that he has great respect for respondent and described him as an excellent lawyer.

The respondent also called Richard Norton to testify as a character witness on his behalf during the sanctions hearing. Mr. Norton testified that

he has known respondent for 25 years and they became good friends through their contacts at a church. Mr. Norton stated that when he was serving as the bishop of the ward at the church, respondent served as the elder ward president and did an excellent job. Mr. Norton described respondent as having high ethical standards. Mr. Norton also said that respondent performs service in the community such as volunteering in hurricane relief efforts, at addiction recovery services and at homeless shelters.

III. RECOMMENDATIONS AS TO GUILT.

I recommend that Respondent be found guilty of violating the following Rules Regulating The Florida Bar: Rule 3-4.3; Rule 4-1.4(b); Rule 4-1.5(a); and Rule 4-8.4(a).

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards, office signs or any other indicia of respondent's status as an attorney, whatsoever.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

7.1 Deceptive Conduct or Statements and Unreasonable or Improper Fees

7.1(b) Suspension. Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.1(c) Public Reprimand. Public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

7.1(d) Admonishment. Admonishment is appropriate when a lawyer is negligent in determining whether the lawyer's conduct violates a duty owed as a professional and causes little or no actual or potential injury to a client, the public, or the legal system.

V. CASE LAW

I considered the following case law prior to recommending discipline:

The Florida Bar v. Rosenberg, 169 So. 2d 1155, 1162 (Fla. 2015).

The Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct.

The Florida Bar v. Carlon, 820 So. 2d 891 (Fla. 2002). The Court approved the referee's recommendation of a 91-day suspension and payment of restitution to the client of the amount that was found to be clearly excessive.

The Florida Bar v. Kavanaugh, 915 So. 2d 89 (Fla. 2005). The Court cautioned that attorneys who charge excessive fees are guilty of serious ethical breaches that diminish public confidence in the legal profession. The Court imposed a public reprimand and order that respondent pay restitution.

The Florida Bar v. Forrester, 656 So 2d 1273 (Fla. 1995). An attorney who charged an excessive fee received a 90-day suspension followed by an indefinite period of suspension that would continue beyond the 90 days, until the attorney completed the repayment of the excessive fees and the bars costs, for failing to return the unearned portion of her fees when she was discharged.

The Florida Bar v. Richardson, 574 So. 2d 60 (Fla. 1990). The Court disapproved of the referee's recommendation of a public reprimand, six months of probation and restitution. The Court imposed a 91-day suspension and a two-year probationary period upon reinstatement after the attorney was found in violation of The Florida Bar Code of Professional Responsibility for charging his clients clearly excessive fees.

The Florida Bar v. Draughon, 94 So. 3d 566 (Fla. 2012). The Court imposed a one-year suspension against an attorney, who was not acting in a formal attorney-client relationship, for engaging in conduct that was

unlawful and contrary to honesty and justice in violation of Rule 3-4.3 of the Rules Regulating The Florida Bar.

The Florida Bar v. Parrish, 241 So. 3d 66, 80 (Fla. 2018). The Court in more recent years has imposed more severe discipline for unethical conduct and unprofessional conduct than in the past.

The Florida Bar v. Smith, 866 So. 2d 41 (Fla. 2004). A referee may order restitution if a respondent received a clearly excessive, illegal, or prohibited fee or converted trust funds or property.

VI. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

- A. One year suspension from the practice of law.
- B. Payment of The Florida Bar's costs in these proceedings.
- C. Restitution in the amount of \$25,000.00 to Daniel McCool, Dr. Colorchip, Corp. The undersigned finds that the respondent violated Rule 4-1.5(a), by charging and collecting a clearly excessive fee. This bar disciplinary case is a separate proceeding from the civil court case, and respondent is to pay Dr. Colorchip \$25,000.00 immediately regardless of what happens with the appeal in the civil case.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 67

Date admitted to the Bar: September 30, 1999.

Aggravating Factors:

3.2(b)(2) dishonest or selfish motive;

3.2(b)(7) refusal to acknowledge the wrongful nature of conduct;

3.2(b)(9) substantial experience in the practice of law.

Respondent testified that he graduated from law school in 1988 and prior to being admitted to the bar in Florida, he practiced law in Delaware.

3.2(b)(10) indifference to making restitution.

Mitigating Factors:

3.3(b)(1) absence of a prior disciplinary record;

3.3(b)(5) full and free disclosure to the bar or cooperative attitude toward the proceedings; and

3.3(b)(7) character or reputation.

VIII. STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED

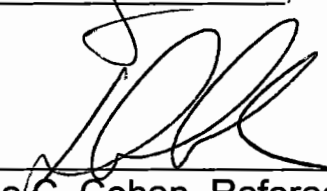
I find the following costs were reasonably incurred by The Florida

Bar:

Administrative Costs	\$1,250.00
Investigative Costs	\$126.00
Court Reporter Costs	\$4,660.60
Expert Witness Costs	\$16,830.00
TOTAL	\$22,866.60

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of The Florida Bar.

Dated this 18 day of May, 2023.


Dale C. Cohen, Referee

Original To:

Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

Conformed Copies to:

Curtis S. Alva, Respondent, *pro se*, 200 E 13th St, Riviera Beach, FL 33404-6930, via email at curtis@alvalaw.com

Joi L. Pearsall, Bar Counsel, Ft. Lauderdale Branch Office, Lake Shore Plaza II 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, via email at jpearsall@floridabar.org

Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, FL 32399-2300, via email at psavitz@floridabar.org

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Complainant,

v.

CURTIS S. ALVA,

Respondent.

Supreme Court Case
No. SC-

The Florida Bar File
No. 2018-50,796(15A)

_____ /

COMPLAINT

The Florida Bar, complainant, files this Complaint against Curtis S. Alva, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was at all times mentioned herein a member of The Florida Bar admitted on September 30, 1999 and is subject to the jurisdiction of the Supreme Court of Florida.

2. Respondent practiced law in Palm Beach County, Florida, at all times material.

3. The Fifteenth Judicial Circuit Grievance Committee "A" found probable cause to file this complaint pursuant to Rule 3-7.4, of the Rules Regulating The Florida Bar, and this complaint has been approved by the presiding member of that committee.

RECEIVED, 11/10/2021 08:51:21 AM, Clerk, Supreme Court

4. Daniel McCool (hereinafter “McCool”) retained respondent to represent him and his corporation, Dr. Colorchip, Corp. in litigation involving Dr. ColorChip, Corp.

5. The September 19, 2016 engagement letter states that the law firm of Alva & Gleizer, PLLC will charge \$400.00 an hour for attorney time and \$100.00 an hour for paralegal time to represent McCool and Dr. Colorchip, Corp. in the dispute against William McLean. Attached as Exhibit “A” is a copy of the September 19, 2016 engagement letter.

6. McCool also remitted a \$25,000.00 retainer to respondent which, pursuant to the retainer agreement, “will be held in a trust account until the end of the representation and the settling of this account, but it may be applied to any invoices unpaid after 10 days. . . .”

7. On September 29, 2016, respondent filed a verified complaint on behalf of the plaintiff Dr. ColorChip Corp., in the civil case Dr. ColorChip Corp., plaintiff v. McLean, defendant, Palm Beach County, Florida, Case No. 50-2016-CA-011102-XXXX-MB.

8. In or about January 2018, respondent sent a bill to McCool for the law firm’s charges for December 2017, (Invoice #90). Attached as Exhibit “B” is a copy of Invoice #90.

9. Invoice #90 stated that respondent's law firm had a total of 66.8 billable hours from respondent's firm from December 1, 2017 through December 29, 2017 and said invoice referenced an hourly rate for attorney time of \$400.00 and paralegal time of \$100.00.

10. Invoice #90 lists \$25,040.00 in charges billable to Dr. ColorChip/McCool for services rendered by respondent's law firm for the month of December 2017.

11. There were no unpaid past due charges noted on Invoice #90, only the billable hours charged for December 2017.

12. After receiving Invoice #90, McCool and his assistant sent respondent correspondence letting respondent know that the invoice was being reviewed, that there were questions about certain charges in the December 2017 invoice and that an explanation for the law firm's charges was requested.

13. While respondent answered a few of McCool's questions, respondent failed to fully and properly explain the charges that were being questioned by McCool.

14. Instead, on or about February 21, 2018, respondent informed McCool by email that if the December 2017 invoice was not paid, at least in part, respondent may "seek payment for what Dr. ColorChip would owe me

if there was no contract, in other words, if we had not agreed to discount my rate to \$400.00 per hour, in other words, \$550.00 per hour.”

15. In the February 21, 2018 email, respondent also indicated he could pursue a claim against Dr. Colorchip, Corp. and seek treble damages based on McCool’s dispute about the charges in the December 2017 invoice.

16. When McCool failed to pay Invoice #90 as demanded, respondent sent McCool another invoice (Invoice #95) dated February 26, 2018 requesting payment in the amount of \$126,650.00. Attached as Exhibit “C” is a copy of Invoice #95.

17. The charges in Invoice #95 represented an upcharge from the hourly billing rate that McCool agreed to in the September 2016 engagement letter with respondent’s firm which was \$400.00 per hour for attorney time and \$100.00 per hour for paralegal time. The upcharge in the attorney and paralegal hourly rates by \$150.00 and \$25.00, respectively, was applied retroactively, including to charges that McCool had already paid.

18. Invoice #95 stated that respondent’s law firm was requesting that McCool pay the law firm for 1,032.5 billable hours.

19. By issuing Invoice #95 to McCool for payment, respondent engaged in back billing McCool the difference between the agreed rate of \$400.00/\$100.00 as set forth in the retainer agreement and respondent's regular rate of \$550.00/\$125.00.

20. On or about February 27, 2018, Dr. ColorChip, Corp. paid respondent \$25,040.00, the full amount of Invoice #90.¹

21. McCool hired new counsel and terminated respondent's representation in February of 2018.

22. Instead of returning the \$25,000.00 retainer to McCool, on or about March 20, 2018, respondent sent McCool a statement of account showing that the \$25,000.00 retainer was used to offset the purported balance of \$126,650.00 and the balance due was \$101,834.95.

23. On or about April 9, 2018, McCool sent an email to respondent requesting that all retainer funds be returned immediately.

24. On or about April 10, 2018, respondent sent McCool an email stating in part that, "There is a balance due in excess of \$100,000.00.

The \$25,000.00 retainer payment was applied to the unpaid invoice and the balance in your retainer account is \$0."

¹ McCool also paid the full amount of Invoice #93, dated February 14, 2018, Invoice #93 stated that respondent's law firm had 11.3 billable hours from January 2, 2018 to February 12, 2018. The hourly rate for the attorney was \$400.00 and the hourly rate for the paralegal was \$100.00.

25. Despite receiving full payment of the December 2017 invoice (Invoice #90), respondent failed to return the \$25,000.00 retainer to McCool.

26. By the conduct set forth above, respondent violated R. Regulating Fla. Bar 3-4.3 [The commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise, whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor, may constitute a cause for discipline.]; 4-1.4(b) [A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.]; 4-1.5(a) [A lawyer must not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar.]; and 4-8.4(a) [A lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.].

WHEREFORE, The Florida Bar prays respondent will be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



Joi L. Pearsall, Bar Counsel
The Florida Bar
Ft. Lauderdale Branch Office
Lake Shore Plaza II
1300 Concord Terrace, Suite 130
Sunrise, Florida 33323
(954) 835-0233
Florida Bar No. 182427
jpearsall@floridabar.org



Patricia Ann Toro Savitz, Staff Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5839
Florida Bar No. 559547
psavitz@floridabar.org

CERTIFICATE OF SERVICE

I certify that this Complaint has been E-Filed with The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, with a copy provided via email to Respondent's Counsel, D. Culver Smith III, at csmith@culversmithlaw.com; and that a copy has been furnished by United States Mail via certified mail No. 7017 1450 0000 7821 0605, return receipt requested to D. Culver Smith III, whose record bar address is 500 S. Australian Ave., Ste. 600, West Palm Beach, FL 33401-6237 and via

email to Joi L. Pearsall, Bar Counsel, jpearsall@floridabar.org on this 10th day of November, 2021.

A handwritten signature in black ink, appearing to read 'Patricia Ann Toro Savitz', with a stylized flourish at the end.

Patricia Ann Toro Savitz
Staff Counsel

NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY EMAIL ADDRESS

PLEASE TAKE NOTICE that the trial counsel in this matter is Joi L. Pearsall, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Ft. Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, Florida 33323, (954) 835-0233 and jpearsall@floridabar.org and esanchez@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

RULE 3-7.6(h)(2), RULES REGULATING THE FLORIDA BAR,
PROVIDES THAT A RESPONDENT SHALL ANSWER A COMPLAINT.

ALVA & GLEIZER, PLLC

Curtis Alva
curtis@alvagleizer.com
Licensed in Florida and Delaware

Guillermo Gleizer
guillermo@alvagleizer.com
Licensed in New York and Florida

August 27, 2016

Daniel McCool
5126 Isabella Dr.
Palm Beach Gardens, FL 33418
mccoolre2002@yahoo.com

Re: William McLean and Dr. Colorchip, Corp

Dear Dan:

Thank you for retaining the firm of Alva & Gleizer, PLLC (the "Firm"). The terms of our engagement are set forth in this letter. This is a limited representation, as follows:

1. The Firm will represent Dan McCool in his dispute with William McLean regarding Dr. Colorchip, Corp. You will pay hourly for this work at the rate of \$375 an hour for attorney time and \$100 an hour for paralegal time.
2. The Firm's representation in this matter is limited to pre-litigation and litigation services. The parties may expand or otherwise modify this engagement by written agreement.
3. Out of pocket costs for the matter will be paid by you as incurred.
4. At the beginning of the representation, You shall pay the Firm a \$2,500 retainer towards the fees for legal services. This retainer will be applied to invoices as they come due and any unspent retainer will be refunded to the client at the termination of the representation.
5. This engagement will begin when a countersigned copy of this letter and the retainer are received by the Firm.
6. The Firm will invoice monthly for work provided and payment will be due in 10 days.
7. Miscellaneous Provisions.
 - a. Notices. All notices or other communications hereunder to each Party shall be (i) in writing and shall be deemed to be given on the earlier to occur of (a) actual receipt or (b) the day such notice or other communication is emailed to the address as provided herein:

If to Dan McCool:

Daniel McCool
5126 Isabella Dr.
Palm Beach Gardens, FL 33418
mccoolre2002@yahoo.com

If to the Firm:

Curtis Alva
901 N. Olive Ave
West Palm Beach, FL, USA 33401
curtis@alvagleizer.com

b. **Waivers.** The failure or delay of any Party at any time to require performance by another Party of any provision of this Agreement, even if known, shall not affect the right of such Party to require performance of that provision or to exercise any right, power or remedy under this Agreement. Any waiver by any Party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any Party in any circumstance shall, of itself, entitle such Party to any other or further notice or demand in similar or other circumstances.

c. **Governing Law.** This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida without regard to principles of conflicts of laws.

d. **Amendments.** The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by all Parties and making specific reference to this Agreement.

e. **Jurisdiction and Venue.** The Parties acknowledge that a majority of the activities included in the transactions contemplated herein are located in Palm Beach County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in Palm Beach County or the United States District Court, Southern District of Florida. Each Party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court. Service of any court paper may be affected on such Party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedure or local rules.

f. **Enforcement Costs.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or

901 N. Olive Avenue, West Palm Beach, FL 33401 · 561-225-1599
1200 Brickell Avenue, Suite 1450, Miami, FL 33131 · 305-602-8998
347 Fifth Avenue, Suite 1402, New York, NY 10016 · 646-233-4097

www.alvagleizer.com

misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such Party or Parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing Party.

g. No Construction Against Draftsmen. The Parties acknowledge that this is a negotiated agreement, and that in no event shall the terms of this Agreement be construed against any Party on the basis that such Party, or its counsel, drafted this Agreement.

h. ADVICE OF COUNSEL. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS OWN COUNSEL WITH RESPECT TO THE TRANSACTIONS GOVERNED BY THIS AGREEMENT, AND SPECIFICALLY WITH RESPECT TO THE TERMS OF SECTION 7(i) BELOW, WHICH CONCERNS THE WAIVER OF EACH PARTY'S RIGHT TO TRIAL BY JURY, AND EACH PARTY HAS EITHER DONE SO OR KNOWINGLY DECLINED TO DO SO.

i. JURY WAIVER. IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE PERFORMANCE OF THIS AGREEMENT, OR THE RELATIONSHIP CREATED BY THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THIS AGREEMENT OF THE WAIVER OF THE PARTIES' RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

j. Entire Agreement. This Agreement and the Exhibits to this Agreement represent the entire understanding and agreement among the Parties with respect to the subject matter of this Agreement, and supersede all other negotiations, understandings and representations (if any)

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made by and among such Parties.

Sincerely,

/s/ Curtis Alva
Curtis Alva
Alva & Gleizer, PLLC

Approved this _____ day of _____, 2016, by:

By Daniel McCool

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347 Fifth Avenue, Suite 1402, New York, NY 10016 · 646-233-4097
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IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO. 50-2016-CA-011102-XXXX-MB-AK

DR. COLORCHIP CORP.,

Plaintiff,

v.

WILLIAM MCLEAN,

Defendant.

WILLIAM MCLEAN, individually and
derivatively on behalf of Dr. Colorchip Corp.,

Counter-Plaintiff,

v.

DANIEL MCCOOL and DR. COLORCHIP
CORP.,

Counter-Defendants.

**STIPULATION FOR SUBSTITUTION OF COUNSEL FOR DR. COLORCHIP CORP.
AND DANIEL MCCOOL**

The law firm of Berger Singerman LLP and the law firm of Alva & Gleizer, P.A. hereby stipulate to the substitution of Berger Singerman LLP as counsel for Plaintiff and Counter-Defendant Dr. Colorchip Corp. and Counter-Defendant Daniel McCool. Counsel agree that the law firm of Alva & Gleizer, P.A. shall have no further responsibility as counsel of record for Dr. Colorchip Corp. or Daniel McCool, individually.

BERGER SINGERMANN LLP
350 East Las Olas Blvd., Suite 1000
Fort Lauderdale, FL 33301
Telephone: 954-525-9900

By: /s/ Matthew S. Nelles

Matthew S. Nelles
Florida Bar No. 009245
mnelles@bergersingerman.com
Caitlin M. Trowbridge
Florida Bar No. 92113
ctrowbridge@bergersingerman.com

Dated: February 15, 2018

LAW OFFICE OF ALVA & GLEIZER,
PLLC
901 N. Olive Avenue
West Palm Beach, FL 33401
Telephone: 561-225-1599

By: /s/ Curtis S. Alva

Curtis S. Alva
Florida Bar No. 178993
curtis@alvagleizer.com

Dated: February 15, 2018

Pursuant to Fla. R. Jud. Adm. 2.505(e)(2), Plaintiff/Counter-Defendant Dr. Colorchip Corp. and Counter-Defendant Daniel McCool were notified in advance of this proposed stipulation and consents hereto in writing as evidenced by the signature below.

DR. COLORCHIP CORP.

By: Dan McCool

DAN MCCOOL, PRESIDENT
Print name and title

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of February, 2018, I electronically filed the foregoing document with the Clerk of the Court through the Florida Court's E-Filing Portal, Portal, which will, in turn, send a notice of electronic filing to: Curtis Alva, Esq., Law Office of Alva & Gleizer, PLLC, co-counsel for Plaintiff, 901 N. Olive Avenue, West Palm Beach, FL 33401, Curtis@alvagleizer.com, juli@alvagleizer.com; Gregory W. Coleman, Esq., and Santo

GiGangi, Esq., Critton, Luttier & Coleman, LLP, Counsel for Defendant, 303 Banyan Blvd., Suite 400, West Palm Beach, FL 33401, gcoleman@lawclc.com, sdigangi@lawclc.com, cwoodward@lawclc.com.

BERGER SINGERMANN LLP
350 East Las Olas Boulevard, Suite 1000
Fort Lauderdale, Florida 33301
Phone: 954-525-9900
Fax: 954-523-2872

By: s/ Matthew S. Nelles
Matthew S. Nelles
Florida Bar No. 009245
mnelles@bergersingerman.com
Caitlin M. Trowbridge
Florida Bar No. 92113
ctrowbridge@bergersingerman.com
*Counsel for Dr. Colorchip, Corp. and
Daniel McCool*

8369749-2

From: [Curtis Alva](#)
To: [Tricia O'Rourke](#)
Cc: [Dan McCool](#)
Subject: RE: REVISED ANSWER TO YOUR EMAIL OF TODAY RE: January invoice
Date: Wednesday, February 14, 2018 5:18:00 PM

I look forward to hearing from you soon.

Curtis Alva

Attorney at Law

curtis@alvagleizer.com

Alva & Gleizer, PLLC

901 N. Olive Ave 1200 Brickell Ave, #1450 347 Fifth Ave, #1402

West Palm Beach, FL 33401 Miami, FL 33131 New York, NY 10016

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From: Tricia O'Rourke [mailto:tricia@drcolorchip.com]

Sent: Wednesday, February 14, 2018 5:14 PM

To: Curtis Alva <Curtis@alvagleizer.com>

Subject: RE: REVISED ANSWER TO YOUR EMAIL OF TODAY RE: January invoice

Who mentioned litigation? We have no intention of litigating an invoice. That's ridiculous. That's not how we roll. We are professionals who expect to be treated professionally and fairly. That's all.

As I mentioned, I will review and get back to you.

Regards,

Tricia O'Rourke

Operations Manager

Dr. ColorChip Corporation

1369 North Killian Drive

Suite 1

Lake Park, FL 33403

Cell: 561-512-2314

Office: 561-845-6122

From: Curtis Alva [mailto:Curtis@alvagleizer.com]

Sent: Wednesday, February 14, 2018 5:03 PM

To: Tricia O'Rourke <tricia@drcolorchip.com>

Cc: Dan McCool <dan@drcolorchip.com>

Subject: RE: REVISED ANSWER TO YOUR EMAIL OF TODAY RE: January invoice

As I recall, I said something different than that. I believe I said that I would consider a “courtesy discount.” Courtesy discounts are unrelated to any factor other than keeping a good relationship with client. You, of course, are free to analyze the bills in any manner you choose, but if you are trying to reach an agreement, it seems unlikely to me that we would reach any agreement based upon a “performance/results” matrix because we would have very different opinions about the success of the representation. I should also mention that I am also willing to consider a separate basis for a discount, if we don’t go the courtesy discount route, which would be a small discount to avoid litigation, with all of its depositions, document requests, hearings, and the risk to one party or the other of paying the attorney’s fees of the prevailing party. Especially for small matters like this, the attorney’s fees alone can grow to be substantially more than the amount in dispute. You might ask Dan whether he would be willing to accept a 5% discount today in exchange for avoiding all of that.

Curtis Alva

Attorney at Law

curtis@alvagleizer.com

Alva & Gleizer, PLLC

901 N. Olive Ave 1200 Brickell Ave, #1450 347 Fifth Ave, #1402

West Palm Beach, FL 33401 Miami, FL 33131 New York, NY 10016

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From: Tricia O'Rourke [<mailto:tricia@drcolorchip.com>]

Sent: Wednesday, February 14, 2018 4:01 PM

To: Curtis Alva <Curtis@alvagleizer.com>

Subject: RE: REVISED ANSWER TO YOUR EMAIL OF TODAY RE: January invoice

That’s odd. Ok, so per our conversation, you stated that you would not reduce the amount for my reason that we were overcharged, however you would consider reducing the invoice if it were based on performance/results, I forget the exact word you used. I will go over this invoice without the benefit of an individual time log and get back to you.

Regards,

Tricia O’Rourke

Operations Manager

Dr. ColorChip Corporation

1369 North Killian Drive

Suite 1

Lake Park, FL 33403

Cell: 561-512-2314
Office: 561-845-6122

From: Curtis Alva [<mailto:Curtis@alvagleizer.com>]

Sent: Wednesday, February 14, 2018 3:54 PM

To: Tricia O'Rourke <tricia@drcolorchip.com>

Cc: Dan McCool <dan@drcolorchip.com>

Subject: RE: REVISED ANSWER TO YOUR EMAIL OF TODAY RE: January invoice

Attached is the final invoice. As to your request for itemized billing for December forward, this matter has always been billed on a block basis, and, with one exception, I did not create any itemized time records. The one exception is that on January 31, we held a meeting and I updated my calendar at the conclusion of the meeting to show the approximate actual time we spent in the meeting. It shows we met from 2 p.m. to 4:35 p.m. My recollection is that although you and I and Dan were in the conference room at 2, there was some delay in connecting Dave and Matt by telephone and I billed only 2.3 hours to the meeting, in light of the delay. You will find that itemized amount, [2.3], on the final bill s.v. January 31.

Curtis Alva

Attorney at Law

curtis@alvagleizer.com

Alva & Gleizer, PLLC

901 N. Olive Ave 1200 Brickell Ave, #1450 347 Fifth Ave, #1402

West Palm Beach, FL 33401 Miami, FL 33131 New York, NY 10016

(561) 225-1599 (305) 602-8998 (646) 233-4097

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From: Tricia O'Rourke [<mailto:tricia@drcolorchip.com>]

Sent: Wednesday, February 14, 2018 8:25 AM

To: Curtis Alva <Curtis@alvagleizer.com>

Subject: RE: REVISED ANSWER TO YOUR EMAIL OF TODAY RE: January invoice

With regard to the review of the December invoice, your bills have blocks of tasks in one time period making it impossible to know how much time was spent on each item. Can you please use your time log to break down the December invoice and put a time spent to each item.

So, for example if on December 9, you spent 1:40 "continuing to work on Janeen Serino deposition, read email and advise clients, continue to work on tax issue", I need to know how long you spent on each of those 3 items to make up the 1:40 total.

I will also need that for the final invoice.

Thank you.

Regards,
Tricia O'Rourke
Operations Manager
Dr. ColorChip Corporation
1369 North Killian Drive
Suite 1
Lake Park, FL 33403
Cell: 561-512-2314
Office: 561-845-6122

From: Curtis Alva [<mailto:Curtis@alvagleizer.com>]

Sent: Tuesday, February 13, 2018 4:09 PM

To: Tricia O'Rourke <tricia@drcolorchip.com>

Cc: Dan McCool <dan@drcolorchip.com>; DMcCool@Watlow.com

Subject: Re: REVISED ANSWER TO YOUR EMAIL OF TODAY RE: January invoice

Thanks for the clarification. From this moment forward I will do nothing on the file based upon Matt's immediate role as sole counsel for Dr ColorChip and Daniel McCool in the state court litigation. Please have him file the substitution papers today, if possible. I have not yet sent the letter to Coleman and will not do so and the "deadline" last week was timely met. Best of luck in this matter. I will send invoices for the time in January and February. I enjoyed working with you guys.

Curtis Alva
Alva & Gleizer
901 N. Olive Ave
Riviera Beach, FL
33401

On Feb 13, 2018, at 3:07 PM, Tricia O'Rourke <tricia@drcolorchip.com> wrote:

Curtis,
We didn't realize you were asking to send Coleman a letter regarding Judge Garrison's request to give him a list of the motions that each party wanted to put before him. I thought you were talking about the motion to compel response.
So with regards to the letter to Coleman regarding hearing dates, if you haven't already sent that to him, then do NOT send. If you have already given him this information, then fine, just send us a copy of the letter.
I assume you met the deadline last week for the filings that needed to be filed.
Going forward, Matt Nelles will be filing a substitution of counsel and will be taking over the entire Dr. ColorChip case.
Please send us your final billing.
Regards,
Tricia O'Rourke
Operations Manager
Dr. ColorChip Corporation
1369 North Killian Drive
Suite 1

Lake Park, FL 33403
Cell: 561-512-2314
Office: 561-845-6122

From: Curtis Alva [<mailto:Curtis@alvagleizer.com>]

Sent: Tuesday, February 13, 2018 2:09 PM

To: Tricia O'Rourke <tricia@drclorchip.com>; Dan McCool <dan@drclorchip.com>

Cc: 'McCool, David' <DMcCool@Watlow.com>

Subject: RE: January invoice

Thanks for taking time to talk today about this issue. As I mentioned, I will not agree to a 50% discount on the January 9 invoice, but I remain willing to meet and discuss some other arrangement.

Trish, after Dan left the call I notified you that there is work that should probably be done today, including responding to Coleman's request for an expedited hearing on a new motion of his to compel all the financial records of Dr. C. I told him that I would respond to him today. The response would be a draft of the letter to the Court listing all the hearings and discovery that the parties would like have scheduled, putting Coleman's new request at the bottom of the list. My concern is that if Dr. C does not respond today, Coleman may just unilaterally set a hearing on his motion. His new motion gives Dr. C. some leverage because this may be the first time that they have actually really wanted any discovery (other than Dan's depo). You told me that you would send me an email on what work, if any, Dan wanted me to do. I will wait for your email but today is a busy day and I need to know soon if you need something done today. In the meantime, I will not do any work on the file. Beyond today, there is also work that, in my opinion, needs to be done beginning tomorrow. Let me know if you also want to discuss that work.

Curtis Alva

Attorney at Law

curtis@alvagleizer.com

Alva & Gleizer, PLLC

901 N. Olive Ave 1200 Brickell Ave, #1450 347 Fifth Ave, #1402

West Palm Beach, FL 33401 Miami, FL 33131 New York, NY 10016

(561) 225-1599 (305) 602-8998 (646) 233-4097

NOTICE: The information contained in this e-mail is confidential and may be legally privileged. It is intended solely for the use of the individual or entity to whom it is addressed and others authorized to receive it. If you are not the intended recipient you are hereby notified that any disclosure, copying, distribution or taking any action in reliance of the contents of this information is strictly prohibited and may be unlawful. Alva & Gleizer, PLLC, is not liable for the improper or incomplete transmission of the information contained in this communication or for any delay in its receipt. By way of precaution, we would like to point out that the receipt of e-mail can be subject to technical or operational interference. We therefore request that time-critical or important notices are sent to Alva & Gleizer, PLLC, by first class courier services. The sending of e-mail to us shall not constitute compliance with any time limits or deadlines. If you want to be sure that your e-mail has been received properly you should request a written confirmation from the recipient.

From: Tricia O'Rourke [<mailto:tricia@drcolorchip.com>]

Sent: Tuesday, February 13, 2018 12:07 PM

To: Curtis Alva <Curtis@alvagleizer.com>

Subject: January invoice

Curtis,

Dan forwarded me the last 3 invoices as you do not code me into those invoices for several months now.

So as you know, the invoice dated January 19th has not been paid yet. I have looked over the last 3 months and have many questions, but have not had the time to really dissect it, however I will if I need to.

Rather, I would request that you discount the January 9, 2018 invoice by 50% (\$12,520) and I will instruct Dan to pay it immediately and we can move on. I am sure you can understand that Dan has paid an enormous amount of money to Alva & Gleizer with very little to show for it and the other side spending only a fraction. In that regard, the original strategy of forcing McLean to spend money was a miserable failure. But no sense crying over spilled milk.

Please advise if this is acceptable.

Regards,

Tricia O'Rourke

Operations Manager

Dr. ColorChip Corporation

1369 North Killian Drive

Suite 1

Lake Park, FL 33403

Cell: 561-512-2314

Office: 561-845-6122

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO. 50-2016-CA-011102-XXXX-MB-AK

DR. COLORCHIP CORP.,

Plaintiff,

v.

WILLIAM MCLEAN,

Defendant.

WILLIAM MCLEAN, individually and
derivatively on behalf of Dr. Colorchip Corp.,

Counter-Plaintiff,

v.

DANIEL MCCOOL and DR. COLORCHIP
CORP.,

Counter-Defendants.

**ORDER APPROVING STIPULATION FOR SUBSTITUTION OF COUNSEL FOR
DR. COLORCHIP CORP. AND DANIEL MCCOOL**

THIS CAUSE having come before the Court upon the filing of the Stipulation for
Substitution of Counsel, and the Court having reviewed the Stipulation, and being otherwise
fully advised in the premises, it is

ORDERED AND ADJUDGED as follows:

1. The Stipulation For Substitution Of Counsel is hereby approved.

2. The law firm of Berger Singerman LLP is substituted as counsel of record in place of the law firm of Alva & Gleizer, P.A., as counsel for Plaintiff and Counter-Defendant Dr. Colorchip Corp., and Counter-Defendant Daniel McCool.

3. The law firm of Alva & Gleizer, P.A. shall have no further responsibility as counsel of record for Dr. Colorchip Corp. or Daniel McCool.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 15th day of February, 2018.

 THE 15TH JUDICIAL CIRCUIT
ADMINISTRATIVE OFFICE OF THE COURT
EDWARD A. GARRISON
ACTING CIRCUIT JUDGE

Copies furnished:
Matthew S. Nelles, Esq.
mnelles@bergersingerman.com
Caitlin M. Trowbridge, Esq.
ctrowbridge@bergersingerman.com

Curtis S. Alva, Esq.
curtis@alvagleizer.com

Gregory W. Coleman, Esq.
gcoleman@lawclc.com
Santo GiGangi, Esq.
sdigangi@lawclc.com

Curtis Alva

From: Curtis Alva
Sent: Monday, February 5, 2018 10:46 AM
To: Dan McCool
Subject: FW: December's Invoice
Attachments: invoice_90 Dr. C December 2017.pdf

I know that you've been out of the country, so this invoice might still be in processing. It was sent on 1/9/18. Can you tell me the status?

From: Curtis Alva
Sent: Tuesday, January 09, 2018 6:26 PM
To: Dan McCool
Subject: December's Invoice

Thanks so much for getting the checks out so quickly for the October and November invoices. I hope your holidays were merry. Here is the December invoice. Call me with any questions or comments.

Alva & Gleizer, PLLC

901 N. Olive Ave
West Palm Beach, Florida 33401

INVOICE

Invoice # 90
Date: 01/09/2018
Due On: 01/19/2018

Dr. Colorchip, Daniel McCool
1369 N. Killian Drive
Lake Park, FL 33403

15083-Dr. Colorchip

Re" William McLean

Date	Attorney	Description	Quantity	Rate	Total
12/01/2017	CA	Continue correspondence re tax issue. Continue work on opposing expedited hearing on dissolution motion and limited discovery re same.	0.60	\$400.00	\$240.00
12/04/2017	CA	Further analysis of tax issues and correspond with team re same. Set up 12/5 conference re same. Identify potential expert re same. Continue work on opposition to dissolution and opposition to expediting and limiting discovery re same. Set conference with Coleman re same for 12/6. Work on expert for our injunction motion.	4.30	\$400.00	\$1,720.00
12/04/2017	CA	Continue negotiations with Coleman re hearing scope and procedure. Review Guyard, CPA's correspondence regarding the number of shares and work on response and recommendations to team and draft correspondence re same and set up meeting re same.	4.10	\$400.00	\$1,640.00
12/05/2017	CA	Observe J. Garrison on the bench. Prepare for and meet with Mike Guyard, CPA, and client re tax issues and draft correspondence re same. Work on potential expert witness re tax issues. Work on getting Nelles retained. Work on opposition to expedited dissolution and hearing re same and re receiver.	4.40	\$400.00	\$1,760.00
12/06/2017	CA	Conference with Nelles re Injunction motion and with team re same and re all current discovery issues and opposing expedited dissolution hearing and re Canadian Issues. Conference with Coleman re same. Travel to and From Nelles's office in Ft Lauderdale (No Charge). Continue work on opposing expedited dissolution, opposing an expedited hearing re same and opposing an interim receiver.	7.10	\$400.00	\$2,840.00
12/07/2017	CA	Travel to court to discuss J. Garrison with attorneys currently in front of him. Analyze updates to "DCC" and "DCC LLC" information. Correspond with Nelles re establishing the urgency of our injunction motion.	1.90	\$400.00	\$760.00

12/08/2017	CA	Work on team conference for pre-hearing preparation. Correspond with Kurt Heyman, Esq., to get court decision and briefs on a recent case trial requesting a receiver.	0.60	\$400.00	\$240.00
12/09/2017	CA	Review recent cases involving requests for dissolution and receivers pending dissolution.	2.60	\$400.00	\$1,040.00
12/10/2017	CA	Continue preparation for case management conference and in opposition to McLean's request for expedited dissolution hearing.	1.50	\$400.00	\$600.00
12/11/2017	CA	Prepare outline of all issues, authorities and exhibits for case management conference and in opposition to McLean's motion to expedite dissolution motion. Analyze McLean's earlier motion for emergency treatment and court order denying same and outline similarities to the motion to expedite. Conference with client and team re same and Matt Nelles re same, Work on drafting 3rd request for production of documents to McLean. Consult with court personnel re J. Garrison. Review client email re scheduling conflicts and draft reply. Review correspondence from client re responding to McLean's recent request for production of documents and draft step by step instructions re same. Trade correspondence with Nelles re potential Venetian salami style hearing with only affidavits. Finish drafting motion to compel better responses from Janeen Serino. Continue drafting 3rd request for documents to McLean. Assist with drafting timeline of McLean's efforts and successes in delaying discovery. Draft scheduling request to Coleman for 16 depositions and 3 hearings as stage 1 of responding to his dissolution motion and review his response refusing to agree to schedule even one of those events.	6.70	\$400.00	\$2,680.00
12/11/2017	GG	Review outstanding discovery requests by Dr. ColorChip to McLean and determine all that have not been answered adequately. Draft a timeline for CA including all dates, requests, and outstanding answers needed. Assist draft proposed letter to Coleman. Assist draft Motion to Compel Better Answers from McLean.	3.30	\$100.00	\$330.00
12/12/2017	CA	Prepare oral arguments for case management conference and in opposition to McLean's motion to expedite dissolution motion. Attend hearing and argue re same. Confer with Coleman about mitigating damages from loss of control of domain and settlement. Conference with client and team re same and begin follow up to same, including beginning drafting of letter to the court requesting scheduling of motions, and setting depositions, and beginning drafting recap memo to team, Finish drafting 3 request for production of documents to McLean and demand letter for prompt production of documents responsive to our 1st and 2nd RFP's. Work on moderating risks involved in live testimony re domain name hearing. Work on making	7.30	\$400.00	\$2,920.00

		Coleman a witness re same. Observe J. Garrison handling other cases.			
12/12/2017	GG	Assist with outstanding Motions. Review previous hearing transcripts. Assist draft Motion to Compel better answers from Serino and for sanctions. Assist draft Third Request for Production from McLean.	2.30	\$100.00	\$230.00
12/14/2017	CA	Observe J. Garrison on the bench. Conference with Dan re the litigation side of certain tax and corporate issues. Work on spoliation of evidence motion. Work on motion for expedited equitable relief to parallel McLean's motion to expedite dissolution.	2.00	\$400.00	\$800.00
12/15/2017	CA	Continue augmenting list of hearing and other events we want the judge to schedule.	0.30	\$400.00	\$120.00
12/20/2017	CA	Review correspondence from Soble, Esq., responding to my questions of 11/2/17 and repeating Kings demands. Draft correspondence to team re same. Update plan to sue King in light of same. Draft follow up demand to Coleman re documents requested in November 2016 and requesting additional time to respond to McLean's November 2017 request for documents. Draft recap email to team regarding 8 pending issues. Draft email to Coleman demanding his basis for the claim he made to Garrison that Sasser had clearly found that McLean was a shareholder, owning 50%, who was deadlocked with Dan entitling McLean to dissolution and citing concerns about Coleman's duty of candor to the Court. Review Coleman's response and draft a follow up demand. Review email from Pando re Canadian issues.	4.80	\$400.00	\$1,920.00
12/21/2017	CA	Analyze alternatives in light of King's threat to stop payments to Dr. C. Begin reviewing Sasser transcripts for support for Coleman's 12/12 claim. Review Coleman's email providing his basis for the claim and re-review the 11/10/17 transcript and find no basis for his claim. Analyze remedies for the breach of the duty of candor and procedures to get same. Prepare for and confer with Dan, Dave and Trish re the above issues and re certain tax and distribution and I.P. issues.	4.60	\$400.00	\$1,840.00
12/22/2017	CA	Work with Patrick McCool and Mike Guyard on a potential amended return using 2 separate tax years for 2016. Work on draft correspondence to Coleman re same.	1.00	\$400.00	\$400.00
12/23/2017	CA	Review email from O'Rourke on potential payment into Court Registry and begin work in response. Review notes on earlier discussions and analysis.	1.10	\$400.00	\$440.00
12/24/2017	CA	Continue work on potential payment to Court Registry. Consider multiple grounds suggested by client and other potential grounds. Review and analyse statutes that permit deposits into the Registry.	2.20	\$400.00	\$880.00

12/25/2017	CA	Continue work on potential payment into Court Registry. Draft email to client re same.	1.00	\$400.00	\$400.00
12/26/2017	CA	Continue research and analysis of a potential deposit with the Court Registry to hold contract payment to McLean. Work on other sources of funds for paying 2017 taxes. Draft correspondence to client re same. Conference with Dan re same. Draft correspondence to Matt Nelles, Esq., updating him re claims and actions against King.	1.90	\$400.00	\$760.00
12/29/2017	CA	Review executed 2016 return for Dr. C. and McLean's K-1 and continue drafting notice to McLean through Coleman that an alternate methodology is available and the conditions under which Dr. C. would discuss amending the return. Draft email to team re same. Review email from Dan re strategic considerations re same and draft reply.	1.20	\$400.00	\$480.00

Quantity Subtotal	66.8

Quantity Total	66.8

Subtotal	\$25,040.00

Total	\$25,040.00

Please make all checks payable to:
 Alva & Gleizer, PLLC
 901 N. Olive Ave
 West Palm Beach, Florida 33401

Exhibit 2

ALVA & GLEIZER, PLLC Engagement letter

Curtis Alva
curtis@alvagleizer.com
Licensed in Florida and Delaware

Guillermo Gleizer
guillermo@alvagleizer.com
Licensed in New York and Florida

September 19, 2016

Dr. Colorchip, Corp.
Daniel McCool
1369 N. Killian Dr.
Lake Park, FL 33403

Re: William McLean and Dr. Colorchip, Corp

Dear Dan:

Thank you for retaining the firm of Alva & Gleizer, PLLC (the "Firm"). The terms of our engagement are set forth in this letter, which supersedes the engagement letter of August 27, 2016. This is a limited representation, as follows:

1. The Firm will represent Dan McCool and Dr. Colorchip ("You" or the "Parties") in the dispute with William McLean regarding Dr. Colorchip, Corp. My hourly rate is \$550 an hour for attorney time and my paralegal's rate is \$125 an hour. The fees will be based on these factors: The time and labor required; the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the lawyer or lawyers performing the services.

2. The Firm's representation in this matter is limited to pre-litigation and litigation services. This agreement does not include any appeal work. The parties may expand or otherwise modify this engagement by written agreement.

3. Out of pocket costs for the matter will be paid by you as incurred.

4. You shall pay the Firm a \$10,000 retainer towards the fees for legal services. This is in addition to the \$2,500 retainer already paid pursuant to the August 27, 2016 engagement letter. This retainer will be held in a trust account until the end of the representation and the settling of this account, but it may be applied to any invoices unpaid after 10 days, and if it is so applied, it will be replenished to \$12,500 within 10 days of being spent to pay any invoice. It may also be used to pay any out of pocket costs that have not been paid by you within 10 days, and if it is so

applied, it will be replenished to \$12,500 within 10 days of being spent to pay any out of pocket costs. Any unspent and unapplied retainer will be refunded to you at the termination of the representation during the settling of this account. If McLean brings litigation, the retainer amount will be increased to \$25,000 and replenished to \$25,000, if it is applied to any unpaid invoices or out of pocket expenses.

5. For Mr. McCool, this engagement began pursuant to the August 27, 2016 Engagement Letter and continues pursuant to this letter. For Dr. Colorchip, the engagement begins today

6. The Firm will invoice monthly for work provided and payment will be due in 10 days.

7. Miscellaneous Provisions.

a. Notices. All notices or other communications hereunder to each Party shall be (i) in writing and shall be deemed to be given on the earlier to occur of (a) actual receipt or (b) the day such notice or other communication is emailed to the address as provided herein:

If to Dan McCool:

Daniel McCool
5126 Isabella Dr.
Palm Beach Gardens, FL 33418
mccoolre2002@yahoo.com

If to Dr. Colorchip, Corp.

Dr. Colorchip, Corp.
Attn: Daniel McCool
1369 N. Killian Dr.
Lake Park, FL 33403
dan@drcolorchip.com

If to the Firm:

Curtis Alva
901 N. Olive Ave
West Palm Beach, FL, USA 33401
curtis@alvagleizer.com

b. Waivers. The failure or delay of any Party at any time to require performance by another Party of any provision of this Agreement, even if known, shall not affect the right of such Party to require performance of that provision or to exercise any right, power or remedy under this Agreement. Any waiver by any Party of any breach of any provision of this

901 N. Olive Avenue, West Palm Beach, FL 33401 561-225-1599

1200 Brickell Avenue, Suite 1450, Miami, FL 33131 305-602-8998

347 Fifth Avenue, Suite 1402, New York, NY 10016 646-233-4097

www.alvagleizer.com

Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any Party in any circumstance shall, of itself, entitle such Party to any other or further notice or demand in similar or other circumstances.

c. **Governing Law.** This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Florida without regard to principles of conflicts of laws.

d. **Amendments.** The provisions of this Agreement may not be amended, supplemented, waived or changed orally, but only by a writing signed by all Parties and making specific reference to this Agreement.

e. **Jurisdiction, Venue, and Arbitration.** The Parties acknowledge that a majority of the activities included in the transactions contemplated herein are located in Palm Beach County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of Florida in Palm Beach County or the United States District Court, Southern District of Florida. Each Party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court. Service of any court paper may be affected on such Party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedure or local rules. HOWEVER, ANY PARTY TO THE AGREEMENT MAY ELECT TO HAVE ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS LETTER, SETTLED BY ARBITRATION ADMINISTERED IN WEST PALM BEACH, FLORIDA, PURSUANT TO A SINGLE ARBITRATOR ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, WITH THE EXPEDITED PROCEDURES APPLYING REGARDLESS OF THE AMOUNT OF THE CLAIMS AND JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF AND, IF ARBITRATION IS ELECTED, ALL PARTIES TO THIS AGREEMENT WAIVE ANY RIGHT TO BRING A COURT ACTION OR HAVE A JURY TRIAL. MOREOVER, IN THE EVENT A DISPUTE ARISES BETWEEN THE FIRM AND CLIENT REGARDING FEES, ANY PARTY TO THIS AGREEMENT MAY ELECT TO SUBMIT THAT DISPUTE UNDER THE FLORIDA BAR FEE ARBITRATION PROGRAM AND IF THE FEE ARBITRATION PROGRAM IS ELECTED ALL PARTIES TO THIS AGREEMENT WAIVE ANY RIGHT TO BRING A COURT ACTION OR HAVE A JURY TRIAL.

f. **Enforcement Costs.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such Party or Parties may be entitled. Attorneys' fees shall include, without limitation,

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paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing Party.

g. No Construction Against Draftsmen. The Parties acknowledge that this is a negotiated agreement, and that in no event shall the terms of this Agreement be construed against any Party on the basis that such Party, or its counsel, drafted this Agreement.

h. ADVICE OF COUNSEL. EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY ITS OWN COUNSEL WITH RESPECT TO THE TRANSACTIONS GOVERNED BY THIS AGREEMENT, AND SPECIFICALLY WITH RESPECT TO THE TERMS OF SECTION 7(i) BELOW, WHICH CONCERNS THE WAIVER OF EACH PARTY'S RIGHT TO TRIAL BY JURY, AND EACH PARTY HAS EITHER DONE SO OR KNOWINGLY DECLINED TO DO SO.

i. JURY WAIVER. IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE PERFORMANCE OF THIS AGREEMENT, OR THE RELATIONSHIP CREATED BY THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THIS AGREEMENT OF THE WAIVER OF THE PARTIES' RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.

j. Entire Agreement. This Agreement and the Exhibits to this Agreement represent the entire understanding and agreement among the Parties with respect to the subject matter of this Agreement, and supersede all other negotiations, understandings and representations (if any)

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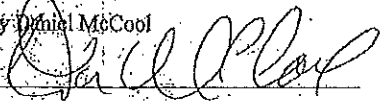
made by and among such Parties.

Sincerely,

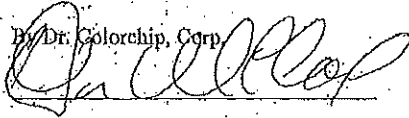
/s/ Curtis Alva
Curtis Alva
Alva & Gleizer, PLLC

Approved this 19th day of Sept, 2016, by:

By: Daniel McCool



By: Dr. Colorchip, Corp



Its President

901 N. Olive Avenue, West Palm Beach, FL 33401 • 561-225-1599
1200 Brickell Avenue, Suite 1450, Miami, FL 33131 • 305-602-8998
347 Fifth Avenue, Suite 1402, New York, NY 10016 • 646-233-4097
www.alvagleizer.com

From: [Dan McCool](#)
To: [Curtis Alva](#)
Cc: [McCool, David](#)
Subject: Re: revised re: dan RE: Questions on Dec bill
Date: Tuesday, February 27, 2018 5:08:10 PM

Yes. As quickly as the bank processes it you should have it shortly.

Sent from my iPhone

On Feb 27, 2018, at 2:16 PM, Curtis Alva <Curtis@alvagleizer.com> wrote:

Thanks. Not sure what "payment yesterday" means but I think the rest of your email means that I'll receive a check for \$25,040 in the mail within a couple days. I'll let you know when I receive it. I received the check for the work in January and February yesterday. Thanks for sending it so promptly.

Curtis Alva
Alva & Gleizer
901 N. Olive Ave
Riviera Beach, FL
33401

On Feb 27, 2018, at 12:32 PM, Dan McCool <dan@drcolorchip.com> wrote:

Curtis,
Per Dave's advice I have issued to you full payment of the \$25,040 invoice to my bank for payment yesterday.

Sent from my iPhone

On Feb 27, 2018, at 12:28 PM, Curtis Alva
<Curtis@alvagleizer.com> wrote:

I wish that Dan had consulted with you rather than with others before Dr. ColorChip decided to breach the engagement letter by failing to pay. I am confident that this dispute would never have arisen. I asked him to do so repeatedly, but without success. Dr. ColorChip even refuses to pay the amounts of the bill that are not disputed, in spite of several requests. The invoice was due on January 19 and still not one penny of it has been paid. Tricia said a couple of times that she was reviewing the invoice and when I asked when the review might finish, she said that it would be finished when it was finished. I believe I have answered all their questions and shown that all the work was properly performed and billed and benefitted Dr. ColorChip.

To the limited and belated extent that Dan has involved you, he may not have mentioned to you that I gave Dr. ColorChip a \$150 per hour discount for this matter, which totals about \$125,000. I am not a collections attorney, but I believe that, having breached the engagement letter, Dr. ColorChip can no longer enforce it and, per the ethics rules, my services may be billed at their reasonable value, which I believe is my regular billable rate--without the discount. I have now tried everything that I can think of, short of litigation, to get this resolved. I honestly believe that the last thing in the world that Dan wants is more litigation in his life, but he has delegated this issue to another and perhaps some personal animosity is driving the decision making. I would be happy to talk to Dan or you or both about this. Trish has asked me not to communicate with her any more.

Curtis Alva

Attorney at Law

curtis@alvagleizer.com

Alva & Gleizer, PLLC

901 N. Olive Ave 1200 Brickell Ave, #1450 347 Fifth Ave,
#1402

West Palm Beach, FL 33401 Miami, FL 33131 New York, NY
10016

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From: McCool, David [<mailto:DMcCool@Watlow.com>]

Sent: Monday, February 26, 2018 10:49 PM

To: Curtis Alva <Curtis@alvagleizer.com>; Dan McCool <dan@drcolorchip.com>

Subject: RE: revised re: dan RE: Questions on Dec bill
Curtis, I don't know the details of your invoices and I'm not interested in getting in the middle of that debate. My advice to Dan is to square up on the disputed amounts and allow this to end with some dignity. But Dan explained that your latest invoice purports to unilaterally increase an earlier invoice by \$126,000 for the same work. I'm fairly certain there's no basis for that adjustment in the engagement letter, let alone ethically, but I think you know that already.
Dave

From: Curtis Alva [<mailto:Curtis@alvagleizer.com>]

Sent: Monday, February 26, 2018 1:11 PM

To: Dan McCool <dan@drcolorchip.com>

Cc: McCool, David <DMcCool@Watlow.com>

Subject: RE: revised re: dan RE: Questions on Dec bill

Here is my response, inserted among your points. I have not copied Trish on this because she specifically instructed me not to email to her any more.

Lets put this bickering behind us. Curtis, I do feel way too much time was spent "thinking about Serrino deposition" I have observed a pattern in this relationship, that Dr. ColorChip makes judgements about the cost of work without considering the benefits obtained from the work. This appears to be another example of such an analysis. Did you remember what benefits we expected from pursuing her deposition when you decided that we spent too much time? Have you compared those benefits to the cost? Did you total up the time spent on pursuing her deposition? Let me tell you what I remember. McLean's attorneys were claiming that you and McLean had an enforceable verbal agreement to split the company. McLean was going to testify as to the specifics of that agreement and he was going to testify that you got greedy and decided to keep the whole thing for yourself and you then breached the agreement by terminating him on false pretenses. You, of course, would testify to the opposite, making this a "his word against yours" dispute. His attorneys hoped to give McLean a 50% chance of winning, depending upon who the jury believed. McLean's attorneys were then going to bump up the odds in their favor by claiming that

Serino was a witness to the agreement, in one way or another, making it the word of 2 people against the word of one, hoping to give them a 66% chance of winning. If you recall, their chances of winning on all other arguments seemed negligible, so 50% or 60% would have been a huge shift in their favor. We, however, found a flaw in their plan—Serino had been present for multiple conversations between McLean and his attorneys even though Serino was not one of their clients, thus potentially waiving the attorney client privilege and allowing us to force Serino and the attorneys to disclose all the contents of all of those conversations. During those conversations, all the evil plans of McLean and his attorneys to make up this lie about an agreement might have been discussed. So at the deposition, I laid all the groundwork to make a motion to compel Serino to come back for another deposition and disclose those conversations. Faced with that risk, Serino promptly disappeared and never returned to Florida, that we know of. So, as long we continued to pursue Serino, McLean would have no witness to corroborate his story, but we would have all of the documents showing that he lied and cheated about other matters. In those circumstances, settlement for some amount of money seemed more attractive to McLean than going forward with his claim to trial. and “continuing to work on the tax issue”. I was very comfortable with the advice I received from two tax experts, My brother Pat and Mike Guillard. The attorney that you brought in was not a tax expert and he admitted as much to my brother. A \$500 tax filing exploded into about a \$6,000 expense. I know you were comfortable, but my recollection is that Pat and David and I were concerned. Pat was concerned, quite rightly, because, as he wrote in his 8/31 email “, is this tax filing with a 50/50 split going to cause any legal issues that Curtis can think of? For example, does it imply that Bill is still a 50/50 partner?” In fact, McLean would argue that it was more than implied, it was admitted under oath by you that as of 12/31, McLean owned 50% of the stock. But Pat didn’t know of any other way to reflect the ownership on the return. So we hired Adi Rapaport. I don’t know where you got your belief that Adi isn’t a

tax expert, his Gunster website bio shows that he is board certified in tax and that his practice focuses on tax work and that he specifically, among other things, “assists business clients with structuring and implementing buy-sell arrangements and has substantial experience in tax and fiduciary litigation. Adi almost immediately came up with an alternate way of reporting the change of ownership, the weighted average approach, that did NOT imply or admit any stock ownership by McLean after he was terminated, thus completely taking this argument away from McLean. Pat was also concerned, as David and I were, that Mike believed that the previous year’s return showed that the company had 3,789 shares issued and outstanding, but Pat disagreed. So when you say you were comfortable with Mike and Pat’s advice, you have to remember they disagreed. It wasn’t until I took the time to meet Mike in his office and walk through the issue line by line that we figured out that Mike was assuming, incorrectly, that the stock had a par value of \$1.00—it doesn’t—and that \$3,789 on the return necessarily meant that there were 3,789 shares—there weren’t. Once we understood Mike’s mistaken assumption, we were quickly able to resolve that part of the tax issue. There was also a third tax issue, which was, can we prompt McLean to enter a settlement by offering to use the “year end approach” instead of the weighted average approach, which would give McLean thousands more in cash. At the time, McLean was being relatively quiet and we hoped that volunteering the money showed great amounts of good faith and going through a mini-settlement over the tax issue might prompt a total settlement. So we spent time on that. Before the return could be finalized, however, you and Trish discovered the most recent Canadian shenanigans and you decided, rightly, that you no longer wanted to offer McLean the tax windfall. This last point specifically illustrates how Dr. ColorChip sometimes looks only at the cost and not at the benefit. You spent about \$6,000 on these three tax issues, you say in your email, but you avoided admitting McLean was a shareholder and you got a check for \$164,000 whereas McLean got a check for \$32,000. Have you calculated what your check would have been without my work and Adi’s on that issue?

Somewhere around \$120,000, if I recall correctly. So you spent \$6,000 and got about \$44,000 plus no admission that Bill was a shareholder. Did you include that \$44,000 in your analysis that \$6,000 was too much to spend on that issue? If you feel I am being reasonable on the questioning of this and the very large bill that I received for December when I was basically gone on vacation for half the month and even if you just confine it to the \$6,800 you seem to feel Tricia Identifies in her email with her requests for answers to her questions, I think that is fair to revisit what was done there and come to some form of compromise. This case has gone in a different direction for many reasons.....losing Judge Sasser, multiple DQ motions which cost me a lot of money, a lack of focus on the IP issues which have always been the most important aspect of this case yet lacked focus and a proactive approach and more importantly a true IP expert working this part of this case. No one attorney is an expert in each area. Your complaint that the litigating did not focus on the merits of your issues is a product of the strength of our strategy, not a weakness. At the beginning of this case we put together a plan where you could properly terminate McLean, redeem his stock and throw him off the Board. Because we were right on the merits, we did not give McLean the option of litigating the merits because they were a loser for him. So, if he was determined to litigate, and it turns out that he was, he HAD to litigate on everything but the merits, which he did. If we had been wrong on the merits, he would have litigated only the merits and you would have lost years ago. I think we collectively lost sight that we need to work towards a settlement in this case. I know how hard it is for a non-litigator to understand litigation. I strongly suggest you talk to David, who is a professional litigation manager. Nothing was done in this case that was not calculated to bring settlement sooner and cheaper. Settlement rarely comes soon or cheap, but it can come sooner and cheaper than it would otherwise come, and that was our constant focus. Ask David if he disagrees. If I am going to continue down the path and litigate.....it will be on the IP issue and the Dissolution issue. We have lost way too much time and money obsessing over

depositions and additional filings for treble damages when we should have been pushing to move along domain issue. We could have filed this in Federal court 10 months ago and gotten this heard. Sitting around worrying about the DQ motion when we should have been proactively looking for a better strategy cost me several hundred thousand dollars.....The total bill is around \$450,000 last I checked. Talk with Tricia.....I want to put this behind us. You did a nice job firing Bill and refuting his shitty attorney's misguided efforts. Had you done a better job with a more disciplined and focused approach on the initial strategy of making Bill spend money I think this case would have been resolved six months ago. Lets agree to a number and I will get you a check this week. You made \$350,000 working this deal . If you have four clients.....you made a killing and I am in the wrong business trying to protect my employees and making \$240,000. Half of my normal income. I was glad you got Bill and Jeannine to hate you . Coleman is not a fan either. That's ok, Greed all around. Time to move forward. Talk with Tricia and I will send out a check tomorrow. **Trish told me by email last Friday that payment in full for the December invoice would be processed that day. I guess that is incorrect. I asked on 2/16 for payment of just the undisputed amount. That has not occurred. So, as I stated in my 2/21 email, I am now demanding payment in full for all the work without the discounted hourly rates down to \$400 for me and \$100 for my assistant. An invoice is attached, which, as I said on 2/21, is due in 3 days. The additional amount is \$126,834.95. I hope we can resolve this quickly, without further trouble. You have always paid all invoices on time, before this, and I hope that we can be finished with this tomorrow. I won't talk to Tricia because she has specifically instructed me not to. If you want to send a check for a different amount tomorrow, please do so. If not, please send a check for the full amount in 3 days.**

Curtis Alva

Attorney at Law

curtis@alvagleizer.com

Alva & Gleizer, PLLC

901 N. Olive Ave 1200 Brickell Ave, #1450 347 Fifth Ave,

#1402

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From: Dan McCool [<mailto:dan@drcolorchip.com>]

Sent: Monday, February 26, 2018 12:13 AM

To: Curtis Alva <Curtis@alvagleizer.com>; Tricia O'Rourke
<tricia@drcolorchip.com>

Cc: McCool, David <DMcCool@Watlow.com>

Subject: RE: revised re: dan RE: Questions on Dec bill
Curtis/Tricia,

Lets put this bickering behind us. Curtis, I do feel way too much time was spent "thinking about Serrino deposition" and "continuing to work on the tax issue". I was very comfortable with the advice I received from two tax experts, My brother Pat and Mike Guillard. The attorney that you brought in was not a tax expert and he admitted as much to my brother. A \$500 tax filing exploded into about a \$6,000 expense. If you feel I am being reasonable on the questioning of this and the very large bill that I received for December when I was basically gone on vacation for half the month and even if you just confine it to the \$6,800 you seem to feel Tricia Identifies in her email with her requests for answers to her questions, I think that is fair to revisit what was done there and come to some form of compromise. This case has gone in a different direction for many

reasons.....losing Judge Sasser, multiple DQ motions which cost me a lot of money, a lack of focus on the IP issues which have always been the most important aspect of this case yet lacked focus and a proactive approach and more importantly a true IP expert working this part of this case. No one attorney is an expert in each area. I think we collectively lost sight that we need to work towards a settlement in this case. If I am going to continue down the path and litigate.....it will be on the IP issue and the Dissolution issue. We have lost way too much time and money obsessing over depositions and additional filings for treble damages when we should have been pushing to move along domain issue. We could have filed this in Federal court 10 months ago and gotten this heard. Sitting around worrying about the DQ motion when we should have been proactively looking for a better strategy cost me several hundred thousand dollars.....The total bill is around \$450,000 last I checked. Talk with Tricia.....I want to put this behind us. You did a nice job firing Bill and refuting his shitty attorney's misguided efforts. Had you done a better job with a more disciplined and focused approach on the initial strategy of making Bill spend money I think this case would have been resolved six months ago. Lets agree to a number and I will get you a check this week. You made \$350,000 working this deal . If you have four clients.....you made a killing and I am in the wrong business trying to protect my employees and making \$240,000. Half of my normal income. I was glad you got Bill and Jeannine to hate you . Coleman is not a fan either. That's ok, Greed all around. Time to move forward. Talk with Tricia and I will send out a check tomorrow.

President

Dr. ColorChip Corporation
1369 North Killian Drive, Suite 1
Lake Park, FL 33403
(O) 561-845-6122
(Cell)561-232-8812
www.drcolorchip.com

From: Curtis Alva [<mailto:Curtis@alvagleizer.com>]

Sent: Wednesday, February 21, 2018 2:22 PM

To: Tricia O'Rourke <tricia@drcolorchip.com>; Dan McCool <dan@drcolorchip.com>

Subject: RE: revised re: dan RE: Questions on Dec bill

Dan is correct, but let me explain it in more detail in hopes that we all can come to a mutual understanding of my proposal. I am happy to answer your 7 questions, if they are

being asked in a good faith attempt to move the ball forward, in other words, we find out how much of the December bill is actually subject to good faith dispute. It appears that we have that number, \$6,800. Dr. ColorChip then pays in full the amount that is not subject to dispute, \$18,240 and I answer all of your 7 questions about the \$6,800, to see if that narrows the dispute to a number we can agree upon. I understand from your email that Trish may not agree with that proposal. The letter doesn't say what Dan feels about it. However, if Dr. ColorChip does not pay in full the undisputed amount, \$18,240, then I will not believe that your questions are being asked in good faith. In that event, I will send a formal notice of breach of contract and demand payment in full in 3 days. Because Dr. ColorChip is already in breach, I will have 2 options: [a] enforce the contract as written and seek \$25,040, or [b] seek payment for what Dr. ColorChip would owe me if there was no contract, in other words, if we had not agreed to discount my rate to \$400 per hour, in other words, \$550.00 per hour. My rough guess is that the higher rate would change Dr. ColorChip's indebtedness from \$25,040 to \$125,000, plus, if there is no good faith on Dr. ColorChip's part, a claim for bad faith, misrepresentation and punitive damages equal to treble the amount of the claim, or \$375,000. I don't want to believe that Dr. ColorChip is acting in bad faith. I hope that your response allows me to keep that belief. As you said, you are professionals who want to be treated professionally, as am I.

Curtis Alva

Attorney at Law

curtis@alvagleizer.com

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From: Tricia O'Rourke [<mailto:tricia@drcolorchip.com>]

Sent: Wednesday, February 21, 2018 7:49 AM

To: Curtis Alva <Curtis@alvagleizer.com>

Subject: RE: revised re: dan RE: Questions on Dec bill
Curtis,

I haven't received your answers to my 7 numbered questions on your December invoice for \$25,040 that I emailed to you Friday. Will you be providing that?
As you know, Dan has always paid promptly and in fact, there were times you were so anxious to get paid, you asked him to pay right away which he did.
Please advise as I would like to finish my review.

Regards,

Tricia O'Rourke
Operations Manager
Dr. ColorChip Corporation
1369 North Killian Drive
Suite 1
Lake Park, FL 33403
Cell: 561-512-2314
Office: 561-845-6122

From: Curtis Alva [<mailto:Curtis@alvagleizer.com>]

Sent: Friday, February 16, 2018 3:53 PM

To: Tricia O'Rourke <tricia@drcolorchip.com>

Subject: Re: revised re: dan RE: Questions on Dec bill
Your analysis related only to the unpaid December invoice. There is another unpaid invoice for January and February. Is it correct that you have no dispute with that invoice?

Curtis Alva
Alva & Gleizer
901 N. Olive Ave
Riviera Beach, FL
33401

On Feb 16, 2018, at 3:26 PM, Tricia O'Rourke
<tricia@drcolorchip.com> wrote:

Dan read your email differently than I . I was understanding that you were settling the invoice for us to be charged \$18240 and that would be the end of the discussion. Although, I still had concerns, I was willing to this compromise and be done with the relationship and move on.

He read it that we would pay \$18,240 and continue to dispute \$6800, which would not be acceptable to me.

Please clarify who is correct so we can make a determination.

Regards,
Tricia O'Rourke
Operations Manager
Dr. ColorChip Corporation
1369 North Killian Drive
Suite 1
Lake Park, FL 33403
Cell: 561-512-2314
Office: 561-845-6122

From: Tricia O'Rourke
Sent: Friday, February 16, 2018 2:48 PM
To: 'Curtis Alva' <Curtis@alvagleizer.com>
Subject: RE: Questions on Dec bill

I am willing to accept \$18,240 although I am not at all afraid to seek the Court's assistance either. You can pick up the check on Monday for \$18,240. I will leave it with Lisa if I am not here.

Regards,
Tricia O'Rourke
Operations Manager
Dr. ColorChip Corporation
1369 North Killian Drive
Suite 1
Lake Park, FL 33403
Cell: 561-512-2314
Office: 561-845-6122

From: Curtis Alva
[<mailto:Curtis@alvagleizer.com>]

Sent: Friday, February 16, 2018 2:37 PM

To: Tricia O'Rourke <tricia@drcolorchip.com>

Cc: Dan McCool <dan@drcolorchip.com>

Subject: RE: Questions on Dec bill

Thanks for getting back to me with your questions. I want to know that by going through these questions we are actually getting closer to resolving this and not just kicking the can down the road. So, let's divide the charges into disputed and undisputed. You have identified the following specific charges/issues that you might dispute:

\$2120 for work on potential payment to Court Registry on 4 days around Christmas

\$3000 for work on the tax issue on 12/4

Janeen Serino for an unspecified amount on 12/11 (for the moment, let's be wildly overcautious and assign 1 hour to this, i.e., \$400).

Tax issue, \$480, 12/29.

Whether the meeting between Matt and I on 12/6 was in Ft. Lauderdale or West Palm (which I will treat as potentially disputing 2 hours of time for traveling to Ft Lauderdale--\$800)

You also had some general questions, such as how much time over all, was spent related to the tax issues. If you have a dollar amount you want to assign to that, just let me know.

So, if I understand correctly, you potentially dispute some or all of \$6,800 on the December invoice, plus whatever number, if any, you assign to the general tax issue. That leaves \$18,240 apparently undisputed, minus whatever you assign to the general tax issue.

I'd like to pick up a check for the undisputed amount on Monday. If you are willing to provide that check, then the dispute will be narrowed to \$6,800, plus whatever you assign to the general tax issue. I will then address each of your questions to see if we can further narrow the dispute. If you are unwilling to pay the undisputed amount on Monday, then I don't see the value in trying to reach an amicable solution and we can promptly seek the Court's assistance.

Curtis Alva

Attorney at Law

curtis@alvagleizer.com

Alva & Gleizer, PLLC

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From: Tricia O'Rourke

[\[mailto:tricia@drcolorchip.com\]](mailto:tricia@drcolorchip.com)

Sent: Friday, February 16, 2018 10:01 AM

To: Curtis Alva <Curtis@alvagleizer.com>

Subject: Questions on Dec bill

Dear Curtis,

As I mentioned, I needed additional time to review the December invoice as you billed us a startling \$25,040. This was a period that Dan was mostly out of town and I was undergoing cancer treatment. At any rate, I would appreciate it if you could please provide me

with the following information regarding the December 2017 invoice so I can conclude my review and instruct Dan with regard to payment:

1. How much was Dr. ColorChip charged for the tax issue for all months(ballpark is fine)? As we stated, our accountant charged us \$500 for his work, yet it appears you spent several thousands of Dr. ColorChip dollars on an issue that you have no expertise in and the so-called expert you recommended admittedly didn't have the expertise to provide proper advice.
2. On or about 12/23, I sent you an email relating my 5 minute conversation with the Clerk's office on how to set up an account with the Court. It was explained to me and I forwarded to you that we needed to ask the Court for approval to set up the account, exactly what it would be for and that we would need the Court to approve each time we needed to make payment out of it. It seemed quite cut and dried to me, yet you charged \$2120 for work on potential payment to Court Registry for 4 days including an entry for 1 hour on CHRISTMAS DAY. Do you recall what exactly you worked on our behalf on Christmas Day? Can you explain why this would have taken so much of your time?
3. On 12/4 you clocked 4.10 hours and \$1610 (see 2nd entry). Since your conversations with Coleman are generally very short, I assume the majority of the \$1640 was for the tax issue. Is that the case? Can you explain why the work on response and recommendations to team and draft correspondence would take over 3 hours? Additionally you clocked an entire workday (8 hours and 40 minutes) on 12/4 working for Dr. ColorChip. It appears you have duplicate entries for

working on tax issues and correspond with team re same? It appears that this day cost Dr. ColorChip at least \$3000 just working on the tax issue. Is this the case?

<image001.png>

4. On 12/6, you spent another entire day on our case and charged \$2840. How much time did you spend speaking to Matt and did you meet him in person in Ft. Lauderdale? as you have an entry that we were not charged for travel.
5. Can you explain the reason there are multiple entries over the months regarding working on getting better responses from Janeen Serino, when you clearly stated that Coleman and his team were completely uncooperative with providing any deposition dates? Wouldn't it have been prudent to wait at least until we were assured of deposition dates before spending time on questions for witnesses?
6. Can you explain in December, when our primary focus was the domain hearing and a possible dissolution hearing, why you worked on compelling better answers from Janeen Serino noted in your entry on December 11?
7. On 12/29 you clock 1:20 for review of the 2016 tax return and K-1 for Dr. ColorChip. Can you provide your expertise as it pertains to tax accounting?

Regards,
Tricia O'Rourke
Operations Manager
Dr. ColorChip Corporation
1369 North Killian Drive
Suite 1
Lake Park, FL 33403
Cell: 561-512-2314
Office: 561-845-6122

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Alva & Gleizer, PLLC

901 N. Olive Ave
West Palm Beach, Florida 33401

INVOICE

Invoice # 95
Date: 02/26/2018
Due On: 03/01/2018

Dr. Colorchip, Daniel McCool
1369 N. Killian Drive
Lake Park, FL 33403

16083-Dr. Colorchip

Re: William McLean

Services

Date	Attorney	Description	Quantity	Rate	Total
02/26/2018	CA		808.70	\$150.00	\$121,005.00
02/26/2018	GG		226.80	\$25.00	\$5,645.00
			Quantity Subtotal		1032.5
			Services Subtotal		\$126,650.00

Expenses

Type	Date	Description	Rate	Total
Expense	02/26/2018	Prose Invoice #22722; Judge Garrison Hearing on Dec. 12, 2017	\$184.95	\$184.95
			Expenses Subtotal	\$184.95
			Quantity Total	1032.5
			Subtotal	\$126,834.95
			Total	\$126,834.95

Please make all checks payable to:
Alva & Gleizer, PLLC
901 N. Olive Ave
West Palm Beach, Florida 33401

Alva & Gleizer, PLLC

901 N. Olive Ave
West Palm Beach, Florida 33401

INVOICE

Invoice # 89
Date: 12/20/2017
Due On: 12/30/2017

Dr. Colorchip, Daniel McCool
1369 N. Killian Drive
Lake Park, FL 33403

15083-Dr. Colorchip

Re" William McLean

Date	Attorney	Description	Quantity	Rate	Total
09/20/2017	GG	Draft subpoena for deposition for Janeen Serino.	0.30	\$100.00	\$30.00
11/01/2017	GG	Meet with GA re Complaint in Dr. ColourChip Canada. Look at all allegations in US complaint and prepare draft to be filed in Palm Beach County.	1.70	\$100.00	\$170.00
11/02/2017	CA	Draft response to Soble's cease and desist demand. Begin drafting complaint against King.	2.30	\$400.00	\$920.00
11/03/2017	CA	Work on engaging Canadian counsel.	0.10	\$400.00	\$40.00
11/06/2017	CA	Continue work on engaging Canadian counsel. Continue drafting complaint against King.	2.50	\$400.00	\$1,000.00
11/07/2017	CA	Continue drafting complaint against King. Assist in drafting termination letter of King. Email client re bases for keeping the litigation in Florida, should a forum non-convenience motion be made. Work on Charlesglen Toyota issue.	2.90	\$400.00	\$1,160.00
11/08/2017	CA	Email client re risks of apparent forum shopping, in case of deliberate delay of King complaint for strategic reasons. Continue work on engagement of Canadian counsel.	0.60	\$400.00	\$240.00
11/09/2017	CA	Work with Dan and Trish on comments to the draft complaint against King. Work on demands to King and his counsel to preserve evidence.	1.00	\$400.00	\$400.00
11/10/2017	CA	Send draft notices to Canadian sub-licensees for review by Nigel Campbell. Email client re risks and urgency in Charlesglen Toyota's current plan and risks to Dr. C of not waiting for Toyota to hear our position.	0.90	\$400.00	\$360.00
11/11/2017	CA	Analyze risks in the response of Charlesglen Toyota and draft correspondence to client re same. Correspond with O'Rourke on case status. Review.	0.80	\$400.00	\$320.00

		correspondence from Doug McLeod commenting on the draft notice of termination and respond. Review correspondence from McCool re reaching out to Toyota's Canadian counsel and re their clients proposed course of action, which seems to risk Canadian litigation against them and Dr. C.			
11/13/2017	CA	Consider risks involved in CPA deposition re 2016 taxes and draft correspondence to client re same. Continue to analyze the position taken by Charlesglen Toyota in response to the cease & desist demand from King and draft correspondence to their counsel discussing the likelihood of litigation, their lack of indemnification and a possible injunction against them using the system during litigation. Review correspondences from McCool regarding deposition likelihood and additional work re "DCC". Review correspondence from O'Rourke re CPA's diligence and integrity.	1.30	\$400.00	\$520.00
11/14/2017	CA	Continue consideration of risks involved in CPA deposition re 2016 taxes and draft additional correspondence to client re same. Conference with McCool re tax issues re potential 2017 issues. Review correspondence from Dave McCool discussing the CPA deposition risks.	0.70	\$400.00	\$280.00
11/16/2017	CA	Trade messages with Matthew Kirk, counsel for Charlesglen Toyota. Correspond with client re same.	0.10	\$400.00	\$40.00
11/17/2017	CA	Work on updating Annette Hay research. Conference with team re current litigation issues. Conference with Charles Kirk, attorney for Charlesglen Toyota about the risks involved in responding to the cease and desist demand from King and the urgency. Work on claims against King and reasonableness of Florida venue.	5.50	\$400.00	\$2,200.00
11/20/2017	CA	Prepare for and confer with Dan, Dave and Trish re current litigation issues and receive instructions to be aggressive, exhaustive and immediate in getting the DQ and Injunctions motion resolved and the complaint amended to add King. Follow up to conference, including writing to Coleman and Postman requesting a case management conference, corresponding with Charlesglen Toyota's attorney, and beginning outline of argument for immediate ruling on DQ motion and expedited hearing on Injunction motion. Work on forum non conveniens issues to get the Florida case preferred over a Canadian case.	5.20	\$400.00	\$2,080.00
11/21/2017	CA	Begin review of McLean's (1) motion to expedite discovery, (2) motion to expedite dissolution, (3) letter request for a conference re his motion to expedite his motion for dissolution, (4) withdrawal of motion to disqualify, and (5) request for production of documents. Conference with Barry Postman re same and re Judge Garrison. Correspond with client re same.	1.10	\$400.00	\$440.00

11/22/2017	CA	Begin drafting objections and responses to McLean's newest request for documents and begin drafting a corresponding set of requests from Dr. ColorChip to McLean. Begin opposition to motions to expedite discovery and to expedite dissolution. Draft correspondence to client re McLean's [1] motion to expedite discovery, [2] motion to expedite dissolution, [3] letter request for a conference re his motion to expedite his motion for dissolution, [4] withdrawal of motion to disqualify, [5] request for production of documents, and their effects upon scheduling, our motion for injunction and our motion for attorneys fees. Draft response to Dan's concerns about [1] McLean secretly planning for 18 months to use the DQ motion as a decoy to buy time to set up a competing company, [2] McLeans numerous false claims, and the need for prompt resolution of the URL injunction motion. Work on adding IP expertise to the team.	5.00	\$400.00	\$2,000.00
11/23/2017	CA	Review correspondence from client and from attorney for Charlesglen Toyota.	0.20	\$400.00	\$80.00
11/24/2017	CA	Review and analyze correspondence from Charlesglen Toyota's attorney to Soble and forward to client. Continue review of McLean's [1] motion to expedite discovery, [2] motion to expedite dissolution, [3] letter request for a conference re his motion to expedite his motion for dissolution, [4] withdrawal of motion to disqualify, and [5] request for production of documents.	0.80	\$400.00	\$320.00
11/28/2017	CA	Respond to question about a potential IP expert and about setting a 12/12 status conference and about opposing an expedited hearing on dissolution.	0.20	\$400.00	\$80.00
11/30/2017	CA	Draft correspondence to team addressing multiple questions about preventing a premature hearing on dissolution; getting the discovery needed to disprove the alleged bases for dissolution, anticipated deception from McLean relating to dissolution, shareholder distribution history, tax issues and proceeding with an amendment to our complaint to add King. Respond to Coleman's request for expedited dissolution hearing and request 6 initial depositions, sufficient follow up depositions, overdue responses to past written discovery served by Dr C, anticipated future written discover to be served by Dr C, expediting the Injunction motion re dotster, anticipating a motion to compel better responses from Serino, and setting dates for all anticipated depositions and hearings. Object to Coleman's defective notice of hearing on his motion to expedite. Work on potential IR expert.	3.30	\$400.00	\$1,320.00
			Quantity Subtotal	36.5	
			Quantity Total	36.5	
			Subtotal	\$14,000.00	

Total \$14,000.00

Please make all checks payable to:
Alva & Gleizer, PLLC
901 N. Olive Ave
West Palm Beach, Florida 33401

From: [Curtis Alva](#)
To: DMcCool@Watlow.com
Subject: Fwd: Tax Check and other
Date: Tuesday, January 23, 2018 7:01:02 PM

Didn't know if you were in the loop on this. Trish has instructed me to stop all work immediately and to not submit an invoice for January's work. See below.

Curtis Alva
Alva & Gleizer
901 N. Olive Ave
Riviera Beach, FL
33401

Begin forwarded message:

From: "Tricia O'Rourke" <torourke@earthlink.net>
Date: January 23, 2018 at 4:47:57 PM EST
To: "Curtis Alva" <Curtis@alvagleizer.com>
Cc: "Dan McCool" <mccoolre2002@yahoo.com>
Subject: Tax Check and other

Curtis,
Did you send the tax check to McLean? I didn't see any communication about that.
Also, I don't expect to see an Alva/Gleizer bill for January. Don't do any work for us this month. I think \$14k for December is enough for now. We will make some decisions on the future shortly, but don't want to spend anymore money.
Tricia O'Rourke
501 Lake Shore Drive
Apt 701
Lake Park, FL 33403
Tel: 561-512-2314

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR

Complainant,

v.

CURTIS S. ALVA,

Respondent.

Supreme Court Case
No. SC-21-1564

The Florida Bar File
No. 2018-50.796 (15A)

**DANIEL MCCOOL’S AND DR. COLORCHIP CORP.’S
SECOND MOTION FOR PROTECTIVE ORDER**

Non-parties Dr. Colorchip Corp. and Daniel McCool hereby respectfully move this tribunal, for a second time, for a Protective Order as to depositions duces tecum sought by Respondent Curtis S. Alva and state:

**Respondent’s Improper Attempt to Take Discovery for the Palm Beach
County Civil Litigation**

1. The Florida Bar has identified two (2) witnesses planning to testify at the November 14th trial: Dan McCool, President of Dr. Colorchip, and Patricia O’Rourke, former employee of Dr. Colorchip.

2. On July 15, 2022, Mr. McCool and Dr. Colorchip filed their Motion for Protective Order directed to Respondent Alva’s subpoenas both to Mr. McCool and Dr. Colorchip, and to other witnesses associated with them, including Ms. O’Rourke, David McCool, Esq., who is Dan McCool’s brother and an attorney in Missouri, and Patrick McCool, who is Dan McCool’s other brother.

3. One of the main arguments for seeking the Referee’s protection was that Respondent Alva was improperly using these subpoenas not for the limited purposes of this Bar

proceeding, but also to take depositions for use in a civil litigation against him pending in Palm Beach County Circuit Court wherein Judge Bradley Harper entered Final Summary Judgment against Respondent for failing to return Dr. Colorchip's \$25,000 retainer based on an improperly issued "Quantum Meruit Invoice" for \$126,650 (the "Palm Beach Civil Litigation").¹

4. The Palm Beach Civil Litigation included claims both for failure to return Dr. Colorchip's \$25,000 retainer, and also for overbilling and/or billing misrepresentations in connection with the underlying McLean Litigation for which Respondent had been retained by Dr. Colorchip in the first place.

5. After its successful summary judgment on the issue of Respondent's use of the unlawful Quantum Meruit Invoice as a vehicle for refusing to return the retainer, Dr. Colorchip elected to voluntarily dismiss the remaining claims, which caused Respondent Alva to become very angry because he was no longer able to depose the very same witnesses he now seeks to depose in this Bar proceeding. See July 15, 2022 Motion for Protective Order for details.

6. Respondent's improper attempt to use discovery in this proceeding for the Palm Beach County Civil litigation against him, in the unlikely event it were ever to be remanded after appeal, is evidenced in several ways, including the overbreadth of the duces tecum document requests as far beyond the scope of this Bar proceeding, the mirror images of the subpoenas in both proceedings, and that Respondent Alva sought to depose individuals (Dr. Colorchip Corp., Dave McCool, and Patrick McCool) who are not identified as witnesses in this Bar proceeding and whose only knowledge relates to matters that had been asserted in the Palm Beach Civil Litigation.

¹ Respondent has appealed that decision, and Judge Harper's denial of Respondent's Motion to Disqualify His Honor, to the 4th DCA.

Hearing Before Referee on October 17, 2022

7. On October 17, 2022, the Referee heard and denied Respondent Alva's Motion for Contempt and Sanctions. In the context of denying Respondent's Motion, the Referee discussed certain issues raised by that Motion and also some raised by these Third Parties, but did not expressly address or rule on McCool's/Dr. Colorchip's July 15th Motion for Protective Order.

8. Critical to this Second Motion for Protective Order is that Respondent Alva, in an attempt to broaden the scope of discovery, did not accurately represent to the Referee the scope of and issues presented by the Bar proceeding.

9. Specifically, Respondent Alva read into the record ¶¶ 8-10 of the Bar Complaint, which provided background details concerning his issuance to Dr. Colorchip in the McLean Litigation of a December 2017 Invoice #90:

8. In or about January 2018, respondent sent a bill to McCool for the law firm's charges for December 2017 (Invoice #90)....
9. Invoice #90 stated that respondent's law firm had a total of 66.8 billable hours from respondent's firm from December 1, 2017 through December 29, 2017 and said invoice referenced an hourly rate for attorney time of \$400 and paralegal time of \$100.
10. Invoice #90 lists \$25,040 in charges billable to Dr. Colorchip/McCool for services rendered by respondent's law firm for the month of December 2017.

10. The Bar Complaint goes on to explain that: a) upon receipt of Invoice #90, Mr. McCool questioned some of the charges and requested an explanation; b) Respondent failed to fully explain the questioned charges; c) Respondent threatened to sue Mr. McCool for treble damages based on his questioning of Invoice #90; d) Respondent sent Invoice #95 for \$126,650 for up-charged time in the amount of an additional \$150 per attorney hour and \$25 per paralegal

hour for all 1,032.5 hours billed in the McLean Litigation; e) in February 2018, in response to Respondent's threats, Mr. McCool paid Invoice #90; and f) despite being paid in full, Respondent failed to return Dr. Colorchip's \$25,000 retainer.

11. The Bar Complaint then states in ¶ 26, "By the conduct set forth above," Respondent violated numerous Rules Regulating the Florida Bar, including, *inter alia*, dishonesty, charging an excessive fee, and failing to explain matters to a client.

12. At the hearing on October 18, 2022, Respondent Alva claimed that because the Bar set forth in its Complaint background concerning Mr. McCool's questioning of Invoice #90, issues relating to work he claims to have performed in the underlying McLean Litigation, including tasks, number of hours, results achieved, amounts billed, and literally everything at issue in that litigation (collectively, the "McLean Litigation Topics") are relevant to this Bar proceeding. In other words, according to Respondent, the issues in the Palm Beach Civil Litigation overlap with those in this Bar proceeding.

13. Respondent Alva's representations to the Referee were misleading: it appears from Third Parties' understanding of the issues presented in this Bar proceeding that the only invoice the Bar Complaint appears to substantively challenge is Invoice #95 for \$126,650, i.e. the already-determined-unlawful-by-Judge Harper Quantum Meruit Invoice, for up-charges sent after Mr. McCool dared to question Invoice #90.

14. It does not appear to Third Parties that the Bar takes the position that Invoice #90 itself, paid by Mr. McCool in full but over his objection and without any explanation, is excessive or that its issuance, alone, resulted in violations of the Rules Regulating the Florida Bar. Again, Invoice #90 appears to be referenced in the Bar Complaint because it provides necessary context for Respondent's future improper actions.

15. Thus, while there is an overlap in issues between this Bar proceeding and the Palm Beach Civil Litigation, that overlap appears to relate only to, generally, Respondent Alva's failure to explain his charges in Invoice #90, threat of treble damages, spiteful generation of Invoice #95 for \$126,650, and failure to return Dr. Colorchip's \$25,000 retainer (collectively, the "Apparent Bar Proceeding Issues").

16. Based on Respondent's misrepresentations that the McLean Litigation Topics "overlap" with this Bar proceeding, the Referee stated that he would not prevent any depositions from going forward. However, Respondent Alva, who delayed attempts to have this matter heard until the eve of trial, would need to serve subpoenas and the Referee did not foreclose the rights of any witnesses to seek further protection.

17. The Referee also stated that the documents Respondent seeks from these witnesses appear to be directed to the Palm Beach Civil Litigation.

18. Based on Respondent's Alva's "overlap" misrepresentations, the Referee assigned Kristen Padowitz as Magistrate to resolve disputes concerning the scope of the requested documents and ordered the losing party to pay her fees.²

Depositions of McCool and O'Rourke

19. On October 18, 2022, the day after the hearing, Mr. McCool, who was never personally served, nonetheless provided his voluntary availability for an 8-hour deposition on behalf of himself, individually, and Dr. Colorchip, on October 24, 2022. Ms. O'Rourke, also

² Mr. McCool and Dr. Colorchip objected to paying any of the Magistrate's fees because they are not a party to this Bar proceeding and should not be forced to incur these expenses, regardless of how their objections are resolved.

without requiring a subpoena, provided her availability for an 8-hour deposition on November 2, 2022 and her deposition is anticipated to proceed.

20. Mr. McCool's and Ms. O'Rourke's attorney informed Respondent Alva that these witnesses would appear for 8 hours only and would not appear for a second deposition.³ And while Mr. McCool would bring documents to his/Dr. Colorchip's deposition, Ms. O'Rourke, a former employee, does not have any responsive documents in her possession, custody or control.

21. Respondent Alva deposed Mr. McCool for 8 hours on October 24, 2022. As anticipated, a large majority of his questions were focused on the McLean Litigation Topics, i.e. issues within the exclusive scope of the Palm Beach Civil Litigation, and not on the Apparent Bar Proceeding Issues identified above.

22. As previously explained, Respondent has appealed the Final Judgment rendered against him in the Palm Beach Civil Litigation and seeks to have the case remanded.

23. It is entirely improper, therefore, for Respondent to be permitted to depose Mr. McCool or Ms. O'Rourke concerning matters relating only to the Palm Beach Civil Litigation. Indeed, allowing these questions would adversely affect Mr. McCool's/Dr. Colorchip's rights.

24. Further, taking a deposition of a *nonparty* that is more than 8 hours for a proceeding limited to the Apparent Bar Proceeding Issues is abusive, harassing, and an annoyance.

25. According, Mr. McCool/Dr. Colorchip were forced during the deposition to move for the Referee's protection. After 8 hours, the deposition was concluded and this Motion follows.

³ At the hearing, the Referee questioned why Respondent Alva would even need a full day for a deposition stating, "well, you don't need an all-day deposition for lack of communication." The Referee also stated that although he was not limiting discovery, Respondent would have "time constraints."

26. This Second Motion for Protective Order is necessary because Respondent misled the Referee at the October 17th hearing concerning the scope of the Apparent Bar Proceeding Issues.

27. Accordingly, Mr. McCool/Dr. Colorchip respectfully request the following:

- a) that the Referee grant Mr. McCool's/Dr. Colorchip's Motion for Protective Order concerning the scope of the deposition, and, in particular, Respondent's attempt to depose them concerning the McLean Litigation Topics and the Palm Beach Civil Litigation;
- b) that the Referee protect McCool/Dr. Colorchip from any further attempts to depose them;
- c) that the Referee limit the scope of Respondent's deposition questions of Ms. O'Rourke, set for November 2, 2022, in the same manner as (a), above, and limit the time for that nonparty witness deposition to 8 hours;
- d) that no depositions be permitted of Mr. McCool's brothers, Dave and Patrick McCool because they are clearly targeted for the Palm Beach Civil Litigation; and
- e) that Respondent be required to pay for all attorney's fees and costs incurred by these nonparties in connection with attending the depositions, arguing before Magistrate Padowitz, and drafting and arguing this Motion for Protective Order.

WHEREFORE, Dr. Colorchip and Daniel McCool respectfully request that the Referee issue a Protective Order in accordance with the foregoing, and for such other and further relief as the Referee deems appropriate.

Respectfully submitted,

By: /s/ Matthew S. Nelles.
Matthew S. Nelles
Florida Bar No. 009245
mnelles@nelleslawfl.com

NELLES LAW GROUP
101 Northeast Third Ave., Suite 1500
Fort Lauderdale, FL 33301
T: (954) 246-4800; D: (954) 246-4880
E: yberstein@nelleslawfl.com

Attorneys for Defendant Didier Marien

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2022, a copy of the foregoing was electronically served upon: The Honorable Dale C. Cohen, Referee, by email to his Judicial Assistant at pbuchhol@17th.flcourts.org and div37@17th.flcourts.org; Curtis Alva, Esq., Respondent, City of Riviera Beach Marina, 200 E. 13th Street, Riviera Beach, FL 33401, email: curtis@alvalaw.com; Patricia Ann Toro Savitz, Esq., The Florida Bar Staff Counsel, 651 E. Jefferson Street, Tallahassee, FL 32399, email: psavitz@floridabar.org; and Joi Pearsall, Esq., Attorney for Complainant, The Florida Bar, Ft. Lauderdale Branch Office, Lake Shore Plaza II, 1300 Concord Terrace, Suite 130, Sunrise, FL 33323, email: jpearsal@floridabar.org.

By: /s/ Matthew S. Nelles
Matthew S. Nelles

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,
vs.

CASE NO. SC21-1564
Florida Bar File 2018-50,797(15A)

CURTIS S. ALVA,
Respondent.

_____ /

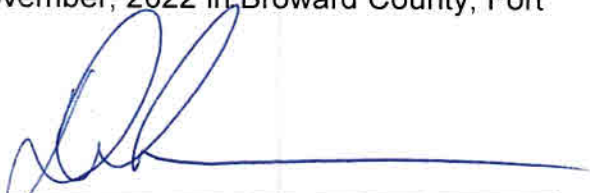
DANIEL MCCOOL'S AND DR. COLORCHIP CORP.'S
SECOND MOTION FOR PROTECTIVE ORDER

Non-parties Daniel McCool and Dr. Colorchip Corp. filed a Second Motion for Protective Order on October 31, 2022.

Having considered the grounds for the Motion and considered the applicable law, it is Found,

ORDERED AND ADJUDGED as follows: the motion is denied.

DONE AND ORDERED this 2nd day of November, 2022 in Broward County, Fort Lauderdale, Florida.



Dale C. Cohen, Circuit Judge
As Referee

Copies furnished:

Joi L. Pearsall, Bar Counsel, The Florida Bar, <jpearsall@floridabar.org>
and <esanchez@floridabar.org>;
Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar
<psavitz@floridabar.org>
Curtis S. Alva, pro se, <curtis@alvalaw.com> and
<assistant@alvalaw.com>;
Matthew Nelles, Esq., <mnelles@mnelleslawfl.com>

Assistant

From: Tricia O'Rourke <tricia@drcolorchip.com>
Sent: Wednesday, February 7, 2018 3:32 PM
To: Curtis Alva; Dan McCool
Cc: DMcCool@Watlow.com
Subject: RE: Dr. Colorchip v. McLean - Letter from Greg Coleman re: Checks Received

Curtis,

As to your December invoice, the first time Dan received the invoice was 2 days ago unless you sent it before that and he did not see it. Your statement: "As to my December invoice, the due date on the invoice is January 19, which is now almost 3 weeks past" is unprofessional and uncalled for considering Dan has paid you promptly over \$320,000 in 16 months, and additionally paid you early on the last invoice because you were in a big rush to get it and requested he pay it right away.

As to when I will be finished reviewing the invoice? I will be finished when I am finished.

Regards,
Tricia O'Rourke
Operations Manager
Dr. ColorChip Corporation
1369 North Killian Drive
Suite 1
Lake Park, FL 33403
Cell: 561-512-2314
Office: 561-845-6122

From: Curtis Alva [mailto:Curtis@alvagleizer.com]
Sent: Tuesday, February 6, 2018 9:17 PM
To: Dan McCool <mccoolre2002@yahoo.com>
Cc: Tricia O'Rourke <tricia@drcolorchip.com>; DMcCool@Watlow.com
Subject: RE: Dr. Colorchip v. McLean - Letter from Greg Coleman re: Checks Received

I'm glad we are on the same page. You don't want any time spent now on possible nonpayments to Bill, and my email suggested no further work on the issue until your next distribution to yourself, whenever that is. As to my December invoice, the due date on the invoice is January 19, which is now almost 3 weeks past. Do you know when you will have your review of it completed?

From: Dan McCool [mailto:mccoolre2002@yahoo.com]
Sent: Monday, February 5, 2018 4:20 PM
To: Curtis Alva <Curtis@alvagleizer.com>
Cc: Tricia O'Rourke <tricia@drcolorchip.com>; DMcCool@Watlow.com
Subject: Re: Dr. Colorchip v. McLean - Letter from Greg Coleman re: Checks Received

I'm fine with your reply to Coleman. I don't want to spend any time right now researching ideas on how not to pay Bill on any potential future payouts. I'm following the shareholder agreement. Of course he is going to claim he is entitled to more. Our letter with the checks outlined what each was for. It's his argument against ours and that hasn't changed. We just have put forth little evidence in front of a judge to prove our position. I am hoping the Federal case filing might be a step in the right direction. If something urgent needs to be responded to I need it run by me and address it as needed.

Sent from my iPhone

On Feb 5, 2018, at 4:05 PM, Curtis Alva <Curtis@alvagleizer.com> wrote:

I can tell that this litigation is weighing heavily upon you. I'll make this as short as possible. Bill is doing 2 things: one we don't care about and one we very much do. Bill is purporting to change the nature of the 2017 payment you made, by scratching out the re: line, which we don't care about, but he is also hoping that you will agree he can do that, by giving us notice of the change and hoping we won't object. This you DO care about because you otherwise are potentially admitting that he is still a shareholder and the \$120,000 you sent becomes a shareholder distribution and doesn't pay down the debt incurred for redeeming his stock by even a penny. Thus, the purpose of objecting was not to fight with Coleman to stop him from altering the check--I fully believed that they had withheld their notice to us until after the check had already been deposited (which turned out to be completely true)—the purpose was to put a written objection on file so that Bill cannot claim that you agreed that he is still a shareholder and agreed that you hadn't paid the \$120,000 for part of the purchase price of his stock. The amount of time it took me to spot the issue and write the objection was about 5 minutes, for which the bill will be less than \$40. My expectation would be that if you hadn't objected, and Bill had claimed that you had waived your rights by failing to object, he would have at some point made that argument to the Judge and we would have spent hours fighting it, and if we had lost that argument, it would have cost you \$120,000, plus the fees spent on opposing the argument. I want you to know that I generally do not spend ANY time on a letter or motion or analysis or anything else unless I believe that spending the time is less expensive to you than not spending it.

As to this email, there is no charge for it unless you tell me that it was helpful and you want to pay for it.

From: Dan McCool <dan@drcolorchip.com>

Sent: Monday, February 5, 2018 1:47 PM

To: Curtis Alva; Tricia O'Rourke

Cc: McCool, David

Subject: RE: Dr. Colorchip v. McLean - Letter from Greg Coleman re: Checks Received

I am not concerned about what Coleman advises Bill to make as changes to the Memo section of the check. They are always going to suggest they should be paid more and I don't want to waste time and money in legal fees arguing back and forth over a non issue. It is no surprise that Coleman thought up of something to do with the checks to support his idea that Bill is entitled to more money. It in no way changes what we told them the payments were for. We are getting too caught up in figuring out ways to argue non important communication from Coleman. I don't want to research the ideas that somehow Coleman saying they won't change the wording on the Memo portion of the checks is something they won't do. I don't care if they do this or not. I would not have asked them for this and I don't want the checks that were deposited back from Bill. Lets not waste money on the idea of trying to withhold payments to

Bill over the next years. I won't pay for time spent trying to create a way to withhold payments. I don't care about the checks to Bill. I don't care what he feels they are for. I paid them to Bill because I made the decision that was the right thing to do. Coleman didn't charge Bill \$800 to figure out a way to handle the depositing of the checks and I don't want to pay legal fees responding to these petty responses from Coleman. I am being charged far too much to analyze Coleman's and Bill's reasons for doing things. I have accountants I pay to make accounting recommendations and my direction with any future payments to Bill are going to be in line with how I handled these most recent payouts. As I had indicated before, these payouts are based on sound accounting principles and my interpretation of the shareholders agreement. Of course they are going to argue them and let's not waste any more time and money entering a pissing match with Coleman. This does us no good. Eventually there will be a settlement. What I will pay to Bill going forward will be my choice consistent with what my accountants advise me on my company's financial performance for the year. I don't want extensive reviews of a bullshit letter from Coleman and incur several thousands of dollars in legal fees to review what I have already paid my accountants to advise me on.

I am in receipt of your most recent bill for \$25,000, which we will review in detail and will need to discuss before incurring any more legal fees.

Dan McCool

President

Dr. ColorChip Corporation

1369 North Killian Drive, Suite 1

Lake Park, FL 33403

(O) 561-845-6122

(Cell) 561-232-8812

www.drcolorchip.com

From: Curtis Alva [<mailto:Curtis@alvagleizer.com>]

Sent: Monday, February 05, 2018 1:20 PM

To: Dan McCool <dan@drcolorchip.com>; Tricia O'Rourke <tricia@drcolorchip.com>

Subject: FW: Dr. Colorchip v. McLean - Letter from Greg Coleman re: Checks Received

IN THE SUPREME COURT OF FLORIDA
(BEFORE A REFEREE)
SUPREME COURT NO. SC21-1564
FLORIDA BAR FILE NO. 2018-50, 796 (15A)

THE FLORIDA BAR,
Plaintiff
vs.

November 15, 2022

CURTIS S. ALVA,
Defendant.

TRIAL DAY 2
BEFORE THE HONORABLE DALE C. COHEN

A P P E A R A N C E S

FOR THE PLAINTIFF: JOI L. PEARSALL, ESQ
THE FLORIDA BAR The Florida Bar
Lake Shore Plaza, II, Suite 130
1300 Concord Terrace
Sunrise, FL 33323
(954) 835-0233
jpearsall@floridabar.org

FOR THE DEFENDANT: CURTIS S. ALVA, ESQ
CURTIS S. ALVA 200 E. 13th Street
Riviera Beach, FL 33401
Curtis@alvalaw.com

REPORTED BY: GIZELLA BAAN-PROULX, FCRR, RPR

I N D E X

Witness	Direct	Cross	Redirect	Recross
DANIEL McCOOL	17		39	62
PATRICIA SHAHINIAN	78	96	116	121

P L A I N T I F F E X H I B I T S

Exhibit	Marked	Admitted
26	88	89
38	58	59
40	59	60
45	40	
50A	116	120
50B	49	52

D E F E N S E E X H I B I T S

(None)

P R O C E E D I N G S

(The following proceedings were held in open court.)

THE COURT: All right, before we continue, Mr. Nelles, who is here, filed a motion so that he could be present during the testimony for the second day of trial for Mr. McCool.

Now that I have a better understanding of the case and what the issues are, and we have narrowed some of the issues from the first day, Mr. Alva, why is it that you would need Mr. Nelles to testify? I don't understand.

MR. ALVA: I can explain that, Your Honor. Mr. McCool has testified that the fees were very high. The only basis that I'm aware of for his assertion that the fees are high that are within the knowledge of Mr. McCool --

THE COURT: But you're not charged with that. You're not charged with the fees being high. That's not an issue in our case.

MR. ALVA: Well, Your Honor, he has testified to that effect. I don't know what argument --

THE COURT: I understand that, but there's not an issue in our case. You're not -- you're charged with excessive fees, not because your

1 fees were high, because you changed your rate
2 from 400 to \$550. So unless you can give me a
3 legitimate reason why Mr. Nelles is needed for
4 your presentation of the case, I'm not going to
5 have -- allow him to be a witness and I'm going
6 to allow him to sit in on these proceedings.

7 MR. ALVA: The complaint, Your Honor, that
8 was filed in the underlying litigation explains
9 that and I can pull it up on the screen for Your
10 Honor.

11 THE COURT: You're talking about the Palm
12 Beach County civil case or the Florida Bar
13 matter?

14 MR. ALVA: The Palm Beach County civil case,
15 Your Honor. But I think Your Honor will
16 understand. I'm not trying to litigate an issue
17 that is not within the disciplinary proceeding,
18 if I understand the proceeding correctly, Your
19 Honor.

20 So let me share the screen with you all.

21 MR. NELLES: Judge, I just wanted to say
22 before he even does that, I haven't been
23 subpoenaed. I'm not going to be testifying.

24 THE COURT: I understand that. I understand
25 that.

1 MR. NELLES: And, Judge, I will say I just
2 think there was grave error committed yesterday
3 with respect to excluding depriving my client of
4 the right to be represented by a lawyer.

5 THE COURT: I read that in your motion.

6 MR. NELLES: If an opponent can list
7 their -- if a party can list their opponent's
8 lawyer as a witness and then exclude that witness
9 from trial, so that the party is unrepresented,
10 that makes no sense. The sequestration rule
11 specifically says that it only applies for very
12 limited circumstances when you think maybe a
13 witness' testimony might be colored, and I don't
14 know how my testimony, even if I was subpoenaed
15 and I could appear, which is not happening, how
16 could my testimony be colored when they're my own
17 clients?

18 THE COURT: Okay.

19 MR. NELLES: It's just that my client was
20 permitted or told that he cannot --

21 THE COURT: I understand. I understand your
22 frustration. I understand the dilemma. I am
23 trying to avoid reversal and I'm trying to avoid
24 errors. And --

25 MR. NELLES: Now I understand and

1 appreciate --

2 THE COURT: Listen, I always say the judge
3 is the one in the courtroom with the least amount
4 of knowledge on the case because I'm not the one
5 that lived it, you know. Mr. McCool lived this
6 for six years. Mr. Alva was involved in this for
7 six years. I'm just hearing about all this for
8 the first time.

9 The complaint by the Florida Bar was not
10 specific as to what excessive fees were being
11 alleged. Now that I've had a day of testimony,
12 and we have had conversations yesterday with the
13 Florida Bar, we have narrowed what the excessive
14 fee issue is and, obviously, that doesn't involve
15 you.

16 MR. NELLES: Right.

17 THE COURT: Please let me hear from Mr.
18 Alva.

19 MR. ALVA: Your Honor, I think maybe the
20 most efficient way to handle this is if the Bar
21 will stipulate that the only basis for claiming
22 that the fee was excessive is that the rate was
23 raised to 550 from the rate in the contract of
24 \$400, then this testimony from Nelles doesn't
25 seem to go directly to that point. But as you

1 say, the complaint was not very specific. I had
2 to make my witness list with the benefit --

3 THE COURT: But, yesterday the Florida Bar
4 told me and you that the excessive rate
5 allegations go to your change in rate, not the
6 fact that \$550 is too high, not the fact that you
7 billed too many hours.

8 MR. ALVA: And is it Your Honor's
9 understanding that that is the only basis for the
10 alleged violation of the fee rule? Because if
11 that is, this testimony or the information that
12 is in the complaint that I'm showing on the
13 screen, Your Honor, doesn't go to that point.

14 So if that's the only basis, my concern is
15 that in closing she's going to argue additional
16 bases and she's going to say Mr. McCool sat right
17 in front of Your Honor and testified that the
18 fees were too high.

19 MR. NELLES: What's that got to do with Nelles?
20 What's that got to do with me?

21 THE COURT: Mr. Nelles, please. We're
22 sealing off this argument and you're opening it
23 up.

24 Ms. Pearsall --

25 MS. PEARSALL: Yes, Your Honor.

1 THE COURT: -- for a third time, can you
2 please tell Mr. Alva that the excessive fee issue
3 goes to the changing of the rate from \$400 to
4 \$550 and not for extraordinary hours billed?

5 MS. PEARSALL: Thank you, Your Honor. I
6 would disagree with Your Honor, respectfully, and
7 with Mr. Alva, the Bar's complaint is clear. The
8 Bar's complaint specifically points to Mr. -- the
9 allegations say that Mr. Alva up-charged his
10 billing rate, which resulted in an Invoice Number
11 95 where he asked -- demanded that Mr. McCool pay
12 the firm for over 1,032 billable hours and that's
13 on Invoice 95, and on Invoice 95, Mr. McCool
14 requested payment in the amount of \$126,650.

15 Like I said yesterday, I have not alleged
16 and I've answered many times that the issue is
17 what Mr. McCool was told. It's different from
18 what Mr. Alva ultimately did and he did not put
19 him on notice in the engagement letter that an
20 up-charge would occur or he would increase his
21 rates beyond the rate that Mr. McCool had been
22 advised of.

23 I do not want to use the word stipulate. I
24 want to prove up the allegations that are in the
25 complaint. There is not one paragraph there that

1 says \$550 charge is too expensive or too costly.
2 There's not one line that says that. What it
3 says and, hopefully, it's very clear, it says
4 that Mr. McCool was told one thing by Mr. Alva.
5 He agreed to that rate. Later, Mr. Alva
6 unilaterally up-charged or back-billed or however
7 you want to say it to make his rate \$550 and
8 raise the paralegal's rate up to \$125 against
9 what the original agreement was for that
10 representation.

11 THE COURT: Thank you, Mr. Pearsall. Mr.
12 Alva, that's your answer. So you're not going to
13 need Mr. Nelles. I'm going to allow him to sit
14 in on these proceedings and act as a lawyer for
15 Mr. McCool.

16 MR. ALVA: Your Honor, will his appearance
17 be limited to while the witnesses are testifying,
18 because once the witnesses are not testifying, he
19 has no interest of any kind in these proceedings
20 other than to be disruptive.

21 MR. NELLES: This is a public proceeding. I
22 have a right to be present, and my client's
23 rights are directly impacted in connection with
24 this proceeding. So I have a right to be present
25 throughout the whole thing, and my client has

1 requested that I be present throughout the whole
2 thing in a public proceeding.

3 MR. ALVA: Respectfully, Your Honor, his
4 clients have no rights whatever in this
5 proceeding, they are not a party to this
6 proceeding. The only parties to this proceeding
7 --

8 THE COURT: Hold on. Ms. Pearsall, are
9 these open proceedings?

10 MS. PEARSALL: Yes, Bar proceedings are open
11 proceedings.

12 THE COURT: That's your answer. Okay.

13 MR. NELLES: Judge, I have asked that we --

14 MR. ALVA: Your Honor, that allows him to
15 attend, that does not allow him to participate.
16 He can only participate if he represents a party
17 and he does not represent a party.

18 THE COURT: He can represent a witness while
19 they're on the stand.

20 MR. ALVA: Okay.

21 THE COURT: Let's start.

22 MR. NELLES: Wait. Judge, may I stop you
23 for a minute. I've asked for three specific
24 requests. Respectfully, Judge, I know you did
25 what you felt was necessary yesterday. We think

1 that error was committed and the only way to
2 prevent further error at this point, Number 1)
3 is, especially since my client had to appear
4 without -- with being deprived of representation,
5 the only way to try to at least minimize the
6 error is, Number 1) I need to confer with my
7 client about what happened yesterday before we
8 start the trial because he was told not to even
9 speak to me and the attorney/client privilege is
10 inviolate and I don't think that was proper.

11 THE COURT: Well, he's in the middle of his
12 testimony so he can't speak with his own lawyer,
13 I don't understand.

14 MR. NELLES: And I'm aware of no legal
15 authority that says that a client -- that the
16 attorney/client privilege yields to a witness'
17 testimony on the stand. I'm not aware of any
18 case law that ever -- or a rule that says that,
19 and I think the attorney.

20 THE COURT: While a witness is on the stand
21 and they're in the middle of their testimony,
22 they can't talk to their own lawyers.

23 MR. NELLES: Well, there's a break and there
24 was a break in the day, like there always is in a
25 live trial, and there's no reason why a client

1 can't speak to their attorney, and I don't think
2 that there can ever be an instruction not to
3 speak to their lawyer.

4 THE COURT: When you're on the stand, you're
5 on the stand.

6 MR. NELLES: Well, there was a break in the
7 day and there's always a break in the day.

8 THE COURT: Doesn't matter.

9 MR. NELLES: Well --

10 THE COURT: You have to get Court
11 permission. You have to get Court permission if
12 there's a break if you need to speak with your
13 lawyer. You can't -- that's just the rule.

14 MR. NELLES: Well, with respect to this
15 particular situation, because I was not present
16 to even hear what happened, I do need to speak to
17 my client about what happened yesterday.

18 And Number 2) I would like an order entered
19 because a party's testimony cannot be used
20 against them if they were not represented by a
21 lawyer. I attempted to appear to represent my
22 client and was deprived, and my client was
23 deprived of that. So there should be an order
24 entered precluding the use in any future
25 litigation and, in particular, the Palm Beach

1 litigation if Mr. Alva -- in the unlikely event
2 Mr. Alva were to succeed and persuade the Fourth
3 DCA that Judge Harper committed error that it
4 can't be used in connection with that proceeding.

5 So we have asked for three things: Number
6 1) I need to confer with my client before today
7 starts.

8 Number 2) I want to appear for the rest of
9 this trial, and Number 3) an order precluding the
10 use of my client's testimony in any future
11 litigation.

12 MR. ALVA: Your Honor, if I can respond.

13 THE COURT: No, no, I'm not inclined to
14 grant any of those requests.

15 MR. NELLES: Well, you agreed to the one
16 that permitted me to attend?

17 THE COURT: Yes. Yes.

18 MR. NELLES: Judge, I have a right to speak
19 to my client. I wasn't present and I think my
20 client has a right. I think my client has a
21 right to speak to me and he appeared --

22 THE COURT: You could have talked to him two
23 days ago.

24 MR. NELLES: I did speak to him two days
25 ago. It's fundamental that a client when --

1 before he gets on the stand to testify in a case
2 that could potentially impact another a case that
3 he has a lawyer present to object or prevent any
4 testimony from coming up. I don't even know what
5 he said because I was precluded from appearing
6 and Ms. Pearsall couldn't tell me anything and my
7 client was told not to tell me anything, so I'm
8 sitting here --

9 THE COURT: What could you object to, just
10 privilege, correct?

11 MR. NELLES: Among other things.

12 THE COURT: Among Fifth Amendment. I mean,
13 what privilege? What would you be able to object
14 to?

15 MR. NELLES: Well, there could be any number
16 of objections, any kind of privilege that would
17 apply, whether it's work product, whether it's
18 attorney/client privilege, whether it's, you
19 know, matters that are clearly directed to the
20 Palm Beach case which Mr. Alva has made no bones
21 about. He's trying to get evidence for the Palm
22 Beach in case, for some reason, he were to
23 succeed in the appeal before the Fourth DCA.

24 MR. ALVA: That is entirely untrue, Your
25 Honor. Mr. Nelles need to stop saying derogatory

1 things about me.

2 MR. NELLES: It's not derogatory.

3 THE COURT: All right, Mr. Nelles.

4 MR. NELLES: I would like to speak with my
5 client for 15 minutes prior to the start so I can
6 get caught up at least.

7 THE COURT: Okay. Overruled.

8 Mr. Alva, you may inquire. You were in the
9 middle of your cross. You sent the document over
10 to Mr. McCool so he can review the contents of
11 the document and we broke at that period.

12 MR. NELLES: Just so for the record, so that
13 the record is clear, my client is not being
14 permitted to speak to me prior to resuming the
15 second day of testimony?

16 THE COURT: He's in the middle of his
17 testimony, correct. He's not allowed to speak
18 with anybody regarding his testimony at this
19 point.

20 Mr. McCool, I'm going to swear you in again
21 since we're starting for a second day.

22 Do you swear -- raise your right hand,
23 please.

24 Thereupon,

25 DANIEL MCCOOL,

1 having been duly sworn by the Court, testified as
2 follows:

3 A. Yes, sir.

4 THE COURT: Okay. All right. Thank you.
5 All right.

6 State your name again.

7 MS. PEARSALL: Your Honor, I'm sorry. And
8 the one other item that needs to be added to
9 being sworn again, that the witness consent to be
10 bound by the oath administered under the general
11 laws of the State of Florida.

12 A. Yes, I do.

13 THE COURT: Okay. All right. Thank you.
14 And Mr. McCool, if you can just state your
15 name again.

16 A. Daniel McCool.

17 THE COURT: Okay. All right, thank you.
18 Mr. Alva.

19 MR. ALVA: And Your Honor, just one
20 recordkeeping thing, could I get the court
21 reporter to tell me Exhibit Number 2, identify
22 that for me. I don't have that in my notes.
23 That was during Mr. McCool's testimony. Can the
24 court reporter give me --

25 THE COURT REPORTER: Exhibit 2 was not

1 marked yesterday.

2 MR. ALVA: Okay.

3 (Thereupon, there was a brief discussion off the
4 record.)

5
6 CROSS EXAMINATION

7 BY MR. ALVA:

8 Q. Mr. McCool, did you receive the e-mail that
9 I sent to you last night?

10 A. Yes, I did.

11 Q. Did you have an opportunity to review the
12 document that was attached to the e-mail?

13 A. Yes, I did.

14 Q. I'm going to share the document on my
15 screen.

16 Mr. McCool, can you identify this document?

17 A. I can't see the documents.

18 THE COURT: No, he can't.

19 BY MR. ALVA:

20 Q. Can you see it now, Mr. McCool?

21 A. Yes, I can.

22 Q. Is this the document that was sent to you by
23 e-mail last night?

24 A. Yes, it was.

25 Q. I want you to go to Page 8 of the document

1 that's on the screen here. Do you see that page?

2 A. Yes, I do.

3 Q. Do you see in the middle of the page, it
4 says, "From Dan McCool, Monday, February 26th to
5 Curtis Alva"?

6 A. Yes, that's my e-mail to you and to Trisha
7 and to Dave McCool.

8 Q. Why was Dave McCool copied on the e-mail?

9 MS. PEARSALL: Objection. Relevance.

10 A. Dave is my advisor, and my brother, I took
11 input from him and his advice from the beginning
12 prior to your involvement in this case, and still do
13 to this day.

14 BY MR. ALVA:

15 Q. You don't copy all of your brothers on your
16 e-mails in this matter, do you?

17 MS. PEARSALL: Objection. Argumentative.
18 Relevance.

19 THE COURT: Sustained.

20 BY MR. ALVA:

21 Q. So Dave McCool was giving you legal advice
22 in this matter; is that correct?

23 A. I will get his advice and his opinions on
24 matters in this case, yes.

25 Q. Well, opinions on what sort, legal opinions?

1 MS. PEARSALL: Objection. Relevance.

2 A. He's an attorney and I get legal opinions
3 which I use to make my decisions.

4 BY MR. ALVA:

5 Q. So do you see in the body of this e-mail you
6 say, "Curtis/Trisha, let's put this bickering behind
7 us, Curtis"?

8 A. I see, "Let's put this bickering behind us,"
9 period.

10 Q. Okay. So I want you to go now to Page 3.
11 You see that this is in the same e-mail string as the
12 reading you were reading?

13 A. Yes.

14 Q. Mr. McCool --

15 A. Do you have a question for me?

16 Q. Yes, that was a question for you. Do you
17 see that this --

18 A. What was the question? I didn't hear the
19 question.

20 Q. Do you see that this is part of the same
21 e-mail string as the page you were reading from
22 previously?

23 A. Yes, I said yes.

24 Q. Okay. So about one-third down from the top,
25 you see it says, "From Curtis Alva, Monday, February

1 26th, to Dan McCool"?

2 A. Cc Dave McCool, yes.

3 Q. Yes. And cc to Dave McCool. And can you
4 see, if you count down, not including the subject
5 line, so go down to the body of the e-mail, if you up
6 count down one, two, three, four, five -- five lines,
7 do you see the exact same text where it says, "Let's
8 put this bickering behind us, period, Curtis"?

9 A. Yes.

10 Q. Did you say yes?

11 A. Yes.

12 Q. I can't hear you, Mr. McCool?

13 A. Can you guys hear me? Yes.

14 MR. NELLES: We do.

15 BY MR. ALVA:

16 Q. Thank you. So this is my response to you,
17 to your e-mail. And in red are my responses and in
18 blue are your questions. Do you see where it says,
19 "Let's put this bickering behind us," that that's in
20 blue?

21 A. Yes, I see that.

22 Q. And three lines below, do you see that the
23 print is now in red?

24 A. Yes.

25 Q. Okay. So I want you to read me the blue

1 part where you start with, "Let's put this bickering
2 behind us."

3 A. "Let's put this bickering behind us.
4 Curtis. I do feel too much time was spent thinking
5 about Serino deposition," that is in quote-unquotes.
6 That was something I guess either you had said or I
7 said.

8 Q. And now I want you to read the part in red.

9 A. "I have observed a pattern in this
10 relationship that Dr. ColorChip makes judgments about
11 the cost of work without considering the benefits
12 obtained from the work. This appears to be another
13 example of such analysis. Did you remember what
14 benefits we expected from pursuing her deposition
15 when you decided that we spent too much time? Have
16 you compared those benefits to the costs? Did you
17 total up the time spent on pursuing her deposition?
18 Let me tell you what I remember. McLean's attorneys
19 were claiming that you and McLean had an enforceable
20 verbal agreement to split the company. McLean is
21 going to testify as to the specifics of that
22 agreement and he was going to testify that you got
23 greedy and decided to keep the whole thing for
24 yourself and you then breached the agreement by
25 terminating him on false pretenses. You, of course,

1 would testify to your opposite making this a his word
2 against yours dispute. His attorneys hope to give
3 McLean a 50 percent chance of winning depending upon
4 who the jury believed. McLean's attorneys were then
5 going to bump up the odds in their favor by claiming
6 that," and that's all I see. "Serino was a witness
7 to the agreement, in one way or another, making it
8 the word of two people against the word of one,
9 hoping to give him a 66 percent chance of winning.
10 If you recall, their chances of winning on all other
11 arguments seemed negligible, so 50 percent or 60
12 percent would have been a huge shift in their favor.
13 We, however, found a flaw in their plan. Serino had
14 been present for multiple conversations between
15 McLean and his attorneys, even though Serino was not
16 one of their clients, thus potentially waiving the
17 attorney/client privilege and allowing us to force
18 Serino and the attorneys to disclose all the contents
19 of all of those conversations. During those
20 conversations, all the evil plans of McLean and his
21 attorneys to make up this lie about an agreement
22 might have been discussed, so at the deposition I
23 laid all the groundwork to make a motion to compel
24 Serino to come back for another deposition and
25 disclose those conversations. Faced with that risk,

1 Serino promptly disappeared and never returned to
2 Florida that we know of. So as long as we continue
3 to pursue Serino, McLean would have no witness to
4 corroborate his story, but we would have all of the
5 documents showing that he lied and cheated about
6 other matters. In those circumstances, settlement
7 for some amount of money seemed more attractive to
8 McLean than going forward with his claim to trial."

9 Q. So do you recognize that as your response to
10 the question you were asked about work that was done
11 to get the deposition of Serino?

12 A. I think it's a response that -- I think it's
13 a very long-winded, blown up response that, quite
14 honestly, doesn't hold any importance to me.

15 MR. ALVA: Your Honor, I move to strike the
16 portions after he answered the question saying I
17 recognize that it is a response.

18 MS. PEARSALL: Your Honor, I would object to
19 the request to strike. That's the witness'
20 answer. Just because counsel doesn't like the
21 answer, that's his answer.

22 THE COURT: I'm going to strike it.
23 Nonresponsive.

24 MR. ALVA: Thank you, Your Honor.

25 BY MR. ALVA:

1 Q. Now, Mr. McCool, under that in blue, I want
2 to you read me the next portion of the e-mail string.

3 A. Blue part?

4 Q. So you just finished reading the sentence
5 that says, "More -- settlement seemed more attractive
6 to McLean than going forward with his claim to
7 trial." Under that there is a portion in blue. I
8 would like you to read the portion in blue, if you
9 can.

10 A. "In continuing to work on the tax issue," I
11 don't know what that pulls from but, "I was very
12 comfortable with the advice I received from my two
13 tax experts, my brother Pat and Mike Guillard, the
14 attorney that you brought in was not a tax expert and
15 he admitted as much to my brother. A \$500 tax filing
16 exploded into about a \$6,000 expense."

17 Q. Thank you, and now can you read the response
18 that is in red?

19 A. "I know you were comfortable, but my
20 recollection is that Pat and David and I were
21 concerned. Pat was concerned quite rightly because
22 he wrote in his 8-31 e-mail in his tax filing with
23 the 50/50 split -- is the tax filing with the 50/50
24 split going to cause any legal issues that Curtis can
25 think of," that was asking me. "For example, does it

1 imply that Bill is still a 50/50 partner? In fact,
2 McLean would argue that it was more than implied, it
3 was admitted under oath by you that as of 12-31" and
4 I'm not sure if that's 12-31-2017 or 2018, "McLean
5 owned 50 percent of the stock. But Pat didn't know
6 of any other way to reflect the ownership on the
7 return, so we hired Adi Rappoport. I don't know
8 where you got your belief that Adi isn't a tax expert
9 but his it Gunster website bio shows that he is board
10 certified in tax and that his practice focuses on tax
11 work and that he specifically, among other things,
12 assists business clients with structuring and
13 limiting buy-sell arrangements and has substantial
14 experience in tax and fiduciary litigation. Adi
15 almost immediately come up with an alternate way of
16 reporting the change of ownership. The weighted
17 average approach that did not require any stock
18 ownership by McLean after he was terminated. Thus,
19 completely taking this argument away from McLean.
20 Pat was also concerned, as David and I were, that
21 Mike believed that the previous's year's returns
22 showed that the company had 3,789 shares issued and
23 outstanding but Pat disagreed. So when you say you
24 were comfortable with Mike and Pat's advice, you have
25 to remember they disagree. It wasn't until I took

1 the time to meet Mike in his office and walk through
2 the issue line by line that we figured out that Mike
3 was assuming incorrectly and that the stock had a par
4 value of a dollar. It doesn't net \$3,789 on return
5 necessarily meant there weren't 3,789 shares. There
6 weren't. Once we understand Mike's mistaken
7 assumption, we were quickly able to resolve that part
8 of the tax issue.

9 "There was also a third tax issue which was
10 can we prompt McLean to enter a settlement by
11 offering to use the year-end approach instead of the
12 weighted average approach which would give McLean
13 thousands more in cash. At the time, McLean was
14 being relatively quiet and we hoped that volunteering
15 the money showed we hoped" -- hold on. "At the time,
16 McLean was being relatively quiet and we hoped that
17 volunteering money showed great amounts of good faith
18 and going through a mini-settlement over the tax
19 issues might prompt a total settlement. So we spent
20 time on that. Before the return could be finalized,
21 however, you and Trish discovered that most recent
22 Canadian shenanigans and you decided rightly that you
23 no longer wanted to offer McLean the tax windfall.
24 This last point specifically illustrates how Dr.
25 ColorChip sometimes looks only at the costs and not

1 the benefit. We spent about 6,000 in these three tax
2 issues you say in your e-mail but you avoid admitting
3 McLean was a shareholder and you got a check for
4 164,000 whereas McLean got a check for 32,000. Have
5 you calculated what your check would have been
6 without my work and Adi's on that issue? Somewhere
7 around 120,000, if I recall correctly, so you spent
8 six grand and got about 44,000 plus no admission that
9 Bill was a shareholder. Do you include that 44,000
10 in your analysis that 6,000 was much to spend on that
11 issue?"

12 Q. Thank you, Mr. McCool.

13 Now, can you read your next blue part of the
14 e-mail?

15 A. "If you feel I am being unreasonable on the
16 questioning of this and the very large bill that I
17 received from December when I was basically gone on
18 vacation for half the month and you -- if you just
19 confined it to the 6,800 you seemed to feel Trish
20 identifies in her e-mail what her requests for
21 answers to her questions, I think that is fair to
22 revisit what was done there and come to some form of
23 compromise. This case has gone in a different for
24 many reasons. Losing Judge Sasser, multiple DQ
25 motions which cost me a lot of money, a lack of focus

1 on the IP issues which have always been the most
2 important aspect of this case, yet lacked focus and a
3 proactive approach and, more importantly, a true IT
4 expert working this part of this case. No one
5 attorney is an expert in each area."

6 Q. Thank you very much. Would you read the
7 response in red?

8 A. "The complaint that is litigating did not
9 focus on the merits of these issues, it is a product
10 of the strength of our strategy, not a weakness. At
11 the beginning of this case, we put together a plan
12 where you could properly terminate McLean, redeem his
13 stock and throw him off the board because we were
14 right on the merits, we did not give McLean the
15 option of litigating the merits for they were a loser
16 for him. So if he was determined to litigate and it
17 turned out that he was, he had to litigate on
18 everything but the merits, which he did. If he had
19 been wrong on the merits, he would have litigated
20 only the merits and you would have lost years ago."

21 Q. Thank you. Can you read the next question
22 in blue?

23 A. "I think we collectively lost sight that we
24 need to work towards a settlement in this case."

25 Q. Thank you. Would you read the next response

1 in red?

2 A. "I know how hard it is for a non-litigator
3 to understand litigation. I strongly suggest you
4 talk to David, who is a professional litigation
5 manager. Nothing was done in this case that was not
6 calculated to bring settlement sooner and cheaper.
7 Settlement rarely comes sooner and cheaper, it comes
8 sooner and cheaper than it would otherwise would come
9 and that was our constant focus. Ask Dave if he
10 disagrees."

11 Q. And would you read the next question in
12 blue?

13 A. I don't know if it's a question. It's a
14 statement.

15 Q. Well, the next -- yeah, the next part.

16 A. "If I'm going to continue down the path and
17 litigate, it will be on the IP issue and the
18 dissolution issue. We have lost way too much time
19 and money obsessing over depositions and additional
20 filings for treble damages when we should have been
21 pushing to move along domain issue. We could have
22 filed this in federal court ten months ago and gotten
23 this heard. Sitting around worrying about the DQ
24 motion when we should have been proactively looking
25 for a better strategy cost me several hundred

1 thousands of dollars. The total bill is around
2 \$450,000 last I checked. Talk with Trisha. I want
3 to put this behind us. You did a nice job firing
4 Bill and refuting his shitty attorney's misguided
5 efforts. Had you done a better job with a more
6 discipline and focused approach on the initial
7 strategy of making Bill spend money, I think this
8 case would have been resolved six months ago. Let's
9 agree to a number and I'll get you a check this week.
10 You made \$350,000 working this deal. If you have
11 four clients, you made a killing and I'm in the wrong
12 business trying to protect my employees and making
13 \$240,000, half my normal income. I was glad you got
14 Bill and Jeanine to hate you. Coleman is not a fan
15 either. That's okay. Greed all around. Time to
16 move forward. Talk with Trisha and I'll send out a
17 check tomorrow."

18 Q. And then would you read the final part in
19 red?

20 A. "Patricia told me by e-mail last Friday that
21 payment in full for the December invoice would be
22 processed that day. I guess that is incorrect. I
23 asked on 2-16 for payment of just the undisputed
24 amount. That has not occurred. So as I stated in my
25 2-21 e-mail, I'm now demanding payment in full for

1 all the work without the discounted hourly rate down
2 to 400 for me and 100 for my assistant. The invoice
3 attached, which I sent on 2-21 is due in three days.
4 The additional amount is \$126,834.95. I hope we can
5 resolve quickly without further trouble. You have
6 always paid all invoices on time before this and I
7 hope that we can be finished with this tomorrow. I
8 won't talk to Trisha because she has specifically
9 instructed me to not.

10 "If you want to send a check for a different
11 amount tomorrow, please do so. If not, please send a
12 full check for the full amount in three days."

13 Q. So now going back to Page 3. Do you see the
14 date that this e-mail is sent to you by me?

15 A. February 26th.

16 Q. And then spinning backward in time to Page
17 8, do you see the date that you sent your e-mail to
18 me?

19 A. It says February 26th.

20 Q. So these two e-mails were sent on the same
21 day, correct?

22 A. Yeah, it looks like it.

23 Q. Mr. McCool, after the response, was there
24 any other information you needed to receive from me
25 in order to write the check for the December bill?

1 A. After the invoice -- I was not sure if we
2 had agreed upon a resolution. But I believe after
3 that back and forth, I submitted a check the next day
4 for full payment, even though Trisha didn't come to
5 me and give me any advice, she was out of the
6 picture, I made the decision to put it to bed. I
7 offered to give you the ability to give me a number
8 and I would cut a check to you. You didn't give me a
9 number, so I went ahead and cut a check for the whole
10 deal, because I was putting it to bed.

11 So, yeah, I made that decision within 24
12 hours of that final e-mail. You cashed the check on
13 March 6th.

14 Q. I'm sorry, thank you.

15 Now, you testified earlier that you did not
16 see that December invoice until you returned to the
17 United States; is that correct?

18 A. I believe the first time I saw it was on the
19 19th. And I reached out to you and I said I'm in
20 receipt of the e-mail or the invoice. I don't think
21 I saw it before then.

22 Q. Is that the date that you returned to the
23 United States or were you still overseas?

24 A. I don't recall. I don't recall.

25 Q. So you received it in your e-mail inbox?

1 A. I think so.

2 Q. Okay. And to your knowledge, was your
3 e-mail inbox not operating during the period from
4 January 9th to January 19th?

5 MS. PEARSALL: Objection. Relevance.

6 A. I don't know.

7 THE COURT: Overruled. You can answer.

8 A. I don't know.

9 BY MR. ALVA:

10 Q. Were you still conducting business on behalf
11 of Dr. ColorChip during that time period?

12 A. Yes.

13 MS. PEARSALL: Objection. Relevance.

14 THE COURT: Overruled.

15 A. Yes.

16 BY MR. ALVA:

17 Q. So you first saw it on January 19th, is your
18 best recollection. Did you, when you saw it on the
19 19th request any additional time?

20 A. I reached out to you and I told you I had
21 questions on the invoice and I had Trisha reach out
22 to you.

23 Q. My question was a little different, sir.
24 Did you request additional time to pay the invoice?

25 A. I told you I was -- I had questions. So

1 that would imply I needed additional time to get
2 questions answered.

3 Did I specifically say I need two days or a
4 week or however much time, no, I didn't ask for a
5 specific extension. I just made it known that we had
6 questions on the invoice.

7 Q. Are you aware, sir, of any language in the
8 contract that permits you to take longer than ten
9 days to pay the invoice if it's an invoice that you
10 have not yet reviewed?

11 MS. PEARSALL: Objection. Compound
12 question.

13 THE COURT: Sustained.

14 BY MR. ALVA:

15 Q. Mr. McCool, are you aware of any language in
16 the agreement that allows you to request additional
17 time to pay an invoice?

18 A. I don't think there's specific language in
19 the contract for that.

20 Q. Do you recall if there's any language in the
21 contract that allows you to not pay within ten days
22 if you have a dispute about the invoice?

23 A. I don't believe there's language that is
24 specific to that in the contract.

25 Q. Do you have any experience, sir, with the

1 kind of attorneys' fees that are generated in a
2 complex dispute for control of a company?

3 A. I don't think I have any particular
4 experience in that other than my own personal
5 experience.

6 Q. Do you have any education or training in the
7 amounts of attorneys' fees that are generated in a
8 matter of that kind?

9 A. Only through my personal experience.

10 Q. And what's your personal experience in that?

11 A. It's developed over the years. But I've
12 seen attorneys charge all across the board.

13 Q. Well, tell me about the attorney's bills
14 that you have seen in complex contest for the control
15 of a company?

16 MS. PEARSALL: Objection. Relevance.
17 Outside the scope of direct.

18 THE COURT: Sustained.

19 BY MR. ALVA:

20 Q. Are --

21 A. Is there a question?

22 MR. ALVA: Just a moment, sir.

23 BY MR. ALVA:

24 Q. Mr. McCool, the docket sheet for the
25 litigation where I represented you and your company

1 indicates that on October 13, 2016, Mr. McLean
2 brought a motion for preliminary injunction and an
3 emergency evidentiary hearing.

4 Do you have any experience with the amount
5 of attorneys' fees that are generated in a case where
6 there is an emergency motion for an injunction?

7 A. No. I don't have a lot of information on
8 that.

9 Q. Do you have any education or training as to
10 the amount of attorneys' fees that are generated on a
11 dispute like that?

12 MS. PEARSALL: Objection. Outside of the
13 scope of direct.

14 THE COURT: Sustained.

15 BY MR. ALVA:

16 Q. Mr. McCool, I'm interested in the opinion
17 that you formed that the amount of attorneys' fees
18 that were billed in this matter were too high. Do
19 you remember giving that testimony?

20 A. Yeah, it did come to my knowledge. I'm not
21 sure the exact source, but I believe the mediator.

22 Q. Well, this is a yes or no question, sir, if
23 you could limit your response.

24 A. What was the question again?

25 MR. ALVA: Madam Reported, would you read

1 the question back to him?

2 (Thereupon, the court reporter read back the
3 requested portion.)

4 A. Yes.

5 BY MR. ALVA:

6 Q. You have to answer audibly, sir?

7 A. Yes.

8 Q. Do you recall -- or actually, let me get
9 this up. I'm going to show you, Mr. McCool, a
10 document and ask you if you can identify it.

11 Can you see that document, sir?

12 A. Yes.

13 Q. And can you see that that's in the case of
14 Dr. ColorChip versus Dr. William McLean?

15 A. Yes.

16 Q. And is that the case that I represented you
17 and your company?

18 A. Yes.

19 Q. And do you see where it says, "Answer and
20 affirmative defenses to complaint and verified
21 counterclaim"?

22 A. Yes.

23 Q. So do you understand that this is the answer
24 that was filed by Mr. McLean, who is your adversary
25 in the litigation?

1 A. Yes.

2 Q. I can't hear you?

3 A. Yes.

4 Q. And then he also filed affirmative defenses.

5 Do you see that?

6 A. I see this, yes.

7 Q. And he filed a verified counterclaim. Do
8 you see that?

9 A. Yes, I see this page that's in front of me,
10 yes.

11 Q. I want to show you one of the exhibits to
12 the counterclaim, sir, and ask you if you recognize
13 this document.

14 So first of all, there's correspondence that
15 appears to be signed by you dated October 3, 2016.

16 Do you see that?

17 MS. PEARSALL: Objection. Outside the scope
18 of direct.

19 THE COURT: What are we doing here, Mr.
20 Alva?

21 MR. ALVA: Your Honor, this relates to
22 Mr. McCool's testimony about the amount of
23 attorneys' fees that were generated in this case.

24 THE COURT: That's not an issue for us.
25 That's not on the table in your disciplinary

1 trial.

2 MR. ALVA: Thank you, Your Honor.

3 Your Honor, I don't have any other
4 cross-examination questions for the witness at
5 this time, but I would like to reserve the right
6 to call him in my case in chief to cover those
7 areas where Ms. Pearsall has objected to him
8 testifying beyond the scope of the direct.

9 THE COURT: Ms. Pearsall, did you have any
10 questions for your client.

11 MS. PEARSALL: For Mr. McCool, yes, I do.
12 Thank you, Your Honor.

13
14 REDIRECT EXAMINATION

15 BY MS. PEARSALL:

16 Q. Mr. McCool, as we sit here today, have you
17 received your \$25,000 retainer back from in Alva?

18 A. I have not.

19 Q. When Mr. Alva did not return your \$25,000
20 retainer, did you seek assistance from the civil
21 court?

22 A. Not immediately, so I did not at that time.

23 Q. And did you file a Bar complaint?

24 A. Yes, I did.

25 Q. And then later, did you seek assistance from

1 the civil court to obtain your -- after Mr. Alva had
2 not returned your \$25,000 retainer?

3 A. Yes, I did.

4 Q. I'm going to share my screen now.

5 THE COURT: Give me a moment to set you up.

6 MS. PEARSALL: Okay.

7 THE COURT: Okay. You're set up.

8 MS. PEARSALL: Thank you.

9 (Thereupon, the exhibit was marked for identification.)

10 BY MS. PEARSALL:

11 Q. I'm showing you this, hopefully you can see
12 it, yes. I'm showing you what's marked as the
13 Florida Bar's Exhibit Number 45. And I'll scroll up
14 to the top of the page.

15 What is this and how do you recognize it?

16 A. That is a summary judgment granting
17 Dr. ColorChip and Daniel McCool summary judgment as
18 to Count 1.

19 Q. And I'll scroll down to the balance of the
20 document. So you can see all of it. And does this
21 Florida Bar's Exhibit Number 45 appear in the same or
22 substantially the same condition as you recall?

23 A. Yes, it does.

24 MS. PEARSALL: At this time, the Bar offers
25 Florida Bar's Exhibit 45 into evidence.

1 THE COURT: Any objection?

2 MR. ALVA: Your Honor, I object. This is
3 beyond the scope of the cross.

4 THE COURT: That's sustained.

5 MS. PEARSALL: No, it's not, Your Honor.
6 It's not beyond the scope of the cross, Your
7 Honor. That's my argument.

8 THE COURT: Okay. Well, tell me how.

9 MS. PEARSALL: Mr. Alva asked questions
10 related to the actual case that he had filed a
11 verified complaint. He showed that on the
12 screen. He asked Mr. McCool in-depth questions
13 if you recall about whether he had signed the
14 complaint charging Mr. Alva with excessive fees,
15 whether he had written certain items, and the
16 complaint was up on the screen for quite a while.

17 So that is the Bar's position, that it was
18 placed in evidence by Mr. McCool -- I'm sorry,
19 Mr. Alva. He opened the door by questioning the
20 witness about the complaint that had been filed
21 against Mr. Alva by Dr. ColorChip and Mr. McCool.

22 THE COURT: Okay. I'm going to stay with my
23 ruling.

24 MS. PEARSALL: Okay, Your Honor. That's
25 over the Bar's objection, if I could just have a

1 little bit more time on the record.

2 Mr. Alva showed it up on the screen. It was
3 highlighted in yellow and underlined and he spent
4 considerable time asking Mr. McCool why he made
5 certain findings. Did he review it before he
6 filed it, did he sign off on it, so forth and so
7 on. And all of that related to this particular
8 case and to this particular court case. So that
9 is why I believe it is relevant and he opened the
10 door and it should come into evidence.

11 Thank you, Your Honor.

12 THE COURT: Thank you. Okay. Anything
13 else?

14 MS. PEARSALL: From me or from Mr. Alva?

15 THE COURT: No. From you.

16 MS. PEARSALL: Oh, yes. I do.

17 BY MS. PEARSALL:

18 Q. And Mr. McCool, in the civil case against
19 Dr. ColorChip and yourself filed against Mr. Alva,
20 what were the results of that case?

21 MR. ALVA: Objection, Your Honor. Beyond
22 the scope of cross.

23 THE COURT: Wait for the objection.

24 Mr. Alva, I'm sorry.

25 MR. ALVA: It's beyond the scope of the

1 cross, Your Honor.

2 MS. PEARSALL: Do I need to respond, Your
3 Honor?

4 THE COURT: Yes.

5 MS. PEARSALL: It is not beyond the scope of
6 the cross. Once the witness opened the door and
7 started asking about the actual litigation, it is
8 not beyond the scope.

9 Mr. Alva, even in his arguments and
10 presentation to the Court and in his opening
11 statement, made the point that the litigation is
12 over, it's done, it's -- the civil litigation has
13 already been handled and his matter is up on
14 appeal.

15 It was also his argument that this Court has
16 no jurisdiction because there was a civil case
17 that was brought by the witness, Mr. McCool, and
18 Dr. ColorChip against him.

19 So he opened the door in the beginning of
20 the case in his opening argument and throughout
21 his questioning of the witness, Your Honor.

22 MR. ALVA: Your Honor --

23 THE COURT: This is rebuttal of
24 cross-examination. And I don't remember Mr. Alva
25 going into this. So I'm going to sustain the

1 objection.

2 MS. PEARSALL: Okay. That's over the Bar's
3 objection, Your Honor.

4 BY MS. PEARSALL:

5 Q. Now, Mr. McCool, you testified that when you
6 had an opportunity to review the invoice, that would
7 be Invoice 90, the one with the December charges,
8 December 2017, once you had an opportunity to review
9 that, you reached out to Mr. Alva and told him you
10 had questions and you eventually paid that invoice in
11 full.

12 Is that a fair statement of your testimony,
13 sir?

14 MR. ALVA: Objection, Your Honor.

15 THE COURT: What's the objection?

16 MR. ALVA: Compound.

17 THE COURT: Can you rephrase the question?

18 MS. PEARSALL: Yes, I can, Your Honor.

19 BY MS. PEARSALL:

20 Q. Mr. McCool, regarding Invoice Number 90, I
21 can place it back up on the screen if you would like
22 me to but that would be the December 2017 invoice.
23 Once you had an opportunity to review that invoice,
24 did you -- was it your testimony that you let Mr.
25 Alva know that you had some questions about the

1 invoice?

2 A. Yes.

3 Q. And as far as those questions, Ms. Trisha
4 O'Rourke, your assistant at Dr. ColorChip, was she
5 the person you tasked with trying to get more answers
6 to some questions regarding the invoice?

7 A. Yes.

8 Q. And as far as that particular invoice,
9 December of 2017 Invoice Number 90, you paid that
10 invoice in full?

11 A. Yes.

12 MR. ALVA: I can't hear the witness'
13 responses, Your Honor.

14 A. Yes. Is my volume is not up? Are you guys
15 having a hard time hearing me?

16 MR. ALVA: No, I hear you fine now. I think
17 you were just sitting a little far from the
18 screen.

19 BY MS. PEARSALL:

20 Q. And you testified also that you sent the
21 check out and Mr. Alva cashed the check for the
22 December invoice. Is that a fair representation of
23 your testimony, sir?

24 MR. ALVA: Objection, Your Honor. That goes
25 beyond the scope of the cross.

1 THE COURT: I'm going to overrule that.

2 MR. ALVA: Thank you, Your Honor.

3 BY MS. PEARSALL:

4 Q. You can answer it, sir.

5 A. Yes, that's a fair representation.

6 Q. Now, as far as the engagement letter that
7 you signed with Mr. Alva to represent you in
8 September 19th of 2016, do you recall that engagement
9 letter saying that you could get your retainer back?

10 A. I believe it was a part of that contract. I
11 don't have it in front of me, but I believe that's
12 meant to be returned if the relationship terminates.
13 I think it's stated in that contract. I'm not sure.

14 Q. I'm going to show you -- I'm going to move
15 on to another question.

16 Mr. McCool, was it usual or was it a usual
17 practice that you wanted Ms. O'Rourke to be copied on
18 invoices that came in so -- since she was your
19 assistant so she would see them also?

20 MR. ALVA: Objection, Your Honor. Beyond
21 the scope of the cross.

22 THE COURT: So Ms. Pearsall?

23 MS. PEARSALL: Your Honor, it's not beyond
24 the scope of the cross. We have had lots of
25 questions about when did you get the e-mail,

1 where were you, did you get it, was your e-mail
2 server working?

3 It's not beyond the scope of the cross, Your
4 Honor. There were lots of questions by Mr. Alva
5 related to the e-mail, when he got it, when he
6 sent it out.

7 THE COURT: I agree. I agree. It's
8 overruled. You can answer.

9 A. Could you please repeat the question,
10 Ms. Pearsall?

11 BY MS. PEARSALL:

12 Q. Okay. I'll repeat it.

13 When you were -- your assistant, Ms. Trisha
14 O'Rourke, was it something, a standard or something
15 that was usual that she would be copied on invoices
16 along with yourself that came in to Dr. ColorChip for
17 this particular case with Mr. Alva where he was
18 representing you?

19 MR. ALVA: Objection. Compound.

20 THE COURT: I'm sorry, Mr. Alva?

21 MR. ALVA: It's a compound question, Your
22 Honor.

23 THE COURT: Can you rephrase the question?

24 BY MS. PEARSALL:

25 Q. Sir, when -- was it typical when Mr. Alva

1 was representing you for him to include you and your
2 assistant on the invoices that he was sending?

3 A. Yes.

4 MR. ALVA: Objection. The question is
5 vague. The word "typical."

6 THE COURT: Overruled.

7 MR. ALVA: Thank you, Your Honor.

8 MS. PEARSALL: Yeah, I think --

9 A. That was the practice and I asked that
10 Trisha and myself be copied on all invoices, that was
11 the -- that was what we did every time when I had
12 Trisha review the invoices for me prior to payments.

13 MR. ALVA: Objection, Your Honor. That was
14 nonresponsive. There wasn't even a question
15 pending.

16 THE COURT: Let's ask another question.

17 MS. PEARSALL: Yes, thank you.

18 BY MS. PEARSALL:

19 Q. Sir, do you recall if Mr. Alva copied your
20 assistant Ms. O'Rourke on the e-mail where he sent
21 you the December 2017 invoice, Invoice Number 90?

22 MR. ALVA: Objection, Your Honor. Best
23 evidence rule. It's a document. Its contents
24 are best proved by the document, not by the
25 witness' recollection.

1 THE COURT: If it was sent to him -- I'm
2 going to sustain the objection as best evidence.

3 A. I'm sorry, is there a question pending?

4 BY MS. PEARSALL:

5 Q. I have to ask another question. Just one
6 second, sir.

7 I'm showing you what's marked as the Florida
8 Bar's Exhibit 50B.

9 (Thereupon, the exhibit was introduced into evidence.)

10 BY MS. PEARSALL:

11 Q. Mr. McCool, do you see this Exhibit 50B on
12 the screen, what is it and how do you recognize it?

13 A. Yes, it's an e-mail from Curtis Alva on
14 February 5th to me regarding the December Invoice
15 Number 90.

16 Q. I'll go down to the balance of the document
17 so you can see all of it. Down to Page 4 of 4. Does
18 this exhibit appear in the same or substantially the
19 same condition as you recall?

20 A. Yes, it does.

21 MS. PEARSALL: The Bar offers Exhibit 50B
22 into evidence.

23 THE COURT: Any objection?

24 MR. ALVA: Your Honor, I don't object to the
25 exhibit but an issue has arisen that is very

1 troubling. I understand that Your Honor today
2 lifted the sequestration of Mr. Nelles that he
3 was under last night. But it occurs to me that
4 perhaps Mr. Nelles last night, while he was still
5 sequestered, had a substantial conversation with
6 will Ms. Pearsall.

7 MS. PEARSALL: Oh, my gosh. Really?
8 Really, sir?

9 MR. ALVA: Please don't interrupt me.

10 MS. PEARSALL: Really, sir?

11 Your Honor, if Mr. Alva's going to make this
12 type of allegation against me, is it possible to
13 put the witness into a breakout room?

14 THE COURT: Let deal with this --

15 MR. NELLES: This is a fabrication.

16 THE COURT: Mr. Alva, what proof do you have
17 to make this claim?

18 MR. ALVA: I'm not making a claim. I'm
19 telling Your Honor that I'm concerned that these
20 things that are coming up in this examination
21 appear to be things that ordinarily would have
22 been brought up in the original direct, and
23 they're not. They don't seem to have much to do
24 with the cross and I'm concerned and I'm not
25 saying that it happened. I'm concerned -- and

1 Mr. Nelles can tell us -- that Mr. Nelles spoke
2 to somebody about the testimony that was given
3 yesterday while he was sequestered.

4 MR. NELLES: That is totally false.

5 THE COURT: Okay, there's your answer.

6 MR. ALVA: Thank you, Your Honor.

7 THE COURT: Okay.

8 MS. PEARSALL: I would just like to say I
9 have no words. The accusation is beyond the
10 pale. It really is. It really is.

11 MR. NELLES: It's not beyond the pale, Joi.

12 THE COURT: Please let's not let this get
13 out of control.

14 MR. ALVA: Your Honor, there was no
15 accusation.

16 THE COURT: All right. Was there any
17 objection to this exhibit?

18 MR. ALVA: No.

19 THE COURT: What's the number on that,
20 Ms. Pearsall?

21 MS. PEARSALL: 50B, as in boy.

22 THE COURT: 50B will now be introduced into
23 evidence.

24 MR. ALVA: Was that on the original exhibit
25 list or is that the one you sent last night,

1 Ms. Pearsall?

2 MS. PEARSALL: 50 covers all of the
3 documents that I received from you. So this is
4 one. This wasn't Bates stamped though. This is
5 one of the documents I received from you as part
6 of discovery. So this was -- I Bates stamped and
7 I just sent this one to you.

8 MR. ALVA: And what's the date? What was
9 the date on it, February 5?

10 MS. PEARSALL: February 5th. If you can see
11 up top the e-mail came from you, it has your name
12 across the top, Curtis Alva.

13 MR. ALVA: Thank you.

14 MS. PEARSALL: Uh-huh. (Nodding.)
15 (Thereupon, the exhibit was admitted into evidence.)

16 MS. PEARSALL: All right. Once the witness
17 comes back in, Your Honor.

18 THE COURT: He's been here.

19 MS. PEARSALL: Oh, I can't see him. Oh, I'm
20 sorry. All right.

21 BY MS. PEARSALL:

22 Q. Okay. So, Mr. McCool --

23 MS. PEARSALL: So is 50B in evidence, Your
24 Honor, before I move on?

25 THE COURT: Yes. 50B.

1 BY MS. PEARSALL:

2 Q. Mr. McCool, if we can just begin with the
3 first e-mail where it says Curtis Alva -- from Curtis
4 Alva, I'm sorry, sent Tuesday, January 9, 2018, 6:26
5 p.m. You see that one?

6 A. Yes, I do.

7 Q. And who was that e-mail sent to?

8 A. That was sent to me.

9 Q. Could you repeat that again? You faded out.

10 A. That was sent to me.

11 Q. One more time.

12 MR. ALVA: You're breaking up.

13 A. Okay. (Inaud.) It might be where I'm
14 located, it was sent to my attention, Dan McCool.

15 BY MS. PEARSALL:

16 Q. Is your --

17 MR. ALVA: Your Honor, I can't hear his
18 responses. I think his WiFi connection is slow.

19 THE COURT: Yes.

20 MR. ALVA: It may be intermittent, I'm in
21 the basement. I see that the e-mail is from
22 Curtis Alva to me, Dan McCool.

23 BY MS. PEARSALL:

24 Q. Is there any other person, namely your
25 assistant, copied on this e-mail?

1 A. No, she is not.

2 Q. And what's the subject of the e-mail?

3 A. The December invoice.

4 Q. Could you read what's below the subject line
5 December invoice, please?

6 A. Sure. "Thanks so much for getting the
7 checks out so quickly for the October and November
8 invoices. I hope your holiday is merry. Here is the
9 December invoice. Call me with any questions or
10 comments."

11 Q. And then we go up to the next e-mail that
12 says it's from Curtis Alva, Monday, February 25,
13 2018, at 10:46 a.m., and who was that sent to?

14 A. It was sent to me, Dan McCool.

15 Q. On this e-mail, do you see your assistant
16 Trisha O'Rourke copied?

17 A. No, she was not.

18 Q. And what's the subject line for the e-mail?

19 A. December invoice, Invoice 90, Dr. C.,
20 December 2017.

21 Q. Could you read what it says under there,
22 please?

23 A. "I know that you've been out of the country
24 so this invoice might still be in processing. It was
25 sent on 1-9-18. Can you tell me the status?"

1 Q. Mr. McCool, when you said that you had
2 questions about the December invoice, did "questions"
3 mean that you were trying to get out of paying the
4 invoice or you just had questions about the invoice
5 itself?

6 MR. ALVA: Objection. It's compound and
7 it's leading, Your Honor.

8 THE COURT: Overruled.

9 A. I had questions about the invoice that I
10 wanted to get settled before paying out the invoice.

11 MS. PEARSALL: One more moment, Your Honor.

12 BY MS. PEARSALL:

13 Q. And I'd like to show, I believe this is
14 Respondent's 2 that's in evidence. I'm showing part
15 of Respondent's 2 that was provided by Mr. Alva via
16 e-mail yesterday.

17 MR. ALVA: Can you go to the top,
18 Ms. Pearsall?

19 MS. PEARSALL: I just want to keep what page
20 I'm at.

21 (Complies.)

22 Can you see it?

23 MR. ALVA: I can see the top. Thank you.

24 BY MS. PEARSALL:

25 Q. Okay. So we'll start here. February 27,

1 2018, at 12:32 p.m., Dan McCool, Dr. ColorChip wrote,
2 "Curtis, per Dave's advice, I've issued you full
3 payment of the \$25,040 invoice to my bank for payment
4 yesterday."

5 Mr. McCool, do you recall this e-mail?

6 A. Yes, I do.

7 Q. And would that represent your notification
8 to Mr. Alva that you're just going to go ahead and
9 pay the December invoice?

10 MR. ALVA: Objection. Leading.

11 A. Yes.

12 THE COURT: Overruled.

13 BY MS. PEARSALL:

14 Q. And this is another e-mail, February 27,
15 2018, 2:16 p.m., Curtis Alva wrote, "Thanks. Not
16 sure what payment yesterday means, but I think the
17 rest of your e-mail means that I'll receive the check
18 for \$25,040 in the mail within a couple of days.
19 I'll let you know when I receive it. I received the
20 check for the work in January and February yesterday.
21 Thanks for sending it promptly."

22 And do you recall receiving this as a reply
23 e-mail from Mr. Alva?

24 A. Yes, I do.

25 Q. And then I'll go up to the top and this says

1 from Dan McCool to Curtis Alva, cc David McCool, and
2 the subject is, "Revised re: Dan, questions on
3 December bill. Tuesday, February 27, 2018, 5:08:10
4 p.m." And it reads -- now this is from you. It
5 says, "Yes, as quickly as the bank processes it, you
6 should have it shortly."

7 Do you recall sending that e-mail to Mr.
8 Alva?

9 A. Yes, I do.

10 Q. Now I'll just go down -- I'm going to stop
11 sharing for a moment. I just need to find the spot
12 I'm looking for. I'm sorry.

13 I'm still showing you Respondent's 2 in the
14 red section here, this is the part we'll be looking
15 at, but I'm going to go up to the top of the e-mail,
16 you read all of this into the record during your
17 cross. So I'll just go up to the date, and the date
18 of this e-mail says, from Curtis Alva, Monday,
19 February 26, 2017.

20 Do you see that Mr. McCool, to Dan McCool?

21 A. Yes, I do.

22 Q. Okay. So I'll go all the way back down to
23 the end of the e-mail. And this last line says, "If
24 you want to send a check for a different amount
25 tomorrow, please do so. If not, please send a check

1 for the full amount in three days."

2 On December 27th -- I'm sorry, on February
3 27th of 2018, did you notify Mr. Alva by e-mail that
4 you were sending him a check for the full amount,
5 \$25,040?

6 A. Yes, I did.

7 Q. And you were asked questions about when you
8 ended your legal relationship or terminated your
9 relationship with Mr. Alva having him represent you
10 in the Dr. Colorchip/McLean matter?

11 A. Yes.

12 Q. Eventually, did Mr. Alva stop representing
13 you in that particular case?

14 A. Yes.

15 Q. I'm showing you what's been marked as the
16 Florida Bar's Exhibit 38.
17 (Thereupon, the exhibit was introduced into evidence.)

18 BY MS. PEARSALL:

19 Q. What is it and how do you recognize it?

20 A. It's a substitution of counsel order
21 approving the change.

22 Q. I'll show you the balance of the order.
23 Does the Florida Bar's Exhibit 38 appear to be in the
24 same or substantially the same condition?

25 A. Yes, it does.

1 MS. PEARSALL: The Bar offers Florida Bar's
2 38 into evidence.

3 THE COURT: Any objection?

4 MR. ALVA: Yes, Your Honor. It's beyond the
5 scope of the cross.

6 MS. PEARSALL: Your Honor, it is --

7 THE COURT: I'm going to let it in.

8 (Thereupon, the exhibit was admitted into evidence.)

9 BY MS. PEARSALL:

10 Q. Okay, I'm showing what is the Florida Bar's
11 Exhibit 40. This is also -- this was put in evidence
12 as the Respondent's Exhibit 1. I do not have the
13 Respondent's Exhibit 1 so I'm showing the Florida
14 Bar's Exhibit 40 up on the screen. And I'll go to
15 the top of the document.

16 It's a letter dated May 25, 2018 and I'll go
17 to the balance of the document.

18 (Thereupon, the exhibit was introduced into evidence.)

19 BY MS. PEARSALL:

20 Q. And Mr. McCool, what is this document and
21 how do you recognize it?

22 A. It's a filing of the bar ethics violations
23 with the Florida Bar, in fact, in May of 2018.

24 Q. And I'll go down, and all the way down to
25 the balance of the document. And you see the final

1 page there?

2 A. Yes, I do.

3 Q. The envelope, Dan McCool?

4 A. Yes.

5 Q. Does the Florida Bar's Exhibit 40 appear in
6 the same or substantially the same condition as you
7 recall?

8 A. Yes, it does.

9 MS. PEARSALL: The Florida Bar offers the
10 Florida Bar 40 into evidence.

11 THE COURT: I thought you said this is
12 Respondent's 1.

13 MS. PEARSALL: Yes, Your Honor, but I don't
14 have his 1 and so I'm offering my 40. I don't
15 have his exhibits to actually show. It's the
16 same exhibit minus Mr. Alva's exhibit does not
17 contain the envelope so --

18 THE COURT: All right. Florida Bar 40 is
19 admitted.

20 (Thereupon, the exhibit was admitted into evidence.)

21 MR. ALVA: Can you go all the way to the top
22 for a moment?

23 MS. PEARSALL: I can't go all the way to the
24 top.

25 MR. ALVA: Thank you.

1 BY MS. PEARSALL:

2 Q. Okay. I'm down here at paragraph 8, and I'm
3 going to the second paragraph. "The initial reason I
4 had not paid the December invoice sooner was because
5 I was away in Australia and did not return until the
6 23rd of January. Upon my return, I asked my
7 assistant, Trisha O'Rourke, to review it." Do you
8 recall what date you returned now?

9 A. I do now. Yes. This documents the day that
10 I returned.

11 MR. ALVA: Can you go back just a second,
12 Ms. Pearsall, to where you were?

13 Right there. Thank you. Thank you.

14 MS. PEARSALL: I have no further questions.
15 Thank you.

16 MR. ALVA: I have just a couple of lines of
17 inquiry, Your Honor, based on the redirect.

18 THE COURT: Okay.

19 MR. ALVA: And I'm going to try to pull up
20 the exhibits. It's going to take a minute.
21 Since hers are off the screen, I have to pull
22 them out of my computer and I need --

23 THE COURT: We'll take a five-minute break.

24 MR. ALVA: Thank you, Your Honor.

25 (Thereupon, a brief recess was taken.)

1 THE COURT: All right, Mr. Alva.

2 MR. ALVA: I don't see Mr. Nelles. Do you
3 want me to proceed?

4 THE COURT: I have him on my screen. He's
5 here. Mr. Nelles?

6 MR. NELLES: Sorry, Your Honor.

7 THE COURT: All right, very good.

8 All right, Mr. Alva.

9 MR. ALVA: Thank you, Your Honor.

10

11 RE CROSS EXAMINATION

12 BY MR. ALVA:

13 Q. Mr. McCool, I want to show you a document
14 that you testified about during your redirect. And
15 let me get the exhibit number.

16 Do you see the document on the screen,
17 Mr. McCool?

18 A. Sorry? Do I see the date?

19 Q. Do you see the document on the screen?

20 A. Yeah, I see a document on the screen.

21 Q. Okay. In the middle of the screen, do you
22 see that it says, "February 27, 2018, 2:48 p.m., Dan
23 McCool wrote"?

24 A. Yes.

25 Q. And then do you see where it says, "Curtis,

1 Per Dave's advice, I have issued to you full payment
2 of the \$25,040 invoiced to my bank for payment
3 yesterday"?

4 Do you see that?

5 A. Yes.

6 Q. Do you recall testifying about that in your
7 redirect examination?

8 A. Testifying about making the payment?

9 Q. No. Testifying about this e-mail.

10 A. I don't, but I see it.

11 Q. Okay. Who is the Dave that you're referring
12 to when you say, "Per Dave's advice"?

13 A. That is my brother, Dave McCool.

14 Q. And if I remember correctly, Dave McCool is
15 an attorney, right?

16 A. Yes, he is.

17 Q. Is he the general counsel for (inaud.)?

18 MS. PEARSALL: Objection. Relevance.

19 THE COURT: What's the relevance?

20 MR. ALVA: I just want to know a bit about
21 this Dave McCool who is advising Mr. Dan McCool
22 to pay the \$25,000 invoice that was disputed.

23 THE COURT: Sustained on relevance.

24 BY MR. ALVA:

25 Q. The advice that Mr. -- that Dave gave you,

1 was that by e-mail to you?

2 MS. PEARSALL: Objection. Relevance.

3 THE COURT: Sustained.

4 MR. ALVA: Your Honor, this is the advice to
5 Dan McCool that apparently caused him to pay the
6 invoice. And there has been substantial
7 testimony about did he decide to pay the invoice?
8 When did he decide to pay it? Why did he pay it.

9 THE COURT: Your position of the case is he
10 didn't pay it in ten days, therefore, it's an
11 invalid contract, therefore, I can charge a
12 higher fee. So the motivations are not relevant.
13 I'm sustaining the objection.

14 MR. ALVA: Thank you, Your Honor.

15 BY MR. ALVA:

16 Q. Mr. McCool, I'm going to show you a document
17 that you testified about on redirect.

18 Okay, I found it.

19 Mr. McCool, do you recall this May 25, 2018
20 letter to Annemarie Craft that bears your -- or I
21 guess you authorized someone to sign that on Page 3?

22 A. Yes, I recognize it.

23 Q. Do you recognize this as the document you
24 were testifying about in redirect?

25 A. Yes.

1 Q. I want to direct your attention to Page 7.
2 These are the exhibits to the letter that you sent to
3 the Bar, and if you look towards the bottom where
4 it's titled -- highlighted in yellow, can you -- do
5 you recognize that as an e-mail from Dan McCool to
6 David McCool?

7 A. Yes.

8 Q. And can you read, sir, what it says there in
9 the body of the e-mail.

10 A. "It's too stressful and expensive having
11 Curtis and Matt on the case. I will pay Curtis for
12 his work, although I don't agree with his recent
13 invoice. I truly can't afford the mounting legal
14 fees. We can talk when you're available. We are
15 working to follow the federal case and also have the
16 URL motion scheduled in state court. The current
17 legal arrangement have become too much for me. I've
18 got to get this behind me, win or lose, and move on
19 with my life. Talk later."

20 Q. And what's the date of that e-mail, sir?

21 A. February 13th.

22 Q. So is it correct, sir, that as of February
23 13th, you had already decided to pay the December
24 invoice?

25 MS. PEARSALL: Objection. Asked and

1 answered.

2 THE COURT: You can answer.

3 A. I knew in my mind I was going to pay you for
4 your work. I did not specify if it was going to be
5 the amount that you had issued in your invoice. It
6 ended up being that amount but, yes, I was going to
7 pay you.

8 BY MR. ALVA:

9 Q. So is that what you meant when you say, "I
10 will pay Curtis for his work"?

11 A. For the invoice that I was disputing, yes.

12 Q. Okay. Thank you.

13 MR. ALVA: Your Honor, I don't have any
14 other questions on recross-examination for the
15 witness, but I do reserve my right to call him in
16 my case in chief to cover those areas where
17 Ms. Pearsall objected to me covering them on
18 cross-examination.

19 THE COURT: Okay. All right. So we are
20 going to break for lunch. It's now 12:20. So
21 let's come back at, let's just say quarter to
22 two.

23 MS. PEARSALL: Your Honor, sorry to
24 interrupt. Before we break, I know you said
25 during the case we would discuss our motions to

1 take judicial notice.

2 When are we going to do that? I don't want
3 to get past the time when I need to ask that, so
4 that, and I also would like to know can
5 Mr. McCool be excused so he doesn't have to sit
6 on the Zoom all day?

7 THE COURT: Well, Mr. Alva may want to call
8 him as a witness, so that -- I don't know if he's
9 under subpoena by Mr. Alva.

10 MR. NELLES: He's not. He's also in a
11 different time, dramatically different time zone.

12 THE COURT: I understand that. There's
13 nothing I can do about that.

14 So -- well, when we get back from lunch,
15 we'll talk about the judicial notice.

16 MR. ALVA: Your Honor, what time did you say
17 we would reconvene?

18 THE COURT: Let's do quarter to two. That
19 gives you about an hour and 20 minutes for lunch.

20 MR. ALVA: So a quarter until two.

21 THE COURT: 1:45, yes.

22 MR. ALVA: Thank you, Your Honor.

23 MS. PEARSALL: I still have the same
24 question about Mr. McCool. But --

25 A. So a quarter to five? I should stay up at

1 least until quarter to five, is that the directive?

2 MR. NELLES: Wait a minute. Judge, I think
3 that --

4 THE COURT: I didn't say anything. If he's
5 under subpoena from Mr. Alva --

6 MR. NELLES: He's not. He's not under
7 subpoena from Mr. Alva.

8 THE COURT: Then I don't know how Mr. Alva
9 can force him to testify, if he's not under
10 subpoena so -- okay.

11 MR. NELLES: Thank you.

12 THE COURT: See you at lunch -- after lunch.

13 MR. ALVA: Thank you, Your Honor.

14
15 (Thereupon, a luncheon recess was taken.)

16 * * *

17
18
19
20 A F T E R N O O N S E S S I O N

21 THE COURT: All right. I see we have our
22 court reporter. Thank you.

23 All right, we're all back. Mr. Nelles is
24 back.

25 Ms. Pearsall, your next witness?

1 MR. ALVA: Your Honor, could we get
2 Ms. Pearsall to indicate how many witnesses she
3 still thinks she is going to call so I can do
4 some planning.

5 THE COURT: Sure.

6 MS. PEARSALL: Two, maybe three.

7 Possibly just two. The one that's scheduled
8 to go next, and then after that I'll have another
9 witness.

10 MR. ALVA: Can you tell us who that is.

11 MS. PEARSALL: Ms. Shahinian is the next
12 witness, sir.

13 MR. ALVA: No, I mean after her. I
14 understand Ms. Shahinian. Who is the other
15 witness.

16 MS. PEARSALL: I have my expert witness.

17 MR. ALVA: But right now, nobody else?
18 Thank you.

19 THE COURT: You also mentioned that you had
20 some judicial notice, Ms. Pearsall.

21 MS. PEARSALL: Yes, Your Honor. We
22 mentioned this at -- I mentioned at the start of
23 the trial when you were with doing the pretrial
24 motions. The Court said we would get to it while
25 we were in the testimony. So --

1 THE COURT: We can do that while the witness
2 is testifying.

3 MS. PEARSALL: Okay.

4 THE COURT: If it's related to the witness.
5 If it's not related to a witness --

6 MS. PEARSALL: Yes. I believe it's related
7 to the witness and related to the case. I'll go
8 by Your Honor's procedures. That's why I asked
9 to do it before, before we got started because I
10 believe it's related to the case itself, and not
11 just a specific witness. But the complaint
12 that's brought on --

13 THE COURT: Hold on. I have Mr. Alva's
14 notice of judicial -- motion to take judicial
15 notice. I don't see yours.

16 MS. PEARSALL: Mine was filed on October, I
17 believe, 24th, Your Honor.

18 THE COURT: So we don't have a court file.

19 MS. PEARSALL: I can resend it, Your Honor.
20 I'll resend it again.

21 THE COURT: All right. Can you send it
22 directly to my e-mail?

23 MS. PEARSALL: The division e-mail, sir.

24 THE COURT: No, don't do that.

25 MS. PEARSALL: And to your assistant.

1 THE COURT: No, just send it to me.

2 MS. PEARSALL: I actually don't know your
3 e-mail address and I don't know if you want to
4 put it on the record, Your Honor.

5 THE COURT: No. It's fine. It's
6 Jdcohen@17th.FLcourts.org.

7 MR. ALVA: Ms. Pearsall, can you copy me on
8 that.

9 MS. PEARSALL: I was going to do that
10 anyway, Mr. Alva, but yes.

11 MR. ALVA: Thank you very kindly.

12 Your Honor, while she's sending that, a
13 quick issue. Ms. Shahinian appears to be sitting
14 in front of a bright window and so it's making it
15 very difficult to see her face.

16 Can we ask her to reorient herself so she
17 doesn't have that bright window behind her?

18 THE COURT: Okay. It's more of a backlight
19 issue. I don't know if there's a light in the
20 room.

21 THE WITNESS: Can you see me? Oh, yeah, I
22 can try turning that off.

23 (Thereupon, there was a brief discussion off the
24 record.)

25 MR. ALVA: Your Honor, if it will expedite

1 things, I didn't see anything in the documents
2 that she wanted you to take judicial notice that
3 I objected to, and it's possible she also doesn't
4 object to mine. And rather than hearing argument
5 on it, we can just stipulate that the Court can
6 take judicial notice of each other's documents in
7 the motions. I'm happy to do that.

8 THE COURT: I don't have a copy of the Bar's
9 motion anyway, so I still need to get it.

10 MS. PEARSALL: Okay, I'm going to --

11 MR. ALVA: I think I can put it on the
12 screen, Your Honor, if that would help.

13 Would that assist the Court?

14 THE COURT: Well, Ms. Pearsall, are you
15 agreeing to stipulate to Mr. Alva's --

16 MS. PEARSALL: Motion.

17 THE COURT: -- motion for judicial notice?

18 MS. PEARSALL: No. I can't agree to
19 stipulate or will not agree to stipulate to
20 compulsory judicial notice, because I do not
21 believe Mr. Alva submitted his document timely,
22 gave written timely notice of it.

23 So the compulsory judicial notice comes in
24 at 90.203. 90.202 of the Florida statutes says
25 the Court may take judicial notice, but I can't

1 agree to compulsory judicial notice under 90.203.

2 I would note that I have two documents for
3 my notice for judicial notice, and one of those
4 documents is listed as Mr. Alva's Number 20,
5 which is the final judgment dated June 22, 2022.

6 So we have -- two of the items we have are
7 exactly the same, Your Honor. So that's what I'm
8 trying to say. I have two items and he has about
9 20 -- 23.

10 MR. ALVA: Do I understand correctly,
11 Ms. Pearsall, that you're willing to stipulate to
12 permissive judicial notice for each of the items?
13 Maybe we can do it that way.

14 MS. PEARSALL: The rule says that the Court
15 may, so that would be up to the Court to
16 determine whether they will for those items in
17 your motion. As far as the Bar's motion, once I
18 can get another copy over to the Court, I believe
19 it qualifies under the may and as well as the
20 compulsory judicial notice for my two items, Your
21 Honor.

22 THE COURT: Okay. Let's call the next
23 witness. And then Ms. Pearsall, we need to stop
24 today at four o'clock sharp. So let's call the
25 next witness and then overnight you can e-mail me

1 your motion for judicial notice.

2 Mr. Alva, just in general, I'd looked at
3 your motion to take judicial notice, and a lot of
4 it is not related to the disciplinary, the Bar
5 case, it's more related to the civil lawsuit that
6 you have in Palm Beach.

7 So perhaps overnight you may want to narrow
8 it down so we don't have to go through 23 items,
9 many of which are just not -- have no relevance
10 to our case.

11 MR. ALVA: Yes, Your Honor. If I understand
12 correctly, this Bar proceeding is limited to
13 claims that don't arise from the breach of the
14 engagement letter, so they arise from something
15 other than that.

16 So if is something that arises from a breach
17 of the engagement letter, that's in the civil
18 litigation where they brought a claim for breach
19 of contract.

20 So if that understanding is correct, Your
21 Honor, that would allow me to go through the
22 items that are in my list and if it's something
23 that relate solely to, oh, this is unethical
24 because it was a breach of contract, I can
25 eliminate those, Your Honor.

1 So I just want to make sure I understand
2 which ones you think it would be appropriate to
3 eliminate.

4 THE COURT: I don't want to steer anybody in
5 the wrong direction. So, Mr. Alva, it's my
6 understanding that your defense is because
7 Dr. Colorchip violated the terms of your
8 contract, that you have a right to modify it. So
9 that's an issue -- that's your defense in the Bar
10 case. That, I have no problem allowing you to go
11 into those areas.

12 It's when you -- what happened in the civil
13 case in Palm Beach where you got sued because you
14 didn't return the retainer agreement, that's not
15 relevant in the Bar case.

16 MR. ALVA: Your Honor, if I can, for just a
17 minute, the defense in this disciplinary
18 proceeding to the claim that I violated the rules
19 of ethics by changing the rate, the hourly rate
20 to a rate that was not in the contract, my
21 defense to that is that that is not a
22 disciplinary issue, that is an ordinary civil
23 litigation issue and has already been litigated.

24 So if that's the issue we're talking about,
25 Your Honor, then I know which ones I can take out

1 of my motion for judicial notice. I didn't know
2 that before we started the trial, Your Honor, as
3 you didn't. But if that's a correct
4 understanding, I now know which ones to take out.

5 THE COURT: But they're also saying that you
6 didn't communicate with the client because --

7 MR. ALVA: Yes.

8 THE COURT: -- because --

9 MR. ALVA: I understand.

10 THE COURT: -- you didn't tell them that you
11 would do that if they didn't pay within the ten
12 days.

13 MR. ALVA: I understand that.

14 THE COURT: So it's connected somewhat.

15 MR. ALVA: So I'm not including that. The
16 only thing that I understand that Your Honor is
17 saying is not part of the disciplinary proceeding
18 is that there was a violation of the rules of
19 ethics by breaching the contract and changing the
20 hourly rate. So if that's a correct
21 understanding, I know what to take out, and that
22 would not include the additional claim for a
23 breach of the rule for failure to explain matters
24 to a client sufficiently for the client to make
25 informed decisions.

1 I understand that's separate.

2 MS. PEARSALL: All right. Well, Your Honor,
3 if I could just add on, the Bar's complaint is
4 the Bar's complaint, and once I get the motion
5 for judicial notice over to you, I believe the
6 two items that I've listed are relevant to the
7 proceedings, and under the Florida Bar rules, the
8 Court is authorized to consider relevant
9 evidence, including trial transcript or judgment
10 from a civil proceeding.

11 So I believe it's -- it may be relevant and
12 maybe we should address it with -- before the
13 Court tomorrow, Your Honor.

14 THE COURT: All right. So --

15 MS. PEARSALL: That may be the best.

16 THE COURT: All right. Please announce your
17 next witness.

18 MS. PEARSALL: Okay. The Bar calls
19 Ms. Patricia Shahinian, please.

20 THE COURT: Ma'am, raise your right hand.
21 Thereupon,

22 PATRICIA SHAHINIAN,
23 having been duly sworn by the Court, testified as
24 follows:

25 THE COURT: State your name and spell your

1 last name for the court reporter.

2 A. Patricia Shahinian, S-H-A-H-I-N-I-A-N.

3 THE COURT: Thank you. All right,

4 Ms. Pearsall, you can inquire.

5 MS. PEARSALL: Your Honor, one other
6 technical matter, pursuant to the oath, if the
7 witness is not located in the State of Florida,
8 the witness must consent to be bound by an oath
9 administered under the general laws of the State
10 of Florida.

11 THE COURT: Where are you located,
12 Ms. Shahinian?

13 A. Florida.

14 MS. PEARSALL: Oh, okay, sorry.

15 A. I'm back.

16 MS. PEARSALL: Okay. All right. Thank you.

17

18 DIRECT EXAMINATION

19 BY MS. PEARSALL:

20 Q. Ms. Shahinian, in 2016 and 2017, did you use
21 a different name last name?

22 MR. ALVA: Your Honor, I think this is the
23 proper time for me to object to this witness
24 testifying to any matters in this because the
25 witness was not deposed in this matter.

1 Your Honor signed a subpoena for her to
2 appear for her testimony in July. She was to
3 appear during the second or third week in July.
4 She was duly noticed. She did not appear at that
5 time. Her counsel, Mr. Nelles, made a motion for
6 a protective order. And, ultimately, a second
7 motion for protective order. That was denied by
8 the Court in its entirety, so she failed to
9 appear based on reasons that the Court has
10 rejected.

11 Mr. Nelles did not schedule his motion for
12 protective order until September, even though it
13 was filed in July.

14 By delaying the proceedings until September,
15 that effectively eliminated my ability to get
16 service on Ms. Shahinian during the time that
17 remained. So I have not been able to depose her.
18 She did not produce any of the documents that
19 Your Honor ordered her to produce when Your Honor
20 signed the subpoena and those documents should
21 have been produced in any event.

22 She has, apparently, documents in her
23 possession, custody or control, and I have not
24 been given access to those, so I am materially
25 prejudiced by her failure to appear and by her

1 failure to produce documents, and I object to her
2 testifying at this hearing.

3 MR. NELLES: Do you want to hear from me.

4 MS. PEARSALL: No, that's fine. I'll go.

5 Your Honor, the witness has relevant
6 information and testimony to present in this
7 case. The witness has been willing to appear to
8 be deposed. I noticed in Mr. Alva's recitation
9 he kept saying "duly noticed," but he never said
10 "served with a subpoena."

11 So I would note that Ms. Alva never served
12 Ms. Shahinian to appear for trial or
13 deposition -- I'm sorry -- with a subpoena. And
14 also, previously, Ms. Shahinian had agreed to
15 appear on at least two dates. One date I gave to
16 Mr. Alva where she would appear and Mr. Alva
17 chose not to set a deposition on that particular
18 date, and most recently, in November 2nd of 2022,
19 Ms. Shahinian, through her counsel, had agreed to
20 appear for depositions. I was ready to appear
21 and a little after 9 a.m. on September 2nd, I
22 sent an e-mail to Mr. Alva --

23 MR. NELLES: November.

24 MS. PEARSALL: November, I sorry, 2nd of
25 2022, I sent an e-mail to Mr. Alva requesting

1 him to provide me with the Zoom link for that
2 particular deposition. Mr. Alva chose not to
3 depose Ms. Shahinian on that date.

4 It is my understanding that she would
5 need -- she was going to appear voluntarily on
6 that date but Mr. Alva didn't arrange whatever he
7 needed to arrange to have the deposition take
8 place.

9 There -- I do not believe there is any
10 prejudice in this case. Mr. Alva has knowledge
11 and information about what Ms. Shahinian is
12 prepared to testify about. He has received
13 documentation in this case. In fact, Mr. Alva
14 has presented direct communications that he had
15 with Ms. Shahinian directly related to the Bar's
16 complaint in the December of 2017 invoice. So
17 that is my argument, Your Honor.

18 MR. ALVA: If I may respond?

19 THE COURT: Do you have proof of service for
20 the deposition?

21 MR. ALVA: I was not able to serve her in
22 the brief time that was remaining in the schedule
23 after Your Honor denied the second motion for
24 protective order. That second motion for
25 protective order was only denied a couple of

1 weeks before the trial date, Your Honor. I tried
2 to get her served. I did not have enough time.

3 Ms. Pearsall's representation that
4 Mr. Nelles said that the witness had agreed to
5 appear without a subpoena is correct, but he said
6 that she was not going to bring any of the
7 documents that had been ordered in the subpoena
8 that you signed.

9 So the subpoena that you signed that I was
10 not able to serve directed her to produce all of
11 the documents that relate to the testimony that
12 she's going to give.

13 Mr. Nelles wrote to me and said, she's
14 willing to appear, but she is not bringing no
15 documents. I would not agree to take the
16 witness' deposition without the documents that
17 were called for in the subpoena.

18 So the offer to have her appear with no
19 documents was not accepted, and there's no
20 requirement that I agree to depose the witness
21 when the documents that you ordered her to
22 produce were being withheld.

23 There is substantial prejudice to me, Your
24 Honor, because the only documents I have are the
25 documents that I already had where I e-mailed her

1 directly or she e-mailed me.

2 What I don't have are the e-mails between
3 her, for example, and Daniel McCool, and Daniel
4 McCool has testified extensively that he was
5 talking to Trish about the issues that are at
6 stake in this case. She was also communicating
7 with others, and I don't have any of those
8 e-mails.

9 So I don't have any internal documents
10 between anybody and Trish. I only have external
11 documents that were sent to me. Those documents,
12 Your Honor, we don't know what they contain. But
13 it is almost a certainty that they relate to the
14 testimony that she would give here and that is
15 extreme prejudice, Your Honor, because we don't
16 even know what the e-mails say.

17 MR. NELLES: Mr. Alva --

18 THE COURT: What I'm hearing is you never
19 served her so you didn't took her depo, so I'm
20 not excluding her.

21 All right, Ms. Pearsall, your first
22 question.

23 BY MS. PEARSALL:

24 Q. Ms. Shahinian, in 2016, 2017, and 2018, did
25 you go by the name of Trisha O'Rourke?

1 A. Yes.

2 Q. Where did you work in August of 2016?

3 A. I worked -- I worked for either -- and I say
4 this -- I worked for Dan McCool or Dr. ColorChip. I
5 started working for Dan McCool personally and then at
6 some point in time, I started working for
7 Dr. ColorChip.

8 I think I was working for Dr. ColorChip on
9 the date that you're talking about.

10 MR. ALVA: Your Honor, I can't understand
11 what she is saying. I don't think her internet
12 connection is -- I only hear about half the
13 words. The other words are indecipherable.

14 THE COURT: If you can make an effort to try
15 to talk into the mic and project as much as you
16 can.

17 A. I believe I was working for Dr. ColorChip in
18 August of 2016.

19 THE COURT: Perfect.

20 BY MS. PEARSALL:

21 Q. Are you still working at Dr. ColorChip?

22 A. No.

23 Q. When did you stop working at Dr. ColorChip?

24 A. I believe it was September of 2018.

25 Q. And how do you know Curtis Alva?

1 A. I met Curtis at Lake Park Tennis. I played
2 tennis with his wife Dorothy Alva. We were on a
3 tennis team together and so I knew Curtis from Lake
4 Park Tennis.

5 Q. Did you have e-mail communications with
6 Curtis Alva regarding an invoice that Curtis Alva
7 sent to Dr. ColorChip in the amount of \$25,040 for
8 services in December of 2017?

9 A. Yes.

10 Q. I'm showing you an item that's already in
11 evidence. This is the Florida Bar's Exhibit 50. I'm
12 going to go down -- 50B, I'm sorry, go down to
13 invoice, and it says Invoice Number 90.

14 Are you able to see that, ma'am?

15 A. Yes.

16 MR. ALVA: Can you scroll to the top,
17 Ms. Pearsall.

18 MS. PEARSALL: (Complies.) That's the top.

19 MR. ALVA: Thank you.

20 MS. PEARSALL: Okay.

21 BY MS. PEARSALL:

22 Q. All right. So I'm going to go down to the
23 very last page of Exhibit 50B. And do you see the
24 amount there of \$25,040 as the total?

25 A. Yes.

1 Q. And this is the invoice that you had
2 communications -- this is the particular invoice I'm
3 referring to that you had communications with
4 Mr. Curtis Alva about?

5 A. Yes.

6 Q. And did you ask questions about the amount
7 of the invoice and the charges contained in the 2017
8 invoice?

9 A. I asked questions about the work in the
10 invoice.

11 Q. Now, when you were working at Dr. ColorChip,
12 was it normal for you to be included on the e-mails
13 when the invoices came in from Mr. Alva or his firm,
14 Alva and Gleizer?

15 A. I was except towards the end he stopped
16 coding me on the invoices, so I believe the last
17 three or four he did not code me on.

18 Q. And can you see the date of the invoice?
19 Invoice Number 90, can you see the date or do I need
20 to make it bigger?

21 A. It's fine. I don't actually see that it
22 says 90 because that's cut off, but you actually just
23 made it bigger. So what I could see --

24 Q. Okay, let me take it down. There, is that
25 better?

1 A. Yes, I can see it.

2 Q. And can you see the date?

3 A. Yes.

4 Q. And what's the date?

5 A. 1-9-2018.

6 Q. Now, if an invoice came into Dr. ColorChip
7 on January 9, 2018, and you weren't included in the
8 e-mail, you wouldn't be able to see it, would you?

9 A. No. That's correct.

10 Q. And do you see this e-mail that's up on the
11 screen, it says, "Curtis Alva, Tuesday, January 9,
12 2018, 6:26 p.m., to Dan McCool, December's invoice"?

13 A. Yes.

14 Q. Do you see your e-mail anywhere on there for
15 the Dr. ColorChip Corporation?

16 A. No.

17 Q. And I'm going up again, and this is another
18 e-mail sent Monday, February 5, 2018, 10:46 a.m., to
19 Dan McCool for December invoice.

20 Do you see your name in the "to" subject
21 line or cc'd in that e-mail?

22 A. I do not.

23 MR. ALVA: Ms. Pearsall, are we in the same
24 exhibit, we're still in 50B when you're
25 scrolling.

1 MS. PEARSALL: Yes, sir, right there. I'm
2 on the first page, the Bates stamped first page.

3 MR. ALVA: Thank you.

4 MS. PEARSALL: You're welcome.

5 BY MS. PEARSALL:

6 Q. Okay, I'm going to share my screen again.
7 If I need to make it bigger, you'll let me know?

8 A. Yeah, that's fine.

9 (Thereupon, the exhibit was marked for identification.)

10 BY MS. PEARSALL:

11 Q. Okay. I'm showing you what's marked as the
12 Florida Bar's Exhibit 26. What is this and how do
13 you recognize it?

14 A. This is an e-mail I sent to Curtis telling
15 him that I needed time to review the December invoice
16 and --

17 Q. I'm going to scroll down so you can see the
18 rest of it, the rest of the exhibit. Okay, that's
19 the end. Okay.

20 Does this exhibit, the Florida Bar's Exhibit
21 26, appear in the same or substantially the same
22 condition as you recall it?

23 A. Yes.

24 MS. PEARSALL: The Florida Bar offers the
25 Bar's Exhibit 26 into evidence.

1 THE COURT: Any objection?

2 MR. ALVA: No, Your Honor.

3 THE COURT: Okay, that will be 26.

4 (Thereupon, the exhibit was admitted into evidence.)

5 BY MS. PEARSALL:

6 Q. And Ms. O'Rourke, now the subject line for
7 this e-mail, Bar's 26, does it say, "Questions on
8 December bill"?

9 A. Yes.

10 Q. Now, when you sent this to Mr. Alva, it says
11 you needed additional time to review the
12 bill/invoice. Can you tell me --

13 A. Yes.

14 Q. -- why or why at this time did you need
15 additional time?

16 MR. ALVA: Your Honor --

17 BY MS. PEARSALL:

18 Q. If you need me to make it bigger, I can.

19 A. It's fine.

20 MR. ALVA: Your Honor, she's enlarging and
21 shrinking and now that I see the current view of
22 the document, I see that the document has
23 marginalia that is not part of the original
24 e-mail. So I'm wondering if I could --

25 THE COURT: Yes.

1 MR. ALVA: So the marginalia os stripped.

2 Thank you.

3 BY MS. PEARSALL:

4 Q. Okay, if you could just read the first
5 paragraph starting with you and Curtis, ma'am, and
6 you don't have to go through the numbers, just, "Dear
7 Curtis?"

8 A. "As I mentioned, I needed additional time to
9 review the December invoice as you billed us a
10 startling \$25,040. This was for the period that Dan
11 was mostly out of town and I was undergoing cancer
12 treatment. At any rate, I would appreciate it if you
13 could please provide me with the following
14 information regarding the December 2017 invoice, so I
15 can conclude my review and instruct Dan with regard
16 to payment."

17 And there is another reason why we're doing
18 this in February and not sooner, if you want to know
19 what that is.

20 MR. ALVA: Your Honor, I move to strike the
21 last part of her answer as nonresponsive.

22 THE COURT: Sustained.

23 BY MS. PEARSALL:

24 Q. Ms. Shahinian, now, when I read this, you
25 say, "As I mentioned, I needed additional time?"

1 So why hadn't you reviewed the Invoice
2 Number 90 prior to this particular e-mail or finished
3 your review?

4 A. I didn't get the invoice originally, and
5 neither did Dan, because I believe that when Curtis
6 said, "You haven't paid the invoice," Dan hadn't
7 gotten it, for whatever reason, or maybe he just
8 didn't see it.

9 MR. ALVA: Your Honor --

10 A. So that automatically --

11 THE COURT: Hold on, hold on. There's an
12 objection.

13 MS. PEARSALL: Wait, ma'am.

14 MR. ALVA: Your Honor, that's nonresponsive
15 to the question.

16 THE COURT: Sustained. Yeah. So, Patricia,
17 if you could just listen to the question and only
18 answer the question that's asked and then not
19 leave the topic. Okay?

20 BY MS. PEARSALL:

21 Q. So, ma'am, regarding your receiving or being
22 sent or forwarded a copy of the invoice, Invoice
23 Number 90 with the date of January 9, 2018, did you
24 receive that invoice from Mr. Alva when it first came
25 in or did you get it when it first came in to

1 Dr. ColorChip?

2 MR. ALVA: Objection. Compound.

3 THE COURT: Overruled.

4 A. No.

5 BY MS. PEARSALL:

6 Q. And now, I'm directing you back to Exhibit
7 26. There are seven questions here. And were all of
8 these questions related to the December invoice or
9 Invoice Number 90?

10 A. Yes.

11 Q. Ms. Shahinian, when you were asking these
12 questions of Mr. Alva, did you ask these questions in
13 bad faith?

14 A. No.

15 Q. And why did you ask these questions about
16 Mr. Alva's December of 2017 bill?

17 A. Because there was various work that I just
18 had a problem understanding the enormity of what we
19 were being charged. And I can go into detail if you
20 want me to.

21 Q. And while you were working at Dr. ColorChip
22 and Mr. Alva was sending invoices, are you aware of
23 any instance where Mr. Alva, or do you recall any
24 instance where Mr. Alva asked Dr. ColorChip or Dan
25 McCool to pay an invoice sooner than ten days?

1 A. Yes.

2 Q. I am showing you what's marked as the
3 Florida Bar's Exhibit 40. It's in evidence. This is
4 Bates stamped page 008.

5 MR. ALVA: Can I see the top of it,
6 Ms. Pearsall.

7 MS. PEARSALL: That's the top of the page.

8 What did you need, Mr. Alva? The first page
9 of the exhibit?

10 MR. ALVA: Yes, please.

11 MS. PEARSALL: This is the first page of the
12 exhibit.

13 MR. ALVA: You're going just a little too
14 quickly. Can you go back to the top.

15 MS. PEARSALL: Okay.

16 MR. ALVA: Thank you.

17 BY MS. PEARSALL:

18 Q. Okay, Ms. Shahinian, on the page is a list
19 of a number of invoices and it says "amounts paid"
20 and it has quite a few numbers here.

21 So I'm going to scroll down and are you able
22 to see where it says Invoice Number 90 there?

23 A. Yes.

24 Q. And with the date of 1-9-18 and \$25,040
25 paid?

1 A. Yes.

2 Q. Now, all of these invoice amounts listed
3 here beginning at Number 64, all the way down to
4 Number 93, do they all say that they were paid?

5 A. Yes.

6 Q. In your time reviewing the invoices that
7 Mr. Alva would send Dr. ColorChip, do you recall any
8 invoice prior to the Invoice Number 90 that would be
9 the December 2017 invoice? So I'm going to start my
10 question over.

11 While working at Dr. ColorChip, while you
12 were reviewing or seeing the invoices, other than
13 that -- prior to the December 2017 invoice, do you
14 recall Dr. ColorChip not paying or the amount timely?

15 A. Yeah. Dan always paid timely.

16 MR. ALVA: I'm sorry, what was that?

17 A. Dan always paid his bills timely.

18 MR. ALVA: Your Honor, I object to the extra
19 comment at the end as being nonresponsive.

20 THE COURT: Sustained and stricken.

21 MS. PEARSALL: That's over the Bar's
22 objection.

23 BY MS. PEARSALL:

24 Q. Ms. Shahinian, we're back on Exhibit 50B
25 that we just looked at a few moments ago, and this is

1 Invoice Number 90. And if you could look over here
2 to this side where it says, "Re: William McLean,"
3 and going down, all the way down, right here, date,
4 what's the first charge on Invoice Number 90, the
5 date of the first charge?

6 A. 12-1 of 2017.

7 Q. Ms. Shahinian, was -- after this invoice,
8 Invoice Number 90 came in, do you recall if another
9 invoice came in from Mr. Alva's Invoice Number 93?

10 A. I believe there was at least one invoice
11 after the December invoice.

12 Q. And after the December invoice, do you know
13 if eventually the invoice that came in after the
14 December invoice, do you know whether that was paid,
15 the -- I believe it would have been Invoice Number
16 92?

17 MR. ALVA: Objection. Compound.

18 THE COURT: Overruled.

19 A. Yes, it was paid. They were all paid.

20 BY MS. PEARSALL:

21 Q. And from your work at Dr. ColorChip, the
22 questions you asked in December of 2017 -- I'm sorry,
23 the e-mail you sent about the 2017 invoice, prior to
24 that invoice coming in, had the bills just been paid
25 without question?

1 A. I had made a couple of comments but, yes,
2 they were paid without question.

3 MS. PEARSALL: I don't have any further
4 questions, Your Honor.

5 THE COURT: Mr. Alva?

6 MR. ALVA: Thank you, Your Honor.

7 Let me see if I can pull up my copies of her
8 exhibits, Your Honor.

9 Ms. Pearsall --

10 MS. PEARSALL: Which one.

11 MR. ALVA: -- could you put your Exhibit 26
12 back up on the screen, please? That might be the
13 fastest way to do it.

14 MS. PEARSALL: (Complies.)

15 Okay, I'll share it. It says 26.

16 MR. ALVA: Thank you.

17
18 CROSS EXAMINATION

19 BY MR. ALVA:

20 Q. Ms. Shahinian, do you see the Bar's Exhibit
21 26 on the screen?

22 A. Yes.

23 Q. And in the first line, tell me if I read
24 this correctly, "As I mentioned, I needed additional
25 time to review the December invoice as you billed us

1 a startling \$25,040."

2 Did I read that correctly?

3 A. Yes.

4 Q. Does the e-mail say anything about you not
5 having received the invoice on or about January 9th?

6 A. No.

7 Q. Does the e-mail say anything about
8 Mr. McCool not receiving the invoice on or about
9 January 9th?

10 A. This particular e-mail does not say that.

11 Q. Are you aware of another e-mail that says
12 that Mr. McCool did not receive it on or about
13 January 9th?

14 A. There was a conversation with you that he
15 didn't get it the first time.

16 Q. Ms. Shahinian, that wasn't my question to
17 you.

18 MR. ALVA: Your Honor, I move to strike that
19 as nonresponsive.

20 THE COURT: Okay. Stricken.

21 BY MR. ALVA:

22 Q. Ms. Shahinian, is there another e-mail that
23 you're aware of --

24 MS. PEARSALL: I'm sorry, I'm moving the
25 exhibit. I apologize. I didn't mean to. I'll

1 go back.

2 Okay, there it is, 26.

3 MR. ALVA: Thank you, Ms. Pearsall.

4 BY MR. ALVA:

5 Q. So Ms. Shahinian, is there another e-mail
6 that you're aware of that states that Dan did not
7 receive the invoice on or about January 9th?

8 A. I don't remember if it was a conversation or
9 if it was in an e-mail. But there was discussion
10 that he didn't get the first -- he didn't get the
11 first e-mail from you with that December invoice.

12 Was it an e-mail or did he say it in a
13 conversation?

14 MR. ALVA: Your Honor, I asked a question.
15 That entire speech by her is nonresponsive and I
16 move that it be stricken.

17 THE COURT: Sustained.

18 MR. ALVA: Your Honor, would it be untoward
19 for me to ask you to instruct her to listen
20 carefully to the questions and answer them?

21 THE COURT: I think I already have. Please
22 just answer the questions that are asked and
23 don't embellish or elaborate more. You'll have
24 an opportunity with Ms. Pearsall to explain your
25 answers.

1 MR. ALVA: Thank you, Your Honor.

2 BY MR. ALVA:

3 Q. Ms. Shahinian, are you aware of any other
4 e-mail that states that Dan did not receive the
5 invoice on or about January 9th?

6 A. Not at this time.

7 Q. Are you aware of any other e-mail that
8 states that you did not receive the invoice on or
9 about January 9th?

10 A. Not at this time. I'd have to go back and
11 look at all the e-mails.

12 Q. Is there any other occasions you can recall,
13 Ms. Shahinian, where you ever told me that you had
14 not received the invoice on or about January 9th?

15 A. Can you repeat that?

16 MR. ALVA: Madam Reporter, would you read
17 that back to the witness?

18 (Thereupon, the court reporter read back the
19 requested portion.)

20 A. I did tell you that we didn't -- that Dan
21 didn't receive the invoice the first time you sent
22 it. Are you talking about the second time you sent
23 it?

24 MR. ALVA: Your Honor, her internet
25 connection isn't allowing me to understand her

1 answer.

2 THE COURT: I did. I was able to hear her
3 clearly.

4 MR. ALVA: Madam Reporter, would you read
5 the question back to Ms. Shahinian.

6 (Thereupon, the court reporter read back the
7 requested portion.)

8 MR. ALVA: Your Honor, that's not responsive
9 either. I move to strike that. The question
10 asked if she had ever told me, and she's
11 answering what she thinks Dan did.

12 THE COURT: Sustained.

13 BY MR. ALVA:

14 Q. Ms. Shahinian, would you please answer the
15 question that I asked?

16 A. Oh, I'm sorry. I don't remember if I told
17 you or Dan told you that he did not receive it the
18 first time.

19 Q. Ms. Shahinian, I'm not asking you what you
20 recall about that.

21 MR. ALVA: Your Honor, I don't know how to
22 get the witness to answer the questions. Her
23 answer was nonresponsive. I make a motion to
24 have it stricken.

25 THE COURT: Stricken.

1 MR. ALVA: Madam Reporter, would you read
2 the question back to the witness, just the
3 question.

4 (Thereupon, the court reporter read back the
5 requested portion.)

6 A. So when you say on any other occasion, is
7 that the -- so that excludes the one that I just told
8 you that -- I think it was me that said --

9 THE COURT: The problem is that you keep
10 including Dan in your answers and he's asking you
11 about you specifically.

12 A. Oh, I believe I'm the one -- I believe I'm
13 the one who confirmed to him, either in an e-mail or
14 by voice, that Dan didn't get the first one. I
15 believe it was me.

16 BY MR. ALVA:

17 Q. No. I'm not asking you whether Dan received
18 it.

19 A. Then I don't recall. Then I don't recall.

20 Q. So would it be true, then, Ms. Shahinian,
21 that the first time you have ever told me that you
22 did not receive the invoice, on or about January 9th,
23 is today?

24 A. Repeat that again.

25 MR. ALVA: Madam Reporter, would you read

1 the question back to the witness.

2 (Thereupon, the court reporter read back the
3 requested portion.)

4 A. No. I just said what, I just literally said
5 what I think happened. So that would be no.

6 BY MR. ALVA:

7 Q. Then would you, please, Ms. Shahinian,
8 identify to me the earlier occasion where you told me
9 that you did not receive the invoice on or about
10 January 9th?

11 A. Well, I wouldn't have received it because
12 you stopped sending me the invoices. You only sent
13 them to Dan. So I said that Dan didn't receive the
14 first invoice.

15 MR. ALVA: Your Honor, that's nonresponsive.

16 I make a motion to strike and --

17 THE COURT: That one is overruled.

18 MR. ALVA: Thank you, Your Honor.

19 BY MR. ALVA:

20 Q. When you worked at Dr. ColorChip, did you
21 communicate with Dan McCool by e-mail?

22 A. Both. He only sat three feet away from me.
23 So if he was in the office, we usually communicated
24 that way by voice or in a conference room.

25 Q. That wasn't my question, Ms. Shahinian.

1 This is a yes or no question. When you worked at
2 Dr. ColorChip, did you communicate with Dan McCool by
3 e-mail?

4 A. Yes.

5 Q. Thank you. And did you -- what e-mail
6 address did you use to communicate with him?

7 MS. PEARSALL: Objection. Relevance.

8 THE COURT: Overruled.

9 A. He has two. If it was business, I probably
10 would have got Dan@Dr. ColorChip, but it could also
11 have been his personal e-mail as well just to make
12 sure he got it.

13 BY MR. ALVA:

14 Q. And did you also use a personal e-mail to
15 send communications that related to Dr. ColorChip?

16 MS. PEARSALL: Objection. Relevance.

17 THE COURT: Overruled.

18 A. When I first worked for Dan, I would use my
19 personal because it wasn't -- I wasn't actually an
20 employee of Dr. ColorChip. When I became an employee
21 of Dr. ColorChip, I believe I got the
22 Trisha@Dr. ColorChip e-mail and I'm pretty sure I
23 started just using that.

24 But I don't recall if I absolutely did it
25 every time.

1 BY MR. ALVA:

2 Q. When you are conducting Dr. ColorChip
3 business, did you ever use an Earthlink e-mail
4 address to send e-mails?

5 MS. PEARSALL: Objection. Relevance.
6 Outside of the scope of direct.

7 THE COURT: What's the relevance?

8 MR. ALVA: I'm trying to find out about the
9 communications that she had with Dan about
10 whether to pay and the questions that she asked
11 me, and I'm concerned that there are some e-mails
12 that relate to it that are from an Earthlink
13 e-mail address and I don't have it.

14 THE COURT: I'll allow it.

15 A. I had an Earthlink address a long time ago.
16 I don't remember if I -- I doubt I used it at that
17 point in time. It's a very old -- it's a very old
18 address so I don't know.

19 BY MR. ALVA:

20 Q. The questions that appear on the exhibit
21 that's on the screen, Ms. Shahinian, Exhibit 26 of
22 the Bar, are these questions that you discussed with
23 Dan?

24 A. I believe I asked him about if I could ask
25 you some questions regarding the bill. And he said,

1 sure, go ahead.

2 I'm not sure if I discussed every -- no, I
3 don't think I did. I think I asked him if I could
4 ask you some questions. I might have given him an
5 example, just so he would know what I was doing, but
6 I don't think I -- I don't think I discussed with him
7 in detail the questions I was going to ask you. I
8 probably hadn't formulated it yet. I probably just
9 had my general what I wanted to ask about and I asked
10 him if it was okay. And he said, yeah, go ahead.

11 BY MR. ALVA:

12 Q. So do you know whether Dan needed any
13 information from me regarding the tax issue that you
14 ask about in Question Number 1?

15 MS. PEARSALL: Objection. Calls for
16 speculation.

17 THE COURT: Can you repeat your question?

18 BY MR. ALVA:

19 Q. Do you know whether Dan needed the
20 information that you requested in Question Number 1?

21 THE COURT: That would call for speculation.
22 Sustained.

23 MR. ALVA: Your Honor, I'm not asking her to
24 disclose the information. I'm only asking her a
25 yes or no question, does she know.

1 THE COURT: You would have to lay a
2 predicate before she could answer yes or no.

3 MR. ALVA: Thank you, Your Honor.

4 BY MR. ALVA:

5 Q. Did you discuss with Dan the question that
6 you asked in Question Number 1 in Exhibit 26?

7 A. He discussed the tax issue. I wasn't -- I
8 was a little bit involved in it because I had gotten
9 Mike Guillard to look over something. And so I was a
10 little bit informed about it.

11 But the reason why I questioned that was
12 because of the enormity of the amount that was spent
13 on the tax issue.

14 MR. ALVA: Your Honor, I make a motion to
15 strike as nonresponsive.

16 THE COURT: I didn't follow that. I'm
17 sorry.

18 A. Am I supposed to answer?

19 THE COURT: No. Let's move on to the next
20 question.

21 MR. ALVA: Ms. Pearsall, can you scroll down
22 a little bit?

23 MS. PEARSALL: (Complies.)

24 BY MR. ALVA:

25 Q. Ms. Shahinian, did you review the entire

1 Invoice Number 90 that was shown to you by
2 Ms. Pearsall?

3 A. The one for 25,040?

4 Q. Yes.

5 A. Yes.

6 MR. ALVA: Ms. Pearsall, can you put that
7 back up on the screen for us. And thank you for
8 your courtesy of doing that.

9 MS. PEARSALL: (Complies.)

10 BY MR. ALVA:

11 Q. Ms. Shahinian, I found my copy. So I'm
12 going to put that up instead and thank you for being
13 willing to do that.

14 Do you see on the screen, Ms. Shahinian,
15 Invoice Number 90?

16 A. Yes.

17 Q. Okay. So this invoice is four pages long.
18 And I'll flip through it for you, Page 1, Page 2,
19 Page 3, and Page 4. It's your testimony that you
20 looked at every item on that invoice?

21 A. Yeah. Probably several times.

22 Q. And did you look at the amount of time that
23 was billed for each item?

24 A. Well, you didn't break it down like that so
25 I wasn't able to do that.

1 Q. Well, when I say item, Ms. Shahinian, for
2 example, December 1, 2017, do you see that entry?

3 A. Yes.

4 Q. Okay. So we'll call them entries. Did you
5 look at the time that was billed for every entry on
6 the invoice?

7 A. Yes.

8 Q. And did you look at the amount that was
9 billed for every entry on the invoice?

10 A. Yes.

11 Q. And when you sent me your e-mail, which was
12 Exhibit 26 with your list of questions, did you have
13 any questions about the invoice that you did not
14 present to me in your e-mail?

15 A. I would say, yes, but I wanted to stick with
16 what I really felt was egregious behavior on your
17 part to -- the answer to that is yeah. I had other
18 questions but I was trying to stick with what I felt
19 I really had a handle on in terms of the charges and
20 the work that was being done.

21 Q. So would it be correct that every
22 significant question that you had you sent to me in
23 your e-mail?

24 A. Well, they're all significant. But I just
25 was going to ask you the questions that I put in that

1 e-mail. I mean, I could go all through the
2 300-and-some-odd thousand dollars worth and have a
3 bunch of questions, but I was sticking with a few
4 questions that I felt like I had some grip on what
5 the time frame and what the work was being done that
6 I really just wanted -- I just wanted the answers,
7 really.

8 MR. ALVA: Your Honor, other than the first
9 couple of words, it's nonresponsive and I make a
10 motion to have it stricken.

11 MS. PEARSALL: Your Honor, I would object.

12 THE COURT: Overruled. I'm overruling it.

13 MR. ALVA: Madam Reporter, would you read me
14 back the beginning of her response?

15 (Thereupon, the court reporter read back the
16 requested portion.)

17 BY MR. ALVA:

18 Q. Ms. Shahinian, are you aware of any
19 significant questions that you had about this invoice
20 that you did not put in the e-mail?

21 A. No, not that I can recall because it was
22 four years ago. So I would have to go through -- no.
23 I'll just say no.

24 Q. Thank you. To your knowledge, did
25 Dr. ColorChip have anybody else review Invoice Number

1 90 other than Daniel McCool?

2 A. I don't know of anybody else other than
3 Daniel McCool and myself.

4 Q. Do you know whether Dave McCool reviewed the
5 invoice?

6 A. I do not.

7 MS. PEARSALL: Objection.

8 BY MR. ALVA:

9 Q. I'm sorry, I didn't hear a response?

10 THE COURT: Overruled.

11 A. I do not know.

12 BY MR. ALVA:

13 Q. Do you know whether Dave McCool advised
14 Daniel McCool to pay that invoice?

15 MS. PEARSALL: Objection. Relevance.

16 THE COURT: Sustained -- you can answer if
17 you know.

18 A. I was not privy to a conversation regarding
19 that. In speaking with Dan, I believe Dan said he
20 was going to go ahead and pay it. I'm not sure --
21 I'm not sure if -- I don't -- I don't know. I don't
22 know.

23 BY MR. ALVA:

24 Q. Thank you. Ms. Shahinian, what was your
25 official title at Dr. ColorChip?

1 A. I think it was operations manager.

2 Q. And who gave you that title?

3 A. I did.

4 Q. You gave yourself the title?

5 A. Yes.

6 Q. And who gave you authority to make yourself
7 operations manager?

8 A. We were going --

9 MS. PEARSALL: Objection. Relevance.

10 THE COURT: Overruled.

11 A. We were getting business cards for everybody
12 in the office, and we thought it would be nice to
13 give everybody a title. And so, you know, that's
14 what we did. So I gave myself operations manager.
15 Dan was fine with it. And that's basically what I
16 was doing anyway.

17 BY MR. ALVA:

18 Q. So is it correct that Dan gave you authority
19 to make yourself operations manager?

20 MS. PEARSALL: Objection. Asked and
21 answered.

22 THE COURT: Sustained.

23 BY MR. ALVA:

24 Q. Ms. Shahinian, you've testified a couple of
25 times, I think the word you used was enormous, that

1 the amount of the December bill was enormous; is that
2 correct?

3 A. I don't remember if that's the adjective I
4 used.

5 Q. Well, what adjective would you use to
6 describe the amount of the December invoice?

7 A. I would say enormous is a good number, a
8 good name. Yeah, that describes it. I mean,
9 \$25,000, that's a lot of money.

10 Q. Do you have any experience, Ms. Shahinian,
11 with the attorney fees that are generated in a
12 complex fight for the control of a corporation?

13 A. No.

14 Q. Do you have any training or education in the
15 amount of attorneys' fees that are generated in that
16 kind of litigation?

17 A. No.

18 Q. I'm going to put the invoice back on the
19 screen for a minute. If you look at Entry Number 1
20 of the December 1st entry, do you see that.

21 A. Yes, if you could make it bigger that would
22 be better but yeah, I can see it a little bit.

23 Q. How is that?

24 A. Better.

25 Q. Okay. Do you see where it says, "Continue

1 work on opposing expedited hearing on dissolution
2 motion and limited discovery re: Same"?

3 A. Yes.

4 Q. Do you have any experience with judging the
5 amount of attorneys' fees that are incurred on
6 opposing an expedited hearing for dissolution?

7 A. Well, I have to say, I worked with my ex-
8 husband in his law practice for three years so I have
9 a tiny bit of how long it takes to prepare a motion.
10 But, you know, as far as -- I mean, I have very
11 limited.

12 Q. Okay. And how many dissolution motions did
13 you work on during that tiny amount of experience?

14 A. I would say I probably did maybe 20
15 divorces, maybe. And I know it's not the same as a
16 dissolution in this case but --

17 Q. Yes, this is isn't is a dissolution of a
18 marriage, it's dissolution of a company.

19 A. So I'll say I have no experience. No. I
20 have no experience.

21 Q. Do you have any education or training in the
22 amount of fees that are generated on opposing a
23 dissolution motion?

24 A. No.

25 MS. PEARSALL: Objection.

1 THE COURT: What was the --

2 MS. PEARSALL: Asked and answered and
3 outside of the scope -- never mind, Your Honor.
4 She's already answered it.

5 THE COURT: So what's the relevance of all
6 this, Mr. Alva?

7 MR. ALVA: She's testified that it was
8 enormous bill and I'm trying to find out whether
9 she has any basis at all for the testimony that
10 she gave that the bill was enormous.

11 THE COURT: And what's the significance of
12 the bill being enormous?

13 MR. ALVA: Well, one of the claims that is
14 being brought by the Bar, Your Honor, is that the
15 fee was unreasonable. Now, I understand that
16 they're saying apparently it was unreasonable
17 because the rate was changed, but Ms. Pearsall
18 did say to you in responding to your question
19 that her complaint is her complaint. And she is
20 standing on that.

21 So even though during these proceedings it
22 seems to be that she is limiting the claim to
23 changing the rate, in her complaint it merely
24 says that the December invoice was issued in the
25 amount of 25,000 and by these -- paragraph 26

1 says, "On account of the items listed above,
2 which includes the invoice, Mr. Alva violated the
3 rule on fees."

4 THE COURT: Okay. I can assure you,
5 Mr. Alva, I will not be finding you -- addressing
6 the issue of whether you overbilled your client
7 for hourly work.

8 MR. ALVA: Thank you, Your Honor.

9 THE COURT: I told you that in the
10 beginning. And I'm going to keep saying it
11 because none of this is relevant for the issue.
12 You know what the issue is.

13 MR. ALVA: Thank you, Your Honor.

14 THE COURT: Okay.

15 BY MR. ALVA:

16 Q. Ms. Shahinian, do you recall that you
17 instructed me to not communicate with you anymore
18 about the bills in the ColorChip matter?

19 A. I asked you not to -- we were going back and
20 forth -- it wasn't about that. I had just had it
21 with the whole, about the bill and everything. So
22 that had nothing to do with you not sending me the
23 invoices. You had stopped sending me the invoices
24 before we even questioned the December bill.

25 MR. ALVA: Your Honor, I move to strike the

1 entirety of her answer as nonresponsive.

2 THE COURT: I'm going to overrule.

3 A. Can you repeat the question?

4 THE COURT: No, no. You answered it.

5 MR. ALVA: I don't have any other
6 cross-examination questions for this witness. I
7 would like to reserve my right to call her during
8 my direct examination in my case in chief, Your
9 Honor.

10 THE COURT: Okay. Ms. Pearsall, any
11 redirect?

12 MS. PEARSALL: Yes, Your Honor. Just one
13 question involving one exhibit.

14

15 REDIRECT EXAMINATION

16 BY MS. PEARSALL:

17 Q. And I'll share the screen.

18 Ms. Shahinian, I'm showing you what's marked
19 as the Florida Bar's Exhibit 50A as in apple.
20 (Thereupon, the exhibit was introduced into evidence.)

21 BY MS. PEARSALL:

22 Q. What is this and how do you recognize it?
23 Can you see it, ma'am?

24 MR. ALVA: What document is this,
25 Ms. Pearsall can you show us the entire document?

1 MS. PEARSALL: (Complies.) Yes, this
2 document came from you, Mr. Alva.

3 MR. ALVA: Thank you. I would still like to
4 see it.

5 MS. PEARSALL: Okay, just going through
6 (Complies.)

7 That's it.

8 MR. ALVA: Thank you.

9 A. It says from, "Trisha to Curtis. Please go
10 ahead with your response and let me know when it is
11 done. Thank you, regards."

12 I don't know -- you'd have to show me more
13 context because I don't know what that pertains to.

14 Q. (Complies.) If you could, like, not read it
15 out loud. I'll just show you the rest of the
16 document and you tell me what it is and whether you
17 recognize it.

18 A. I'm going to read the whole thing.

19 Q. Oh, Okay, I don't know if you've gotten this
20 far.

21 A. No, I'm almost done.

22 Q. There's more below that so...

23 A. (Reading.) Could you go up again a little
24 bit?

25 Q. Okay, (Complies.)

1 A. Okay.

2 Q. And there's still more.

3 A. (Reading.) Okay.

4 Q. So what is the Florida Bar's Exhibit 50A and
5 how do you recognize it?

6 A. So, that appears to be -- and I have not
7 seen that in a long time so I really don't know from
8 I'm just reading it.

9 Can you go up a little bit more?

10 Q. That's as far as it goes.

11 A. No. I mean, can you go down.

12 Q. Oh, sure. (Complies.)

13 A. No, to the -- I'll tell you. The body of
14 the second part. Okay.

15 Q. (Complies.)

16 A. (Reading.) So it appears to me and, like I
17 said, I haven't seen this in forever. It appears to
18 me that before I even asked him the questions -- it
19 appears to me from this e-mail that before I even
20 asked him the questions that I asked him that he
21 never did answer, that I asked him to discount that
22 bill 50 percent.

23 BY MS. PEARSALL:

24 Q. Before you testify about the document, I
25 need to know what it is, and how you recognize it.

1 So, like, simply what is it, the exhibit, is it --
2 and how do you recognize it?

3 MR. ALVA: Your Honor, I make a motion to
4 strike the response that she gave.

5 THE COURT: Overruled.

6 A. Okay.

7 BY MS. PEARSALL:

8 Q. Okay, so Ms. O'Rourke, what is Exhibit 50A
9 and how do you recognize it?

10 A. It appears that it's an e-mail from me to
11 Curtis --

12 Q. And --

13 A. -- February 13th regarding the January
14 invoice.

15 Q. And you've had an opportunity to review
16 Exhibit 50A as in apple. Does it appear in the same
17 or substantially the same condition?

18 A. Is that what this is, 58?

19 Q. 50A, as in apple. That's Exhibit 50A. See
20 it down there at the bottom?

21 A. Oh, okay. I haven't seen this in a long
22 time, so I don't know. I can't tell if that's my
23 computer printer or, you know. I don't know if it
24 was off of my printer or not. I don't know.

25 Q. Okay. Well that's fine, Your Honor.

1 Understand.

2 But you recognize your name, the e-mail
3 address you were using at Dr. ColorChip?

4 A. Yes, and the text is familiar to me.

5 MS. PEARSALL: Your Honor, the Bar would
6 offer Florida Bar's Exhibit 50A into evidence.

7 THE COURT: Any objection?

8 MR. ALVA: No, Your Honor.

9 THE COURT: All right, 50A will come in.

10 (Thereupon, the exhibit was admitted into evidence.)

11 BY MS. PEARSALL:

12 Q. Now, Ms. Shahinian, now you were asked a
13 question on cross-examination about whether February
14 16th was the first time or whether you had ever told
15 Mr. Alva that you hadn't received the invoices or
16 hadn't been receiving the invoices.

17 And looking at this February 13, 2018
18 e-mail, dated 12:07 p.m. from you to Mr. Alva, is it
19 correct that the first line says, "Curtis, Dan
20 forwarded me the last three invoices as you do not
21 code me into those invoices for several months now"?

22 A. Yes.

23 Q. So, is it -- so you did put Mr. Alva on
24 notice that he hadn't been including you or sending
25 you or copying you on the invoices?

1 A. Yes.

2 MS. PEARSALL: No further questions of this
3 witness, Your Honor.

4 THE COURT: Okay. I know you do have an
5 expert. Is your expert available?

6 MR. ALVA: I do have some redirect based on
7 -- I mean, some recross based on the redirect,
8 Your Honor.

9 THE COURT: Okay, that's fine.

10 MR. ALVA: Ms. Pearsall, could you put
11 Exhibit 50A back up for us.

12 MS. PEARSALL: (Complies.)
13

14 RE CROSS EXAMINATION

15 BY MR. ALVA:

16 Q. Ms. Shahinian, do you see your Exhibit 50A on
17 your screen?

18 A. Yes.

19 Q. It says here, "Dan forwarded me the last
20 three invoices." Do you see that?

21 A. Yep.

22 Q. So apparently, Dan did receive the invoice
23 because he forwarded it to you; is that correct?

24 A. Yeah, but I don't know if he got -- I know
25 the last -- I know the 25,040 he said he didn't get

1 it the first time you sent it. By February 13th, he
2 obviously had that because that's when we were asking
3 you the questions. It was about around that time.

4 I'm talking about the -- apparently, you had
5 said you sent it long before this February 13th, so
6 I'm just saying he didn't get it the first time you
7 e-mailed it to him, or he didn't see it.

8 Q. When did Dan forward you the last three
9 invoices?

10 A. I don't remember.

11 Q. If you go down a little bit in that --

12 MR. ALVA: Can you scroll down to about a
13 half a screen, Ms. Pearsall? Right there. Thank
14 you.

15 BY MR. ALVA:

16 Q.

17 Can you read me the sentence that begins
18 with, "Rather, comma, I would"?

19 A. Sure. "Rather, I would request that you
20 discount the January 9, 2018, invoice by 50 percent,
21 \$12,520, and I will instruct -- I will instruct Dan
22 to pay it immediately and we can move on. I'm sure
23 you can understand that Dan has paid an enormous
24 amount of money to Alva and Gleizer with very little
25 to show for it and the other side spending only a

1 fraction. In that regard" --

2 Q. That's good. So I'm interested in the part
3 where you say, "And the other side spending only a
4 fraction." Do you see that?

5 A. Yes.

6 Q. And by "the other side," do you mean
7 Mr. McLean's side of the litigation?

8 A. Yes.

9 Q. And what personal knowledge do you have
10 about the amount that Mr. McLean spent on attorneys'
11 fees?

12 A. I don't remember. I don't know that
13 personally. I think Dan and I had a conversation,
14 someone found out somehow that Bill McLean didn't
15 spend, I mean, not even -- he didn't even -- I don't
16 even think he spent six figures but, yeah, there was
17 a conversation that -- I forget how we knew that, but
18 we found out somehow that McLean had spent under a
19 hundred thousand. But I couldn't tell you who we
20 heard it from.

21 Q. You found out that McLean had spent less
22 than a hundred thousand; is that your testimony?

23 A. Yes. I'm saying that in a conversation --
24 I'm saying that there was somewhere where we heard --
25 I don't know who it was from -- but there was someone

1 that we heard that he didn't spend nearly as much as
2 Dan did.

3 Q. Do you have any idea where you heard that?

4 MS. PEARSALL: Objection. Asked and
5 answered.

6 THE COURT: Overruled. You can answer.

7 A. Okay. No.

8 BY MR. ALVA:

9 Q. But you don't have personal knowledge of how
10 much was spent?

11 A. No.

12 Q. And you're certain that the amount was less
13 than a hundred thousand?

14 MS. PEARSALL: Objection. Misstates the
15 witness' testimony.

16 THE COURT: Sustained.

17 BY MR. ALVA:

18 Q. Are you certain of the amount that you
19 heard?

20 A. No.

21 Q. So could it have been over a hundred
22 thousand?

23 A. It could have been over but not by much.

24 Q. Did you testify that you heard that it was
25 in the six figures?

1 MS. PEARSALL: Objection. Asked and
2 answered.

3 THE COURT: Doesn't that call for hearsay?

4 MS. PEARSALL: Hearsay is admissible in Bar
5 proceedings.

6 BY MR. ALVA:

7 Q. Ms. Shahinian, did you hear that the amount
8 that he had spent was in six figures?

9 A. Whoever told us that is my recollection and
10 this is only a recollection, this is not -- I don't
11 even remember who told us.

12 So the amount, to me, like that stuck in my
13 head was somewhere in the hundred thousand dollar
14 mark. That's all I'm saying.

15 Q. Did you tell Dan that you had heard that the
16 other side had spent somewhere around a hundred
17 thousand?

18 MS. PEARSALL: Objection. Relevance.

19 THE COURT: Sustained. Sustained.

20 BY MR. ALVA:

21 Q. What did you tell Dan about that issue?

22 MS. PEARSALL: Objection. Relevance.

23 THE COURT: Sustained.

24 MR. ALVA: Ms. Pearsall, you can take that
25 down. Thank you. I appreciate the courtesy.

1 MS. PEARSALL: (Complies.)

2 BY MR. ALVA:

3 Q. Ms. Shahinian, I'm going to show you --
4 Ms. Shahinian, do you see that document on your
5 screen?

6 A. Yes.

7 Q. And do you see up at the top, it's an e-mail
8 from Dan McCool to me and it's copied to David
9 McCool?

10 A. Yeah.

11 Q. And we have marked this as an exhibit during
12 Dan's testimony. I believe this is Exhibit Number 3.

13 MR. ALVA: Ms. Pearsall, is that the number
14 you've got for it?

15 MS. PEARSALL: No. As far as I know, you
16 only have two exhibits. I believe that's Number
17 1. If you give me a moment. I believe that's
18 Exhibit Number 1 and Number 2 was the letter to
19 the Bar, the 5-25-2018 letter to the Bar.

20 MR. ALVA: Thank you.

21 MS. PEARSALL: I think. I could be wrong
22 now. So I'm trying to keep them --

23 THE COURT: Two is the May 25th letter to
24 the Bar.

25 MR. ALVA: So this is Exhibit Number 1.

1 Thank you.

2 BY MR. ALVA:

3 Q. Ms. Shahinian, this has been marked as
4 Respondent's Exhibit Number 1. And I'm going to
5 direct you to the very first e-mail in this string.
6 So we're now on Page 14. Do you see near the bottom
7 of Page 14 an e-mail from yourself to me dated
8 February 16, 2018?

9 A. Yes.

10 Q. And do you see on Page 15 that these are the
11 questions that you asked me about the December
12 invoice?

13 A. Yes.

14 Q. And is it correct that your testimony is
15 that I never answered those questions?

16 MS. PEARSALL: Objection. Outside of the
17 scope of direct.

18 MR. ALVA: She said exactly those words,
19 Your Honor, on redirect, that I never answered
20 her questions.

21 THE COURT: I'll allow it.

22 MS. PEARSALL: I thought he asked the Court
23 to strike that. But okay.

24 BY MR. ALVA:

25 Q. Ms. Shahinian, are these the questions that

1 you testified I had never answered?

2 A. Yes.

3 Q. Did you see, Ms. Shahinian, that e-mails
4 that were exchanged between myself and Daniel McCool
5 that are part of the string?

6 MS. PEARSALL: Objection. Vague. Calls for
7 speculation and the attorney's moving the exhibit
8 very fast.

9 MR. ALVA: Let me see if I can clarify it.

10 I understand Ms. Pearsall's point.

11 BY MR. ALVA:

12 Q. I'm going to direct you, Ms. Pearsall {sic},
13 to Page 3 of this exhibit. Do you see that page on
14 you screen, Ms. Pearsall -- or Ms. Shahinian?

15 A. Yes.

16 Q. And do you see about halfway down the page
17 where it says, "I have not copied Trish on this
18 because she specifically instructed me not to e-mail
19 her anymore." Do you see that?

20 A. Yes.

21 Q. Is it correct that you instructed me not to
22 e-mail you anymore?

23 MS. PEARSALL: Objection. Outside of the
24 scope of redirect. I mean, yeah, redirect.

25 THE COURT: Overruled.

1 A. Yes.

2 BY MR. ALVA:

3 Q. And then do you see that that on this page I
4 have questions from Dan McCool in blue and answers in
5 red?

6 MS. PEARSALL: Objection. Calls for
7 speculation.

8 THE COURT: Overruled.

9 A. I'm sorry. What did you say? Can you
10 repeat the question?

11 BY MR. ALVA:

12 Q. Yeah let me reword it for you.

13 Do you see on the page where it says in
14 blue, "Let's put this bickering behind us, Curtis, I
15 do feel way too much time was spent thinking about
16 Serino deposition."

17 Do you see that?

18 A. Yes. Yes.

19 Q. Okay. And then do you see that in red,
20 there is a page and a half of a response, and you can
21 take the time to read the response if you want.

22 MS. PEARSALL: Same objection.

23 Characterization. The improper foundation for
24 having this witness testify.

25 THE COURT: This isn't her e-mail. So why

1 are you questioning her on this?

2 MR. ALVA: She testified that her questions
3 were never answered, but it appears from this
4 e-mail that they were answered but they were
5 answered in an e-mail to Mr. McCool. That's why
6 I'm asking. It goes directly to her testimony
7 that the questions were never answered.

8 And one of the claims in the Bar's complaint
9 is that there was not an explanation to the
10 client sufficient to enable the client to make
11 decisions regarding the representation.

12 MS. PEARSALL: Same objection, Your Honor.
13 This is not the witness. The witness is not even
14 included in this e-mail and Mr. Alva just
15 testified to that.

16 THE COURT: Yeah, I'm going to sustain the
17 objection.

18 BY MR. ALVA:

19 Q. Ms. Shahinian, to the best of your
20 knowledge, have you ever seen before this e-mail that
21 begins on Page 3 between myself and Dan McCool,
22 that's copied to David McCool, that has the re:
23 line, re: Revised, re: Dan, re: Questions on
24 December bill, and starts with the sentence, "Here is
25 my response inserted among your points"?

1 A. Yes.

2 Q. Have you ever seen that e-mail before?

3 A. Yes.

4 Q. When did you see that e-mail?

5 A. I don't remember. I sent you my questions
6 February 13th. This is February 26th. I never got
7 the answers to my questions. And I would have to
8 read this entire thing to tell you if you answered
9 every question that I asked you. But basically, you
10 were like you're not asking in good faith and I'm
11 going to threaten you and bully you and everything
12 else.

13 So I don't know what to tell you about this.
14 But if you want me to read everything and then go
15 take my notes and see if you answered every single
16 question 13 days later? I'll do that.

17 MR. ALVA: Your Honor, I'm making a motion
18 to strike her answer as nonresponsive.

19 THE COURT: So, Ms. Shahinian, do these 17
20 pages -- this is in evidence, correct.

21 MR. ALVA: It is, Your Honor.

22 THE COURT: So it sounds to me like you're
23 trying to convince the witness by reading some
24 e-mail chain that she's not a part of that you
25 didn't commit a Bar violation. This is in

1 evidence. You don't have to convince Patricia
2 that you didn't you commit a Bar violation. You
3 need to convince me, and it's already in
4 evidence. And you can certainly read it during
5 your portion of the case, or it's in evidence.
6 You can read it to me in your closing.

7 I don't know why you're interrogating the
8 witness on this document.

9 MR. ALVA: The only thing I'm trying to find
10 out from the witness, Your Honor, and I
11 apologize, the only thing I'm trying to find out
12 is if they had ever seen this e-mail. Has she
13 seen it? That's all I need to know.

14 THE COURT: What's the relevance if she's
15 seen it or not?

16 MR. ALVA: If she has seen it, then she
17 would be aware of the responses that were made.
18 It would be within her awareness.

19 THE COURT: See, again, the problem here is
20 I don't believe the Florida Bar is saying you
21 didn't answer questions to the client. You
22 didn't respond to questions of the client
23 regarding your bill or the case. They're saying
24 when you initially prepared a retainer agreement
25 and you didn't tell them that, oh, by the way, if

1 you don't pay my fee within ten days, I'm going
2 to up the rate.

3 MR. ALVA: If that's correct, Your Honor,
4 then I didn't need this. I didn't understand
5 that Ms. Pearsall had agreed.

6 I understand that's Your Honor's
7 understanding. I didn't know that Ms. Pearsall
8 had agreed that the only lack of communication in
9 the case was at the beginning of the case.

10 MS. PEARSALL: I'm not going to make any
11 agreements. Obviously, the referee is the finder
12 of fact in this instance and the Bar's complaint
13 is the Bar's complaint.

14 THE COURT: Mr. Alva, let's move on.

15 MR. ALVA: Thank you, Your Honor.

16 Your Honor, I don't have any other questions
17 for this witness regarding the redirect
18 examination. And I reserve the right to call her
19 during my case in chief.

20 THE COURT: Okay. So let's talk about
21 tomorrow.

22 Ms. Pearsall, how long is your expert going
23 to be testifying for?

24 MS. PEARSALL: Your Honor, I don't think it
25 will be more than like an hour or so. I really

1 don't. I don't think so.

2 THE COURT: And Mr. Alva, you have witnesses
3 besides yourself?

4 MR. ALVA: Yes, I will, Your Honor. But,
5 Your Honor, we may be able to save some time
6 because I believe that the entirety of the
7 expert's testimony is based on the breach of
8 contract argument which Your Honor has said is
9 not part of this proceeding. We can look at
10 his -- the Bar's responses to the expert
11 interrogatories, I looked at it very carefully,
12 and each of his opinions and each of the bases
13 for his opinions comes directly from the fact
14 that the rate was changed to \$550, which was not,
15 he says, permitted in the contract.

16 MS. PEARSALL: I would just object, Your
17 Honor. I do not need Mr. Alva making argument
18 about what my witness is going to say.

19 THE COURT: I'm just trying to figure out
20 time for tomorrow.

21 MS. PEARSALL: Yes.

22 THE COURT: Take a deep breath.

23 MS. PEARSALL: Thank you, Your Honor.

24 THE COURT: Take a deep breath.

25 MS. PEARSALL: Okay.

1 MR. ALVA: I was just alerting the Court
2 that there will be a motion at the beginning of
3 his testimony to exclude it because --

4 THE COURT: Well, let's assume he's going to
5 testify for an hour and then, Mr. Alva, what do
6 you anticipate for your witnesses?

7 MR. ALVA: Your Honor, there will be
8 cross-examination of him. I don't know if
9 Ms. Pearsall is including that in her estimate,
10 and then there will be testimony by myself, Your
11 Honor.

12 THE COURT: Okay. All right. Hopefully, we
13 can finish tomorrow.

14 MS. PEARSALL: And, Your Honor, if I could
15 have your e-mail address one more time so I can
16 send you the motion.

17 THE COURT: J as in Judge, D as in Dale,
18 Cohen@17th.FLcourts.org.

19 MS. PEARSALL: And is Ms. Shahinian excused,
20 Your Honor.

21 THE COURT: For today.

22 All right. Thank you.

23 MS. PEARSALL: I don't believe Mr. Alva has
24 subpoenaed her to appear.

25 THE COURT: I'm not going to comment on

1 that.

2 I'm not discussing that. Not going down
3 that wormhole.

4 MS. PEARSALL: Okay, Your Honor. Thank you.

5 THE COURT: All right. You all have a good
6 night, be safe, everybody.

7 MR. ALVA: Thank you, Your Honor.

8
9 (Thereupon, the above proceedings were adjourned at
10 3:45 p.m.)

11
12 * * *

R E P O R T E R ' S C E R T I F I C A T E

STATE OF FLORIDA
COUNTY OF BROWARD

I, Gizella Baan-Proulx, Federally-Certified
Realtime Reporter, Registered Professional Reporter,
and Notary Public in and for the State of Florida at
large, do hereby certify that I was authorized to and
did report said hearing in stenotype; and that this
is a true and correct transcription of my shorthand
notes of said hearing.

I further certify that said hearing was taken at
the time and place hereinabove set forth and that the
taking of said hearing was commenced and completed as
hereinabove set out.

I further certify that I am not an attorney or
counsel of any of the parties, nor am I a relative or
employee of any attorney or counsel of party
connected with the action, nor am I financially
interested in the action.

The foregoing certification of this transcript does
not apply to any reproduction of the same by any
means unless under the direct control and/or
direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set
my hand this June 13, 2023.

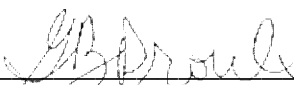

Gizella Baan-Proulx, FCRR, RPR



Exhibit 12

Dan McCool

From: Curtis Alva <Curtis@alvagleizer.com>
Sent: Wednesday, March 07, 2018 7:23 PM
To: Dan McCool
Subject: Re: Retainer Agreement

Thanks for writing to me directly. Thanks also for sending the payment for the invoice for December.
Setting aside for the moment the statement that Dr. ColorChip did not receive the engagement letter, I'll be happy to send a copy. I expect to be in the office Friday and have time to pull it from the file.
Additionally, I would like to get this account settled promptly. I'll try to send you a statement next week with the balance due, which I expect will be the 2/26 invoice minus the retainer paid plus any out of pocket expenses that have come in after 2/26 (if any).

Please call me after you get the statement to get this finalized.

↑ we are
paid in full
at this
date

Curtis Alva
Alva & Gleizer
901 N. Olive Ave
Riviera Beach, FL
33401

On Mar 7, 2018, at 2:47 PM, Dan McCool <dan@drcolorchip.com> wrote:

Curtis,
Please email me a copy of the retainer agreement signed back in September of 2016. We never received a copy of that for our files. Thank you.

Dan McCool
President
Dr. ColorChip Corporation
1369 North Killian Drive, Suite 1
Lake Park, FL 33403
(O) 561-845-6122
(Cell) 561-232-8812
www.drcolorchip.com

Exhibit 13
page 2

Alva & Gleizer, PLLC

Statement of Account

901 N. Olive Ave
West Palm Beach, Florida 33401

Dr. Colorchip, Daniel McCool
1369 N. Killian Drive
Lake Park, FL 33403

03/20/2018 to 03/20/2018

Date	Activity	Due Date	Invoice Amount	Payments	Balance
03/20/2018	Trust Account Balance		-\$25,000.00		
03/20/2018	Invoice #96	03/30/2018	\$126,834.95		\$126,834.95
03/20/2018				Balance Due:	\$101,834.95
				Overdue Balance:	\$101,834.95

Account Balances

Trust Account of Law Firm of Alva & Gleizer, PLLC:

\$25,000.00

Please make all checks payable to:
Alva & Gleizer, PLLC
901 N. Olive Ave
West Palm Beach, Florida 33401

May 25, 2018

Annemarie Craft, Bar Counsel, ACAP
The Florida Bar
651 Jefferson Street
Tallahassee, Florida 32399

RECEIVED

MAY 30 2018

**THE FLORIDA BAR - ACAP
TALLAHASSEE, FLORIDA**

UPS Next Day Air

Re: Re: Curtis Alva, Esq. – Client Trust Fund and other Bar Ethics Violations
The Florida bar File No. 2018-50,796 (15A)

Dear Ms. Kraft:

This letter will serve as Dr. Colorchip's rebuttal to Curtis Alva's response to our complaint. For reasons unknown to us, Mr. Alva elected not to furnish us with a copy of his response until May 18, 2018, which was four days after his deadline for doing so. It was delivered on May 21, 2018. We will attempt to streamline our reply.

1. Mr. Alva explained in detail why he believes his representation of us was sufficient. To be clear, while we believe, and the record will clearly reflect, that Mr. Alva's representation of us was below the standard of care and that we were grossly overbilled, our complaint is directed not to Mr. Alva's incompetence, but to other violations of the Rules of Professional Conduct.
2. To begin with, by refusing to answer our questions concerning his invoice for legal services, Mr. Alva violated Rule 4-1.4((a)(4), requiring him to "promptly comply with reasonable requests for information." In his response, Mr. Alva denies that he failed to communicate with us concerning his December invoice. But Exhibit 7 to our complaint (Mr. Alva's February 16, 2018 email) evidences his refusal to answer our questions until we paid him an additional \$18,040. Then, on February 21, he stated that he is "happy to answer your 7 questions" if we pay him \$18,040 (Exhibit 8 to our complaint). The following day, he answered one of our questions about his bill, but then says he will charge us to answer any more (Exhibit 11 to our complaint).
3. Next, Mr. Alva violated Rule 4-1.5, which states that a lawyer shall not "charge or collect an illegal, prohibited, or clearly excessive fee" from a client. A fee is "clearly excessive" when, "(1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or (2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client." "Extortionate" fees also violate Rule 5.1.1(d).

As explained in our complaint, Mr. Alva billed us over \$326,000, not including the additional \$126,650 he "back billed" us for, unlawfully, after we terminated his services. Suffice it to say, the record in this case, including the Palm Beach County docket, will reflect that this case was not advanced in any meaningful manner during the time that Mr.

Alva represented us, and certainly not consistent with a \$326,000 bill. Mr. Alva categorically over-reached.

Further, as explained in the complaint, Mr. Alva frequently demanded payment of his invoices within hours of having sent them to us, offering to come to our office or send his wife to pick up a check. This, coupled with the manner in which he threatened to sue us for treble damages if we did not pay his last invoice plainly constitutes an “unconscionable demand” for payment and the commission of an “intentional misrepresentation and fraud” upon us to collect his fee.

4. Similarly, by trumping up an additional \$126,650 invoice after his services were terminated based on the difference between his regular and discounted hourly rates over the course of his representation (a point he does not refute in his response), Mr. Alva further violated the Rule because this charge is unlawful. Notably, there is nothing in our retainer agreement with him that permits Mr. Alva to back bill us the difference in his hourly rate under any circumstances. Indeed, the agreed-upon hourly rate is unequivocal and unconditional.
5. Mr. Alva claims he is entitled to back bill us on the theory of quantum meruit. That argument is absurd. Fundamentally, it is our understanding that quantum meruit is not an available claim where there is a clear and express contract covering the attorneys’ services. Mr. Alva drafted his retainer letter and, as you can see, it clearly reflects his hourly rate.
6. Under the comments to Rule 5.1.1, “a lawyer may not hold trust funds to coerce a client into accepting the lawyer’s contention,” which is exactly what Mr. Alva did with respect to our \$25,000 retainer.
7. Because there is a dispute over the return of our \$25,000 retainer, Mr. Alva was not entitled to simply abscond with our money. Under Rule 5.5.1(f), he was required to keep our funds in trust until the dispute was resolved. Mr. Alva’s response to our complaint admits that he refused to return our retainer funds.
8. Mr. Alva’s contention that we somehow committed fraud because we never intended to pay his December invoice is a desperate “hail Mary.” First of all, we had paid Curtis Alva, many times just days after he invoiced us and almost never without questioning him, over \$326,000. Second, we paid the full amount of his January 2018 invoice for \$3,330 even though he had refused to answer our questions about the prior invoice. This is inconsistent with any contention that we committed fraud. See New Exhibit 16.

The initial reason I had not paid the December invoice sooner was because I was away in Australia and did not return until the 23rd of January. Upon my return, I asked my assistant, Tricia O’Rourke, to review it. As evidenced by my February 13, 2018 email to my brother, Dave (Exhibit 15), I had every intention to pay the December invoice.

9. In his letter, Mr. Alva stated that my brother was co-counsel. That claim is utterly false. Dave is my brother who provided informal advice to me during the case. He did not

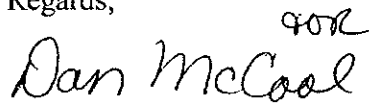
appear at all in the case, draft any documents, or make strategy decisions, and he was not paid. In hindsight, retaining Dave would have been a far better option than paying Mr. Alva \$326,000 for no results.

10. Mr. Alva states that we had decided to terminate his representation in November 2017 yet didn't fire him until February 2018. In fact, we had decided to hire another attorney in November 2017 to handle the Intellectual Property issues in our case, a field of expertise that Mr. Alva didn't possess. Despite his gross overbilling and inability to obtain any results, we had not decided to terminate him until February 2018 when we received his trumped up, extortionate, and unlawful \$126,650 invoice.
11. On page 2 of 10, paragraph 1, Mr. Alva states that "Dr. ColorChip allegedly had claims against *McCool* for stealing from Dr. ColorChip." Mr. Alva meant to say "Dr. ColorChip allegedly had claims against *McLean* for stealing from Dr. ColorChip". We point this out to you only for purposes of ensuring that you understand this is Mr. Alva's typographical error."
12. Mr. Alva states in his rebuttal that he "nowhere refuses to answer their questions", and as proof he states he sent "70 emails" since delivering the Dec invoice. Unfortunately, none of these emails addressed the subject invoice; they related to unrelated matters. Instead, Mr. Alva demanded that we pay him \$18,040 as a condition to answering our questions concerning his invoice. To date, Mr. Alva answered only part of question nos. 4 and 6 (respectively, on February 22 and 26, 2018), and part of question #2 as to why he billed us for work allegedly performed on Christmas Day (in his response to our complaint to the Bar). To date, he has never answered the remaining four questions.

There are many additional statements that Mr. Alva makes in his very lengthy response that are false; however, we do not wish to burden the Bar with more reading than is necessary. Suffice it to say, Mr. Alva's: a) back billing us for \$126,650 in violation of our written retainer agreement; b) absconding with our \$25,000 retainer; c) repeated demands to come to our office to pick up a check days after invoicing us; d) threats to sue us for treble damages unless we paid his December invoice; e) refusal to answer questions about his invoices unless we paid him; f) gross overbilling in the amount of \$326,000 while not advancing our case in any way. This activity reflects to any reasonable observer that Mr. Alva is a troubled and unethical man who should be sanctioned by the Bar.

Thank you for your assistance.

Regards,

The signature is written in cursive and includes the word "for" above the name "Dan McCool".

Daniel McCool

cc: Curtis Alva

From: Curtis Alva [mailto:Curtis@alvagleizer.com]
Sent: Friday, February 16, 2018 2:37 PM
To: Tricia O'Rourke <tricia@drcolorchip.com>
Cc: Dan McCool <dan@drcolorchip.com>
Subject: RE: Questions on Dec bill

Exhibit 7

✓ (will only answer questions if we pay him \$18,240 an amt he makes up as undisputed which is false)

Thanks for getting back to me with your questions. I want to know that by going through these questions we are actually getting closer to resolving this and not just kicking the can down the road. So, let's divide the charges into disputed and undisputed. You have identified the following specific charges/issues that you might dispute:
\$2120 for work on potential payment to Court Registry on 4 days around Christmas
\$3000 for work on the tax issue on 12/4
Janeen Serino for an unspecified amount on 12/11 (for the moment, let's be wildly overcautious and assign 1 hour to this, i.e., \$400).
Tax issue, \$480, 12/29.
Whether the meeting between Matt and I on 12/6 was in Ft. Lauderdale or West Palm (which I will treat as potentially disputing 2 hours of time for traveling to Ft Lauderdale--\$800)
You also had some general questions, such as how much time over all, was spent related to the tax issues. If you have a dollar amount you want to assign to that, just let me know.

So, if I understand correctly, you potentially dispute some or all of \$6,800 on the December invoice, plus whatever number, if any, you assign to the general tax issue. That leaves \$18,240 apparently undisputed, minus whatever you assign to the general tax issue. I'd like to pick up a check for the undisputed amount on Monday. If you are willing to provide that check, then the dispute will be narrowed to \$6,800, plus whatever you assign to the general tax issue. I will then address each of your questions to see if we can further narrow the dispute. If you are unwilling to pay the undisputed amount on Monday, then I don't see the value in trying to reach an amicable solution and we can promptly seek the Court's assistance.

Curtis Alva
Attorney at Law
curtis@alvagleizer.com

Alva & Gleizer, PLLC		
901 N. Olive Ave	1200 Brickell Ave, #1450	347 Fifth Ave, #1402
West Palm Beach, FL 33401	Miami, FL 33131	New York, NY 10016
(561) 225-1599	(305) 602-8998	(646) 233-4097

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Tricia O'Rourke

From: Curtis Alva <Curtis@alvagleizer.com>
Sent: Wednesday, February 21, 2018 2:22 PM
To: Tricia O'Rourke; Dan McCool
Subject: RE: revised re: dan RE: Questions on Dec bill

Exhibit 8
(multiple threats by Alva)

Dan is correct, but let me explain it in more detail in hopes that we all can come to a mutual understanding of my proposal. I am happy to answer your 7 questions, if they are being asked in a good faith attempt to move the ball forward, in other words, we find out how much of the December bill is actually subject to good faith dispute. It appears that we have that number, \$6,800. Dr. ColorChip then pays in full the amount that is not subject to dispute, \$18,240 and I answer all of your 7 questions about the \$6,800, to see if that narrows the dispute to a number we can agree upon. I understand from your email that Trish may not agree with that proposal. The letter doesn't say what Dan feels about it. However, if Dr. ColorChip does not pay in full the undisputed amount, \$18,240, then I will not believe that your questions are being asked in good faith. In that event, I will send a formal notice of breach of contract and demand payment in full in 3 days. Because Dr. ColorChip is already in breach, I will have 2 options: [a] enforce the contract as written and seek \$25,040, or [b] seek payment for what Dr. ColorChip would owe me if there was no contract, in other words, if we had not agreed to discount my rate to \$400 per hour, in other words, \$550.00 per hour. My rough guess is that the higher rate would change Dr. ColorChip's indebtedness from \$25,040 to \$125,000, plus, if there is no good faith on Dr. ColorChip's part, a claim for bad faith, misrepresentation and punitive damages equal to treble the amount of the claim, or \$375,000. I don't want to believe that Dr. ColorChip is acting in bad faith. I hope that your response allows me to keep that belief. As you said, you are professionals who want to be treated professionally, as am I.

Curtis Alva
Attorney at Law
curtis@alvagleizer.com

Alva & Gleizer, PLLC

901 N. Olive Ave
West Palm Beach, FL 33401
(561) 225-1599

1200 Brickell Ave, #1450
Miami, FL 33131
(305) 602-8998

347 Fifth Ave, #1402
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Exhibit 11

Tricia O'Rourke

From: Curtis Alva <Curtis@alvagleizer.com>
Sent: Thursday, February 22, 2018 8:31 PM
To: Tricia O'Rourke; Dan McCool
Subject: RE: revised re: dan RE: Questions on Dec bill

If you are not disputing any portion of the bill, please pay it in full. The time for you to finish your review was within 10 days of the invoice. If you want to know what position the Florida Bar takes, you should call them and ask them. If, on the other hand, you were making an attempt to get me to discount the bill to avoid you calling the Bar, you should have your attorney give you advice about not committing extortion.

Here is the answer to question #4. I don't know exactly how much time I spent speaking to Matt, but I expect it was about an hour and I met him in Ft Lauderdale. It takes about an hour to travel there, each way, and Dr. ColorChip was not charged for the time I spent traveling. As I expect that Dr. ColorChip does not object to me traveling to Ft Lauderdale at my own expense and without charging for the time, and as I expect that it has no objection to my meeting him at his office, which expedited the scheduling of the meeting because I traveled there instead of him traveling here, I believe that this resolves your questions about the day of 12/6 and takes out of the dispute the \$2840 charged for that day, reducing the dispute to \$3,960. If that is not correct, let me know. I'll answer your other questions in following emails, even though they do not appear to be made in a good faith attempt to resolve the dispute, and keep track of my time spent in doing so and add it to my damages claim, if we don't resolve this matter. I will also send the notice of breach and a demand that you preserve all evidence relating to this dispute in the next day or so.

Curtis Alva
Attorney at Law
curtis@alvagleizer.com

Alva & Gleizer, PLLC		
901 N. Olive Ave	1200 Brickell Ave, #1450	347 Fifth Ave, #1402
West Palm Beach, FL 33401	Miami, FL 33131	New York, NY 10016
(561) 225-1599	(305) 602-8998	(646) 233-4097

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From: Tricia O'Rourke [mailto:tricia@drcolorchip.com]
Sent: Thursday, February 22, 2018 10:37 AM
To: Curtis Alva <Curtis@alvagleizer.com>; Dan McCool <dan@drcolorchip.com>
Subject: RE: revised re: dan RE: Questions on Dec bill

Curtis,

Find messages, documents, photos or people

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Starred
Drafts
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Important D... 2
Marriott Rewards
Notes
RackSpace
RECON CAR CARE
San Fran
SCOTT AND STRI...
SEMA 3
SHOPSITE
South Africa

Please advise if this is acceptable.

Regards,

Tricia O'Rourke

Operations Manager

Dr. ColorChip Corporation

1369 North Killian Drive

Suite 1

Lake Park, FL 33403

Cell: 561-512-2314

Office: 561-845-6122

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Dan McCool

mccoole2002@yahoo.com
(561) 232-8812

SPRI

SPRI



Dan McCool <mccoole2002@yahoo> Feb 13 at 3:31 PM
To: McCool, David

It's too stressful and expensive having Curtis and Matt on the case. I will pay Curtis for his work although I don't agree with his recent invoice. I truly can't afford the mounting legal fees. We can talk when your available. We are working to file the Federal case and also have the URL motion scheduled in state court. The current legal arrangement had become too much for me. I got to get this behind me win or lose and move on with my life. Talk later

Sent from my iPhone

➤ Show original message

↩ ⏮ ⏭ ...

Reply, Reply All or Forward

Exhibit 16

LIST OF INVOICE AMOUNTS

Invoice #64	9/20/16	\$15,250	Paid	
Invoice #65	10/17/16	\$23,990	Paid	
Invoice #66	10/27/16	\$44,744	Paid	
Invoice #67	11/9/16	\$21,580	Paid	
Invoice #70	12/15/16	\$35,410	Paid	
Invoice #75	4/12/17	\$45,230	Paid	
Invoice #76	4/13/17	\$12,640	Paid	
Invoice #77	4/17/17	\$12,260	Paid	
Invoice #78	5/1/17	\$16,150	Paid	
Invoice #80	6/6/17	\$23,710	Paid	
Invoice #82	8/10/17	\$ 7,980	Paid	
Invoice #84	8/14/17	\$17,640	Paid	
Invoice #86	10/13/17	\$ 1,690	Paid	
Invoice #88	12/19/17	\$ 5,440	Paid	
Invoice #89	12/20/17	\$14,000	Paid	
Invoice #90	1/9/18	\$25,040	Paid	
Invoice #93	2/14/18	\$ 3,330	Paid	TOTAL PAID TO DATE: \$326,084
Invoice #95	2/26/18	\$126,650 (fabricated invoice back billing 1032.5 hours)	Unpaid	

Statement of Account 3/20/2018 (\$25,000) Trust Account Balance – Attorney Alva refused to return

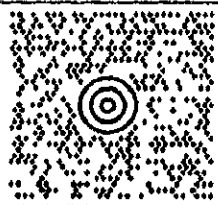
DAN MCCOOL
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DR COLORCHIP CORPORATION
1369 N KILLIAN DR
LAKE PARK FL 33403-1952

LTR

1 OF 1

SHIP TO:

ACAP: ANNEMARIE CRAFT
(866) 352-0707
THE FLORIDA BAR
651 EAST JEFFERSON STREET
TALLAHASSEE FL 32399-2300



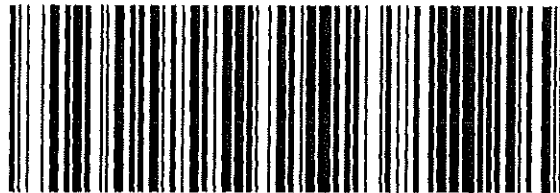
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IN THE SUPREME COURT OF FLORIDA
(BEFORE A REFEREE)
SUPREME COURT NO. SC21-1564
FLORIDA BAR FILE NO. 2018-50, 796 (15A)

THE FLORIDA BAR,
Plaintiff
vs.

November 14, 2022

CURTIS S. ALVA,
Defendant.

TRIAL DAY 3
BEFORE THE HONORABLE DALE C. COHEN

A P P E A R A N C E S

FOR THE PLAINTIFF: JOI L. PEARSALL, ESQ
THE FLORIDA BAR The Florida Bar
Lake Shore Plaza, II, Suite 130
1300 Concord Terrace
Sunrise, FL 33323
(954) 835-0233
jpearsall@floridabar.org

FOR THE DEFENDANT: CURTIS S. ALVA, ESQ
CURTIS S. ALVA 200 E. 13th Street
Riviera Beach, FL 33401
Curtis@alvalaw.com

REPORTED BY: GIZELLA BAAN-PROULX, FCRR, RPR

P R O C E E D I N G S

(The following proceedings were held in open court.)

THE COURT: All right. So, Mr. Alva?

MR. ALVA: Your Honor, I note that Mr. Nelles is on the Zoom call. My understanding from Your Honor's ruling is that he is attending as a member of the public.

THE COURT: Correct, who has a right to be here as a member of the public.

MR. ALVA: Correct. So I just wanted to note that because he's a member of the public, the public has no right to participate in the proceedings. So I would like the Court to instruct Mr. Nelles that he's not to participate and he should leave his microphones turned off.

THE COURT: Well, his microphone is off and he hasn't interrupted these proceedings one iota.

So I understand your concerns about him doing so, but he has only acted appropriately throughout these proceedings, so I'm not going to instruct him.

MR. ALVA: He was attending before, Your Honor, as counsel.

THE COURT: Why don't you wait until he does something and then object? How about that?

1 MR. ALVA: Thank you, Your Honor.

2 THE COURT: Okay. Ms. Pearsall.

3 MS. PEARSALL: Yes, Your Honor. The witness
4 is on the Zoom, Your Honor. He's in the room. If
5 you're ready, I will begin.

6 MR. ALVA: Your Honor, I would like this
7 witness to be excluded and I'd like to present
8 argument on why he should be excluded.

9 THE COURT: Okay.

10 MS. PEARSALL: Does he want to do it with the
11 witness in the room? I would prefer the witness
12 stay in the room, so --

13 MR. ALVA: Well, I think it would be
14 appropriate, Your Honor, for the witness not to be
15 in the room when we're arguing about whether or
16 not --

17 THE COURT: I'll put him in the waiting room.

18 MS. PEARSALL: That's over the Bar's
19 objection.

20 THE COURT: All right, Mr. Alva.

21 MMR. ALVA: Thank you, Your Honor. So I want
22 to share with the Court, the -- oh, my sharing
23 hasn't been turned on.

24 THE COURT: Okay. Hold on.

25 Okay (Complies.)

1 MR. ALVA: Thank you, Your Honor. I want to
2 share with the Court, Your Honor, the Bar's
3 responses to the expert interrogatories that were
4 posed, and explain to the Court how the responses
5 to expert interrogatories demonstrate that
6 Mr. Betensky's testimony is related solely to an
7 order that the Court has already excluded.

8 If we look, Your Honor, at the subject matter
9 on which he is expected to testify, you can see
10 that the subject matter he's expected to testify
11 on, first of all, is that respondent retroactively
12 up-charged the client, and by retroactively
13 up-charged, he means higher than the contract rate.

14 It goes on to say that he billed over the
15 hourly rate for attorney time and over the hourly
16 rate for paralegal time that was listed in the
17 engagement letter, which is an issue that Your
18 Honor has already excluded. That issue --

19 THE COURT: I didn't exclude that. What are
20 you talking about I excluded that?

21 MR. ALVA: I think Your Honor has, if I
22 understand Your Honor's rulings yesterday on
23 testimony, if an issue relates to whether or not
24 the contract was breached by charging a rate that
25 was above the rate in the contract, that is an

1 issue that was litigated in the civil litigation.
2 That is an issue that was litigated all the way to
3 a final judgment and is now on appeal.

4 So that issue has -- is fully and fairly being
5 litigated in the civil litigation.

6 THE COURT: Okay. Just -- okay. You're very
7 good with semantics. And I don't want you to twist
8 things or twist what I said.

9 Here is the issue: The Bar's not saying, and
10 I'm going to make this very clear, you charging
11 \$550 is not what they're charging is excessive.
12 What they're alleging is that you told the client
13 you were going to bill \$400 an hour, and then you
14 unilaterally changed the rate to \$550 and made that
15 retroactive.

16 So, according to the subject matter of what
17 he's going to testify to, that's exactly what he's
18 going to testify to. I have no problem with that.
19 That's why we're here.

20 MR. ALVA: Thank you, Your Honor.

21 THE COURT: Okay. All right, so if we can
22 take this screen share off.

23 MR. ALVA: Oh, yes, Your Honor.

24 THE COURT: And I'm going to let him back in
25 the room.

1 THE COURT REPORTER: For the record, could you
2 identify the name of the witness?

3 MS. PEARSALL: Yes, I will. His name is Gary
4 S. Betensky, B-E-T-E-N-S-K-Y.

5 THE COURT: So, Mr. Betensky, you are -- you
6 need to take yourself off mute. If you are on a
7 computer, if you hit the screen on the bottom left-
8 hand corner, there should be a mute button. If
9 you're on a cell phone, star 6.

10 (Thereupon, there was a brief discussion off the
11 record.)

12 MS. PEARSALL: Okay, Your Honor, do you see a
13 person waiting to be admitted with a phone number?

14 THE COURT: Yes.

15 MS. PEARSALL: I think Mr. Betensky needs to
16 be admitted with the phone number as well as the
17 video. I think that's the issue. I haven't
18 even --

19 THE COURT: That phone number should be in our
20 Zoom.

21 MS. PEARSALL: It's there. So as long as he
22 connects --

23 THE COURT: That number is also muted, by the
24 way.

25 MS. PEARSALL: Oh, he's unmuted.

1 THE COURT: There you go.

2 MS. PEARSALL: It's echoing.

3 THE COURT REPORTER: He's got two speakers on
4 at the same time. He needs to turn one of them
5 off.

6 THE COURT: Well, right now both are off.

7 MS. PEARSALL: Okay, I'll let him know.

8 Thank you very much, Madam Court Reporter.

9 THE WITNESS: Okay, I'm back on video.

10 (Thereupon, there was a brief discussion off the
11 record.)

12 THE COURT: Are we ready to begin?

13 MS. PEARSALL: Yes, Your Honor.

14 THE COURT: Let me swear in the witness,
15 Mr. Betensky, if you can raise your right hand.

16 Thereupon,

17 GARY BETENSKY,
18 having been duly sworn by the Court, testified as
19 follows:

20 A. Yes, I do, Your Honor.

21 THE COURT: All right, if you can state your
22 name and spell your last name.

23 A. Yes, Gary with one R, Betensky,
24 B-E-T-E-N-S-K-Y.

25 THE COURT: Thank you, you can inquire.

DIRECT EXAMINATION

BY MS. PEARSALL:

Q. Good morning, Mr. Betensky.

A. Good morning, Ms. Pearsall.

Q. Have you been retained to reach an expert opinion in this Bar case?

A. Yes, I have.

Q. Did you reach an expert opinion in this Bar case?

A. Yes, I did.

Q. What is your occupation?

A. I am an attorney, licensed in the State of Florida since 1984.

Q. Where did you attend college?

A. Undergraduate, Boston University; law school, NOVA University Law Center is how it was known at the time.

Q. What areas of law do you practice?

A. Exclusively business litigation.

Q. Are you board certified in any areas of law?

A. Yes. I am board certified in business litigation law, since 2007.

Q. And the board certification, is it issued by the Florida Bar?

1 A. That is correct.

2 Q. Are you admitted to other district courts for
3 state bars?

4 A. Not admitted presently in any other state
5 bars. I had been -- I am admitted in the district
6 courts within the State of Florida, and in the past I've
7 pro haced into other federal districts in various other
8 jurisdictions outside of Florida.

9 Q. During your time as an attorney, have you
10 served on any committees that you believe may be
11 relevant to the testimony you're going to provide today?

12 A. Yes.

13 Q. And what committees?

14 A. I have served on the Florida Bar's
15 professional ethics committee, I believe two terms,
16 possibly three, but for certain two terms.

17 During one of those terms, I was appointed
18 chair and served as a chair for a one-year period, and
19 in a different term, I served as co-chair and then I
20 termed off.

21 So I've been on the professional ethics
22 committee.

23 I've also served as chair for one of the
24 Florida Bar's grievances committees -- grievance
25 committees in Palm Beach County, specifically Committee

1 15D, as in David.

2 Q. What prior experience or duties did you have
3 related to the termination of attorney fee rates?

4 A. Well, I served on my firm's -- my prior firm,
5 Richman Greer, we merged into Day Pitney four years ago,
6 but within the Richman Greer law firm, I served on the
7 firm's executive committee for many years. I couldn't
8 tell you how many. And as a member of the executive
9 committee, we set fee rates within our firm based on,
10 you know, investigation in the marketplace as to what
11 our contemporaries and other law firms were charging.

12 I have also served -- I have testified and
13 been qualified as an attorney's fee expert in -- on
14 several occasions.

15 MS. PEARSALL: At this time, the Bar tenders
16 Mr. Gary Betensky as an expert witness in business
17 litigation and attorney fees.

18 THE COURT: Mr. Alva, any objection?

19 MR. ALVA: No objection, Your Honor.

20 THE COURT: I'll declare him as an expert in
21 those fields.

22 BY MS. PEARSALL:

23 Q. Mr. Betensky, what did you do to arrive at
24 your opinion in this matter?

25 A. Primarily, I reviewed court pleadings in this

1 matter, the Florida Bar versus Mr. Alva. And I also
2 reviewed selected pleadings in the matter of
3 Dr. Colorchip Corp., and Daniel McCool versus Curtis
4 Alva, and Alva and Gleizer.

5 In addition to reviewing those pleadings, and
6 when I reference the Bar case that we're here on today,
7 I'm also including in that the Florida Bar inquiry
8 complaint that initiated this proceeding. I read a few
9 cases and spoke with you.

10 Q. Was the order granting Dr. Colorchip and
11 Daniel McCool's motion for summary judgement as to Count
12 1, one of the items that you reviewed to arrive at your
13 opinion?

14 A. Yes.

15 Q. Sir, can you see the screen?

16 A. Yes, I can.

17 Q. I'm showing you what's marked as the Florida
18 Bar's Exhibit No. 45?

19 (Thereupon, the exhibit was introduced into evidence.)

20 BY MS. PEARSALL:

21 Q. What is it and do you recognize it?

22 A. I do recognize it. This is the order granting
23 Dr. Colorchip and Daniel McCool's motion for summary
24 judgement as to Count 1 in the litigation initiated by
25 Dr. Colorchip Corp., and Daniel McCool against Mr. Alva

1 and his law firm.

2 Q. I'm going to scroll -- sorry, sir.

3 A. Yes. That order is dated June 2, 2022.

4 Actually -- yeah, June 2, 2022.

5 Q. Yeah, I'm going to scroll down to the balance
6 of the document so you can see it.

7 A. Correct. Judge Harper entered that order.

8 Q. And does the Florida Bar's 45 appear in the
9 same or substantially the same condition as you recall
10 it?

11 A. Could you repeat that question, please?

12 Q. I'm sorry. Does the Florida Bar's Exhibit 45
13 appear in the same or substantially the same condition
14 as you recall it?

15 A. Yes. It does.

16 MS. PEARSALL: The Bar offers the Florida
17 Bar's Exhibit 45 into evidence.

18 THE COURT: Any objection?

19 MR. ALVA: No, Your Honor.

20 THE COURT: That will be 45.

21 (Thereupon, the exhibit was admitted into evidence.)

22 BY MS. PEARSALL:

23 Q. Now, the top of Florida Bar's Exhibit 45 now
24 in evidence, the e-File date on top of that document is
25 June 2, 2022, sir?

1 A. Correct.

2 Q. Now, I'm going to scroll down to the second
3 Bates stamp page of the Florida Bar's Exhibit 45. Are
4 you able to see the date where the judge signed it? If
5 not, I can increase the size.

6 A. No, I have the hard copy in front of me so I
7 see it's dated May 31, 2022.

8 Q. Now, you read this order, order granting
9 Dr. Colorchip and Daniel McCool's motion for summary
10 judgement as to Count 1?

11 A. Yes.

12 Q. And in this case, Dr. Colorchip and Daniel
13 McCool were the plaintiffs in this particular case, and
14 Mr. Alva and his law firm were the defendants?

15 A. Yes.

16 Q. Could you begin reading at paragraph No. 1,
17 please, and through the balance of the order, please?

18 A. Read it to myself?

19 Q. No, aloud, please. Sorry.

20 A. Okay. Paragraph No. 1 of the order reads,
21 "The plaintiffs and defendants entered into an attorney
22 fee agreement. The plaintiffs are suing in Count 1 for
23 the return of their \$25,000 retainer."

24 Paragraph 2, "The plaintiffs paid all bills
25 for legal services rendered pursuant to the contract for

1 legal representation."

2 No. 3, "There was a dispute regarding the
3 amounts billed for legal services in the December and
4 February bills."

5 Paragraph 4, "The bills were ultimately paid,
6 but not within ten days."

7 Paragraph 5, "Pursuant to the contract, the
8 \$25,000 retainer was to be returned unless applied to an
9 outstanding bill for legal services. The retainer was
10 not applied to any outstanding bills."

11 Paragraph 6, "All invoices were paid. Thus,
12 pursuant to the contract, the plaintiffs are entitled to
13 the return of their \$25,000 retainer."

14 Paragraph 7, "The March invoice was not for
15 any legal services rendered, but was a quantum meruit
16 invoice whereby the defendant billed for legal services
17 for which he had already been compensated at a higher
18 true value rate," true value in quotations. "The
19 existence of this bill does not, as a matter of law,
20 negate the evidence that all bills were paid."

21 Paragraph 8, "Wherefore, it is hereby ordered
22 and adjudged that the plaintiff's motion for partial
23 summary judgment as to Count 1 is granted for the
24 reasons stated on the record and contained herein. A
25 final judgment will be entered at a later date and the

1 plaintiffs are ordered to prepare the same and submit to
2 the Court for review.

3 "Done and ordered in chambers at West Palm
4 Beach, Palm Beach County, Florida, Judge Bradley G.
5 Harper, Circuit Judge, May 31, 2022."

6 Q. Thank you, sir. Now, I'm going to stop
7 sharing the screen. We'll come back to this
8 momentarily.

9 In your review, did you also review a
10 engagement letter between Mr. McCool, Dr. Colorchip, and
11 the respondent, Mr. Curtis Alva?

12 A. I did.

13 Q. I'm showing you what's previously entered into
14 evidence as the Florida Bar's Exhibit 1, and I'll
15 increase the size of the document.

16 Mr. Betensky, Exhibit 1 that's on the screen
17 dated September 19, 2016, is this the document that you
18 reviewed in coming to your opinion in this case?

19 A. Yes.

20 Q. When you reviewed the Florida Bar's Exhibit
21 No. 1, which is the September 19, 2016, engagement
22 letter, upon your review of that document, did you find
23 any wording within the engagement letter which stated or
24 would put the client on notice that if they did not pay
25 an invoice in ten days, the hourly rates would increase?

1 A. No. There was nothing in the letter that says
2 that.

3 Q. Now, in paragraph 1, if you can see that on
4 the screen, and I can increase it if I need to.

5 A. It's okay, I have a hard copy in front of me
6 as well.

7 Q. Upon your review of this engagement letter,
8 what did you learn was the hourly rate for attorney time
9 that had been agreed to?

10 A. Attorney time, \$400 an hour.

11 Q. And what was the paralegal rate that had been
12 agreed to per this agreement?

13 A. \$100 per hour.

14 Q. In your review of the engagement letter,
15 September 19, 2016, did you see any language in that
16 letter which stated how the agreement could be amended,
17 by which means it had to be amended?

18 A. Yes. Do you want me to point those out?

19 Q. Yes. I'm on the screen. I'm on Bates stamp
20 Page 3 of Exhibit 1, and I believe paragraph D, sub D
21 says, "Amendments." But if --

22 A. Go ahead. I'm sorry.

23 Q. And could you tell the Court what you learned
24 from your review wasn't needed in order to amend this
25 agreement?

1 A. Yes. Well, there are actually three
2 provisions in here that speak to that issue.

3 Paragraph 2 of the engagement letter, second
4 sentence says, "The parties may expand or otherwise
5 modify this engagement by written agreement."

6 Additionally, same document, same exhibit,
7 paragraph 7, which is entitled, "Miscellaneous
8 provisions," subpart D, as in David, "Amendments," reads
9 as follows, "The provisions of this agreement may not be
10 amended, supplemented, waived or changed orally, but
11 only by a writing signed by all parties and making
12 specific reference to this agreement."

13 And that's my answer to your question, those
14 two provisions, and the answer to your question is you
15 need a writing signed by both parties, if there's going
16 to be a modification or amendment or a supplement.

17 Q. Now, in your review of the engagement letter
18 from September 19, 2016, did you find any language that
19 said -- spoke about how the work would be invoiced and
20 when payment would be due?

21 A. Yes. Paragraph 6 states, "The Firm," capital
22 F, as in Frank, "will invoice monthly for work provided
23 and payment will be due in ten days."

24 Q. Additionally, in your review of this
25 engagement letter, did you find any language that spoke

1 about a retainer and what was to happen with the
2 retainer upon termination of the representation?

3 A. Right. So paragraph 4 addresses retainers.
4 And toward the end of that paragraph, it states -- and
5 I'll quote it, second to last sentence, "Any unspent and
6 unapplied retainer will be refunded to you at the
7 termination of the representation during the settling of
8 this account."

9 And also the earlier part of paragraph 4,
10 third sentence, speaks to the retainer being held in the
11 trust account of the law firm until the end of the
12 representation and the settling of the account with an
13 option for the law firm to apply the retainer to any
14 unpaid invoices after ten days.

15 Q. I'll stop sharing this particular document,
16 Florida Bar's 1.

17 A. Okay.

18 Q. On the screen I'm showing you what's marked as
19 the Florida Bar's 50B, already in evidence. It is
20 Invoice No. 90 with a date of January 9, 2018. And the
21 beginning charge is December 1, 2017.

22 In your review in coming to your opinion in
23 this matter, did you review this invoice?

24 A. I did review the invoice but I was not
25 reviewing the invoice for the purpose of analyzing the

1 entries, or making any determination about those
2 entries. I was looking at the invoice because that is
3 the invoice that began the dispute between the law firm
4 and the client.

5 Q. And this invoice, Invoice No. 90, which is the
6 Florida Bar's exhibit -- part of the Florida Bar's
7 Exhibit 50B, the total charge for that invoice, can you
8 see that amount on the screen?

9 A. Yes.

10 Q. And what's the total there?

11 A. The total amount is \$25,040. And let me just
12 amend my prior answer. I looked at this also to see how
13 the -- whether the hourly rate billed was in conformity
14 with the engagement letter. And it was in this
15 particular invoice, \$400 for attorney and \$100 for
16 paralegal.

17 Q. And what was the quantity total on the invoice
18 for this particular Invoice No. 90?

19 A. Total dollar amount, \$25,040.

20 Q. And the quantity total for the hours, the
21 amount of hours, what was that?

22 A. 66.8.

23 Q. I'm stopping the share of this.

24 I'm showing you what's previously in evidence
25 as the Florida Bar's Exhibit -- I'm sorry, that's the

1 wrong. I'm not showing it. I apologize. I need to
2 share it. One moment.

3 I'm showing you what's in evidence as the
4 Florida Bar's Exhibit No. 5. And this is Invoice No. 95
5 with the date of February 26, 2018. It says due on
6 3-1-2018.

7 Mr. Betensky, in the documents, is this one of
8 the documents you reviewed in order to reach your
9 opinion in this case?

10 A. Yes.

11 Q. And what did you learn by reviewing Invoice
12 No. 95?

13 A. Well, to state it succinctly, I deduced from
14 read all of these materials that this invoice was issued
15 at some point during this dispute, February 28, 2018, is
16 the date of the invoice. And it reflects, I guess for
17 lack of a better term, an up-charge back to the, my
18 term, standard hourly rate that is reflected in the
19 engagement letter but crossed out. And the up-charge
20 was assessed nunc pro tunc, meaning back to the first
21 attorney entry in this case, retroactively back to that
22 date to bring the invoice from the discounted rate back
23 to the, my term, standard hourly rate that is crossed
24 out in the engagement letter.

25 So, in other words, whoever prepared this

1 bill, took all of the hours from day 1 through, I
2 believe, 2-26 of 2018 or 2-28 of 2018 -- I can't tell,
3 took all those hours, multiplied it by \$150, which was
4 the difference between the \$400 agreed to hourly rate
5 with the client, and the crossed out rate, and that
6 brought the attorney's time on this bill up to \$121,005,
7 and the same was done for the paralegal, 226.8 hours up-
8 charged that by \$25, for a total of 5,645, 5,645,
9 showing a quantity subtotal in hours of 1,032.5 hours
10 and a total bill amount of \$126,650, and there's some
11 expenses on the bottom.

12 Q. Now, in the services section, Mr. Betensky, of
13 the Florida Bar's Exhibit 5, and I apologize if I
14 misspoke, the date is February 26, 2018.

15 In the services section where it's next to --
16 it says February 26, 2018, and it says, "Attorney CA."
17 Do you see any writing in the description section there?

18 A. No, I don't. And I apologize, too, because I
19 wasn't focused in the upper right-hand corner. It is
20 February 26th.

21 But to answer your question, no, there's just
22 an entry of an attorney initials CA and a paralegal
23 initials of GG. And no description of work for services
24 I should say.

25 Q. So there's nothing in the description box, in

1 your opinion to put a client on notice of what work the
2 attorney provided to them to charge them this amount of
3 money?

4 A. No, there's nothing in there. I'll leave it
5 at that. I mean, I can explain further but I'll take
6 your questions as they come.

7 Did I answer your question?

8 Q. Yes, you did.

9 A. Okay.

10 Q. So would it be fair to say that this invoice
11 or this bill, Invoice No. 95, represents back billing to
12 the client at an increased rate that wasn't stated in
13 the engagement letter?

14 MR. ALVA: Your Honor, I object to the term
15 "back billing." She hasn't laid a foundation that
16 there is such a term in this area, and unless that
17 foundation is laid, I would object to the witness
18 offering testimony on it.

19 THE COURT: I'm going to overrule that
20 objection.

21 BY MS. PEARSALL:

22 Q. Okay. I'll repeat the question, or I can
23 rephrase it.

24 What type of billing is this for,
25 Mr. Betensky?

1 A. Frankly, I don't know what kind of billing it
2 is other than to say that, for whatever reason, the law
3 firm determined that they were going to deviate upon the
4 agreed upon discounted rates, and bring back in the
5 standard hourly rates that were not agreed to. And the
6 multiplication goes from the first entry of services
7 rendered all the way through February 26, 2028 {sic}, to
8 extinguish the agreed to discounted rate, and now
9 charged the client the standard hourly rates, if, in
10 fact, those were, quote, standard hourly rates. That's
11 my term that I used in my vernacular.

12 So this bill represents a retroactive look
13 over the course of the representation of approximately
14 18 months, and now up-charging or bringing this or
15 billing the client for what was not agreed to in the
16 engagement.

17 Q. Mr. Betensky, if a client paid on Day 1 for a
18 service, in your opinion is it appropriate to charge the
19 client, again, on Day 2 for the same service but charge
20 him on that date at a higher rate?

21 A. No.

22 MR. ALVA: Your Honor, I object. It's
23 compound.

24 THE COURT: Overruled.

25 Can you repeat the answer?

1 A. The answer is no.

2 BY MS. PEARSALL:

3 Q. In your review, did you determine or learn or
4 discover whether the client in this case paid the
5 December invoice, the \$25,040, to Mr. Alva?

6 A. Yes, I did learn that the client did pay that
7 bill in full.

8 Q. I'm showing you what's already in evidence as
9 the Florida Bar's Exhibit 31.

10 Can you see the e-mail on the top of the
11 screen from Curtis Alva, sent March 7, 2018, 7:23 p.m.,
12 to Dan McCool?

13 A. Yes, I do see that.

14 Q. If you could, let me know if you've seen this
15 e-mail before.

16 A. Yes, I have.

17 Q. Now, in reviewing this e-mail, did you also
18 see that Mr. Alva, in his e-mail, acknowledged that he
19 had received payment for the invoice for December?

20 A. Yes. Second sentence confirms that fact.

21 Q. And that's on March 7th?

22 A. Yes, but on my review, I learned that the
23 payment for the December invoice was actually made on
24 February 27, 2018. So this an acknowledgment or a thank
25 you for sending the payment for the invoice for

1 December.

2 Q. I am showing on the screen what was previously
3 in evidence as the Florida Bar Exhibit 6, and I will
4 increase the size up.

5 In your review, did you have an opportunity to
6 review this document entitled, "Statement of account,"
7 with the date of March 20, 2018?

8 A. Yes. Yes, I did review that.

9 Q. And in your analysis, did you determine
10 whether this statement of account was sent after
11 Mr. Alva acknowledged that he received the full payment
12 for the December bill?

13 A. Yes. It appears to have been generated after
14 the confirmation e-mail that you previously showed me.
15 I mean, it says, "Statement of account, 3-20-2018 to
16 3-20-2018," and the entry date in the part of the
17 statement of account, again, repeats the date of March
18 20, 2018.

19 THE COURT: Ms. Pearsall, what's the exhibit
20 number for that one.

21 MS. PEARSALL: Six.

22 THE COURT: Thank you.

23 MS. PEARSALL: You're welcome.

24 BY MS. PEARSALL:

25 Q. Okay. For the -- now I note on the statement

1 of account, the Florida Bar's Exhibit 6, there is a line
2 that says, "March 20, 2018, trust account balance," and
3 then it has a minus sign, \$25,000. And below that it
4 has a balance due of one hundred and one dollars, eight
5 -- I'm sorry, \$101,834.95. Do you see that, sir?

6 A. I do.

7 Q. In your opinion, do you have an opinion about
8 whether or not the client actually owed this amount of
9 money on March 20, 2018?

10 A. When you say "this amount of money" --

11 Q. I'm sorry. The overdue balance, the
12 \$101,834.95.

13 A. I determined that as of March 20, 2018, just
14 looking at this document in a vacuum, no, the client did
15 not owe the law firm a penny more, based on the
16 agreement that the client signed with the law firm.

17 Q. So the -- so when you say the client didn't
18 owe a penny more, they -- are you saying it was zero
19 balance for the client?

20 A. That is correct. And to be more clear about
21 this, the December invoice that's at issue, the \$25,040
22 invoice, as I said, was paid already on February 27,
23 2018. And also in my review, I found that on February
24 14, 2018, the law firm issued Invoice No. 93 for January
25 and February, apparently combined, for \$3,514.95, and

1 that bill was paid on February 14, 2018.

2 So in answer to your question, there was a
3 zero balance certainly as of March 20, 2018. I'll just
4 say looking -- just going back in my mind, just to be
5 very clear, I don't recall whether the January-February
6 invoice was paid on February 14th, as I just said. It
7 may have been. I know it was delivered by Mr. Alva on
8 that date. I must have seen an e-mail and that's what I
9 notated.

10 So my answer stands, zero balance as of March
11 20, 2018.

12 Q. Now, earlier when you were testifying you were
13 discussing the engagement letter and what was to happen
14 with the retainer upon the termination of the legal
15 relationship or the engagement.

16 Do you have an opinion, or what is your
17 opinion regarding the \$25,000 retainer and whether
18 Mr. Alva should have returned it to the client after
19 they paid the December invoice and they terminated the
20 representation, I'm sorry.

21 MR. ALVA: Object to the form of the question,
22 Your Honor.

23 MS. PEARSALL: I'll repeat it because I jumped
24 in the middle of the question, Your Honor. That's
25 fine.

1 BY MS. PEARSALL:

2 Q. What is your opinion regarding Mr. Alva's
3 obligation, under his agreement, to return the \$25,000
4 retainer agreement?

5 A. The \$25,000 should have been returned to the
6 client.

7 And I'll just add to that, that as of February
8 27, 2018, when the December invoice was paid, and I
9 believe the January and February invoice had already
10 been paid, one could conclude that the account was
11 settled. There were no other invoice or financial
12 issues outstanding. And, therefore, the \$25,000,
13 pursuant to the engagement letter, should have been
14 returned to the client.

15 Q. One moment. I'm showing you what's in
16 evidence as the Florida Bar's Exhibit 29, and I will
17 move the document up.

18 In your review to come to your opinion, did
19 you have an opportunity to review this e-mail dated --
20 well, the top date is April 10, 2018, from Dan McCool?

21 A. Yes. Yes, I have seen that e-mail. I did
22 review it.

23 Q. Now, I'm going to go down to the bottom of the
24 e-mail, and I'm going to read it. On April 9, 2018, at
25 11:57 a.m., Dan McCool, Dan at Dr. Colorchip, wrote,

1 "Curtis, please return all retainer funds immediately.
2 Your correspondence dated March 20, 2018, indicates the
3 trust balance is \$25,000. Please advise when the check
4 will be ready for pickup and we will pick it up at your
5 office on Olive Avenue in West Palm Beach."

6 And I'm going to go up to the next one.

7 On April 10, 2018, at 9:55 a.m., Curtis Alva,
8 curtisalva@alvaandgleizer.com, wrote, "There is no
9 return due. There is a balance due in excess of
10 \$100,000. The \$25,000 retainer payment was applied to
11 the unpaid invoice and the balance in your retainer
12 account is zero. Please make a check for the balance
13 and let me know when I can pick it up. If you do not
14 intend to pay in full, please let me know promptly so I
15 can pursue collections."

16 In your review of this case, what -- do you
17 have an opinion on whether on April 10, 2018, Mr. Alva
18 had a basis not to return the client's \$25,000 retainer
19 payment?

20 A. I do have an opinion and there was
21 unequivocally no basis for the law firm not to return to
22 the client the \$25,000 retainer.

23 Q. Thank you. Stop the share.

24 I'm showing you what's marked as the Florida
25 Bar's Exhibit 25 in evidence. And I will scroll up so

1 you can see the balance of the document, and enlarge it.

2 Okay, sir, are you able to see this document
3 on the screen?

4 A. Yes, I am.

5 Q. In your review to come to your opinion, did
6 you have an opportunity to review this e-mail from
7 Curtis Alva dated Wednesday, February 21, 2018, 2:22
8 p.m., to Tricia O'Rourke, Dan McCool, subject line re:
9 Revised, re: Dan, re: Questions on December bill.

10 A. Yes.

11 Q. In your review of this e-mail, were the -- was
12 Mr. Alva's representation or his words in this e-mail in
13 keeping with the September 19, 2016, engagement
14 agreement he had with the client?

15 MR. ALVA: I object to the form of the
16 question. It's vague. There are lots and lots of
17 words on this exhibit. I don't know which words
18 she's referring to when she's asking if it is
19 consistent with the agreement.

20 THE COURT: Overruled.

21 BY MS. PEARSALL:

22 Q. You can answer, sir.

23 A. If you're asking me is this e-mail consistent
24 with the engagement letter, no, it is inconsistent.
25 It's inconsistent.

1 Q. And again, you testified earlier I believe --
2 correct me if I'm wrong -- or I'll ask the question
3 again.

4 When you were reviewing the September 19,
5 2016, engagement letter, did you find any language that
6 would have notified the client or put the client on
7 notice that the rates of the engagement could be
8 increased -- the dollar rates, I'm sorry?

9 A. The short answer is no. And if there was any
10 increase in a rate, then you would have to revert back
11 to the agreement requiring a written agreement signed by
12 both parties. So there is no written agreement signed
13 by both parties, or signed by any party changing the
14 rates set forth in this letter, the engagement letter.

15 Q. Stop the share.

16 A. To be more specific, if I may --

17 Q. Yes.

18 A. -- there is nothing in the engagement letter
19 that says to the client, to which the client -- let me
20 rephrase. Strike that.

21 There is nothing in the engagement letter
22 between the client and the law firm that says to the
23 client, if you don't pay your bills within ten days,
24 then the law firm is going to revert back to the
25 standard hourly rate that is crossed out on Page 1.

1 There's no language, no implication, no
2 inference, no nothing. The agreement is 400 an hour for
3 attorneys, 100 an hour for paralegals, period.

4 Q. What opinion did you ultimately come to when
5 you completed your review in this case, sir?

6 MR. ALVA: Your Honor, I object to the form of
7 the question. I'm not sure -- he's testified as to
8 many opinions that he has. I'm not sure which one
9 she's referring to.

10 THE COURT: All right. I'm going to sustain
11 the objection. Can you be more specific?

12 MS. PEARSALL: Yes, yes, Your Honor.

13 BY MS. PEARSALL:

14 Q. Mr. Betensky, what opinion did you reach
15 regarding the -- maybe I should put it back up on the
16 screen to be sure.

17 I'm showing Invoice No. 95, and that's the
18 Florida Bar's Exhibit 5 with the total for attorney and
19 paralegal services combined, subtotal of \$126,650, for a
20 quantity of hours totaling 1,032.5 hours.

21 Mr. Betensky, what is your opinion regarding
22 this bill and whether there was a basis for Mr. Alva to
23 issue this bill to the client?

24 A. Sure. There was no basis to issue that bill
25 to the client, and that was a violation of Rule

1 4-1.5(a), which is one of the rules that was charged in
2 the complaint by the Florida Bar.

3 MR. ALVA: Your Honor, I object to the witness
4 giving opinion as to whether or not it was a
5 violation of the rule. That is the province of the
6 Court and not the expert witness.

7 THE COURT: Ms. Pearsall?

8 MS. PEARSALL: Your Honor, the witness can
9 give an opinion. It's his opinion. Obviously,
10 Your Honor is the finder of fact. So I'll leave it
11 at that.

12 THE COURT: I'm going to overrule the
13 objection.

14 BY MS. PEARSALL:

15 Q. In looking at this invoice, Invoice 95, and
16 the quantity of hours and the services subtotal, again,
17 of \$126,650, and the quantity of hours provided, what is
18 your opinion regarding the charges themselves? Do these
19 represent clearly excessive charges, in your opinion?

20 A. Yes, this is a clearly excessive charge and
21 under 4-1.5(a), the rule helps us understand because it
22 explains when a fee or cost is clearly excessive. And
23 there are two elements in the rule.

24 One) after a review of the facts, a lawyer of
25 ordinary prudence would be left with a definite and firm

1 conviction that the fee or the cost exceeds a reasonable
2 fee for cost of services provided to such a degree as to
3 constitute clear overreaching or unconscionable demand
4 by a lawyer. A lot of words to unpack there. But
5 that's one of the definitions or the identifiers of when
6 a fee is clearly excessive, and the second one is when
7 the fee or cost is sought or secured by the lawyer by
8 means of intentional misrepresentation or fraud upon the
9 client, a non-client party, or any court as to either
10 entitlement to or amount of the fee.

11 I concluded, based on that rule, that the
12 issuance of that \$126,650 bill violates that rule. It
13 is clearly excessive. It is clearly overreaching, and
14 it is clearly unconscionable, and I'll leave it at that.

15 THE COURT: Can you just repeat the rule for
16 me?

17 A. The rule is 4-1.5(a).

18 MR. ALVA: Your Honor, I object to the
19 testimony the witness gave. The responses to the
20 expert interrogatories state the subject matter on
21 which he's going to testify and the substance of
22 his opinions. And nowhere in that Interrogatory
23 response does it say that he's going to give an
24 opinion as to whether or not the amount billed was
25 clearly excessive or was unconscionable. It's just

1 not there, Your Honor, there's nothing even close
2 to that in the Interrogatory response. I can share
3 the screen with Your Honor so you can see what they
4 said in their --

5 THE COURT: You can share the screen.

6 MR. ALVA: Thank you, Your Honor.

7 It says that the other has to stop sharing.

8 MS. PEARSALL: Oh, sorry.

9 MR. ALVA: Your Honor, here is the
10 Interrogatory response and the substance of the
11 facts of the opinions that he's going to testify,
12 first) is that there's an absence of language in
13 the engagement letter to put the client on notice
14 that the rate would increase, and second) that the
15 invoices requested payments above the agreed hourly
16 rates, and third) that the rates represented an
17 increase over the hourly rates in the contract.

18 So those are the opinions that I was given
19 notice of that this witness was going to testify
20 about. And nowhere in there is there an opinion
21 that the fee was clearly excessive. Nowhere in
22 there is there an opinion that the fee was
23 unconscionable or overreaching. And, so it is
24 grossly prejudicial for me, for this witness now to
25 come and testify as to opinions that were not

1 included in this Interrogatory response.

2 THE COURT: I'll note your objection for the
3 record, I'm going to overrule it.

4 Thank you.

5 Can we take this off the screen.

6 MR. ALVA: Yes, Your Honor.

7 BY MS. PEARSALL:

8 Q. And Mr. Betensky, as far as --

9 A. Can I add to my last answer, Ms. Pearsall?

10 Q. That would be up to the Court.

11 THE COURT: I'm sorry, were you finished
12 answering the last question?

13 A. I just wanted to put an addendum on there
14 because I said, and I'll leave it at that, but I think I
15 should address the second element of how one identifies
16 a clearly excessive fee, and that's the one that said
17 where the fee or cost is sought or secured by the lawyer
18 by means of intentional misrepresentation or fraud upon
19 the client as to either entitlement or the amount of the
20 fee.

21 I don't want to get into the head of the
22 lawyer, but it's clearly a misrepresentation to the
23 client to tell the client, you now owe me \$126,650. And
24 then threaten to sue for punitive damages and treble
25 damages and fraud. That's what the client was told.

1 Those are misrepresentations to the client.

2 MR. ALVA: Your Honor, I object to that
3 testimony on the same grounds, and this is even
4 farther afield. There's absolutely nothing in the
5 Interrogatory responses to suggest that this
6 witness was going to give an opinion as to whether
7 or not the fee was the result of misrepresentation
8 or fraud.

9 It's just -- I have no opportunity, Your
10 Honor, to address that or to hire my own expert or
11 to deal with it in any way that's not highly
12 prejudicial to me.

13 MS. PEARSALL: Your Honor, if I may --

14 THE COURT: I think you're just taking a very
15 narrow interpretation of the Florida Bar's response
16 to the Interrogatory, so I'm going to overrule it.

17 MS. PEARSALL: If could I have 30 seconds,
18 Your Honor. And I'll be right back.

19 (Brief pause.)

20 MS. PEARSALL: Your Honor, I have no further
21 questions for this witness.

22 MR. ALVA: Your Honor, at this point I would
23 respectfully request a continuance of these
24 proceedings so that I could prepare to do a
25 cross-examination of this witness on the opinions

1 that he's given as to which I had no notice in the
2 Interrogatory responses and to obtain my own expert
3 to give an opinion on these issues that were not
4 addressed in the Interrogatory responses.

5 THE COURT: Okay. I'm going to deny that
6 request. Let's come back at 1:15. Does that work
7 for everybody?

8 A. Yes, sir.

9 MS. PEARSALL: That's fine, Your Honor.

10 THE COURT: All right. And Mr. Betensky --
11 let me get your name right. So you're under oath,
12 as you know. So you can't speak with the lawyers
13 or any other witnesses before we come back to
14 court.

15 A. Understood.

16 THE COURT: All right, thank you.

17 A. And I'm going to do the phone thing again?

18 THE COURT: Okay. I'm going to leave the
19 screen up so if you want to leave your setup the
20 way it was and walk away, that's fine.

21 A. Okay.

22 THE COURT: Thank you.

23 A. Thank you, Judge.

24 MS. PEARSALL: You would need to mute your
25 phone or turn it off or whatever you need to do and

1 call back in.

2 (Thereupon, a luncheon recess was taken.)

3 * * *

4
5 A F T E R N O O N S E S S I O N

6 THE COURT: We're just waiting for Mr. Alva.

7 MS. PEARSALL: My apologies, my watch said
8 1:15 apparently. It's two minutes behind.

9 THE COURT: We're just waiting for Mr. Alva.
10 That's all.

11 MR. NELLES: Thank you for allowing me to
12 attend, Judge.

13 THE COURT: Okay. We have Mr. Alva coming in.

14 MR. ALVA: Is that better, Judge.

15 THE COURT: Perfect. I think we have
16 everybody here. All right.

17 So Mr. Alva, we're at the part of the trial
18 where you're going to cross-examine the witness.

19 MR. ALVA: Yes, Your Honor.

20 Your Honor, if I could renew my motion. My
21 understanding of the Interrogatory responses that
22 the Bar gave as to the opinions that would be
23 offered by Mr. Betensky did not include several of
24 the opinions on direct examination. I haven't had
25 sufficient time or notice to be able to

1 cross-examine the witness about those opinions
2 because I was not aware that they were going to be
3 given, and I haven't had an opportunity to hire an
4 expert witness to rebut the opinions that are
5 beyond the scope of the Interrogatory responses,
6 and I would respectfully request that the Court
7 grant me a continuance so that I have an
8 opportunity to prepare the cross-examine on those
9 opinions and to hire an expert of my own limited to
10 the areas where the opinions are, in my opinion
11 (inaud.) interrogatory responses?

12 THE COURT REPORTER: Mr. Alva, do you have two
13 devices or is that me?

14 THE COURT: That's you.

15 MMR. ALVA: I didn't hear that, Your Honor.

16 THE COURT: All right. So I'm going to deny
17 your motion, once again, and you can proceed with
18 cross-examination.

19 MR. ALVA: Thank you, Your Honor.

20
21 CROSS EXAMINATION

22 BY MR. ALVA:

23 Q. Mr. Betensky, are you familiar with a doctrine
24 called the First Breach Rule?

25 A. Yes.

1 Q. I want to show you -- actually, sir, I'd like
2 to read to you a case involving the First Breach Rule
3 and ask you whether or not, in your opinion, it
4 accurately states the First Breach Rule.

5 So I'm going to read to you from the case of
6 Toyota Tsusho, T-S-U-S-H-O, AM., Inc., versus
7 Crittenden, C-R-I-T-T-E-N-D-E-N, which is 736 So.2d 472,
8 and the pinpoint cite is 477. It is a Fifth District
9 Circuit Court case opinion from 1999.

10 And here is the portion I want to read to you,
11 sir. "When a non-breaching party to a contract is
12 confronted with a breach by the other party, the non-
13 breaching party may stop performance, treating the
14 breach as a discount of its contractual liability."

15 Would you agree that that was an accurate
16 statement of the First Breach Rule?

17 MS. PEARSALL: Objection.

18 THE COURT: Overruled.

19 MS. PEARSALL: I'm sorry, I was going to say
20 referring to items not in evidence and I haven't
21 had an opportunity to read what counsel is
22 referring to.

23 THE COURT: Okay. Overruled. You can answer
24 the question.

25 A. That's a general statement of many that relate

1 to that rule.

2 BY MR. ALVA:

3 Q. Well, would you agree that it's accurate, sir?

4 A. As a general statement, yes.

5 Q. And I'd like to read you one other statement
6 if I can. This is from the case of City of Miami Beach
7 versus Carner, C-A-R-N-E-R. This is 579 So.2d 248. The
8 pinpoint cite is 251. This is a Third Circuit Court of
9 Appeals case from 1991. And the statement is, "The rule
10 is quite clear that a contracting party, faced with a
11 material breach by the other party, may treat the
12 contract as totally breached and stop performance."

13 Would you agree that that's an accurate
14 statement of the First Breach Doctrine?

15 A. As a general statement, yes.

16 Q. Now, sir, you testified that in your opinion,
17 that the fees that were charged by my firm were
18 excessive; is that correct?

19 MS. PEARSALL: Objection. Misstates the
20 witness' testimony.

21 THE COURT: Well, he's going to have an
22 opportunity to explain his position.

23 A. To answer the question with respect to Invoice
24 No. 95, yes.

25 BY MR. ALVA:

1 Q. I'm going to show you -- can you see this on
2 your screen, sir, Rule 4-1.5?

3 A. I do see it.

4 Q. And I'm going to take you to Subsection B and
5 tell me if I read this correctly. "Factors to be
6 considered in determining reasonable fees and costs."

7 Did I get that right?

8 A. You read the header in bold from B correctly,
9 yes.

10 Q. Thank you. Would you agree, sir, that these
11 are the factors to be considered in determining
12 reasonable fees and costs?

13 A. That's what the rule states.

14 Q. Well, do you agree with the rule?

15 MS. PEARSALL: Objection. Relevance.

16 A. I don't know what that means.

17 THE COURT: Sustained.

18 BY MR. ALVA:

19 Q. In reaching your conclusion that Invoice 95
20 was excessive, did you consider the time and labor
21 required?

22 A. I did not consider that factor because it's
23 not relevant to my opinion.

24 Q. Well, I wasn't asking you what you thought was
25 relevant to your opinion, sir. I just wanted to know

1 whether you asked that. Is it correct that you did not
2 consider that?

3 A. Correct.

4 Q. Did you consider the novel complexity of the
5 questions involved?

6 A. The questions involved in the underlying
7 lawsuit in which you represented McCool and his company?
8 Is that your question?

9 Q. Yes, sir.

10 A. I did not consider that.

11 Q. Did you consider the skill requisite to
12 perform the legal service properly?

13 A. I did not.

14 Q. Did you consider the likelihood that the
15 acceptance of the particular employment would preclude
16 other employment?

17 A. No.

18 Q. Did you consider the fee or rate of fee
19 customarily charged in the locality for legal services
20 of a comparable or similar nature?

21 A. No.

22 Q. Did you consider the significance of or amount
23 involved in the subject matter of the representation,
24 the responsibility involved in the representation, and
25 the results obtained?

1 A. No.

2 Q. Did you consider the time limitations imposed
3 by the client or by the circumstances and, as between
4 attorney and client, any additional or special time
5 demands or requests of the attorney by the client?

6 A. No.

7 Q. Did you consider the nature and length of the
8 professional relationship with the client?

9 A. I hadn't thought about this before but now
10 that you're asking me this question on subpart F, to a
11 certain extent.

12 Q. To a certain extent you did consider that one?

13 A. Yes. Because the chronology and the time
14 period in which you represented the client was important
15 to me.

16 Q. And what did you conclude as to the nature and
17 length of the professional relationship as it related to
18 the amount of the fee?

19 A. Well, I took into consideration that you began
20 to represent the client September of 2016, and by the
21 time you issued your bill in January of 2018, you had
22 performed services and billed approximately \$300,000
23 during that 16-month period. And I did not see any
24 disputes with the client relating to billing until after
25 the issuance of Invoice No. 90, the one that's dated

1 January of 2018.

2 Q. Thank you. Did you consider the experience,
3 reputation, diligence, and ability of the lawyer or
4 lawyers performing the service?

5 A. I did not.

6 Q. Did you consider the expertise or efficiency
7 of effort reflected in actually providing the services?

8 A. No.

9 Q. Did you consider whether the fee was fixed or
10 contingent?

11 A. Well, I had to consider it because it was a
12 fixed fee set forth in the engagement letter, so to that
13 extent, yes.

14 Q. Now, I want to take you, sir, to Exhibit 25.
15 Ms. Pearsall, could I impose on you to put Exhibit 25 on
16 the screen?

17 MS. PEARSALL: Okay. (Complies.)

18 You see it? It says Exhibit 25, so I'm going
19 to go back to the top of the page.

20 BY MR. ALVA:

21 Q. Mr. Betensky, if you would look at the exhibit
22 that Ms. Pearsall has put on the screen, do you see
23 where it says, "In other words, we find out how much of
24 the December bill was actually subject to good faith
25 dispute, it appears that we have that number, \$6,800."

1 Do you see that?

2 A. I do.

3 Q. Are you aware of any basis, Mr. Betensky, for
4 Dr. Colorchip to not pay the portion of the December
5 invoice as to which they had no dispute?

6 A. Yes.

7 Q. And what would that basis be, sir?

8 A. The basis is, is that the client raised or
9 alerted you to the fact they had questions about the
10 bill. You refer to it as the December bill. But to be
11 clear, we're talking about the bill that was actually
12 dated January 9, 2018, for December services rendered.

13 So I just want to be clear about that.

14 Q. Yes, thank you.

15 A. And you and/or your firm were informed that
16 the client had questions. Apparently, in your e-mail
17 you narrowed it to seven questions. Maybe they said it
18 was seven questions. But the questions hadn't been
19 addressed yet. And you then decided to try to parse the
20 bill between what you were trying to get at, what was in
21 dispute, what was not in dispute.

22 So while this is all pending, if I'm the
23 client, I would like my questions answered. So I'm
24 looking at this in that light.

25 Q. Well, let me ask you a hypothetical question,

1 Mr. Betensky. I want you to assume for the purposes of
2 the question that a part of the December invoice was not
3 in dispute.

4 In that hypothetical, are you aware of a legal
5 basis for the client to not pay the portions that are
6 not in dispute?

7 A. I cannot answer that question in a vacuum,
8 Mr. Alva. I have looked at this case based on the facts
9 of this case. So to just throw out that general
10 statement, I wouldn't know how to address it.

11 There has to be an agreement between an
12 attorney and the client. If they got down the road and
13 there was a question and the lawyer insisted on the
14 client paying the undisputed portion, first of all,
15 you'd have to identify what the undisputed portion is.
16 The client would have to agree that that's the
17 undisputed portion. And then it would be subject to
18 whether or not the client wanted to pay the undisputed
19 portion while there was still issues pending as to the
20 disputed portion.

21 Q. Is it your position, sir, that it would be
22 appropriate for the client to not pay the undisputed
23 portions in order to convince the attorney to answer the
24 questions pending?

25 MS. PEARSALL: Objection. Argumentative and

1 compound question.

2 THE COURT: I'm going to overrule it. You can
3 answer.

4 A. I think it is highly inappropriate for any
5 lawyer to condition these issues on whether or not the
6 lawyer believes the client is proceeding in good faith
7 or is looking to parse the bill. There are questions
8 about this bill. The duty of the lawyer is to address
9 the questions, not to start saying, let's first do this.
10 Let's first find out what's in dispute. Let's find out
11 what's not in dispute, and then I'll answer your
12 questions. That is not appropriate. Not appropriate.

13 MR. ALVA: Okay. Your Honor, I object to the
14 witness' answer and move to strike it as
15 nonresponsive. My question was a question about what
16 the client could appropriately do, and the witness
17 answered by what the lawyer could appropriately do or
18 not do as he testified. I move to strike it.

19 THE COURT: All right, I'm going to overrule
20 that.

21 BY MR. ALVA:

22 Q. Mr. Betensky, I wonder if I could get you to
23 focus on the client for a moment. Is it appropriate for
24 the client to refuse to pay the undisputed amount as a
25 way of convincing the attorney to answer the questions

1 pending?

2 A. You're going to have to run that by me again.

3 MR. ALVA: Madam Reporter, would you be kind
4 enough to read that back to the witness.

5 (Thereupon, the court reporter read back the
6 requested portion.)

7 MS. PEARSALL: Objection. Outside the scope
8 of direct.

9 THE COURT: Overruled.

10 A. Are you asking in this specific instance or
11 are you just throwing out in the ether this
12 hypothetical?

13 BY MR. ALVA:

14 Q. Let's do it in this instance, if we can.

15 A. Okay.

16 Q. I'm sorry. Did you answer?

17 A. No. I said -- I thought you were going to ask
18 the next question.

19 Q. No, I'd like the answer to the question
20 pending, if you could.

21 A. Okay. If your question is -- I don't know if
22 you used the word appropriate, I don't remember what you
23 asked now, but if you are asking whether in this
24 specific instance Dan McCool had the right to not pay
25 the undisputed amount, if he determined he didn't want

1 to pay the undisputed amount until the entire bill was
2 addressed, totally, totally within his prerogative as a
3 client.

4 Q. Are you aware, sir, of any authority that
5 states that a client can refuse to pay an undisputed
6 portion of a legal bill in order to convince the
7 attorney to address questions the client has?

8 A. You're reading in something here that, unless
9 you show me otherwise, you're suggesting in your
10 question that this client was strong-arming you and that
11 the client was not paying what you claim to be the
12 undisputed amount because they were somehow trying to
13 gain leverage on you.

14 I don't read this record that way at all. I
15 simply read it that the client had questions about the
16 January bill for December services. You're the one that
17 started saying, "I'll answer your questions, but first
18 we're going to do it my way, and you need to prove to me
19 that you're acting in good faith."

20 That's inappropriate and I find that
21 personally, as an expert witness, as a practicing
22 attorney for 38 years, offensive.

23 MR. ALVA: Your Honor, I move to strike the
24 witness' answer as nonresponsive. The question was
25 a yes or no as to whether or not he was aware of

1 certain legal authority and instead he gave an
2 answer that was nonresponsive, and I ask that we
3 strike.

4 THE COURT: I'll grant your motion to strike.

5 MS. PEARSALL: Over the Bar's objection.

6 BY MR. ALVA:

7 Q. Mr. Betensky, if I could get you to focus on
8 legal authorities. Are you aware of any legal authority
9 that states that a client can properly refuse to pay an
10 undisputed amount in order to convince the attorney to
11 answer the questions that are pending?

12 A. I don't have a case in front of me that says
13 specifically that, if that is what you're asking me.

14 Q. To the best of your recollection, as you sit
15 here today, sir, have you ever given the opinion before
16 that it is appropriate for a client to not pay an
17 undisputed amount in order to convince the attorney to
18 answer the questions pending?

19 MS. PEARSALL: Objection. Argumentative.

20 THE COURT: Well, I just don't understand why
21 are we placing the client on trial here and talking
22 about their conduct. I don't understand how this
23 goes towards your defense and how any of these
24 questions are relevant.

25 MR. ALVA: Your Honor, may I respond?

1 THE COURT: Yes, please.

2 MR. ALVA: I think the relevance, Your Honor,
3 is that the issue of the reasonableness of the
4 attorney's behavior is intertwined with the
5 behavior of the client. And, apparently, from this
6 exhibit here, there was an undisputed amount, maybe
7 we don't know the exact amount of it, but there was
8 some amount that was not disputed by the client.
9 And if the client refused to pay the undisputed
10 amount without a legal -- without the legal right
11 to do so, then the client is in breach of the
12 contract.

13 And pursuant to the First Breach Doctrine, if
14 the client breaches their contract, the attorney is
15 excused from performing under the contract.

16 THE COURT: Okay, I don't think anybody
17 disagrees with that. But then so that gets you to
18 Step 2. How do you get from Step 2 to Step 3?

19 Now, you're just going to charge an extra
20 \$100,000.

21 MR. ALVA: Well, this specific question does
22 not relate to that, Your Honor, I agree. That's
23 the next step. This relates only to --

24 THE COURT: Okay. So let's talk about your
25 remedies at this point. So under the First Breach

1 contract, you would have a remedy if they, in fact,
2 did breach, correct?

3 MR. ALVA: I'm sorry, have the remedy what,
4 sir? You broke up.

5 THE COURT: You would have a remedy without
6 getting into what the remedies are, you would have
7 a remedy if Dr. Colorchip breached your contract,
8 correct?

9 MR. ALVA: I believe so, Your Honor.

10 THE COURT: Obviously, you could stop working,
11 correct?

12 MR. ALVA: That's one of the things you could
13 do. Well, no, I think you'd actually have to be
14 granted withdrawal.

15 THE COURT: Withdrawal.

16 MR. ALVA: Yeah.

17 THE COURT: You could move to withdraw for
18 nonpayment?

19 MR. ALVA: Yes.

20 THE COURT: I guess, you could sue them for
21 not paying your bill?

22 MR. ALVA: I believe so, Your Honor.

23 THE COURT: So that's if they're wrong. So
24 the question is, do you have a third remedy? Are
25 you able to then go back and retroactively charge

1 them more money in addition to the contracted rate?

2 MR. ALVA: Well, the way I would word it, Your
3 Honor, is that if my obligations under the fee
4 agreement are excused, I think is the language
5 that's used in the First Breach Rule, by a prior
6 breach by the client, then the \$400 rate is no
7 longer binding on me. And I am able to bill a rate
8 that is other than the contract rate because I'm no
9 longer bound by the contract, would be the
10 relevance analysis, I believe, Your Honor.

11 THE COURT: So I just don't see why we are --
12 so let's just assume, for purposes of this trial,
13 that the client was in breach.

14 MS. PEARSALL: Sorry, Your Honor.

15 THE COURT: Let's just assume that. Let's
16 just assume that.

17 MR. ALVA: Okay, thank you.

18 THE COURT: Does that help with your
19 questioning of this witness?

20 MR. ALVA: Well, I think so, Your Honor,
21 because in the Interrogatory responses that they
22 gave, the witness' opinion was that the fee was
23 unreasonable because it was higher than the fee
24 that was permitted by the contract.

25 And if my obligation to bill the contract rate

1 has been excused, then I am no longer obligated by
2 that \$400 rate, and I can bill at a different rate.

3 Now, Your Honor, I agree that does not address
4 the question of, well what about time that was
5 already paid? This doesn't go to that. This just
6 goes to the point that the \$400 rate was no longer
7 a requirement in this case, if the client had
8 breached, and my \$400 obligation had been excused.

9 That's the only point, Your Honor.

10 MS. PEARSALL: If I could be heard, Your
11 Honor.

12 The Bar is not in agreement with any of that.
13 The Bar is not in agreement to assuming for the
14 sake of the trial that the client breached the
15 contract. So I'm objecting to all of that.

16 I just wanted that stated on the record.
17 Thank you, Your Honor.

18 THE COURT: Okay. I mean, that's not an issue
19 for this Court is whether the client breached the
20 contract. But Mr. Alva's position is that the
21 client breached the contract and, therefore, I'm
22 taking a remedy. And it's the remedy that he's
23 taking is what is in dispute here today.

24 So I don't want to -- I just don't want to
25 spend an hour on whether the client breached the

1 contract or not because it doesn't -- assuming that
2 the client did breach the contract, that's not the
3 violation. The violation is, was the remedy that
4 Mr. Alva took appropriate? That's it. And
5 Mr. Alva's going to have an opportunity to put on
6 his case and explain to me why his remedy was
7 appropriate.

8 And I don't mind if you want to ask the
9 witness if the remedy that you took was
10 appropriate, but I just don't want to spend an hour
11 in discussion as to whether Dr. Colorchip was in
12 violation of their contract. I think we can assume
13 that they were, just for purposes of the ethics
14 trial, and then let's just focus on Mr. Alva's, you
15 know, response to that breach.

16 MR. ALVA: Thank you, Your Honor.

17 THE COURT: You can ask the witness as many
18 questions you want to, I'm not limiting you, I'm
19 just trying to focus the trial on where we need to
20 be and not putting it back towards the Palm Beach
21 County trial, which you've already done.

22 MR. ALVA: Thank you, Your Honor.

23 Madam reporter, would you read me back the
24 last question to the witness?

25 (Thereupon, the court reporter read back the

1 requested portion.)

2 BY MR. ALVA:

3 Q. Do you have just a yes-or-no answer to that,
4 sir?

5 A. I don't -- I just really don't know how to
6 answer that question. I can't -- in a vacuum, what the
7 client's rights are or not. I just can't answer that
8 question.

9 Q. Well, sir, I don't think actually the question
10 wants you to talk about the client's rights. It's a
11 question of, in the past, have you ever taken the
12 position that you're taking now.

13 A. You mean with my clients?

14 MS. PEARSALL: Objection to the form of the
15 question. Misstates the witness' testimony.
16 Mischaracterizes the witness' testimony, and vague.

17 THE COURT: Did you understand that? Did the
18 witness understand the question?

19 A. I don't understand the question. I guess,
20 let's try it again, Mr. Alva. But there's an assumption
21 in your question that there was an agreement between you
22 and the client as to what was disputed and undisputed,
23 and my general recollection of the myriad of
24 communications and e-mails back and forth with the
25 client, that there was no definitive agreement about

1 parsing this bill to what was disputed or undisputed.

2 But to answer to your question, a client can
3 do whatever a client wants to do.

4 BY MR. ALVA:

5 Q. Thank you. Let me see if I can reword it.

6 MMR. ALVA: Madam Reporter, can you read me
7 back the question and I'll reword it?

8 (Thereupon, the court reporter read back the
9 requested portion.)

10 A. No, I have never given such an opinion.

11 BY MR. ALVA:

12 Q. Thank you.

13 A. Nor have I been asked to give that opinion
14 until today.

15 Q. Mr. Betensky, I believe in your direct
16 examination you gave testimony to the effect that the
17 engagement letter between my firm and the client didn't
18 give the client any notice that if they were to breach
19 the agreement, I would increase the hourly rate.

20 Did I get that right?

21 A. In your words, yes, pretty much that's what
22 we're talking about.

23 Q. And, sir, in your opinion, does an attorney
24 have to put in the engagement agreement all of the
25 remedies that are available to the attorney in the event

1 of breach?

2 A. I don't know if that is a remedy, but if the
3 intent was to condition any term in that employment
4 agreement on the client doing something, or else
5 something else would happen, yes. My opinion would be
6 that would have to be in the engagement letter,
7 particularly when it relates to fees.

8 Q. Okay. So then would it be consistent with
9 that opinion to say that a lawyer was obligated to put
10 in the engagement letter that if the client were to
11 breach, that the lawyer could choose to sue them for
12 damages?

13 MS. PEARSALL: Objection. Outside of the
14 scope of direct.

15 THE COURT: Overruled.

16 A. A lawyer can put whatever a lawyer wants to
17 put -- well, I shouldn't say that.

18 If a law firm wants to put that language in
19 the engagement letter, he can they can put that language
20 in the engagement letter.

21 BY MR. ALVA:

22 Q. I don't think that's the question I was
23 asking. What I'm trying to figure out is, in your
24 opinion, is a lawyer obligated to put in the engagement
25 letter that if the client breaches, that the lawyer

1 could sue them for damages?

2 A. Well, just tell me the first few words of that
3 question again.

4 MMR. ALVA: Madam Reporter, would you read
5 that back to us?

6 (Thereupon, the court reporter read back the
7 requested portion.)

8 A. I don't think the lawyer is necessarily
9 obligated to make that general statement. Usually,
10 there's a provision in there that if there's a dispute,
11 there's some kind of dispute resolution mechanism set
12 forth in an engagement letter. Could be arbitration, it
13 could be mediation, whatever.

14 BY MR. ALVA:

15 Q. So to make sure I understand your testimony, a
16 lawyer can properly sue a client for damages if the
17 client breaches without notifying the client in the
18 engagement letter that the lawyer could sue them for
19 damages?

20 MS. PEARSALL: Objection. Compound question.
21 Misstates and mischaracterizes the witness'
22 testimony, and counsel is testifying.

23 THE COURT: It's also not related -- you're
24 asking hypotheticals that aren't related to our
25 case.

1 MR. ALVA: If I understand the witness'
2 testimony correctly, Your Honor, he's testifying
3 that one of the reasons that actions that were
4 taken were inappropriate was because they were not
5 disclosed to the client in the engagement letter.
6 And he has specifically said you didn't disclose
7 that you would change the rate to a higher rate.
8 And by not disclosing that, you did something that
9 was improper.

10 And so I'm trying to determine whether his
11 opinion that you have to disclose something in it
12 includes remedies for breach.

13 THE COURT: But that's not -- okay. You're
14 asking him questions about a different factual
15 scenario than what we have here.

16 So, for instance, if you put in a retainer
17 agreement that if you breach you can be sued and
18 you'll be responsible for attorneys' fees, then the
19 parties agree to that.

20 But if you don't put in the attorney fee
21 provision, you're not entitled to attorneys' fees
22 for being successful in the breach contract.

23 That scenario has nothing to do with your
24 case. You're asking questions off topic.

25 MR. ALVA: I don't intend to, sir, and I

1 apologize if I am. I'm just trying to get the
2 scope of his opinion as to what has to be
3 disclosed.

4 I would like to be able to argue to the Court
5 at the end of the case that the fact that this
6 remedy was not disclosed is not a violation of the
7 rules because you don't have to disclose remedies
8 in your engagement letter with, I think the
9 exception of the point you mentioned, Your Honor,
10 which is attorneys' fees, which I think the witness
11 would agree is a special circumstance because
12 attorneys' fees --

13 THE COURT: Would have to be disclosed.

14 MR. ALVA: -- would have to be disclosed, yes,
15 Your Honor.

16 THE COURT: So is changing the rate one of
17 those things that would have to be disclosed?

18 Why don't you just ask the witness that
19 question?

20 MR. ALVA: Yes, Your Honor. Let me see if I
21 can do just that.

22 BY MR. ALVA:

23 Q. Mr. Betensky, can you list for me the remedies
24 that have to be disclosed in an engagement letter
25 between an attorney and a client in order for the

1 attorney to exercise those remedies?

2 MS. PEARSALL: Objection. Outside of the
3 scope of direct. Relevance.

4 THE COURT: Overruled. Overruled.

5 A. We're talking about two different things in my
6 opinion, Mr. Alva. Your engagement letter expressly
7 states that the rate is \$400 an hour for attorneys and
8 \$100 an hour for paralegals.

9 It doesn't say, and it says on top of that,
10 all the bills need to be paid within ten days. Clients
11 don't always pay their bills within ten days. Human
12 beings don't always pay their bills within what's
13 specified on an invoice.

14 So if the client didn't pay the bill, a lawyer
15 has a right to bring collection efforts, if that's what
16 the lawyer wants to do. But, more specifically, here,
17 the letter doesn't say, oh, by the way, if you do not
18 pay me within ten days, the discounted hourly rate goes
19 out the window, and I have the right, I retain the right
20 to bill you nunc pro tunc, back to the beginning of the
21 representation at the non-discounted hourly rate.

22 That, in my opinion, would absolutely have to
23 be set forth in the agreement. There is simply no legal
24 basis for the agreement, which is an express contract to
25 be unilaterally modified or expanded, I should say, by

1 the lawyer under these facts and circumstances.

2 MR. ALVA: Your Honor, I think the question
3 was asking him to identify the remedies that would
4 have to be listed. I don't think that he did that.
5 I would move to strike the respondent's answer as
6 nonresponsive, and I'll maybe find another way to
7 word it to see if I could get a list of the
8 remedies that need to be disclosed.

9 MS. PEARSALL: Your Honor, I don't know how
10 you're going to rule, but I believe the witness'
11 answer was responsive. And he said what needed to
12 be disclosed. And I ask that you deny Mr. Alva's
13 motion to strike.

14 THE COURT: I'm not striking that response.
15 BY MR. ALVA:

16 Q. Mr. Betensky, other than the remedy of no
17 longer being bound by the contract rate, and the remedy
18 of attorneys' fees, are you aware of any other breach
19 remedy that has to be disclosed in an engagement letter
20 between an attorney and client?

21 A. I haven't thought about that, Mr. Alva, so I
22 couldn't answer that question. We're not talking --
23 when I reviewed this case, I didn't view it with an eye
24 toward remedies because I don't think we're talking
25 about a remedy, we're talking about a retaliatory

1 invoice that was issued to the client when the client
2 did not accede to the lawyer's demands.

3 That's all. That's what I'm talking about.

4 MR. ALVA: Your Honor, I move to strike that
5 as prejudicial, unfairly prejudicial and
6 nonresponsive. The only question was, can you
7 identify any other remedy that needs to be
8 disclosed, and he did not answer that question,
9 instead gave an unfairly prejudicial response.

10 THE COURT: All right. Overruled.

11 BY MR. ALVA:

12 Q. Mr. Betensky, just list for me the ones that
13 you can do as you sit here, okay? List for me all of
14 the remedies that an attorney has to disclose in advance
15 in an engagement letter with the client?

16 A. When you say "has to disclose," has to
17 disclose by virtue of what authority, Mr. Alva?

18 Q. Has to disclose to not be in breach of the
19 ethics rules. Let's try that.

20 A. I'm not aware, sitting here -- go ahead, I'm
21 sorry, Ms. Pearsall.

22 MS. PEARSALL: Objection. Vague as to the
23 ethics rules. There are a lot of ethics rules.

24 MR. ALVA: I can --

25 THE COURT: Rephrase the question.

1 MR. ALVA: Yes, Your Honor.

2 BY MR. ALVA:

3 Q. In order to not be in violation of the rule
4 against unreasonable fees, list for me all of the
5 remedies that you know of, as you sit here, that have to
6 be disclosed in the engagement letter?

7 A. I'm not aware of a specific rule by the
8 Florida Bar or the Florida Supreme Court that mandates
9 what remedies an attorney must put in an engagement
10 letter, if any, other than what the Court has already
11 acknowledged.

12 Obviously, if you want to get prevailing party
13 attorneys' fees as a result of a dispute that arises out
14 of the contract, you need to have that as a provision in
15 the contract, if there's no statute that gives you a
16 right to that. So that would be a remedy.

17 But in terms of whether the lawyer wants to
18 reserve the right to bring an injunction or seek
19 specific performance or sue for money damages, I'm not
20 aware of any specific mandate as to what a lawyer must
21 put into an engagement letter. But I reiterate that's
22 not the situation under these facts.

23 Q. Let me just ask one followup question, sir, if
24 I may.

25 If you're not aware of any rule that explains

1 to an attorney which remedies have to be disclosed in
2 advance, how is an attorney to determine whether the
3 remedy that they're going to potentially exercise would
4 be unethical?

5 MS. PEARSALL: Objection. Calls for
6 speculation. I'm sorry, sir. Objection. Calls
7 for speculation. Vague.

8 THE COURT: I agree. I'm going to sustain
9 that objection.

10 BY MR. ALVA:

11 Q. Mr. Betensky, if there are no rules to your
12 knowledge that tell an attorney which remedies have to
13 be disclosed in an advanced, are you aware of any case
14 law, as you sit here now, that tells attorneys which
15 remedies have to be disclosed in the engagement letter?

16 MS. PEARSALL: Objection. Mischaracterizes
17 the witness' testimony.

18 THE COURT: Overruled.

19 A. I'm not aware of any case law sitting here
20 without researching it. But, again, this is not a
21 remedy that we're talking about, not a legally
22 cognizable remedy.

23 BY MR. ALVA:

24 Q. Is that opinion, sir, disclosed in the Bar's
25 Interrogatory responses on your expert opinions that you

1 would offer?

2 A. I don't know. You're asking these questions.
3 I don't know, you know, whether that relates to an
4 opinion or not.

5 Q. Thank you.

6 A. My point is what happened with the issuance of
7 Invoice 95 was not a legally cognizable remedy, that was
8 your law firm's remedy.

9 Q. There's actually no question pending, sir.

10 A. I was simply supplementing my response.

11 Q. I'm going to show you Rule 5-1.1. Do you see
12 that on your screen, sir?

13 A. I do.

14 Q. Do you recognize this as the rule in Florida
15 regulating trust accounts?

16 A. It appears to be.

17 Q. Are you familiar with that rule, sir?

18 A. Not off the top of my head. I've not read the
19 rule for purposes of this case.

20 Q. I want to take you, if I can, sir, to
21 Subsection D -- no. Subsection F, if I can.

22 Do you see that on your screen?

23 A. Yes.

24 Q. Could you read that into the record for us,
25 please?

1 A. "Subpart F, disputed ownership of trust funds.
2 When in the course of representation a lawyer is in
3 possession of property in which two or more persons,
4 (one of whom may be the lawyer) claim interest, the
5 property must be treated by the lawyer as trust
6 property, but the portion belonging to the lawyer or law
7 firm must be withdrawn within a reasonable time after it
8 becomes due, unless the right of the lawyer or law firm
9 to receive it is disputed, in which event, the portion
10 in dispute must be kept separate by the lawyer until the
11 dispute is resolved."

12 And if you scroll up a little bit because part
13 of it is being blocked out.

14 The final sentence says, "The lawyer must
15 promptly distribute all portions of the property as to
16 which the interests are not in dispute."

17 Q. Do you recognize this, sir, as the ethics rule
18 in Florida that governs what an attorney can do when
19 there is a dispute as to ownership of funds in a trust
20 account?

21 MS. PEARSALL: Objection. Compound question
22 and vague.

23 THE COURT: Overruled.

24 A. It appears to be.

25 BY MR. ALVA:

1 Q. Is it your opinion, sir, that if a lawyer was
2 in possession of funds in a trust account, and the
3 ownership of the funds was in dispute, that a lawyer
4 could follow this -- not follow -- comply with this rule
5 by keeping the funds separate until the dispute is
6 resolved?

7 A. Well, if the funds are already in the lawyer's
8 trust account, the funds are separate and protected.

9 Go ahead.

10 Q. I'm sorry. I'm asking whether the lawyer can
11 keep the funds in the trust account until the dispute is
12 resolved?

13 A. Well, the premise of the rule is when you have
14 two or more persons, one of whom may be the lawyer,
15 claim interest in the trust account funds. I'm not
16 aware -- well, let me stop there.

17 And so it would remain in the trust account
18 while the dispute is adjudicated.

19 Q. So is it correct that the lawyer can properly
20 keep the funds separate until the dispute is resolved?

21 MS. PEARSALL: Objection. Asked and answered.

22 THE COURT: Overruled.

23 MS. PEARSALL: The rule speaks for itself, I
24 guess.

25 THE COURT: Overruled.

1 A. The funds would still be in the trust account.
2 So in answer to your question, yes, they would be kept
3 separate by virtue of being in the trust account.
4 Whenever trust account funds are in dispute, they should
5 not be moved until the dispute is resolved.

6 When I say "moved," should not be moved into
7 the lawyer's operating account or transferred out of the
8 trust account to some third party. It needs to sit in
9 the trust account.

10 BY MR. ALVA:

11 Q. Thank you. I want to show you the engagement
12 letter now, if I may, sir.

13 MR. ALVA: Ms. Pearsall, do you recall the
14 number for this exhibit?

15 MS. PEARSALL: It's Bar's 1.

16 MR. ALVA: Thank you.

17 BY MR. ALVA:

18 Q. Mr. Betensky, I'm going to show you my copy --
19 so this is not the copy that was marked as an exhibit
20 but this is my copy of the Bar's Exhibit No. 1. It is
21 the September 19, 2016, engagement agreement, if I
22 understand correctly, between my firm and the client.

23 Do you recognize that?

24 A. I do.

25 Q. This is one of the documents that you reviewed

1 in preparing your opinion; is that correct?

2 A. That is correct.

3 Q. And I want to refer you to some language that
4 I believe you addressed in your direct examination. Do
5 you see the portion that I highlighted in yellow at the
6 bottom of the first page?

7 A. I do see that.

8 Q. Is that large enough for you to read, sir?

9 A. I have a hard copy in front of me so I'm
10 looking at that instead. It's easier for me.

11 Q. Thank you, sir. Okay. So if you would, would
12 you read into the record the portion that begins with
13 the yellow highlighting and then it doesn't quite
14 highlight the end of that sentence, if you could
15 complete the sentence, that's there.

16 A. Sure. "This retainer will be held in a trust
17 account until the end of the representation and the
18 settling of this account. But it may be applied to any
19 invoices unpaid after ten days, and if it is so applied,
20 it will be replenished to \$12,500 within ten days of
21 being spent to pay any invoice."

22 Q. So is it correct, sir, that the engagement
23 agreement here permitted the firm to use the retainer to
24 pay any unpaid invoices after ten days?

25 A. Yes.

1 Q. And then I want to show you on the next page.
2 Can you see Clause Number 6, sir, or paragraph 6?

3 A. Was your prior question can a lawyer use the
4 trust money, the retainer money to apply to an unpaid
5 invoice, if it's not paid in ten days? That was the
6 question?

7 Q. I believe so, sir.

8 A. Okay. What's the next question then?

9 Q. The next question, I'm going to the next page
10 of the exhibit and I want you to look at the paragraph
11 6.

12 A. Yep, got it.

13 Q. Can you read that into the record for us?

14 A. Yes. Number 6, "The firm will invoice monthly
15 for work provided and payment will be due in ten days."

16 Q. So is it correct, sir, that the attorney and
17 the client agreed that the client would pay invoices in
18 ten days?

19 MS. PEARSALL: Objection. Calls for
20 speculation.

21 THE COURT: Overruled. You can answer.

22 A. The law firm and the client agreed to
23 paragraph 6, that is correct.

24 BY MR. ALVA:

25 Q. And then if you would look at paragraph 6,

1 sir, labeled, "Miscellaneous provisions."

2 Do you see that?

3 A. Yes, I do.

4 Q. Can you read Subsection A into the record?

5 A. Subsection A, titled, "Notices. All notices
6 or other communications hereunder to each party shall be
7 i)" I believe, "i) in writing and shall be deemed to be
8 given on the earlier to occur of, A) actual receipt, or
9 B) the day such notice or other communication is
10 e-mailed to the address as provided herein."

11 And then it follows with the address and
12 contact information for Mr. McCool and for Dr. Colorchip
13 and to the law firm.

14 Q. So is this a provision of the contract that an
15 attorney at this firm would have to follow in order to
16 send a communication to the client?

17 MS. PEARSALL: Objection. Calls for
18 speculation and it's only one section of the
19 agreement.

20 THE COURT: Overruled.

21 A. I'm familiar with these notice provisions in
22 transactional documents. I'm not familiar with them in
23 engagement letters. But if your question is -- well, if
24 they are going to be notices, whatever that means, or
25 communications, then they need to be in writing. And

1 they tell you when they're deemed to have occurred.

2 Q. And does it also tell you to whom they can be
3 sent?

4 A. Yes.

5 Q. And if the communication is to Mr. Dan McCool,
6 do you see the e-mail address McCoolre2002@yahoo.com?

7 A. I see that.

8 Q. Now, as to the part you mentioned, sir, as to
9 when they are deemed to be given, is it correct that
10 under this agreement a communication shall be deemed to
11 have been given either on the day that it's actually
12 received by the client, or the day that the
13 communication is e-mailed to the address provided
14 herein?

15 MS. PEARSALL: Objection. Asked and answered.

16 THE COURT: Overruled.

17 A. I see what it says. I think it's self-
18 explanatory. I don't know the difference between actual
19 receipt or the day such notice is e-mailed, because if
20 you're e-mailing it today, it is being received today.
21 It may not be opened today, but it surely going to be
22 received on the other end, the other person's inbox.

23 BY MR. ALVA:

24 Q. Okay, and I'm not actually asking you, sir,
25 whether those two dates could possibly be different.

1 I'm only asking you whether the parties agree that a
2 communication would be deemed to be given on the earlier
3 of actual receipt or the day it was e-mailed?

4 A. That's what it says.

5 Q. Now, Mr. Betensky, on the same page, I'm going
6 to go up to the top of the page and I'm going to ask you
7 to read the first full sentence. It starts with the
8 word "unspent," if I'm reading it correctly.

9 A. Sure. "Any unspent and unapplied retainer
10 will be refunded to you at the termination of the
11 representation during the settling of this account."

12 Q. And do I recall correctly, sir, that your
13 opinion was something to the effect that the settling of
14 the account occurred when the client paid the last
15 outstanding invoice?

16 A. Well, frankly, this sentence is ambiguous to
17 me. I'll answer your question in a second but we're
18 looking at the sentence.

19 It conflates at the termination of the
20 representation during the settling of this account. I
21 don't really know what that means. There can be a
22 termination of representation, or there could be a
23 settling of the financial account between the lawyer and
24 the client. I don't necessarily see those things as
25 separate, but they could, I suppose, coincide with one

1 another. We reach an agreement on termination. We
2 reach an agreement on settling the account on the same
3 day, or it can be on separate points in time.

4 MR. ALVA: Madam Reporter, could you read the
5 question back to him?

6 (Thereupon, the court reporter read back the
7 requested portion.)

8 MR. ALVA: Your Honor, I'd make a motion to
9 strike his answer as nonresponsive. It clearly
10 doesn't respond to the question that was posed.

11 THE COURT: Okay. Sustained.

12 BY MR. ALVA:

13 Q. Mr. Betensky, can you ask {sic} the question
14 and I can have the reporter read it back to you if you'd
15 like?

16 A. I would like to have it read back, please.

17 MR. ALVA: Madam Reporter, can you read the
18 question back?

19 (Thereupon, the court reporter read back the
20 requested portion.)

21 A. Well, I don't know what you recall, but when
22 you say "something to the effect," yeah, it's something
23 to the effect, that when all the invoices were paid,
24 that would be the settling of the account. Because at
25 that point, the law firm is not owed any further funds.

1 And, in fact, the termination occurred before the
2 settling of the account.

3 BY MR. ALVA:

4 Q. Are you familiar, sir, with the use of the
5 term "settling of the account" to mean that each party's
6 claims against the other for payment are resolved?

7 A. No.

8 Q. So you've never heard it used in that manner?

9 MS. PEARSALL: Objection. Asked and answered.

10 THE COURT: Sustained.

11 BY MR. ALVA:

12 Q. The only meaning of the term "settling of the
13 account," that you're familiar with, sir, is when one of
14 the parties pays the amounts that they believe are due?

15 MS. PEARSALL: Objection. Mischaracterizes
16 the testimony.

17 THE COURT: Sustained.

18 MR. ALVA: Your Honor, I wasn't trying to
19 characterize his testimony. I'm asking a question,
20 is it correct that he thinks that the only time
21 there could be a settlement is when one party pays.

22 I'm not trying to characterize his testimony
23 at all.

24 MS. PEARSALL: Well, my same objection because
25 when you say "so you think" or "you think" or "you

1 believe," that's characterizing, and same
2 objection, Your Honor. Mischaracterizes.

3 MR. ALVA: Well, I can rephrase it without
4 that.

5 THE COURT: Okay.

6 MMR. ALVA: Madam Reporter, would you read the
7 question back and I'll rephrase is?

8 (Thereupon, the court reporter read back the
9 requested portion.)

10 BY MR. ALVA:

11 Q. Can you answer that question, sir?

12 A. In this particular situation, the account was
13 settled, at least in the client's mind, when they paid
14 100 cents on the dollar. It clearly was not settled in
15 your mind.

16 So that's not a term that I use every day,
17 "settling the account," but I think we all know what
18 that means. We have got bills going out, and payments
19 coming in.

20 The client paid 100 cents on the dollar. They
21 understood that they had settled their account. You,
22 apparently, did not.

23 Q. Do you actually know, sir, that the client
24 settled the account?

25 A. I have not spoken to Mr. McCool about his

1 subjective intent, but on the record, his company and/or
2 he individually paid 100 cents on the dollar of all the
3 bills that you issued, except for that Invoice No. 95.

4 Q. If I can direct your attention to paragraph 1
5 of the exhibit, sir.

6 A. Yes, sir.

7 Q. Do you see the portion where it -- it is about
8 three lines down where it says, "The fees will be based
9 on these factors"?

10 A. I do.

11 Q. You recognize those as the factors that are
12 set forth in the Florida rule on reasonable fees?

13 A. Well, I do.

14 Q. Now, sir, I want to show you another section
15 of Rule 5-1. Do you see the document on the screen,
16 sir?

17 A. I do.

18 Q. And is that Chapter 5 of rules regulating
19 trust accounts?

20 A. Yes.

21 Q. And I'm going to scroll through --

22 MS. PEARSALL: I have an objection, but my
23 objection is going to be outside of the scope of
24 direct. I can wait for the question or I can do it
25 now. So I guess I just did it now.

1 THE COURT: I don't recall an issue being
2 raised regarding the trust account.

3 MR. ALVA: This isn't limited to the trust
4 account, sir, and actually, it's unusual but -- and
5 I'm going to ask the witness this question, but
6 when it says, "Controversies as to amount of fees,"
7 I don't think that they meant that to limit that to
8 fees that are in a trust account.

9 That's one of the questions that I'm going to
10 ask the witness.

11 THE COURT: That's fine. That's fine.

12 MS. PEARSALL: My objection still stands.
13 Outside the scope of direct.

14 THE COURT: Well, your complaint alleges that,
15 you know, he wrongfully withheld the \$25,000
16 retainer. And his defense is that he had a right
17 to the money and he -- I guess you had it in the
18 trust account?

19 MR. ALVA: Yes, Your Honor.

20 MS. PEARSALL: I would object to his -- to the
21 witness' characterization of that -- I mean, sorry.
22 The respondent's characterization or answer to that
23 question as well, Your Honor.

24 THE COURT: You can inquire.

25 BY MR. ALVA:

1 Q. So, Mr. Betensky, do you see subparagraph D
2 there, "Controversies as to amount of fees"?

3 A. Yes.

4 Q. And I want you to focus on the language that
5 starts on the third line down where it says, "In a
6 controversy." Do you see that?

7 MS. PEARSALL: I have an objection, Your
8 Honor. If we're going to have the witness read a
9 rule, why can't he read the complete portion of the
10 rule?

11 THE WITNESS: I was going to do that anyway.

12 MR. ALVA: I don't object to that.

13 I don't know he needs to read the whole thing
14 in the record. Do we need that, Joi -- I mean, Ms.
15 Pearsall?

16 MS. PEARSALL: I'll wait until you ask your
17 question. I didn't know what you were going to
18 have him read or not. So let me just back up.

19 Ask your question. I'm sorry.

20 BY MR. ALVA:

21 Q. Mr. Betensky, would you read all of Subsection
22 D to yourself and then I'm going to ask you a question
23 about a particular portion?

24 A. (Reading.)

25 Can you scroll up so I can see the beginning

1 of this rule, please?

2 Q. Scroll to the top of the document?

3 A. Yep. Right.

4 Q. Right there?

5 A. All the way up, let me see where we are.

6 Okay, if you would scroll down a little bit.

7 Q. (Complies.)

8 A. Stop right there.

9 Q. Can I scroll further down, is that what you're
10 saying?

11 A. I'm actually reading.

12 Q. Oh, okay, let me know when you're ready.

13 A. All right. You can scroll down, please.

14 Q. (Complies.)

15 A. I'm going to read Subpart D to myself now.

16 (Reading.)

17 Okay.

18 Q. So I want you to read into the record, if you
19 would, the third line down in Subsection D that starts
20 with the words, "In a controversy."

21 A. "In a controversy alleging a clearly
22 excessive, extortionate, or fraudulent fee, announced
23 willingness of an attorney to submit a dispute as to the
24 amount of a fee to a competent tribunal for
25 determination may be considered in any determination as

1 to intent or in mitigation of discipline."

2 Do you want me to keep going?

3 Q. No, no, that's fine. So the portion I want to
4 ask you about is "submitting a dispute as to the amount
5 of a fee to a competent tribunal."

6 Do you see that language?

7 A. I do.

8 Q. So, I would be correct in understanding that
9 when that language says "submitting the dispute to a
10 competent tribunal," that means, for example, filing an
11 action in civil court and having the Court determine the
12 proper amount of the fee?

13 MS. PEARSALL: Objection. Outside of the
14 scope of direct. And vague and calls for
15 speculation.

16 THE COURT: Sustained.

17 MR. ALVA: Your Honor, if I can explain the
18 relevance. In his testimony on direct, he
19 specifically looked at an e-mail that was sent from
20 me to the client where it said if we can't -- words
21 to this effect, I'm not trying to quote it exactly,
22 Your Honor, but it said words to the effect, if we
23 can't reach an agreement, then we can go to the
24 Court and have the Court resolved it, and I believe
25 it was the witness's testimony that saying that to

1 a client was part of the grounds upon which you
2 determined that the firm had violated the ethics
3 rules.

4 And I want him to look at this language here
5 and see whether or not the rules actually permit a
6 law firm to say exactly what was said in the
7 e-mail.

8 MS. PEARSALL: Objection. My objection is --
9 I'm sorry, Your Honor.

10 My objection is in that response, counsel
11 mischaracterized the witness' testimony and he did
12 not correctly characterize whatever was in the
13 e-mail that he's referring to.

14 THE COURT: I'm going to allow the question.
15 I'm reversing myself.

16 BY MS. PEARSALL:

17 Q. Would you like the question read back to you,
18 sir?

19 A. No. We did not address what you just said in
20 my direct testimony. I don't remember being asked
21 anything about any language in an e-mail about you going
22 to court.

23 I think what I did talk about was --

24 BY MR. ALVA:

25 Q. Let me see if I can find it for you, sir.

1 A. All right.

2 Q. It might help if we actually show you the
3 exhibit that you were looking at.

4 MR. ALVA: Ms. Pearsall, could I impose upon
5 you to put your Exhibit 25 on the screen?

6 THE COURT: You'd have to remove your screen
7 share.

8 MMR. ALVA: Oh, am I -- (complies.)

9 Thank you, Your Honor.

10 Can you scroll down, Ms. Pearsall, to the next
11 portion in the string?

12 MS. PEARSALL: I only have -- this is only one
13 page so there is no --

14 MR. ALVA: Oh.

15 MS. PEARSALL: This is one page. Maybe this
16 is not the one you're looking for.

17 MR. ALVA: Hang on just a minute.

18 BY MR. ALVA:

19 Q. Let me see if I can get my copy of it.

20 MR. ALVA: What was the date on your Exhibit
21 25, Ms. Pearsall?

22 MS. PEARSALL: February 21, 2018.

23 MR. ALVA: Thank you.

24 I don't see what I'm looking for, Mr.
25 Betensky.

1 BY MR. ALVA:

2 Q. Mr. Betensky, let's try it this way: In your
3 review of documents to prepare your opinion, did you
4 review a document in which I wrote to the client that
5 one of my options was to bring an action in court and
6 have the court resolve the dispute?

7 A. I think early on, yes, you made some comment
8 similar to that, yes.

9 Q. And is it your testimony, sir, that saying to
10 the client that I could bring an action in court to
11 resolve the dispute over the amount was improper?

12 MS. PEARSALL: Objection. Mischaracterizes
13 the witness' testimony.

14 THE COURT: He can answer the question.

15 A. I would only be able to answer the question in
16 the context of which communication we're talking about,
17 and at what point in time.

18 BY MR. ALVA:

19 Q. Let me see if I can reword for you.

20 MR. ALVA: Ms. Reporter, would you read the
21 question back?

22 (Thereupon, the court reporter read back the
23 requested portion.)

24 A. (No answer.)

25 BY MR. ALVA:

1 Q. And what additional information do you need,
2 sir?

3 A. I would like to know which communication
4 you're specifically referring to so I can put it in
5 context. You have several e-mails in here in which, in
6 my opinion, you fuel the flame.

7 So I don't know if it's that one or if it's
8 another one. I knew -- I remembered this one that you
9 had up on the screen, which used the term that you were
10 going to, you know, you could pursue a claim for bad
11 faith misrepresentation and punitive damages equal to
12 treble the amount of the claim, or \$375,000. I thought
13 that was inappropriate, inaccurate, very argumentative.

14 Q. Okay. So let's look again so I can share my
15 screen again. So going back to Rule 5-1.1 and
16 Subsection D, and the language that you read in the
17 record about the announced willingness of an attorney to
18 submit a dispute as to the amount of the fee to a
19 competent tribunal, do you see that language again?

20 A. I do.

21 Q. So is it your testimony, sir, that under
22 Subsection D of this rule, an attorney could announce to
23 the client that the attorney was willing to submit the
24 dispute as to the amount of the fee to a competent
25 tribunal for determination?

1 A. An attorney can say that to a client.

2 Q. And that would not be a violation of the
3 ethics rules if that's what the attorney said to the
4 client?

5 MS. PEARSALL: Objection. Vague.

6 THE COURT: Overruled.

7 A. No.

8 MR. ALVA: Your Honor, my assistant hasn't
9 come in yet today. I don't know if you remember
10 but she was involved in an auto accident and was
11 going to the hospital.

12 Could we take a 10-minute break and I can just
13 check on her well-being.

14 THE COURT: Sure. We'll take a break. We'll
15 come back, it ten to 3:00, we'll meet back up at
16 3:00.

17 MR. ALVA: Thank you, Your Honor.

18 (Thereupon, a brief recess was taken.)

19 BY MR. ALVA:

20 Q. Mr. Betensky, do you remember the amount of
21 fees that were collected in this matter?

22 You're on mute, sir.

23 A. Sorry about that. You mean by your firm?

24 Q. Yes.

25 A. Collected by your firm? Yes, yes, I do.

1 Q. And can you tell me what that was?

2 A. The amount through, it appears February 14,
3 2018, was \$326,084. I'm reading from a ledger that I
4 did not prepare so I'm taking these numbers at face
5 value.

6 Q. Who prepared the ledger, sir?

7 A. Well, I don't know, but I'm assuming -- I
8 don't like to assume. It is Exhibit No. 16 to the
9 Florida Bar Inquiry Complaint Form, so I believe Exhibit
10 16 was included by the McCool/Dr. Colorchip group. I
11 don't know who prepared it.

12 Q. For the purposes of these questions, if you
13 would assume that's the correct amount, sir.

14 A. Yep.

15 Q. Did you come to an opinion as to whether or
16 not 326,000 was an unreasonable fee in this matter?

17 A. No, I didn't because that's not what I'm
18 testifying about. That's not my role and that's not
19 what I was asked to do.

20 Q. I just asked if you came to an opinion, sir.
21 You did not come to an opinion that that was
22 unreasonable?

23 A. I did not come to any opinion as to the total
24 amount of these bills through February 14, 2018.

25 Q. Thank you.

1 A. The bills that were paid, all of them -- I'm
2 referring to all the bills that were paid by your
3 client. No. No opinion on that.

4 Q. Thank you. Do you remember the amount of the
5 invoice for the work that was done in December?

6 A. \$25,040.

7 Q. Did you come to an opinion, sir, as to whether
8 that amount was unreasonable?

9 A. No. I did not come to an opinion.

10 Q. If we take the \$326,000 -- actually, let me
11 ask you it way: Do you have an opinion, sir, as to what
12 the range of reasonable fees would be for the work that
13 was done in this matter?

14 A. No. I'm not a fee expert.

15 MS. PEARSALL: Objection. Outside of the
16 scope of direct.

17 THE COURT: He already answered the question.

18 A. I'm not a fee expert. The answer is no.

19 BY MR. ALVA:

20 Q. So, would it be correct then, sir, that you
21 don't know whether \$400,000 would have been an
22 unreasonable fee here?

23 MS. PEARSALL: Same objection. Outside the
24 scope of direct.

25 THE COURT: You can answer.

1 A. Where you did pick \$400,000 from? Where is
2 that coming from?

3 BY MR. ALVA:

4 Q. Well, actually, if you could just answer the
5 question, sir, and then Ms. Pearsall could do any
6 followup that she wants to do.

7 MS. PEARSALL: Okay. Objection.
8 Argumentative.

9 THE COURT: Overruled.

10 A. So if you're asking me, Mr. Alva, if \$400,000
11 was billed by your law firm, have I made a determination
12 whether that's reasonable or unreasonable, the answer to
13 your question is no, because I'm not testifying in the
14 capacity as a fee expert for a prevailing party or
15 against a prevailing party.

16 BY MR. ALVA:

17 Q. Okay. Would it also be true, sir, then that
18 you don't have an opinion as to whether or not \$450,000
19 would have been an unreasonable fee?

20 MS. PEARSALL: Objection to the -- excuse me.

21 THE COURT: Sustained. Sustained. Sustained.

22 BY MR. ALVA:

23 Q. Mr. Betensky, do you remember the amount of
24 Invoice 95?

25 A. I do.

1 Q. Can you tell us what that was?

2 A. 126 -- let me pull it out. I don't want to
3 guess. I think it was \$126,650, but bear with me a
4 second. Yep, \$126,650. That was Invoice No. 95.

5 Q. Thank you, sir. So math is not my strong
6 suit, probably why I became a lawyer, but if we take the
7 \$326,000 that was billed as of February 14, 2018, and we
8 add to it the amount of Invoice No. 95, which was
9 \$126,000, I get \$452,000 and change.

10 Would it be correct, sir, that you do not have
11 an opinion --

12 MR. ALVA: My screen just said, "Recording
13 stopped."

14 THE COURT: Yeah, because we don't record.

15 MR. ALVA: Oh, oh.

16 THE COURT: That's our in-house court
17 reporting.

18 MR. ALVA: Let me start the question over.

19 BY MR. ALVA:

20 Q. If you take the amount of \$326,000, which
21 we're assuming was the fees collected as of February 14,
22 2018, and you add to it the \$126,000 that was in Invoice
23 No. 95, I come up with \$452,000.

24 Would it be correct, sir, that you do not have
25 an opinion that \$452,000 would have been an unreasonable

1 fee?

2 MS. PEARSALL: Objection. Outside the scope
3 of direct. Vague. Calls for speculation.

4 THE COURT: It's been asked and answered.

5 MS. PEARSALL: Asked and answered. And
6 there's no context to the question.

7 THE COURT: Mr. Betensky has stated about five
8 times that he didn't review your invoices for
9 reasonableness. So --

10 MR. ALVA: Yeah, and, Your Honor, I was just
11 trying to probe because I believe during his
12 direct, he gave an opinion that the fees were
13 overreaching, and clearly will excessive, which I
14 think, Your Honor are components of reasonableness
15 and I'm just trying to figure out the bases for
16 that opinion, and one of the bases could be that he
17 determined that the amount was unreasonable.

18 THE COURT: And if you ask him the same
19 question five times, he gave you the same answer
20 five times.

21 MR. ALVA: Well, I was trying to show the
22 witness where the \$452,000 number came from because
23 I had not explained that earlier and I wanted him
24 to understand that that's the amount that the fees
25 would have been if you include Invoice 95, which

1 he's testified extensively to, Your Honor, and he
2 has testified was overreaching.

3 So that's my only reason for asking that, Your
4 Honor, is to find out why does he believe it was
5 overreaching.

6 THE COURT: Okay, let's move on.

7 BY MR. ALVA:

8 Q. Mr. Betensky, is it your opinion that Invoice
9 95 was overreaching?

10 A. Whatever I said previously about Invoice 95.
11 If that was one of the terms I used, yes, but there were
12 other terms I used when I referred to the rule.

13 Q. Can you recall for us the --

14 A. Sure.

15 Q. -- the opinions that you have about Invoice
16 95?

17 A. Absolutely.

18 First of all, Invoice 95 should have never
19 been issued. And it's a violation, in my opinion,
20 Invoice 95 runs afoul of Rule 4-1.5 because we're not
21 talking about excessive fees in the context of an
22 agreement between lawyer and client where the lawyer ran
23 up a bill or, you know, ran up hundreds of thousands of
24 dollars in billing in a vacuum.

25 What we're talking about is the issuance of

1 Invoice 95. There was no basis to issue it, other than
2 in a retaliatory manner, but Rule 4-1.5 expressly states
3 that a fee is clearly excessive when, after a review of
4 the facts, a lawyer of ordinary prudence, would be left
5 with a definite and firm conviction that the fee or the
6 cost exceeds a reasonable fee or cost for services
7 provided to such a degree as to constitute clear
8 overreaching, or an unconscionable demand by the lawyer.

9 Under these facts, the issuance of that bill,
10 in and of itself, is overreaching and unconscionable.
11 There is no legal basis. No contractual basis. No
12 equitable basis to have issued that bill other than to
13 gain leverage on the client because of your frustration
14 that the client didn't meet your demands through
15 multiple e-mails.

16 Q. Would it be correct, sir, then that if the
17 billing rate on the next invoice from the firm had been
18 \$450, that you would not believe that that was
19 unreasonable?

20 A. If which bill?

21 Q. If there was another bill from the firm. This
22 is a hypothetical question. If there was an Invoice 96.

23 A. Yeah, that said what?

24 Q. If there was an Invoice 96 issued at \$450 per
25 hour for work that was done, let's say, in the month of

1 April, that's the hypothetical, would it be your opinion
2 that that was not unreasonable?

3 MS. PEARSALL: Objection. Vague. Calls for
4 speculation.

5 THE COURT: No, no. Overruled.

6 A. First of all, there would be no bill issued in
7 April because what would that bill have related to when
8 the representation ended earlier?

9 But if you're asking me to assume, just in a
10 vacuum, if you had billed during the course of this
11 representation \$450 an hour as opposed to \$400 an hour,
12 is that an unreasonable or excessive fee; is that your
13 question?

14 BY MR. ALVA:

15 Q. I'm sorry, I actually misspoke. I meant to
16 say \$400. I didn't mean to say 450.

17 If there had been a bill in April at \$400 an
18 hour, would that have been unreasonable?

19 A. There would be no basis in these facts and
20 this timeline to have issued a bill in April. You were
21 paid through February. You were paid through February
22 so you're making an assumption that there was work done
23 in March and you issued an April bill, is that assumed
24 in your question?

25 Q. No, Mr. Betensky, this is a hypothetical

1 question.

2 If the representation had continued into April
3 and an invoice was issued at \$400 per hour, would that
4 have been unreasonable in your opinion?

5 A. No. It's not unreasonable.

6 Q. Thank you.

7 Mr. Betensky, among the documents that you
8 reviewed in forming your opinion, did you review any
9 internal e-mails to Dr. Colorchip? By "internal," I
10 mean, they were sent from one person at Dr. Colorchip to
11 another person at Dr. Colorchip.

12 A. I don't think so. I'd have to go through all
13 of this stuff because --

14 Q. Let me make it easier.

15 A. -- they were cc'd on the e-mail. But go
16 ahead.

17 Q. Let me see if I can make it easier.

18 Did you review any e-mails that were not
19 either sent to me, sent from me, or copied to me?

20 A. I don't believe so.

21 Q. Did you review any documents that were
22 internal to Dr. Colorchip, in other words, that were not
23 shared with me at some point?

24 A. Well, I don't know what was shared with you,
25 but I don't recall seeing any e-mails that were by and

1 between people -- persons within the Colorchip
2 organization.

3 Q. Yeah, and by the question, sir, I meant on the
4 face of the document it didn't show that it had been
5 shared.

6 Do you recall reviewing any documents that, on
7 the face of the document, had not apparently been shared
8 with me?

9 A. No. The answer is that the substantial
10 majority, if not all of these e-mails, were by and
11 between you and either Tricia O'Rourke or Dan McCool,
12 and were all of you combined on an e-mail.

13 Does that answer your question?

14 Q. Yes, sir.

15 MR. ALVA: Your Honor, I don't have any other
16 questions. I don't have any other questions at
17 this time for Mr. Betensky.

18 THE COURT: Ms. Pearsall?

19 MS. PEARSALL: I would like to address one
20 matter before the witness' testimony is concluded,
21 Your Honor. My motion to take judicial notice. We
22 still haven't addressed that and I recall yesterday
23 you said I should ask while a witness is --

24 THE COURT: Yes, yes, yes, yes, yes.

25 MS. PEARSALL: Yes. Okay.

1 THE COURT: And I did receive the e-mail from
2 you.

3 MS. PEARSALL: And if I could, I'll just
4 begin. I ask that the Court take judicial notice,
5 including compulsory judicial notice under 90.202
6 and 90.203 of the Florida Statutes of two
7 documents. One) the final judgment signed by Judge
8 Bradley Harper on June 28, 2022 in the case of
9 Dr. Colorchip Corp. versus Curtis Alva, Palm Beach
10 County case number 50-2021-CA-005695XXXMB.

11 And the second document, which is in evidence
12 now, I believe it's the Florida Bar's Exhibit 45,
13 but I still ask that the Court would take judicial
14 notice of that as well.

15 Second document is order granting
16 Dr. Colorchip and Danny McCool's motion for summary
17 judgement as to Count 1, signed by Bradley Harper,
18 Circuit Judge on May 31st of 2022, Your Honor.

19 And I believe the Bar has met all the
20 requirements under the rules for the Court to take
21 compulsory judicial notice.

22 THE COURT: Mr. Alva, any objection to either
23 of the two?

24 MR. ALVA: No objection, Your Honor.

25 THE COURT: All right. The Court will take

1 judicial notice of both items.

2 MR. ALVA: Would this be a good time, Your
3 Honor, for the Court to consider my motion for
4 taking judicial notice or should we wait until the
5 witness' is --

6 THE COURT: Let's finish with Mr. Betensky.

7 MR. ALVA: Thank you, Your Honor.

8 THE COURT: Okay.

9 MS. PEARSALL: And, Your Honor, the Bar has no
10 further questions for Mr. Betensky.

11 THE COURT: All right, thank you, sir.

12 A. Thank you, Your Honor. Thanks, everybody.

13 MS. PEARSALL: Thank you.

14 At this time, the Bar has no additional
15 witnesses to call in this matter. And one moment,
16 Your Honor.

17 I've been keeping a list of the documents that
18 are entered into evidence. I usually would go over
19 that before I even think about resting my case.

20 Is it possible do that now, Your Honor, or --

21 THE COURT: Yes. Okay.

22 MS. PEARSALL: I'll pull out my list. Okay.
23 What I have is admitted into evidence are the
24 Florida Bar's Exhibit 1; Florida Bar's Exhibit 7;
25 the Florida Bar's Exhibit 8; Florida Bar's Exhibit

1 9; Florida Bar's Exhibit 27; the Florida Bar's
2 Exhibit 28; the Florida Bar's Exhibit 19; and the
3 Florida Bar's Exhibit 21; the Florida Bar's Exhibit
4 3, which is in --

5 THE COURT: I have 20, also --

6 MS. PEARSALL: Okay, thank you, Your Honor.

7 THE COURT: -- which was Invoice 86.

8 MR. ALVA: I'm sorry. 21 was admitted or not?

9 THE COURT: 21 was admitted. I have Florida
10 Bar 20 as admitted before that, which was Invoice
11 86 from October 13, 2017.

12 MS. PEARSALL: Thank you, Your Honor. And so
13 I'll go back to 20, then Florida Bar's Exhibit 21;
14 the Florida Bar's Exhibit 3, which is Invoice No.
15 90; Florida Bar's Exhibit 44; Florida Bar's Exhibit
16 24 admitted, all handwritten commentary stricken;
17 Florida Bar's Exhibit 25 admitted, all handwritten
18 commentary and underlines stricken; Florida Bar's
19 Exhibit 30 admitted, all underlining and stricken
20 will be disregarded -- Florida Bar's Exhibit 3;
21 Florida Bar's Exhibit 40; Florida Bar's Exhibit 5;
22 Florida Bar's Exhibit 6; Florida Bar's Exhibit 31,
23 with removed handwritten commentary stricken;
24 Florida Bar's 26, and I have removed writing, I
25 guess that's handwriting, or underlining; the

1 Florida Bar's Exhibit 50A, as in apple; Florida
2 Bar's Exhibit 50B; the Florida Bar's Exhibit -- I
3 just said it, and last one -- I just moved my list
4 -- Florida Bar's Exhibit 50 -- oh, no, I already
5 said that, I'm sorry; Florida Bar's Exhibit 45.

6 And I believe that is all of them.

7 All right, thank you, Your Honor, for that.

8 THE COURT: Hold on. My clerk is checking for
9 you.

10 I'm told that's correct. Wait. Hold on.
11 Thirty-eight.

12 MS. PEARSALL: Oh, yes, you're right. I have
13 it on a separate list.

14 That was the copy of the order approving the
15 stipulation of substitute of counsel.

16 THE COURT: Yes. Yes. Yes.

17 MS. PEARSALL: Yes, Your Honor. The Florida
18 Bar's Exhibit 38. Thank you.

19 THE COURT: Is that everything?

20 THE COURTROOM DEPUTY: Yes.

21 THE COURT: I'm told that's everything. For
22 the exhibits, we need you to provide the clerk hard
23 copies of the exhibits so we can include that for
24 the record for the Florida Supreme Court.

25 MS. PEARSALL: Okay. I will have them

1 transmitted over to wherever I'm told to transmit,
2 I guess to your --

3 THE COURT: Yeah, you can always bring it to
4 my office and we'll -- because we're the ones
5 creating (inaud.)

6 MS. PEARSALL: For the record. Yes, I
7 understand, sir.

8 MR. ALVA: Ms. Pearsall, may I ask, before you
9 transmit those to the Court, are you going to
10 remove the portions that were stricken?

11 MS. PEARSALL: I am going to attempt to. If I
12 have -- I'm going to take the writing, I guess,
13 where it says, you know, the things in parentheses,
14 I will remove that. I can e-mail you, I guess, a
15 copy of them with it removed, Mr. Alva, if that's
16 what you would like me to do.

17 MR. ALVA: If you would, just so I'm sure that
18 they were stricken.

19 MS. PEARSALL: Okay, that's fine. Thank you,
20 Your Honor. And at this time, the Bar will rest,
21 Your Honor.

22 THE COURT: Okay. Mr. Alva?

23 MR. ALVA: Yes, Your Honor. Could I just ask
24 about scheduling, Your Honor? We're not going to
25 be able to complete today. Do we have some idea

1 when we might reconvene?

2 THE COURT: Okay. I have two days that are
3 available in December, don't laugh, the 28th and
4 the 29th.

5 MR. ALVA: I'm scheduled to be traveling on
6 those days where I won't have access to internet,
7 Your Honor.

8 THE COURT: Okay. Fair enough. No worries.
9 I don't expect anybody to actually agree to a trial
10 date on the last week of the year, but I'll be
11 here.

12 Let me get ahold of my judicial assistant.
13 (Thereupon, there was a brief discussion off the
14 record.)

15 THE COURT: How do you feel about a Friday
16 afternoon?

17 MS. PEARSALL: I'm fine with it, Your Honor.
18 As long as it's not Friday, December 25th -- I'm
19 not sure if -- I'm in the wrong calendar, I'm
20 sorry. Oh, yeah.

21 THE COURT: So I have January the 6th, the
22 13th, and the 20th.

23 MR. ALVA: I'm not available on the 6th, Your
24 Honor.

25 And let me just give you my guess. I don't

1 think that we'll finish in an afternoon based on
2 the rate at which we have been traveling. So is
3 there a time when you have two days in a row?

4 MS. PEARSALL: I don't want to interrupt, Your
5 Honor. I don't want to belabor this out for
6 months. I don't mind splitting the days if we have
7 to. I just want to put my position in. I would
8 prefer we proceed sooner rather than later.

9 THE COURT: I agree. I agree. We're under
10 time constraints. So can we do January 13th and
11 the 20th?

12 MR. ALVA: Your Honor, I can -- I can juggle
13 and do that, I'm pretty confident.

14 THE COURT: Ms. Pearsall?

15 MS. PEARSALL: Those dates appear fine with
16 me, if there's not anything sooner, other than
17 January -- or the 28th that you offered in
18 December.

19 THE COURT: The problem is I'm out for the
20 first two weeks in December.

21 MS. PEARSALL: Okay. That's fine, Your Honor.

22 THE COURT: And then the last two weeks,
23 nobody seems to want. So I think the January 13th
24 and the 20th should work.

25 Okay, so we'll do this for 1:00 o'clock to,

1 let's just say, 4:00 p.m.

2 And, Ms. Pearsall, if you could notice it and
3 we'll continue doing it by Zoom.

4 MS. PEARSALL: One moment, Your Honor. So are
5 we going to start any further testimony today or --

6 THE COURT: I don't want to break up
7 Mr. Alva's testimony, I would rather just do that
8 in one setting, unless Mr. Alva has got a short
9 witness, or we can go over Mr. Alva's motion for
10 judicial notice.

11 MR. ALVA: I don't have a short witness, Your
12 Honor, but I can pull up my motion and we can --

13 THE COURT: Okay. All right. So Patti, block
14 off the 13th and the 20th in the afternoon, 1:00 to
15 4:00.

16 Let's go over Mr. Alva's motion to take
17 judicial notice.

18 MR. ALVA: Some of these have already been
19 admitted, Your Honor.

20 Ms. Pearsall, do you have my motion in front
21 of you?

22 MS. PEARSALL: Okay, go ahead.

23 MR. ALVA: Numbers 1 and 4, are they already
24 admitted as exhibits?

25 MS. PEARSALL: No. No.

1 MR. ALVA: So, Your Honor, I would like Number
2 1, which is their complaint that was filed by
3 Dr. Colorchip and prepared by my firm. I'd like
4 the Court to take judicial notice of that, and
5 Number 4 is the answer and affirmative defenses of
6 Mr. McLean (ph.) in response to the complaint.

7 THE COURT: Okay. That's fine.

8 MMR. ALVA: And then, Ms. Pearsall, is 13
9 already an exhibit, the complaint that was filed by
10 Mr. Colorchip against my firm?

11 MS. PEARSALL: No.

12 MR. ALVA: Did you say no?

13 MS. PEARSALL: No, it's not.

14 MR. ALVA: I would like the complaint that was
15 filed by Dr. Colorchip against my firm.

16 THE COURT: I'll take judicial notice of that.
17 That's fine.

18 MMR. ALVA: And the answer and affirmative
19 defenses that were filed in response to the
20 complaint, Your Honor, that's Number 15.

21 THE COURT: Okay. I'll take judicial notice
22 of that.

23 THE COURT REPORTER: For the clarify of the
24 record, are those being admitted, Judge?

25 THE COURT: No, just take taking judicial

1 notice.

2 THE COURT REPORTER: Thank you.

3 MR. ALVA: And then, Number 16, Your Honor, is
4 the motion, Your Honor has already taken judicial
5 notice of the order that resulted from this motion.

6 So I'd like to have you take judicial notice
7 of the motion.

8 THE COURT: That's fine. I'll take judicial
9 notice of that.

10 MR. ALVA: And my firm's brief that was filed
11 in opposition to the motion, Your Honor, that's
12 Number 19.

13 MS. PEARSALL: I would object to that.

14 THE COURT: It's granted as well.

15 MR. ALVA: Ms. Pearsall, is the final
16 judgment, that's my Number 20, that's already
17 admitted, right, or was it just summary judgment?

18 MS. PEARSALL: The final judgment was -- the
19 Court took judicial notice of it. It is not in as
20 an exhibit.

21 It's a judicial notice on my motion so it's
22 not on yours.

23 MR. ALVA: Your Honor, if Your Honor would
24 take judicial notice of the motion that resulted in
25 that final judgment, which is my 21.

1 MS. PEARSALL: Let me look that up first.

2 MR. ALVA: And that's all, Your Honor.

3 THE COURT: Any objection, Ms. Pearsall, to
4 21?

5 MS. PEARSALL: Just looking at it, did you
6 file -- who filed this motion, Mr. Alva, because I
7 can't tell? It would be Dr. Colorchip?

8 MR. ALVA: Let me pull up my copy of it.

9 The motion for final judgment, this one was
10 filed by Mr. Nelles.

11 MS. PEARSALL: Okay. Well, that's fine then.
12 That's fine, Your Honor.

13 THE COURT: Okay. I'll take judicial notice
14 of the motion for entry of the final judgment.

15 MR. ALVA: Did you also take notice of Number
16 20, Your Honor? My computer cut out when -- that
17 was the final judgment.

18 THE COURT: Yes.

19 MR. ALVA: Okay, thank you, Your Honor.
20 That's all for my motion.

21 THE COURT: Okay.

22 MS. PEARSALL: And so the rest, you're not
23 requesting. Okay.

24 Your Honor, the issue we have is the report of
25 referee is due on January 13th of 2023.

1 THE COURT: Can you submit something to the
2 Florida Supreme Court that we have completed three
3 days of trial and we have two days left?

4 MS. PEARSALL: Yes, I can, Your Honor. How
5 long of an extension would you like to submit your
6 report?

7 THE COURT: Well, wouldn't we get 30 days
8 after the final day?

9 MS. PEARSALL: Your Honor, if I could suggest
10 you ask for a little bit more time than you think
11 you will need to complete the report. So if you
12 think you will need an additional 60 days or 75
13 days, it's better to ask than have to go back and
14 re-ask.

15 THE COURT: Okay. So let's ask for 60 days
16 after January 20th, just include that we have
17 completed three days of trial and we have two more
18 days scheduled for the end of January.

19 MS. PEARSALL: All right, Your Honor. And is
20 that -- do you have any objection to that, Mr.
21 Alva, so I can go ahead and submit it?

22 MR. ALVA: I do not, Ms. Pearsall.

23 MS. PEARSALL: Thank you, Your Honor, and I
24 will have the exhibits, the hard copies delivered
25 over to your chambers.

1 THE COURT: Okay. All right, very good.

2 And, Mr. Alva, I need the same thing from you.
3 Obviously, you haven't put on your case yet. But
4 when your case is done, I'm going to need copies of
5 all of your exhibits, hard copies.

6 MR. ALVA: Thank you, Your Honor.

7 Do you also need hard copies of the documents
8 of which you took judicial notice?

9 THE COURT: I don't think they're part --
10 they're not introduced into evidence, are they?

11 MR. ALVA: No, not yet.

12 THE COURT: Only if they're introduced into
13 evidence.

14 MR. ALVA: Okay. Thank you, Your Honor.

15 THE COURT: All right, thank you. Happy New
16 Year and I'll see you in January.

17

18 (Thereupon, the proceedings were concluded at 3:40 p.m.)

19

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* * *

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25

R E P O R T E R ' S C E R T I F I C A T E

STATE OF FLORIDA
COUNTY OF BROWARD

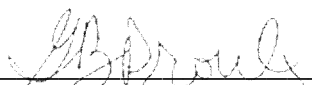
I, Gizella Baan-Proulx, Federally Certified
Realtime Reporter, Registered Professional Reporter,
and Notary Public in and for the State of Florida at
large, do hereby certify that I was authorized to and
did report said hearing in stenotype; and that this is
a true and correct transcription of my shorthand notes
of said hearing.

I further certify that said hearing was taken at
the time and place hereinabove set forth and that the
taking of said hearing was commenced and completed as
hereinabove set out.

I further certify that I am not an attorney or
counsel of any of the parties, nor am I a relative or
employee of any attorney or counsel of party connected
with the action, nor am I financially interested in
the action.

The foregoing certification of this transcript does
not apply to any reproduction of the same by any means
unless under the direct control and/or direction of
the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set
my hand this December 16, 2022.



Gizella Baan-Proulx, FCRR, RPR



**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

CASE NO.: 50-2021-CA-005695XXXXMB (Div. AD)

DR. COLORCHIP, CORP.,

a Florida corporation, and DANIEL
MCCOOL, individually,

Plaintiffs,

v.

CURTIS S. ALVA, individually, and ALVA
& GLEIZER, PLLC,

a Florida limited liability company,
Defendants.

CURTIS S. ALVA, individually, and ALVA & GLEIZER, PLLC,
a Florida limited liability company,
Counter Plaintiffs and Third-Party Plaintiffs

v.

DR. COLORCHIP, CORP.,

a Florida corporation, and DANIEL MCCOOL, individually,
Counter Defendants

and

Matthew Nelles, individually,

And Patricia O'Rourke, individually,

Third Party Defendants

_____ /

**CURTIS ALVA AND ALVA & GLEIZER ANSWER, AFFIRMATIVE DEFENSES,
COUNTERCLAIM AND THIRD-PARTY COUNTERCLAIM**

Jurisdiction and Parties

1. Defendant admits to the allegation for jurisdiction purposes only.
2. Defendants admits to the allegation for jurisdiction purposes only.
3. Defendant is without knowledge as to this allegation and therefore denies same.

4. Defendant admits to the allegation.
5. Defendant admits to the allegation.
6. Defendant admits to the allegation for jurisdiction purposes only.
7. Defendant admits to the allegation.
8. The document speaks for itself. Otherwise denied.
9. Defendant denies this allegation.
10. Defendant denies this allegation.
11. Defendant denies this allegation.
12. Defendant denies this allegation.
13. Defendant denies this allegation.
14. Defendant denies this allegation.
15. Defendant denies this allegation.
16. Defendant denies this allegation.
17. Defendant denies this allegation.
18. Defendant denies this allegation.
19. Defendant denies this allegation.
20. Defendant denies this allegation.
21. Defendant denies this allegation, except admits there is a December Invoice for \$25,040.
22. Defendant denies this allegation.
23. Defendant denies this allegation.
24. Defendant denies this allegation, except admits there is a February Invoice for \$18,040.
25. Defendant denies this allegation.
26. Defendant denies this allegation.

27. Defendant denies this allegation.
28. Defendant denies this allegation.
29. The document speaks for itself. Otherwise denied.
30. Defendant denies this allegation except admits Dr. Colorchip paid \$18,040.
31. The document speaks for itself. Otherwise denied.
32. Defendant denies this allegation except admits Dr. Colorchip paid the Invoice.
33. The document speaks for itself. Otherwise denied.
34. The document speaks for itself. Otherwise denied.
35. The document speaks for itself. Otherwise denied.
36. The document speaks for it. Otherwise denied.
37. Defendant denies this allegation.
38. Defendant denies this allegation.
39. Defendant denies this allegation.
40. Defendant denies this allegation.
41. Defendant denies this allegation.
42. The document speaks for itself. Otherwise denied.
43. Defendant admits to the allegation.
44. The document speaks for itself. Otherwise denied.
45. The document speaks for itself. Otherwise denied.
46. A legal conclusion to which no response is required. Otherwise denied.
47. Defendant denies this allegation.

COUNT ONE
BREACH OF CONTRACT

48. The document speaks for itself. Otherwise denied.

49. Defendant denies this allegation.

50. Defendant denies this allegation.

51. Defendant denies this allegation.

52. A legal conclusion to which no response is required. Otherwise denied.

53. A legal conclusion to which no response is required. Otherwise denied.

COUNT TWO

FRAUD

54. Defendant denies this allegation.

55. Defendant denies this allegation.

56. Defendant denies this allegation.

57. Defendant denies this allegation.

58. Defendant denies this allegation.

59. Defendant denies this allegation.

60. Defendant is without knowledge as to this allegation and therefore denies same.

COUNT THREE UNJUST ENRICHMENT

61. Defendant denies this allegation.

62. Defendant denies this allegation.

63. Defendant denies this allegation.

COUNT FOUR FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES

64. The document speaks for itself. Otherwise denied.

65. The document speaks for itself. Otherwise denied.

66. Defendant denies this allegation.

67. Defendant denies this allegation.

68. Defendant denies this allegation.

69. A legal conclusion to which no response is required.

PRAYER FOR RELIEF

WHEREFORE, Curtis Alva and Alva & Gleizer demand the claims be denied and, for damages, including attorneys' fees, pre and post judgement interest, costs, and such other and further relief as this court deems just and proper.

JURY TRIAL DEMAND

Curtis Alva and Alva & Gleizer hereby demand a trial by jury of all issues so triable.

ALVA'S AND ALVA & GLEIZER'S AFFIRMATIVE DEFENSES

COMES NOW, CURTIS ALVA and ALVA & GLEIZER (A&G) and hereby file their Affirmative Defenses and state:

First Affirmative Defense

Unclean Hands

Because the unconscionable acts of Dr. Colorchip and Daniel McCool, alleged in paragraphs 9-92 of Alva and Alva & Gleizer Counterclaim and Third-Party Claim (the "Counterclaim"), affect the equitable relations between the parties and the alleged unconscionable acts concern the issues raised in each of Plaintiffs' claims, their claims must be denied.

Second Affirmative Defense

Unenforceability

Because of the actions of Dr. Colorchip and Daniel McCool as alleged in paragraphs 9-92 of the Counterclaim, the contracts alleged by Dr. Colorchip, and Daniel McCool are not enforceable by them.

Third Affirmative Defense

Prior Breach

Because of the prior breaches on contract by Dr. Colorchip and Daniel McCool, as alleged in paragraphs 9-92 of the Counterclaim, Alva and A&G is excused from performing.

Fourth Affirmative Defense

Equitable Estoppel

Because of the actions of Dr. Colorchip and Daniel McCool, as alleged in paragraphs 9-92 of the Counterclaim, Dr. Colorchip and Daniel McCool is equitable estopped from bring any of his claims. In words and deeds, Dr. Colorchip and Daniel McCool made representations as to material facts that are contrary to the positions he takes in his claims. Alva relied on Dr. Colorchip and Daniel McCool representations, and (3) changed in position in detriment to himself and A&G, caused by the representations and reliance thereon.

Fifth Affirmative Defense

Fraud

Because of the frauds committed by Dr. Colorchip and Daniel McCool, alleged in paragraphs 9-92 of the Counterclaim, Dr. Colorchip and Daniel McCool may not bring any of his claims.

Sixth Affirmative Defense

Fraud on the Court

Because of the frauds on the Court committed by Dr. Colorchip and Daniel McCool, alleged in paragraphs 9-92 of the Counterclaim, Dr. Colorchip and Daniel McCool, may not bring any of his claims.

Seventh Affirmative Defense

Fraud in the inducement

When Dr. Colorchip and Daniel McCool were negotiating the Contracts alleged in their claims, they wrongfully induced Alva and A&G to enter in those contracts by falsely representing that Dr. Colorchip and Daniel McCool, intended to honor the contracts, but they never intended to honor them and, instead, intended to breach them and use them to injure Alva and A&G.

Eighth Affirmative Defense

Failure to state a claim

Dr. Colorchip and Daniel McCool fail to allege the ultimate facts needed for each of their claims.

Nineth Affirmative Defense

Failure to satisfy a condition precedent

Dr. Colorchip and Daniel McCool's failures, as alleged in paragraphs 9-92 of the Counterclaim, are failures to satisfy the conditions precedent imposed by the contracts and the LLC statute, and common law.

Tenth Affirmative Defense

Failure of consideration

Dr. Colorchip and Daniel McCool's failures to provide the promised consideration, as alleged in paragraphs 9-92 of the Counterclaim, disqualify them from enforcing the contract.

Eleventh Affirmative Defense

Necessity

Because of the actions of Dr. Colorchip and Daniel McCool, as alleged in paragraphs 9-92 of the Counterclaim, it was necessary for Alva and A&G to act as they did. They reasonably believed that their action was necessary to avoid injury to themselves. They did not intentionally or recklessly place themselves in the situation. There existed no more reasonable means to avoid the threatened injury. The harm they sought to avoid was more serious than the acts they took to avoid it, and (5) they ceased the conduct as soon as the necessity or apparent necessity for it ended.

Twelfth Affirmative Defense

Justification

Because of the actions of Dr. Colorchip and Daniel McCool, as alleged in paragraphs 9-92 of the Counterclaim, Alva and A&G were justified in each of their acts. They acted under a threat of prejudice to themselves and A&G because of the acts of Dr. Colorchip and Daniel McCool. They had a well-founded belief that the prejudice would occur, and they acted reasonably under the circumstances.

Thirteenth Affirmative Defense

Unjust enrichment

Dr. Colorchip and Daniel McCool, knowingly received benefits from the actions of Alva and A&G under circumstances where it would be inequitable for Dr. Colorchip and Daniel McCool, to retain them.

Fourteenth Affirmative Defense

Consent

By agreeing to the contract, Dr. Colorchip and Daniel McCool consented to each of the acts of Alva and A&G.

Fifteenth Affirmative Defense

Ratification

By continuing under the contract, Dr. Colorchip and Daniel McCool ratified each of the acts of Alva.

Sixteenth Affirmative Defense

Waiver

By committing the wrongful acts alleged in paragraphs 9-92 of the Counterclaim, Dr. Colorchip and Daniel McCool waived their rights to any relief for their claims.

Seventeenth Affirmative Defense

Mitigation of Damages

Dr. Colorchip and Daniel McCool, could have taken substantial acts to mitigate their damages, but they knowingly failed to do so.

Eighteenth Affirmative Defense

FDUTPA

The court should refuse to apply the Act to attorney conduct because to do so would necessarily equate the practice of law with an ordinary commercial enterprise.

Nineteenth Affirmative Defense

FDUTPA

The Act does not apply to attorneys because under Florida law the regulation of attorney conduct was an area of shared responsibility between the legislative and judicial branches of government and absent specific legislative intent to include attorneys, the statute was not meant to govern attorney conduct.

Twentieth Affirmative Defense

FDUTPA

Attorney's services, including billing for those services, do not fall within the intendment of the Consumer Fraud Act.

Twenty-first Affirmative Defense

RULE 1.130(a)

Notwithstanding the requirement of Rule 1.130(a) for Plaintiff to attach the documents as exhibits to their Complaint, Plaintiffs have deliberately omitted them.

Twenty-second Affirmative Defense

Statute of Limitations

As the Complaint makes clear, the alleged overbilling, fraud, deceptive practices, and unjust enrichment began at the very inception of the relationship, which is alleged to be September 2016, 4 years and 8 months before the Complaint was filed. The limitation for fraud, FDUTPA and unjust enrichment is 4 years.

Twenty- third Affirmative Defense

Laches

Dr. Colorchip and McCool delayed in asserting their rights, and, because of this delay, are no longer entitled to bring an equitable claim and as a consequence of the delay, it would be unfair for the Court to give them relief.

COUNTERCLAIM AND THIRD-PARTY CLAIM

Counter and Third-Party Plaintiffs, CURTIS ALVA and ALVA & GLEIZER, PLLC, (“A&G”) sue Counter Defendants, DR. COLORCHIP, CORP., DANIEL McCOOL, together with Third Party Defendants Matthew Nelles and Patricia O’Rourke, to recover damages as a result of c o n s p i r a t o r s' egregious, extortionist conduct in connection with refusing to pay attorneys' fees for the representation of Dr. Colorchip and Mr. McCool

in civil litigation. Counter Defendants, with the assistance of and through their agents, Nelles and O'Rourke, flagrantly breached the attorney client engagement contract with Counter Plaintiffs, fraudulently refused to pay for services, and after the breach of contract, refused to pay the fair value of the services, threatened to file a false Bar Grievance, and otherwise acted in an extreme and outrageous manner toward Alva and A&G in order to extort a concession in attorneys' fees. Plaintiffs further allege:

Jurisdiction and Parties

1. This is an action for damages in excess of \$30,000, exclusive of costs, interest, and attorneys' fees.
2. Counter Defendant, Dr. Colorchip Corp. ("Dr. Colorchip"), is a Florida corporation with its principal place of business in Palm Beach County, Florida.
3. Counter Defendant, Daniel McCool, is a resident of Palm Beach County, Florida and is the principal owner and corporate officer of Dr. Colorchip.
4. Counter and Third-Party Plaintiff, Curtis Alva ("Alva"), was and is an attorney licensed to practice law in the State of Florida.
5. Counter and Third-Party Plaintiff A&G is a law firm incorporated in Florida as a professional limited liability company with its principal place of business in Palm Beach County, Florida. Alva is the manager of that firm.
6. Third party Defendant Patricia O'Rourke was an officer, employee, or other agent of Dr. Colorchip in Dr. Colorchip's office in Palm Beach County and is and was a resident Palm Beach County.
7. Third party Defendant Matthew Nelles is a licensed Florida attorney who

provided legal services for Dr. Colorchip in Palm Beach County and committed the acts alleged below in Palm Beach County.

8. Venue is proper in this Court because Plaintiffs brought their claims here and the events described herein occurred, and McCool and Dr. Colorchip and O'Rourke reside and maintain their principal place of business, in Palm Beach County.

Conspirator's Bilking of Alva and A&G

9. In September 2016, Dr. Colorchip and Mr. McCool signed an Engagement Agreement with A & G to represent it in shareholder dispute litigation against William D. McLean (the "McLean Litigation"). A true and correct copy of the Engagement Agreement is attached to the original Complaint as **Exhibit A**. O'Rourke reviewed and approved the Agreement.

10. Under the terms of the Engagement Agreement, Defendant Alva agreed to discount his hourly rate to \$400, and his paralegal's hourly rate to \$100.

11. The McLean Litigation was a complex, expedited, fiercely contested battle for control of a company worth about \$5 million.

12. Before Dr. Colorchip hired A&G, it was a deeply troubled company with a rogue Vice President and Director, and 50/50 owner McLean who was causing substantial immediate exposure to regulatory shut down, corporate deadlock, and misappropriation of key intellectual property.

13. For example, Dr. Colorchip discovered that McLean has misappropriated the Company's internet domain name, www.drcolorchip.com, and purportedly transferred it to a newly created fictitious entity, DDC, for McLean's own personal benefit. By misappropriating the domain name, McLean has the ability to immediately redirect all the incoming internet customer orders away from Dr. Colorchip and to himself. Those customer orders represent about 90% of all of Dr. Colorchip's business.

14. On May 5, 2014, McLean went into the Company's profile page on Dotster and changed the identity of the Company's Administrator to himself and changed the email address that Dotster would use to contact Dr. Colorchip to McLean's email address at Dr. Colorchip. He also changed the identity of the Company's Technical Contact Person to himself and changed the email address for technical communications with Dotster to his Dr. Colorchip email address. Now McLean had taken the apparent power to act as the administrator and technical contact for the account and to receive administrative and technical emails from Dotster regarding the account.

15. On December 17, 2014, McLean took additional steps. He changed the identity of the Registrant individual (the contact person at the owner-company of the domain name) to himself and he changed all of the email addresses on file at Dotster to his personal email address, bisleyroo@yahoo.com. Now Bill had taken apparent control of all contacts with Dotster.

16. On September 9, 2016, McLean completed his misappropriation of the domain name. He changed the Registrant Organization (the owner of the domain name) from DRCOLORCHIP.COM to “DDC,” a fictitious entity unknown to Dr. Colorchip or its president, McCool, and, on information and belief, controlled by McLean. He also changed the address of the Registrant from Dr. Colorchip’s address in Lake Park, Florida, to McLean’s home address in West Palm Beach. He likewise changed the name and address for the Administrator Organization and Technical Organization from Dr. Colorchip’s name and its address in Lake Park to DCC’s name and McLean’s personal address in West Palm Beach. *Id.*

17. As the Administrator and the Administrator Organization, McLean had improperly, and without any authorization, usurped to himself the power to redirect all incoming customer orders away from Dr. Colorchip and to himself.

18. Dr. Colorchip’s management had not been able to identify a procedure to effectively moderate the risks.

19. Dr. Colorchip’s goal was to get rid of the risks brought by McLean, recover to stolen intellectual property and for Dan McCool to become the sole owner, sole Director, and sole officer of the Company, and do all this at the lowest total cost with the greatest certainty of succeeding.

20. The total cost would include, principally, the cost of litigating with McLean, who was the other 50% owner and the other officer and director, and the cost of paying for McLean's 50% stock ownership in the Company.

21. Before hiring A&G, McCool considered getting rid of McLean by offering McLean \$2.25 million for his stock, but McCool was not convinced that McLean would accept that offer.

22. The other alternative was to dismiss McLean as Vice-President, redeem all of his stock, and vote him out as a director after his stock had been redeemed, and then withstand the counterattack/lawsuit McLean might bring to attempt to regain his stock and positions as Director and Vice President.

23. A&G, which had extensive experience in disputes over corporate control, quickly identified the legal and corporate steps needed to address the risks caused by McLean.

24. On October 3, 2016, Dr. Colorchip terminated McLean, redeemed his stock, and voted him and his board position.

25. On September 29, 2016, Dr. Colorchip filed a complaint bringing claims for Breach of Fiduciary Duty and Duty of Loyalty for misappropriating the intellectual property.

26. On October 13, 2016, the defendant-counter plaintiff, McLean, filed his Answer and Affirmative Defenses to the Complaint and his Verified Counterclaim and a Verified Emergency Motion for Preliminary Injunction.

27. On October 20, 2016, McLean brought a Motion to Disqualify Attorney because A&G represented both Dr. ColorChip and Dan McCool and Dr. ColorChip allegedly had claims against McCool for stealing from Dr. ColorChip.

28. An expedited /evidentiary hearing was held on October 26, 2016.

29. On October 27, 2016, McLean filed a motion for Judicial Dissolution, Injunctive Relief, Appointment of Custodian or in the Alternative Appointment of a Provisional Director.

30. An emergency evidentiary hearing was set for November 3, 2016.

31. On October 24, 2016, Dr. ColorChip requested the deposition of William McLean, on November 4, 2016, filed Request for Production and Interrogatories, and on December 12, 2016, requested the depositions of Juan Mancera, Kepler Leger, and Janeen Serino.

32. On October 26, 2016, the parties briefed the issue of whether an actual emergency existed.

33. At an evidentiary hearing on November 8, 2016, the Court ruled that no emergency existed.

34. During the time A&G represented Dr. Colorchip, no less than 21 motions were filed, 25 depositions were noticed or otherwise requested, 24 Interrogatories and 180 Requests for Production were served.

35. The docket contained 199 entries at the time counsel was substituted.

36. On March 8, 2017, Dr. ColorChip filed a Motion for Temporary Injunctive Relief to obtain control of its internet domain name and requested a prompt hearing.

37. On March 16, 2017, McLean renewed his disqualification motion, adding additional grounds.

38. On June 19, 2017, Dr. ColorChip requested the depositions of Alan Espy, Janeen Serino, John Boyer, Juan Mancera, Kepler Leger, and William McLean.

39. On December 12, 2017, filed a third request for production.

40. The Conspirators falsely allege that they were shocked and outraged

that despite paying, in total, more than \$326,000, Dr. Colorchip was "literally no better off today, and no further toward reaching [their] goals, than they [were] when the case was initiated"

41. That is false, of course, as Dr. Colorchip obtained the goal of McCool becoming the sole owner, officer, and director of the Company. McLean fought vigorously to get his positions back.

42. The progress made towards the goal was summarized in a January 11, 2018, email to McCool, co-counsel Dave McCool, and co-counsel, Nelles:

43. "Bill [McLean] wanted immediate, permanent and sole control of the entire company as the sole executive officer, sole board member and sole shareholder. You wanted the opposite. Bill got nothing; you got everything. Bill wanted, if he couldn't have immediate, permanent, sole control, to have at least immediate interim sole control of the entire company, during the litigation's lifespan, as the sole executive officer, sole board member and sole shareholder. Bill got nothing; you got everything. Bill wanted, if he couldn't have sole control, to have immediate, permanent shared control and be restored as Vice President, a board member, and a shareholder. Bill got nothing; you got everything. Bill wanted, if he couldn't immediately share control, to at least have immediate shared interim control and be temporarily restored as Vice President, a board member, and a shareholder, during the litigation's lifespan. Bill got nothing; you got everything. Bill wanted your attorney taken from you-twice-- Bill got nothing; you got

everything. Bill wanted the Company immediately dissolved, then he backtracked to dissolution within 2 weeks, then he backed down to 30 days, then he backed down to 3 months. Bill got nothing; you got everything. Now he wants dissolution sometime before trial. Bill wanted the rest of his \$500,000 for 2016 and 2017. Bill got \$31,584 more for 2016 and \$120,000 for 2017...You have spent about \$400,000 [that number includes fees paid to the Firm and to co-counsel other than the Firm, such as the tax lawyer, the lawyer for an employee of Dr. ColorChip who was named as a co-cross- referred others] and been the sole officer, sole director and sole shareholder."

44. Contrary to the false claim made pursuant to the conspiracy, that the fees paid to A&G were "shocking and outrageous," as of the date of the end of the Representation, about \$325,000 in attorney's fees had been paid to the Firm.

45. So, as of the end of the Representation, instead of paying the \$2.25 million that Dr. Colorchip had expected to pay in order to gain sole ownership and control of the company, plus whatever legal fees would have been needed to compel McLean to sell at that price, if there was any amount that could compel his acceptance, Dr. Colorchip had paid about \$325,000.

46. Thus, at the time of the end of the representation, Dr. Colorchip had benefited in an amount around \$1.9 million.

47. Of course, there is no ethical requirement that a client in litigation achieve his goal or benefit financially for a lawyer's services. However, the enormous benefit to Dr. Colorchip shows the outrageous nature of the false claims

made pursuant to the conspiracy.

48. The Conspirators likewise claimed that the amount of the December Invoice, \$25,040, was shocking, reprehensible, etc., etc. because in December, other than a 5-minute court appearance, there was no legal work performed on the case that could have possibly justified a \$25,040 invoice.

49. Contrary to that claim, exactly \$25,040 in legal work was performed in December. The December Invoice was included as Exhibit 5 to the Grievance. There is substantial evidence of the work done in December. First, there are 85 or more emails that were sent from the Firm to various members of the litigation team that discuss various items of the \$25,040 worth of work done in December, including a December 20 email from me listing some, but not all of the work being done in December.

50. That email went to co-counsel Dave McCool, Dan McCool, and O'Rourke. It listed the following tasks: "1. Motion to amend to add King as a defendant in the suit against McLean-not earlier than 1/1. 2. Proposed amended complaint adding King as a defendant--not earlier than 1/1. 3. Can we sue King without terminating him (this issue now might be moot). 4. Spoliation motion against McLean--as soon as feasible. 5. Motion for equitable relief against McLean (for our claims for breach of fiduciary duty, fraud, tortious interference, and control of the domain--before the letter/list to Garrison. 6. Motion to expedite our motion for equitable relief (to parallel McLean's motion to expedite dissolution) --before the letter/list to Garrison. 7. Demand letter to Coleman asking for the cite to the

transcript Coleman referenced as the basis for his representation to Judge Garrison that Judge Sasser already said she would grant expedited dissolution because she had already found that [a] McLean was a 50% shareholder, [b] he had equal management rights, and [c] the shareholders were deadlocked--as soon as the transcript of the 12/12 hearing is available (it came in today). 8. Simultaneous letter/list to Garrison from Coleman and I describing each hearing, deposition, or other deadline we want the Judge to set and describing the sequence for all such events--after we finish the motion for equitable relief and the motion to expedite. This is not a complete list of all of the work we are doing, but it may be the key action items Dave wants tracked."

51. And this was just a list of tasks being tracked as of December 20, so it does not include tasks that were worked on during December, but completed before December 20, and, as it states in the last sentence, it is not even a complete list of the tasks as of December 20, just the tasks that co-counsel, Dave McCool, wanted to track.

52. So, the fraudulent claim of the Conspirators is demonstrably false and outrageous.

53. In the Agreement, Dr. Colorchip agreed to pay all bills within 10 days.

54. From September 2016 until October 2017, Dr. Colorchip paid all of A&G's bills timely.

55. However, after Nelles became involved, Dr. Colorchip stopped paying the bills.

56. It is indisputable that Dr. Colorchip was billed according to the Agreement and received a large net financial benefit from the legal services that were provided. Indeed, the legal charges were a small fraction of the amount in controversy.

57. Contrary to the fraudulent claim in the original Complaint, all of the services provided were actually provided. Nevertheless, O'Rourke, Nelles and Dr. Colorchip (the "Conspirators") refused to pay the bills for every month after Nelles became involved.

58. In short, Alva and A&G were bilked by the Conspirators.

59. Additionally, the manner in which the Conspirators refused to pay the bills was egregious, extortionate, and fraudulent.

60. Before Nelles became involved, Dr. Colorchip routinely reviewed every bill, and also had the bills reviewed by A&G's co-counsel, David McCool, who was also inhouse counsel to a large midwestern company.

61. Before Nelles became involved, Dr. Colorchip timely approved and paid every invoiced dollar.

Nelles Appears and Conspires with Dr. Colorchip and O'Rourke to Defraud and Rob A&G and Alva

62. In about November 2017, Dr. Colorchip decided to hire Nelles as additional co-counsel for the McLean Litigation.

63. Because A&G and Nelles were both counsel to Dr. Colorchip and McCool at the same time and for the same matter, A&G and Nelles shared the same attorney-client privilege

with each other and with Dr. Colorchip and McCool.

64. Likewise, because A&G and David McCool were both counsel to Dr. Colorchip and Dan McCool at the same time and for the same matter, A&G and David McCool shared the same attorney-client privilege with each other and with Dr. Colorchip and McCool.

65. In December 2017, A&G issued an invoice to Dr. Colorchip, for work performed in November and December 2017, in the amount of \$25,040 (the "Fraudulently Unpaid December Invoice").

66. As a false pretense for stealing the services of A&G for that time period, Nelles, O'Rourke and Dr. Colorchip conspired to claim that the only legal work performed in the period covered by the Fraudulently Unpaid December Invoice was a single court appearance.

67. Although the fake excuse for not paying the Fraudulently Unpaid December Invoice was unconscionable and obviously contrived, A&G believed that Dr. Colorchip still needed continued legal representation from A&G and that Dr. Colorchip would eventually act in good faith. So, A&G continued to provide legal services to Dr. Colorchip.

68. However, by failing to pay that invoice, Dr. Colorchip breached the Agreement.

69. The breach was intentional, egregious, outrageous, and intended to injure Alva and A&G.

70. On February 13, 2018, Dr. Colorchip notified A&G that Dr. Colorchip was terminating the McLean Litigation representation.

71. On February 14, 2018, A&G issued an invoice, in the amount of \$18,040, for work performed in January and February 2018 ("Fraudulently Unpaid February Invoice").

72. Nelles and additional co-counsel, David McCool, together with A&G, McCool and O'Rourke worked together almost daily during that time.

73. Thus, it is impossible that the entries reflected in the Fraudulently Unpaid December and February Invoices were not reasonable and genuine.

74. To be clear, the pretexts that the Conspirators offered for not paying the bills were fictionalized, made-up, and concocted.

75. In light of Nelles's and O'Rourke's conspiracy to steal the services from A&G, it is no wonder they contrived pretexts to wrongfully refuse to pay the Invoices.

Conspirators Continued Efforts to Rob A&G

76. Regarding the Fraudulently Unpaid Invoices, Alva and A&G worked diligently, promptly and did far more than they were required to do to try to get the Conspirators to stop their fraud and pay the bills.

77. This included offering to accept an initial partial payment of \$18,040, the amount as to which the Conspirators did not even pretend to have an objection, and to forgo collection activity on the balance while the parties addressed the amounts where the conspirators pretended to have an objection.

78. A&G also notified Dr. Colorchip that its' breach of the contract put Dr. Colorchip in a position to pay, instead, the undiscounted value of all of the services provided in the representation. The fraud also put Dr. Colorchip in a position

to pay treble the amount due as "damages."

79. The Conspirators were surprised that their fraud was not going unchallenged and knowing the egregious, extortionate, and indefensible character of their theft, eventually paid every penny the February Invoice, in order to try to avoid public exposure of the fraud and theft.

80. However, The conspirator's payment of the February Invoice did not cure the breach of contract, the December Invoice was still unpaid, so, on February 26, 2018, in light of the continued excuses that were literally pernicious inventions of the Conspirator's wicked imaginations, A & G sent Dr. Colorchip an invoice for the undiscounted, fair value of the services in the representation, which was \$126,834.95, (the "Quantum Meruit Invoice").

81. Sometime on or shortly before February 27, 2021, co-counsel David McCool advised Dr. Colorchip that it should pay the December invoice, promptly and in full.

82. On February 27, 2018, with their conspiratorial pretext destroyed by the advice of co-counsel David McCool, in an additional attempt to avoid public disclosure of their fraud and theft, Dr. Colorchip paid the December Invoice immediately and in full.

83. Dr. Colorchip, however, continued to refuse to pay the Quantum Meruit Invoice.

84. As the Agreement provided, in the case of an invoice unpaid after 10 days, A&G applied the retainer to the Quantum Meruit Invoice and asked for payment of the remaining due and owing amount.

85. The results achieved for Dr. Colorchip in the representation were a huge financial operations benefit. Worth far more than they cost.

86. The entire con-job by the Conspirators is all the more egregious because Nelles is a member of the Florida Bar.

The Fraudulent Florida Bar Grievance

87. In April 2018, in furtherance of the conspiracy, Dr. Colorchip sent a demand letter for the return of the money that had been applied to the overdue invoice.

88. Also in April 2018, in an attempt to accuse Alva of the very kind of misdeeds that the conspirators', themselves, had committed, Dr. Colorchip filed a fraudulent grievance against Alva with the Florida Bar. See **Exhibit C** to the original Complaint.

89. On May 10, 2018, Alva responded. See Exhibit A.

90. The response showed that the Bar Grievance was a fraud. The Grievance was filed solely to extort money out of the Firm.

91. On October 10, 2019, the Florida Bar sent a Notice regarding potential further proceedings.

92. However, no further proceedings have been initiated in the 2 years after the October 10, 2019, Notice.

COUNT ONE BREACH OF CONTRACT

93. Alva and A&G restate the allegations contained in paragraphs 1-92 as if fully set forth herein.

94. Under the terms of the Engagement Agreement, Dr. Colorchip, McCool,

and O'Rourke agreed that Dr. Colorchip would pay invoices within 10 days.

95. Defendants breached the Agreement by failing to pay and causing the failure to pay the Invoices ("Fraudulently Failing to Pay").

96. Defendants further breached the Engagement Agreement by demanding the return of the \$25,000 retainer.

97. As a result of the breaches of the Engagement Agreement, A&G and Alva have been damaged.

98. Dr. Colorchip and Mr. McCool seek recovery for all damages incurred, including, without limitation, the fair value of the services *throughout* the relationship.

99. A&G and Alva also seek their attorneys' fees under the Engagement Agreement.

COUNT TWO FRAUD

100. A&G and Alva restate the allegations contained in paragraphs 1-92 as if fully set forth herein.

101. The Conspirators materially and deliberately misrepresented to A&G and Alva that Dr. Colorchip would timely pay for the services reflected in the Invoices.

102. The Conspirators further materially and deliberately misrepresented that Nelles was brought in as co-counsel.

103. The Conspirators further materially and deliberately misrepresented that they were reviewing and, later, negotiating payment in good faith. They are not.

104. McCool became aware of the misrepresentation made in the name of Dr. Colorchip and himself and acquiesced in the Conspirators further pursuing their conspiracy.

105. The Conspirators and McCool also materially and deliberately misrepresented to the Florida Bar that Alva had breached his ethical duties to Dr. Colorchip and McCool.

106. Each of these misrepresentations were made to induce A&G and Alva provide additional services, for which the Conspirators intended not to pay, or to accept reduced payments for the invoices, or to refrain from suing the Conspirators.

107. The misrepresentations to the Bar were also meant to induce the Bar to undertake proceedings relative to the Grievance, which it did.

108. A&G and Alva detrimentally relied upon the misrepresentations and have been damaged.

109. Upon a proffer or evidentiary showing, which they will seek forthwith, A&G and Alva intend to seek punitive damages to punish the Conspirators for their malicious conduct.

COUNT THREE
UNJUST
ENRICHMENT

110. Plaintiffs restate the allegations contained in paragraphs 1-92 as if fully set forth herein.

111. A&G and Alva conferred a benefit on the Conspirators and McCool.

112. The Conspirators and McCool voluntarily accepted and retained these benefits.

113. It would be inequitable for them to retain the benefits conferred upon them.

COUNT FOUR
FLORIDA DECEPTIVE AND UNFAIR TRADE
PRACTICES

114. Plaintiff restates the allegations contained in paragraphs 1-92 as if fully set forth herein.

115. Florida Statute § 501.204(1) provides that "unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

116. The provisions of the Act shall be "construed liberally to promote the protection" of the "consuming public and legitimate business enterprises from those who engage in... deceptive or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat § 501.202.

117. The conspirators and McCool were, at all times material to the allegations herein, engaged in "trade or commerce" as defined by the Act. Fla. Stat. § 501.203.

118. By fraudulently refusing to pay and causing to not be paid the Invoices, and by fraudulent making the statements made in connection therewith, The Conspirators and McCool engaged in unlawful and deceptive acts and practices in the conduct of their trade in violation of Florida Statute § 501.204.

119. As a result, A&G and Alva have been damaged.

120. A&G and Alva seek recovery of their attorneys' fees under Fla. Stat. § 501.2105.

**PRAYER FOR
RELIEF**

WHEFEFORE, A&G and Alva demand judgment against the Conspirators and McCool, jointly and severally, for damages, including attorneys' fees, pre and post judgment interest, costs, and such other and further relief as this Court deems just and proper.

**JURY TRIAL
DEMAND**

A&G and Alva hereby demand a trial by jury of all issues so triable.

Dated: October 19, 2021.

Respectfully submitted,

/s/ Curtis Alva

Law Office of Curtis Alva
901. N Olive Avenue
West Palm Beach, FL 33401
Phone: 561-225-1599
curtis@alvalaw.com

Exhibit 10

Tricia O'Rourke

From: Dan McCool
Sent: Tuesday, April 10, 2018 10:00 AM
To: Curtis Alva
Subject: Re: Dr ColorChip Retainer Return

Curtis,
At this point given the manner in which you have handled this I will take this up with the Florida Bar for their guidance on getting our retainer back.

Sent from my iPhone

On Apr 10, 2018, at 9:55 AM, Curtis Alva <Curtis@alvagleizer.com> wrote:

There is no return due. There is a balance due in excess of \$100,000.00. The \$25,000 retainer payment was applied to the unpaid invoice and the balance in your retainer account is \$0. Please make a check for the balance and let me know when I can pick it up. If you do not intend to pay in full, please let me know promptly so I can pursue collection.

Curtis Alva
Alva & Gleizer, PLLC
901 N. Olive Ave
West Palm Beach, FL 33401
561-225-1599
curtis@alvagleizer.com
alvagleizer.com

On Apr 9, 2018, at 11:57 AM, Dan McCool <dan@drcolorchip.com> wrote:

Curtis,
Please return all retainer funds immediately. Your correspondence dated 3/20/2018 indicates The Trust Account Balance is \$25,000. Please advise when the check will be ready for pickup and we will pick it up at your office on Olive Avenue in West Palm Beach.

Dan McCool
President
Dr. ColorChip Corporation
1369 North Killian Drive, Suite 1
Lake Park, FL 33403
(O) 561-845-6122
(Cell) 561-232-8812
www.drcolorchip.com

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,
Complainant,

vs.

CURTIS S. ALVA,
Respondent.

Supreme Court Case
No. SC21-1564

The Florida Bar File
No. 2018-50,796(15A)

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PROCEEDINGS BEFORE THE  
HONORABLE DALE C. COHEN

January 13, 2023  
1:17 p.m. - 3:56 p.m.

Via Videoconference



## APPEARANCES OF COUNSEL

On behalf of the Complainant:

JOI L. PEARSALL, ESQUIRE  
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On behalf of the Respondent:

CURTIS S. ALVA, PRO SE  
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curtis@alvalaw.com

- - -

Proceedings in the Matter of  
The Florida Bar vs. Curtis S. Alva  
January 13, 2023

THE COURT: Good afternoon. Are we ready to pick up?

MR. ALVA: Yes, your Honor.

THE COURT: All right. Mr. Alva?

MR. ALVA: Thank you, your Honor. If it pleases the Court, your Honor, I would like to start today by asking the Court to reconsider the decision as to my rebuttal expert witness, Mr. Hackleman. The grounds for reconsideration, your Honor, are that I believe the time period that the Court was looking at is not the time period that would be most appropriate.

The basis in part, your Honor, for your ruling was that I have had plenty of time to identify an expert witness, and your Honor, if I understand correctly, was looking at the time when the complaint was filed. I think your Honor specifically referenced that in the discussion at the hearing.

And my belief, your Honor, is that the time period the Court should be looking at is the time

1 period that began when Mr. Betensky testified at  
2 trial. And the reason for starting on that day,  
3 your Honor, is that, in the interrogatory responses  
4 that were provided by the Bar in response to my  
5 interrogatories about expert witnesses and their  
6 testimony, they identified Mr. Betensky, but they  
7 gave the expected scope of his testimony. And his  
8 entire basis, your Honor, for concluding that there  
9 was a violation of the Rule 4-1.5 was that the rate  
10 that was being charged in what we calling the  
11 quantum meruit invoice, your Honor, is a rate that  
12 was higher than the rate that was in the contract.

13 At trial, your Honor, Mr. Betensky's  
14 testimony included not only that the contract rate  
15 was higher, but he also believed that there was  
16 misrepresentation on my part, which is an  
17 independent basis, your Honor, under the rules, as  
18 you know, for finding that there's a violation of  
19 4-1.5.

20 So the original basis for him testifying was  
21 that the rate was higher than the contract rate,  
22 and there's no dispute as to that, so there was no  
23 need for me to have an expert witness if that was  
24 the basis for his testimony.

25 If the basis for his testimony, your Honor,

1 is that there was misrepresentation, that's an  
2 entirely independent basis and to my belief, your  
3 Honor, a much more culpable basis, and that  
4 requires the rebuttal of an expert, because I  
5 believe Mr. Betensky's testimony on that issue is  
6 flawed, and my expert would so testify.

7 In addition to that, your Honor, when the Bar  
8 answered the expert interrogatories, the Bar also  
9 stated that his testimony was going to be limited  
10 in that he would not have an opinion that the fee  
11 that was charged was unreasonable. But when he  
12 testified in court, your Honor, he also testified  
13 that the fee was unreasonable. So those are new  
14 things. I had no notice those things were going to  
15 occur.

16 During Mr. Betensky's deposition testimony, I  
17 read through each of his opinions and the basis for  
18 them with Mr. Betensky, and his testimony, your  
19 Honor, was entirely consistent and limited to the  
20 responses that were given in the interrogatories.

21 So his sole basis for finding a violation of  
22 4-1.5 was that the rate in the invoice was higher  
23 than the contract rate. And he specifically said  
24 that he had not formed an opinion as to whether the  
25 fees were reasonable. In fact, he said he wasn't

1 qualified to form such an opinion in his  
2 deposition. And he did not say that part of the  
3 basis for his opinion was that believed there was  
4 misrepresentation.

5 So the very first time, your Honor, that I  
6 had noticed either of those two issues, and they're  
7 critical issues, your Honor, was when he testified  
8 at trial.

9 I found and identified and hired  
10 Mr. Hackleman as an expert within I think it's 22  
11 or so days of the prior hearing, your Honor, that  
12 was on the 14th, 15th and 16th, I believe, and  
13 within seven days of me identifying, you know, I  
14 sent his name to the other side and subsequently  
15 his appearance, so I would like the Court to use  
16 that time period instead. I had only two or three  
17 weeks in order to determine I needed an expert and  
18 to hire an expert and to notify the other side.

19 Thank you, your Honor.

20 THE COURT: It is my understanding that you  
21 did discovery in this case. This witness was  
22 identified to you. You conducted discovery with  
23 him. And it was at that time, that you did the  
24 discovery, that you could have hired your expert,  
25 not after the State rested it's case. I don't know

1 to the extent of what you took discovery. If you  
2 took his deposition, I don't know. But if you had  
3 conducted proper discovery or more thorough  
4 discovery, you may have uncovered some of the  
5 issues that you are now discovering, I guess, in  
6 the middle of trial.

7 But the problem is the State has put on their  
8 case, they rested their case, and you did list this  
9 person as a witness. It's not as if you never have  
10 access to their witness. You did. So, to me,  
11 you're ambushing the State by calling a new witness  
12 after they rested in the middle of trial. So  
13 that's the basis for my ruling.

14 All right. Do you have any witnesses besides  
15 yourself?

16 MR. ALVA: Your Honor, I would like to make a  
17 proffer of the actual opinions that Mr. Hackleman  
18 would give to the Court and the basis for those  
19 opinions.

20 THE COURT: Okay, that's fine.

21 MR. ALVA: Thank you.

22 MS. PEARSALL: And if I could just state,  
23 before you start, that would be over the Bar's  
24 objection. I'm sorry to interrupt you, Mr. Alva.  
25 Go ahead.

1 MR. ALVA: And your Honor, I did have a  
2 scheduling question. My recollection is that we  
3 were going to proceed until 4:00 today, is that  
4 correct?

5 THE COURT: Correct.

6 MR. ALVA: And that will be the same for next  
7 Friday, that we'll go from 1 to 4?

8 THE COURT: Correct.

9 MR. ALVA: Thank you, your Honor. As to the  
10 opinions that Mr. Hackleman would offer, I want to  
11 start with two that I think the Court correctly  
12 understands are the heart of the dispute in this  
13 case, and that is Mr. Betensky's opinion that in  
14 invoicing, in the quantum meruit invoice, a rate  
15 that was higher than the rate in the contract, I  
16 violated Rule 4-1.5. That was one of his opinions,  
17 and Mr. Hackleman comes to the opposite opinion.

18 The other opinion that Mr. Betensky gave that  
19 I think the Court recognizes as being at the heart  
20 of the case was that the time period that was  
21 included in the quantum meruit invoice begins on  
22 the first day of the case and then went to the last  
23 day of the case, and this was despite that fact  
24 that, for most of that time period, the client had  
25 timely paid, you know, each month within the 10-day

1 period the amount on the invoice, which was the  
2 rate that was in the contract, and Mr. Betensky  
3 formed the opinion that by billing in the quantum  
4 meruit invoice at the time, which had already been  
5 paid for at the contract rate, that I had also  
6 violated Rule 4-1.5.

7 Mr. Hackleman comes to the opposite opinion.  
8 And I want to give you the basis for  
9 Mr. Hackleman's opinion.

10 The first basis for Mr. Hackleman's opinion  
11 is that Mr. Betensky incorrectly neglected to take  
12 into account the fact that the client had breached  
13 the contract. And, your Honor, giving us some  
14 guidance when we were previously before the Court,  
15 the Court said that the issue here -- the Court was  
16 willing to assume, based on what you had heard from  
17 both sides so far, that the client had in fact  
18 breached the contract.

19 And Mr. Hackleman goes through the chronology  
20 of events for the breach. You know, there was an  
21 invoice for the work done in December. That  
22 invoice was sent out on January the 9th of 2018.  
23 Payment was due on January the 19th, 2018. No  
24 payment was made. During those 10 days, no inquiry  
25 was made as to the invoice. No objections were



1 made to the invoice. And no requests for  
2 production in the amount of the invoice were made.  
3 In fact, there were no communications whatsoever  
4 from the client during the 10-day period up until  
5 the 19th when payment was due.

6 All prior invoices, your Honor, had been paid  
7 within the 10-day period and many of them  
8 substantially before the 10-day period. The  
9 conduct of the parties, and this is also part of  
10 Mr. Hackleman's basis, was that each month I would  
11 contact the client within a day or two of the  
12 invoice being delivered to the client and sometimes  
13 on the same day and remind them that payment was  
14 due in 10 days and I would like to receive payment.  
15 And in every instance, they made the payment in 10  
16 days, up until the invoice for the work that was  
17 done in December.

18 So I think there's not any dispute from the  
19 Bar, but I guess we'll hear more from Ms. Pearsall  
20 about that, that there was in fact a breach of the  
21 contract. And the difficulty that Mr. Hackleman  
22 has with Mr. Betensky's opinion and the reason  
23 Mr. Hackleman comes to the opposite opinion is that  
24 the breach of the contract has very serious  
25 consequences for the client in terms of payment.

1           And this is black letter law, your Honor.  
2           There's nothing controversial about the cases that  
3           Mr. Hackleman relies upon. I was able to e-mail  
4           those to the Court an hour or so ago. I'm going to  
5           refer to them here, but they were e-mailed to the  
6           Court. And the first case, your Honor, that  
7           Mr. Hackleman relies upon --

8           MS. PEARSALL: Your Honor, I'm going to make  
9           another objection. This proffer is going beyond a  
10          typical proffer. He's going into case law, telling  
11          us what someone relied on, who is not a witness in  
12          this case and who has not testified. So, in  
13          essence, Respondent is testifying.

14          So I just wanted to put that on the record,  
15          and I will refrain from speaking, your Honor.  
16          Thank you.

17          THE COURT: I'm going to sustain the  
18          objection. If you want to argue these cases in  
19          closing, you're more than welcome to.

20          MR. ALVA: I'm not actually trying to make any  
21          argument now, your Honor. And it's a little  
22          difficult, because I'm a lawyer and a witness, so  
23          I'm acting now as the lawyer and giving the proffer  
24          of Mr. Hackleman.

25          I think it's very important in the Court

1 understanding Mr. Hackleman's opinion that the  
2 Court be aware of the cases that Mr. Hackleman  
3 relies on to contradict the opinion that was  
4 reached by the State's -- by the Bar's witness.  
5 The Bar's witness testified as to his opinion, and  
6 he testified as to the law that he was relying on  
7 in reaching those opinions.

8 Mr. Hackleman comes to the opposite opinions.  
9 And the cases that he relies on, your Honor, are  
10 critically important to understanding the dispute  
11 between the two experts.

12 THE COURT: I'll let you cite to cases for the  
13 record. I don't want you arguing the cases,  
14 though. You can argue them in closing.

15 MR. ALVA: Okay. Your Honor, on the point as  
16 to the consequences of breach, the cases that  
17 Mr. Hackleman relied on are Forbes v. Prime General  
18 Contractors, which is 255 So.3d 448, and Ballard v.  
19 Krause, your Honor, which is 248 So.2d 233.

20 Your Honor, the next fact that Mr. Hackleman  
21 relies on is that the e-mail correspondence between  
22 myself and Dr. ColorChip very clearly shows that I  
23 exercised the option that I had of nullifying the  
24 contract. So the contract was voided ab initio.

25 And if a contract is nullified, then

1 Mr. Hackleman will give opinions as to the  
2 consequences of nullification, and his opinion  
3 would be that when a contract is nullified, the  
4 party that is not in breach has the option of  
5 seeking the kind of damages that they want, and one  
6 of the damages that the law permits them to seek is  
7 restitution or damages in quantum meruit. In other  
8 words, they're entitled to seek the fair value of  
9 whatever it was that they provided pursuant to the  
10 contract.

11 And the cases that Mr. Hackleman would rely  
12 on for the proposition that the non-breaching party  
13 can seek damages in quantum meruit are the Ballard  
14 case, which I already cited to the Court, and the  
15 Forbes case, which I already cited to the Court.  
16 And in addition, your Honor, the case of Ocean  
17 Communications v. Bubeck, which is 956 So.2d 1222,  
18 your Honor, that's a Fourth District Court of  
19 Appeals case.

20 And I should mention as to Ballard, your  
21 Honor -- well, Oceans Communications is a 2007 case  
22 from the Fourth DCA. Ballard, your Honor, is a  
23 Fourth DCA case from 1971, and Forbes, your Honor,  
24 is a 2018 case from the Second DCA.

25 Mr. Hackleman's next opinion would be that if

1 the non-breaching party elects to receive damages  
2 in quantum meruit, that the measure of those  
3 damages is the fair value of the services that were  
4 provided during the life of the contract. In other  
5 words, it goes back to day one.

6 And for the fair value of the services, your  
7 Honor, Mr. Hackleman would rely on the same three  
8 cases, the Forbes case, the Ballard case, and the  
9 Ocean case.

10 Mr. Hackleman's next opinion is, if you elect  
11 to receive a remedy in quantum meruit, the  
12 beginning day for calculating amount of damages  
13 that you can receive is the day before the contract  
14 was signed. So in other words, the entire period  
15 that the services were provided is the period  
16 during which you're allowed to pursue damages for  
17 the fair value of the services you provided. And  
18 for that, your Honor, Mr. Hackleman will rely on  
19 the Ballard case and the Forbes case.

20 Mr. Hackleman's next opinion is as to the  
21 dispute over what do you do with the months when  
22 payment was already made at the contract rate?  
23 Mr. Hackleman's opinion is that the breaching party  
24 is entitled to a credit in the full amount of any  
25 payments that were already made. And for that, he

1 would rely on the Ocean case.

2 But it's only, your Honor, in his opinion a  
3 credit. It's not payment in full for that time  
4 period, because the nullification nullifies the  
5 entire contract, and the remedy begins on the day  
6 before the contract was signed. So the payments  
7 that are made during the life of the contract are a  
8 credit against the fair value of the services. And  
9 he relies on the Ocean case, your Honor, for that  
10 proposition.

11 Mr. Hackleman's next opinion, your Honor,  
12 goes to the second point, and I know the Court was  
13 concerned about it, which was the hourly rate that  
14 is reflected in the quantum meruit invoice is  
15 higher than the rate that was in the contract. And  
16 Mr. Hackleman's opinion is that a quantum meruit  
17 recovery can exceed the contract price if the  
18 breach is willful. And for that proposition, your  
19 Honor, Mr. Hackleman relies on the Ballard case.

20 And at one point, your Honor, during the  
21 previous proceedings, your Honor had commented  
22 about the scope of the evidence that your Honor was  
23 going to consider, and one of the issues that you  
24 were looking at is, do we have to have testimony  
25 during these proceedings as to the conduct of the

1 client? And Mr. Hackleman's opinion is, under the  
2 Ballard case, yes, the conduct of the client is  
3 critically important, because if the breach is  
4 willful, and Mr. Hackleman's opinion on that is  
5 that the breach here was willful, and his basis for  
6 that opinion, your Honor, is that the client did  
7 not respond at all within the 10-day period and  
8 after the 10-day period refused to even pay the  
9 part of the invoice that was undisputed. So there  
10 was 18,000 of the 25,000 as to which there was no  
11 dispute, and they refused to pay that amount. And  
12 based on those, your Honor, he concludes that the  
13 breach was willful.

14 And his opinion, based on the Ballard case  
15 is, if the breach was willful, the quantum meruit  
16 recovery can exceed the recovery that's in the  
17 contract.

18 Mr. Hackleman's next opinion is that  
19 Mr. Betensky reached the opinion that because this  
20 was a client, even if it was only a former client,  
21 there are still ethical duties that are owed from  
22 the attorney to the client other than the ones we  
23 all recognize, the duty of confidentiality and the  
24 duty of conflicts, you know, to not get involved in  
25 a dispute that would be adverse to the client in a

1 manner that is the essentially same or statutorily  
2 related. So those duties are not controversial,  
3 your Honor.

4 But Mr. Betensky reached the opinion that  
5 there was still a duty of loyalty and the duty to  
6 not have the appearance of impropriety that  
7 attaches to former clients.

8 Ms. Pearsall: Your Honor, once again, I'm  
9 going to object. The testimony speaks for itself.  
10 Counsel is trying to recount what the witness said.  
11 Your Honor was present, you're the trier of fact,  
12 and the witness's testimony speaks for itself.  
13 Thank you.

14 THE COURT: All right.

15 You may continue.

16 MR. ALVA: Thank you, Ms. Pearsall.

17 Mr. Hackleman's opinion is that there is no  
18 duty of loyalty to a former client. When a former  
19 client becomes a former client, the duty of loyalty  
20 ceases. And for that, your Honor, Mr. Hackleman  
21 relies on the case of Alters v. Villoldo, and I'll  
22 spell that for your Honor, V-i-l-l-o-l-d-o, so I  
23 think it's pronounced here correctly, Villoldo.  
24 That, your Honor, is 230 So.3d 115. It is a 2017  
25 case from the Third DCA.



1           And Mr. Hackleman's opinion, based on that  
2 case, is that there is no duty of loyalty to a  
3 former client. When they become a former client,  
4 the duty of loyalty ceases. He relies on that  
5 case, your Honor, for the corresponding opinion  
6 reached by Mr. Betensky, which was there's a duty  
7 with the former client to avoid the appearance of  
8 impropriety. And Mr. Hackleman comes to the  
9 opposite opinion, that there is no duty to a former  
10 client to avoid the appearance of impropriety. And  
11 for that, your Honor, he, again, relies on the  
12 Alters case.

13           Mr. Hackleman's next opinion, your Honor, is  
14 that Mr. Betensky's opinion that the fee that was  
15 charged here was unreasonable is not a correct  
16 opinion, because Mr. Betensky admits that he did  
17 not look at the factors that are set out in  
18 Rule 4-1.5B. And Mr. Hackleman's opinion is that,  
19 in order to come to an opinion as to the  
20 reasonableness of an attorney's fees, you have to  
21 look at the factors in Rule 4-1.5.

22           It was the testimony of Mr. Betensky that he  
23 could substitute for those --

24           MS. PEARSALL: Same objection, your Honor, the  
25 witnesses, Mr. Betensky in specific, has testified.

1 That testimony is before the Court. I object to  
2 counsel testifying and rephrasing the testimony of  
3 the witness, your Honor.

4 MR. ALVA: Your Honor, can I comment on the  
5 testimony of other witnesses?

6 THE COURT: If you proffer that, it would be  
7 an improper proffer.

8 MR. ALVA: Your Honor, I'm only trying to tell  
9 you in some detail what Mr., Hackleman's, opinion  
10 is so if I'm going beyond that, your Honor, I  
11 apologize.

12 Mr. Hackleman's opinion is, that, in order to  
13 form an opinion as to the reasonableness of  
14 attorneys' fees, you have to look at the factors in  
15 4-1.5B, and you cannot substitute the contract for  
16 one of those factors. His opinion further is that  
17 the contract itself is actually not among the  
18 factors that the Court may consider. And  
19 Mr. Hackleman looked in detail at each of the  
20 factors in Rule 4-1.5(b), and the contract is not  
21 among them.

22 Mr. Hackleman's opinion as to role of the  
23 contract, that the contract plays, is in Rule  
24 4-1.5D. Rule Rule 4-1.5(d), as in dog, as opposed  
25 to B as in Bradley, is that contracts for fees or

1 enforceable subject to certain circumstances, and  
2 one of the circumstances is that the fee has to be  
3 reasonable. So the contract is not a way of  
4 determining whether the fees are reasonable. In  
5 fact, it's just the opposite. The factors are one  
6 of the ways of determining whether the contract is  
7 enforceable.

8 So, in Mr. Hackleman's opinion, you cannot  
9 form an opinion that the fees were unreasonable  
10 unless you look at the factors, and you may not  
11 look at the contract as one of the factors. His  
12 opinion is that you are reversing the analysis if  
13 you're looking at the contract to determine  
14 reasonability, and the only way you can determine  
15 reasonability is to look at the factors.

16 His second part of the opinion in that  
17 regard, your Honor, is that, if you do not look at  
18 the factors in Rule 4-1.5(b), as in boy, and  
19 Mr. Betensky did not, then you cannot reach an  
20 opinion as to whether the fees were reasonable,  
21 because those factors are mandated by  
22 Rule 4-1.5(b).

23 So it is the opinion of Mr. Hackleman, that,  
24 in order to come to any opinion as to  
25 reasonableness, you have to go to the factors. And

1 his additional opinion is that, if you don't go  
2 through the factors, you actually cannot form an  
3 opinion as to the reasonableness. It's a mandatory  
4 step, in the opinion of Mr. Hackleman, to look at  
5 the factors.

6 The next opinion by Mr. Hackleman is that he  
7 goes through each of the factors in Rule 4-1.5(b),  
8 and I won't run the Court through this as part of  
9 the proffer, but he looked at each of those  
10 factors, and Mr. Hackleman then looked at the total  
11 amount of fees that was charged in this case, and  
12 it is the opinion of Mr. Hackleman that the fee  
13 that was charged in this case, including the fee  
14 that was charged in the quantum meruit invoice for  
15 the additional \$126,000, was reasonable under  
16 Rule 4-1.5, and that there was no violation of  
17 Rule 4-1.5 in charging a reasonable fee, and there  
18 was no basis for any other violation of Rule 4-1.5.

19 Mr. Hackleman's next opinion is that there  
20 was no misrepresentation made to the client by the  
21 attorney that would constitute misrepresentation  
22 sufficient for the attorney to violate 4-1.5 in the  
23 subsection where it says that a fee can be  
24 unreasonable if it's based on misrepresentation or  
25 fraud. And that's 4-1.5(a)(2), your Honor.

1           Mr. Hackleman's opinion is that in order for  
2           there to be misrepresent under Rule 4-1.5(a)(2),  
3           there has to be an intent to deceive the client.  
4           And Mr. Hackleman's opinion is that there was no  
5           intent to deceive the client here, because all of  
6           the statements that were made by the attorney to  
7           the client, and Mr. Hackleman reviewed all of the  
8           e-mails that had been admitted and, in addition,  
9           all the other e-mails that were exchanged between  
10          the law firm and the client as to the fees, and  
11          after reviewing all of those, his conclusion is  
12          that there was no misrepresentation, that every  
13          representation that was made by the attorney to the  
14          client was made in good faith and had had a  
15          reasonable basis.

16                He next, your Honor, takes issue with  
17          Mr. Betensky's specific opinion that --

18                MS. PEARSALL: Objection again, your Honor.

19                THE COURT: You can't comment on other  
20          witnesses.

21                MR. ALVA: Yes, your Honor. Let me do it this  
22          way then.

23                Mr. Hackleman's next opinion is that the  
24          quantum meruit invoice that was issued was not a  
25          misrepresentation because the quantum meruit

1 invoice billed the client for a remedy in quantum  
2 meruit which could properly begin the day before  
3 the contract was signed and could properly exceed  
4 the contract rate based on the cases that have  
5 already been cited to the Court. Since the quantum  
6 meruit invoice could exceed the contract rate and  
7 could begin on day one, it was not a  
8 misrepresentation for the quantum meruit invoice to  
9 be sent to the client.

10 And then, further, there is no intent. And  
11 misrepresentation, your Honor, requires an intent  
12 to deceive. There was no intent to deceive,  
13 because even if, for some reason, the attorney was  
14 mistaken as to the law, the fact that there was a  
15 good faith basis and an honest belief on the part  
16 of the attorney that the remedy could begin on day  
17 one and could exceed the amount of the contract  
18 rate, then there cannot be misrepresentation.  
19 Mr. Hackleman's opinion is, then, that if that  
20 there is no intent to deceive, there is no  
21 misrepresentation, and if there is no  
22 misrepresentation, there is no violation of Rule  
23 4-1.5(a)(2), contrary to Mr. Betensky's opinion.

24 The final part of the proffer I would like to  
25 make as to Mr. Hackleman, your Honor, are his

1        qualifications as an expert. Mr. Hackleman has  
2        been practicing law in Florida for over 40 years.  
3        It was a substantial part of his practice to  
4        deliver opinions in court or in affidavit form on  
5        the reasonableness or unreasonableness on fees. He  
6        has done that dozens if not hundreds of times.  
7        Mr. Hackleman is a graduate of -- oh, the law  
8        school in Nashville, your Honor, I know it and I  
9        blanked on it, very prestigious. It will come to  
10       me. He's a graduate of a prestigious law school.

11       He served for a decade as the managing  
12       partner of the litigation department of the firm of  
13       Gunster, Yoakley & Stewart and was a member of the  
14       management committee. And as a member of the  
15       management committee, he was the person at Gunster  
16       Yoakley who was in charge of defending Gunster  
17       Yoakley in cases where clients had made allegations  
18       that Gunster Yoakley had charged them an  
19       unreasonable fee.

20       And he was also in charge of disciplining  
21       attorneys when there was an alleged reasonable  
22       basis for believing that an attorney had violated  
23       the rules of ethics.

24       Let me see if I got all of his  
25       qualifications. Oh, your Honor, he was also, for

1 about a decade, a member of the judicial nominating  
2 commission and on Bar committees relating to  
3 professional responsibility.

4 So that's my proffer, your Honor, as to the  
5 opinions and the basis for Mr. Hackleman. Thank  
6 you very much.

7 THE COURT: Okay. Do you have any witnesses  
8 you wish to call, or do you want to testify?

9 MR. ALVA: Yes, the only witness, your Honor,  
10 if Mr. Hackleman is not testifying, would be  
11 myself, and I can begin that now if it pleases your  
12 Honor.

13 THE COURT: All right. Let me swear you in,  
14 since we're on a new day.

15 (Curtis Alva was sworn in by the Court and  
16 testified as follows:)

17 MR. ALVA: I do.

18 THE COURT: All right. You may begin.

19 MR. ALVA: Thank you, your Honor. And it  
20 seems a little awkward to do this in  
21 question-and-answer format, so I think I'll just  
22 give the testimony part of it, if that's okay with  
23 your Honor.

24 THE COURT: That's fine.

25 MR. ALVA: Okay. So, your Honor, the first



1 part of my testimony will be that the fee charged  
2 that was charged in this case was a reasonable fee,  
3 and I would like to go through with the Court the  
4 factors that are in Rule 4-1.5(b)(1)(a) through (h)  
5 and --

6 THE COURT: Give me some background about  
7 yourself before we go into that.

8 MR. ALVA: Thank you, your Honor, yes.

9 I graduated from college with it wasn't quite  
10 a 4.0, it's 3.9 something. I was admitted to the  
11 Yale Law School. I received a full scholarship  
12 there. I graduated there, your Honor.

13 During the time that I was there, I was  
14 elected as the editor in chief of the Yale Journal  
15 on Regulation, which I think is recognized as the  
16 most prestigious academic in the areas of  
17 administrative law and regulatory law.

18 While I was also there I was honored to be a  
19 John M. Olin scholar for excellence in scholarship.  
20 I graduated from the law school in 1988, and I took  
21 a position, your Honor, after law school with the  
22 firm on Skadden, Arps, Slate, Meagher & Flom.  
23 That's a firm, your Honor, that is headquartered in  
24 New York but has offices in 40 or 50 different  
25 countries around the globe.

1           At the time I took the position, your Honor,  
2           I took a position in the office in Wilmington  
3           Delaware, because Wilmington, Delaware is the site  
4           of all the cutting-edge litigation on the issues of  
5           the fiduciary duties of directors and officers of  
6           corporations and other entities that are like  
7           corporations. It is the place of incorporation of  
8           a majority of the Fortune 500, and those companies  
9           are regularly involved in litigation relating to  
10          the fiduciary duties of the directors and officers  
11          and disputes over the control of the corporation,  
12          who's going to be able to control it. Is it the  
13          stockholders? Is it certain members of the  
14          directors? Is it someone who's making an offer to  
15          purchase it?

16                 That was sort of the most glamorous part of  
17          corporate litigation at the time that I graduated.  
18          Years before, it was antitrust litigation. But  
19          when I graduated, it was litigation over fiduciary  
20          duties and corporate control.

21                 So I went to the Wilmington, Delaware office.  
22          I was there for 10 years. During the 10 years I  
23          was there, I was part of litigation teams that  
24          litigated for, I think our clients were always  
25          Fortune 100 clients, your Honor.

1           The opponents that we had in litigation were  
2           the Wall Street firms and the other most talented  
3           and experienced law firms around the globe. I was  
4           part of the team that litigated the dispute over  
5           the changing control of RJR Nabisco, which is now  
6           25, 30 years ago. But even though it's been that  
7           long, I think it is still of record as the very  
8           largest amount in dispute in a corporate-control  
9           transaction. I was part of the litigation team of  
10          hundreds of cases that involved disputes over  
11          control of corporations and fiduciary duties of  
12          directors.

13           After being at Skadden Arps for 10 years,  
14          your Honor, I was married and had six kids, and my  
15          wife prevailed upon me to find a more balanced work  
16          schedule. So I moved to Florida, your Honor, and  
17          took a position with Shutts & Bowen, which is a  
18          very highly regarded law firm with offices in West  
19          Palm and other places. It's populated with the  
20          most skillful, experienced, and professional  
21          attorneys that you can come across in Florida.

22           And while I was there, I was the head  
23          litigator at that firm on cases involving fiduciary  
24          duties, and we didn't actually have any  
25          corporate-control cases at Shutts & Bowen, but all

1 cases relating to fiduciary duties I was the lead  
2 litigator at that time.

3 After being at Shutts & Bowen I think for  
4 about 8 years, I was prevailed upon to take a  
5 position at Gunster, Yoakley & Stewart. Gunster,  
6 Yoakley & Stewart is another preeminent law firm in  
7 Florida, very highly regarded. The attorneys that  
8 serve there are among the elite in legal skills and  
9 ethical practices and in experience.

10 While I was there, I was again the lead  
11 litigator on cases of fiduciary duties. And we  
12 always had some corporate-control cases while I was  
13 at Gunster, Yoakley & Stewart, including, your  
14 Honor, the dispute relating to US Sugar, where US  
15 Sugar had determined to sell all or most of all of  
16 its assets to the State of Florida. That was a  
17 multibillion-dollar dispute between certain  
18 stockholders of US Sugar and founders and owners of  
19 US Sugar, which was in Detroit.

20 Each member of the board of directors had to  
21 be separately represented by counsel, and each of  
22 the officers was separately represented by counsel,  
23 so the number of lawyers in that case was in the  
24 dozens. It was all of the preeminent law firms or  
25 most all of them in the cases located in Palm Beach

1 County, Broward County, and Miami-Dade County. And  
2 I was the lead litigator in that case. The case  
3 was filed in federal Court in the Southern  
4 District. The proceedings were in Miami, and I was  
5 the person who spoke on behalf of the defense  
6 group. When arguments were made in court, I was  
7 the person who made the deciding vote on all issues  
8 of strategy and tactics in the case. It was an  
9 extremely challenging case, and we had a tremendous  
10 result for the client.

11 After I was at Gunster Yoakley, I took a  
12 position at Holland & Knight. Holland & Knight is  
13 a worldwide firm, one of the largest firms in the  
14 world, and it's a Florida-based firm, starting in  
15 Lakeland, Florida, your Honor, a very successful  
16 firm. Like the other two firms, your Honor, it is  
17 peopled with preeminent attorneys in Florida in  
18 terms of skill, in terms of experience, in terms of  
19 ethics. The work there was as rigorous and  
20 challenging as it was at the other firms.

21 While I was at Holland & Knight representing  
22 a client in a very large case, Holland & Knight had  
23 an opportunity to take a stratospherically large  
24 case for another client that had a technical  
25 conflict with the client we were already

1       representing. It was a large international bank.  
2       And we worked it out so that I would take the  
3       firm's existing client and start my own practice,  
4       and Holland & Knight would then be free to  
5       represent this large international bank in the new  
6       matter where there was a technical conflict.

7               So I went out on my own, your Honor, and I've  
8       been on my own since then running a firm with just  
9       myself or, at times, with one other partner.

10              My practice, your Honor, has always  
11       specialized in fiduciary duties and disputes over  
12       control of corporations. The case that underlies  
13       this disciplinary proceeding, your Honor, was the  
14       fight for the control of a Florida corporation, so  
15       it was right in the middle of my specialized  
16       practice area. There is a very small bar, your  
17       Honor, that specializes in this practice.

18              I am one of maybe a dozen attorneys in all of  
19       South Florida who have at least a majority of their  
20       practice in this area. And I think, among all of  
21       those attorneys, your Honor, I am at the zenith. I  
22       think I have done more of those cases than anybody  
23       else in that bar. I believe that I've been  
24       practicing in that area longer than anybody else in  
25       that bar, and I believe that the dollar value of

1 the cases that I have served in is exponentially  
2 larger than for any other member of that bar. So  
3 I've been very lucky and very successful in a very  
4 specialized area of corporate litigation, your  
5 Honor.

6 I have a spotless record on ethical issues  
7 and litigation issues. I have never been  
8 disciplined by any Bar. I'm a member of this Bar  
9 and also the Bar in Delaware. I have never been  
10 sued by a client. Up until I met Dr. ColorChip,  
11 your Honor, I've never had a legal dispute of any  
12 kind with a client. I've ever had a collection  
13 dispute with a client. I've never had an ethical  
14 dispute with a client, nor with anybody else.

15 Let me see if that's all relating to  
16 background. I think that's a pretty good  
17 description of my background and experience, your  
18 Honor. So if I -- if I can now, your Honor, I will  
19 go to the -- the fee that was charged in this  
20 matter.

21 THE COURT: All right.

22 MR. ALVA: So I believe that the fee that I  
23 charged in this matter was a reasonable fee. I  
24 believed that, when I charged the fee, I had done  
25 the legal research on each of the steps that I

1       took. And I charged a fee that was reasonable  
2       under each of the factors, and I would like to go  
3       through them one by one.

4               We've already talked about, your Honor,  
5       subfactor G, which is experience, skill, and  
6       expertise. We covered that when I did my  
7       background.

8               So we can go next to the time difficulty and  
9       skill of it, that matter. Your Honor, the dispute  
10      for the control of the corporation was a fiercely  
11      contested fight to the corporate death dispute,  
12      that was highly sophisticated, extremely demanding  
13      in terms of the scheduling requirements, and was  
14      extraordinarily successful for the client.

15              At the time that the client approached me,  
16      the company, Dr. ColorChip, was a deeply troubled  
17      company that was actually in peril of no longer  
18      surviving. There was a dispute between the two  
19      co-owners and co-directors of the company. So  
20      Mr. McCool, who you've heard testimony from, was  
21      one of the two directors, and he was a 50-percent  
22      stockholder, but there was another co-director who  
23      had half of the votes on the board of directors and  
24      who was a 50-percent stockholder. So they were at  
25      a deadlock. They were equally powerful in the



1 company. The only difference between the two is  
2 that Mr. McCool was the president, and the other  
3 fellow, whose name is Mr. McLean, was the vice  
4 president.

5 The company at that time, your Honor, was  
6 worth about \$5 million. The annual distributions  
7 from the company, at that time, to the two  
8 stockholders were about a million dollars a year.

9 So for a company that was founded in Florida,  
10 it was a very valuable dispute. The company, your  
11 Honor, just to tell you very quickly, is a paint  
12 chip repair company. And I think it's fair to say  
13 that 90-plus percent of their business comes  
14 through the internet.

15 So if you have a car and you get a chip in  
16 the paint and you go on the internet and you  
17 search, how can I repair the chip in my paint?  
18 Dr. ColorChip pops up, among other companies, and  
19 they will match exactly the shade of paint that you  
20 need for the year and model of your car. And they  
21 can also do things like, gee, how long was it since  
22 the car was painted? because, of course, the paint  
23 fades over time, and you can buy from them a little  
24 bottle of paint, and you use a little thing like a  
25 fingernail brush, and you paint over the chip over

1 in your car, and it repairs it. That's the  
2 business they're in. That's the only business  
3 they're in.

4 At the time that they approached me,  
5 Mr. McLean was causing substantial exposure to  
6 regulatory shutdowns, because he was shipping  
7 products into Canada that did not comply with  
8 Canadian environmental regulations. And the  
9 penalty for shipping those products in, that were  
10 not in conformance, was that you would be banned  
11 from shipping products in and you'd have to  
12 disgorge all of the products, or not just products,  
13 I mean, all of the money that you had received in  
14 shipping the products. Canada, I think, was their  
15 largest market, second to the United States. And  
16 the regulatory shutdown, your Honor, would have  
17 been a substantial hit to the income of the  
18 company.

19 He was also in deadlock to Mr. McCool,  
20 because they were each 50 percent stockholder, and  
21 they were each half of the votes of the board of  
22 directors. And, and this was something that the  
23 company very recently discovered, he had  
24 misappropriated the key intellectual property of  
25 the company.

1           Now, intellectual property, your Honor, for  
2           this company was 90 to 95 percent of their  
3           business, because the intellectual property he had  
4           misappropriated were the domain name of their  
5           company that you would use if you were going to  
6           order some paint from the company. So you would go  
7           to WWW, dot, Dr. ColorChip, dot, com, and when you  
8           typed in that address, it would take you to the  
9           company, and they would receive the order, ship the  
10          paint, and receive the money for the paint. He had  
11          misappropriated that domain name and put it in  
12          control of himself individually.

13                So the domain name used to be controlled by  
14          Dr. ColorChip Corporation. It was owned by  
15          Dr. ColorChip Corporation, but he had, over a  
16          series of months, changed all of the information  
17          and the registration to his personal information.  
18          So now he could personally control the -- where the  
19          traffic was directed.

20                So when you typed in www, dot, Dr. ColorChip,  
21          it was going to the computers at Dr. ColorChip. He  
22          had the intellectual property to redirect that  
23          traffic so that it no longer went to Dr. ColorChip  
24          and it would now go to the computer at his house.  
25          So Dr. ColorChip would not know that the orders

1        were received, would not know they were supposed to  
2        ship some paint, and would not receive their money.  
3        And this was 95 percent of their business.

4                When Mr. McCool came to me and explained the  
5        problem, he said, I have a solution that I want you  
6        to put in place. There is a buy-sell clause in the  
7        contract, and I want to trigger the buy-sell  
8        clause. And it's one of those, they call them, a  
9        Texas showdown buy-sell clause, which means you  
10       make the offer, the person who receives the offer  
11       can either sell you their half at the price that  
12       you want, before they can flip it on you and buy  
13       your half for the price that you offered to buy  
14       their half.

15               So they came up with a price of about \$2.25  
16       million that they were willing to offer to  
17       Mr. McLean to buy out his half, and they said I  
18       think this is going to solve the problem. I think  
19       Mr. McLean is going to agree to do this. He's  
20       bound by the contract to do this, and this is going  
21       to be the solution to the problem.

22               And I advised the client that, in my opinion,  
23       this was not going to solve the problem.  
24       Obviously, Mr. McLean had been lining himself up to  
25       take over the entire revenue stream of the company.

1 When they made a buy-sell offer to him, that was  
2 going to indicate to him that they knew that there  
3 was a problem and they needed to get him out, and  
4 he would have just taken the final steps to  
5 redirect all the traffic from the computers at  
6 Dr. ColorChip to the computers in his garage, and  
7 he would have then had the entire revenue stream of  
8 the company.

9 My advice to them was, hey, you're not going  
10 to be able to get him out by offering him money,  
11 and even if you offered him money, you would have  
12 to go to court to enforce it. He was required in  
13 the contract to either buy or sell, but if he  
14 elected not to, there was no mechanism to force him  
15 to do it. It would have had to go to court, file a  
16 lawsuit, and try and compel him to accept the buy  
17 or sell. And, in the meantime, he would be  
18 redirecting the traffic and stealing all the  
19 revenue.

20 So the problem was they had to get rid of him  
21 immediately and without giving him any advanced  
22 notice. And those kinds of tactics, your Honor,  
23 are exactly in my area of specialty.

24 So I advised the company that what they  
25 needed to do was they needed to use Mr. McCool's

1 powers as the president, because the president had  
2 the power to terminate the vice president from the  
3 vice president's office. And the contract had a  
4 clause in it that said that if an officer of the  
5 company is discharged from the company and is also  
6 a stockholder, the company has the option of  
7 redeeming his shares involuntarily at a price set  
8 in a formula.

9 So I advised them that he's breaching the  
10 laws of Canada and he's stealing intellectual  
11 property. You have grounds to terminate him. You  
12 need to terminate him. And at the time you need to  
13 terminate him, you need to redeem all of his stock,  
14 so that he has no stock. When he has no stock, you  
15 need to immediately call a meeting of the  
16 stockholders and have the stockholders elect a new  
17 board of directors, which is what stockholders do.  
18 And when you have the stockholder's vote, you are  
19 the only one that has any stock, so you're the only  
20 one that has any votes, and you will vote him off  
21 the board of directors.

22 So at the stroke of a pen he will no longer  
23 be an officer, he will no longer be a director, and  
24 he will no longer be a stockholder. So all of the  
25 risks that you run of him destroying the company

1 are addressed immediately except for the risk that  
2 he's going to redirect the traffic. He can still  
3 do that by contacting the company. You know, it's  
4 one of those Monster.com's, where they are your  
5 domain name and they control your domain name.  
6 That was the only risk that there was.

7 And I said what you need to do to address  
8 that risk is you need to go to the Court and you  
9 need to request an injunction on an ex-parte basis  
10 so that he doesn't even know you've requested the  
11 injunction. You need to say to the Court I have to  
12 have an injunction before he has notice, because  
13 he's going to switch the domain name and he's going  
14 steal all the revenue if we give him the notice.  
15 So, your Honor, you've got to do it without notice  
16 to him.

17 I then advised him that if you do this, he's  
18 going to sue you. He's going to sue you to get  
19 back his stock. He's going to sue you to get back  
20 his position on the board and to get back as the  
21 vice president, and you're going to spend a lot of  
22 money in litigation with this guy if he decides to  
23 sue, and it's going to be a lot in attorneys' fees.  
24 But it will solve your problems.

25 Because it's going to be expensive, I said,

1       you need to make him an offer at the beginning to  
2       settle the whole dispute. So you can't make him  
3       the settlement offer before you fire him, because  
4       once you make him a settlement offer, he's going to  
5       redirect the traffic. So we determined that we had  
6       to fire him first, and then immediately upon  
7       terminating him, give him a written settlement  
8       offer.

9               And so we gave him a settlement offer. And  
10       the settlement offer was we will pay you for the  
11       stock we redeem. So upon payment, he redeems the  
12       stock. The redemption of stock was immediate, but  
13       payment was by a formula and would occur over time.  
14       So the settlement offer was we have taken all of  
15       your stock, you don't have any choice, but we want  
16       to offer you a price that is a reasonable price for  
17       your stock.

18              And the way we set the price was we looked  
19       at, how much is it going to cost you to litigate  
20       with this guy? And eventually he's going to get  
21       tired of litigating and you're going to settle with  
22       him. How much is it going to cost you to settle  
23       with the guy after litigation? And the  
24       determination that we made that the cost of  
25       settling, the cost of litigating was going to be in



1 the neighborhood of a million dollars. And so was  
2 going to be up to one year of distributions to the  
3 stockholders of the company, so it was a lot. It  
4 was a very important decision for the company.

5 The company decided that if we're willing to  
6 pay him a million, we don't want to show him a  
7 whole million the first time. So let's offer him  
8 \$700,000.

9 And the company actually, at the moment he  
10 was terminated, we handed him a settlement offer,  
11 that said this is a settlement of any dispute about  
12 any issue relating to you being fired and your  
13 stock being redeemed and you voting off by the  
14 board of directors. We will pay you, I think it  
15 was over a period of 6 months or 12 months,  
16 \$700,000 for your stock, and in exchange, you'll  
17 get general releases and we'll be done. You'll get  
18 700,000. Go do whatever you want, and the company  
19 would be entirely controlled by Mr. McCool.

20 That offer was sent to Mr. McLean, who  
21 immediately rejected it, hired a lawyer and started  
22 the litigation that we were -- that we expected  
23 that he might do.

24 The importance, your Honor, of the \$700,000,  
25 for the reasonableness of the fees, is that the

1 case was eventually settled. After I was  
2 terminated as counsel, Mr. Nelles took over as  
3 counsel, and Mr. Nelles, in a motion that he filed  
4 with the Court in the civil litigation, notified us  
5 that the case would settle for \$430,000. So that  
6 was the amount that was given to Mr. McLean to  
7 redeem his stock and for all of his claims.

8 The amount of legal fees that they had paid  
9 to my firm at the time that I was terminated was  
10 \$325,000. So if you look at the 325,000 they paid  
11 me and the 400,000 or 450,000, I forget which, that  
12 they paid to settle it, you come up with about  
13 \$775,000, which is \$225,000 less than we discussed  
14 before I was hired as to the amount that it was  
15 probably going to cost them to get done with this  
16 problem. They put in a million, and they actually  
17 got out for \$775,000, your Honor.

18 So as to the specifics in the difficulty and  
19 the skill that was required to litigate this case,  
20 your Honor, when Mc. McLean filed his lawsuit -- he  
21 was terminated on October 3, 2016. We made the  
22 settlement offer to him at the same time, October  
23 3, 2016.

24 On September 29, 2016, your Honor, which is  
25 before October the 3rd, we had gone to the Court

1 with our complaint seeking an ex-parte injunction.  
2 The Court denied the ex-parte injunction. The  
3 Court said you might be entitled to an injunction,  
4 but I don't believe that I can do it on an ex-parte  
5 basis. You're going to have to serve a complaint  
6 on him. You're going to have to give him notice  
7 and then you guys can come to court and then I'll  
8 decide what to do with the injunction.

9 On October 13th, your Honor, Mr. McLean filed  
10 his answer to the lawsuit and his counterclaim, and  
11 he also filed a verified emergency motion for a  
12 preliminary injunction. So instead of the  
13 injunction that the company was seeking to prevent  
14 him from changing the contact information on the  
15 firm's domain name, this was his injunction in  
16 which he asked the Court to dissolve the company,  
17 appoint a custodian, if the judge wasn't going to  
18 dissolve the company, appoint a provisional  
19 director, if the Court wasn't going to appoint a  
20 custodian, and award to Mr. McLean 100 percent of  
21 the stock in the company by flipping, remember,  
22 there was a Texas showdown buy-sell provision that  
23 we had, that was in there.

24 He said that the \$700,000 settlement offer we  
25 made him was actually pursuant to the Texas

1       showdown buy-sell clause, which enabled him to buy  
2       up all of Mr. McCool's stock for \$700,000 and to  
3       then fire Mr. McCool and to then become the sole  
4       member of the board of directors. So everything we  
5       had done to Mr. McLean, he wanted the Court to flip  
6       around and have that done to Mr. McCool. He filed  
7       that request for an emergency on October 2016.

8               On October 26th, the Court held a hearing on  
9       his motion for an emergency injunction. The Court  
10      did not grant him any of the relief that he wanted  
11      on October the 26th. So in a period of -- well, he  
12      filed his answer on the 13th, so in that period of  
13      13 days, we had to prepare for an evidentiary  
14      emergency injunction hearing on all of the relief  
15      that I just discussed with you.

16             On October 27th, so this is the day after  
17      he's denied the injunction relief that he's  
18      seeking, he files another motion for emergency  
19      relief, for dissolution, appointment of a  
20      custodian, and appointment at this time of a  
21      provisional director, and he seeks another  
22      emergency hearing. That emergency hearing, your  
23      Honor, was set for November the 3rd, so a week or  
24      two later or 10 days later.

25             We had to take depositions. We had to do

1 written discovery. On October the 24th, we sent  
2 out a bunch of deposition notices. We sent out  
3 requests for documents. He did the same thing.

4 On October the 26th we submitted briefs to  
5 the Court, so we had to draft actual briefs, and  
6 the first issue the court wanted briefed was, is  
7 this an actual emergency where I have to figure  
8 out, on November 3rd, whether to grant relief. So  
9 we briefed, your Honor, just the issue of whether  
10 there was not -- whether or not there was an  
11 emergency relief.

12 We then had a hearing. The Court moved the  
13 hearing from November 13th to November 8th, and at  
14 that November 8th hearing, she addressed solely the  
15 issue of whether or not there was an emergency.  
16 She determined that there wasn't an emergency. She  
17 denied emergency relief. But she said this  
18 deserves expedited treatment. This is going to be  
19 an expedited litigation. We're going to get this  
20 done pronto.

21 During the time that I represented  
22 Dr. ColorChip, we filed 21 motions. We noticed 25  
23 depositions. We sent out 24 interrogatories and  
24 had 180 requests for production. And in about -- I  
25 think I was on the case for about one year where we

1 had 199 docket entries during that time.

2 On March 8th we filed a motion for injunctive  
3 relief to regain control of the domain name, and on  
4 March the 16th, Mr. McLean countered and made a  
5 motion to disqualify counsel for Dr. ColorChip, in  
6 other words, myself and my firm, and his grounds  
7 for disqualification were that I represented both  
8 Dr. ColorChip and Daniel McCool, and that, in his  
9 counterclaim, he was making the allegations that  
10 Dan McCool had stolen millions of dollars from  
11 Dr. ColorChip, so that created a conflict between  
12 Dan McCool and Dr. ColorChip, and they could not be  
13 represented by the same counsel.

14 Our response was that those allegations were  
15 an entire fabrication, that there was no good-faith  
16 basis for making that.

17 And we litigated in front of the Court the  
18 next issue was -- the next issue, which was, should  
19 counsel for both of them be disqualified because of  
20 these allegations that one of my clients was  
21 stealing from another one of my clients? The Court  
22 later determined that there was no basis for those  
23 allegations, and motion for disqualification was  
24 not granted.

25 We then went into June -- we sought

1 additional depositions. Additional requests for  
2 production were done. And that took us up to, your  
3 Honor, December of 2017.

4 So the factors, your Honor, let me pull up  
5 the exact language here for B(1)(A), the factors  
6 that the Court needs to look at are the time and  
7 labor required, the novelty, complexity, and  
8 difficulty of the questions involved and the skill  
9 that's requisite to perform the legal services  
10 properly.

11 So as to the time and labor requirement, that  
12 is set out exactly in the bill, so we have exactly  
13 how much time and labor.

14 As to the complexity and difficulty of the  
15 questions involved, your Honor, litigating these  
16 multiple emergency evidentiary motions on issues as  
17 complicated as, does the company need to be  
18 dissolved? Does a provisional director need to be  
19 appointed? Does all of the company's income stream  
20 need to be frozen by injunction in the meantime?  
21 Was the \$700,000 settlement offer a Texas showdown  
22 invocation of the contract that allowed Mr. McLean  
23 to flip it all and purchase and wipe out his  
24 opponent for \$700,000? those are among the most  
25 complex issues that you can get in the law. And to

1 have to litigate those issues in a week or 2 weeks  
2 and repeatedly is extremely difficult and justifies  
3 the fee that was charged in this case, your Honor.

4 Let's go now to factor B(1)(b). Factor  
5 B(1)(b) is a likelihood that the acceptance of a  
6 particular employment would preclude other  
7 employment by the lawyer. These expedited  
8 proceedings, your Honor, did not allow me to work  
9 on any cases other than Dr. ColorChip.  
10 Dr. ColorChip was 100 percent my time during almost  
11 the entire length of the representation. Because  
12 of the multiple motions for emergency relief and  
13 because of the judge's decision that, even though  
14 there wasn't an emergency, it was going to be an  
15 expedited litigation, and she was going to get to  
16 the end of the road as soon as possible.

17 So there was no opportunity for me to  
18 represent any client of Dr. ColorChip. So if I was  
19 not paid by Dr. ColorChip, I was not going to have  
20 any income at all.

21 The next factor, your Honor, is the fee or  
22 rate of fee customarily charged for the locality  
23 for the legal services comparable or similar in  
24 nature. The only comparable practice in this area  
25 are preeminent firms in Florida, and their fees are



1       commensurate with their status in the Bar. The  
2       amount -- the hourly rate I charge, the way I  
3       calculated that, your Honor, and the way that I  
4       know that it's in line with the rate customarily  
5       charged for the locality is because I've worked for  
6       each of these other firms. I had friends at each  
7       of these other firms. I know how much they  
8       charged. And I continued to know how much they  
9       charged when I left the firm, because, on average,  
10      they increased their fees at a rate of about  
11      7 percent a year. So I would increase my rate  
12      about 7 percent a year.

13             And because I wasn't at a very large firm and  
14      didn't have to pay the overhead that very large  
15      firms pay, I did not charge the same rate that  
16      would be charged by the large firms. I charged a  
17      lower rate. So, at the time, my standard rate was  
18      \$550 an hour. The rate at a large firm for the  
19      same work was probably \$750 an hour, so I was a  
20      substantial discount to the rate that is charged.  
21      So the rate that is customarily charged for those  
22      legal services, your Honor, would have been \$750 an  
23      hour rather than \$550 and substantially higher than  
24      the \$400 discount that I gave to the client.

25             Other than that the fee that I was charging

1 was substantially less than the fee charged in the  
2 locality, is that, if you hire one of these big  
3 firms and they have to go to an evidentiary hearing  
4 in seven days on ten complicated issues of  
5 corporate law, they're going to have a team of  
6 five, ten lawyers working on the case. So you're  
7 not going to have just one lawyer, with the issues  
8 in the case, that involve one person that knows  
9 everything, but you're going to have a team of  
10 lawyers. So the hourly rate was going to be  
11 substantially higher, and the number of attorneys  
12 on the case was going to be higher by Richter  
13 scales. I did it by myself.

14 If I had been at Holland & Knight at the time  
15 this case was done, we would have had at least  
16 five, six lawyers on the case, your Honor.

17 So the fee that I charged was substantially  
18 below the fees charged in the locality for the  
19 kinds of services that were done.

20 The next factor, your Honor, is  
21 subparagraph D, and that is the significance of or  
22 amount involved in the subject matter and  
23 representation and the responsibility involved in  
24 the representation and the results obtained.

25 The significance, your Honor, in terms of

1       having control of the company could not have been  
2       higher. Whoever won this litigation was going to  
3       have 100 percent of the company, and whoever lost  
4       the litigation was going to have zero percent of  
5       the company. This was winner-take-all, nothing for  
6       the loser, and the loser is dead to this  
7       corporation.

8               So you couldn't have a more significant  
9       dispute in terms of the things that they were  
10      fighting over, which was, who's going to control  
11      the company and who's going to receive all the  
12      money when it sells the products?

13             As to the responsibility involved, I was the  
14      sole attorney on the case, so I was responsible for  
15      everything that occurred in the representation, and  
16      the results obtained, your Honor, are that  
17      Dr. ColorChip got everything that it was seeking  
18      and Mr. McLean got nothing. Mr. McCool got 100  
19      percent of the stock. He got the only position on  
20      the board of directors, and he was the only  
21      officer. He got 100 percent of the income stream  
22      from the very first day that Mr. McLean was  
23      terminated. So he got all the money, all of the  
24      power, and Mr. McLean got nothing other than  
25      payment of the stock redeemed in the amount of

1           \$430,000.

2           The next factor, your Honor, is  
3           subparagraph E, and subparagraph E, the time  
4           limitations imposed by the client or by the  
5           circumstances and any additional special time  
6           demands or requests of the attorney by the client,  
7           here, your Honor, and you've already got the  
8           particulars of that, the time limitations that were  
9           imposed by the circumstances are among the most  
10          challenging and nearly impossible time requirements  
11          that you could imagine, because there would be a  
12          20- or 30-page motion for an emergency injunction  
13          filed on day one, and on day seven, we were in a  
14          hearing battling over that emergency relief that  
15          was being sought. And when that battle was done,  
16          on the very next day, there was another emergency  
17          motion that was filed and another hearing, this  
18          time two weeks later, that we had to get ready for,  
19          and these emergency requests.

20          And then the requests, your Honor, for  
21          disqualification of counsel had to be dealt with  
22          immediately, because there was a substantial risk  
23          to the company during the time period when there's  
24          a pending request to disqualify their counsel. So  
25          all of those, your Honor, were emergency things

1       that had to be done under the most challenging time  
2       limitations that the Court can imagine.

3           And even after all the emergencies were over  
4       and the disqualification was over, there was still  
5       the decision by the Court that the litigation had  
6       to be expedited, so that she could find out as soon  
7       as possible who was supposed to be in control and  
8       who was supposed to get all of the money.

9           So, even after the emergencies were over, the  
10       time limitations placed by the Court on the  
11       litigation were extremely challenging and justified  
12       the highest -- justified the fee, your Honor, that  
13       was charged in the case and even more than the fee  
14       that was charged in the case.

15          The next one, your Honor, is the nature and  
16       length of the professional relationship with the  
17       client. I don't think that factors into here.  
18       This was a new client for me. I had never been an  
19       attorney for them before. So there wasn't any  
20       professional relationship before. The case lasted  
21       about a year. So we were a year together, and  
22       before that, I'd never had a relationship with  
23       them, your Honor.

24          G, your Honor, we've already done, which is  
25       the experience, reputation, diligence, and ability

1 of the lawyer or lawyers performing the service,  
2 and the scale of expertise or efficiency or effort  
3 in the actual providing of such services. And,  
4 your Honor, the one that we haven't dealt with in  
5 total is the efficiency of the effort. So we have  
6 dealt with the fact that it is much more efficient  
7 to use one attorney than it is to use five, because  
8 they don't have to talk to each another and one  
9 person knows everything, so it's much more  
10 efficient to have one attorney.

11 But there were other efficiencies that were  
12 put in for the benefit of the client. For example,  
13 before the emergency motion for -- when the first  
14 emergency motion was set by Mr. McLean, he had  
15 requested a hearing within a couple of days and had  
16 asked the Court to give him that hearing.

17 Now, there were two ways of responding to  
18 that, your Honor. One was to turn on all the  
19 faucets and get as much work in as is humanly  
20 possible done in the amount of time that Mr. McLean  
21 had given us before the hearing that he wanted.  
22 That was one way of dealing with it, your Honor.  
23 And that would have generated a lot of income for  
24 my firm, because it would have been, you know, 18  
25 hours a day for every day.

1           Instead, your Honor, because of my experience  
2           in this area, I knew that there was a particular  
3           requirement that was needed in order for him to get  
4           the hearing that he wanted. And so I wrote him a  
5           letter, and in the letter, and the letter only took  
6           me, I think, less than an hour to do, I wrote him a  
7           letter that said, if you go to the Court with this  
8           request, here's what we are going to do, and it had  
9           a list of five or six things that we're going to  
10          do. And I said these things are going to show to  
11          the Court that you do not know what you're doing  
12          and your request is not justified and she's going  
13          to throw you out on our ear.

14               Based on that rhetoric, he withdrew that, the  
15          the emergency request, which was a very, very soon  
16          hearing. And so I saved the client, other than  
17          one-hour, all of the fees that would have been  
18          required to get ready for that hearing within a few  
19          days.

20               I did that because I knew, I've been in these  
21          disputes many, many times, I know what is required  
22          to get an emergency relief on the kind of issues  
23          that were here. I knew it off the top of my head.

24               Within an hour, I put together a letter that  
25          was so persuasive and so undeniable that he

1 voluntarily withdrew his request for that emergency  
2 hearing. And I did that throughout the litigation,  
3 because of my experience and because of my desire  
4 to save the client money. These things are very  
5 expensive, your Honor. And it is a great service  
6 that an attorney can do for a client to save them  
7 money when they can.

8 And the client has no idea that that can be  
9 done. The client had no idea that we could stop  
10 his hearing and embarrass him in front of the  
11 judge, because of the things that were in that  
12 letter. I am the only one that knew that. So the  
13 client doesn't know how much money was saved to  
14 them by doing that. The client only knows, oh,  
15 wow, I don't have to go to Court and testify in a  
16 few days, thank God.

17 So throughout the litigation, your Honor, I  
18 made it my constant practice to litigate in a way  
19 that was efficient and that would save the client  
20 from fees that could be saved and that would  
21 terminate the litigation at the earliest possible  
22 moment, so that the amount of fees that were being  
23 charged would stop.

24 Your Honor, as to subparagraph 8, your Honor,  
25 subparagraph 8 doesn't apply here whether the fee



1 is fixed or contingent. There wasn't a contingent  
2 fee here, your Honor. There was a fixed fee that  
3 was set up in the contract.

4 So my testimony, your Honor, as to the  
5 reasonableness of the fees under the factors that  
6 are set forth in 4-1.5(b)(1)(a) through (h) is that  
7 for every applicable factor, which is all but two  
8 of the factors, the fee was not only reasonable, it  
9 was more than reasonable. It was a great benefit  
10 to the client. It provided tremendous success to  
11 the client. It avoided all of the jeopardy that  
12 the client was in at the time that they spoke to  
13 me. And it gave the client complete success in the  
14 litigation. They won everything, and the opponent  
15 got nothing for the relief that he sought.

16 And so, your Honor, I believe the fee was  
17 reasonable under 4-1.5(b).

18 Your Honor, I've been speaking non-stop for  
19 about an hour or so. Would it be possible to take  
20 a 10-minute break?

21 THE COURT: Yes, we may. I'm showing that  
22 it's 22 to 3. Let's come back at quarter to 3, so  
23 we'll be back in 7 minutes.

24 (A short break was taken.)

25 THE COURT: Go ahead, Mr. Alva.

1 MR. ALVA: Your Honor, I would like to testify  
2 now on the issues of whether the quantum meruit  
3 invoice was a breach of Rule 4-1.5 in that the  
4 billing rate was higher than the rate that was in  
5 the contract and it billed for the entire time  
6 period that I had served as counsel for the client,  
7 rather than just the time period where the client  
8 had already made payments at the rate of the  
9 contract.

10 And the first thing I want to address, your  
11 Honor, is my testimony that the client, in fact,  
12 breached the contract and did so willfully.

13 So, your Honor, the Bar has already shown you  
14 the contract and the provision in the contract that  
15 payment is due within 10 days. Let me share that  
16 on the screen. Can you see that up on the screen,  
17 your Honor?

18 THE COURT: Yes, a contract.

19 MR. ALVA: Is it large enough to see, your  
20 Honor?

21 THE COURT: I can't really read it.

22 MR. ALVA: Is that better now?

23 THE COURT: Perfect.

24 MR. ALVA: Okay. So, your Honor, this is the  
25 engagement letter that's already been introduced as

1 an exhibit in this matter, and this is page 2 of  
2 the engagement letter. You'll see page 2, at  
3 paragraph 6, it says the firm will invoice monthly  
4 for the work provided and payment will be due in 10  
5 days.

6 So that's a requirement, your Honor, in the  
7 contract, and that 10-day period was in exchange  
8 for the promises that were made by the client and,  
9 as with most engagement letters, your Honor, the  
10 promise that is made by the client is the promise  
11 to pay.

12 So a discount was given to the client from  
13 \$550 to \$400, your Honor. And I'll go back to the  
14 first page of the letter. And you can see, at  
15 paragraph 1, it says the firm will represent Dan  
16 McCool and Dr. ColorChip, the parties, the in the  
17 dispute with William McLean regarding Dr. ColorChip  
18 Corp. My hourly rate is, and then it says, in the  
19 typed part of the document, \$550 an hour, which was  
20 my standard rate. And then the \$550 is scratched  
21 out, and that was scratched out by me, and there's  
22 an interlineation in the margin, where it was  
23 changed to \$400. So my rate was discounted from  
24 \$550 an hour to \$450 dollars. And that was done in  
25 exchange for the client's promise to pay and the

1       promise to pay within 10 days.

2               And it further says for attorney time, and my  
3       paralegal's rate is, and in the typed portion of  
4       the document, it says \$125 an hour. And, just as  
5       with my right, that is scratched out by me, and  
6       there's an interlineation between the lines of \$100  
7       an hour. And that was also done in exchange for  
8       the client's promises that the client would pay and  
9       the payment would be within 10 days. I'll stop  
10      sharing the screen.

11             So the client was required by the contract to  
12      pay within 10 days. And during the entirety of  
13      this litigation, the client always honored that  
14      obligation to pay within 10 days.

15             The case lasted about a year, and every month  
16      I sent them a bill. I would contact them either  
17      the same day that the bill was sent or a day or so  
18      after and remind them that payment was due in 10  
19      days and that I would like to come by and pick up  
20      payment. I would then come by, and I did this  
21      every month, your Honor, for the life of the  
22      relationship, with one exception, when I wasn't  
23      able to go in person, and I would go personally  
24      over to the client and ask them if they have any  
25      questions about the bills, asking if they had any

1 concerns about the bills and discuss with them any  
2 questions or concerns that they have. They would  
3 then give me a check on the spot for the amount of  
4 the bill. And that happened every single month,  
5 your Honor.

6 The 10-day requirement was understood by  
7 everybody to be a material part of the agreement,  
8 in part because this was the only case that I'd be  
9 working on. I didn't have any other cases. So I  
10 couldn't count on any income from any matter other  
11 than this one during the life of this case. So it  
12 was important for the cash flow of my firm, since I  
13 was the only attorney billing at the firm and since  
14 this was the only client I was billing to, that  
15 payment be received promptly and they always pay  
16 within the 10 days.

17 In the month of December, your Honor, 2017, I  
18 continued to work for the client, and the month of  
19 December 2017 was a very busy month. We had a lot  
20 of work to be done. I communicated extensively  
21 with the client during the month and with the other  
22 attorneys, your Honor, who were also representing  
23 the client. So in this matter, your Honor, there  
24 were two other attorneys who were also representing  
25 the client.

1           The first one was David McCool. David McCool  
2           was Daniel McCool's brother. David McCool was an  
3           attorney at, I think, a Fortune 500 company that  
4           was located in the Midwest, I think St. Louis,  
5           Missouri. He was general counsel there, and his  
6           duties as general counsel included, among other  
7           things, of course, supervising outside litigation  
8           counsel. So when the company got in litigation,  
9           they would hire outside counsel who were  
10          specialists in litigation to do the litigation, and  
11          those attorneys would be supervised by David  
12          McCool.

13          David McCool performed exactly the same role  
14          in this case. He was the supervisor of my firm. I  
15          was interviewed by David McCool before I was hired.  
16          I sent all of the important documents that are  
17          created in the case to David McCool before they  
18          were filed, so that he could receive them and could  
19          make comments on them, including, your Honor, from  
20          day one, I sent a copy of the complaint that we  
21          filed to David McCool before it was filed. I sent  
22          a copy of our motion for an ex-parte injunction to  
23          David McCool before it was filed.

24          And I had multiple conversations with David  
25          McCool about how we're going to persuade the Court

1 to grant the injunction, what kind of a showing do  
2 we have to make. What kind of evidence do we have  
3 to present? What form does it have to be in? What  
4 are the rules for receiving ex-parte relief? What  
5 are we going to do if we don't get ex-parte relief?  
6 And I also discussed with him, what are we going to  
7 do in the corporate matter? How are we going to  
8 terminate Mr. McLean? How are we going to keep  
9 Mr. McLean from immediately locking the doors,  
10 shutting down the offices or lighting it on fire or  
11 stealing all the paint in the back room?

12 All of those things were discussed with and  
13 approved by David McCool, who was supervising my  
14 firm. He played that supervisory role throughout  
15 the --

16 MS. PEARSALL: Objection, calls for  
17 speculation.

18 THE COURT: Overruled.

19 MR. ALVA: He played that role during the  
20 entire length of the litigation. He was always  
21 involved in major decisions. And I did a quick  
22 count of the e-mails between myself and David  
23 McCool, and there are more than 300. So he was  
24 constantly involved in watching over my firm,  
25 watching the services that were provided and also,

1 and this is another important thing for supervising  
2 counsel to do, looking at the bills to see whether  
3 the amount that was being billed was commensurate  
4 with the results that were being obtained, seeing  
5 whether we were going faster or too fast or too  
6 slow, whether it was too expensive or not expensive  
7 enough. Were we doing things that were being  
8 productive? These were all evaluated by David  
9 McCool.

10 MS. PEARSALL: Same objection, calls for  
11 speculation.

12 THE COURT: Overruled.

13 MR. ALVA: So David McCool was representing  
14 the company or was advising the company during the  
15 month of December 2017 when this work was done for  
16 the invoice that they refused to pay.

17 In addition to David McCool representing the  
18 company in that time, your Honor, the company was  
19 also represented by Matthew Nelles. Matthew Nelles  
20 is an attorney here in Fort Lauderdale. Matthew  
21 Nelles was hired in November of 2017. I was told  
22 by Daniel McCool and by Ms. O'Rourke that Matthew  
23 Nelles was a specialist in intellectual property  
24 litigation.

25 And if your Honor will remember, the only



1        thing that we hadn't taken away from Mr. McLean in  
2        our first attack was his information that he had  
3        put with the domain company that potentially gave  
4        him control of the domain and allowed him to change  
5        the direction of the income stream and the order so  
6        that they went directly to e-mail. That was the  
7        intellectual property of the company. We had not  
8        yet been able to take that away from him.

9                So Mr. Nelles, as I was told, was a  
10       specialist in intellectual property litigation, and  
11       Mr. Nelles had advised them that rather than  
12       continuing to try and get that relief --

13               MS. PEARSALL: Objection, calls for  
14       speculation as to what Mr. Nelles advised the  
15       client.

16               THE COURT: Sustained.

17               MR. ALVA: I was told that Mr. Nelles was a  
18       specialist in intellectual property, who was going  
19       to file an intellectual property lawsuit in federal  
20       court, and that he was going to be able to get  
21       almost immediate relief from the federal court on  
22       obtaining full control of the intellectual  
23       property. And I was told by Dr. ColorChip that  
24       that was the reason that he was hired and that that  
25       was the scope of his involvement, was to bring that

1 lawsuit in federal court and get control of the  
2 intellectual property.

3 But I was also told by Dr. ColorChip that, in  
4 order for him to be able to effectively do that and  
5 to efficiently work with efforts that I was taking  
6 on the other issues in the case, that Mr. Nelles  
7 would have to be involved in everything that I was  
8 doing. So after Mr. Nelles was retained, he was  
9 copied routinely on the e-mails that were sent to  
10 the client regarding the work that I was doing, the  
11 deadlines that were being made, and the progress  
12 that was being achieved. He was copied on all of  
13 that.

14 And he was advising the company on the issues  
15 that were arising at that time. That's what I was  
16 told. That was including, for example, your Honor,  
17 to give an example, we learned after many months  
18 with the company that Mr. McLean, who was the  
19 disloyal director, had formed an alliance with one  
20 of the company's agents who was up in Canada, and  
21 he and the Canadian were scheming to use a Canadian  
22 entity to receive the traffic, the orders, and ship  
23 the paint, and to do it from a company in Canada  
24 that would have a name similar to Dr. ColorChip.

25 And Mr. Nelles was copied on the e-mail

1 traffic regarding that issue and was included in  
2 the conferences regarding that issue as to, what  
3 are we going to do about this guy up in Canada who  
4 is scheming with Mr. McLean to steel the traffic?  
5 So Mr. Nelles was involved and was copied on and  
6 was involved in the conversations for all of the  
7 work that my firm was doing in December of 2017.

8 MS. PEARSALL: Objection, relevance.

9 THE COURT: Overruled.

10 MR. ALVA: So, at the time that the work was  
11 being done, that was going to be on the invoice,  
12 that the client refused to pay, the company was  
13 being advised by three lawyers. It was being  
14 advised by myself. It was being advised by  
15 Mr. Nelles. And it was being advised by David  
16 McCool.

17 The bill to Dr. ColorChip for the work that  
18 was done in December was sent to Dr. ColorChip on  
19 January the 9th. It was sent by e-mail to Daniel  
20 McCool at the address that is specified in the  
21 engagement agreement. And, your Honor, if I can  
22 share, again, the engagement agreement?

23 THE COURT: You can.

24 MR. ALVA: Thank you, your Honor.

25 THE COURT: You can use the screen the whole

1 presentation. You don't have the ask.

2 MR. ALVA: Thank you, your Honor. So, your  
3 Honor, I'm going to refer your Honor to paragraph 7  
4 of the engagement agreement. Do you see that on  
5 the screen?

6 THE COURT: Nothing is up yet.

7 MR. ALVA: Okay. I'm pulling it up. Do you  
8 see it now, your Honor?

9 THE COURT: Yes.

10 MR. ALVA: So, your Honor, if you'll look at  
11 paragraph 7, paragraph 7 is entitled miscellaneous  
12 provisions, and if you look at sub paragraph A,  
13 it's entitled notices, and it says:

14 All notices or other communications hereunder  
15 to each party shall be, one, in writing and shall  
16 be deemed to be given on the earlier to occur of  
17 sub A, in parentheses, actual receipt or sub B, in  
18 parentheses, the day such notice or other  
19 communication is e-mailed to the address provided  
20 herein.

21 And then for Daniel McCool, it lists Daniel  
22 McCool's e-mail address, mccoolre2002@yahoo.com.  
23 So the invoice for the work in January was e-mailed  
24 to Daniel McCool on January 9th. And, according to  
25 paragraph 7A, it is deemed to have been received by

1 him on the day that it was e-mailed to that  
2 address. And that day was January 9th, your Honor,  
3 and the address that it was sent to was  
4 mccoollre2002@yahoo.com. I'll stop broadcasting the  
5 share-screen.

6 Pursuant to the contract, your Honor, under  
7 the provision that I already cited to you, payment  
8 was due in 10 days, which would be January the 19th  
9 of 2018. During that time period, the client made  
10 no communications with me whatsoever. They did not  
11 ask any questions. They did not make any  
12 objections. They did not respond at all to the  
13 bill.

14 So, contrary to every prior bill, as to this  
15 bill, I not only did not receive payment within the  
16 10 days, I received no communications whatsoever  
17 from the client.

18 THE COURT: How much was the bill for?

19 MR. ALVA: The bill was for \$25,040, if I  
20 remember correctly, your Honor. Yes, \$25,040, your  
21 Honor, and that was for the work done in December.

22 So January 19th, I had received no  
23 communications and no payment. On that day, the  
24 client was in breach of the engagement letter. And  
25 being in breach of the engagement letter, I had

1 rights as a contract party to remedies because of  
2 that breach.

3 So during the period between January 19th,  
4 when payment is due, and February 13th, I traded  
5 multiple e-mails with the client about trying to  
6 receive payment. And your Honor has seen some of  
7 those e-mails between me and the client regarding  
8 receiving payment. Those negotiations did not  
9 result in an agreement between myself and the  
10 client. And on February 13, 2018, the client sent  
11 me an e-mail terminating me as counsel for the  
12 client. Let me pull that up, your Honor.

13 So, your Honor, on the screen is a portion of  
14 an e-mail stream between myself and Dr. ColorChip.  
15 I'm going to refer the Court about halfway down the  
16 page, to a line there that says -- and let me make  
17 it bigger so you can see that.

18 MS. PEARSALL: If I may interrupt before you  
19 read from it, Mr. Alva?

20 MR. ALVA: Yes.

21 MS. PEARSALL: Does this have an exhibit  
22 number? Was it entered into evidence? That's why  
23 I'm asking, because I'm not sure.

24 MR. ALVA: I don't think this has an exhibit  
25 number, Ms. Pearsall. So let me first authenticate

1 it, and then I'll offer it as an exhibit.

2 Your Honor, it's Florida Bar, ignoring the  
3 preceding zeros, 1092, and on page 1 is an e-mail  
4 from Curtis Alva to Tricia O'Rourke, who testified  
5 in this matter, and Daniel McCool, who testified in  
6 this matter, and the re line is revised answer to  
7 your e-mail of today re January invoice, and it's  
8 dated Wednesday, February 14, 2018. The document  
9 is six pages long. On the last page of the  
10 document is an e-mail from Tricia O'Rourke to  
11 myself dated February 13, 2018, and the re line is  
12 January invoice. That's the one that I wanted to  
13 direct your Honor's attention to, where I'm  
14 terminated by the client.

15 And I would like to offer this as Exhibit  
16 No. 1, or we can number them consecutive with the  
17 Bar's exhibits, if you prefer, your Honor.

18 THE COURT: Any objection?

19 Ms. Pearsall: Your Honor, I was just looking  
20 at it and I almost think the exhibit might be in  
21 already, but I'm not really sure. I don't have any  
22 objection, but I don't think they should  
23 necessarily be numbered after my numbers. I'm just  
24 not sure if --

25 THE COURT: No. It's entered as Respondent's

1 No. 1.

2 MR. ALVA: So it's Respondent 1. Thank you,  
3 your Honor.

4 Thank you, Ms. Pearsall.

5 So, your Honor, we are now on page 1095, and  
6 this is an e-mail dated February 13, 2018, at 3:07  
7 p.m. from Tricia O'Rourke, at  
8 tricia@dr.colorchip.com, and wrote, colon, and  
9 here's the text of the e-mail, Curtis, and she  
10 discusses a couple of issues, and then going down  
11 to the second-to-last sentence in the e-mail, she  
12 says as follows:

13 Going forward, Matt Nelles will be filing a  
14 substitution of counsel and will be taking over the  
15 entire Dr. ColorChip case. Please send us your  
16 billing. Regards, Tricia O'Rourke.

17 So that's February 15th, your Honor. So on  
18 February 15th, I'm terminated by the client as  
19 their attorney. I'm no longer their attorney.

20 Mr. Nelles was going to file a substitution  
21 of counsel. Mr. Nelles began working on the  
22 substitution of counsel. It took him a couple of  
23 days to get that accomplished. On February 15th,  
24 Mr. Nelles succeeded in obtaining an order  
25 approving stipulation for substitution of counsel



1 for Dr. ColorChip Corp and Daniel McCool. And,  
2 your Honor, that was introduced as an exhibit by  
3 the Bar.

4 Ms. Pearsall, I believe that's Exhibit  
5 No. 38, if I have that correctly.

6 And I will broadcast that now, your Honor.

7 MS. PEARSALL: Yes, it is 38.

8 MR. ALVA: It is? Thank you, Ms. Pearsall. I  
9 appreciate that.

10 So, your Honor, this is the order approving  
11 the stipulation, and the order says lawyer can  
12 adjust as follows, stipulation for substitution of  
13 counsel is hereby approved. Paragraph 2 says the  
14 law firm of Berger Singerman LLP is substituted as  
15 counsel of record in place of the law firm of Alva  
16 & Gleizer PA as counsel for Plaintiff and  
17 Counter-Defendant Dr. ColorChip Corp and  
18 Counter-Defendant Daniel McCool.

19 Paragraph 3 says the law firm of Alva &  
20 Gleizer PA shall have no further responsibility as  
21 counsel of record for Dr. ColorChip Corp or Daniel  
22 McCool.

23 So as of February the 15th, your Honor, I was  
24 no longer counsel for Dr. ColorChip, and I was no  
25 longer their attorney in any respect. I was now

1        their former attorney, and they were now a former  
2        client. And the importance of that, your Honor, is  
3        that when a client becomes a former client, the  
4        duties that the attorney has to the client change  
5        dramatically, and when I issued the next invoice,  
6        which was Invoice No. 95, which we called the  
7        quantum meruit invoice, which billed at the rate of  
8        \$550 an hour and billed for the time period that  
9        started on the first day that I provided services  
10       to Dr. ColorChip and went up to the last day that I  
11       provided Dr. ColorChip services, and that bill was  
12       sent on February 26, 2018, and it was in the amount  
13       of \$126,650. When that invoice was sent to  
14       Dr. ColorChip, Dr. ColorChip was not my client. I  
15       did not owe them any of the duties that an attorney  
16       owes to a client. That was part of the analysis in  
17       sending that that invoice. What ethical duties do  
18       I have in trying to collect the money that  
19       Dr. ColorChip owes me?

20                I specifically looked at duties that I had to  
21       a former client, to see what the range of options  
22       was that I had. And I understood, at that time,  
23       from the research that I did, that I did not owe  
24       them a duty to do only things that were in their  
25       interests, and I did not owe them a duty of

1 loyalty, and I did not owe them a duty to not do  
2 anything that would have the appearance of the  
3 impropriety.

4 And in fact, I found cases in my research  
5 where a former attorney had filed a lawsuit against  
6 a former client in a matter that was not related to  
7 the representation.

8 So with that understanding of my duties that  
9 I owe them, I looked at the legal options that I  
10 had for trying to collect the debt that was paid to  
11 me, and I researched, your Honor, the cases that  
12 discussed the doctrine of first breach, which is a  
13 doctrine, your Honor, that Mr. Betensky gave you  
14 some testimony about and in which, if I recall  
15 correctly, Mr. Betensky --

16 MS. PEARSALL: Objection, the testimony speaks  
17 for itself.

18 THE COURT: Sustained.

19 MR. ALVA: I withdraw that.

20 So I researched, your Honor, the cases that  
21 said, that when a party breaches a contract and the  
22 breach is material, then the party who is the  
23 victim of the breach has the option of nullifying  
24 the contract. So the parties would be in the  
25 position that they would have been in if there had

1        been no contract at all. And I looked at the  
2        damages or relief that I could receive as someone  
3        who was the victim of a breach of contract, and I  
4        specifically researched, your Honor, cases that  
5        said that if you are the victim of a breach of  
6        contract, and if you elect to nullify the contract,  
7        you can seek damages in quantum meruit, and some of  
8        the cases called it restitution, some of the cases  
9        called it equitable relief, and some of the cases  
10       called it quantum meruit, but it's all the same  
11       concept, your Honor.

12           I looked and found the cases that said that I  
13       was entitled to be paid the fair value of my  
14       services. And I found also, your Honor, the cases  
15       that said I'm entitled to be paid the fair value of  
16       my services for all of the services that were  
17       provided starting with the day before the contract  
18       was executed. So that would be the day before we  
19       had an engagement letter, the day before there was  
20       an agreement to discount the rate to \$400 per hour.

21           I specifically researched the cases that  
22       said, if you do that, you have to give them a  
23       credit for the amount that they have already paid  
24       if the amount of the fair value of your services is  
25       greater than the amount that they've already paid,

1       which it was.

2               So I issued the invoice to them, Invoice 95,  
3       in an amount that started the day before the  
4       contract was signed with them and billed them for  
5       the entire period that I represented them for all  
6       of the work that was provided at the reasonable  
7       value of my services, which I understood to be my  
8       normal billing rate. In fact, I understood it to  
9       be in excess of my normal billing rate, because my  
10      billing rate was lower than the market rate at the  
11      time, and my fee was lower than the fee that would  
12      have been charged by other firms that practice in  
13      this area, because all of the work was done by a  
14      single attorney and not by a group of attorneys.

15             When I calculated that, I specifically looked  
16      at the cases that say if the quantum meruit amount  
17      of the fee that you're seeking is higher than the  
18      contract price, you can seek that as damages if the  
19      breach of the contract was willful. And I was  
20      completely convinced, your Honor, by this time,  
21      that the breach of contract was willful.

22             They had not communicated at all during the  
23      10-day time period, which was exactly the opposite  
24      of how they had behaved on every prior invoice.  
25      They had not asked any questions about the amount

1       that the bill for the work that was done in  
2       December. They had not requested any discounts on  
3       that bill during the 10-day period. So, they  
4       hadn't done anything to honor their obligation to  
5       pay me the 10-day bill.

6             In addition to those things that they did  
7       during the 10 days, your Honor, after the 10 days,  
8       they additionally behaved in a way that I believed  
9       constituted willful breach of the contract. I  
10      discussed with them a proposal that they pay the  
11      undisputed portion of the invoice.

12            And, your Honor, I'll pull this up, if I can  
13      share my screen.

14            THE COURT: When was the first time that they  
15      contacted -- when was the first time that they  
16      responded to that bill?

17            MR. ALVA: I think that's already in the  
18      record, your Honor, and going by my recollection of  
19      the exhibits that Ms. Pearsall put in, there was an  
20      e-mail from Daniel McCool to me, that was after the  
21      10-day period where Daniel McCool said we have  
22      received your invoice and we are reviewing it.

23            THE COURT: You don't know what day that was?

24            MR. ALVA: Off the top of my head, I don't,  
25      your Honor.

1           Ms. Pearsall, do you remember which exhibit  
2           that was?

3           MS. PEARSALL: No.

4           MR. ALVA: There is an e-mail, your Honor, at  
5           the beginning of this string, that is dated  
6           February 16th, so it would have been by at least by  
7           February 16th, your Honor, because in this e-mail,  
8           it's already communicated.

9           And let me make this an exhibit, if I can,  
10          your Honor. Let me authenticate it. This is an  
11          e-mail string between myself and Daniel McCool and  
12          David McCool. It begins with Bates No. Florida Bar  
13          1098. It is 17 pages long and ends on page 01114.  
14          On page 1 is an e-mail from Daniel McCool to Curtis  
15          Alva copied to David McCool. The subject is re,  
16          revised re, Dan re --

17          MS. PEARSALL: Excuse me. Can I stop you for  
18          a second? I can't see it. There's nothing on the  
19          screen, and Mr. Alva is frozen.

20          MR. ALVA: It's not on the screen yet?

21          THE COURT: No, there's nothing on the screen  
22          yet.

23          MR. ALVA: I apologize. Thank you,  
24          Ms. Pearsall. Is it on the screen now?

25          THE COURT: Yes, it starts on February 27,

1           2018.

2           MR. ALVA: Yes, February 27, 2018, subject  
3 line, question on December bill. And on the last  
4 page is some boilerplate language. On the  
5 second-to-last page -- actually, it's the  
6 fourth-to-last page, so this is page 1111 is an  
7 e-mail from Tricia O'Rourke, sent on Friday,  
8 February 16, 2018, at 10:01 a.m. to me, and the  
9 subject is questions on December bill.

10          So your Honor that -- and I would like to  
11 offer that as an exhibit, your Honor.

12          THE COURT: So leave it there. Leave it  
13 there. So it says, as I mentioned I needed  
14 additional time to review the December invoice.  
15 And that was dated -- when did they send that?  
16 That was sent to you on February 16th. So prior to  
17 the 16th, they already contacted you about, I  
18 guess, the voracity of your bill?

19          MR. ALVA: Yes, there was a contact -- this  
20 contact here, your Honor, is not the first contact.

21          THE COURT: Right. I'm just curious to know  
22 what was the first contact they had where they let  
23 you know we want to review the bill.

24          MR. ALVA: Yes, your Honor.

25          Ms. Pearsall, I'm pretty sure that's an



1 exhibit, but off the top of my head I can't pull it  
2 up.

3 Let me look at this one. Maybe it's this one  
4 here. I'm going to stop broadcasting, your Honor.

5 I think this is the one she's referring to  
6 your Honor, so I'll broadcast this.

7 Your Honor, did we make the other one an  
8 exhibit yet?

9 THE COURT: The 17-page e-mail stream?

10 MR. ALVA: Yes.

11 THE COURT: That can be Respondent 2.

12 MR. ALVA: Thank you, your Honor.

13 In Respondent 1, your Honor, I believe that's  
14 the e-mail she's referring to, so I'll broadcast it  
15 now. So if you look at Respondent 1, your Honor,  
16 on the last page --

17 THE COURT: It's not up.

18 MR. ALVA: Hold on.

19 Okay. So Respondent 1, your Honor, this is a  
20 February 13th e-mail, and it's from Tricia O'Rourke  
21 to myself, re January invoice, and it says, Curtis,  
22 Dan forwarded me the last three invoices as you do  
23 not code me into those invoices for several months  
24 now. So, as you know, the invoice dated January  
25 19th has not been paid yet. I have looked over the

1 last 3 months and have had many questions but have  
2 not had time to really dissect it. However, I will  
3 if I need to. So I think that's the e-mail she's  
4 referring to, your Honor, in her e-mail of February  
5 16th.

6 THE COURT: Okay.

7 MR. ALVA: Okay. So going back to -- I'll  
8 stop broadcasting this one.

9 THE COURT: From the time that you received  
10 this e-mail from the company on February 13th and  
11 they had owed you approximately 25,000 for your  
12 work in December, you were still holding a 25,000  
13 retainer from them, correct?

14 MR. ALVA: That's correct. I was, your Honor.

15 THE COURT: So, I mean, had you wanted to,  
16 could you have just utilized that and then billed  
17 them for whatever balance of legal services you  
18 had?

19 MR. ALVA: Eventually, your Honor, that was  
20 done. I did not do it at this time. But my  
21 recollection is that the contract had a specific  
22 provision in it that says that if a bill is overdue  
23 for I think it's 10 days, your Honor, then the firm  
24 can take the retainer to pay the unpaid bill and  
25 the client has the obligation of replenishing the

1           retainer.

2           THE COURT: Right.

3           MR. ALVA: So I think that's the answer to  
4           that question, your Honor.

5           THE COURT: Well, they wouldn't have to  
6           replenish anything, because they fired you on  
7           February 13th. So on February 13, you could have  
8           just kept the 25,000 and it seems like everything  
9           would have been even-Steven.

10          MR. ALVA: Your Honor, my recollection is  
11          that's not correct, because there was another bill  
12          that was -- the bill that was sent to them on  
13          January 9th was for the work that was done in  
14          December.

15          THE COURT: I understand.

16          MR. ALVA: There was additional work, your  
17          Honor, that was done in January and February, and  
18          that was not on the bill that was sent on January  
19          9th. That was not sent until later. So that bill  
20          also needed to be paid, your Honor.

21          THE COURT: So you kept working even though  
22          it's your position that they had willfully breached  
23          the contract?

24          MR. ALVA: I kept working after they breached  
25          the contract, your Honor, because the demands that

1        were being made by the Court on the client, the  
2        time demands were still incredible, and if I had  
3        stopped work and just said I'm not going to work  
4        anymore, there were deadlines, your Honor -- and  
5        actually, those deadlines are discussed, your  
6        Honor, we can go back to those two e-mails we just  
7        looked at, there were deadlines that were falling  
8        due within a couple of days, and if I had just  
9        stopped work, then the client would have been  
10       harmed by the fact that the deadlines weren't met.  
11       So, in part, it was we had deadlines from the Court  
12       and the work has to be done.

13                THE COURT: Maybe I misunderstood, but I  
14       thought you said Mathew Nelles was also working  
15       alongside you in December.

16                MR. ALVA: He was. But what I was told -- I  
17       don't know the scope of all the work that  
18       Mr. Nelles did. I know what I said to Mr. Nelles.  
19       I know the phone calls that I had where Mr. Nelles  
20       was involved. But I don't actually know what work  
21       Mr. Nelles was doing. But I know what I was told.

22                And if you look at the e-mail that we just  
23       had up, your Honor, where Ms. O'Rourke notifies me  
24       that I've been terminated, she says he is now  
25       taking over the entire case.

1           So my understanding of that and from what  
2           they told me earlier was, you know, the work that  
3           he was doing was monitoring my work and watching it  
4           so he could coordinate with it, but the only  
5           assignment that he had was to go to Federal Court,  
6           file a lawsuit and get control of the intellectual  
7           property.

8           I do not believe that Mr. Nelles could have  
9           stepped in and met the Court deadlines that were  
10          coming up in a matter of days, because it was for  
11          substantial work that occurred before he was  
12          retained and as to which he wouldn't have had any  
13          knowledge, so I do not believe, your Honor, that he  
14          could have met those deadlines, even if it was part  
15          of his engagement.

16          THE COURT: Fair enough. I understand.

17          MR. ALVA: Thank you, your Honor.

18          Okay. Let me see where I was. And so on  
19          February 15th, the client becomes a former client  
20          and I become the former counsel, and my duties to  
21          the client change. Up until that day, up to  
22          February the 25th, your Honor, there is no  
23          allegation by the Bar, that I'm aware of, that I  
24          did anything that was improper. And there is no  
25          testimony by Mr. Betensky that I did anything that

1 was improper.

2 So during the period of time when  
3 Dr. ColorChip was my client, it is unchallenged  
4 that there are no violations of any kind, of any  
5 ethical rules or any contracts or of any sort -- in  
6 any dimension. There is no claim that there was  
7 any improper behavior. The behavior after they  
8 became a former client is regulated, according to  
9 the research that I did, by only two duties that I  
10 had to them, the duty regarding conflicts and the  
11 duty regarding confidential information, and  
12 there's no allegation by the Bar that there was any  
13 violation of those duties.

14 So when I issued the invoice, which was  
15 issued on February 26th, I had come to the  
16 conclusion that the client had willfully breached  
17 the contract and that I was entitled under the law  
18 to a quantum meruit recovery in the amount of the  
19 fair value of my services, even if that amount  
20 exceeded the amount that was in the contract.

21 So on the 26th, when I issued Invoice No. 95,  
22 the quantum meruit invoice, my good faith and I  
23 believe, your Honor, correct understanding of my  
24 obligations to the client, were that the client had  
25 committed a willful breach of the contract, which

1 entitled me to nullify the contract, to seek a  
2 remedy in quantum meruit, starting on the first day  
3 I provided the services covering the entire  
4 engagement at a rate that was higher than the  
5 contract rate.

6 And based on that understanding on the 26th,  
7 I issued that invoice, and I believe, your Honor,  
8 I'm entitled to be paid for that invoice. I  
9 believe that my understanding of the law is  
10 correct, and I'm not aware of any law that is  
11 contrary to that, and that says that I wasn't  
12 entitled to nullify it, that I wasn't entitled to  
13 quantum meruit. I'm aware of no authority contrary  
14 to that.

15 THE COURT: I have a few questions for you.  
16 If I can ask you about the cases you cited --

17 MR. ALVA: Yes, your Honor.

18 THE COURT: -- Ocean Communications and  
19 Ballard --

20 MR. ALVA: Yes, your Honor.

21 THE COURT: -- I don't know that they -- I  
22 think they kind of contradict each other to some  
23 extent, but if you look at the third headnote in  
24 Ocean --

25 MR. ALVA: Okay. Let me find that, your

1 Honor.

2 THE COURT: Yeah, okay, sure. Let me know  
3 when you have it.

4 MR. ALVA: Yes, I have that.

5 THE COURT: Okay. So that case says:

6 A plaintiff cannot pursue an equitable theory  
7 such as unjust enrichment or quantum meruit to  
8 prove entitlement to relief if an expressed  
9 contract exists.

10 MR. ALVA: Correct.

11 THE COURT: You had an existing -- you had an  
12 expressed contract. In this case, it's saying  
13 you're not entitled to quantum meruit.

14 MR. ALVA: But, your Honor, if you keep  
15 reading it, into Headnote 5, there's a however, and  
16 that however is critical to the understanding of  
17 what Ocean says.

18 So it says, however -- let's start at the  
19 beginning of it. Restitution is available as a  
20 type of recovery, however, where there has been a  
21 breach of an expressed contract.

22 So what it says is if you have an expressed  
23 contract and there is no breach, you cannot seek  
24 recovery in quantum meruit. But the very next  
25 paragraph says, however, if they breach, you have



1 the option. And that's why Ocean is not  
2 contradicted by Ballard, because Ballard goes  
3 through the same analysis.

4 In both cases, there was a breach. In both  
5 cases, the breach entitled the non-breaching party  
6 to nullify the contract, is my understanding of the  
7 law now, your Honor, and that was my understanding  
8 at the time I issued the invoice.

9 THE COURT: Okay. So the paragraph 4 in  
10 Ocean, it says a contract implied in law or a  
11 quasi-contract operates when there's no contract to  
12 provide a remedy where one party was unjustly  
13 enriched, where that party received a benefit under  
14 the circumstances that made it unjust to retain it  
15 without giving compensation.

16 So, now, Ballard says something a little  
17 different. I don't think Ballard and Ocean are in  
18 sync with each, because paragraph 5 of Ballard,  
19 where, in quantum meruit, contract price is  
20 generally the upper limit of damages unless the  
21 breach is willful, which I understand you're taking  
22 that position, but you understand if the breach is  
23 not willful, you would -- under your case that you  
24 provided me, you would be capped out of your  
25 contract price, which would be 400, 395, or

1           whatever you had marked in your contract.

2           MR. ALVA: I think you're correct, your Honor.  
3           If the breach was not willful and if this was a  
4           lawsuit between me and the client for breach of  
5           contract, I think the legal result is that if it's  
6           not willful, I am capped out at 400.

7           But in a disciplinary proceeding, your Honor,  
8           the disciplinary rules are very clear that a  
9           disciplinary proceeding is not appropriate for a  
10          fee dispute unless one or two things is true.  
11          Either there's fraud and misrepresentation or the  
12          fee is unreasonable. Unless you have those two  
13          factors, you cannot have a disciplinary proceeding  
14          on a fee dispute.

15          And here, my understanding is that there is  
16          no misrepresentation because I had a good faith,  
17          honest, subjective belief that I could send the  
18          bill in the amount I sent for the time period that  
19          I sent, so there was no intent to deceive.

20          If there's no intent to deceive, your Honor,  
21          you cannot satisfy the requirement that there had  
22          been misrepresentation or fraud. The only other  
23          way, your Honor, to get to a disciplinary  
24          proceeding on a fee dispute is if the amount is  
25          clearly unreasonable. "Clearly excessive" I think

1 is the exact wording.

2 And here, there is no showing that the fee is  
3 clearly excessive, and Mr. Betensky, their expert,  
4 specifically testified I did not look to see --

5 MS. PEARSALL: Objection, what the witness  
6 testified to.

7 THE COURT: I'm going to apologize, because  
8 oftentimes when I'm doing nonjury trials, I throw  
9 thoughts out to the parties, and we have general  
10 discussions about what's happening. So I didn't  
11 mean to interrupt your presentation, and I'm  
12 inviting you back to continue your presentation.

13 MR. ALVA: Thank you, your Honor.

14 THE COURT: Sure.

15 MR. ALVA: We've been going about another  
16 hour. Could I have another 10-minute break?

17 THE COURT: Well, we're stopping at 4:00.

18 MR. ALVA: Oh, we're going to stop at 4:00.  
19 I'm sorry, I don't need to take it.

20 So, your Honor, going back to the chronology,  
21 the bill was sent -- the bill was dated February  
22 26th and it was sent that day. It has not been  
23 paid. After the bill was sent, I believe on the  
24 face of the bill, it's due in three days, but it  
25 might be five days. I waited the three days. I

1 waited the five days. I actually waited about 10  
2 days.

3 And, after that and having received no  
4 payment, I took the \$25,000 that your Honor  
5 remembers was in the retainer. I applied it to the  
6 bill and I submitted a statement for the balance.  
7 That finishes the chronology, your Honor.

8 My understanding as to that, is that, the  
9 \$25,000 was in my trust account, the \$25,000  
10 belonged to me because of Invoice 95, and that not  
11 only is there the language of the contract but  
12 there is the ethical requirement that you can't  
13 commingle funds, so you can't keep in your trust  
14 account funds that actually belong to the law firm.  
15 They have to be put in the law firm's operating  
16 account, which is what I did.

17 Subsequent to that, your Honor, I received a  
18 notice from the company that they were formally  
19 disputing the ownership of the funds in the trust  
20 account.

21 And there is a Bar rule, your Honor, that  
22 specifically covers disputes involving funds in a  
23 trust account, that is in Rule 5-1.1(f). And let  
24 me pull up for the Court.

25 THE COURT: If I remember from the testimony

1           correctly, going by the best of my recollection,  
2           they did eventually pay you the full amount of your  
3           request?

4           MR. ALVA: They paid, you're correct, your  
5           Honor, they paid the full amount of the December  
6           invoice, which was \$25,040.

7           They also paid the full amount of the January  
8           and February. It was a single invoice, your Honor,  
9           because February was only a part of the month, so I  
10          combined it into a single invoice for January and  
11          January. They paid the full amount of that. But  
12          they did not pay --

13          THE COURT: Do you know when they paid that?

14          MR. ALVA: Yes, there is testimony already in  
15          the record, your Honor, as to the date of the  
16          payment of the \$25,040. I believe, your Honor, it  
17          was paid the day after Invoice No. 95 was issued,  
18          which would be February the 27th, but it was  
19          definitely paid after they received Invoice 95.

20          So they might have actually paid it on the  
21          26th, your Honor, but they did not pay it before  
22          they received Invoice 95. They received Invoice  
23          95, and then, either later the day or the next day,  
24          they paid the \$25,040 dollars.

25          So until I sent them the invoice, they paid

1 nothing on the December bill, not one penny.

2 THE COURT: So then the January and February  
3 fees that you had earned, those were paid also?

4 MR. ALVA: Those were also paid, your Honor.  
5 They were not within the 10 days, but they were  
6 paid. And my recollection is, your Honor, that  
7 they were actually paid before the December invoice  
8 was paid, but I don't remember the day.

9 THE COURT: So you think those were paid in  
10 February? So all of your bills were paid in  
11 February?

12 MR. ALVA: I believe so, your Honor. That's  
13 my recollection. And between now and a week from,  
14 I'll figure it out.

15 THE COURT: Okay. So let me ask you one more  
16 thing. So with them having paid the December  
17 invoice and the January and February invoice, you  
18 still were holding 25,000 in addition to their full  
19 payments, correct?

20 MR. ALVA: Yes, your Honor. I had 25,000 in  
21 my trust account, up until the day that I took it  
22 and moved it into the operating account, which  
23 would have been about, let's see, the invoice was  
24 dated the 26th, I gave them three or five days, so  
25 that would be the 29th or the 31st, and I waited

1 about 10 days, so it would have been in the  
2 neighborhood, your Honor, of March the 10th.

3 THE COURT: All right. So that was the  
4 quantum meruit invoice --

5 MR. ALVA: Yes.

6 THE COURT: -- is when you took the \$25,000.

7 MR. ALVA: Yes, it was, your Honor.

8 THE COURT: Okay, got it. Got it, thank you.

9 MR. ALVA: So let me pull up Rule 5-1.1, your  
10 Honor. I can't bring it up on my iPad, but I'll  
11 read it to you. Okay, here it is.

12 Rule 5-1.1, I'll read it, F is titled  
13 disputed ownership of trust funds, and it says when  
14 in the course of representation, a lawyer is in  
15 possession of property in which two or more  
16 persons, open paren, one of whom may be the lawyer,  
17 close paren, claim interest, the property must be  
18 treated by the lawyer as trust property, comma, but  
19 the portion belonging to the lawyer or law firm  
20 must be withdrawn within a reasonable time after it  
21 becomes due unless the right of the lawyer or law  
22 firm to receive it is disputed, in which event, the  
23 portion in dispute must be kept separate by the  
24 lawyer until the dispute is resolved.

25 So in dealing with the \$25,000 that was in my

1 trust account, your Honor, which was the retainer  
2 paid by Dr. ColorChip, I followed Rule 5-1.1(f).  
3 So when the funds became, in my good faith opinion,  
4 the property of the company, they were withdrawn  
5 from the trust account, and they were placed in my  
6 operating account.

7 Afterwards, I received a formal dispute from  
8 the client saying that the money actually belonged  
9 to them, and that triggered the portion of 5.1-1(f)  
10 which says there's a dispute, and then I followed  
11 the part which says in which event the property  
12 must be kept separate. So I took the money back  
13 out of my operating account and I put the money  
14 back in the trust account.

15 And so I followed 5-1.1(f), your Honor, in  
16 handling the amount that was in the retainer  
17 account.

18 I believe that's everything that relates to  
19 the chronology that I was presenting.

20 THE COURT: Okay. Do you have more testimony  
21 to give?

22 MR. ALVA: I do, your Honor. I have  
23 substantially have testimony to give, but not on  
24 the topics that we've done so far.

25 THE COURT: All right. So I guess now is a



1 good time to break.

2 MR. ALVA: It is, your Honor.

3 THE COURT: I apologize, I thought we were  
4 starting at 1:30 today, and I got in at 1:15. So  
5 we're set for 1:00?

6 Ms. Pearsall: Yes, your Honor, we're set for  
7 1:00. It was set for 1:00 today, and it's set for  
8 1:00 next week.

9 THE COURT: I'm sorry. I always run on time.  
10 I thought we were starting at 1:30. That's my  
11 fault. I'll be here at 1:00 sharp next week.

12 MS. PEARSALL: Yes, we are set for 1:00 next  
13 week.

14 MR. ALVA: Thank you, your Honor.

15 MS. PEARSALL: Your Honor, before we leave, I  
16 just have a housekeeping issue. One of the  
17 exhibits that was admitted by the Court, one of the  
18 Bar's exhibits, Exhibit No. 40, that particular  
19 exhibit contained e-mail attachments, and I  
20 painstakingly took the time to redact the other  
21 exhibits, but in keeping with your Honor's prior  
22 request that I redact some marginalia, that  
23 exhibit, Exhibit 40, I didn't realize it had  
24 underlining and commentary in it, so I'm going to,  
25 even though I wasn't required to, I am going to

1 resubmit that particular exhibit to the Court and  
2 remove the underlining and the commentary, the  
3 written commentary.

4 MR. ALVA: Is that e-mails, Ms. Pearsall,  
5 Exhibit No. 40?

6 MS. PEARSALL: It's a letter with e-mail  
7 attachments, so the attachments are behind it, so  
8 that it was part of that. I already redacted those  
9 particular e-mails in other exhibits, but then it  
10 came to my attention that that exhibit also had the  
11 e-mails with the writing on it, so I'll submit  
12 that.

13 MR. ALVA: Okay.

14 THE COURT: I think you both may need to get  
15 with my clerk to make sure that we have all the  
16 exhibits in the record.

17 MS. PEARSALL: Yes, your Honor.

18 MR. ALVA: Yes, your Honor.

19 THE COURT: Okay. Thank you.

20 (The Final Hearing was adjourned at 3:56 p.m.)

21 - - -  
22  
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24  
25

## COURT CERTIFICATE

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

I, Chloe Leroux, Florida Professional Reporter,  
certify that I was authorized to and did  
stenographically report the foregoing proceedings and  
that the transcript is a true and complete record of my  
stenographic notes.

Dated this 20th day of June, 2023.

Chloe Leroux  
Chloe Leroux, FPR



IN THE SUPREME COURT OF FLORIDA  
(BEFORE A REFEREE)

SUPREME COURT CASE NO. SC21-1564

THE FLORIDA BAR FILE NO. 2018-50,796(15A)

THE FLORIDA BAR

Complainant,

VS

CURTIS S. ALVA,

Respondent.

\_\_\_\_\_ /

HEARING RE: ANNOUNCEMENT OF REFEREE'S RULING ON TRIAL

- - -

The above-entitled cause came on for hearing before the HONORABLE JUDGE DALE C. COHEN on April 10th, 2023, scheduled for 9:00 a.m., commencing at 9:26 a.m. to 9:52 a.m., when and where the following proceedings were reported by:

Lisa Torres, Court Reporter

## 1 APPEARANCES:

2 On Behalf of the Complainant:

3 JOI PEARSALL, ESQUIRE

4 THE FLORIDA BAR

5 1300 Concord Terrace

6 Suite 130

7 Sunrise, Florida 33323

8 (850) 561-5600

9 jpearsall@floridabar.org

10 On Behalf of the Respondent:

11 CURTIS ALVA, ESQUIRE

12 LAW OFFICE OF CURTIS ALVA

13 200 East 13th Street

14 Riviera Beach, Florida 33404-6930

15 (561) 225-1599

16 curtis@alvalaw.com

17

18

19

20

21

22

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24

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1 (The following proceedings were had:)

2 THE COURT: I see we have a few people that are not  
3 supposed to be here. Counselor, I'm going to put you in the  
4 waiting room.

5 Matt Nelles, I believe you go in the waiting room.

6 That's iPhone. Yeah, Dan, I guess goes in the waiting  
7 room.

8 MS. PEARSALL: Your Honor, Mr. McCool was the client of  
9 Mr. Alva.

10 THE COURT: Okay. All right.

11 MS. PEARSALL: And Mr. Nelles was his counsel, Your Honor.

12 THE COURT: Okay. Oh, I see. So we will put them back in.  
13 I had asked -- I believe I had asked you both to have the records  
14 sent to our office by today, and I haven't seen those.

15 MS. PEARSALL: Good morning, Your Honor. Joi Pearsall for  
16 the Florida Bar. The Bar sent over its exhibits, and they were  
17 received by your office on Tuesday delivered via FedEx.

18 THE COURT: Okay.

19 MS. PEARSALL: And as far as the rest of all the things  
20 that we've filed in the case, all the pleadings from the time the  
21 case was transferred to Your Honor, those were sent over by U.S.  
22 mail and they were received by your office on Thursday.

23 THE COURT: Okay. Mr. Alva?

24 MR. ALVA: Yes, Your Honor. I sent mine by Federal Express  
25 as well, and -- I don't have my assistant here, but I believe

1 they were received the next day. They were marked for receive  
2 the next day, the day that Your Honor had asked to receive them.

3 THE COURT: Okay. All right. Thank you.

4 All right. Just give me five minutes because obviously I'm  
5 running late this morning, and I'll be right back.

6 MS. PEARSALL: Okay. Thank you, Your Honor.

7 MR. ALVA: Thank you, Your Honor.

8 THE COURT: Okay. And we have a court reporter? Is the  
9 court reporter ready?

10 COURT REPORTER: Yes, Your Honor.

11 THE COURT: Yes? Okay.

12 Okay. Let me make sure we have, Mr. Alva. Okay. All  
13 right. Thank you.

14 All right. Well, here's my ruling. Now, nearly all the  
15 facts in this case are not in dispute, and I don't think Mr. Alva  
16 or the Florida Bar dispute any of the facts. It's just the  
17 matter of interpretation of the law that brings us here, and I  
18 just -- perhaps some rejudgement might have -- I don't know.

19 Okay. So it's undisputed that Mr. Alva and Dr. Colorchip  
20 had a contract for representation. The contract specifically  
21 states that the rate is to be \$400 an hour. There is nothing in  
22 the retainer agreement authorizing the rate to be increased for  
23 any reason. In fact, their contract said quite the opposite, no  
24 oral agreements to modify any provisions of the contract. And so  
25 the contract specifically prohibited any changes to the

1 provisions of the contract unless agreed to by both parties in  
2 writing. That was not done here.

3 It's undisputed that Dr. Colorchip had paid Mr. Alva timely  
4 and in full each and every month for more than a year until the  
5 December invoice.

6 Dr. Colorchip informed Mr. Alva that they wanted to review  
7 the December invoice, which is certainly reasonable, and  
8 eventually Dr. Colorchip did pay that December invoice, although  
9 not timely.

10 It should be noted that Dr. Colorchip had given a \$25,000  
11 retainer to Mr. Alva, which Mr. Alva was holding in his trust  
12 account, which in the event of a breach, I guess Dr. -- I mean  
13 Mr. Alva could have held on to that retainer to cover the  
14 December invoice.

15 After that December payment was not made timely, Mr. Alva  
16 then informed Dr. Colorchip that he was increasing his rate in  
17 the contract, and that he was making that rate, increased rate,  
18 retroactive to the initial representation, and that now Mr. Alva  
19 was demanding a payment of \$225,000.

20 Again, this was not agreed to by the parties, and this was  
21 in violation of the contract. In aggravation of these factors,  
22 Mr. Alva threatened to pursue a claim against Dr. Colorchip for  
23 trouble damages in the amount of \$375,000. There was no basis  
24 for the upcharge of the \$225,000 and, therefore, these threats of  
25 litigation were baseless.



1           The Court does not see how the demand for this payment is  
2 any different than a person attempting to commit grand theft on  
3 their client.

4           Mr. Alva's defense is that he had a right to change the  
5 rate in the contract because of the legal concept of quantum  
6 meruit. The Court disagrees with that. Quantum meruit does not  
7 apply in this situation.

8           You had an actual contract, and some of the cases that you  
9 sent me for quantum meruit specifically said this occurs when  
10 there is no contract for representation. I hear there was a  
11 contract, there was an agreed rate, and he was paid timely. And  
12 my understanding of quantum meruit is where someone does the work  
13 without a contract, a person accepts the benefit of the work  
14 knowing that there's no contract and then doesn't want to pay  
15 anything. Clearly, that's not the circumstance here.

16           So I am going to -- there was one other issue, I believe.

17           The second allegation alleges that Mr. Alva failed to keep  
18 the client informed that in the event of a breach that they would  
19 be responsible for a higher rate. This is the factor of which  
20 Mr. Alva should have notified the client prior to the engaging of  
21 the representation, not afterwards. So I am going to find  
22 Mr. Alva guilty of that as well.

23           So I am going to grant the Florida Bar's petition, and then  
24 we just need to set up a sentencing. We have it scheduled for  
25 next Monday at 9:00. Each side will be able to make a

1 presentation as to what they feel an appropriate sanction should  
2 be, and then we'll issue a ruling at that time.

3 Is there anything else you need from me today,  
4 Ms. Pearsall? Mr. Alva?

5 MS. PEARSALL: I'll go first, I guess. I have a question,  
6 Your Honor. So as to all the rule violations charged by the Bar  
7 in its complaint, Your Honor is finding that Mr. Alva is guilty  
8 of violating those rule violations?

9 THE COURT: That's correct.

10 MS. PEARSALL: Okay. And my next question, and then I'll  
11 pass it to Mr. Alva, regarding the Report of Referee, I recall  
12 from the last hearing you said if whoever -- typically, whoever  
13 you rule in favor of, whatever side, you ask them to prepare the  
14 proposed report for you. When would you like me to prepare that?

15 I know there's -- Mr. Alva submitted one. So I don't know  
16 if he's going to resubmit another one. When would you like that?

17 THE COURT: How much time do you need?

18 MS. PEARSALL: If you would like it before Monday, I can do  
19 that. If you want to wait until after Monday, and I give it to  
20 you on Monday, that's the day of the sanctions hearing, that's  
21 fine.

22 I would like at least, six days, five days, whatever Your  
23 Honor tells me, as long as it's not like Wednesday, like this  
24 week Wednesday. I can't --

25 THE COURT: Do you think it should be included in the

1 report or is that separate?

2 MS. PEARSALL: It would be added afterward. It's all  
3 included in the same report, but it's a separate section.

4 THE COURT: So why don't you do it seven days after the  
5 sanctions hearing? Have it to me seven days after the sanctions  
6 hearing.

7 MS. PEARSALL: Okay.

8 THE COURT: All right. Mr. Alva, anything before we leave?

9 MR. ALVA: Your Honor, there are -- if you look at the  
10 complaint the Bar filed, there are some of the allegations in  
11 there where they requested findings of guilt or innocence that  
12 were never discussed by the parties or with the Court. My  
13 recollection is the ones that were presented to the Court were  
14 the violations of the rule on charging an unreasonable fee, and  
15 the violation of the rule of not informing the client.

16 There are two or three others in the complaint, Your Honor,  
17 about things that are violations of law and honesty and things of  
18 that kind. My understanding is those weren't presented and that  
19 the Court isn't making a determination as to those.

20 THE COURT: Okay. I have the complaint in front of me. Is  
21 there a specific paragraph that you're referring to?

22 MR. ALVA: Yeah. Let me pull up the complaint, Your Honor,  
23 and I'll tell you the ones that I'm referring to.

24 Okay, the complaint.

25 So, Your Honor, if you go to paragraph 26, Rule 3-4.3, my

1 understanding is there was no discussion or presentation as to  
2 that rule which was an act of unlawful or contrary to honesty and  
3 justice. Rule 4-1.4B was tried. Rule 4-1.5A was tried, but Rule  
4 4-8.4, my understanding is that was not tried.

5 So I don't think the Court means to, and I would object to  
6 any ruling on 4-8.4 or 3-4.3, because those were not part of the  
7 trial.

8 THE COURT: Okay. So 3-4.3 deals with honesty and justice  
9 and increasing your rate retroactively and then threatening  
10 trouble damages for something you weren't entitled to deals with  
11 -- covers that, and I think that would encompass also 4-8.4A, and  
12 so I don't have any issue with that. Okay.

13 MR. ALVA: Thank you, Your Honor. There isn't anything  
14 else.

15 THE COURT: Okay. All right. Thank you all, and I'll see  
16 you next Monday.

17 MR. ALVA: Thank you, Your Honor.

18 MS. PEARSALL: Thank you, Your Honor.

19 (The proceedings were concluded at 9:52 a.m.)  
20  
21  
22  
23  
24  
25

## REPORTER'S CERTIFICATE

STATE OF FLORIDA  
COUNTY OF BROWARD

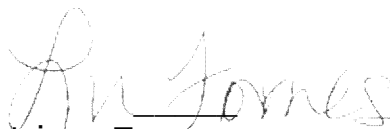
I, Lisa Torres, Notary Public, in and for the State of Florida at large, do hereby certify that I was authorized to and did report said hearing in stenotype; and that the foregoing pages, numbered from 1 to 9, inclusive, are a true and correct transcription of my shorthand notes of said hearing.

I further certify that said hearing was taken at the time and place hereinabove set forth and that the taking of said hearing was commenced and completed as hereinabove set out.

I further certify that I am not an attorney or counsel of any of the parties, nor am I a relative or employee of any attorney or counsel of party connected with the action, nor am I financially interested in the action.

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of April, 2023.

  
Lisa Torres



IN THE SUPREME COURT OF FLORIDA  
(BEFORE A REFEREE)  
SUPREME COURT NO. SC21-1564  
FLORIDA BAR FILE NO. 2018-50, 796 (15A)

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THE FLORIDA BAR,  
Plaintiff  
vs.

November 14, 2022

CURTIS S. ALVA,  
Defendant.

---

TRIAL DAY 1  
BEFORE THE HONORABLE DALE C. COHEN

---

A P P E A R A N C E S

FOR THE PLAINTIFF: JOI L. PEARSALL, ESQ  
THE FLORIDA BAR The Florida Bar  
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FOR THE DEFENDANT: CURTIS S. ALVA, ESQ  
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Curtis@alvalaw.com

REPORTED BY: GIZELLA BAAN-PROULX, FCRR, RPR

## I N D E X

| Witness       | Direct | Cross | Redirect | Recross |
|---------------|--------|-------|----------|---------|
| DANIEL McCOOL | 48     | 108   |          |         |

## P L A I N T I F F E X H I B I T S

| Exhibit | Marked | Admitted |
|---------|--------|----------|
| 1       | 58     | 59       |
| 3       | 79     | 80       |
| 5       | 95     | 97       |
| 6       | 99     | 102      |
| 7       | 62     | 64       |
| 8       | 66     | 67       |
| 9       | 69     | 70       |
| 19      | 75     | 76       |
| 20      | 76     | 77       |
| 21      | 78     | 78       |
| 24      | 84     | 86       |
| 25      | 86     | 88       |
| 27      | 71     | 73       |
| 28      | 74     | 75       |
| 29      | 105    | 106      |

|    |         |                               |        |          |
|----|---------|-------------------------------|--------|----------|
|    |         |                               |        | 3        |
| 1  | 30      |                               | 90     | 91       |
| 2  | 31      |                               | 102    | 103      |
| 3  | 44      |                               | 81     | 83       |
| 4  |         |                               |        |          |
| 5  |         |                               |        |          |
| 6  |         |                               |        |          |
| 7  |         |                               |        |          |
| 8  |         | D E F E N S E E X H I B I T S |        |          |
| 9  | Exhibit |                               | Marked | Admitted |
| 10 | 1       |                               |        | 129      |
| 11 | 2       |                               |        | 140      |
| 12 |         |                               |        |          |
| 13 |         |                               |        |          |
| 14 |         |                               |        |          |
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## P R O C E E D I N G S

(The following proceedings were held in open court.)

THE COURT: I thought we had a discussion that we were doing this in person?

MS. PEARSALL: Your Honor, the order -- good morning, Your Honor. The order that the Court issued said Zoom. Your prior assistant said it was supposed to be via Zoom.

THE COURT: We all agreed. We all agreed.

MS. PEARSALL: Your Honor, that's the original order I submitted said in person. Your assistant said no, the case would be by Zoom, resubmit the proposed order which I did. And so we are per --

THE COURT: I wish you had brought that to my attention because I had a temp. Basically, a temp changed it because all the other normal family cases we do by Zoom. This we were going to do in person. I'm not happy.

MS. PEARSALL: Your Honor, I'm only prepared to do this by Zoom because that's what I've known about since, I believe it was sometime in July, the end of July 29th, and I was just doing what was requested of the assistant. And that's what I submitted, Your Honor.

1 THE COURT: There's no way we can do this in  
2 person at 1:30 here?

3 MS. PEARSALL: No, Your Honor, my witnesses  
4 are not local. I did not prepare to have anybody  
5 travel because as of when that order came back in  
6 July, it said Zoom. It never said in person.

7 THE COURT: Okay.

8 MS. PEARSALL: Now, it might be possible for  
9 me to be there if that's what you'd like, Your  
10 Honor. But there's no way for the witnesses to  
11 be there.

12 THE COURT: Okay. Fine. Mr. Alva, we need  
13 you on video.

14 Curtis Alva.

15 All right, I'm going it take five minutes  
16 since maybe he's having internet connections.

17 All right, let's take a five-minute break.

18 All right, I'm going to try calling  
19 Mr. Alva.

20 MS. PEARSALL: Your Honor, I just sent  
21 Mr. Alva an e-mail telling him that he needs to  
22 log back in again because we can see his  
23 photograph but we can't hear or see him.

24 THE COURT: Okay.

25 MR. ALVA: Good morning, Your Honor.

1 THE COURT: Hi, good morning.

2 All right, I'm going to announce the case.  
3 This is the matter of Florida Bar, complainant,  
4 versus Curtis Alva, respondent, case No,  
5 SC-21-1564. And we have Joi Pearsall from the  
6 Florida Bar, if you can just please announce.

7 MS. PEARSALL: Joi Pearsall, Bar counsel,  
8 the Florida Bar.

9 THE COURT: Mr. Alva, if you can just  
10 announce.

11 MR. ALVA: Curtis Alva representing myself.

12 THE COURT: All right, and we have other  
13 people here.

14 MS. PEARSALL: Yes, Your Honor. Joi  
15 Pearsall, again from the Bar. Present in the  
16 courtroom are two of the witnesses the bar plans  
17 to call for trial, along with their counsel,  
18 Mr. Matthew Nelles, Your Honor, and also we do  
19 have a court reporter present.

20 THE COURT REPORTER: Good morning.

21 THE COURT: Good morning. And then we have  
22 a backup stenographer.

23 THE COURT REPORTER: Yes, Judge, I am just  
24 having two different computers on two different  
25 networks, just in case one goes out.

1 THE COURT: Good plan. All right. Do we  
2 need to put anybody in the waiting room before we  
3 make openings?

4 MR. ALVA: No, Your Honor. But I have some  
5 motions I would like to present to the Court  
6 before opening statements, if the Court will hear  
7 them.

8 THE COURT: Let's first put some people in  
9 the waiting room. All right, Mr. Nelles, we'll  
10 put in the waiting room.

11 Trisha, is that a witness?

12 MS. PEARSALL: Yes, Your Honor.

13 THE COURT: Okay, waiting room. And then  
14 Dan is in the waiting room.

15 Okay. What do we need to address before we  
16 make openings?

17 MR. ALVA: Your Honor, there are three  
18 motions that I would like to make. The first is,  
19 as Your Honor will recall, three weeks ago my  
20 counsel Skip Smith, who is a trial lawyer and  
21 expert ethics litigator, withdrew. I have tried  
22 diligently to obtain replacement counsel for him.  
23 I have been unable to do so. People just weren't  
24 willing -- I mean weren't available to do a trial  
25 on three weeks notice, so I haven't been able to

1 retain counsel for this, Your Honor. I am not a  
2 trial lawyer and I am not an ethics litigator,  
3 and I would respectfully request that the Court  
4 grant me -- reconsider the Motion for Continuance  
5 and grant me time to be able to obtain counsel to  
6 represent me.

7 THE COURT: Ms. Pearsall, your position.

8 MS. PEARSALL: My position is I believe the  
9 Court should deny respondent's request for a  
10 continuance of the trial date. Respondent came  
11 onto the case as co-counsel. And he's been  
12 representing himself and arguing motions before  
13 the Court, including taking depositions of  
14 witnesses, Your Honor, and we were schedule to go  
15 for trial today, and the Court previously denied,  
16 I believe, counsel's two Motions for Continuance  
17 and a Motion for Reconsideration, Your Honor.  
18 Thank you.

19 THE COURT: All right. I'm going to deny  
20 your Motion for Continuance. What else?

21 MR. ALVA: Your Honor, next I would like a  
22 motion to exclude any witnesses who would be  
23 testifying who are representing Dr. ColorChip.  
24 And the reason for that, Your Honor, is their  
25 refusal, despite court orders, to participate in

1 discovery. Dr. ColorChip, if Your Honor may  
2 recall, you executed a subpoena on July the 1st  
3 of this year for Dr. ColorChip to appear, to  
4 testify, and to produce substantial documents.

5 THE COURT: Let me stop you.

6 MR. ALVA: Yes, sir.

7 THE COURT: Before they call the witness,  
8 you will have that argument, before --

9 MR. ALVA: Thank you, Your Honor.

10 THE COURT: I don't want to do that  
11 pretrial. So if you have an objection to a  
12 witness, when they call the witness, I'll give  
13 you plenty of time to make your argument.

14 MR. ALVA: Okay, Your Honor. The last  
15 motion, Your Honor, is that -- and I don't think  
16 this works the way that witnesses would, Your  
17 Honor, so let me present it now and you can see  
18 if you agree.

19 Is the motion to exclude any evidence on the  
20 alleged breach of contract by issuing Invoice 95  
21 and the basis for that motion, Your Honor, is  
22 that that claim that has been brought by the bar  
23 is outside the jurisdiction of disciplinary  
24 proceedings.

25 The -- let me pull up my argument, Your

1 Honor. The claim that's being made by the Bar,  
2 Your Honor, is that I issued an invoice for the  
3 quantum meruit value of services that I provided  
4 after the clients had breached their contract by  
5 failing to pay an invoice when the invoice was  
6 due. We have the Bar's expert interrogatory  
7 responses where the Bar explains that the basis  
8 for seeking discipline for the issuance of that  
9 invoice was that there was no contractual basis  
10 for that invoice to be issued and the invoice,  
11 therefore, was a breach of the contract and was,  
12 therefore, unethical. That is the sole basis in  
13 the response to the expert interrogatories as to  
14 why that belongs within a disciplinary  
15 proceeding.

16 That, however, Your Honor, is a legal  
17 dispute. It is not an ethical dispute. And the  
18 Florida Supreme Court has distinctly said that  
19 disciplinary actions cannot be used as a  
20 substitute for what should be private civil  
21 actions against attorneys. That's the case  
22 Florida Bar versus Della-Donna, Your Honor. And  
23 the -- not only, Your Honor, is the claim that an  
24 invoice breached the contract and is, therefore,  
25 unethical, not only is that a proper private

1 civil litigation claim, but it has already been  
2 litigated, Your Honor.

3 So that exact claim, the claim that I issued  
4 an invoice for the quantum meruit value of my  
5 services and, therefore, breached the contract  
6 has been fully litigated in Palm Beach County,  
7 Your Honor, before Judge Harper, and it was  
8 litigated all the way to final judgment Your  
9 Honor, and it is now on appeal.

10 And the complaint, Your Honor, that was  
11 filed in that action clearly shows that it is  
12 precisely the same claim that the bar is  
13 presenting here. If I can show that complaint to  
14 Your Honor.

15 THE COURT: Let me see, what's the cite of  
16 your case?

17 MR. ALVA: The cite of the Della-Donna case  
18 Your Honor, is -- that's 583 So.2d 307, Your  
19 Honor. It's a 1989 Florida Supreme Court case.

20 THE COURT: Okay.

21 MR. ALVA: And, Your Honor, if we look at  
22 the complaint that was filed in the civil action  
23 that brings exactly the same claims, Your Honor,  
24 so here is the complaint, I'm going to -- may I  
25 share my screen, Your Honor?



1 THE COURT: Yeah, I gave you access.

2 MR. ALVA: Is that large enough for everyone  
3 to see.

4 THE COURT: No. No. You have to make it a  
5 full page.

6 MR. ALVA: All right. (Complies.)

7 Do that do it, Your Honor?

8 THE COURT: Yes.

9 MR. ALVA: Thank you, Your Honor.

10 Okay, so this is the complaint that was  
11 filed by Dr. ColorChip against me, and in that  
12 complaint, Your Honor, they bring exactly the  
13 breach of contract claim that is brought by the  
14 Bar here and it starts, Your Honor, on Page 5 of  
15 that complaint, so you can see in paragraph 33,  
16 it says that, "Unfathomably, on February 26,  
17 2018, despite having received full payment for  
18 the work that was literally a figment of Alva's  
19 imagination, defendant sent Dr. ColorChip yet  
20 another invoice, this time for \$126,834.95."

21 Your Honor, that is Invoice 95, the invoice  
22 that is referenced in the Bar complaint as being  
23 unethical because it was in breach of contract.

24 The paragraph goes on to say, "Representing  
25 the supposed difference in hourly rates between

1        what was specified in the engagement agreement,"  
2        so that's the contract that the Bar alleges was  
3        breached, and that to which the defendants felt  
4        they were entitled to bill Alva's standard rate,  
5        and they labeled that as the February extortion  
6        invoice.

7                The next page, Your Honor, or Page 7, Your  
8        Honor, then goes on to explain how that's a  
9        breach of contract. In paragraph 48 it says,  
10       "Under the terms of the engagement agreement,  
11       defendants agreed to provide legal services to  
12       Dr. ColorChip at the rate of \$400 per hour," that  
13       was the rate on the previous invoices, Your  
14       Honor, "for Defendant Alva's time, and \$100 per  
15       hour for paralegal time. Defendants breached the  
16       agreement by charging Dr. ColorChip and  
17       Mr. McCool for legal services that were not  
18       actually performed," which they labeled,  
19       fraudulently billed services, "and by charging  
20       Dr. ColorChip for legal services in excess of the  
21       rate specified under the agreement," which is  
22       actually the claim that the Bar makes here, that  
23       Invoice 95 was at \$550 an hour and that \$400  
24       amount was a breach of the agreement and,  
25       therefore, a violation of the ethics rules

1 regarding legal fees.

2 And in paragraph 50, Your Honor, they go on,  
3 "Defendants further breached the engagement  
4 agreement by unlawfully applying and otherwise  
5 retaining Dr. Colorchip's \$25,000 retainer, which  
6 is also in the Bar's complaint and also in the  
7 Bar's interrogatory responses where they say what  
8 it is that violated the fee that is at issue in  
9 the disciplinary action, Your Honor.

10 That complaint, Your Honor, was litigated  
11 all the way to summary judgment. And a summary  
12 judgment has been issued, Your Honor. The  
13 summary judgment, Your Honor, that was issued is  
14 here. It is the Court's order granting summary  
15 judgment as to counterclaim. No. Give me just a  
16 moment, Your Honor.

17 Here it is, Your Honor. I apologize.

18 So this is the order granting summary  
19 judgment, and this is the basis for the final  
20 judgment in the action that resolved the issue of  
21 the billing rate and not returning the retainer.  
22 And Judge Harper here, in this, specifically goes  
23 through the same issue here in the Bar complaint.

24 Paragraph 1, "The plaintiffs and defendant  
25 entered into an attorney's fee agreement," the

1 very same agreement Your Honor, at issue in this  
2 disciplinary proceeding.

3 Paragraph 2, "The plaintiffs paid all legal  
4 bills for legal services rendered pursuant to the  
5 contract. That allegation, Your Honor, is in the  
6 disciplinary complaint almost word for word.

7 Paragraph 3, "There was a dispute regarding  
8 the amounts billed for the legal services for the  
9 December and February bills. Those are the exact  
10 bills, Your Honor, that are cited in the  
11 disciplinary complaint and are attached as copies  
12 in the disciplinary complaint.

13 Paragraph 4, "The bills were ultimately paid  
14 but not within ten days."

15 Paragraph 5, "Pursuant to the contract, the  
16 retainer was to be returned unless applied to  
17 outstanding legal bills."

18 Paragraph 6, "All invoices were paid. Thus,  
19 pursuant to the contract, the Plaintiffs are  
20 entitled to the return of their \$25,000  
21 retainer."

22 Paragraph 7, this is the one where the  
23 billing rate was increased to \$550 an hour. This  
24 is Invoice 95, that is prominently featured in  
25 the Bar complaint. The order says, "The March

1 invoice was not for any legal services rendered  
2 but it was a quantum meruit invoice whereby the  
3 defendant billed for legal services for which he  
4 had already been compensated at a higher true  
5 value rate. The existence of this bill does not,  
6 as a matter of law, negate the evidence that all  
7 bills were paid."

8 Wherefore paragraph, "It is hereby ordered  
9 and adjudged that Motion for Summary Judgment is  
10 granted for the reasons states on the record  
11 here.

12 So the issue of whether or not I breached  
13 the contract by issuing Invoice 95 at a higher  
14 rate, and whether I breached the contract by not  
15 returning the retainer that was paid had been  
16 fully litigated in the proper forum, which is a  
17 private civil dispute between the client or the  
18 former client and the attorney, and it has  
19 already been resolved.

20 So the Supreme Court's finding, Your Honor,  
21 and I'm going to turn off the broadcasting now,  
22 so the Supreme Court's holding, Your Honor, that  
23 ordinary civil disputes are not appropriate for  
24 disciplinary proceedings applies here exactly.  
25 There is a private civil dispute that has already

1       been litigated and a final judgment has already  
2       been entered. Now it's under appeal but that it  
3       doesn't mean that it wasn't fully and finally  
4       litigated, and it doesn't mean that the Bar can  
5       bring exactly the same dispute in this  
6       disciplinary proceeding.

7             And let me go back to my argument, Your  
8       Honor. The Bar is not, in their interrogatory  
9       response, Your Honor, and we also deposed the  
10      expert and there is no claim, that I'm aware of,  
11      that there is any basis for alleging that there  
12      was a violation of the rules regarding fees,  
13      other than that it was a breach of the contract.  
14      It was not permitted by the contract and the  
15      contract actually required that the billing be  
16      done at \$400 an hour.

17            So with that being the sole basis, and that  
18      claim having already been litigated in the forum  
19      where the Court actually has jurisdiction, I  
20      respectfully request that the Court exclude any  
21      evidence relating to the claim that there was a  
22      breach of contract and that that breach of  
23      contract created a violation of the rules of  
24      ethics, Your Honor.

25            Thank you, Your Honor.

1 THE COURT: Okay. That motion is denied.  
2 What else do you have?

3 MR. ALVA: Those are my motions, Your Honor.

4 THE COURT: Okay, I do know you did send an  
5 exhaustive list for the Court to take judicial  
6 notice. Those we'll address as they come up  
7 through the trial. I don't want to go through  
8 that prior to the trial starting.

9 Ms. Pearsall, anything from the Florida Bar  
10 before we begin?

11 MS. PEARSALL: Yes, Your Honor. The Bar  
12 filed a motion to take judicial notice as well so  
13 we would like to address that and I heard Your  
14 Honor's ruling that it will come up as we get to  
15 those different parts of the trial.

16 THE COURT: Yes.

17 MS. PEARSALL: And another thing before we  
18 begin, Your Honor, Your Honor, is aware that the  
19 Court issued an order denying the Florida Bar's  
20 motion to quash subpoenas for deposition duces  
21 tecum and Motion for Protective Order and granted  
22 -- entered that order and I received that today.

23 While the Bar is not in agreement with the  
24 Court's ruling, I do have the Court's ruling and  
25 I just wanted to add further to the record, if I

1       could just for one moment, aside from the issues  
2       listed specifically in the Bar's motion  
3       requesting that the subpoenas issued by or signed  
4       by the respondent be quashed pursuant to the  
5       rules regulating Florida Bar and the motion for  
6       protective order be granted.

7             Additionally, in the referee manual on Page  
8       6 of that manual as further supported for the  
9       Bar's position it says, "Subpoenas for the  
10      attendance of witnesses and the production of  
11      documentary evidence are only issued by the  
12      referee and are served in the manner provided by  
13      law for service of process. See Rule 3-7.11, sub  
14      D, sub 1, subpoenas may not be issued by counsel  
15      as that part of the civil rules is inconsistent  
16      with the procedure for issuing subpoenas under  
17      the rules of discipline.

18            So that's just further support for the Bar's  
19      motion, Your Honor.

20            And that's all of the motions that I have to  
21      present, Your Honor.

22            THE COURT: Okay. Ms. Pearsall, do you wish  
23      to make an opening.

24            MS. PEARSALL: Yes, Your Honor. Thank you.

25



## OPENING STATEMENT

MS. PEARSALL: In a lawyer/client relationship, communication is important. The lawyer has a duty to explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Some lawyer client relationships begin with some form of written statement or as in this case an engagement letter. The engagement letter the starting line of this legal relationship told the client that he would pay a set hourly rate for the lawyer's time and a set hourly rate for the time of the lawyers's paralegal.

Over the course of this trial, you will learn that the client was informed at the start of the lawyer-client relationship that the hourly rate for the lawyer's time would be \$400, and the hourly rate for the paralegal's time would be \$100. That is the rate that the client agreed to.

You will also learn that later, the lawyer unilaterally increased the rate for lawyer time and paralegal time and sent the client invoices reflecting this increased rate and demanded

1 payment. But remember when the relationship  
2 started? The starting line that I talked about  
3 earlier? There was a set hourly rate. The  
4 evidence will show that the respondent charged  
5 his client a clearly excessive fee in violation  
6 of the rules regulating the Florida Bar, and just  
7 as important as how the relationship starts is  
8 how the relationship ends.

9 After the representation is terminated, a  
10 lawyer should refund any money that has not been  
11 earned. The evidence will show that the client  
12 asked the respondent to refund his retainer, but  
13 the respondent refused.

14 The evidence will clearly and convincingly  
15 show that by his conduct respondent violated  
16 rules regulating the Florida Bar.

17 Thank you.

18 THE COURT: Mr. Alva.

19 MR. ALVA: Thank you, Your Honor.  
20

#### 21 OPENING STATEMENT

22 MR. ALVA: The beginning of my opening  
23 statement, Your Honor, would be just a quick  
24 reminder of the matters that were presented in my  
25 motion. This is not a proper matter for

1 disciplinary proceedings to the extent that the  
2 basis for the alleged rule violations are the  
3 breach of contract.

4 In addition to that, Your Honor, the Court  
5 will learn, through the presentation of the  
6 evidence, that the client breached the contract  
7 by failing to pay when payment was due. The  
8 contract clearly provides that payment is due  
9 within ten days. This representation lasted for  
10 more than a year. And in every single month of  
11 the representation's existence, the client paid  
12 within ten days.

13 You'll learn that the client reviewed each  
14 invoice within the ten days, and then paid within  
15 the ten days.

16 But, the Court will learn in November of the  
17 year 2016, the client hired an additional  
18 attorney, Mr. Nelles, who is in the waiting room,  
19 and after Mr. Nelles was retained, the client  
20 then failed to pay the very next invoice within  
21 ten days. And by failing to pay the invoice, the  
22 -- under the first breach doctrine of Florida for  
23 breach of contract, the obligations that were  
24 ordinarily placed upon the attorney, myself, Your  
25 Honor, were released because of the breach of

1 contract. So when the client breached the  
2 contract, Your Honor will learn I had to figure  
3 out what to do as a result of the breach of  
4 contract.

5 And I'll go through, Your Honor, a  
6 chronology of that. But the invoice that was  
7 issued was an invoice that was not issued  
8 pursuant to the contract, because the contract no  
9 longer existed.

10 Not only had the client breached the  
11 contract, you will learn that the client then  
12 terminated my representation. And so the invoice  
13 that was issued at the higher rate was not an  
14 invoice issued pursuant to the contract.

15 The client intends to present to Your Honor  
16 in testimony defenses to the claim that they  
17 breached the contract, but the testimony will  
18 show that the defenses are meritless. There is  
19 no language in the contract the Court will see  
20 that allows the client to not pay within ten  
21 days. There is no provision in the contract that  
22 allows the client to extend the ten days because  
23 the client has questions. The Court will learn  
24 that there were no questions asked during the ten  
25 days. In fact, there were no questions asked of

1 the attorney until after the attorney had been  
2 discharged. And the Court will note that their  
3 rule that was cited by Ms. Pearsall in her  
4 opening that requires to explain things to the  
5 client, on the face of the rule applies to  
6 clients. It does not, Your Honor, apply to  
7 former clients.

8 So the obligations under the rule cited by  
9 the Bar cannot apply to an attorney who has been  
10 discharged.

11 Now that doesn't mean an attorney who has  
12 been discharged has no ethical obligation to  
13 continue to talk to the client but no obligation  
14 of that kind is any part of the disciplinary  
15 complaint. The only thing that is in the  
16 disciplinary complaint is the rule that requires  
17 you to communicate with the client so that the  
18 client can participate in this representation.  
19 This participate had ended before the first  
20 question was asked. There was no request for  
21 additional time.

22 And the testimony will also show that  
23 despite the lack of any rule obligation to answer  
24 the questions of a former client, there were  
25 extensive and instantaneous communications

1       between myself and the client.

2               When the client eventually got around to  
3 asking questions which was 20 to 30 days later, I  
4 responded the very same day. And Your Honor will  
5 see that there are detailed copious explanations  
6 to the client as to the client's questions that  
7 were made on the same day as the client requested  
8 the information.

9               So Your Honor will learn that failure to  
10 communicate that the Bar is alleging is based on  
11 the Bar's reading of certain e-mails as a refusal  
12 to communicate. So the Bar does not actually say  
13 that there was no communication. There won't be  
14 any testimony there was no communication. There  
15 were just during the month of December, Your  
16 Honor, dozens of e-mails between myself and the  
17 client. Dozens of e-mails, or more than a dozen  
18 e-mails which related directly to the billing  
19 issues that were raised by the client.

20              So the Court will see that the testimony  
21 introduced by the Bar is that there's an e-mail  
22 where the Bar believes I said I am not going to  
23 communicate. But then they don't -- there isn't  
24 going to be any testimony that there actually  
25 wasn't any communication. In fact, there was

1 substantial communication.

2 The second point that I would like to make,  
3 Your Honor, is that -- as to the retainer, the  
4 Bar states that it was wrongful to not return the  
5 retainer when it was demanded by the client. But  
6 the Florida rules, Rule 5-1.1(f), specifically  
7 says that if there is a dispute as to an amount  
8 that was held as a retainer, that amount is to be  
9 held in the retainer account until the dispute is  
10 resolved.

11 So clearly, there was a dispute as to the  
12 ownership of these of the \$25,000, Your Honor.  
13 And pursuant -- the client sent a letter to the  
14 Bar where they said, "We have a dispute as to the  
15 retainer. The retainer should be placed in  
16 trust." And within a day of the client demanding  
17 that the retainer be placed in trust, it was put  
18 in trust, Your Honor.

19 So the claim that I should have returned the  
20 retainer to the client during the pendency of the  
21 dispute, Your Honor, you will see is directly  
22 contrary to the Florida rule that explains to  
23 attorneys what their obligations are when a  
24 retainer is in dispute.

25 The representation that was made here, Your

1 Honor, was an extraordinarily complex and  
2 successful representation. The Bar is alleging  
3 that there was an unreasonable fee that was  
4 charged here. But, as the witness who is going  
5 through the testimony, Your Honor, for the  
6 factors that relate to the reasonableness of a  
7 fee, what the Court will find is that this was a  
8 highly reasonable fee under any of the factors.

9 The testimony will show that Dr. ColorChip  
10 had a crippling problem with the man who was the  
11 50 percent stockholder, 50 percent of the board  
12 of directors, and the vice president of the  
13 company. He was opening sales accounts with  
14 potential customers of the company, not notifying  
15 the company that he was making the sales and then  
16 putting the money in his pocket.

17 In addition to that, the testimony will show  
18 that he was shipping product internationally into  
19 Canada in violation of Canadian law and  
20 jeopardizing the company's ability to do any  
21 business in Canada.

22 So the testimony will show Your Honor, that  
23 when the client came to me, they had no solution  
24 for this problem because it is almost impossible  
25 to get rid of a 50 percent stockholder. They



1       have extraordinary rights, Your Honor, to  
2       maintain their position. You can't outvote a 50  
3       percent stockholder because he has 50 percent of  
4       the votes. You couldn't outvote him on the board  
5       of directors, he was one of only two director on  
6       the board of directors.

7               So the client had this almost impractical  
8       problem which they brought to me.

9               The testimony will show, Your Honor, I am a  
10      specialist in corporate control disputes. I have  
11      been litigating disputes for corporate control  
12      since 1988. It is the largest percentage of my  
13      practice. And the client brought the problem to  
14      me and I reviewed all of the documents and I  
15      found that because Mr. McLean (ph.) was  
16      committing civil theft against the company,  
17      Mr. McLean could be discharged for cause. And  
18      the shareholder agreement between the two  
19      shareholders, which gave 50 percent of control to  
20      each shareholder, the testimony will show, had a  
21      provision in it that if an officer or stockholder  
22      is -- if an officer is discharged for cause, that  
23      officer's stock can be involuntarily redeemed at  
24      a formula, a price formula that was set forth in  
25      the agreement.

1           So the client terminated the -- McClain as  
2           the vice president. By terminating him as a vice  
3           president, they were available to redeem his  
4           stock and they redeemed his stock instantaneously  
5           which removed him as a stockholder.

6           THE COURT: Let me stop you.

7           Ms. Pearsall, I have a question for you.

8           MR. ALVA: Yes, sir.

9           THE COURT: I understand the Florida Bar is  
10          claiming that Mr. Alva's fee was excessive and  
11          that's the main basis for this complaint.

12          Are you saying 550 is excessive for the type  
13          of case that he handles or you're saying it's  
14          excessive because he agreed to charge \$400 in the  
15          contract, and then despite the fact that he  
16          agreed to charge \$400, he then charged \$550?

17          So when you use the term "excessive," which  
18          one are you referring to?

19          MS. PEARSALL: Thank you, Your Honor. Yeah.  
20          The Bar's allegations are saying that Mr. Alva's  
21          charge is clearly excessive, and we're referring  
22          to Mr. Alva back-billing the client for over a  
23          thousand hours and increasing the rate for his  
24          services for those hours. I believe it's 1,032.5  
25          hours. And that is the invoice -- sorry.

1 THE COURT: Let me ask you this: So, in  
2 other words, if Mr. Alva, in the original  
3 contract, had charged \$550 an hour for services  
4 on a complicated litigation case, that -- you're  
5 not saying that's excessive?

6 MS. PEARSALL: For the purposes of what the  
7 Bar's position is today, I'm not saying if that  
8 was the case -- the Bar, I'm sorry, is not saying  
9 if that was the case and everyone was on board  
10 with whatever, I'm not saying that would have  
11 been excessive, and that's a broad statement  
12 because that's not what I have before me, and  
13 it's a hypothetical and a generalization. So I'm  
14 not saying it wouldn't be excessive in other  
15 arenas, but for right now, where the Bar is with  
16 this particular case, that is not the argument in  
17 general if that was his standard fee that he  
18 charged and it was in the agreement from the  
19 beginning and the client agreed for whatever  
20 particular service, I'm not saying that that was  
21 excessive, Your Honor.

22 THE COURT: Fair enough. So --

23 MS. PEARSALL: I don't want to pigeon-hole  
24 the Bar's argument but that's the --

25 THE COURT: So, Mr. Alva, I don't need to

1       hear about how complicated a civil litigation  
2       case that you were involved in. That's not why  
3       they're saying it's excessive. They're saying  
4       it's excessive because you charged -- you  
5       contracted to do your work at \$400 an hour, and  
6       then you billed for \$550 an hour. And that's  
7       where it's excessive.

8               So I don't need to hear the history of the  
9       actual litigation that you were handling is.

10              MR. ALVA: Thank you, Your Honor. The fee  
11       factors that are laid out in the rule, Your  
12       Honor, for a reasonable fee, I had intended to  
13       present to Your Honor in my opening discussion of  
14       each of the fee factors and how the fee was  
15       reasonable.

16              Is it correct, Your Honor, to understand  
17       that you don't need to go through any of the  
18       other fee factors?

19              THE COURT: I don't think that if they had  
20       agreed to \$550 an hour on a complicated civil  
21       matter, which -- and you have proper, you know,  
22       experience and expertise in, I don't think \$550  
23       is excessive. That's not why you're before the  
24       Court.

25              MR. ALVA: Okay, Your Honor. Thank you.

1 THE COURT: Okay.

2 MR. ALVA: Okay. So I'll skip over all the  
3 discussion I was going to make of the factors for  
4 the fees and the underlying litigation that  
5 existed.

6 And, Your Honor, I'd like to address just  
7 briefly the evidence that the Court will hear  
8 about the communications that were made between  
9 their client and the attorney. And Your Honor,  
10 let me go to -- so, Your Honor, the -- what  
11 you'll hear by way of testimony as to the events  
12 that occurred in the billing dispute is that in  
13 November of 2017, former clients decided to hire  
14 what they describe as new alternate lead counsel.  
15 So Mr. Nelles was, I guess, lead counsel as I was  
16 in the litigation against McLean. The client  
17 admits that they did that in November of 2017.  
18 There will be no testimony, Your Honor, that that  
19 was disclosed to me that Mr. Nelles was alternate  
20 lead counsel. Testimony will show that it was  
21 represented to me that Mr. Nelles had specialized  
22 expertise in intellectual property litigation and  
23 the client had an intellectual property issue  
24 that they wanted to have resolved and Mr. Nelles  
25 was being retained to bring a lawsuit in federal

1 court on an expedited basis to get possession of  
2 some intellectual property.

3 On January the 9th of 2018, the testimony  
4 will show I sent an invoice to the client for the  
5 work that was done in December. The testimony  
6 will show that this is the invoice about which  
7 the client, or that the client failed to pay on  
8 time, and as to which the client began to ask  
9 questions but, in addition to asking questions  
10 about the December invoice, Your Honor, the  
11 client asked questions about billing going back  
12 to the very beginning of the representation.

13 And this is important, Your Honor, because  
14 one of the arguments or some of the testimony  
15 that you'll hear from the client is that they  
16 regarded the fees that had been paid for all  
17 months up to December as resolved, and they were  
18 shocked and appalled that I was looking back  
19 before December in the invoice that changed the  
20 billing rate. But the client's questions go back  
21 to the very beginning of the representation, Your  
22 Honor.

23 And so the invoice is issued on January 9th.  
24 The invoice is then due, testimony will show, on  
25 January the 19th.

1           Between January 9th and January 19th, Your  
2 Honor, the testimony will show there were no  
3 contacts between the client and the attorney.  
4 None whatsoever. So where the client usually had  
5 performed their entire analysis and paid the  
6 bill, the client, this month, had done nothing.

7           I waited, the testimony will show, until  
8 February 8th of 2018. So it's due on January  
9 19th. I waited three weeks because I knew that  
10 the CEO of the client, Mr. McCool, was traveling.

11           Now, he -- the testimony will show, he  
12 travels frequently, and all the other times when  
13 he was traveling, he was able to still review the  
14 invoices and pay them. There won't be any  
15 testimony, Your Honor, as to why he didn't do  
16 that this time while he was traveling, but I knew  
17 he was traveling. I waited until February 8th  
18 and then I sent the following e-mail, "Can you  
19 tell me the status?"

20           So the clients, Your Honor, will testify as  
21 to their opinion that they were very aggressively  
22 treated by me when they failed to pay the bill.  
23 But the testimony will show that not until  
24 February 8th did I do anything to pursue the bill  
25 and then the only thing that was said was, "Can

1       you tell me the status?"

2               Mr. McCool who intends to testify today,  
3       responded that the invoice had been received and  
4       it was going to be reviewed in detail and  
5       discussed with my firm. So that's the extent of  
6       his response.

7               On February 6th, the testimony will show  
8       payment is now 18 days overdue. I sent an e-mail  
9       saying, "Do you know when your review of the  
10      December invoice will be completed?"

11              On February 7th, the next day, Ms. O'Rourke,  
12      who is in the waiting room Your Honor, replied,  
13      "I will be finished when I am finished."

14              On February 13th, Your Honor, so now six  
15      days later, she wrote to me again and said that  
16      she had not really dissected the invoice,  
17      meaning, apparently, that her review of the  
18      invoice hadn't even begun and we're now three  
19      weeks overdue on payment, and that she preferred  
20      instead just to pay half of it.

21              The very same day, Your Honor, that the  
22      company offered to pay half, I responded, and I  
23      said, "I would not agree to accept half, but I am  
24      willing to meet and discuss some other  
25      arrangement," and critically, Your Honor, for the



1 benefit of the client, I have a client now who  
2 has hired new co-lead counsel. I have a client  
3 who, for the first time, has not paid my bill and  
4 has not given any reason why they have not paid  
5 the bill, and they have given me an  
6 extraordinarily heavy workload to do, and I kept  
7 working on the file the entire time, Your Honor.

8 So instead of saying, "I haven't been paid,  
9 I'm not going to work on your case anymore, I'm  
10 sorry if Mr. Nelles now has to do everything on  
11 the case," but I didn't. I kept working through  
12 this entire time.

13 On this same day, I am notified by the  
14 client that I'm being replaced by Mr. Nelles.

15 On February 14th, payment --

16 THE COURT: I'm sorry. What was the date  
17 that they specifically told you you were being  
18 replaced?

19 MR. ALVA: That was on February the 13th,  
20 Your Honor.

21 THE COURT: Okay.

22 MR. ALVA: On February the 14th, when  
23 payment was 26 days overdue, I sent them an  
24 invoice for the work that had been done for the  
25 months of January and February. So the December

1 invoice was the one they had already failed to  
2 pay. I sent them an invoice for January and  
3 February on February 14th. That was in the  
4 amount of \$3,514.95.

5 On February 16th, is the next time I hear  
6 from the client. Mr. O'Rourke testifies that she  
7 needs additional time to review the December  
8 invoice. And she sent me --

9 MS. PEARSALL: Objection to the  
10 characterization. I'm sorry. He said  
11 "testifies."

12 MR. ALVA: I'm sorry.

13 THE COURT: You can continue.

14 MR. ALVA: Thank you, Your Honor.

15 THE COURT: Continue.

16 MR. ALVA: So Ms. O'Rourke asked me  
17 questions about \$6,800 for the time on the  
18 \$25,000 invoice.

19 As to the \$18,000, she didn't raise any  
20 specific objection. She didn't ask any  
21 questions. She did ask a general question about  
22 the tax issue. I wrote back to her the very same  
23 day, and I proposed to her that the client pay  
24 the part as to which they had no questions. And  
25 they had no apparent disputes.

1           It's now almost 30 days overdue. They  
2 haven't paid a single penny on the invoice. I  
3 said to them, "Let's figure out what the  
4 undisputed portion is, pay the undisputed  
5 portion, and let's discuss any questions you have  
6 about the disputed portion."

7           That same day, so we're still on February  
8 the 16th, Your Honor, Ms. O'Rourke writes to me  
9 about the invoice for January and February. And  
10 she says that that invoice was concise and the  
11 fees appear fair and reasonable.

12           Now, Your Honor, you will see what I would  
13 consider shocking testimony that in spite of  
14 Ms. O'Rourke saying that that invoice was concise  
15 fair and reasonable and they paid it the next  
16 day, Your Honor, they later allege that the  
17 February invoice was fraudulent and that none of  
18 the entries on the time represented work that had  
19 actually been done.

20           There are now five more days, Your Honor,  
21 between February 16th and February 21, and five  
22 more e-mails go back and forth between me and the  
23 client on the billing issue. So I've already  
24 sent them multiple e-mails, five more days go by  
25 and five more e-mails are exchanged between me

1 and them exactly on the issue of the billing  
2 dispute.

3 Finally, on February 21st, I notified the  
4 client that if they were unwilling to pay the  
5 amount that was undisputed, I was going to pursue  
6 payment under quantum meruit because of the  
7 breach of contract, Your Honor.

8 The testimony will show that I had  
9 researched the remedies that are available to an  
10 attorney when a contract between an attorney and  
11 a client is terminated, and the attorney is still  
12 owed fees. And the -- one of the remedies that's  
13 available, Your Honor, is quantum meruit, and I  
14 found three cases where an attorney brought a  
15 claim for quantum meruit after a contract between  
16 the attorney and the client was terminated.

17 On February 26th, Your Honor, we are now 38  
18 days overdue on the invoice. For the very first  
19 time, the person who actually runs Dr. ColorChip,  
20 who is Mr. McCool and you will hear Mr. McCool's  
21 testimony that Trisha O'Rourke is merely a  
22 bookkeeper. And so the person who actually runs  
23 the company or actually decides whether to pay  
24 the invoice and who actually manages the  
25 litigation was Mr. McCool.

1           The very first question I received from  
2           Mr. McCool, the testimony will show, was on  
3           February the 26th. He sent me specific  
4           questions. There were, Your Honor, seven or  
5           eight, maybe a dozen questions.

6           On the very same day that I received those  
7           questions from Mr. McCool, I sent an -- extensive  
8           detailed answers to Mr. McCool. And that  
9           February 26th e-mail, Your Honor, will be an  
10          exhibit and the February 26th e-mail, Your Honor,  
11          is single-spaced and goes on for pages where I  
12          highlight each question asked by Mr. McCool and  
13          then give detailed extensive responses to  
14          Mr. McCool, who is a former client of mine.

15          I then issue the invoice for the \$550 rate  
16          and I understand now from Ms. Pearsall, and I  
17          would have dearly loved to have heard this months  
18          ago, but I understand now that the only claim the  
19          Bar is making is the \$550 rate was a breach of  
20          contract. There was a contract for \$400. I  
21          billed at \$550, I breached the contract and she  
22          says, therefore, my actions were unethical, Your  
23          Honor.

24          The last part, Your Honor, I wanted to make  
25          in the opening statement is that as Ms. Pearsall

1 told the Court, the Bar has to satisfy the clear  
2 and convincing evidence standard. In addition to  
3 being a very challenging standard to satisfy,  
4 Your Honor, in this particular case, I don't  
5 believe that it is possible for the Bar to do it  
6 because the witnesses with all of the evidence  
7 have refused --

8 THE COURT: Now you're going past opening  
9 and you're kind of drifting into closing.

10 MR. ALVA: Okay. I apologize.

11 THE COURT: Okay. Let me just take a quick  
12 break. And then I'll let you finish your opening  
13 if you have more.

14 MR. ALVA: I think I'm finished, Your Honor.

15 THE COURT: All right, let's take five  
16 minutes. Thank you.

17 MR. ALVA: Thank you, Your Honor.

18 (Thereupon, a brief recess was taken.)

19 THE COURT: Ms. Pearsall, who is going to be  
20 your first witness?

21 MS. PEARSALL: Daniel McCool, and just as a  
22 housekeeping matter before we bring Mr. McCool  
23 in, Ms. Shahinian is also in the waiting room. I  
24 think Mr. McCool's testimony may take some time.  
25 Is it possible to bring her back in and tell her

1 to come back at a certain time or --

2 THE COURT: That's Trisha?

3 MS. PEARSALL: Yes.

4 THE COURT: Okay. So that's fine.

5 MS. PEARSALL: And Mr. Nelles represents her  
6 as well. So I just don't really want her sitting  
7 there all day if I can help it, just waiting to  
8 be called.

9 MR. ALVA: Your Honor, I object to  
10 Mr. McCool testifying. Is this the time to bring  
11 that objection to the Court's attention?

12 THE COURT: As soon as we deal with Trisha,  
13 yes.

14 Trisha, can you take yourself off mute?

15 Trisha, you're still muted.

16 MS. PEARSALL: It is possible to also bring  
17 Mr. Nelles back in, Your Honor?

18 THE COURT: Sure.

19 MS. SHAHINIAN: I was waiting a while so I  
20 had the TV on -- let me just mute it.

21 THE COURT: Mr. Nelles, you can unmute.

22 THE COURT REPORTER: And for the record, if  
23 I could just get the witness's full name, please.

24 THE COURT: Sure. Trisha, can you state  
25 your full name?

1 MS. SHAHINIAN: Patricia Shahinian.

2 THE COURT: All right, Mr. Nelles.

3 MR. NELLES: Yes, Judge.

4 THE COURT: We're going to break for lunch  
5 so we don't want to keep you unnecessarily in the  
6 waiting room. Dan is going to be the first  
7 witness. Ms. Pearsall, when do you want your  
8 witnesses to sign back in?

9 MS. PEARSALL: Oh, I didn't realize we were  
10 breaking this early for lunch, Your Honor.

11 THE COURT: We're not. We're not. But they  
12 don't need to be in the waiting room because  
13 we're not going to --

14 MS. PEARSALL: Okay. If Mr. McCool is  
15 called first and we get started with his  
16 testimony now, I would like him to stay, but as  
17 far as Ms. Shahinian, if she could check back in  
18 maybe around 1:30, I don't know how long the  
19 Court usually takes for lunch, or one o'clock.

20 THE COURT: Okay. Well, today, I was going  
21 to try to take a shorter lunch so we can get as  
22 much progress as possible.

23 MS. PEARSALL: So it's up to Your Honor.  
24 Whenever you say the lunch break starts, then  
25 that's fine. Then I'll have a better idea of



1           when to tell Ms. Shahinian to log back in.

2           THE COURT: Do you have their cell phones  
3           that you can just text them?

4           MS. PEARSALL: No.

5           MR. NELLES: I do. I don't see Dan McCool  
6           on the call, by the way.

7           THE COURT: He's in the waiting room, he's  
8           going to be the next witness. We're doing that  
9           so we can release you.

10          Can you give us your cell phone number so  
11          Ms. Pearsall can text you?

12          MR. NELLES: Yes. Do you want me to give it  
13          to you?

14          Judge, I did want to attend the testimony of  
15          the witnesses, if that's all right with Your  
16          Honor.

17          THE COURT: The problem is you are a  
18          witness. So if you're not representing -- I  
19          think that you can't because you're a witness.

20          MR. NELLES: I'm not listed as a witness?  
21          It's the first I'm hearing about it.

22          THE COURT: I thought you weren't going to  
23          be a witness.

24          MS. PEARSALL: He's representing  
25          Ms. Shahinian and Mr. McCool as counsel.

1 THE COURT: Mr. Alva, are you going to call  
2 Mr. Nelles as a witness?

3 MR. ALVA: I believe Mr. Nelles is  
4 identified as a witness on my witness list, Your  
5 Honor.

6 THE COURT: Are you calling him as a  
7 witness?

8 MR. ALVA: It depends on what Mr. McCool  
9 says but, yes, I'm prepared to call him as a  
10 witness.

11 THE COURT: I'm going to keep you --

12 MR. NELLES: I haven't been subpoenaed. I  
13 haven't been subpoenaed. I mean, I'm not -- I  
14 haven't been subpoenaed to appear here today.  
15 This is the first I'm hearing that I'm a witness.

16 I'm the attorney who represented Mr. McCool  
17 and I do represent them and that's why I'm here.  
18 And want to be present for their testimony.

19 I mean, that's the whole point, he's got  
20 ongoing civil litigation that he's appealed to  
21 the Fourth DCA that directly, you know, impacts  
22 -- is related to this, and so that's why I'm here  
23 is to protect my clients in connection with the  
24 civil litigation.

25 I don't know if anybody has ever listed me

1 as a witness. This is the first time I've been  
2 hearing about it and I haven't been subpoenaed to  
3 appear.

4 It's not my intention to appear as a witness  
5 in this case. I'm just defending my clients.

6 THE COURT: Okay, I don't want to get  
7 reversed because -- I'm going to keep you in the  
8 waiting room in an abundance of caution in case  
9 you are a witness.

10 The fact that you weren't subpoenaed, I'm  
11 not addressing that.

12 Ms. Pearsall, can you get Trisha's cell  
13 phone number or --

14 MS. PEARSALL: I'll contact Mr. Nelles's  
15 office and get that. I don't want her to give her  
16 contact number.

17 THE COURT: I don't think we're going to get  
18 to her before two o'clock.

19 MS. PEARSALL: Again, for the record, the  
20 Bar has not listed Mr. Nelles as a witness and he  
21 is counsel for the first witness and I believe  
22 Mr. McCool would want him present.

23 MR. ALVA: I'm looking, Your Honor, at my  
24 witness list that was served in this matter and  
25 Mr. Nelles is identified as Witness Number 5 on

1 my list.

2 MR. NELLES: I haven't been subpoenaed which  
3 means I don't need to appear and I could -- I  
4 don't need to be here.

5 THE COURT: Well, here is the -- I'm putting  
6 you in the waiting room (inaud.) to be present  
7 during the testimony.

8 MR. NELLES: I'm sorry?

9 THE COURT: Okay. So Ms. Pearsall will  
10 reach out to you. We're not going to need you  
11 guys before two o'clock.

12 All right. Thank you.

13 All right. Are you there? Please raise  
14 your right hand.

15 Thereupon,

16 DANIEL MCCOOL,  
17 having been duly sworn by the Court, testified as  
18 follows:

19 A. Yes, I do.

20 THE COURT: Can you put your Hand down and  
21 state your full name.

22 A. Daniel Joseph McCool.

23 THE COURT: All right, Ms. Pearsall.

24 MS. PEARSALL: Your Honor, just so we keep  
25 in compliance with the administration of the

1 oath, it's my understanding that Mr. McCool is  
2 not located in the State of Florida at this time  
3 so as part of the oath, if you could just ask the  
4 witness to consent to be bound by the oath  
5 administered under the general laws of the State  
6 of Florida.

7 THE COURT: Okay. And you heard that saying  
8 from Mr. McCool, are you agreeing to be bound by  
9 the general laws of the State of Florida?

10 A. Yes, I am. Is my attorney on this?

11 THE COURT: He's a potential witness, we  
12 have had a long conversation and in an abundance  
13 of caution, I have him in the waiting room.  
14 Because if he's a witness he can't be present  
15 during your testimony.

16 All right, Ms. Pearsall.

17 MS. PEARSALL: Thank you.

18  
19 DIRECT EXAMINATION

20 BY MS. PEARSALL:

21 Q. Could you please state your name, sir?

22 A. Daniel McCool.

23 MR. ALVA: Your Honor, I object to this  
24 witness presenting any testimony at this  
25 proceeding, Your Honor.

1 Can I present that objection now?

2 THE COURT: Yes.

3 MR. ALVA: Your Honor, this witness is  
4 testifying on behalf of Dr. ColorChip.  
5 Dr. ColorChip, you've heard a lot about in the  
6 opening statements.

7 Dr. ColorChip was served with a subpoena  
8 that Your Honor, as a referee, signed on July 1,  
9 2022. That subpoena was duly served on July 5.  
10 The subpoena process server's affidavit was  
11 served on all the parties. The subpoena called  
12 for the witness to testify on July the 8th and to  
13 produce documents on July the 8th. The witness  
14 did not appear on July the 8th. The witness did  
15 not produce any documents on July the 8th.

16 On that very same day, I made a motion to  
17 compel the testimony of Dr. ColorChip and to  
18 compel the production of the documents. I served  
19 them on that day and e-mailed the Court  
20 requesting on expedited hearing on the refusal to  
21 appear of Dr. ColorChip.

22 For reasons outside of the control of the  
23 respondent, no hearing was set despite three  
24 additional e-mails being sent and no hearing was  
25 actually made available until Your Honor's

1 regular judicial JA appeared.

2 She promptly then worked on getting a  
3 hearing, but that was not until September. The  
4 witness made a motion for protective order on or  
5 about July the 15th, which was too late to comply  
6 with the subpoena rule, and then never did  
7 anything to set that motion for protective order  
8 for a hearing until September. That was the very  
9 first time that the witness tried to get the  
10 motion for protective order heard and that was  
11 only because my motion for contempt and to compel  
12 was being scheduled for a hearing.

13 So four months passed. The motion for  
14 protective order was heard, but was not granted.

15 Your Honor then appointed Kristin Padowitz  
16 as a special master to review the documents that  
17 Dr. ColorChip was objecting to. Ms. Padowitz did  
18 extensive preparations to be able to resolve the  
19 document disputes. She was sent all the  
20 pleadings. She was sent deposition transcripts  
21 and other documents.

22 Despite that, Dr. ColorChip never submitted  
23 a single document to Ms. Padowitz for her to  
24 review and to determine whether or not they  
25 should be produced.

1 Dr. ColorChip then made a second motion for  
2 protective order that was on the same grounds as  
3 the first motion, and then added the additional  
4 grounds that they had made a token document  
5 production and Mr. McCool had given token  
6 testimony of a deposition. That second motion  
7 for protective order was denied by this Court.  
8 Dr. ColorChip's deposition was re-noticed and  
9 Dr. ColorChip again failed to appear.

10 The Bar then made a motion for protective  
11 order and a motion to quash the subpoenas and  
12 that motion for protective order and motion to  
13 quash were also denied. So I have not had any  
14 opportunity to get any testimony from  
15 Dr. ColorChip in this matter because of  
16 Dr. ColorChip's failure to appear to two properly  
17 noticed depositions, and pursuant to a  
18 court-executed subpoena, I've not had any  
19 opportunity to receive any document from  
20 Dr. ColorChip.

21 There is an extensive e-mail record on my  
22 behalf that will be shown to the Court, but I  
23 have no e-mails going on on any of the issues  
24 that the Bar is raising, for example, relating to  
25 communications with the client. I have no



1       communications that were internal to the client.  
2       I have no communications from Mr. McCool, I have  
3       no communications from Ms. Pearsall, nothing was  
4       produced pursuant to the subpoena, other than  
5       some public documents that everybody already had  
6       possession of.

7               So they have refused to appear to testify.  
8       They have refused to produce documents.  
9       Mr. McCool did appear, not as Dr. ColorChip but  
10      just as himself individually. He appeared  
11      without being served with a subpoena, he says.  
12      And in that deposition, his lawyer objected and  
13      instructed the witness not to answer dozens of  
14      times on all of the issues where I have any  
15      defense to the claims by the Bar. The only  
16      testimony he would give was self-serving  
17      testimony that they thought supported the claims  
18      that were made by the Bar and all testimony and  
19      all documents that would support my defendants  
20      were denied wrongfully from me.

21             I, therefore, object to this witness  
22      testifying. I object to Dr. ColorChip  
23      introducing any exhibits that were not produced  
24      to me in this litigation. And I object to  
25      Ms. Shahinian who was also noticed for a

1 deposition. Her counsel wrote to Mr. Nelles and  
2 said --

3 MS. PEARSALL: Your Honor, if I could -- we  
4 have moved on to another witness and I would just  
5 object. This is one witness at a time, I would  
6 hope.

7 MR. ALVA: I'm sorry.

8 THE COURT: What date did you take  
9 Mr. McCool's deposition?

10 MR. ALVA: In this case, Your Honor, in the  
11 Bar matter, he appeared for a deposition and then  
12 his lawyer wouldn't let him testify as to any --

13 THE COURT: What date did he appear for the  
14 deposition?

15 MR. ALVA: Your Honor, I will give you the  
16 date that he appeared.

17 MS. PEARSALL: Your Honor, I know. It's in  
18 the Bar's motion to quash. Mr. McCool, Daniel  
19 McCool appeared for deposition on October 24,  
20 2022, with counsel. He voluntarily appeared with  
21 his counsel. He appeared at approximately 9 a.m.  
22 and remained until after 5 p.m.

23 Before his appearance, Mr. Alva was put on  
24 notice by Mr. McCool's counsel that Mr. McCool  
25 was the president of Dr. ColorChip, will be

1 appearing in his capacity as Daniel McCool and as  
2 the president of Dr. ColorChip.

3 Again, and I'll let Mr. Alva continue make  
4 his argument and then I would hope the Court will  
5 let me make mine.

6 Thank you.

7 MR. ALVA: I'm not going to make any  
8 argument as to Ms. Shahinian now, Ms. Pearsall is  
9 correct. This is limited just to Mr. McCool.  
10 But it is not correct, Your Honor, that  
11 Mr. McCool appeared on behalf of Dr. ColorChip  
12 and Mr. Nelles gave a detailed statement at the  
13 beginning of the deposition where he specifically  
14 said that the witness was appearing individually,  
15 that he was not appearing pursuant to the  
16 subpoena that had been sent to Dr. ColorChip, and  
17 he did not give any testimony as to  
18 Dr. ColorChip. All of his testimony was  
19 individual. Mr. Nelles said, "I would like to  
20 state and Mr. Alva has confirmed that he has not  
21 obtained service of process for the deposition on  
22 Mr. McCool and, therefore, there is no compelled  
23 attendance here today. However, because  
24 Mr. McCool does intend to testify at the trial in  
25 this matter, he has agreed to testify solely

1 concerning the issues related to the Bar  
2 complaint, and he will not be testifying as to  
3 matters that are the subject of the civil  
4 litigation."

5 So he's appearing, Your Honor, there is no  
6 appearance on behalf of Dr. ColorChip by  
7 Mr. McCool. He appears individually and without  
8 a subpoena and Dr. ColorChip has never appeared,  
9 even though Dr. ColorChip received a subpoena.

10 THE COURT: Okay. Overruled. I'm going to  
11 allow the witness to testify.

12 Ms. Pearsall you may inquire.

13  
14 DIRECT EXAMINATION (cont'd.)

15 BY MS. PEARSALL:

16 Q. Sir, could you state your name?

17 A. Daniel Joseph McCool.

18 Q. What is your position at Dr. ColorChip  
19 Corporation?

20 A. I'm the president and owner of the company.

21 Q. And did you hold the same position at  
22 Dr. ColorChip Corporation in August of 2016?

23 A. I was president, and I was 50 percent  
24 shareholder of the company.

25 Q. And the same question. Were you also

1 president of Dr. ColorChip on September 19th of 2016?

2 A. Yes, I was.

3 Q. Did there come a time in the year 2016 where  
4 you met someone by the name of Curtis Alva?

5 A. Yes.

6 Q. And how did you come to meet Curtis Alva?

7 A. Through Trisha. At the time, O'Rourke was  
8 her last name. She introduced him to me. It was an  
9 acquaintance of Curtis's wife.

10 MS. PEARSALL: Your Honor, have I been  
11 granted access to share the screen?

12 THE COURT: Throughout the trial, yes.

13 MS. PEARSALL: Okay, thank you.

14 BY MS. PEARSALL:

15 Q. Sir, I'm going to share the screen now, and  
16 hopefully everyone can see.

17 Okay, if I can direct your attention to the  
18 screen, Mr. McCool?

19 A. Yes.

20 Q. And I'm showing you what has been marked --  
21 I'm going scroll down to, so you can see it, the  
22 Florida's Bar's Exhibit 1 for identification. I'll  
23 go up to the top of the document. Hopefully, it's  
24 large enough.

25 A. Yes, it is.

1 Q. And what is this and how do you recognize  
2 it?

3 A. That's the engagement retaining letter that  
4 I entered into with Curtis and his firm with the  
5 hourly rates agreed to. As you can see, \$400 and  
6 \$100 were the rates we agreed to.

7 Q. And does this document -- I'm going to  
8 scroll down to the next page, Florida Bar Exhibit 1  
9 and go down to the next page which is Bates stamp  
10 Page 2. And finally, going down to the Bates stamp  
11 Page 3 of Florida Bar's Exhibit 1. Looks like I need  
12 to reload it.

13 Give me one moment. I do apologize, Your  
14 Honor, it will not load. Wow. One moment. I'll go  
15 to my non-stamped Bates version of the document. If  
16 you'll just give me one moment. I'll start from the  
17 top. Again, we're scrolling now.

18 This is Florida Bar's Exhibit 1, that we saw  
19 earlier, just a different version. It's not Bates  
20 stamped and I'm scrolling down, going down towards  
21 the bottom.

22 THE COURT REPORTER: Will this be Exhibit 1  
23 the hearing as well, or to the trial?

24 MS. PEARSALL: Yes, I have them Bates  
25 stamped and marked, but I could not get the Bates

1 stamped to load so if I need to reload it again,  
2 I will.

3 Yes, this is the Florida Bar's Exhibit 1.  
4 (Thereupon, the exhibit was introduced into evidence.)

5 BY MS. PEARSALL:

6 Q. Mr. McCool, have you seen this page as well?

7 A. Yes, I have.

8 Q. Okay. So I'll stop there. And does the  
9 Florida Bar's Exhibit 1, which is the letter you  
10 stated you had with Mr. McCool's firm, the  
11 engagement, does it -- is it in the same or  
12 substantially the same condition as you recall?

13 A. Yeah. That's the same document that I had  
14 with Alva and Gleizer's firm.

15 MS. PEARSALL: At this time, the Bar moves  
16 or offers the Bar's Exhibit 1 into evidence, Your  
17 Honor.

18 THE COURT: Any objection?

19 MR. ALVA: Just going through her one that's  
20 loaded on the screen, Your Honor, to make sure  
21 it's -- Ms. Pearsall, I can't scroll the document  
22 to review it. Is this the one that was produced  
23 to you in the litigation?

24 MS. PEARSALL: Yes, sir, it is the one that  
25 was produced in the litigation. It is also the

1 actual exhibit that the Bar filed with its  
2 complaint with the Supreme Court.

3 So I'm actually on the Supreme Court's  
4 website with this attached exhibit until I can  
5 load my own my Bates stamped one.

6 MR. ALVA: Your Honor, based on those  
7 representations, I don't object.

8 MS. PEARSALL: If you look here on the side  
9 it says, "Received, Supreme Court clerk," right  
10 here on the side, November 1, 2021.

11 MR. ALVA: I see that, Ms. Pearsall. Thank  
12 you.

13 THE COURT: All right, so that will be  
14 admitted as Exhibit 1 for the Florida Bar.  
15 (Thereupon, the exhibit was admitted into evidence.)

16 MS. PEARSALL: Thank you.

17 BY MS. PEARSALL:

18 Q. So Mr. McCool, on September 19, 2016, did  
19 you enter into an engagement or legal representation  
20 agreement with respondent Curtis Alva of Alva &  
21 Gleizer law firm?

22 A. Is it dated the same on the signature  
23 portion of that agreement?

24 Q. I will go down so you can see that page,  
25 sir, and --



1 A. Yes, that's correct.

2 Q. When you entered the engagement for legal  
3 representation with Curtis Alva on September 19,  
4 2016, did the engagement agreement state how much you  
5 would have to pay for attorney time?

6 A. Yes.

7 Q. And did the same engagement agreement state  
8 how much you would have to pay for paralegal time?

9 A. Yes.

10 Q. When you signed the September 19, 2016,  
11 engagement letter, was it important for you to know  
12 how much Mr. Alva's hourly rate dollar amount would  
13 be?

14 A. Yes.

15 Q. When you signed the September 19, 2016,  
16 engagement letter, was it important for you to know  
17 how much the hourly rate or dollar amount would be  
18 charged for his paralegal services?

19 A. Yes.

20 Q. Was the hourly rate for attorney time and  
21 the hourly rate for Mr. Alva's paralegal time written  
22 in the September 19, 2016, engagement letter?

23 A. It was written in there and it was crossed  
24 out and a dollar amount of \$400 an hour was agreed to  
25 for his attorney time, and \$100 an hour for his

1     paralegal. That's what was agreed to. I would have  
2     not entered the arrangement otherwise.

3             MR. ALVA: I object, Your Honor, and make a  
4     motion to strike the balance of his testimony as  
5     nonresponsive to the part that goes beyond "was  
6     it written in." That's a yes or no question.

7             THE COURT: Overruled.

8     BY MS. PEARSALL:

9             Q. Now, referring back to the Florida Bar's  
10    Exhibit 1 which is the September 19, 2016, engagement  
11    letter, did you read the engagement letter before you  
12    signed it, sir?

13            A. Yes.

14            Q. Was there any written notification in the  
15    September 19, 2016, engagement letter that said the  
16    hourly rate for attorney time would go up if you did  
17    not pay an invoice after ten days?

18            A. No, there was nothing like that.

19            Q. Was there any written notification in the  
20    September 19, 2016, engagement letter that said the  
21    hourly rate charge for paralegal time would go up if  
22    you did not pay an invoice after ten days?

23            A. No, that was not a part of the contract.

24            Q. During the time that Mr. Alva represented  
25    you and Dr. ColorChip Corp., did you communicate with

1 Mr. Alva by e-mail?

2 A. Yes.

3 Q. I'm going to stop sharing the screen. I'm  
4 sharing the screen again.

5 (Thereupon, the exhibit was introduced into evidence.)

6 BY MS. PEARSALL:

7 Q. All right, I'm showing you what's marked as,  
8 if you look in the bottom corner there, the Florida  
9 Bar Exhibit 7 for identification. I'll go up to the  
10 top of the document.

11 Mr. McCool, what is this and how do you  
12 recognize it?

13 A. That's an invoice from Alva and Gleizer.  
14 And it's Invoice Number 64, so that was near the  
15 beginning of the relationship.

16 Q. And I'll scroll down to -- so you can see  
17 the balance of the exhibit, Exhibit 7, and we're at  
18 the bottom of Page 3 of 3.

19 Does the Florida Bar's Exhibit 7 appear to  
20 be in the same or substantially the same condition as  
21 you recall?

22 A. Yes, it does.

23 MS. PEARSALL: At this time, the Florida Bar  
24 offers Exhibit 7 into evidence, Your Honor.

25 THE COURT: What's the date of that invoice?

1 MS. PEARSALL: The date on the invoice is  
2 September 30, 2016. It is Invoice Number 64. I  
3 will make it a little bit larger.

4 THE COURT: Mr. Alva, any objections?

5 MR. ALVA: Ms. Pearsall, rather than trying  
6 to scroll through and inspect it, is this a Bates  
7 stamped copy or --

8 MS. PEARSALL: Yes, sir. Right there.  
9 Bates stamp. Do you see it down at the bottom  
10 corner, Exhibit 7?

11 MR. ALVA: This was in the document  
12 production you sent to me?

13 MS. PEARSALL: Yes, sir.

14 MR. ALVA: Okay, Your Honor, based on those  
15 representations, I don't object.

16 THE COURT: That will be in evidence as  
17 Florida Bar Number 2.

18 MS. PEARSALL: Your Honor if I may ask, I  
19 know we're not going in order with the numbers,  
20 is it possible to keep it as 7 since it's already  
21 Bates stamped and -- or, if not, I will resubmit  
22 it and add that as admitted Number 2, Your Honor.

23 THE COURT: Mr. Alva, do you have any  
24 objection if I just number -- I don't know the  
25 word, if I just make it Number 7, numerize?

1           MR. ALVA: I don't, Your Honor. The numbers  
2 might -- are we going to number the exhibits  
3 consecutively so mine are numbered on top of hers  
4 or do I get my own --

5           THE COURT: You get your own set of numbers.

6           MR. ALVA: Then I don't object to that, Your  
7 Honor.

8           THE COURT: All right. All right. So I'll  
9 make this Number 7.

10       (Thereupon, the exhibit was admitted into evidence.)

11       BY MS. PEARSALL:

12       Q. And so, sir, Mr. McCool --

13       A. Yes.

14       Q. Let me make the exhibit a little bit larger.  
15 So now you're looking at the Florida Bar's Exhibit  
16 Number 7. What is the date of the first charge  
17 listed on that invoice?

18       A. 8-26-2016.

19       Q. And under the column that says "attorney"  
20 next to the 8-26-2016 date, who is the attorney?

21       A. I'm sorry, scroll -- oh, CA. That's -- I'm  
22 sure that's Curtis Alva's initials.

23       Q. And now if you go along the same line where  
24 it says CA, I'll move over. What is the dollar rate  
25 listed under the rate column for CA?

1 A. As agreed upon, \$400 an hour rate.

2 Q. Now, I'm going to go on down to Bates stamp  
3 Page 2 of the Florida Bar's Exhibit 7, and I'll  
4 increase the size.

5 Now, are you able to see the line, September  
6 19, 2016, for GG?

7 A. Yes.

8 Q. And in the column for the rate, the dollar  
9 amount, what is the dollars amount for GG?

10 A. It is \$100.

11 Q. And is it was your understanding from the  
12 contract that \$100 would be the rate charged for  
13 paralegal time?

14 A. Yes.

15 Q. And I'm going to down to the Florida Bar's  
16 Exhibit 7 in evidence. What is the quantity total in  
17 time for this particular invoice?

18 A. 41.2 hours.

19 Q. And what's the total dollar amount that the  
20 invoice says is due?

21 A. \$15,250.

22 Q. Did you pay this invoice, sir?

23 A. Yes.

24 Q. Now, over the time that Mr. Alva was your  
25 attorney, did you receive other invoices from him

1 requesting payment?

2 A. Yes.

3 Q. I am going to share my screen again. I'm  
4 showing you what's marked as the Florida Bar's  
5 Exhibit 8 for identification. I'll go up to the top  
6 of the document. And I'll increase the size.  
7 (Thereupon, the exhibit was introduced into evidence.)

8 BY MS. PEARSALL:

9 Q. Sir, what is this and how do you recognize  
10 it?

11 A. If you scroll forward -- my vision there is  
12 a little blocked, but it's an invoice from Alva and  
13 Gleizer, I just don't see the invoice number there.  
14 My screen is blocking, Invoice Number 65.

15 Q. Let me just make it. Hopefully, that's  
16 better for you.

17 A. Yeah, I was able to see it. It's just the  
18 videos of everybody is blocking the right side of my  
19 screen so -- but I see it. It was Invoice Number 65.

20 Q. And is this invoice in the same or  
21 substantially the same condition as you recall it,  
22 and I'm going to scroll through so you can see the  
23 balance of it. It's Page 1 of 4, Page 2 of 4, Page 3  
24 of 4, and Page 4 of 4, of the Florida Bar's Exhibit  
25 8.

1 A. Yes.

2 Q. And now that you've had a chance to look at  
3 the balance of the exhibit, does the Florida Bar's  
4 Exhibit 8 appear in the same or substantially the  
5 same condition?

6 A. Yes, it does.

7 MS. PEARSALL: The Florida Bar offers  
8 Florida Bar's Exhibit 8 into evidence.

9 THE COURT: Mr. Alva?

10 MR. ALVA: Is this the Bates stamped one,  
11 Ms. Pearsall?

12 MS. PEARSALL: Yes, sir. Yes. Bates stamp  
13 down at the bottom.

14 MR. ALVA: Thank you. Based on that, Your  
15 Honor, I do not object.

16 THE COURT: So that will be Florida Bar  
17 Exhibit 8, Invoice Number 65.

18 (Thereupon, the exhibit was admitted into evidence.)

19 BY MS. PEARSALL:

20 Q. And as I go back up to the top. Mr. McCool,  
21 looking at the invoice, what is the date of Invoice  
22 Number 65?

23 A. 10-17-2016.

24 Q. And what date does it say as the invoice due  
25 or what date is it due on, according to the invoice?



1 A. N 27, 2016.

2 Q. And again, looking at the Florida Bar's  
3 Exhibit 8, the first charge here at the top,  
4 September 26 --

5 A. Yes.

6 Q. -- 2016, and for the attorney it says CA  
7 again. And you know that to be Curtis Alva?

8 A. Correct.

9 Q. And over in the column where it says "rate,"  
10 what is the dollar rate that was charged per invoice  
11 Number 65?

12 A. The agreed to \$400 an hour rate that we  
13 contracted for.

14 Q. And going down still on Page 1 of the  
15 Florida Bar's Exhibit 8, and then in the column, if  
16 you can see it where it says September 27, 2016, for  
17 GG.

18 A. Yes.

19 Q. And under the rate column, what is the  
20 dollar rate amount for GG on this invoice?

21 A. \$100 an hour.

22 Q. And I'll continue on to what is Bates  
23 stamped Page 3, Florida Bar's Exhibit 8. And what is  
24 the total amount due in dollars?

25 A. \$23,990.

1 Q. I'll stop sharing the screen. So far we  
2 have reviewed two invoices that you received from  
3 Mr. Alva's firm, Invoice Number 64 and 65.

4 A. Yes.

5 Q. What was the hourly -- was the \$400 hourly  
6 rate for attorney time and the \$100 hourly rate for  
7 paralegal time listed on those two invoices the same  
8 hourly rate that was listed on the September 19,  
9 2016, engagement letter?

10 A. Yes, it was.

11 Q. Did you also pay Invoice Number 65?

12 A. Yes, I did.

13 Q. I'm going to share my screen again. I'm  
14 showing you what's marked as the Florida Bar's  
15 Exhibit Number 9. Go back to the top of it, and  
16 increase the font.  
17 (Thereupon, the exhibit was introduced into evidence.)

18 BY MS. PEARSALL:

19 Q. What is it and how do you recognize it?

20 A. Invoice Number 66, again from Alva and  
21 Gleizer, on October 27, 2016.

22 Q. And I'll scroll down through the balance of  
23 the invoice. And finally, we're on Page 5 of 5 of  
24 the Florida Bar's Exhibit 9. Does this invoice or  
25 this exhibit appear to be in the same or

1 substantially the same condition as you recall, sir?

2 A. Yes, it does.

3 MS. PEARSALL: At this time, the Bar offers  
4 the Florida Bar's Exhibit 9 into evidence.

5 THE COURT: Mr. Alva?

6 MR. ALVA: No objection, Your Honor.

7 THE COURT: So that will be Number 9 for  
8 Florida Bar.

9 (Thereupon, the exhibit was admitted into evidence.)

10 BY MS. PEARSALL:

11 Q. Now, at the top of the Florida Bar's Exhibit  
12 9, the first charge on this exhibit, is it October  
13 13, 2016?

14 A. Yes, it is.

15 Q. And that's for, under where it says  
16 attorney, it says GG?

17 A. GG, correct.

18 Q. And the dollar amount rate for GG is what,  
19 sir?

20 A. \$100 an hour.

21 Q. And right below that, under the date of  
22 October 13, 2016, under the column attorney, it says  
23 CA?

24 A. Yes.

25 Q. And you know that to be Curtis Alva?

1 A. Correct.

2 Q. And under the rate, what is the dollar  
3 amount rate for CA for October 13, 2016?

4 A. \$400 an hour.

5 Q. Now, we'll go down to the Bates stamped Page  
6 5 of the Florida Bar's Exhibit 9. Would you tell me  
7 what the last charge is, what's the date of the last  
8 charge -- I'm sorry, the date of the last charge?

9 A. The October 27, 2016, one?

10 Q. Yes.

11 A. \$2,200 was the total at \$400 an hour.

12 Q. And if we go down to the actual total for  
13 this particular invoice, what is the dollar amount  
14 listed on the Florida Bar's Exhibit 9?

15 A. \$44,744.

16 Q. And, sir, did you pay this invoice?

17 A. Yes, I did.

18 Q. During the course of the time Mr. Alva  
19 represented you and Dr. ColorChip, did he ever ask  
20 for you to pay the bill sooner than ten days?

21 A. Yes, he did.

22 (Thereupon, the exhibit was marked for identification.)

23 BY MS. PEARSALL:

24 Q. I'm showing you what's been marked as the  
25 Florida Bar's Exhibit 27. I will make it larger if I

1 need to but, sir, what is this and how do you  
2 recognize it?

3 A. It looks like an e-mail from Curtis Alva  
4 requesting expedited payment because he was traveling  
5 and he wanted to be paid before he left town.

6 Q. But how do you recognize it? I know you  
7 were telling me --

8 A. I don't understand the question. How do I  
9 recognize it? It's -- that it's from Curtis Alva?  
10 Because I see the Curtis@AlvaG, I assume that was his  
11 e-mail address, and I see Trisha O'Rourke on it, and  
12 my personal e-mail on it.

13 Q. So is that how you recognize --

14 A. So I recognize -- yes -- that's, yeah, I  
15 would recognize that the invoices would come in and I  
16 ask that they be sent to Trisha for review and  
17 myself.

18 Q. And does this e-mail appear in the same or  
19 substantially the same condition as you recall it?

20 A. Yes, it does.

21 MS. PEARSALL: At this time, the Bar offers  
22 the Florida Bar's Exhibit 27 it into evidence.

23 THE COURT: Mr. Alva, any objection.

24 MR. ALVA: No, Your Honor, no objection.

25 THE COURT: All right this will be 27.

1 (Thereupon, the exhibit was admitted into evidence.)

2 BY MS. PEARSALL:

3 Q. So, Mr. Alva {sic}, I know you already gave  
4 additional information about the e-mail before it was  
5 entered into evidence, but I just want to ask you  
6 some other questions.

7 What is the date of the Florida Bar Exhibit  
8 27, the e-mail?

9 A. Is that question directed to me?

10 Q. Yes. Mr. McCool, I'm sorry.

11 A. Can you -- I spaced out there a little bit.  
12 What date is the --

13 Q. What's the date on the e-mail?

14 A. October 27, 2016.

15 Q. And are you able to see at the top of the  
16 document where it says FW colon?

17 A. Yes. FW, it says invoice through  
18 10/27/2016.

19 Q. And could you please read what's in the  
20 e-mail?

21 A. "I appreciate all the work. I'll be  
22 extremely expedited. Here is the invoice through  
23 October 27, 2016. Because I will be traveling for  
24 six days beginning early on November 2nd, I would  
25 appreciate payment by November 1st."

1 Q. So are there less than six days' time  
2 between October 27, 2016, and November 1, 2016?

3 A. Yes, it's less than six days.

4 Q. I mean, less than ten days. I'm sorry.

5 A. Yes. I think it's -- yeah, it's less than  
6 ten days, for sure, it's six days.

7 Q. Now, did you receive any additional balance  
8 off any invoice if you paid Mr. Alva in less than ten  
9 days?

10 A. No, I did not.

11 Q. Were you required to pay a retainer under  
12 the 2016 engagement retainer agreement?

13 A. Yes, I was.

14 (Thereupon, the exhibit was introduced into evidence.)

15 BY MS. PEARSALL:

16 Q. I'm showing you what's been marked as the  
17 Florida Bar's Exhibit 28 for identification. What is  
18 it and how do you recognize it?

19 A. It's an e-mail from Curtis --

20 Q. Oh, I apologize. Sorry.

21 A. No problem.

22 Q. Okay, if we could begin again, the Florida  
23 Bar's Exhibit 28.

24 A. Yes, it's an e-mail from Curtis Alva dated  
25 Monday, October 31st, asking, "What time can I pick

1 up the check and where?"

2 Q. So do you recognize this e-mail, sir?

3 A. Yes, I do.

4 Q. And does the e-mail appear in the same or  
5 substantially same condition as you recall it?

6 A. Yes, I do.

7 MS. PEARSALL: The Bar offers Florida Bar's  
8 Exhibit 28 into evidence.

9 THE COURT: Mr. Alva?

10 MR. ALVA: No objection Your Honor.

11 THE COURT: That will be 28.

12 (Thereupon, the exhibit was admitted into evidence.)

13 BY MS. PEARSALL:

14 Q. So, sir, we're going to now go forward  
15 towards into 2017.

16 (Thereupon, the exhibit was introduced into evidence.)

17 BY MS. PEARSALL:

18 Q. I'm showing you what's marked as Florida  
19 Bar's Exhibit 19.

20 A. Okay.

21 Q. What is it and how do you recognize it?

22 A. That's Invoice Number 85 dated October 13,  
23 2017, from Alva and Gleizer. That's another invoice.

24 Q. And I'll scroll down. And we're down to the  
25 bottom of Page 3 of 3 of the Florida Bar's Exhibit 19



1 for identification. Does this exhibit appear in the  
2 same or substantially the same condition as you  
3 recall it, sir?

4 A. Yes, it does.

5 MS. PEARSALL: Florida Bar offers Exhibit  
6 Number 19 into evidence.

7 THE COURT: Any objection?

8 MR. ALVA: No, Your Honor.

9 THE COURT: All right, that will be Florida  
10 Bar 19 then.

11 (Thereupon, the exhibit was admitted into evidence.)

12 BY MS. PEARSALL:

13 Q. We're back at the top of the Florida Bar's  
14 19, Invoice Number 85. What is the due date on  
15 Invoice Number 85, sir?

16 A. October 23, 2017.

17 Q. And what is the total amount that was due  
18 for this invoice, Invoice Number 85?

19 A. \$7,490.

20 Q. And did you pay that invoice, sir?

21 A. Yes, I did.

22 (Thereupon, the exhibit was marked for identification.)

23 BY MS. PEARSALL:

24 Q. I'm showing you what's marked as the Florida  
25 Bar's Exhibit 20 for identification. What is this,

1 sir, and how do you recognize it?

2 A. It's Invoice Number 86 from Alva and Gleizer  
3 for date October 13, 2017, issuance.

4 Q. And I'll scroll down to the balance of the  
5 Florida Bar's Exhibit 20 down to Page 2 of 2, Bates  
6 stamp Page 2.

7 Sir, does the Florida Bar's Exhibit 20  
8 appear to be in the same or substantially the same  
9 condition as you recall it?

10 A. Yes, it does.

11 MS. PEARSALL: Florida Bar offers Exhibit 20  
12 into evidence.

13 THE COURT: Any objection?

14 MR. ALVA: No, Your Honor.

15 THE COURT: That will be 20.

16 (Thereupon, the exhibit was admitted into evidence.)

17 BY MS. PEARSALL:

18 Q. What is the due date, sorry on --

19 A. October 23rd. I'm sorry.

20 Q. I'll repeat my question. What is the due  
21 date on the Invoice Number 86?

22 A. October 23, 2017.

23 Q. And what is the total amount due?

24 A. \$1,690.

25 Q. Did you pay Invoice Number 86?

1 A. Yes, I did.

2 Q. I'm showing you what's marked as the Florida  
3 Bar's Exhibit 21 for identification.

4 (Thereupon, the exhibit was introduced into evidence.)

5 BY MS. PEARSALL:

6 Q. What is this and do you recognize it?

7 A. It's Invoice Number 88 dated December 19,  
8 2017, from Alva and Gleizer and, yes, I recognize it.

9 Q. And I'm going to scroll down to the balance  
10 of the Florida Bar's Exhibit 21 for identification.  
11 And I am down to Page 2 of 2.

12 Does the Florida Bar's Exhibit Number 21  
13 appear in the same or substantially the same  
14 condition as you recall it?

15 A. Yes, it does.

16 MS. PEARSALL: The Florida Bar offers  
17 Exhibit 21 into evidence.

18 THE COURT: Mr. Alva?

19 MR. ALVA: No objection, Your Honor.

20 THE COURT: That will be 21.

21 (Thereupon, the exhibit was admitted into evidence.)

22 BY MS. PEARSALL:

23 Q. And what is the date of Invoice Number 88?

24 A. Invoice Number 88 date issued December 19,  
25 2017, due on 12-29-2017.

1 Q. And what's the total amount due of the  
2 invoice?

3 A. \$5,440.

4 Q. And did you pay this invoice?

5 A. Yes, I did.

6 (Thereupon, the exhibit was introduced into evidence.)

7 BY MS. PEARSALL:

8 Q. I'm showing you what has been marked as the  
9 Florida Bar's Exhibit 3 for identification. What is  
10 this and how do you recognize it?

11 A. It's an Invoice Number 90 from Alva and  
12 Gleizer dated January 9, 2018, with a due on date of  
13 January 19, 2018.

14 Q. And we'll go down to Page 2 of 4, 3 of 4,  
15 and finally 4 of 4. What is the total amount due for  
16 this invoice?

17 A. \$25,040.

18 Q. And does this invoice appear to be in the  
19 same or substantially same condition as you recall  
20 it?

21 A. Yes, it does.

22 MS. PEARSALL: At this time, the Bar offers  
23 the Florida Bar's Exhibit 3 into evidence.

24 THE COURT: Mr. Alva?

25 MR. ALVA: No objection, Your Honor.

1 THE COURT: That will be Florida Bar 3.  
2 (Thereupon, the exhibit was admitted into evidence.)

3 BY MS. PEARSALL:

4 Q. Mr. McCool, what is the date due of this  
5 invoice?

6 A. Due date on January 19, 2018.

7 Q. And what's the actual date of Invoice 90?

8 A. It says January 9, 2018.

9 Q. Did you pay Invoice 90 on January 19, 2018?

10 A. No, I did not.

11 Q. Why not?

12 A. We had some questions regarding the invoice  
13 and I authorized Trisha to reach out to Curtis to try  
14 to get some answers on some questions we had.

15 Q. Prior to receiving Invoice Number 90, had  
16 you paid all the other invoices you received from  
17 Mr. Alva?

18 A. Yes, I did.

19 Q. So there were no outstanding bills before  
20 you received Invoice 90?

21 A. No. All invoices had been paid.

22 Q. And what's the beginning date or the first  
23 charge on Invoice 90?

24 A. December 1, 2017.

25 Q. And under the attorney, does it state CA?

1 A. Yes, it does.

2 Q. And for the rate, what is the dollar rate  
3 that is listed for that particular date for CA?

4 A. \$400 an hour.

5 Q. And if you look at the entry for December  
6 11, 2017, for GG, what is the dollar rate for GG?

7 A. \$100 an hour.

8 Q. And what is the last charge on the Invoice  
9 Number 90?

10 A. It's -- what's the total dollar amount?

11 Q. No, I'm sorry. What is the date of the last  
12 charge of Invoice Number 90?

13 A. December 29, 2017.

14 Q. And what quantity -- what's the total  
15 quantity of hours listed?

16 A. 66 -- I'm sorry, yes, 66.8 hours.

17 Q. Thank you. That's the question I was going  
18 to ask, sir.

19 (Thereupon, the exhibit was introduced into evidence.)

20 BY MS. PEARSALL:

21 Q. I'm showing you what's been marked as the  
22 Florida Bar's Exhibit 44. What is it and how do you  
23 recognize it?

24 A. It looks like it's an e-mail from me  
25 regarding --

1 Q. I'll make it bigger.

2 A. -- the Florida Bar -- I'm sorry.

3 Q. I made it a little bit larger.

4 A. Looks like it's an e-mail from me regarding  
5 the Florida Bar filing that I had filed against  
6 Curtis Alva and Alva and Gleizer, and it was sent to  
7 Emily Sánchez and I copied Curtis on it.

8 Q. And so I'll go down to the balance of the  
9 document. It's the end, Bates stamped Page 10.

10 Does the Florida Bar's Exhibit 44 appear in  
11 the same or substantially the same condition as you  
12 recall it, sir?

13 A. Yes, it does.

14 MS. PEARSALL: At this time, the Bar offers  
15 the Florida Bar's Exhibit 44 into evidence.

16 THE COURT: Any objection?

17 MR. ALVA: Can you scroll back up to the  
18 top? I just want to look for a second.

19 MS. PEARSALL: Okay (Complies.) Let me know  
20 when you --

21 MR. ALVA: Is there a date on that,  
22 Ms. Pearsall?

23 MS. PEARSALL: The Bates stamp number or the  
24 date of the actual document?

25 MR. ALVA: The e-mail at the top, is there a

1 date on the e-mail?

2 MS. PEARSALL: Yes, yes, oh, I'm sorry, yes,  
3 it's right there.

4 MR. ALVA: Okay, it was cut off on my  
5 screen.

6 No objection, Your Honor.

7 THE COURT: All right. That will be 44.

8 (Thereupon, the exhibit was admitted into evidence.)

9 BY MS. PEARSALL:

10 Q. Mr. McCool, could you please read your  
11 e-mail into the record?

12 A. "Thank you for supplying me with the reply  
13 provided by Curtis Alva to Joi Pearsall's letter  
14 dated October 30, 2018, sent to Mr. Alva requesting  
15 additional information. I have reviewed Mr. Alva's  
16 reply and he has omitted a couple invoices that I am  
17 attaching to this e-mail. Invoice Number 66 dated  
18 October 27, 2016, in the amount of \$44,744 was  
19 omitted from his reply. This invoice was paid in  
20 full.

21 "Additionally, Mr. Alva failed to include  
22 Invoice Number 93 dated February 14, 2018. This  
23 invoice also was paid in full. Invoice Number 93 was  
24 for work performed while we were in communication  
25 with Mr. Alva attempting to get answers to questions



1 regarding Invoice Number 90 for work performed in  
2 December of 2017. We paid Invoice Number 93  
3 promptly, in full, as we had no questions with  
4 regards to the work covered in the invoice.

5 "As you have requested that all parties must  
6 be cc'd on correspondences to the Florida Bar, I have  
7 copied Mr. Alva on this communication. Thank you."

8 Q. Thank you, sir. And I'm just going to go  
9 down to one of the invoices that's attached to your  
10 e-mail. And this would be Invoice Number 93 and  
11 that's Bates stamp Page 8 of the exhibit.

12 A. That's correct.

13 Q. Okay. Mr. McCool, what is the date of the  
14 invoice that you're looking at, Number 93?

15 A. February 14, 2018.

16 Q. And when was Invoice 93 due?

17 A. It was due on February 24, 2018.

18 (Thereupon, the exhibit was introduced into evidence.)

19 BY MS. PEARSALL:

20 Q. I'm showing you what's marked as the Florida  
21 Bar's Exhibit 24 for identification. What is it and  
22 how do you recognize it?

23 A. That's an e-mail from Curtis Alva, copied to  
24 Trisha O'Rourke and myself. And it's regarding  
25 questions on the bill that we had questions for him

1 on.

2 Q. And I've gone down to the balance of the  
3 page. Does this exhibit appear to be in the same or  
4 substantially the same condition as you recall it?

5 A. Yes, it does.

6 MS. PEARSALL: The Florida Bar moves or  
7 offers the Florida Bar's Exhibit 24 evidence?

8 THE COURT: Any objection?

9 MR. ALVA: Your Honor, my concern is there's  
10 substantial marginalia on this document that is  
11 obviously not part of the original e-mail.

12 And so if she's introducing it as the  
13 original e-mail, I would object because it's  
14 clearly not the original e-mail. Someone has  
15 added underlining and text to it.

16 THE COURT: Ms. Pearsall?

17 MS. PEARSALL: Yes, is this a copy but this  
18 is part of the information that was submitted by  
19 the complainant as part of his complaint to the  
20 Florida Bar. So, this is the copy that I have as  
21 an exhibit.

22 I believe I might be able find one that's  
23 not marked on, but it would have been provided  
24 through discovery, I guess, so I can look for  
25 that and add that, Your Honor, if that's what the

1 Court requires, but I ask that it be admitted.

2 THE COURT: I'm going to admit it and just  
3 strike the portion with the handwritten notes off  
4 to the side, so that those portions are not  
5 included within the document.

6 MR. ALVA: Thank you, Your Honor.

7 THE COURT: So that will be Exhibit 7.

8 MS. PEARSALL: I'm sorry, Your Honor, it's  
9 the Bar's Exhibit 24.

10 THE COURT: 24. I'm sorry.

11 MS. PEARSALL: Yes.

12 (Thereupon, the exhibit was admitted into evidence.)

13 BY MS. PEARSALL:

14 Q. And Mr. McCool, what is the subject of the  
15 e-mail that is the Florida Bar's Exhibit 24? What's  
16 the subject?

17 A. Concerning questions on December bill.

18 Q. And that's the same December bill that you  
19 testified about earlier here today that you had  
20 questions about?

21 A. Yes, it is.

22 Q. I'm showing you what's been marked as the  
23 Florida Bar's Exhibit Number 25.

24 (Thereupon, the exhibit was introduced into evidence.)

25 BY MS. PEARSALL:

1 Q. What is it and how do you recognize it?

2 A. This is an e-mail from Curtis Alva addressed  
3 to Trisha O'Rourke and myself, and it's revised. It  
4 says, "Concerning Dan concerning questions on  
5 December bill."

6 Q. And I'll go down to the balance of the  
7 document. Does the Florida Bar's Exhibit 25 appear  
8 in the same or substantially the same condition as  
9 you recall it?

10 A. Yes, it does.

11 Q. And it's fair to say that this is a copy of  
12 the e-mail and not the original e-mail?

13 A. Yeah. It's -- I mean, it's -- when you say  
14 a copy, I mean it's printed, I guess. Yeah.

15 MS. PEARSALL: At this time, the Bar offers  
16 the Florida Bar's Exhibit 25 into evidence.

17 THE COURT: Mr. Alva.

18 MR. ALVA: My concern is the same, Your  
19 Honor, there's substantial marginalia on the  
20 document, that is not only not original to the  
21 document, but it appears to be derogatory.

22 If the Court would be willing to strike the  
23 marginalia, I have no objection.

24 THE COURT: Yeah, I'm going to do that  
25 again, to be consistent, I'm going to strike the

1           handwritten notes from the document and admit it  
2           as Florida Bar 25.

3       (Thereupon, the exhibit was admitted into evidence.)

4       BY MS. PEARSALL:

5           Q.    Thank you, Your Honor.  Now looking at the  
6       Florida Bar's 25, what date -- who sent you this  
7       e-mail and what date was it sent?

8           A.    It looks like it was sent from Curtis Alva  
9       and it was sent --

10          Q.    I'll make to a little larger, sir.  I'll  
11       make it larger, sir.

12                Same question, who sent you this e-mail and  
13       what date was it sent?

14          A.    Yeah.  It was sent by Curtis Alva and it was  
15       sent on February 21, 2018, to Trisha O'Rourke and to  
16       myself, Dan McCool.

17          Q.    Sir, could you please read the e-mail into  
18       the record?

19          A.    Sure.  "Dan is correct but let me explain  
20       more detail in hopes that we can all come to a mutual  
21       understanding of my proposal.  I'm happy to answer  
22       your seven questions if they are being asked in a  
23       good faith attempt to move the ball forward.  In  
24       other words, we find out how much of the December  
25       bill is actually subject to good faith dispute.  It

1 appears that we have that number, \$6,800.  
2 Dr. ColorChip then pays in full the amount that is  
3 not subject to dispute, \$18,240, and I answer all of  
4 your questions about the \$6,800 to see if that  
5 narrows the dispute to a number that we can agree  
6 upon.

7 "I understand from your e-mail that Trish  
8 may not agree with that proposal. The letter doesn't  
9 say what Dan feels about it. However, if  
10 Dr. ColorChip does not pay in full the undisputed  
11 amount, 18,240, then I will not believe that your  
12 questions are being asked in good faith. In that  
13 event, I will send a formal notice of breach of  
14 contract and demand payment in full in three days.

15 "Because Dr. ColorChip is already in breach,  
16 I will have two options: Enforce the contract as  
17 written and seek \$25,040, or seek payment for what  
18 Dr. ColorChip would owe me if there was no contract.  
19 In other words, if we had not agreed to discount my  
20 rate to \$400 per hour, in other words, \$550 per hour.  
21 My rough guess is that the higher rate would change  
22 Dr. ColorChip's indebtedness from \$25,050 to  
23 \$125,000, plus if there's no good faith on  
24 Dr. Colorchip's part, a claim for bad faith  
25 misrepresentation and punitive damages equal to

1     treble the amount of the claim, or \$375,000.

2             "I don't want to believe that Dr. ColorChip  
3     is acting in bad faith. I hope that your response  
4     allows me to keep that belief. As you said, you are  
5     professionals who want to be treated professionally  
6     as am I."

7             Q.     Thank you, sir.

8     (Thereupon, the exhibit was introduced into evidence.)

9     BY MS. PEARSALL:

10            Q.     I'm showing you what's been marked as  
11     Florida Bar's 30 for identification. What is it and  
12     how do you recognize it?

13            A.     It's an e-mail from Curtis Alva to myself,  
14     Dan McCool.

15            Q.     Go down to the balance of the e-mail,  
16     Florida Bar Exhibit 30, Bates stamped 1. Does this  
17     exhibit appear to be in the same or substantially the  
18     same condition as you recall, sir?

19            A.     Yes, it does.

20            MS. PEARSALL: The Florida Bar offers the  
21     Florida Bar's Exhibit 30 into evidence, Your  
22     Honor.

23            THE COURT: Mr. Alva?

24            MR. ALVA: Ms. Pearsall, can you scroll all  
25     the way to the right so I can see the margins?

1 MS. PEARSALL: What I will do is I'll make  
2 it a little bit smaller so you can see.

3 MR. ALVA: Thank you, and then scroll top to  
4 bottom.

5 MS. PEARSALL: (Complies.)

6 MR. ALVA: Your Honor, subject to the  
7 marginalia being stricken, I have no objection.

8 THE COURT: I'll disregard the underlying  
9 portion, disregard as being highlighted. It's  
10 still part of the exhibit. So Florida Bar 30  
11 will be admitted.

12 (Thereupon, the exhibit was admitted into evidence.)

13 BY MS. PEARSALL:

14 Q. Mr. McCool, what is -- who is -- what is the  
15 date of this e-mail, the Florida Bar's Exhibit 30?

16 A. February 22, 2018.

17 Q. And what's the subject line of the exhibit?

18 A. "Concerning revised, concerning Dan,  
19 concerning questions on December bill."

20 Q. And Mr. McCool, could you read the e-mail,  
21 please?

22 A. Sure. "If you are not disputing any portion  
23 of the bill, please pay it in full. The time for you  
24 to finish your review was within ten days of the  
25 invoice. If you want to know what position the



1 Florida Bar takes, you should call them and ask them.  
2 If, on the other hand, you are making an attempt to  
3 get me to discount the bill to avoid you calling the  
4 Bar, you should have your attorney give you advice  
5 about not committing extortion.

6 "Here is the answer to Question Number 4: I  
7 don't know exactly how much time I spent speaking to  
8 Matt, but I expect it was about an hour, and I met  
9 him in Fort Lauderdale. It takes about an hour to  
10 travel there each way, and Dr. ColorChip was not  
11 charged for the time I spent traveling.

12 "As I expect that Dr. Colorchip does not  
13 object to me traveling to Fort Lauderdale at my own  
14 expense and without charging for the time, and as I  
15 expect that he has no objection to my meeting him at  
16 his office which expedited the scheduling of the  
17 meeting because I traveled there instead of him  
18 traveling here, I believe that this resolves your  
19 questions about the day of 12-6 and takes out of the  
20 dispute the \$2,840 charged for that day, reducing the  
21 dispute to \$3,960.

22 "If that is not correct let me know. I'll  
23 answer your other questions in following e-mails even  
24 though they do not appear to be made in a good faith  
25 attempt to resolve the dispute and keep track of my

1 time spent in doing so and add it to my damages claim  
2 if we don't resolve this matter. I will also send a  
3 notice of breach and demand that you preserve all  
4 evidence relating to this dispute in the next day or  
5 so."

6 Q. And who is the e-mail signed by?

7 A. Curtis Alva.

8 Q. Thank you.

9 MR. ALVA: Ms. Pearsall, are you going to  
10 have him read the whole or just the portions he  
11 read? Is there another e-mail below that, I  
12 guess is what I'm asking?

13 MS. PEARSALL: No, there's nothing below  
14 that. That's just this -- no.

15 MR. ALVA: Okay. I couldn't tell because I  
16 couldn't see the bottom of the document.

17 MS. PEARSALL: Okay.

18 THE COURT: Ms. Pearsall, are you almost  
19 finished with the witness because I will just  
20 release everybody to lunch if you're not?

21 MS. PEARSALL: I probably have 15, ten to 15  
22 minutes, Your Honor. I'm almost there.

23 THE COURT: All right. And then, obviously,  
24 Mr. Alva is going to have some questions for the  
25 witness some, so let's go ahead and break, it's

1 1:15. Can we come back at two o'clock?

2 MR. ALVA: Your Honor, I have received a  
3 text message that my assistant was involved in an  
4 auto accident. Could we take an hour in case I  
5 need to respond to that?

6 THE COURT: Okay. So we'll come back at  
7 2:15.

8 MR. ALVA: Thank you, Your Honor.

9 THE COURT: Okay, thank you.

10 MS. PEARSALL: Thank you.

11 Thank you, Mr. McCool.

12 A. We'll be back in one hour?

13 THE COURT: Yes, one hour, 2:15.

14 MS. PEARSALL: Make sure if you -- if you're  
15 going to leave it up, put it on mute and your  
16 video, sir.

17 MR. ALVA: Your Honor, can we instruct the  
18 witness that he's not to discuss his testimony  
19 while he's on the -- during the break?

20 THE COURT: Absolutely. All right. So  
21 Mr. McCool, because you're in the middle of your  
22 testimony, it's as if we didn't take a break so  
23 you can't talk to any of the attorneys on the  
24 case during lunch, nor can you talk with any of  
25 the other potential witnesses.

1           Your private lawyer may be a witness on the  
2           case, so you may want to have an inclination to  
3           talk to him, but you can't. So please, just for  
4           the next hour, just don't talk to anybody that  
5           has anything to do with this case at all. Okay?  
6           All right. Thank you.

7  
8           (Thereupon, a luncheon recess was taken.)

9                           \*                   \*                   \*

10  
11  
12  
13                   A F T E R N O O N   S E S S I O N

14       BY MS. PEARSALL:

15           Q.    Mr. McCool, I'm showing you what's marked as  
16           the Florida Bar's Exhibit 5 for identification.

17           A.    Yes.

18           (Thereupon, the exhibit was introduced into evidence.)

19       BY MS. PEARSALL:

20           Q.    What is it and how do you recognize it?

21           A.    What is Number 95, that's a fraudulent  
22           created invoice by Curtis Alva to take one last jab  
23           at me to try to get as much money out of me as he  
24           could and he back-billed me --

25           MR. ALVA: Your Honor, I object. It's

1 nonresponsive.

2 THE COURT: Sustained. So just listen to  
3 the question and answer the question that's  
4 asked.

5 MS. PEARSALL: I'll start over. Yes, I  
6 will, sir.

7 BY MS. PEARSALL:

8 Q. Mr. McCool, I'm showing you what's been  
9 marked as the Florida Bar's 5 for identification.

10 What is it and how do you recognize it?

11 A. It's an invoice from Alva and Gleizer,  
12 Invoice Number 95 dated February 26, 2018, with the  
13 due date of March 1, 2018.

14 Q. And I'll scroll down through the balance of  
15 the document. This is Florida Bar's Exhibit 5, page  
16 1 of 1. Does this exhibit, is it the same or  
17 substantially the same condition as you recall it,  
18 sir?

19 A. Yes, it is.

20 MS. PEARSALL: At this time, the Florida Bar  
21 offers Florida Bar's Exhibit 5 into evidence.

22 THE COURT: Okay. Any objection, Mr. Alva.

23 MR. ALVA: No, Your Honor.

24 THE COURT: Okay. All right. That will be  
25 Exhibit 5 Florida Bar.

1 (Thereupon, the exhibit was admitted into evidence.)

2 BY MS. PEARSALL:

3 Q. You just stated a few moments ago that the  
4 date on this invoice is February 26, 2018, with the  
5 due date of March 1, 2018, Mr. McCool?

6 A. Correct.

7 Q. And this is an invoice that you and  
8 Dr. ColorChip received from Mr. Curtis Alva?

9 A. Correct.

10 Q. You've got to get a little bit closer to the  
11 mic.

12 A. Can you see me. I said, correct.

13 Q. Yeah. Okay. Now, if I can direct your  
14 attention to the services portion of this exhibit.  
15 You see where one part says "services" and below that  
16 there's a portion that says "expenses." Do you see  
17 that?

18 A. Correct, yes.

19 Q. All right. So I'm going to direct you to  
20 the services portion and I'll increase the size just  
21 a little bit more. Move the document over.

22 Under the "services" portion, what's the  
23 first date that you see there?

24 A. It February 26, 2018.

25 Q. And under the term of "attorney," what's

1 there?

2 A. CA, Curtis Alva.

3 Q. And if we move over to the section that  
4 says, "Description, is there anything written in the  
5 description section of this invoice?

6 A. No, there is not.

7 Q. Now, we move over to the column that says  
8 "quantity" going along with the 2-26-2018 entry for  
9 CA, Curtis Alva.

10 So under quantity, what do you see there?

11 A. For Curtis Alva, 806.70 hours.

12 Q. And what is the rate?

13 A. \$150.

14 Q. And what is the total in the Curtis Alva CA  
15 column for February 26, 2018?

16 A. \$121,005.

17 Q. I'm going to go down just below that. Now,  
18 we're still in the expenses section of the Florida  
19 Bar's Exhibit 5. Now, and the section --

20 A. Services.

21 Q. Services section. I apologize.

22 Now in the column below the CA column under  
23 services, there is another for GG for February 26,  
24 2018. Now, sir, in the column for quantity for GG,  
25 what does it say?

1 A. 226.80 hours.

2 Q. And for the rate, what's listed there?

3 A. \$25.

4 Q. And for the total for GG, for February 26,  
5 2018, what does it state?

6 A. \$5,645.

7 Q. Now, we're still in the services section, so  
8 the quantity subtotal is what amount, sir?

9 A. 1,032.5 hours.

10 Q. And for the services subtotal, what is the  
11 amount?

12 A. \$126,650.

13 Q. Now, I'm going back up to the top of the  
14 invoice. The date of this invoice, again, is  
15 February 26, 2018, and my question to you is, on  
16 February 26, 2018, did you or Dr. ColorChip owe  
17 Curtis Alva, of Alva and Gleizer, \$126,650.

18 A. No, I did not.

19 (Thereupon, the exhibit was introduced into evidence.)

20 BY MS. PEARSALL:

21 Q. I'm showing you what's been marked as  
22 Florida Bar 6 for identification. What is it and how  
23 do you recognize it?

24 A. It's a statement of account put together, at  
25 least issued by Alva and Gleizer, identifying a trust



1 account balance that he has wiped out to the tune of  
2 \$25,000 that he claimed was in trust.

3 We asked for that and I've never received  
4 confirmation of that so I don't believe it.

5 MR. ALVA: Your Honor, I object and I make a  
6 motion to strike as nonresponsive.

7 THE COURT: Sustained. Again, just listen  
8 to the questions asked and restrict your answers  
9 to what the question asked for.

10 BY MS. PEARSALL:

11 Q. Sir, I'll repeat the question.

12 A. Can you repeat the question?

13 Q. Yes, I will. I'm showing you what's marked  
14 as the Florida Bar's Exhibit 6 for identification.  
15 What is it and how do you recognize it?

16 A. Can you scroll it down so I can see it?  
17 He's showing a statement of his claimed dollar amount  
18 owed after wiping out an escrow deposit that I had on  
19 retainer with him.

20 MR. ALVA: Same objection, Your Honor. The  
21 witness is refusing to follow the Court's  
22 instruction.

23 THE COURT: Overruled.

24 BY MS. PEARSALL:

25 Q. And does the Florida Bar's Exhibit 6 appear

1 in the same or substantially the same condition as  
2 you recall it, sir?

3 A. Yes, it does.

4 Q. And what is the date on this statement of  
5 account?

6 A. It says March 20, 2018.

7 Q. And under the section that says "Balance  
8 due" on March 20, 2018, what amount is listed there,  
9 sir?

10 A. Balance due, and it says a hundred -- oh,  
11 after the 25,000, it says \$101,834.95.

12 MS. PEARSALL: At this time, the Florida Bar  
13 offers the Florida Bar's exhibit 6 into evidence  
14 Your Honor.

15 THE COURT: Mr. Alva?

16 MR. ALVA: Ms. Pearsall, can you scroll up  
17 and down so I can see the margins in the  
18 document?

19 MS. PEARSALL: Sure, I will make it a little  
20 bit smaller to make to a little bit easier.  
21 (Complies.) That's it. It's one page.

22 MR. ALVA: Thank you. Your Honor, there's  
23 marginalia, but it appears to be immaterial so I  
24 don't object.

25 THE COURT: So that will be Florida Bar 6.

1 (Thereupon, the exhibit was admitted into evidence.)

2 BY MS. PEARSALL:

3 Q. Mr. McCool, the Florida Bar's Exhibit 6, the  
4 statement of account invoice, says as of March 20,  
5 2018, you owed Mr. Alva an overdue balance of  
6 \$101,834.95.

7 Mr. McCool, on March 20, 2018, did you owe  
8 Curtis Alva or Alva and Gleizer, PLLC, \$101,834.95?

9 A. Absolutely not.

10 Q. I'm showing you what's marked as the Florida  
11 Bar's Exhibit 31.

12 (Thereupon, the exhibit was introduced into evidence.)

13 BY MS. PEARSALL:

14 Q. And what is it and how do you recognize it?

15 A. The letter -- an e-mail from Curtis Alva to  
16 me, subject regarding retainer agreement.

17 Q. And I'll scroll down so you can see the  
18 whole document a little bit bigger. And does the  
19 Florida Bar's Exhibit 31 appear in the same or  
20 substantially the same condition as you recall it?

21 A. Yes.

22 MS. PEARSALL: Florida Bar offers the  
23 Florida Bar's Exhibit 31 into evidence.

24 THE COURT: Mr. Alva, any objection?

25 MR. ALVA: Your Honor, it's got marginalia

1 on it that I think should be stricken. If that's  
2 done, then I don't object.

3 THE COURT: Yes, I will strike the  
4 marginalia and admit Florida Bar's 31 as 31.  
5 (Thereupon, the exhibit was admitted into evidence.)

6 BY MS. PEARSALL:

7 Q. Mr. McCool, I want to begin down here at the  
8 -- towards the bottom of the exhibit.

9 Are you able to see the line beginning on  
10 March 7, 2018 at 2:47 p.m., Dan McCool --

11 A. Yes.

12 Q. -- wrote?

13 A. Yes, I do.

14 Q. Could you please read that?

15 A. "Curtis, please e-mail me a copy of the  
16 retainer agreement signed back in September of 2016.  
17 We never received a copy of that for our files.  
18 Thank you."

19 Q. And I'll go up above that, and did you  
20 receive a reply from Mr. Alva, Mr. Curtis Alva to  
21 your e-mail?

22 A. I don't recall. I don't recall.

23 Q. Now, at the top of the exhibit, the Florida  
24 Bar Exhibit 31, there is another e-mail up here, and  
25 can you see that e-mail, sir?

1 A. Yes, I can.

2 Q. And who is that e-mail from?

3 A. It's from Curtis Alva addressed to me.

4 Q. And what date and time was that e-mail sent?

5 A. March 7, 2018, at 7:23 p.m.

6 Q. Could you read what the e-mail says, please,  
7 and don't read any handwritten information that you  
8 may see?

9 A. No problem. "Thanks for writing to me  
10 directly. Thanks also for sending the payment for  
11 the invoice for December.

12 "Setting aside for the moment the statement  
13 that Dr. ColorChip did not receive the engagement  
14 letter, I'll be happy to send a copy. I expect to be  
15 in the office Friday and have time to pull it from  
16 the file.

17 "Additionally, I would like to get this  
18 account settled promptly. I'll try to send you a  
19 statement next week with the balance due, which I  
20 suspect will be the 2-26 invoice minus the retainer  
21 paid plus any out-of-pocket expenses that have come  
22 in after 2-26, if any.

23 "Please call me after you get the statement  
24 to get this finalized."

25 Q. In reading the March 7, 2018, 7:23 p.m.

1 e-mail from Mr. Alva, did you take this as Mr. Alva  
2 had received payment for the December invoice that  
3 you had questions about?

4 A. Yes.

5 Q. Why did you decide to pay the December  
6 invoice, the \$25,040 invoice?

7 A. I wanted to settle it and put it behind us.  
8 Curtis was threatening us with legal action and  
9 treble damages and I didn't feel it was worth arguing  
10 with him anymore so I wanted to settle it, pay in  
11 full and be done with him.

12 Q. Do you recall what date you paid the  
13 December invoice, so that would be Invoice Number 90?

14 A. I can't say exactly but there's e-mails I  
15 think in the records that show that I had  
16 communication with Curtis in late February where I  
17 had told him I submitted the payment to be paid from  
18 my bank, and it was through Bill Pay, which typically  
19 takes about ten days.

20 (Thereupon, the exhibit was introduced into evidence.)

21 BY MS. PEARSALL:

22 Q. I'm showing you what's marked as the Florida  
23 Bar's Exhibit 29. And what is it and how do you  
24 recognize it?

25 A. This is an e-mail from me to Curtis on April

1 10th with regards to the retainer of \$25,000 that I  
2 had in escrow with them. And let's see here, and I  
3 was requesting it back.

4 Q. And I'll scroll down to the balance of the  
5 exhibit, the Florida Bar's Exhibit 29. Does this  
6 exhibit appear in the same or substantially the same  
7 condition as you recall?

8 A. Yes, it does.

9 MS. PEARSALL: Florida Bar offers the  
10 Florida Bar's Exhibit 29 into evidence.

11 THE COURT: Any objection?

12 MR. ALVA: Can you, Ms. Pearsall, scroll the  
13 margin so I can look for marginalia?

14 MS. PEARSALL: (Complies.)

15 MR. ALVA: I think I won't have any  
16 objection to it if we take the marginalia out.  
17 I'm not sure I know what the arrow means but if  
18 it's not part of the original document, I think  
19 it should be stricken.

20 THE COURT: Yeah, I'll strike the arrow and  
21 I'll admit Florida Bar 29 into evidence.

22 (Thereupon, the exhibit was admitted into evidence.)

23 BY MS. PEARSALL:

24 Q. Okay, Mr. McCool, now, I'm going to start  
25 down at the bottom of the Florida Bar's Exhibit 29

1 with this particular e-mail, starting on April 9,  
2 2018, at 11:57 a.m. Do you see that e-mail?

3 A. Yes, I do.

4 Q. And did you write this to Mr. Curtis Alva?

5 A. Yes, it appears it came from my e-mail  
6 address.

7 Q. Could you read that into the record?

8 A. "Curtis, please return all retainer funds  
9 immediately. Your correspondence dated 3-20-2018  
10 indicates the trust account balance is \$25,000.  
11 Please advise when the check will be ready for pick  
12 up and we will pick it up at your office on Olive  
13 Avenue in West Palm Beach. Dan McCool."

14 Q. Now go up after that, so that e-mail was on  
15 April 9th, at 11:57. Right above that it says on  
16 April 10, 2018 at 9:55 a.m.

17 Do you see that e-mail?

18 A. Yes, I do.

19 Q. And the e-mail says, "Curtis Alva wrote."  
20 Could you read what's written under there.

21 A. "There is no return due. There is a balance  
22 due in excess of \$100,000. The 25,000 retainer  
23 payment was applied to the unpaid invoice and the  
24 balance in your retainer account is zero. Please  
25 make a check for the balance and let me know when I



1 can pick it up. If you do not intend to pay in full,  
2 please let me know promptly so I can pursue  
3 collection."

4 Q. And then at the top of the exhibit there is  
5 an e-mail that says Dan McCool, from Dan McCool, sent  
6 on April 10, 2018, at 10:00 a.m. to Curtis Alva with  
7 the subject line, "Dr. ColorChip retainer return."  
8 Could you please read that e-mail?

9 A. Yes. "Curtis, at this point, given the  
10 manner in which you have handled this, I will take  
11 this up with the Florida Bar for their guidance on  
12 getting our retainer back."

13 Q. Since you've -- since you requested your  
14 retainer back from Mr. Alva in April of 2018, has  
15 Mr. Alva returned your \$25,000 retainer?

16 A. No, he has not.

17 MS. PEARSALL: One moment, Your Honor.

18 No further questions of this witness, Your  
19 Honor. Thank you.

20 THE COURT: Okay. Cross?

21 MR. ALVA: Thank you, Your Honor.

22  
23 CROSS EXAMINATION

24 BY MR. ALVA:

25 Q. Mr. McCool, if I recall correctly, you

1 testified during direct that you did not pay the  
2 December invoice on January 19, 2018; is that  
3 correct?

4 A. Yes, that's correct.

5 Q. And you testified that the reason that you  
6 didn't pay at that time is because you had questions  
7 about the invoice; is that also correct?

8 A. Yes, that's correct.

9 Q. I'd like to ask you a bit about those  
10 questions. Was one of your questions, Mr. McCool,  
11 that the amount of the invoice in December was  
12 \$25,040, yet the only legal work performed by  
13 defendants in the period captured by the invoice was  
14 a short court appearance?

15 A. What is that taken from? What is the  
16 question?

17 MR. ALVA: Your Honor, can we have the court  
18 reporter read the question back to the witness?

19 THE COURT: Okay.

20 (Thereupon, the court reporter read back the  
21 requested portion.)

22 A. That probably was a statement from Trisha  
23 O'Rourke in her e-mail to Curtis. She was addressing  
24 the questioning.

25 BY MR. ALVA:

1 Q. Mr. McCool, that wasn't my question to you.  
2 Can you please respond to my question?

3 MS. PEARSALL: Objection. Argumentative.

4 THE COURT: Overruled.

5 A. Please ask the question again.

6 MR. ALVA: Madam Reporter, would you read it  
7 back to him again?

8 (Thereupon, the court reporter read back the  
9 requested portion.)

10 A. I believe that was a statement made by  
11 Trisha O'Rourke in an e-mail, yes.

12 BY MR. ALVA:

13 Q. What were the last few words you said?

14 A. I believe that was a statement made in an  
15 e-mail issued by Trisha O'Rourke, I believe that's  
16 what she said.

17 MR. ALVA: Your Honor, can you instruct the  
18 witness to answer my question? I asked a yes or  
19 no question, was this one of his questions and  
20 I --

21 THE COURT: And he said no.

22 MR. ALVA: Oh, he said no, it was not one of  
23 his questions?

24 THE COURT: Yes, he said no.

25 MR. ALVA: Okay.

1 BY MR. ALVA:

2 Q. Was one of your questions, Mr. McCool, that  
3 the December invoice was unconscionable and obviously  
4 contrived?

5 A. I don't think that was a question, I think  
6 that was a statement made by Trisha O'Rourke.

7 Q. Sir, you've never had that question?

8 A. It was a statement made by Trisha O'Rourke.

9 Q. That's not my question to you, sir. Was  
10 that ever a question of yours?

11 MS. PEARSALL: Objection. Asked and  
12 answered.

13 A. It was a question posed.

14 THE COURT: It wasn't answered.

15 A. I'm sorry.

16 I'm sorry?

17 THE WITNESS: You can answer the question.  
18 Did you make the statement?

19 A. I did not make the statement. Trisha was  
20 handling the questioning with Curtis.

21 BY MR. ALVA:

22 Q. So you never said that the invoice was  
23 unconscionable and obviously contrived; is that your  
24 testimony?

25 A. That was not directly from me, no. I do

1 think it was unconscionable and I think it was  
2 contrived, but that statement that you received in an  
3 e-mail was not generated by me.

4 MR. ALVA: Your Honor, I'd like to strike  
5 the portion of his answer that was nonresponsive.  
6 I asked him if --

7 THE COURT: I'm not going to do it. I think  
8 he was just trying to clarify a miscommunication  
9 between the two of you.

10 MR. ALVA: Okay.

11 BY MR. ALVA:

12 Q. Mr. McCool, I'm going to show you a  
13 document.

14 Mr. McCool, I'm showing you a document, and  
15 I'm wondering if you recognize this document. For  
16 identification purposes at the top of the document it  
17 shows that it's a filing filed on May 4, 2021, in the  
18 Circuit Court of the Fifteen Judicial Circuit in and  
19 for Palm Beach County, and it identifies the  
20 plaintiff as Dr. ColorChip Corp., and Daniel McCool,  
21 and the defendants as Curtis S. Alva and Alva and  
22 Gleizer, PLLC.

23 MS. PEARSALL: Objection. Outside of the  
24 scope of direct.

25 THE COURT: Yeah, response?

1 MR. ALVA: Yes, Your Honor. He testified  
2 that he had questions about the invoice and he  
3 has testified that he has never made this  
4 statement that these were contrived, and I think  
5 Your Honor this complaint is a statement of  
6 Mr. McCool that would contradict the testimony  
7 that he's given.

8 THE COURT: I'll give you a little latitude.

9 MR. ALVA: Thank you, Your Honor.

10 BY MR. ALVA:

11 Q. Mr. McCool, do you recognize this document  
12 that's on the screen?

13 A. Yes. Yes, I do.

14 Q. Do you recognize that as the complaint that  
15 was filed by you individually and by Dr. ColorChip  
16 against me and the firm of Alva and Gleizer?

17 A. Yes, I do.

18 Q. And you authorized -- is it correct, sir,  
19 that you authorized this complaint to be filed on  
20 behalf of yourself and Dr. ColorChip?

21 A. Yes, I do.

22 Q. And before you authorized it to be filed,  
23 did you read it?

24 A. Yes, I did.

25 Q. And to the best of your knowledge, were all

1 the statements made in it true and correct?

2 A. Yes, I believe they were.

3 Q. So let me take you, Mr. McCool -- let me  
4 take you to paragraph 21, Mr. McCool, and ask you to  
5 read that into the record.

6 MS. PEARSALL: Your Honor, same objection.

7 This is outside of the scope of direct. It's  
8 leaning towards the civil litigation. The  
9 complainant has legal counsel for the civil  
10 litigation, was not permitted to be in the  
11 hearing, and counsel is asking him questions not  
12 about the Bar complaint, but about civil  
13 litigation which is not --

14 THE COURT: How is this impeachment?

15 MR. ALVA: Your Honor, he has testified that  
16 he never made this the statement that the only  
17 work performed was a short court appearance, but  
18 this is a statement that he authorized to be  
19 filed on his behalf and it says exactly that.

20 THE COURT: Has he signed this? Can you  
21 scroll to the bottom?

22 MR. ALVA: He has testified, Your Honor,  
23 that he authorized it to be filed.

24 THE COURT: Okay. Then I'm going to sustain  
25 the objection. It's not proper impeachment.

1 MR. ALVA: Your Honor, I would like to then  
2 use it to refresh the witness' recollection, if I  
3 might.

4 THE COURT: You're going to have to lay a  
5 foundation.

6 MR. ALVA: Thank you, Your Honor.

7 MS. PEARSALL: Your Honor, before counsel  
8 starts, I have some questions, the same questions  
9 he had. This document is highlighted and  
10 underlined with red marks on it. I'm sure this  
11 is not probably how the document was filed in the  
12 court proceedings.

13 I just wanted to make that statement for the  
14 record.

15 THE COURT: A lawyer can use anything to  
16 refresh a recollection. So --

17 MR. ALVA: Thank you, Your Honor.

18 THE COURT: -- as long as there's a proper  
19 foundation.

20 MR. ALVA: Thank you, Your Honor.

21 BY MR. ALVA:

22 Q. Mr. McCool, do you remember authorizing  
23 Dr. ColorChip and yourself to say in your complaint  
24 that you filed in the civil court that the only legal  
25 work performed by defendants in a period captured by



1 the fabricated December invoice was a short court  
2 appearance?

3 A. I think that was said in a statement to you.

4 Q. That wasn't my question, Mr. McCool. Do you  
5 recall authorizing this statement to be made in the  
6 complaint?

7 A. I signed this complaint so I believe what  
8 was included the complaint, yes.

9 Q. So you authorized the complaint to say that  
10 the only work performed was a short court appearance;  
11 is that correct?

12 MS. PEARSALL: Objection. Asked and  
13 answered.

14 THE COURT: Overruled. You can answer.

15 A. Can you re-ask the question, please?

16 MR. ALVA: Madam Reporter, would you read it  
17 back to him?

18 (Thereupon, the court reporter read back the  
19 requested portion.)

20 A. Yes, that's correct. I believe the invoice  
21 that he submitted was grossly exaggerated and the  
22 only thing that I can point to that we could  
23 physically say occurred was the short court  
24 appearance and I believe that.

25 BY MR. ALVA:

1 Q. Did you also authorize the complaint to say  
2 that the December invoice was unconscionable and  
3 obviously contrived?

4 A. Yes, I believe it was unconscionable.

5 Q. The question was, did you authorize that  
6 statement, sir?

7 A. Yes, I did. I signed it. I authorized  
8 that.

9 Q. Did you also authorize the statement to say  
10 that it is impossible that the entries reflected in  
11 the fabricated February invoice are real?

12 MS. PEARSALL: Your Honor, I'm going to  
13 object again. Counsel is reading from a document  
14 that's not in evidence. And it's up on the  
15 screen.

16 The witness -- I don't believe the proper  
17 predicate has been laid to refresh the witness'  
18 recollection and the witness hasn't asked for his  
19 recollection to be refreshed, so that's my  
20 objection, Your Honor.

21 THE COURT: I'm sustaining that objection.

22 MR. ALVA: Your Honor, I'm not actually  
23 refreshing his recollection. I'm asking him what  
24 he recalls and he's testified that he recalls all  
25 of it.

1 THE COURT: Take the document down then.

2 MR. ALVA: Thank you, Your Honor.

3 (Complies.)

4 BY MR. ALVA:

5 Q. Mr. McCool, do you recall authorizing a  
6 statement in the complaint that was filed by you and  
7 Dr. ColorChip that it is impossible that the entries  
8 reflected in the fabricated February invoice are  
9 real?

10 A. I believe that entries in that invoice were  
11 not supported by work actually done. It was grossly  
12 overcharged.

13 Q. Sir, that wasn't my question to you.

14 MR. ALVA: Your Honor, I make a motion to  
15 strike his responses as nonresponsive and direct  
16 him to answer the question that I asked.

17 THE COURT: Well, I don't understand why  
18 we're doing this. He's acknowledging what you  
19 want him to acknowledge and his complaint that  
20 his attorneys filed in Palm Beach County is not  
21 at issue.

22 MR. ALVA: The complaint is not at issue,  
23 Your Honor, but his claim that he didn't pay the  
24 invoice because of questions he had is directly  
25 at issue and these are questions that relate

1 directly to the December invoice.

2 THE COURT: He's admitting that. He's  
3 saying he thought that you weren't -- that your  
4 hours billed were inflated. He's admitting that.

5 MR. ALVA: I understand that, Your Honor, as  
6 to all but the last answer. The last answer he  
7 didn't actually admit. Instead he gave an answer  
8 that was nonresponsive, if I recall correctly.

9 THE COURT: Why don't you repeat the last  
10 question.

11 MR. ALVA: Thank you, Your Honor.

12 THE COURT: But you're kind of like focusing  
13 on the complaint as opposed to just asking him  
14 direct questions.

15 MR. ALVA: Ah, okay.

16 THE COURT: I think he would answer the  
17 questions the way you want him to if you were  
18 just a little more clear and direct.

19 MR. ALVA: Thank you, Your Honor, I'll  
20 rephrase the question.

21 THE COURT: Okay.

22 BY MR. ALVA:

23 Q. Mr. McCool, have you ever said that it is  
24 impossible that the entries reflected in the  
25 fabricated February invoice are real?

1           A.    I believe we stated that it was impossible  
2   for all those charges to be real, yes.

3           Q.    And have you ever said that the fabricated  
4   December and fabricated February invoices contain  
5   fictionalized, made up, concocted time entries, bills  
6   for work that was simply never performed?

7           A.    I believe there was fabricated information  
8   to top off your invoice to get as much money out of  
9   me as you could. So yes, I believe you did that.

10          Q.    And that's as to the December and February  
11   invoices, sir, and not the quantum meruit invoice?

12          A.    Invoices -- go ahead.

13                MS. PEARSALL: Objection. Compound  
14   question. Objection --

15                THE COURT: Sustained. Sustained.  
16   Compound.

17   BY MR. ALVA:

18          Q.    Mr. McCool, I'm going to separate them.  
19   Have you ever said that the December invoice contains  
20   fictionalized, made up, concocted time entries, bills  
21   for work that was simply never performed?

22          A.    I believe a portion of that invoice was  
23   simply not performed, yes. And if it's said in my  
24   statement, then yes, I believe that.

25          Q.    And have you also said that the February

1 invoice contains fictionalized, made up, concocted  
2 time entries, bills for work performed that was  
3 simply never performed?

4 A. There was a January invoice and a February  
5 invoice that was paid immediately. I don't know what  
6 February invoice you're talking about unless you're  
7 talking about the quantum meruit invoice.

8 Q. No. I'm talking about -- I'm asking about  
9 the invoice for the time worked in January and  
10 February.

11 A. I believe I did not question that. I  
12 believe I paid that promptly, without question.

13 BY MR. ALVA:

14 Q. So is it correct, sir, then, that you do not  
15 believe that the February invoice contains any  
16 fictionalized time entries?

17 A. No, I think it grossly -- go ahead.

18 MS. PEARSALL: Objection to the form of the  
19 question. Misstates the witness' testimony.

20 THE COURT: You can answer.

21 A. I think the January and February statements  
22 were grossly overcharged as well. I was done with  
23 Curtis and we had separated ways and so I paid it. I  
24 completely disagree with the hours and the work that  
25 he claimed he did. But I was ready to move on and

1 that's why I paid them, on time, no questions asked.

2 BY MR. ALVA:

3 Q. So it was your belief that the February  
4 invoice billed for work that was never performed?

5 MS. PEARSALL: Same objection. Misstates  
6 the witness' testimony. Vague as to February  
7 invoice.

8 THE COURT: You asked that question five  
9 times.

10 A. Was the February invoice -- I'm a little  
11 confused. Which invoice was the February invoice >is  
12 that a combined January-February invoice that I paid  
13 in one payment?

14 BY MR. ALVA:

15 Q. Yes, it is?

16 A. And it was 44-something thousand?

17 Q. Not 44.

18 A. Something like that, and you were on your  
19 way out, so I paid it even though you didn't earn  
20 that money. I paid it.

21 Q. That wasn't my question, sir, I know you  
22 paid it.

23 My question was, is it your belief that that  
24 invoice billed for work that was never performed?

25 A. You overcharged me as you had done

1 previously. It was a habit of yours.

2 Q. It was a habit of mine. When were you first  
3 charged for work that was never performed, sir?

4 A. You behaved in that pattern from the onset.  
5 I caught onto it late in our engagement, and made a  
6 decision to make a change.

7 MR. ALVA: I'm going to pull up, and for  
8 ease of mechanics, Your Honor, I'm going to use  
9 the copy of the invoice that I have on my  
10 computer. This was the Bar's Exhibit Number --  
11 Ms. Pearsall, help me.

12 MS. PEARSALL: What's the invoice number,  
13 sir?

14 MR. ALVA: This is Invoice Number 90, it was  
15 Exhibit Number 3.

16 MS. PEARSALL: It's the Bar's 3.

17 MR. ALVA: Okay.

18 BY MR. ALVA:

19 Q. So Mr. McCool, I'm showing you what was --  
20 what is my copy of Invoice Number 90, which was  
21 Exhibit Number 3 which was admitted, and I want to  
22 direct your attention to the entry for December 1,  
23 2017. Do you see that?

24 A. No, I don't see it.

25 Q. Do you see that now, sir?



1 A. I see part of, yes.

2 Q. Okay. So I want to direct your attention to  
3 the entry for December 1, 2017. Do you see that  
4 entry?

5 A. On December 1, 2017?

6 Q. Yes.

7 A. Yes, I do.

8 Q. Is this an entry that was for work that was  
9 never performed?

10 A. I'm not going to analyze this. I think the  
11 entire invoice is grossly overcharged. I think most  
12 of the work in this invoice was never done.

13 THE COURT: Can we take this off? I just  
14 want to ask some questions for the parties.

15 MR. ALVA: Pull the exhibit down you say?

16 THE COURT: Yes, just for a moment.

17 MR. ALVA: Yes, sir. (Complies.)

18 THE COURT: So the questions regarding the  
19 work that you did or didn't do was the subject  
20 matter for the Palm Beach case. My case has  
21 nothing do with that. I'm not here to justify my  
22 your billing. And I'm not here to justify  
23 whether \$550 is an overcharge or not.

24 Our issue in this case is you agreed to bill  
25 for \$400 and then because of your not receiving

1 payment on time, you changed the rate to \$550, so  
2 this whole line of questioning is irrelevant to  
3 our proceedings.

4 MR. ALVA: May I respond, Your Honor?

5 THE COURT: Yes. Yes.

6 MR. ALVA: This line of questioning goes  
7 directly to the witness' credibility.

8 THE COURT: Okay. I knew you were going to  
9 say that and that's not the right answer. If you  
10 have a different answer, that might change my  
11 mind. But if you're going to the credibility  
12 route, that's not proper impeachment.

13 MR. ALVA: Well, I'm not trying to impeach  
14 the witness, Your Honor, if I understand  
15 correctly and forgive me, Your Honor, I'm not a  
16 trial attorney. But my understanding is that if  
17 the witness has made a statement that is not  
18 true, I don't have to impeach him. I can just  
19 introduce the statement and then the fact that  
20 the statement is not true shows that the witness'  
21 is less than credible.

22 My only point here is the witness is not  
23 credible. He has made statements that there were  
24 entries billed for work that was never performed  
25 and he's never been able to identify a single

1 one, and he made those statements, Your Honor,  
2 under circumstances requiring him to have a  
3 good-faith basis for making it and he made  
4 similar statements, Your Honor, to the Bar under  
5 oath, under penalties of perjury. So for --

6 THE COURT: Well, here is a rule for you.  
7 You can't use extrinsic evidence to impeach on a  
8 collateral matter and that's what you're trying  
9 to do.

10 MR. ALVA: I understand your ruling, Your  
11 Honor. I didn't think -- I was trying not to  
12 impeach him, I was trying to just show that his  
13 testimony is not credible because he's lied under  
14 oath.

15 THE COURT: But it's a collateral matter and  
16 you're using the complaint, which is extrinsic  
17 evidence, to impeach.

18 So what you're doing is not proper.

19 MR. ALVA: Thank you, Your Honor.

20 THE COURT: Okay.

21 BY MR. ALVA:

22 Q. I'm going to bring up a document that was  
23 introduced in part by counsel for identification  
24 purposes. This is the complete e-mail string,  
25 portions of which were admitted by the Bar as Exhibit

1 30 and Exhibit 25, and my first question to the  
2 witness is, sir, do you recognize this?

3 A. I recognize that first part. I don't know  
4 if that's the full e-mail, but I do recognize the  
5 first part.

6 Q. Thank you for mentioning that, sir. I'm  
7 going to scroll through this for you.

8 Sir, you can see on Page 1 it starts with a  
9 February 27 e-mail that continues on Page 2. The  
10 bottom of Page 2 is a February 26th e-mail. Page 3,  
11 another February 26th e-mail. That continues up  
12 until Page 8, there's another February 26th e-mail.

13 Page 9, a February 21 e-mail. Page 11, a  
14 February 21 e-mail and a February 16 e-mail. Two  
15 more February 16 e-mails on Page 12 and 13 and 14.  
16 And that's the beginning of the e-mail string.

17 Do you recognize the entire document, sir?

18 A. I recognize the beginning of it and I've  
19 read through the entire document at one point so I've  
20 seen it. I can confirm that.

21 Q. Thank you. So I want to go through this  
22 e-mail starting with the first e-mail in the string.  
23 So this begins on Page 14.

24 MR. ALVA: Actually, before I do that, Your  
25 Honor, I'd like this entered as Defendant's

1 Exhibit Number 1 -- or Respondent's.

2 THE COURT: Yes. Ms. Pearsall?

3 MS. PEARSALL: Mr. Alva, can I see the first  
4 part of the document? Could you go back to Page  
5 1, again, please?

6 MR. ALVA: Yes. There it is. Do you need  
7 it to be larger?

8 MS. PEARSALL: Not too large because I won't  
9 be able to see it. And if you could go to the  
10 final page, please.

11 MR. ALVA: (Complies.)

12 The one before that?

13 MS. PEARSALL: Yes, please, so I can see the  
14 date. Thank you.

15 MR. ALVA: This is actually the beginning of  
16 the first e-mail at the bottom of Page 14.

17 MS. PEARSALL: Could you scroll down on that  
18 page? No, the other way. Scroll down because  
19 it's narrow so I'm missing the date.

20 MR. ALVA: Oh, I'm sorry.

21 MS. PEARSALL: If you just go back on that  
22 page. Okay.

23 MR. ALVA: (Complies.)

24 MS. PEARSALL: Okay, that's fine. I don't  
25 have an objection, Your Honor.

1 THE COURT: All right. So that e-mail will  
2 be Respondent 1.

3 (Thereupon, the exhibit was admitted into evidence.)

4 BY MR. ALVA:

5 Q. Mr. McCool, if I understand correctly, you  
6 authorized Ms. O'Rourke to ask some questions about  
7 the December invoice; is that correct?

8 A. Yes.

9 Q. And what was the purpose of the questions  
10 that she was asking?

11 A. She asked me for permission to talk to you  
12 about the invoice. I didn't get specifics from her.

13 Q. So you don't know what you were trying to  
14 accomplish by asking the questions?

15 A. She reviewed the invoices for me and she had  
16 questions and I authorized her to talk to you about  
17 them.

18 Q. Were her questions about the amount of the  
19 invoice?

20 A. I didn't ask her. She was going to ask you  
21 questions and she did, and you can see them in the  
22 e-mail there.

23 Q. So you don't know why these questions were  
24 being asked?

25 A. Because we disagreed with the extremely high

1 amount of the invoice. I gave her leeway to ask you  
2 questions.

3 Q. Well, at this point, sir, had you made any  
4 decisions about whether to pay the invoice?

5 A. I made the decision that it was okay for her  
6 to ask you questions and we were going to try to  
7 resolve it. That was the goal.

8 Q. That wasn't my question, sir. At this point  
9 in time, February 16, 2018, had you made a decision  
10 yet as to whether to pay the invoice?

11 A. I don't recall exactly when the decision was  
12 made, but it happened quickly thereafter that I paid  
13 it in full because I was tired of the back and forth  
14 bickering between you and Trisha. It was  
15 unproductive, and I did not want it to go on any  
16 longer so, yes, I paid it.

17 Q. Sir, that wasn't my question to you, sir.  
18 Can you answer my question?

19 MS. PEARSALL: Objection. Argumentative.  
20 Asked and answered.

21 THE COURT: Overruled.

22 A. What is the question, Curtis?

23 MR. ALVA: Madam Reporter, would you read  
24 the question back to the witness?

25 (Thereupon, the court reporter read back the

1 requested portion.)

2 A. The invoice amount was not settled so no, we  
3 hadn't determined what was going to be paid but I was  
4 going to pay the invoice and I did. I don't know if  
5 it happened that day, it may have happened the day  
6 after. But shortly thereafter, this was resolved.

7 BY MR. ALVA:

8 Q. So at the time these questions are being  
9 asked on February 16th, you had not decided to pay  
10 the invoice; is that correct?

11 MS. PEARSALL: Objection. Asked and  
12 answered.

13 THE COURT: Sustained.

14 A. Should I answer that?

15 THE COURT: No.

16 BY MR. ALVA:

17 Q. Mr. McCool, if you go to Page 12 now of this  
18 exhibit, do you see an e-mail from Ms. O'Rourke dated  
19 the 16th at 2:48 p.m., to me?

20 A. Yes.

21 Q. And do you see it says, "I'm willing to  
22 accept \$18,240"?

23 A. Yes.

24 Q. Had you authorized Trish to accept \$18,240?

25 A. I didn't -- I wasn't aware of it. I wasn't



1 copied on that e-mail so no, I didn't say yes or no  
2 to that. It wasn't presented to me.

3 Q. Well, did Ms. O'Rourke have authority to  
4 make offers that had not been cleared by you?

5 A. I was inclined to pay this invoice in full  
6 if you couldn't agree with us to some kind of  
7 settlement. And so I left some leeway there to give  
8 her the opportunity to discuss with you what might be  
9 acceptable.

10 So, yes, I mean, she had some freedom to go  
11 back and forth with you without my involvement.

12 Q. So at this point in time, 2:48 p.m., you had  
13 already made the decision to pay the bill in full if  
14 you couldn't pay a discount?

15 MS. PEARSALL: Objection. Misstates the  
16 witness' testimony or mischaracterizes the  
17 witness' testimony.

18 THE COURT: He can answer the question.

19 A. I would have paid it in full and as I did,  
20 even though I did not believe he made any good faith  
21 effort on your part to resolve the issue, but I  
22 absolutely always had an intent to pay the bill,  
23 whether it was in its entirety or slightly  
24 discounted, I was okay with it, especially after you  
25 threatened us with litigation. I didn't want to go

1     there and so I paid it in full.

2     BY MR. ALVA:

3           Q.     Had you been threatened with litigation --

4           A.     You threatened me and you threatened my  
5     company.

6           Q.     Mr. McCool, you have to let me finish my  
7     question or else you can't answer it correctly.

8                     Had you been threatened with litigation as  
9     of February 16th, 2:48 p.m.?

10          A.     I believe there was a threat of this, of  
11     litigation, yes, court action or collections of some  
12     sort, I believe.

13          Q.     Do you have any writing you can point to as  
14     of February 16th, 2:48 p.m., that threatened  
15     collections or court action?

16          A.     Yes, there is some. I believe you were --  
17     and again, it's documented. But you were let go, I  
18     believe, February 13th, which is prior to this. And  
19     that was because you had threatened to possibly take  
20     it to court and seek treble damages.

21                     I didn't think back and forth discussion of  
22     this invoice warranted any further effort. At that  
23     point, you had ruined the relationship and I was  
24     ready to move on.

25                     So at that point, yeah, I made the decision,

1 let's just pay this invoice and let's move forward.  
2 I don't know if it was exactly this day, but it was  
3 shortly thereafter. I think it's documented. I  
4 think I tell you, let's pay it and let's go.

5 Q. So, sir, what information were you trying to  
6 get from me that you needed in order to be -- to make  
7 a decision as to the representation?

8 A. I gave Trisha the opportunity to speak with  
9 you. I made the final decision. So I didn't need  
10 her to come to an agreement for me to make the  
11 decision on what I would pay. So that -- I don't  
12 know. Her communication with you didn't impact my  
13 final decision.

14 Q. So you didn't need the answers to the  
15 questions that she was asking in order to make the  
16 decision to pay because you'd already made it; is  
17 that correct?

18 A. I wanted to give it an opportunity for her  
19 to get answers to her questions. It wasn't  
20 happening. And so I made the decision to pay it.

21 When I saw it deteriorating and threats of  
22 litigation and treble damages and everything being  
23 thrown out there, I didn't want anything to do with  
24 that and you knew it and you were just trying to get  
25 as much as you could.

1 MR. ALVA: All right. I make a motion to  
2 strike the speculation at the end of that answer.

3 THE COURT: All right, it's stricken.

4 MS. PEARSALL: The Bar would object to  
5 striking the answer. I thought it was  
6 completion, Your Honor. Thank you.

7 BY MR. ALVA:

8 Q. Mr. McCool, is it your position that my firm  
9 was obligated to return your retainer to you when you  
10 demanded it and there was a dispute as to the  
11 ownership of it?

12 MS. PEARSALL: Objection. Compound  
13 question.

14 THE COURT: Sustained.

15 BY MR. ALVA:

16 Q. Mr. McCool, is it your position that I  
17 should have returned the retainer when you demanded  
18 it?

19 A. Yes. You had been paid in full.

20 Q. And have you ever taken the position that  
21 the retainer should have been put into trust and held  
22 there until the dispute was over?

23 A. I don't recall that. I thought it was in  
24 escrow.

25 Q. So you don't recall ever saying that it

1 should be held in trust until the dispute is  
2 resolved?

3 A. I don't recall if those words were used. I  
4 don't remember that.

5 Q. Let me see if I can refresh your  
6 recollection, Mr. McCool.

7 THE COURT: That's not a proper predicate.

8 MR. ALVA: I'm sorry?

9 THE COURT: You have to lay a predicate  
10 before you do anything.

11 MR. ALVA: Your Honor, I think he's  
12 testified he doesn't recall making that  
13 statement.

14 THE COURT: Right, but you have to lay a  
15 proper predicate to refresh his recollection.  
16 You can't just show him the document and say,  
17 "Look at it." You have to lay a predicate before  
18 you do that.

19 MR. ALVA: Oh, I'm sorry, Your Honor.

20 BY MR. ALVA:

21 Q. Mr. McCool, do you recall filing a rebuttal  
22 in the grievance proceeding?

23 A. I do not.

24 Q. Do you recall filing a grievance related to  
25 this matter with the Florida Bar?

1           A.    What matter?  I don't understand the  
2 question.

3           Q.    The billing dispute between my firm and your  
4 firm.

5           A.    My filing with the Florida Bar, I remember  
6 filing my complaint with the Florida Bar, yes.

7           Q.    All right, and do you recall that a response  
8 was filed by me?

9           A.    Yes, I believe.

10          Q.    Do you recall that after the response was  
11 filed, that Dr. ColorChip filed a rebuttal to my  
12 response?

13          A.    I don't recall, it's been almost five years,  
14 but I don't recall.

15          Q.    Do you recall on May 25th, 2018, in a letter  
16 addressed to Annemarie Craft, Bar counsel for the  
17 Florida Bar, making the statement that, "Because  
18 there is a dispute over the return of our \$25,000  
19 retainer, Mr. Alva was (inaud.) abscond with our  
20 money.  Under Rule 5-5.1(f), he was required to keep  
21 our funds in trust until the dispute was resolved."

22                   Do you recall making that statement?

23           MS. PEARSALL:  Objection.  Compound question  
24 referring to items not in evidence.  Improper  
25 predicate.

1 THE COURT: He can answer.

2 A. I don't even know what that 5.5, if that's  
3 something my attorney submitted on my behalf and I  
4 approved it. I don't know what that is, Your Honor.  
5 I'm being asked questions that my attorney would  
6 probably object to. And I'm getting absolutely no  
7 representation here. And these are questions I  
8 can't -- I don't know the legal answers to some of  
9 these questions.

10 BY MR. ALVA:

11 Q. Let me show you a document, Mr. McCool, and  
12 see if that helps to refresh your recollection.

13 Is that document appearing on your screen,  
14 Mr. McCool?

15 A. Yes.

16 Q. Do you see that it's a letter dated May 25,  
17 2018, addressed to Annemarie Craft, Bar counsel?

18 A. Yes.

19 Q. And I'm going to scroll to the end of the  
20 document or the end of the letter. Do you see on  
21 Page 3 of the document what appears to be a signature  
22 block and it says "regards" and then in handwriting  
23 it says "Dan McCool," and above that are initials and  
24 below that is typed your name?

25 A. Yes.

1 Q. Do you recognize this, sir, as a letter that  
2 you authorized to be sent to the bar?

3 A. Yes. It appears that it was signed and  
4 initialed by, and we have been through this, by  
5 Trisha O'Rourke, and I authorized it.

6 Q. And could you read for me, sir, paragraph 7  
7 of that document?

8 A. "Because there is a dispute" --

9 MS. PEARSALL: Objection.

10 THE COURT: Sustained. Sustained.

11 MR. ALVA: Could I hear what the objection  
12 is, Your Honor?

13 THE COURT: It's not in evidence. You can't  
14 read from a document that's not in evidence.

15 MR. ALVA: Even to refresh recollection,  
16 Your Honor?

17 THE COURT: You didn't lay a predicate to  
18 refresh recollection.

19 MR. ALVA: Thank you, Your Honor.

20 Your Honor, I'd like this admitted into  
21 evidence as Respondent's Exhibit Number 2.

22 THE COURT: Any objection?

23 MS. PEARSALL: Can I see the full document,  
24 please?

25 MR. ALVA: Yes, you may. This is Page 1,



1 and it's a three page letter, and then there are  
2 exhibits to it. And there are four pages of  
3 exhibits. And that's the conclusion of the  
4 document.

5 MS. PEARSALL: Your Honor, I'll be very  
6 quick.

7 Your Honor, I have a limited objection. The  
8 highlighting on the document, I believe that was  
9 made by Mr. Alva. And so I'm objecting to the  
10 highlighted portions on the document and, Mr.  
11 Alva, is the document itself marked or Bates  
12 stamped in any way?

13 MR. ALVA: This copy of it is not and I  
14 think that tonight I can make the highlighting go  
15 away. I think my assistant can make the  
16 highlighting go away, not me.

17 MS. PEARSALL: Other than that, if it  
18 maintains the same pages, I would object to the  
19 highlighting, Your Honor, I don't have an  
20 objection.

21 THE COURT: Again, I'm going to be  
22 consistent, I'm going to let it in and just  
23 strike the highlighting, not the text itself.

24 So that will be Respondent's 2.

25 (Thereupon, the exhibit was admitted into evidence.)

1 THE COURT: And that's a May 25, 2018,  
2 e-mail.

3 MR. ALVA: It's a letter, actually, Your  
4 Honor, to Annemarie Craft. I don't believe it  
5 was sent by e-mail. It was sent by UPS Next Day  
6 Air.

7 THE COURT: Okay, so that will be the letter  
8 from May 25, 2018, to the Florida Bar.

9 MR. ALVA: Yes, Your Honor.

10 THE COURT: Okay. It's in.

11 BY MR. ALVA:

12 Q. Mr. McCool, would you be kind enough to read  
13 paragraph 7 into the record?

14 A. "Because there is a dispute over the return  
15 of our \$25,000" -- I can't see the whole thing --  
16 "\$25,000 retainer" -- Mr. Alva, I can't -- it's  
17 blocking. Move it up.

18 Q. Is that better?

19 A. Move it up and to the left if you can.  
20 There, that's it.

21 "Mr. Alva was not entitled to simply abscond  
22 with our money, and then under Rule 5.51 he was  
23 required to keep our funds in trust until the dispute  
24 was resolved. Mr. Alva's response to our complaint  
25 admits that he refused to return our retainer funds."

1           Q.    Thank you. During direct examination, sir,  
2 I believe you testified that the reason that you  
3 didn't pay the December invoice by January 19th is  
4 because you have questions about the invoice; is that  
5 correct?

6           A.    That was one of the reasons. I didn't see  
7 the invoice until I got back from overseas. So that  
8 also explains why it was later than the date that you  
9 say you issued it. I didn't see it until I got back  
10 into the country. And I reached out to you and said,  
11 "I'm in receipt of the invoice but we have some  
12 questions."

13          Q.    Why didn't you mention that reason during  
14 your testimony on direct?

15                MS. PEARSALL: Objection. Argumentative.

16                THE COURT: Sustained. Sustained.

17 BY MR. ALVA:

18          Q.    Are there any other reasons, sir, why you  
19 didn't pay the invoice on January 19th?

20          A.    We had questions on it and I gave Trisha the  
21 authorization to talk to you about it. So until that  
22 was resolved, in some fashion, it was not paid.

23          Q.    Well, I understand, sir, you have two  
24 reasons; one, you didn't see it because you were  
25 traveling, and two you had questions about it. My

1 question to you is, is that all of the reasons that  
2 you had for not paying it at that time?

3 A. We had questions about it and we were  
4 waiting for resolution.

5 Q. Okay, and there were no other reasons why  
6 you didn't pay it?

7 A. Well, I thought it was extremely high. And  
8 so I questioned the validity of what was included in  
9 those charges and that's why I asked Trisha to go  
10 ahead and proceed with asking some questions to get  
11 some answers.

12 Q. Isn't it true, sir, that the reason you  
13 didn't pay the invoice when it was due was because  
14 you couldn't afford the amount in legal fees?

15 A. No, that's not true.

16 Q. Have you ever said that's the reason you  
17 didn't pay it was because you couldn't afford the  
18 mounting legal fees?

19 A. No. It was because the invoice I thought  
20 was excessive and I wanted to get answers.

21 Q. Mr. McCool, do you recall sending an e-mail  
22 to your brother David on February 13th, at 3:31 p.m.,  
23 where you said, "I truly can't afford the mounting  
24 legal fees"?

25 MS. PEARSALL: Objection. Referring to

1 items not in evidence.

2 THE COURT: Sustained.

3 BY MR. ALVA:

4 Q. Mr. McCool, do you recall making a statement  
5 to your -- do you recall telling your brother David  
6 McCool that you truly couldn't forward the mounting  
7 legal fees?

8 A. I may have said that to him and I couldn't  
9 afford to pay your high fees anymore. They were  
10 excessive. And I retained another firm to come in  
11 and get the value added that I needed to get the  
12 settlement and the deal resolved.

13 So, no, I could not afford to carry both of  
14 you and you were hammering me with excessive fees.

15 MR. ALVA: Your Honor, I move to strike the  
16 last of that that was not responsive to my  
17 questions.

18 THE COURT: Sustained and stricken.

19 BY MR. ALVA:

20 Q. So Mr. McCool, I want your testimony to be  
21 clear. Do you admit that you told your brother that  
22 you couldn't afford the mounting legal fees or do you  
23 not know one way or the other?

24 MS. PEARSALL: Objection. Compound  
25 question. Relevance.

1           A.     Can I see the e-mail? I mean, you know,  
2     what I can afford and what I can't afford is  
3     something -- a personal decision for me.

4           THE COURT: I think he's already answered  
5     the question. He's already answered the  
6     question. We don't have to make it clear. He  
7     answered it.

8           MR. ALVA: Thank you, Your Honor.

9     BY MR. ALVA:

10          Q.     Mr. McCool, did you ask any questions about  
11     the invoice during the ten days between January 9th  
12     and January 19th?

13          A.     I don't know. I don't know. I don't think  
14     I was back until the 19th, so I don't know for sure.

15          Q.     So, you can't, as you sit here now, identify  
16     a single question that you were asked about the  
17     invoice before January 19th?

18          MS. PEARSALL: Objection. Asked and  
19     answered.

20          THE COURT: Mr. Alva, again, I just don't  
21     understand where we're going with this. This has  
22     nothing do with your complaint. This has  
23     everything to do with your case in Palm Beach  
24     County, but that has nothing do with your  
25     complaint here.

1           MR. ALVA: My concern, Your Honor, is that  
2           the witness has testified that he needed  
3           information in order to decide whether to pay the  
4           invoice. But he didn't ask any questions during  
5           the period when he could have questioned the  
6           invoice, and my concern, Your Honor, is that they  
7           weren't asking the questions in order to decide  
8           whether to pay the invoice, they had already  
9           decided that. And they were only asking the  
10          questions to make it more expensive for me to  
11          collect.

12          So, Your Honor, the violation that the bar  
13          is alleging is that there was information that  
14          the client had to have in order to make a  
15          decision about whether to pay the invoice. And  
16          the fact -- and the argument, the evidence, Your  
17          Honor, that I'm looking for is evidence that  
18          would suggest that they had already decided to  
19          pay and they didn't need the answers to any of  
20          these questions. They were just making  
21          cumbersome and expensive for me to collect.

22          THE COURT: So I do agree with you to a  
23          certain extent in that I guess one of the  
24          accusations the Bar is making is that you weren't  
25          responding to the company's questioning -- I'm

1 not getting a clear picture on that whole issue.

2 I think it's more towards Ms. Pearsall.

3 I mean, when you allege that he -- that  
4 Mr. Alva wasn't acting in communication with  
5 Dr. ColorChip, was that legal issues or was that  
6 billing issues?

7 MS. PEARSALL: Okay. I'll answer your  
8 question this way: I guess you're going towards  
9 the rule that the Bar has charged 4-1.4(b), if  
10 that's where you are or if you're talking about  
11 the language within the complaint.

12 If we're going with 4-1.4(b), the lawyer  
13 shall explain the matter to the extent reasonably  
14 necessary to permit the client to make informed  
15 decisions regarding the representation. The  
16 information presented by the Bar goes to the  
17 client's ability to make a choice about whether  
18 he wants to, A, start the representation with an  
19 attorney based on the information, whether the  
20 lawyer has explained all the matters needed for  
21 the client to make an informed decision regarding  
22 entering into the representation, i.e., if I  
23 don't pay the bill at a specific date, then I run  
24 the risk of having the attorney increase the  
25 charges and back-bill me for services I've



1 already paid for.

2 And as far as the questions, the witness has  
3 gone through and testified that he had questions,  
4 he authorized one of his employees to put forth  
5 those questions to Mr. McCool. He just testified  
6 once he received -- once he got back into -- from  
7 overseas and he saw the invoice, he reached out  
8 to Mr. Alva and told him, "I have questions."  
9 And his assistant or employee sent over a number  
10 of questions to Mr. Alva.

11 So hopefully, that answers the questions  
12 for, Your Honor. If not, I'll be happy to  
13 expand.

14 THE COURT: So it wasn't -- but it wasn't  
15 Mr. McCool who was asking the questions, it was  
16 your next witness. That was the one that was  
17 asking the questions.

18 MS. PEARSALL: Well, Mr. McCool testified  
19 that he authorized Ms. O'Rourke to go forth and  
20 communicate with Mr. Alva some questions. He  
21 also just testified that he had questions about  
22 the bill and the charges in the December invoice.

23 THE COURT: He had rhetorical questions  
24 about the bill. He read it and was concerned  
25 about the validity of the bill, but he, from what

1 I've heard, didn't direct those questions to  
2 Mr. Alva, he directed someone else in the company  
3 to address those questions to Mr. Alva.

4 MS. PEARSALL: That's some of the testimony  
5 that I've heard so far, and Mr. McCool was also  
6 part of some of those e-mails where the questions  
7 went back and forth, and Mr. McCool mentioned in  
8 some of the e-mails as well as, you know, as part  
9 of the responses back to Mr. Alva regarding the  
10 questions.

11 MR. ALVA: Your Honor, may I address the  
12 relevance?

13 THE COURT: Yes.

14 MR. ALVA: Okay. So the relevance of this  
15 line of questioning is that the Bar is saying  
16 that I should be disciplined because I failed to  
17 explain, to the extent necessary, to allow the  
18 client to make an informed decision.

19 We now know from the testimony that the only  
20 decision the client was making at this time,  
21 which is the 16th of February, which is three  
22 days after I was terminated, so there is no  
23 ongoing representation. The only question left  
24 is how much are they going to pay. And the  
25 witness is testifying that he made the decision

1 on February 13th to pay.

2 So they have already got all the information  
3 that they need. So by asking me these questions  
4 and then saying I should be disciplined because I  
5 didn't give them enough information, they don't  
6 have a need for any information because they made  
7 the decision on the 13th.

8 THE COURT: So I think you're twisting the  
9 evidence a little bit. I think that Mr. McCool  
10 was so frustrated in dealing with you that he  
11 basically threw his hands up and said, "I give  
12 up." I think that's kind of a different  
13 interpretation than you're taking.

14 So just because he paid you doesn't mean  
15 that it was resolved. He just wanted to move on  
16 with his business and not have this pushing him  
17 back. But I don't -- I'm not hearing all that  
18 much about Mr. Alva not responding to Mr. McCool  
19 regarding his legal obligations as a lawyer to  
20 keep a client informed. And I think that a lot  
21 of this goes towards the next witness, who  
22 actually had the conversations with Mr. Alva, not  
23 so much someone who is working under Mr. McCool  
24 who is basically following Mr. McCool's  
25 instructions.

1 MS. PEARSALL: Your Honor, if I could just  
2 have a brief 20 seconds.

3 The Bar, in the beginning of its questioning  
4 of Mr. McCool, asked him specific questions  
5 related to the retainer agreement or engagement  
6 letter. Would you have liked to have known this  
7 information when you entered the engagement  
8 agreement? When you signed up on September 19,  
9 2016, would you have liked to have known that if  
10 you did not pay any invoice within ten days, that  
11 the bill would be increased on you, that the  
12 attorney rate would go up \$100 an hour, that the  
13 paralegal rate would go up \$25 an hour? That  
14 goes to 4-1.45.

15 An attorney is under a duty to reasonably  
16 explain to the client so they can make a decision  
17 about the representation. If you know at the  
18 beginning that this could happen to you, would  
19 you have signed up with Mr. Alva? All of this  
20 goes to --

21 THE COURT: I'm not really focused on that  
22 issue. I'm more focused on, I guess, Mr. Alva's  
23 representation and whether he kept his client  
24 informed of the progress of the case and kept the  
25 client involved so that they could make

1 reasonable decisions about their representation,  
2 and I really haven't heard anything to the  
3 contrary.

4 I mean, Mr. Alva is spending a lot of time  
5 cross-examining the witness on fees issue, which  
6 I think has more to do with a breach of contract  
7 than the Bar ethics violation accusations.

8 I just don't want to spend -- I just don't  
9 want to spend, you know, the entire trial  
10 re-litigating the Palm Beach County case because  
11 my issues are actually very different.

12 MR. ALVA: Thank you, Your Honor. I think  
13 -- I think I can go to something that you'll find  
14 more directly relevant.

15 THE COURT: Okay.

16 BY MR. ALVA:

17 Q. So, Mr. McCool, I want to go back to Exhibit  
18 Number 1, which are the e-mails that are going back  
19 and forth between Ms. O'Rourke?

20 A. Excuse me, sorry to interrupt. Can we take  
21 a are short break? It's quarter to seven here in  
22 Australia. I've been up all night on this, and my  
23 wife just woke up and we have to take care of our  
24 daughter. So can we take a short break?

25 THE COURT: How much time do you need?

1 A. Ten minutes.

2 THE COURT: Take ten minutes.

3 A. Okay.

4 MR. ALVA: Thank you, Your Honor.

5 (Thereupon, a brief recess was taken.)

6 MS. PEARSALL: Otherwise, it would be up to  
7 the witness, I believe that 10:30 might be better  
8 for him. It doesn't --the time doesn't matter.

9 A. Yeah, I'm 15 hours ahead of you guys. So  
10 nothing is convenient. I would rather extend it now  
11 and cover what needs to be covered and not have to  
12 stay up through the night tomorrow all night long.

13 THE COURT: All right. Well, let's just  
14 finish, Mr. Alva.

15 MR. ALVA: Your Honor, I don't think there's  
16 any likelihood that we're going to finish by  
17 4:15. I'll go as quickly as I can.

18 THE COURT: Okay. All right. I'm not -- I  
19 don't cut people off. I give you your full  
20 trial, both sides.

21 BY MR. ALVA:

22 Q. Mr. McCool, eventually you asked some  
23 questions about the December invoice directly; is  
24 that correct?

25 A. I don't recall if I did. I definitely had

1 Trisha ask questions.

2 Q. Okay. Let's go again to Exhibit Number 1.  
3 And I want to direct you to Page 3, Mr. McCool, and  
4 I'm going to put that on the screen for you.

5 Do I need to make it bigger? Is that  
6 better?

7 A. No, you're good right there.

8 Q. So let's go to Page 6 -- I'm sorry, Page 8.  
9 So on Page 8 if you see, here's the pages from you to  
10 me and it's regarding a December bill again.

11 Do you see that?

12 A. February 26th at 12:13 a.m.?

13 Q. Yes.

14 A. Yes.

15 Q. And do you see where it says,  
16 "Curtis/Trisha, let's put this bickering behind us"?

17 A. Yes.

18 Q. So you said you sent that e-mail to me and  
19 the page I want to direct you to now is the response.

20 A. Can I see what the full e-mail was before I  
21 see your response? I can't read --

22 Q. Which part do you want to see, sir?

23 A. Well, I'd like to see the full body of the  
24 e-mail --

25 Q. Oh, the entire document?

1           A.    -- sp I understand how these are connected,  
2   because what you were having me look at something  
3   that I had written about you guys bickering and I'd  
4   like to see what it says there because I remember  
5   that. But it has been five years.

6           Q.    Okay, I think I understand what you're  
7   looking for.

8                    So let me show you -- what I've done here,  
9   sir, is in this e-mail string between you and I, if  
10   you look here and if you see -- do you see the red  
11   part, sir?

12          A.    I do. What's above that though, Curtis? I  
13   mean, you're showing me something initially that was  
14   from me. I want to see what you're responding to  
15   rather than this red inserted text which I don't  
16   really see what I wrote to you. So I'd like to see  
17   the body of the e-mail that you first pointed out to  
18   me, so I can see what you're responding to.

19          Q.    Let me see if I can show it to you. Do you  
20   see above the red there is exactly the same language  
21   you said, "Let us put this bickering behind us."

22                   Do you see that in blue?

23                  MS. PEARSALL: Your Honor, even if the  
24   witness can see that, the witness has asked to  
25   see the actual e-mail that he sent and I think it



1       should be allowed if he has to respond to a  
2       question.

3       BY MR. ALVA:

4       Q.    This is all red --

5       A.    These red comments made are very similar to  
6       handwritten notes that were made in some of the  
7       exhibits that were shown earlier.  It's very  
8       misleading the way that's put together.

9               MR. ALVA:  Mr. McCool -- Your Honor, I'd  
10      like to strike the comments that he made.

11      BY MR. ALVA:

12      Q.    This is a single document.  And this is the  
13      original document, other than where I highlighted in  
14      yellow Curtis and Trisha, this is the original  
15      document that has already been admitted as an  
16      exhibit.  It's an e-mail string between Mr. McCool  
17      and myself, the language Mr. McCool is asking about  
18      is right there at the top of the screen.

19      A.    Is that the first part of it?  Is that the  
20      beginning of it?  I'm trying to see the whole thing,  
21      so you if scroll all the way up to the beginning of  
22      this e-mail --

23               THE COURT:  Send Mr. McCool the entire  
24      document so he can read it.

25      MR. ALVA:  I can send it to him, Your Honor.

1 THE COURT: Since it's almost 4:15, we're  
2 going to come back tomorrow at 10:30 and he'll  
3 have an opportunity to have read the entire  
4 document, since it's 17 pages and then you can  
5 ask him questions regarding that.

6 MR. ALVA: I think I can send it to him  
7 right now, Your Honor.

8 THE COURT: Okay. We're going to start back  
9 up at 10:30 tomorrow morning and just go ahead  
10 and send Mr. McCool that document.

11 MR. ALVA: Mr. McCool, is your e-mail  
12 address the same?

13 A. Dan@drcolorchip.com.

14 MR. ALVA: That's what I have. I will send  
15 it, Your Honor. Actually, probably my assistant  
16 will send it because I don't see the button that  
17 I'm looking for but I'll send it right now.

18 THE COURT: Thank you, everyone. Have a  
19 good night.

20 MR. ALVA: Thank you, Your Honor.

21 MS. PEARSALL: Oh, Your Honor.

22 THE COURT: Yes.

23 MS. PEARSALL: The people in the waiting  
24 room.

25 THE COURT: We need to take the screen share

1 off.

2 MR. ALVA: Yes. (Complies.)

3 THE COURT: Joi, you don't have her number?

4 MS. PEARSALL: I contact her through her  
5 counsel Your Honor, I may have her telephone  
6 number, but I try to communicate through their  
7 counsel.

8 MR. ALVA: I see she's popping up on the  
9 screen down in the corner.

10 A. What's the schedule for tomorrow?

11 THE COURT: Same time, it's ten o'clock  
12 Eastern Standard Time.

13 MS. PEARSALL: I thought it was 10:30.

14 THE COURT: 10:30. 10:30. 10:30.

15 MS. PEARSALL: Her audio is not coming up.

16 A. And what is the -- what is it tomorrow  
17 that's taking place?

18 THE COURT: Finishing up cross-examination.

19 A. That's of me at first?

20 THE COURT: Correct.

21 A. And then what follows that tomorrow?

22 THE COURT: Trish is a witness.

23 Ms. Pearsall can give you a breakdown of all the  
24 witnesses.

25 A. Okay.

1 THE COURT: All right, she's not connecting.  
2 So we're done for today and, Ms. Pearsall, you  
3 can get ahold of her.

4 MS. PEARSALL: Okay.

5 THE COURT: All right. Thank you.

6  
7 (Thereupon, the above proceedings were adjourned at  
8 4:00 p.m.)

9  
10 \* \* \*

## R E P O R T E R ' S   C E R T I F I C A T E

STATE OF FLORIDA  
COUNTY OF BROWARD

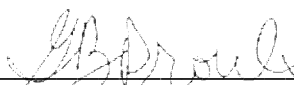
I, Gizella Baan-Proulx, Federally-Certified  
Realtime Reporter, Registered Professional Reporter,  
and Notary Public in and for the State of Florida at  
large, do hereby certify that I was authorized to and  
did report said hearing in stenotype; and that this  
is a true and correct transcription of my shorthand  
notes of said hearing.

I further certify that said hearing was taken at  
the time and place hereinabove set forth and that the  
taking of said hearing was commenced and completed as  
hereinabove set out.

I further certify that I am not an attorney or  
counsel of any of the parties, nor am I a relative or  
employee of any attorney or counsel of party  
connected with the action, nor am I financially  
interested in the action.

The foregoing certification of this transcript does  
not apply to any reproduction of the same by any  
means unless under the direct control and/or  
direction of the certifying reporter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this June 13, 2023.

  
Gizella Baan-Proulx, FCRR, RPR



Tricia O'Rourke

From: Curtis Alva <Curtis@alvagleizer.com>  
Sent: Wednesday, February 21, 2018 2:22 PM  
To: Tricia O'Rourke; Dan McCool  
Subject: RE: revised re: dan RE: Questions on Dec bill

Exhibit 8  
(multiple threats by  
Alva)

Dan is correct, but let me explain it in more detail in hopes that we all can come to a mutual understanding of my proposal. I am happy to answer your 7 questions, if they are being asked in a good faith attempt to move the ball forward, in other words, we find out how much of the December bill is actually subject to good faith dispute. It appears that we have that number, \$6,800. Dr. ColorChip then pays in full the amount that is not subject to dispute, \$18,240 and I answer all of your 7 questions about the \$6,800, to see if that narrows the dispute to a number we can agree upon. I understand from your email that Trish may not agree with that proposal. The letter doesn't say what Dan feels about it. However, if Dr. ColorChip does not pay in full the undisputed amount, \$18,240, then I will not believe that your questions are being asked in good faith. In that event, I will send a formal notice of breach of contract and demand payment in full in 3 days. Because Dr. ColorChip is already in breach, I will have 2 options: [a] enforce the contract as written and seek \$25,040, or [b] seek payment for what Dr. ColorChip would owe me if there was no contract, in other words, if we had not agreed to discount my rate to \$400 per hour, in other words, \$550.00 per hour. My rough guess is that the higher rate would change Dr. ColorChip's indebtedness from \$25,040 to \$125,000, plus, if there is no good faith on Dr. ColorChip's part, a claim for bad faith, misrepresentation and punitive damages equal to treble the amount of the claim, or \$375,000. I don't want to believe that Dr. ColorChip is acting in bad faith. I hope that your response allows me to keep that belief. As you said, you are professionals who want to be treated professionally, as am I.

Curtis Alva  
Attorney at Law  
[curtis@alvagleizer.com](mailto:curtis@alvagleizer.com)

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IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

Supreme Court Case No: SC21-1564  
The Florida Bar File No: 2018-50,796(15A)

THE FLORIDA BAR,

Complainant,

vs.

CURTIS S. ALVA,

Respondent.

\_\_\_\_\_ /

Friday, January 20, 2023  
1:00 p.m. - 4:00 p.m.

TAKEN BY VIDEOCONFERENCE

Hearing in above-styled cause taken  
before the Honorable Dale C. Cohen, Judge of  
the above-styled court, reported by Ileana L.  
Carril, Shorthand Reporter and Notary Public  
in and for the State of Florida at Large,  
pursuant to Notice filed in the above cause.

1 APPEARANCES:

2  
3 ON BEHALF OF THE COMPLAINANT:

4 The Florida Bar  
5 1300 Concord Terrace, Suite 130  
6 Sunrise, Florida 33323  
7 BY: Joi L. Pearsall, Esq.

8 ON BEHALF OF THE RESPONDENT:

9 Law Office of Curtis S. Alva  
10 200 East 13 Street  
11 Riviera Beach, Florida 33404  
12 BY: Curtis S. Alva, Esq.

13  
14 - - - - -  
15  
16  
17  
18  
19  
20  
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22  
23  
24  
25



1           THE COURT: All right. Mr. Alva, I  
2 think you were in the middle of your  
3 testimony.

4           MR. ALVA: Yes, Your Honor. Before  
5 we resume, I have some scheduling  
6 questions.

7           How much time would you like to have  
8 reserved for closing argument today?

9           THE COURT: How much time do you want  
10 for closing?

11          MR. ALVA: Ms. Pearsall, do you have  
12 an amount of time you would like?

13          MS. PEARSALL: I think I'll need at  
14 least 30 minutes.

15          And with that question, I would also  
16 ask, if we're just only going to do  
17 closings and any information regarding  
18 sanctions, do you want that done today as  
19 well or is that going to be done on  
20 another date, any sanctions  
21 recommendation, Your Honor?

22          THE COURT: Well, I don't know how  
23 long it's going to take for the respondent  
24 to complete the case with  
25 cross-examination, and to rest. I don't

1 know where we're going to be at. I'm  
2 flexible. Obviously, my preference is to  
3 finish the case today. I'm sure that's  
4 everybody's preference. I don't know that  
5 we're going to get there. When it comes  
6 to trials, I don't limit time. Let's see  
7 where we're at.

8 MR. ALVA: Thank you, Your Honor.

9 And, Your Honor, I did not anticipate  
10 us dealing with sanctions today, just so  
11 you know. My expectation is that it's  
12 going to take all the time that we have  
13 just to get through the remainder of my  
14 direct, any cross-examination and the  
15 closing arguments.

16 THE COURT: Whatever we don't finish  
17 today, we'll just finish up on another  
18 day.

19 MR. ALVA: Okay. Thank you, Your  
20 Honor.

21 So, Your Honor, to resume the  
22 question that we had ended with or the  
23 issue was --

24 THE COURT: Let me swear you in  
25 again, just in case, because it's

1 testimony.

2 MR. ALVA: Yes, Your Honor.

3 Thereupon:

4 CURTIS S. ALVA  
5 was called as a witness, and was remotely duly  
6 sworn.

7 THE COURT: Go ahead, Mr. Alva.

8 MR. ALVA: So the issue we're on,  
9 Your Honor, is the willfulness of the  
10 breach because the law permits a quantum  
11 meruit recovery to exceed the amount of  
12 the contract if there's a willful breach.  
13 So I want to describe for Your Honor the  
14 factual situation relating to the  
15 willfulness of the breach of contract.  
16 The facts that exist at this time, Your  
17 Honor, are that the invoice, of course, at  
18 issue -- this is the invoice for the work  
19 that was done in December that was issued  
20 on January 9th and was properly delivered  
21 pursuant to the contract to the client on  
22 that day.

23 The contract specifically requires  
24 that payment be made within ten days,  
25 which would be January 19th. On

1 January 19th no payment had been made in  
2 any amount and no contact of any kind had  
3 been made by the client. There was  
4 subsequent contact by the client. And one  
5 of the specific questions that Your Honor  
6 asked was, what was the earliest contact  
7 that my firm received from the client  
8 relating to this invoice. Ms. Pearsall  
9 and I have been able to identify some  
10 emails in February, but there is, in fact,  
11 an email on January the 23rd that goes  
12 directly to the invoice and directly to  
13 the issue of willfulness. If I could  
14 share that with --

15 THE COURT: I'll set you both up with  
16 screen sharing.

17 MR. ALVA: Okay.

18 MS. PEARSALL: While Mr. Alva is  
19 looking at that, I have a question.

20 Has this email been admitted into  
21 evidence already and has it been turned  
22 over to the Bar?

23 MR. ALVA: It has not been admitted  
24 (inaudible.)

25 MS. PEARSALL: You're fading out, Mr.

1 Alva.

2 MR. ALVA: Verbally or visually?

3 MS. PEARSALL: Verbally. I couldn't  
4 hear you.

5 MR. ALVA: Is that better?

6 MS. PEARSALL: Yes, sir.

7 MR. ALVA: Okay.

8 So, yes, this is an email that was  
9 presented to the Bar. It's got a Bates  
10 stamp number, Florida Bar proceeding 1038.  
11 It is a one-page document and it's an  
12 email from Tricia O'Rourke, who, as we  
13 recall, was the operations manager of Dr.  
14 Colorchip and who also had been assigned  
15 specifically the task of being the  
16 interface between Dr. Colorchip and my  
17 firm. This email is dated January 23rd,  
18 2018, and Dan McCool is copied on it and  
19 the Re line is tax check and other. I  
20 would like to submit it as Exhibit Number  
21 3, Your Honor.

22 MS. PEARSALL: Can you make it  
23 larger. I can't see it to say whether I  
24 object or not.

25 Can you please scroll it up to the

1 top so that I can see the top.

2 MR. ALVA: There's the top.

3 MS. PEARSALL: When did you say you  
4 submitted this one to the Bar?

5 MR. ALVA: It was produced in the  
6 document production that my counsel made.

7 MS. PEARSALL: Can I see the Bates  
8 stamp, please. I'm sorry. Then after  
9 that, I'll be finished.

10 MR. ALVA: There's the Bates stamp in  
11 the lower right-hand corner.

12 MS. PEARSALL: Okay. I've seen it.

13 MR. ALVA: Okay. Is it admitted,  
14 Your Honor?

15 THE COURT: Yes. That will be  
16 Respondent's 3.

17 So this email from Ms. O'Rourke,  
18 January 23rd, Your Honor, is now beyond  
19 the time period for making payment, which  
20 was January 19th. So we're four days  
21 beyond the date of the deadline for making  
22 payments.

23 And Ms. O'Rourke writes in relevant  
24 part that starts on the second sentence,  
25 "Also, I don't expect to see an Alva &

1 Gleizer bill for January."

2 Now, this is January 23rd. So my  
3 firm has been working for this client for  
4 23 days in January. On the 23rd day we're  
5 told "Don't send the bill for the work."  
6 She goes on by saying "Don't do any work  
7 for us this month." Even though we've  
8 already been working for 23 days. And  
9 then it says "I think 14,000 for December  
10 is enough for now."

11 Now, if you recall, Your Honor, the  
12 invoice for December was \$25,040. So at  
13 this point I'm told "You're not going to  
14 get paid for January and you're only going  
15 to get 14,000 for December." She goes on  
16 to say "We'll make some decisions on the  
17 future shortly, but don't want to spend  
18 any more money."

19 So the very first time I hear from  
20 the client about the December invoice is  
21 this email saying "You're only going to  
22 get 14,000, and you're not going to get  
23 paid for January."

24 Let me turn the sharing off.

25 MS. PEARSALL: Objection, Your Honor,

1 to counsel's characterization of the  
2 exhibit.

3 THE COURT: Overruled.

4 MR. ALVA: So what we have is a  
5 refusal to pay the bill, and this is, as I  
6 learned later, Your Honor, before there  
7 was any analysis done of the building.

8 So if you'll recall, much, much  
9 later, like four or five weeks later, they  
10 had some questions. Ms. O'Rourke had  
11 some questions. And then later Mr. McCool  
12 had some questions. But at this point  
13 when they're refusing to pay the bill, and  
14 stating that they will pay only 14,000, no  
15 analysis of the invoice has been done.

16 So this, Your Honor, is the first  
17 that we hear.

18 The next communication relating to  
19 the billing, Your Honor, that relates to  
20 willfulness is on February the 5th.

21 On February the 5th, I sent an email  
22 to Dr. Colorchip asking for the status of  
23 payment of the December invoice, and let  
24 me pull it up, Your Honor. This is an  
25 email string beginning on February the 7th



1 -- no. Ending on February the 7th, 2018,  
2 and beginning on February the 2nd, 2018.  
3 The relevant portion is an email from Dan  
4 McCool to me -- if you'll recall, Dan  
5 McCool is the chief executive officer,  
6 founder and owner of Dr. Colorchip, dated  
7 February 5th, and it's also addressed to  
8 Tricia O'Rourke, who is the operations  
9 manager, and to David McCool, who was  
10 another attorney giving advice to the firm  
11 about the Dr. Colorchip matter.

12 And this, I believe -- Ms. Pearsall,  
13 I believe this string is already an  
14 exhibit, but I --

15 MS. PEARSALL: Once again, it's so  
16 small, I'm having trouble seeing it.

17 MR. ALVA: This is the top of it, Ms.  
18 Pearsall. Let me see if I can get the  
19 screen to -- that's as large as I can make  
20 it. Can you see that?

21 MS. PEARSALL: Yes, I can see it. I  
22 can't answer that question, whether...

23 MR. ALVA: Your Honor, it might be  
24 easier just to make it Respondent's  
25 Exhibit Number 4.

1 MS. PEARSALL: How many pages is it  
2 again, sir?

3 MR. ALVA: It's six pages long.

4 Would you like me to scroll through  
5 -- the only part I'm going to do are the  
6 two emails at the top. But you can see  
7 the whole thing, if you would like.

8 MS. PEARSALL: Sure.

9 MR. ALVA: So that's all the first  
10 page. I'm going to shrink it down just a  
11 little so that it will make it easier. So  
12 this is page two. Let me know when you  
13 want me to scroll down.

14 MS. PEARSALL: Go ahead. Scroll  
15 down. That's the last page. Keep going.

16 MR. ALVA: That's the bottom of page  
17 two. This is page three.

18 MS. PEARSALL: Okay.

19 MR. ALVA: That's the bottom of page  
20 three.

21 MS. PEARSALL: Okay. Keep going.

22 MR. ALVA: This is page four.

23 MS. PEARSALL: Okay. Keep going.

24 MR. ALVA: That's the bottom of page  
25 four.

1 MS. PEARSALL: Okay.

2 MR. ALVA: This is page five.

3 MS. PEARSALL: Okay. Keep going.

4 MR. ALVA: This is the bottom of page  
5 five.

6 MS. PEARSALL: Okay, and on to page?

7 MR. ALVA: This is all there is on  
8 page six.

9 MS. PEARSALL: Okay. I notice that  
10 this doesn't have any Bates stamps on it.

11 MR. ALVA: I don't see a Bates stamp  
12 on it either, Ms. Pearsall.

13 MS. PEARSALL: I don't recall reading  
14 this before.

15 MR. ALVA: Well, it was identified as  
16 an exhibit in my exhibit list when I  
17 identified communications between Dr.  
18 Colorchip and myself. These are all  
19 communications between Dr. Colorchip and  
20 myself on pages one, two, three. On page  
21 four -- actually, if you wanted to exclude  
22 page four until the end, that's not a  
23 communication between Dr. Colorchip and  
24 myself. That's between opposing counsel  
25 and myself. That would be fine, if you

1 want to exclude pages four, five and six.

2 MS. PEARSALL: Are you able to tell  
3 me when you provided this exhibit to me?

4 MR. ALVA: I can't. I'm sorry.  
5 Because I didn't find the Bates stamp copy  
6 of it.

7 MS. PEARSALL: Your Honor, I'm going  
8 to have to object to it being admitted in  
9 at this time. If counsel could -- I don't  
10 recall seeing this particular string of  
11 emails before. And while I appreciate  
12 counsel's agreement to allow the Court to  
13 strike certain pages that don't  
14 specifically relate to the client,  
15 communications with Mr. Alva, I'm going to  
16 have to object. If I can just, I guess,  
17 look at it and have a few more seconds to  
18 look at it without the Court, I guess,  
19 being able to see it at the same time. I  
20 don't know how --

21 THE COURT: There's one thing I want  
22 to see on page two. Can you go to page  
23 two.

24 MR. ALVA: The only part that --

25 THE COURT: Wait. Stop on page two

1 for just one second.

2 Can you make it smaller for a second?

3 MR. ALVA: Yes.

4 THE COURT: Maybe it was page three.  
5 Go back to page two again. That's all I  
6 needed.

7 I won't look at it, Ms. Pearsall.  
8 You can review it.

9 MR. ALVA: Do you want to see a  
10 specific page, Ms. Pearsall?

11 MS. PEARSALL: It's fine. I'M  
12 looking at the first page right now.

13 Can you go to page two, please.

14 MR. ALVA: Yes.

15 MS. PEARSALL: Thank you. Can you go  
16 to page two. And page four.

17 MR. ALVA: This is the part between  
18 Collin and myself, and we can strike this,  
19 if you'd like.

20 MS. PEARSALL: Can you go to page  
21 five, please. And page six, beginning  
22 back to -- two, I guess.

23 I finished reviewing, Your Honor. I  
24 still have the same objection, but I've  
25 reviewed it and I've read it. I don't

1 recall seeing this email chain before.  
2 Obviously, anything that's not related to  
3 communications that Mr. Alva said he had  
4 with the client in any way should be  
5 stricken because I do not believe it's  
6 relevant.

7 If the Court chooses to admit this  
8 over the Bar's objection, I'd also ask  
9 that any highlighted portions be stricken,  
10 because I'm sure the emails did not come  
11 that way. And, once again, it's over the  
12 Bar's objection, Your Honor. Thank you.

13 THE COURT: Mr. Alva.

14 MR. ALVA: Your Honor. It was  
15 identified in my exhibit list and on the  
16 class of documents that are  
17 correspondence. It is clearly critical to  
18 the issue of the knowledge that I had at  
19 the time that the quantum meruit invoice  
20 was generated, because it relates directly  
21 to their non-payment of the \$25,000 and  
22 the reason why, and seeing that they  
23 pretended to be going through and  
24 reviewing that. I don't think there's any  
25 prejudice to the Bar from the Court

1       considering it, and I think that it would  
2       help the Court substantially in making the  
3       analysis the Court needs to make, and the  
4       Court, because this is a quasi-judicial  
5       conditional proceeding, has substantially  
6       more latitude in admitting evidence in  
7       this proceeding than it would in ordinary  
8       civil litigation.

9           THE COURT: I'm going to overrule the  
10       Bar's objection. That's going to be  
11       Respondent's 4 for the six pages, and we  
12       will strike the highlighted -- just the  
13       highlighting, not the words themselves.  
14       The Court will disregard the highlighted  
15       portions.

16           MS. PEARSALL: Your Honor, if I could  
17       be heard again.

18           THE COURT: Yes.

19           MS. PEARSALL: Could Your Honor also  
20       strike, if counsel agrees, the pages that  
21       do not relate. I believe they're pages  
22       four, five and six.

23           MR. ALVA: I agree with that.

24           THE COURT: Okay.

25           MS. PEARSALL: And I would also ask

1 for counsel to send me a copy of the  
2 documents when you get a moment, if you're  
3 able to email it to me.

4 MR. ALVA: Yes. You mean during this  
5 hearing?

6 MS. PEARSALL: When you get a moment.  
7 Not right now.

8 So that's Respondent's 4?

9 THE COURT: Yes.

10 MR. ALVA: Yes. I'll do that, Ms.  
11 Pearsall.

12 MS. PEARSALL: Thank you.

13 MR. ALVA: In relevant part, Your  
14 Honor, we're going to begin on page two.  
15 This is an email from Dan McCool, who's  
16 the CEO of Dr. Colorchip, to me and Ms.  
17 O'Rourke and to the other attorney, David  
18 McCool. On page three we have the part  
19 that relates to willfulness.

20 So now, Your Honor, it's February  
21 the 5th and the payment was due on the  
22 19th. We're now about three weeks after  
23 payment is due. This is the second  
24 response that I get from Dr. Colorchip as  
25 to payment on the invoice.



1           And in the last line of the email,  
2       Your Honor, in the middle of page three,  
3       it says "I am in receipt of your most  
4       recent bill for 25,000, which we will  
5       review in detail and will need to discuss  
6       before incurring any more legal fees." So  
7       they're going to review it in detail and  
8       they're going to discuss it with me and  
9       they're going to do it before any more  
10      legal fees are incurred. In other words,  
11      before I'm doing any more work that I'm  
12      not going to get paid for. That's what  
13      I'm told on February 5th.

14           Then, Your Honor, if you go to page  
15      one of the email, this is the email from  
16      Ms. O'Rourke to myself dated Wednesday,  
17      February 7th, 2018, and it's addressed to  
18      Dan McCool and copied to the other  
19      attorney David McCool.

20           In the last line of her email --  
21      that's the part that's relevant to -- no,  
22      actually the whole thing is relevant.

23           So Your Honor, it says in the first  
24      line "As to your December invoice, the  
25      first time Dan received the invoice was

1 two days ago." Which would make it  
2 February the 5th. "Unless you sent it  
3 before that and he did not see it. Your  
4 statement as to my December invoice, the  
5 due date on the invoice is January 19th,  
6 which is now almost three week past -- and  
7 that's in quotes -- is unprofessional and  
8 uncalled for, considering Dan has paid you  
9 promptly over 320,000 in 16 months, and  
10 additionally paid you early on the last  
11 invoice because you were in a big rush to  
12 get it and requested he pay it right away.  
13 As to when I will be finished reviewing  
14 the invoice, I will be finished when I am  
15 finished."

16 So as to the willfulness, Your Honor,  
17 that I believe existed at the time that I  
18 issued the invoice two weeks after this  
19 email, I have Mr. McCool telling me that  
20 it's going to be finished before any other  
21 work is done, but then I have Ms. O'Rourke  
22 telling me "It will be finished when it's  
23 finished." So no regard for what the date  
24 is in the contract and no regard for the  
25 fact that I'm continuing to work and not

1 getting paid is what I'm aware of when I  
2 get this email.

3 I also see, Your Honor, that Ms.  
4 O'Rourke is claiming that the first time  
5 Dan saw the invoice was February the 5th.  
6 But, in fact, Ms. O'Rourke had seen the  
7 invoice on January 23rd because she sent  
8 me an email saying that she had it and she  
9 was only going to pay \$14,000, and she was  
10 not an addressee on the invoice. Only Mr.  
11 McCool was addressed on the invoice.

12 So her claim, I am aware, is untrue  
13 because he had it when it was emailed on  
14 the 9th and she had at least --

15 MS. PEARSALL: Objection. Calls for  
16 speculation.

17 THE COURT: Overruled. Go ahead.

18 MR. ALVA: Thank you, Your Honor.

19 So my concern regarding willfulness  
20 at this point in time is that it hasn't  
21 been paid. It's now two weeks overdue.  
22 It was supposed to be paid on the 19th.  
23 It still hasn't been paid. Not one penny  
24 has been paid. And I have Mr. McCool's  
25 representation that they're going to do

1 the analysis before I'm on the hook for  
2 any more unpaid fees, but I have Ms.  
3 O'Rourke telling me she will finish when  
4 she's finished.

5 So my concern at this point is I'm  
6 not going to get paid. This is not only a  
7 breach. This is a willful breach. This  
8 is an intentional decision not to honor  
9 the contract and not to pay within ten  
10 days and perhaps not to ever pay, is what  
11 I'm aware of as of February the 7th, Your  
12 Honor.

13 So I've been told by Mr. McCool on  
14 the 5th that they are going to do a review  
15 before we do any more work. On the 5th,  
16 there's another email from Ms. O'Rourke.  
17 I'll turn on sharing.

18 So this is an email string, Your  
19 Honor. It is four pages long. The  
20 earliest email is February 6th, 2018. The  
21 most recent email is February 8th, 2018.  
22 I'm sorry. I said 2016. I meant 2018.  
23 It has Bates number Florida Bar 1122. It  
24 goes up to 1125. These are emails between  
25 Dr. Colorchip and my firm regarding the

1 work that they want me to do while I have  
2 still been unpaid that relates to whether  
3 or not the breach is willful. I would  
4 submit this, Your Honor, as Exhibit  
5 Number 5.

6 Ms. Pearsall, I don't believe this is  
7 a previous exhibit.

8 MS. PEARSALL: I need you to stop  
9 scrolling so fast so I can look at it.

10 MR. ALVA: I'm sorry.

11 MS. PEARSALL: I don't recall it  
12 being a previous exhibit and it wasn't  
13 pre-labeled or anything like that.

14 Can you go to the page, please. Next  
15 page, please. Thank you.

16 Is that the end of that page, because  
17 I can't see the bottom? Maybe you went to  
18 the wrong place.

19 MR. ALVA: Hold on. Here's the  
20 bottom of that page.

21 MS. PEARSALL: Okay. And then the  
22 next page, please.

23 MR. ALVA: This is the last page.

24 MS. PEARSALL: I think you said the  
25 first page was 1122.

1 MR. ALVA: Yes, 1122 is the first  
2 page.

3 So, Your Honor, this can be Exhibit  
4 Number 6.

5 THE COURT: I believe that's 5.

6 MS. PEARSALL: Yes. That's not 6.

7 MR. ALVA: I'm sorry. I'm jumping  
8 ahead. Thank you, Your Honor.

9 THE COURT: Is there any objection,  
10 Ms. Pearsall?

11 MS. PEARSALL: No. I would say I do  
12 not recall seeing this particular exhibit.  
13 Like I said, they aren't specifically  
14 numbered. They're just Bates stamped  
15 whereas I numbered mine, so that's why I'm  
16 saying that.

17 No, Your Honor. Other than that and,  
18 again -- that's it, Your Honor.

19 THE COURT: So again Respondent's 5  
20 will be admitted into evidence, and  
21 anything highlighted, just the highlighted  
22 portions, disregard it.

23 MR. ALVA: Yes, Your Honor.

24 So we're going to go to page number  
25 four of Exhibit 5. There's an email from

1 Ms. O'Rourke dated February 6th, 2018 to  
2 me, copy to Dan. The Re line is subject  
3 of production and service. So this is the  
4 day I'm being told that the review is  
5 going to be completed before I'm assigned  
6 any other work.

7 On the very next day Ms. O'Rourke  
8 says to me "Do you need anything from us  
9 with regard to the answers you are sending  
10 to Coleman per our meeting last week?"  
11 And what she's referring to, you can tell  
12 from the Re line, status of production.

13 Opposing counsel had filed a request  
14 for production of documents and had  
15 requested expedited production of the  
16 documents because he was seeking an  
17 expedited hearing on the motion for  
18 dissolution.

19 If Your Honor recalls, opposing  
20 counsel's client was trying to get the  
21 company redissolved, which would have  
22 terminated the use of the company. They  
23 sent a request for production and the  
24 answers were due to me, I think, the very  
25 next day. I had been discussing with Dr.

1 Colorchip the objections. So when she  
2 says "Answers you're sending to Coleman,"  
3 she's referring to the written responses  
4 that would be filed with the Court in  
5 response to the request for production of  
6 documents.

7 She goes on "This should be the only  
8 work you are doing for Dr. Colorchip at  
9 this time, as we're not interested in  
10 incurring any more costs at this time."

11 So on the 5th I'm told the analysis  
12 will be done before I'm given any more  
13 work. And on the 6th I'm given additional  
14 work to do by Ms. O'Rourke.

15 I respond to Ms. O'Rourke on the 7th.  
16 So now on page three of Exhibit 5, this is  
17 an email to Ms. O'Rourke dated  
18 February 7th, 2018 from me with a copy to  
19 Dan McCool and a copy to Dave McCool, who  
20 was the other lawyer advising Dr.  
21 Colorchip at this time.

22 And I say to her "In response to your  
23 question during our last meeting, I got  
24 all the information I need to do the  
25 response to McLean's request for



1 production of documents. The deadline for  
2 response is tomorrow, and I'll send the  
3 response before the deadline."

4 So it has to be done. I'm still  
5 counsel of record. They're asking me to  
6 do the response, but they have not  
7 completed the analysis for the payment on  
8 the bill.

9 Because I'm still obligated at this  
10 time to look out for the client's best  
11 interest, I continue by saying  
12 "Additionally, there are a couple of items  
13 that need doing. First, I've already  
14 responded to one point, parens, the most  
15 urgent, one, parens, letter of January  
16 29th. But he makes several points and it  
17 will likely save time, trouble and money  
18 for Dr. Colorchip to respond to the others  
19 now. This will probably take half an  
20 hour."

21 The second one, Your Honor, is of  
22 lesser importance, but the third one that  
23 begins in the two paragraphs down says  
24 this, "Third, the judge is waiting to get  
25 our list of motions that we want heard and

1       discovery we want enforced."

2               Now these are the motions to compel  
3       discovery that we had previously filed and  
4       we needed this discovery before the  
5       hearing on the motion for dissolution.  
6       That's what I'm referring to.

7               The email goes on. "If we don't send  
8       a letter, my expectation is that he will  
9       just pick, on his own, the motions he  
10      wants to hear." That means the judge.  
11      "And he'll just let the discovery remain  
12      untaken. You will recall that we fought  
13      hard and successfully to prevent a hearing  
14      on the claims dissolution motion. We  
15      stopped the hearing, which Coleman wanted  
16      by mid-December and without any discovery  
17      by insisting on our rights to the  
18      depositions and documents that would  
19      create an evidentiary record that McLean  
20      was stealing from the company and plotting  
21      its demise. The judge is giving us a  
22      chance to get that discovery done; but if  
23      we don't act promptly I expect he could  
24      decide that we don't really want it and  
25      he'll just set a quick dissolution

1       hearing."

2               So the point is, there's an expedited  
3       dissolution hearing, but it does not have  
4       a hearing date yet, and opposing counsel  
5       is trying to get the judge to set it  
6       without giving us the discovery that will  
7       allow us to defeat the motion. So I'm  
8       alerting the client on February the 7th,  
9       even though by now I have no expectations  
10      that I'm going to get paid for either this  
11      email warning them of the risk or creating  
12      the list of motions and writing back to  
13      the judge.

14              Then, Your Honor, Ms. O'Rourke  
15      responds to me on the same day. This is  
16      now on page two of Exhibit Number 5. This  
17      is an email dated February 7th at 5:54  
18      p.m. and she writes to me, "You indicated  
19      you needed the 2016 tax return for the  
20      production. Go ahead with the response."  
21      So now she's authorizing me to do the work  
22      and send the written response.

23              "For the rest of the email questions  
24      below, please hold off for now." So I'm  
25      being told to do some work, but only

1       limited and the rest I'm not going to do,  
2       and I'm still not getting paid and there's  
3       still been no analysis of the December  
4       invoice and any offer to pay anything more  
5       than the 14,000 that was offered on  
6       January the 23rd.

7           I write back to Ms. O'Rourke the same  
8       day at 11:17 p.m. So 11:00 at night I'm  
9       not getting paid. I write back to warn  
10      her, again, about the risks. And we don't  
11      need to go through that in detail, but we  
12      can go up to the next chain.

13           David McCool is general counsel for a  
14      large midwestern company. His job is to  
15      supervise --

16           MS. PEARSALL: Objection. Calls for  
17      speculation.

18           THE COURT: I'm going to sustain  
19      that.

20           MR. ALVA: As to his title or --

21           THE COURT: As to his job assignment  
22      because you don't work there.

23           MR. ALVA: I understand that.

24           His job in this litigation was  
25      supervising my firm as outside litigation

1       counsel. He writes to Ms. O'Rourke and to  
2       Dan, who is the CEO and to me, and he says  
3       "Curtis, failing to meet the judge's  
4       request for a list of motions to be heard  
5       and related discovery would obviously be  
6       pennywise and pound foolish." So he is  
7       indicating that I am to do the work that I  
8       suggested needed to be done in order to  
9       give the judge the list the judge was  
10      asking for.

11           He then says, "Dan/Tricia, I advise  
12      against blowing off the judge's request  
13      and suggest that we quickly come to a  
14      decision in coordination with that on the  
15      federal question of what we want to  
16      communicate to the judge, and in  
17      particular, whether we want to capitalize  
18      on the change to expedite the hearing on  
19      the URL motion and a real possibility that  
20      it could be promptly granted." So now we  
21      have Dan McCool -- so I'M now being  
22      authorized to do additional work. Still  
23      haven't been paid and there's still no  
24      analysis. And David McCool is  
25      characterizing the contrary course

1 pennywise and pound foolish. So I'm still  
2 obligated at this point to do what's in  
3 the client's best interest, even though  
4 I'm not going to get paid and I'm haven't  
5 been paid.

6 MS. PEARSALL: Objection. Calls for  
7 speculation.

8 THE COURT: Overruled.

9 MR. ALVA: The last email that we  
10 need to look at from Exhibit Number 5,  
11 Your Honor, is the one at the top of page  
12 one. This is me writing to Dan McCool,  
13 the CEO David McCool, the attorney and  
14 Tricia O'Rourke, the chief operating  
15 officer.

16 And I said, "As I understand then, my  
17 instructions are to prepare a draft  
18 response to Coleman's 129 letter. Prepare  
19 a draft of the letter the judge instructed  
20 us to prepare, which would be a joint  
21 letter from us and Coleman and will list  
22 the motions and discovery to be scheduled.  
23 No one responded to the point about  
24 preparing a motion to compel discovery  
25 from the claim for his unacceptable

1 response to our request for production, so  
2 I will not prepare that, unless I am  
3 specifically instructed to do so. If my  
4 understanding is incorrect in any part,  
5 please, let me know."

6 So I'm confirming in great specifics  
7 the work that I am to do and the work that  
8 I am not to do. And this is on February  
9 8th, and payment on the bill was due on  
10 January the 19th.

11 I'm going to turn off the sharing.

12 Next, Your Honor, relating to  
13 willfulness, the February 13th email, and  
14 I will share that. This is a two-page  
15 document, Bates number 1074 and 1075.

16 And, Ms. Pearsall, is that your  
17 exhibit marker in the upper left-hand  
18 corner? Can you see that?

19 MS. PEARSALL: No, that's not my  
20 number.

21 MR. ALVA: So then that's my exhibit  
22 marker and the number has to be wrong  
23 there.

24 But this document is Bates stamped  
25 1074 and it ends at 1075, and it's another

1 email string between Dr. Colorchip and my  
2 firm relating to payment of the December  
3 invoice, and I would submit to Your Honor  
4 as Respondent's Exhibit Number 6.

5 THE COURT: Any objection?

6 MS. PEARSALL: No, not right now,  
7 Your Honor.

8 MR. ALVA: Do you need me to scroll  
9 down?

10 MS. PEARSALL: Would you scroll down.  
11 Thank you. Let me look at that.

12 MR. ALVA: Do you want me to go to  
13 page two?

14 MS. PEARSALL: Yes, please. Thank  
15 you.

16 MR. ALVA: There's page two. If I  
17 can just see the Bates stamp number in the  
18 corner, I'll be finished.

19 MS. PEARSALL: Your Honor, my only  
20 objection would be -- it's the same  
21 objection. The highlighted portion, have  
22 the Court disregard any highlighting not  
23 original to the document.

24 THE COURT: That will be Respondent's  
25 6, with the highlighting stricken.



1           MR. ALVA: I'm going to go to page  
2 two of this email. On page two there's an  
3 email dated February 13th, 2018 from Ms.  
4 O'Rourke to myself. The subject line is  
5 January invoice and she says as follows,  
6 "Curtis, Dan forwarded me the last three  
7 invoices, as you do not code me into those  
8 invoices for several months.

9           First of all, she confirms that she  
10 was not addressed on the invoice we worked  
11 on in December, that she somehow had in  
12 her possession on January 23rd and she  
13 claimed that Mr. McCool did not have it in  
14 his possession until February 5th.

15           Next she says "So, as you know, the  
16 invoice dated January 19th has not been  
17 paid yet. I have looked over the last  
18 three months and have many questions, but  
19 I have not had time to really dissect it.  
20 However, I will, if I need to."

21           So what I'm aware of, Your Honor,  
22 from this is that the analysis that was  
23 going to be done before I was asked to do  
24 any more work, and what was supposed to be  
25 done per the contract by January the 19th

1 has not even begun. They haven't even  
2 figured out the first question as to this  
3 invoice.

4 She then goes on to say, "Rather, I  
5 would request that you discount the  
6 January 9th, 2000 invoice by 50 percent,  
7 closed paren, \$12,520, closed paren, and I  
8 will instruct Dan to pay immediately and  
9 we can move on."

10 So the analysis that was going to be  
11 done or was required to be done by the  
12 19th --

13 MS. PEARSALL: Objection. Calls for  
14 speculation.

15 THE COURT: I didn't hear the full  
16 extent of what he was saying. You can  
17 finish and then I'll rule on the  
18 objection.

19 MR. ALVA: Thank you, Your Honor.

20 So what I'm aware of now is that the  
21 analysis that was due by the 19th and was  
22 promised by the fifth has not begun.  
23 Despite the fact that there are no  
24 questions or concerns about the validity  
25 of the invoice, I'm asked to discount it

1 by 50 percent.

2 MS. PEARSALL: The objection is it  
3 mischaracterizes the statements and the  
4 evidence that's before the Court. Also  
5 calls for speculation.

6 THE COURT: I'm going to overrule the  
7 objection.

8 MR. ALVA: I'm going to turn off the  
9 screen sharing now, Your Honor.

10 The next email, Your Honor, that's  
11 relevant to the issue of willfulness --  
12 and I'll turn on the screen sharing here.

13 So this is a one-page document, and I  
14 believe, Ms. Pearsall, this is one of our  
15 exhibits and was produced by the Bar in  
16 discovery. The handwriting, Exhibit  
17 Number 7 at the top, refers to an exhibit  
18 to the grievance that was filed with the  
19 Bar. It is a February 16th, 2018 email  
20 from myself to Ms. O'Rourke and copied to  
21 Dan McCool. And the subject line is Re  
22 questions on December bill.

23 And I don't have your exhibit number,  
24 Ms. Pearsall but I suggest we name it  
25 Respondent's Exhibit 7.

1 MS. PEARSALL: Is it only one page,  
2 because I can see that page?

3 MR. ALVA: Yes. It's only one page.  
4 That's all there is to it.

5 MS. PEARSALL: I don't have an  
6 objection, Your Honor. The exhibit is  
7 already in evidence as part of one of the  
8 Bar's exhibits, that email.

9 MR. ALVA: Your Honor, I'll take the  
10 marginalia out of it and the highlighting  
11 or the underlining on it.

12 MS. PEARSALL: That's not a request  
13 being made by me, but -- it's up to you.  
14 I haven't requested that. It's fine.

15 MR. ALVA: I'm sorry. Only if Ms.  
16 Pearsall wants it.

17 So Exhibit 7 is admitted as-is, Your  
18 Honor?

19 THE COURT: Correct.

20 MR. ALVA: Thank you, Your Honor.

21 So this is an email where I'm writing  
22 back to Ms. O'Rourke. So Ms. O'Rourke has  
23 sent me a list of questions that she has  
24 regarding invoice number 90, the one for  
25 the work that was done in December.

1       Actually, I sort of got them out of order.  
2       Before we go into detail with Exhibit 7,  
3       let me proffer Exhibit Number 8.

4               And again, this is an exhibit that  
5       was introduced by the Bar. It's an  
6       exhibit to the grievance that was filed  
7       with the Bar. It is a one-page email  
8       dated February 16th, 2018 from Ms.  
9       O'Rourke to myself, and the Re line is  
10      questions on December bill, and I would  
11      tender this, Your Honor, as Respondent's  
12      Exhibit 8.

13              THE COURT: Any objection, Ms.  
14      Pearsall?

15              MS. PEARSALL: One moment. I'm just  
16      trying to... I can't find the exhibit  
17      number, but I don't have an objection.

18              Is it one page or two?

19              MR. ALVA: It's just one page.

20              MS. PEARSALL: Okay. That's fine.

21              THE COURT: It's admitted.

22              MR. ALVA: Thank you, Your Honor.

23              So on February 16th, for the very  
24      first time, I received questions regarding  
25      the December invoice from Dr. Colorchip.

1 This is the invoice where payment was due  
2 on the 19th. So almost 30 days later I  
3 received the very first question as to  
4 that invoice and their failure to pay the  
5 invoice when it was due. Ms. O'Rourke  
6 sends me seven questions, and then if we  
7 go back to Exhibit Number 7, this is my  
8 response to Ms. O'Rourke's email with the  
9 seven questions.

10 And so on Exhibit 7 in the last  
11 paragraph I say to Ms. O'Rourke, "So if I  
12 understand correctly, you potentially  
13 dispute some or all of \$6,800 on the  
14 December invoice, plus whatever number, if  
15 any, you assign to the general tax issue.  
16 That leaves \$18,240 apparently undisputed,  
17 minus whatever you assign to the general  
18 tax issue. I'd like to pick up a check  
19 for the undisputed amount on Monday. If  
20 you're willing to provide that check, then  
21 the dispute will be narrowed to \$6,800,  
22 plus whatever you assign to the general  
23 tax issue. I will then address each of  
24 your questions to see if we can further  
25 narrow the dispute. If you are unwilling

1 to pay the undisputed amount on Monday,  
2 then I don't see the value in trying to  
3 reach an amicable solution and we can  
4 promptly seek the Court's assistance."

5 So on the 16th I propose that the  
6 undisputed portion, which I calculated to  
7 be \$18,240, but I say it's actually  
8 whatever amount they're not disputing.  
9 Figure out what you think the general tax  
10 issue is worth and pay me the part that is  
11 undisputed.

12 Now, this is on February 16th. When  
13 the quantum meruit invoice is issued, ten  
14 days later, on February the 26th, I had  
15 not received one penny of the amount that  
16 was undisputed. So I asked them to at  
17 least pay the undisputed amount, and they  
18 refused and paid nothing.

19 And the other facts that are relevant  
20 to willfulness is that on the 13th I was  
21 terminated by the client, instructed not  
22 to do anymore work, and on the 15th I was  
23 released by a stipulation of substitution  
24 of counsel from any responsibility for the  
25 client.

1           The next thing after the 15th, Your  
2 Honor, is my email on the 16th that we've  
3 already admitted where I ask them to pay  
4 the undisputed amount, which is not paid  
5 by the time that the quantum meruit  
6 invoice is issued.

7           The next fact relating to willful  
8 breach, Your Honor, is that on the 26th,  
9 Dan McCool writes to me and, for the very  
10 first time, he asks any questions. This  
11 is now five weeks after payment is due.  
12 He asks questions about the invoice, which  
13 I answered to him in great detail.

14           So, Your Honor, that's the  
15 information that I had in my possession at  
16 the time that I issued the invoice on the  
17 26th that related to whether or not the  
18 breach was willful.

19           The only other part I wanted to  
20 address in my direct examination, Your  
21 Honor, is to answer your question as to if  
22 they were in breach on the 19th, why did  
23 you continue to work on the file until the  
24 15th of February? And the facts that  
25 relate to that, Your Honor, are that



1       they're in breach on the 19th.

2               MS. PEARSALL: Objection. Calls for  
3 a legal conclusion, improper speculation.

4               THE COURT: Overruled. Go ahead.

5               MR. ALVA: They're in breach on the  
6 19th, Your Honor, but I haven't heard  
7 anything from them. I don't know whether  
8 they actually intend to pay for the  
9 invoice or not. We're facing an expedited  
10 hearing on a motion to dissolve. There's  
11 expedited discovery outstanding. And it's  
12 not until January 23rd that I received the  
13 email from Ms. O'Rourke saying "Don't send  
14 me a bill for January. You'll get nothing  
15 for January and you can have 14,000 for  
16 December instead of 25,000.

17               MS. PEARSALL: Objection.  
18 Mischaracterizes the evidence, Your Honor.

19               THE COURT: Overruled. Continue.

20               MR. ALVA: So the time period, Your  
21 Honor, during which I continued to work  
22 after I concluded that there was a willful  
23 breach of the contract was from  
24 January 23rd through February 13th. So  
25 we're talking three weeks.

1           On the 23rd, I get the email saying  
2           "We're not going to pay." On the 24th, I  
3           received an email from Dan McCool, who is  
4           the CEO, asking me urgently to do work by  
5           the very next day. I'll share that with  
6           the Court.

7           So this, Your Honor, is a six-page  
8           email string. It begins with Bates number  
9           1116 and it concludes with Bates number  
10          1121 and it was produced to the Bar by my  
11          counsel. In relevant part it's an email  
12          from Dan McCool, who's the CEO, to me,  
13          dated January the 24th, and the Re line is  
14          scheduled call for next Wednesday, January  
15          31st. I would submit this, Your Honor, as  
16          Respondent's Exhibit Number 9.

17          THE COURT: Ms. Pearsall.

18          MS. PEARSALL: First, what's being  
19          submitted as an exhibit? Is it more than  
20          one document?

21          MR. ALVA: It's a single email  
22          string, Ms. Pearsall. If I understand it  
23          correctly, the latest email on page one is  
24          January 24th. The email we're going to  
25          discuss is also January 24th. It's on

1 page two, and the earliest email is  
2 January 23rd.

3 MS. PEARSALL: What's the Bates stamp  
4 number on the bottom?

5 MR. ALVA: 1116.

6 MS. PEARSALL: What's the last  
7 number?

8 MR. ALVA: The last number is 1121.

9 MS. PEARSALL: Thank you, Your Honor.

10 THE COURT: Do you have any objection  
11 to the document?

12 MS. PEARSALL: If I can inquire of  
13 the witness?

14 THE COURT: Yes.

15 BY MS. PEARSALL:

16 Q. Were you a party to the emails that  
17 you're presenting on the screen?

18 A. Yes.

19 Q. Do all of the emails presented on the  
20 screen, were they either sent to the client,  
21 between you and the client?

22 A. Yes. Now, if you look at the very  
23 earliest email, Ms. Pearsall, you'll see that  
24 that email is from Dr. Colorchip's accountant.  
25 So that's the one that's on page three.

1 Actually, it's copied to the accountant.  
2 Actually between myself and David McCool, who  
3 is the lawyer that was advising them. So  
4 these are all between my firm and Dr.  
5 Colorchip, but it also adds Dr. Colorchip's  
6 accountant, Patrick McCool, who is another  
7 brother of Dan McCool, if that answers your  
8 question.

9 MS. PEARSALL: I don't believe it's  
10 relevant, Your Honor, but that's my only  
11 objection.

12 THE COURT: I'm going to let it in,  
13 and that will be 9, Plaintiff's 9.

14 MR. ALVA: Thank you, Your Honor.  
15 And it has highlighting on it, so  
16 I'll send a copy that's not highlighted.

17 For Exhibit Number 9, Your Honor,  
18 we're going to focus on page two of the  
19 exhibit, which is Bates number 1117. This  
20 is an email dated January 24th. This is  
21 the day after I receive an email from Ms.  
22 O'Rourke that I am not to send an invoice  
23 for work done in January, and I'm only  
24 going to get 14,000 for the work done in  
25 December.

1           So the very next day I get this email  
2           from Dan McCool, the CEO, and he says as  
3           follows "Hi, Curtis. Attached is a letter  
4           that Pat drew up that explains each of the  
5           two checks that will be sent to Bill  
6           McLean. I have the \$120,000 check and can  
7           arrange to get that to you today so that  
8           if we determine it makes sense to send  
9           both checks to Bill McLean together, we  
10          can do that. I have a 12 o'clock  
11          appointment and can meet up with you this  
12          afternoon. I do feel we need to get, at  
13          the bare minimum, the 2016 payout today to  
14          meet that deadline. Call me if you can  
15          discuss this morning. I have to leave  
16          town again tomorrow, so this pretty much  
17          has to happen today."

18          So the day after, I'm told I am not  
19          getting paid for work done, so don't send  
20          an email for the work done in January. I  
21          get an email from the CEO that he wants to  
22          meet with me. We need to have a  
23          conference and determine what checks we're  
24          going to deliver to his adversary in the  
25          litigation and then it has to be done that

1 day. So I continue working on the 24th  
2 because I have an expedited assignment  
3 from the CEO and I'm still counsel in the  
4 case.

5 The next one, Your Honor, is  
6 correspondence between opposing counsel  
7 and myself. So this is a letter on the  
8 letterhead of Critton, Luttier & Coleman.  
9 That's the law firm that was opposite my  
10 firm in the McLean litigation. This is a  
11 three-page document, and it's dated  
12 January 29th, 2018 and it's signed by Greg  
13 Coleman, and it relates to additional work  
14 that was assigned to me to get done during  
15 the period between January 23rd and  
16 February 15th, and I would tender this as  
17 Exhibit Number 10.

18 And Ms. Pearsall, this is not the  
19 Bates stamp number, but I believe this was  
20 an exhibit to the grievance and it relates  
21 directly to the client's concern that they  
22 were paying higher legal bills than they  
23 should have been paying.

24 MR. ALVA: Do you need me to blow it  
25 up?

1 MS. PEARSALL: Your Honor, the Bar --  
2 let me just look at it first. And the  
3 next page, please.

4 Your Honor, I'm objecting to the  
5 admission of this document. It's not  
6 relevant. I actually don't recall ever  
7 seeing this document before or it being  
8 provided to me in any type of discovery,  
9 and I would object to it being admitted at  
10 this time, Your Honor.

11 MR. ALVA: Your Honor, this was not  
12 --

13 THE COURT: I'm going to let it in as  
14 Respondent's 10.

15 MR. ALVA: This was not produced in  
16 the document production, Your Honor. This  
17 document is being tendered to answer the  
18 Court's question because it goes directly  
19 to that, as in why I was working for the  
20 client after I had determined that they  
21 were in a breach. So this specifically is  
22 work that I am responsible for doing  
23 because I'm still counsel of record. That  
24 needs to be done before I'm released on  
25 February the 15th.

1 MS. PEARSALL: Again, I restate my  
2 objection, and, knowing that it was not  
3 turned over to the Bar previously, even  
4 during the Bar's case in chief, I restate  
5 my objection and ask that it not be  
6 admitted and it be stricken. Counsel is  
7 fully capable of testifying about what he  
8 did or did not do to answer any inquiry  
9 the Court may have in this case. Thank  
10 you, Your Honor.

11 THE COURT: That will be admitted as  
12 10.

13 MR. ALVA: Thank you, Your Honor.

14 MS. PEARSALL: Could you also  
15 instruct the respondent to provide the Bar  
16 with a copy of this document, and I'd ask  
17 that the highlighted portion be stricken  
18 as well, Your Honor, since I don't have  
19 it.

20 THE COURT: Absolutely.

21 MR. ALVA: I will do that, Your  
22 Honor.

23 So the relevant portion related to  
24 the work I was doing during this time  
25 period begins on page one. This is Mr.



1 Coleman, who's opposing counsel in the  
2 McLean litigation and who is seeking an  
3 expedited dissolution hearing that would  
4 terminate the existence of the company,  
5 and he wants an expedited hearing and he  
6 wants expedited discovery relating to the  
7 hearing.

8 He says to me at the bottom of page  
9 one, "As you know, your response to our  
10 request for production is now overdue. It  
11 is, in fact, past the agreed upon date I  
12 provided you for an extension."

13 Continuing on page two he says "To  
14 expedite the receipt of documents relevant  
15 to your responses to our request for  
16 production, I would like to prioritize  
17 your request. First and foremost, we need  
18 to immediately receive the tax return  
19 filed for fiscal year 2015 for Dr.  
20 Colorchip Corp. We need all the financial  
21 backup documentation which was utilized to  
22 create and prepare the tax return. We  
23 need the balance sheets, profit and loss  
24 statements, as well as a copy of the  
25 entire general ledger for fiscal year

1       2015. We also need all of these items for  
2       2017."

3               In this letter, while I'm still  
4       counsel for the company, I'm receiving a  
5       request for immediate production of  
6       substantial financial documents that  
7       relate to the dissolution hearing that is  
8       going to be scheduled on an expedited  
9       basis. And I worked on that, producing  
10      those documents, during the time period  
11      after I concluded that there was a willful  
12      breach, but I hadn't been released as  
13      counsel of record. I'm going to stop  
14      there.

15             Next, Your Honor, is a February 13th  
16      email. Let me share that with the Court.  
17      So this is an email string with Bates  
18      number 1092 on the first page. It's a  
19      six-page document. The Bates number on  
20      the last page is 1097. It is emails  
21      between my firm and Dr. Colorchip relating  
22      to the work that is being done during the  
23      time period and the status of payment and  
24      the invoices, and I would tender this,  
25      Your Honor, as Respondent's Exhibit

1 Number 11.

2 Do you need me to blow it up, Ms.

3 Pearsall?

4 Do you want me to scroll down?

5 MS. PEARSALL: Yes, please.

6 MR. ALVA: Actually, we'll go to the  
7 next page. This is the next page.

8 Actually, you know what, let me turn  
9 off the highlighting for just a minute,  
10 Your Honor.

11 This is a document Bates stamped  
12 number 1136. It is an email between Ms.  
13 O'Rourke and myself and my associate at  
14 the time. His name was Gabriel Gonzalez.  
15 That's dated February 13th, 2018. I would  
16 tender this as Exhibit Number 12.

17 THE COURT: Ms. Pearsall.

18 MS. PEARSALL: One moment, Your  
19 Honor.

20 MR. ALVA: So this is admitted, Your  
21 Honor, as Exhibit 12?

22 THE COURT: Ms. Pearsall is reviewing  
23 the document now.

24 MS. PEARSALL: Can I see the top.

25 MR. ALVA: Yes. Sorry.

1 MS. PEARSALL: I don't see the  
2 relevance. That's my objection. I ask  
3 that the highlighting be removed, Your  
4 Honor, and I don't believe that's Number  
5 12.

6 MR. ALVA: Yes. It's Exhibit 11. I  
7 apologize.

8 THE COURT: What's the relevance of  
9 this?

10 MR. ALVA: The relevance, Your Honor,  
11 is February 13th is the day that I am  
12 dismissed as counsel for Dr. Colorchip.  
13 It's the last day of the time period where  
14 I continue to work, even though I believed  
15 there was willful breach. And on the day  
16 that I'm terminated, I receive an urgent  
17 request to chase down a transcript for  
18 them and sent it to them.

19 THE COURT: Okay. I'll let it in.

20 MR. ALVA: Thank you, Your Honor.

21 So, Your Honor, as to Exhibit 11,  
22 this is an email from Tricia O'Rourke,  
23 who's the operations manager, to myself  
24 and my legal assistant. The Re line is  
25 urgent, want November 8th, 2016 hearing

1 transcript. And it says "Do you have the  
2 above hearing transcript needed to prepare  
3 for the domain hearing?" This is the last  
4 day of the time period, Your Honor.

5 On the 13th I'm terminated. I  
6 continued to work up until the 13th, as  
7 you can see, Your Honor. I directed my  
8 associate to chase down that transcript.  
9 And as it turns out, there's no  
10 November 8th hearing, but there was a  
11 status conference on November 3rd, and  
12 there was a case management conference on  
13 November 10th, so we identified those and  
14 sent them off.

15 So that's the last day, Your Honor,  
16 that I did any work for Dr. Colorchip, and  
17 I was continuing to do that work even  
18 though I had already determined that there  
19 was a willful breach. I wasn't going to  
20 get paid, but I was still obligated until  
21 the 15th to continue to watch out for the  
22 client's interest, Your Honor, even if it  
23 was adverse to my own interest.

24 Your Honor, if we can take just a  
25 ten-minute break, I'd like to make sure I

1 don't have any other direct. I just want  
2 to go through my outline and make sure I  
3 covered everything I intended to testify  
4 to, Your Honor.

5 THE COURT: Okay. We'll take ten  
6 minutes.

7 MR. ALVA: Thank you, Your Honor.

8 (Thereupon, a recess was taken, after  
9 which the proceedings continued as  
10 follows:)

11 MR. ALVA: I don't have any direct  
12 testimony to offer.

13 THE COURT: Your voice can't be  
14 heard.

15 MR. ALVA: Is that better?

16 THE COURT: Yes.

17 MR. ALVA: I don't have any other  
18 direct testimony to offer, other than my  
19 expert that's been included. I don't have  
20 any other witnesses. We just went through  
21 the exhibits. I don't know that I need to  
22 go through the exhibits right now to make  
23 sure they've all been admitted today. I  
24 think, Your Honor, that will conclude my  
25 case in chief. Oh, and cross-examination.

1 THE COURT: Exactly.

2 Ms. Pearsall, do you have cross of  
3 Mr. Alva? You're muted.

4 MS. PEARSALL: Yes, I do, Your Honor.

5 BY MS. PEARSALL:

6 Q. Mr. Alva, I'm going to share the  
7 screen.

8 A. I can see it.

9 Q. Is it large enough?

10 A. I recognize it, so that's fine.

11 Q. Mr. Alva, invoice number 90 was  
12 directed from you to the client, Dr.  
13 Colorchip, Daniel McCool, correct?

14 A. It's two clients actually. It was  
15 directed to both clients.

16 Q. I said Dr. Colorchip and Dan McCool?

17 A. Yes, but you said singular. They're  
18 two clients. Dr. Colorchip was a client and  
19 Daniel McCool was also a client, so it was  
20 directed to both clients.

21 Q. And in invoice number 90 you reported  
22 that you and your paralegal did a combined  
23 amount of work totalling 66.8 hours, correct?

24 A. That's what it shows, 66.8.

25 Q. And on invoice number 90, which is

1 Florida Bar's Exhibit 3, where it has the  
2 initials Curtis Alva for attorney. That's  
3 you, Curtis Alva?

4 A. Yes.

5 Q. And on invoice number 90, where it  
6 says Curtis Alva, the hourly rate states that  
7 it was \$400; is that correct?

8 A. I don't see that on the screen.

9 Q. I'll scroll up so that you can see.  
10 Can you see it now?

11 A. I see the rate column for the date,  
12 December 1st, 2017, and the rate column there  
13 says "\$400."

14 Q. And that's for Curtis Alva, Curtis  
15 Alva. That's you, right?

16 A. That's for me, yes.

17 Q. And going down. Now, on  
18 December 11th, 2017, there are initials GG.  
19 And that was the paralegal?

20 A. Yes.

21 Q. And for the rate for the paralegal  
22 for invoice number 90 the rate was \$100,  
23 right?

24 A. I can only see the entry for  
25 12-11-17, but it says \$100. My recollection



1 is that it's the same for all of the entries  
2 for Mr. Gonzalez.

3 Q. And I'm going to go up to the top of  
4 the Florida Bar's Exhibit 3, which is invoice  
5 number 90. At the top of that invoice on  
6 invoice 90 you reported that the first day of  
7 work for invoice number 90 was December 1st,  
8 2017, correct?

9 A. That's what it says on Exhibit 3.

10 Q. And going down to what would be Bates  
11 stamp number page four of the invoice.

12 And on invoice number 90, Florida  
13 Bar's Exhibit 3, you reported that your last  
14 day of work for invoice number 90 was  
15 December 29th, 2017, correct?

16 A. That's what the exhibit shows.

17 Q. So the total for invoice 90, the  
18 total amount of work that you told your client  
19 that you completed for invoice 90, that would  
20 be you and your paralegal, occurred between  
21 December 1st, 2017 and December 29th, 2017; is  
22 that correct?

23 A. That's what Exhibit 3 says, yes.

24 Q. And that invoice, invoice number 90,  
25 you reported to your client that the total

1 amount due for that work completed on invoice  
2 90 by you and your paralegal was \$25,040; is  
3 that correct?

4 A. That's what the exhibit says.

5 Q. And for invoice 90 that you sent to  
6 your client, you reported that you and your  
7 paralegal combined to complete 66.8 hours of  
8 work in total from December 1st, 2017 to  
9 December 29th, 2017; is that correct?

10 A. That's what I see on the exhibit.

11 Q. Mr. Alva, there's no language in the  
12 September 19th, 2016 engagement letter between  
13 you and Dr. Colorchip and Daniel McCool that  
14 states "If you pay in ten days, you can have a  
15 discount," is there?

16 A. Well, I don't have it in front of me,  
17 so I can't --

18 Q. I will pull it up. That's fine. And  
19 I'm sharing the screen. If you need me to  
20 make it larger, I will.

21 A. Can you. Because then I can read it  
22 faster.

23 Q. Can you see it or do I need to move?

24 A. No, no. I can see it fine. If you  
25 scroll down right there, you see in paragraph

1 one it says "The firm will represent Dan  
2 McCool and Dr. Colorchip, paren, quote, you or  
3 the, quote, parties, closed paren, in the  
4 dispute regarding Dr. Colorchip Corp. My  
5 hourly rate is" -- and it says 550 in the  
6 typed text that appears on the page. And then  
7 that's scratched out and it was scratched out  
8 by me and in the margin it says 400. So it  
9 was changed from 550 to 400, and then the text  
10 continues, an hour for attorney time, and my  
11 paralegal's rate is -- and in the typed text  
12 it says "\$125," but that's scratched out.  
13 There's an interlineation of \$100. Then it  
14 continues, an hour.

15 So that's the paragraph where I agree  
16 that my firm would charge \$400 for my time and  
17 \$100 for the paralegal.

18 And then if you continue to scroll  
19 down to paragraph four -- I'm sorry. Keep  
20 going down. I think maybe it's paragraph six.  
21 It's paragraph six. In paragraph six it says  
22 "The firm will invoice monthly for work  
23 provided, and payment will be due in ten  
24 days." My understanding of the contract is  
25 my --

1 MS. PEARSALL: Objection.

2 Nonresponsive.

3 THE COURT: Sustained.

4 BY MS. PEARSALL:

5 Q. I'll repeat the question, if I need  
6 to.

7 A. Yes, if you would.

8 Q. Mr. Alva, there is no language in the  
9 September 19th, 2016 engagement letter between  
10 you and Dr. Colorchip Corp. and Dan McCool  
11 that states if you pay in ten days, you can  
12 have a discount, correct?

13 A. If your question is putting that in  
14 quotation marks so it has to be exactly that  
15 language, then the answer is it does not  
16 contain exactly that language.

17 Q. So you just testified that you put in  
18 the engagement agreement, that's handwritten,  
19 where you put your hourly rate would be \$400  
20 and your paralegal's rates would be \$100.  
21 That's your handwriting, correct?

22 A. That's my recollection. That's my  
23 handwriting.

24 Q. And the client in this case, as part  
25 of the September 19th, 2015 engagement letter,

1 they gave you a \$25,000 retainer; is that  
2 correct?

3 A. I'm sorry. Can you scroll down to  
4 wherever it says 25,000. Scroll up to the  
5 bottom of the previous page.

6 So you'll see in paragraph four it  
7 says "You shall pay the firm a \$10,000  
8 retainer towards fees for legal services."  
9 This is in addition to the \$2500 retainer  
10 already paid pursuant to the August 27th, 2016  
11 engagement letter. So the original retainer  
12 was 2,500. When this document was signed, it  
13 was increased by \$10,000 to a total of  
14 \$12,500. And then if you scroll down to page  
15 four, you can see that it says in the last  
16 sentence of paragraph four "If McLean brings  
17 litigation, the retainer amount will be  
18 increased to \$25,000. So it started at 2,500.  
19 It then increased to \$12,500. And the reason  
20 it increased to 2,500 is because I added a  
21 second client.

22 Originally there was only one client,  
23 and I believe that was Dr. Colorchip. No. It  
24 was Mr. McCool, and we added Dr. Colorchip in  
25 this engagement letter, so the retainer was

1 increased to 12,500. And then it was  
2 subsequently increased because the condition  
3 in paragraph four, which McLean bringing  
4 litigation turned out to be true. He did  
5 bring litigation, and then because of the  
6 litigation the retainer was increased to  
7 25,000.

8 Does that answer your question?

9 Q. So the client gave you a \$25,000  
10 retainer, correct?

11 A. Eventually, and in stages. Not all  
12 at once. It was over time, but the total was  
13 25,000.

14 Q. The client paid invoice number 90.  
15 That would be the December 2017 charges,  
16 correct?

17 A. At what point in time.

18 Q. I'm asking you. Did they pay you?  
19 Did the client pay you?

20 A. The client did not pay me the \$20,040  
21 the day that it was due. The client did not  
22 pay when I asked for payment within three  
23 days, but the client did pay after they  
24 received the quantum meruit invoice on  
25 February 26th, 2018. I don't remember if they

1 paid the same day or the next day, but it was  
2 soon after they got the quantum meruit  
3 invoice.

4 Q. So your answer is the client paid  
5 invoice number 90, correct?

6 A. No. My answer is what I just told  
7 you.

8 Would you like me to repeat it?

9 Q. I don't need you to repeat it sir.  
10 The question is did they pay invoice number  
11 90?

12 The question wasn't when did they pay  
13 it. The question was, was it paid?

14 A. It was not paid on January 19th. It  
15 was not paid after I demanded payment. It was  
16 not paid in part when I asked for an  
17 undisputed payment. It was paid on or soon  
18 after February 25th, 2018.

19 Q. The client paid invoice number 93,  
20 correct?

21 A. Invoice number 93, and I'm going by  
22 recollection here, was not paid on the day  
23 that it was due. It was paid after it was  
24 due, but I don't recall off the top of my head  
25 what the date was.

1 Q. So invoice number 93 was paid.

2 Let me show you invoice number 93 on  
3 the screen.

4 MR. ALVA: Your Honor, I'm not sure  
5 how to do the objections while I'm  
6 testifying and also object to you, but I  
7 don't think that was in the form of a  
8 question so I would object to the form. I  
9 didn't understand it to be a question so I  
10 didn't respond.

11 THE COURT: Overruled.

12 BY MS. PEARSALL:

13 Q. On the screen is invoice number 93,  
14 the Florida Bar's Exhibit Number 4.

15 And invoice number 93, is this an  
16 invoice that you sent to the client, Dr.  
17 Colorchip, and Daniel McCool --

18 A. I believe so. I'm sorry what was  
19 that?

20 Q. You need me to show you the rest of  
21 the document, sir?

22 A. No. It's addressed to Dr. Colorchip  
23 and Daniel McCool, and I believe it was  
24 emailed to Daniel McCool in the email address  
25 that's set forth in the engagement letter.



1 Q. As far as this Exhibit Number 93 --  
2 I'm sorry. Invoice number 93, the Florida  
3 Bar's Exhibit 4, is invoice number 93 one that  
4 you sent to the client, Dr. Colorchip and  
5 Daniel McCool to report work completed by you  
6 and your paralegal from January 2nd, 2018  
7 through February 12th, 2018? And I'll scroll  
8 down so you can see.

9 A. That's what the exhibit says,  
10 Exhibit 4.

11 Q. And now on invoice number 93, you  
12 reported to the client that, combined, you and  
13 your paralegal completed 11.3 hours of work;  
14 is that correct?

15 A. That's what the exhibit shows.

16 Q. And as far as services subtotal, the  
17 amount charged that you reported to the client  
18 that you were seeking payment for was  
19 \$3,330.00; is that correct?

20 A. That's what the exhibit says.

21 Q. You've been testifying that you had  
22 two clients, and a few moments ago you said  
23 that you believe you sent the invoice to  
24 Daniel McCool by email, to the email address  
25 that was on the engagement letter. Let me

1 share my screen again.

2 Now, when you testified on direct  
3 about where you sent invoice number 90 -- tell  
4 me if you can see it.

5 A. I can see it.

6 Q. I might need to zoom out, so I'm  
7 sorry. Here we are.

8 Again, this is the Florida Bar's  
9 Exhibit Number 1. This is the engagement  
10 letter, so hopefully you can see it.

11 When you testified on direct, you  
12 stated that you sent the invoice number 90,  
13 which would be the January bill, by email to  
14 Daniel McCool at the email address that was on  
15 the engagement letter. You testified that  
16 that was Mccoolre2000@yahoo.com; is that  
17 correct?

18 A. Actually, it's 2002@yahoo.com, rather  
19 than 2000.

20 Q. I'm sorry 2002@yahoo.com; is that  
21 correct, sir?

22 A. That's my recollection as to my  
23 testimony.

24 Q. And below that on that same  
25 engagement letter it says to Dr. Colorchip

1 Corp. There's also another email address  
2 there, Dan@doctorcolorchip.com.

3 You didn't send the invoice to that  
4 email address, did you, sir?

5 A. Actually, I can't tell you whether I  
6 sent it to that address or not, but I  
7 recollect that I did send it to the CEO of Dr.  
8 Colorchip, who's Danielmccool@mccoolre2002. I  
9 don't recall whether it was also sent to  
10 Dan@doctorcolorchip.com.

11 Q. But you do know that you did not send  
12 it to Tricia O'Rourke who worked for Dr.  
13 Colorchip. That's correct, right?

14 A. My recollection is that Ms. O'Rourke  
15 said that she was not -- she used the word  
16 coded, which I think means copied. Coded on  
17 nine last three invoices, which would be, I  
18 guess, 9390 and 89. So I'm assuming that she  
19 was correctly identifying which one she was  
20 copied on and which one she wasn't. I don't  
21 actually have an independent recollection.

22 Q. Let me stop the sharing of that  
23 screen.

24 Mr. Alva, I'm showing you invoice  
25 number 95, which is the Florida Bar's

1 Exhibit 5 that's in evidence, and I'll scroll  
2 down so you can see the rest of the document.

3 A. Is it just one page?

4 Q. Yes. If you look at the bottom it  
5 says "Page one of one."

6 A. Very good. Thank you.

7 Q. You're welcome.

8 Looking at invoice number 95, and  
9 it's dated February 26th, 2018, you sent this  
10 invoice to the client, Dr. Colorchip and  
11 Daniel McCool, requesting payment for services  
12 in the amount of \$126,650; is that correct?

13 A. No. I think it's -- oh, for the  
14 total. Sorry. Yes, the total -- well, the  
15 last line I can read "Services subtotal." Is  
16 there another number below that?

17 Q. That's the number I'm referring to,  
18 the services subtotal. Below that, I believe  
19 that's expenses. The services subtotal.

20 A. Yes. The services subtotal on  
21 Exhibit Number 5 is \$126,650.

22 Q. And you asked or demanded that Dr.  
23 Colorchip and Daniel McCool pay this amount by  
24 March 1st of 2018?

25 A. Well, I don't know what you mean by

1 demand, but the due date on the invoice,  
2 Exhibit Number 5 says "March 1st, 2018."

3 Q. So between March (sic) 26th, 2018 and  
4 March 1st, 2018, that's roughly five days,  
5 sir?

6 A. Well, let's see. Assuming it's not a  
7 leap year, the first is roughly three days,  
8 unless my -- if you include the 26th, 27th,  
9 28th and the 1st. Four days, I guess.

10 Q. And the date for the invoice number  
11 95 under the services section where it says  
12 "Date, February 26th, 2018, it has initials  
13 attorney Curtis Alva, but there's no  
14 description for any services that Curtis Alva  
15 provided. That's blank, correct?

16 A. The description column is blank.

17 Q. Curtis Alva, that's still you, sir,  
18 right?

19 A. It is still me.

20 Q. You did not perform 806.70 hours of  
21 services for the client, Dr. Colorchip and  
22 Daniel McCool on February 26th, 2018, did you?

23 A. Well, I don't recall everything I did  
24 on February 26th, but since it's only 24 hours  
25 long, I would say you are correct.

1           Q.    And below that, the column for the  
2    paralegal, GG, for February 26th, 2018,  
3    there's nothing in the description box for the  
4    paralegal as to describe the services that  
5    were performed that date, is there?

6           A.    The description column for the  
7    paralegal is blank.

8           Q.    Mr. Alva, your paralegal didn't  
9    perform 226.8 hours of work for client Dr.  
10   Colorchip and Daniel McCool on February 26th,  
11   2018, did they?

12          A.    Well, using the same analysis that we  
13   did on the 806.7 hours for me, I would say,  
14   no, we did not.

15          Q.    So this invoice that you sent to your  
16   client, Dr. Colorchip and Daniel McCool was  
17   sent to them without describing what services  
18   you wish to be paid for and was at a rate that  
19   they hadn't agreed to in the engagement  
20   letter; is that correct?

21          A.    Well, that's a compound question.  
22   Can you break it up.

23          Q.    This invoice number 95 that you sent  
24   to your client, Dr. Colorchip and Daniel  
25   McCool did not inform the client of the

1 services that you wished to be paid for, did  
2 it?

3 A. This invoice did not repeat the  
4 descriptions that were in the previous  
5 invoices, if that's your question. You are  
6 correct.

7 Q. When you say "previous invoices,"  
8 those were invoices that you previously sent  
9 to the client, Dr. Colorchip and Dan McCool,  
10 and you have received payment for at the rate  
11 of \$400 for attorney time and \$100 for  
12 paralegal time?

13 A. Yes, that's what I'm referring to.

14 Q. So under the rate column for invoice  
15 number 95 for Curtis Alva, for the date  
16 February 26th, 2018 the rate of \$150 per hour,  
17 that represents an increase over what the  
18 client had agreed to pay you for your attorney  
19 time in the engagement letter, doesn't it?

20 A. Actually, that number represents a  
21 credit, rather than an increase.

22 What happened with invoice number 95,  
23 this is a quantum meruit invoice. It is not  
24 sent pursuant to the contract. By  
25 February 26th, the contract had been

1 nullified, and I was billing them in quantum  
2 meruit. And my understanding of the law, in  
3 quantum meruit you have to give a credit to  
4 the breaching party for any money that they  
5 have already paid towards the reasonable value  
6 of your services. The reasonable value of my  
7 services was \$550, but they had already paid  
8 \$400. So I gave them a \$400 credit for every  
9 hour as to which they had already paid, which  
10 is what I was required to do under the law for  
11 806.7 hours for my time and 226.8 for my  
12 paralegal's time, I gave them a credit of \$100  
13 an hour resulting in a net of 25 for the  
14 paralegal and a net of 150 for me. So it is  
15 not an increase of the contract rate. It is a  
16 credit for the amount they already paid  
17 towards the reasonable value of my services.

18 Q. Mr. Alva, you prepared the engagement  
19 letter, the September 19th, 2016 engagement  
20 letter, didn't you?

21 THE COURT: Hold on a second. Okay.

22 BY MS. PEARSALL:

23 Q. Mr. Alva, when you entered the  
24 engagement letter with the clients, Daniel  
25 McCool and Dr. Colorchip, you told them that



1 the value of your service would be \$400 for  
2 attorney time and for your paralegal it would  
3 be \$100 for paralegal time; is that correct?

4 A. Did you say I told them that was the  
5 value or that was the rate I would charge?

6 Q. I'm sorry. The rate. I'll repeat  
7 it.

8 Mr. Alva, when you entered into the  
9 engagement letter of September 19th, 2016 with  
10 the client Dr. Colorchip and Daniel McCool,  
11 you told them the rate you would charge for  
12 attorney time would be \$400 per hour, and the  
13 rate for paralegal time would be \$100 per  
14 hour; is that correct?

15 A. I think we've gone through that. The  
16 typed document says the rate is 550 and 125,  
17 and those are crossed out by me. And then the  
18 margin for me it says "\$400," and  
19 interlineation for my paralegal it says "100."

20 Q. I'm showing you the Florida Bar's  
21 Exhibit 6. This is the statement of account,  
22 March 20th, 2018.

23 This March 20th, 2018 statement of  
24 account, you sent this to your client, Dr.  
25 Colorchip and Daniel McCool; is that correct?

1           A.    That's my recollection.

2           Q.    And in the March 20th, 2018 statement  
3 of account states that you have deducted  
4 \$25,000 from the trust account balance; is  
5 that correct?

6           A.    Yes. The line says 3/20/2018. I  
7 can't read it. Does the next one say  
8 activity?

9           Q.    It says activity is where the trust  
10 account is. The next one is due date. Then  
11 it says "invoice amount."

12          A.    Yes. So in the date column it's  
13 March 20th, 2018. In the activity column, it  
14 says "trust account balance." Due date is  
15 blank and under invoice amount it says there's  
16 a minus sign and \$25,000.

17          Q.    Now, this \$25,000 deduction from the  
18 trust account balance does not mean that you  
19 returned the \$25,000 retainer to the client,  
20 Dr. Colorchip and Daniel McCool, does it?

21          A.    Did you say does mean that or does  
22 not mean that?

23          Q.    Does not mean that.

24          A.    No. The 25,000 in the invoice amount  
25 column is an application of the retainer

1     against the balance due on the account, which  
2     was unpaid and in default. The balance due  
3     was 126 -- I can't read it. And from the  
4     \$126,000, \$25,000 was applied towards that  
5     from the trust account and that left a balance  
6     of \$101,834.95, which was overdue.

7           Q. By March 7th you had already  
8     acknowledged in an email to Daniel McCool that  
9     you had received payment for the December  
10    invoice. That's invoice 90; is that correct?

11          A. I would have to see the email to be  
12    able to answer that question.

13          Q. I'll show you what's in evidence as  
14    the Florida Bar's Exhibit 31. I'll increase  
15    the size of it.

16                Do I need to reask the question?

17          A. Yes, please.

18          Q. On March 7th, 2018, you acknowledge  
19    in the email response to Daniel McCool that  
20    you had received payment for the invoice for  
21    December, correct?

22          A. Well, not exactly. I mean, I don't  
23    mean to quibble, but what it says is "Thanks  
24    also for sending the payment for the invoice  
25    for December."

1           My recollection is that Mr. McCool  
2   told me in an email that he had paid me  
3   yesterday, and, in fact, he hadn't. So I  
4   don't remember when I actually received  
5   payment, but I do remember that, by this time,  
6   he had told me he was sending payment, and I  
7   don't remember off the top of my head when I  
8   actually received that payment.

9           Q.    I'm showing you the Florida Bar's  
10   Exhibit Number 29.

11           When Dan McCool mailed you on April  
12   9th, 2018 asking you return all retainer funds  
13   immediately, you sent a reply email to him on  
14   April 10th, 2018 telling him that the balance  
15   in his retainer account was zero, correct?

16           A.   It looks like the email says the  
17   \$25,000 retainer payment was applied to the  
18   unpaid invoice and the balance in your  
19   retainer account is zero.

20           Q.    So the answer is you sent -- is your  
21   answer you sent Daniel McCool an email --  
22   after he asked you to return the retainer  
23   funds immediately, you sent him email telling  
24   him the balance in the retainer account is  
25   zero, correct?

1           A.    Well, I don't know if you're meaning  
2   has changed the language of the email or not.  
3   I will read you the email.

4                   I sent him an email on April 10th,  
5   2018 and in it I said "There is no return  
6   due," period. "There is a balance due in  
7   excess of \$100,000," period. "The \$25,000  
8   retainer payment was applied to the unpaid  
9   invoice and the balance in your retainer  
10  account is zero," period. "Please make a  
11  check for the balance and let me know when I  
12  can pick it up," period. "If you do not  
13  intend to pay in full," comma, "please let me  
14  know promptly so I can pursue collection,"  
15  period. That's what it says.

16          Q.    Since Mr. McCool asked for you to  
17  return his retainer on April 9th, 2018, have  
18  you returned his \$25,000 retainer?

19          A.    He doesn't have a \$25,000 retainer,  
20  so I can't return something that he doesn't  
21  have.

22          Q.    Where is Mr. McCool's \$25,000  
23  retainer?

24          A.    It's in a trust account.

25          Q.    But here in your e-mail on

1 April 10th, 2018, you told him the balance of  
2 his retainer account is zero?

3 A. I think I see what you're asking.

4 The \$25,000 used to be his retainer  
5 before it was credited to the invoice for  
6 \$126,000. So there's \$25,000. That \$25,000  
7 is in a trust account. That is not his  
8 retainer. That is funds that belong to my  
9 firm because he had an unpaid invoice of  
10 \$126,000, which was past due, and that \$25,000  
11 became the property of my firm. When that  
12 \$25,000 became the property of my firm, he no  
13 longer had a retainer of \$25,000.

14 Does that help?

15 Q. Yes, it helps.

16 You're maintaining the property of  
17 Mr. Daniel McCool, the \$25,000 retainer?

18 A. I'm not retaining his property at  
19 all. I think I explained, that is not his  
20 property. It is, however, being held in a  
21 trust account because there is a dispute as to  
22 the ownership.

23 Mr. McCool, if I understand  
24 correctly, believes that it belongs to him  
25 and/or Dr. Colorchip. My firm believes that

1 it belongs to my firm. Because of that  
2 dispute, the money is being held separately  
3 until the dispute is resolved pursuant to  
4 Florida Bar Rule 5.1.1. I think it's  
5 subparagraph S.

6 Q. So on January 19th, 2018, the bill  
7 that you sent to Dr. Colorchip and Daniel  
8 McCool was for \$25,040, correct?

9 A. I don't recollect the exact amount.  
10 You can show it to me or you can represent the  
11 amount is correct, either way.

12 Q. Can you see it on the screen?

13 A. I can. The amount of this invoice is  
14 \$25,040.

15 Q. I'm showing you what's been marked as  
16 the Florida Bar's Exhibit Number 47, and I'll  
17 scroll through it so you can see. It's only  
18 two pages. What is it and how do you  
19 recognize it?

20 A. Well, if it's what it purports to be  
21 -- and I haven't looked at this recently. I  
22 probably looked at it when you sent me your  
23 exhibits. It's a final judgment in the matter  
24 of Dr. Colorchip and Daniel McCool versus  
25 Curtis Alva and Alva & Gleizer, and that final

1 judgment is under appeal.

2 MS. PEARSALL: At this time, the Bar  
3 moves the Bar's Exhibit 47 into evidence,  
4 Your Honor.

5 THE COURT: Any objection?

6 MR. ALVA: Is there a Bates stamp,  
7 Your Honor, or something? Wait minute.  
8 Theirs is a Bates number on it. I don't  
9 object, Your Honor.

10 THE COURT: So your numbers were out  
11 of order before. You want this 47 or 57?

12 MS. PEARSALL: It's 47, Your Honor.  
13 That's how it's marked, 47.

14 THE COURT: All right. So that will  
15 be Petitioner's 47.

16 BY MS. PEARSALL:

17 Q. Now, Mr. Alva, on June 28th, 2022,  
18 the Court in Palm Beach County in the case of  
19 Dr. Colorchip and Daniel McCool versus Curtis  
20 Alva and Alva & Gleizer entered a final  
21 judgment order in favor of the plaintiffs, Dr.  
22 Colorchip and Daniel McCool, against you and  
23 your firm, Alva & Gleizer, in the amount of  
24 \$25,000; is that correct?

25 A. I can only see a portion of the



1 document, but the portion I see has the date  
2 you mentioned, 6-28-22, and it has the amount  
3 mentioned, 25,000. So that's what the  
4 document shows.

5 Q. And the \$25,000 final judgment that  
6 was entered against you and your firm  
7 represents the client, the plaintiffs, Dr.  
8 Colorchip and Daniel McCool's 25,000 retainer,  
9 correct?

10 A. I don't know what you mean "I  
11 represent." In that complaint they ask for  
12 the return of their retainer, and the judgment  
13 actually worded it a little differently, but  
14 my understanding is that it was for the 25,000  
15 that used to be their retainer.

16 Q. Now, you didn't send out your  
17 invoices to the client, Daniel McCool and Dr.  
18 Colorchip, on the same day every month, did  
19 you, during the representation?

20 A. Oh, I couldn't tell you that. There  
21 were 16 invoices sent over a 16-month period  
22 starting in 2016. I just don't remember what  
23 days they were sent out.

24 Q. Let's go over a few of them. I'm  
25 going to share the screen. I'm showing you

1 what's marked as the Florida Bar's Exhibit 19  
2 and you can see the Bates stamp there on the  
3 bottom. Invoice number 85 from Alva & Gleizer  
4 to Dr. Colorchip and Daniel McCool. This is  
5 invoice number 85. Is the date October 13th,  
6 2017, sir?

7 MR. ALVA: Your Honor, I would  
8 object. There's no relevance to the date  
9 that the invoices were sent out,  
10 especially for invoices that are not in  
11 dispute. And it's almost 4 o'clock, so we  
12 don't need to go through 16 invoices to  
13 find out what date they were all sent,  
14 because it's completely immaterial to the  
15 dispute.

16 THE COURT: Obviously, we're not  
17 finishing today, so I'll get you another  
18 date.

19 I'm going to overrule the objection.

20 MR. ALVA: The date on this invoice  
21 is October 13th, 2017.

22 MS. PEARSALL: That's invoice 85.  
23 That's the Bar's Exhibit 19.

24 BY MS. PEARSALL:

25 Q. I'm showing you the Bar's Exhibit

1 Number 20, and this is invoice number 86 from  
2 Alva & Gleizer to Dr. Colorchip and Daniel  
3 McCool.

4 What's the date on this invoice?

5 MR. ALVA: Your Honor, I would  
6 propose a stipulation. I will stipulate  
7 that the invoices are dated on the date  
8 that's on the face of each invoice for  
9 every invoice that was issued and that  
10 would solve this.

11 THE COURT: That's fine.

12 MS. PEARSALL: So my question was --  
13 what I'm trying to establish is that the  
14 invoices were not consistently sent out on  
15 the same date every month. That is the  
16 purpose of why I'm doing this. Okay? I'm  
17 not trying to prolong anything. That's  
18 just the only way, so I will accept the  
19 stipulation, as long as I can make my  
20 argument later, and I'll stop sharing this  
21 particular screen. Thank you.

22 MR. ALVA: Thank you, Ms. Pearsall.

23 BY MS. PEARSALL:

24 Q. Now, at times, Mr. Alva, would you  
25 send the client, Dr. Colorchip and Daniel

1 McCool, invoices that included charges from  
2 your law firm that had not been incurred in  
3 the prior month, but during some period  
4 beforehand?

5 A. I don't recall. I would think that  
6 the answer to that is generally no, but there  
7 might be an exception where charges are not  
8 included in the previous invoice and then is  
9 picked up in the next month's invoice.

10 Q. Even if there was no consistent date  
11 when you sent out the invoices to the client,  
12 excluding the December 2017 invoice, invoice  
13 number 90, did the client continue to pay on  
14 time and even pay early on occasion?

15 A. My recollection is that every invoice  
16 that was sent out before the invoice for the  
17 work in December was paid within ten days.

18 THE COURT: Okay. I'm not supposed  
19 to keep my clerk here past 4:00. That's  
20 why we designated 4 o'clock. I have dates  
21 in March. I have the 3rd, 10th and 17th.

22 MR. ALVA: Your Honor, may I ask --  
23 and I'm going to check my calendar here.

24 May I ask Ms. Pearsall how much more  
25 time she thinks she has so we know how

1 much of a slot we're shooting for?

2 MS. PEARSALL: Probably 20, 25 more  
3 minutes, Your Honor.

4 THE COURT: And then you're going to  
5 have to do your closings.

6 MS. PEARSALL: Is there any time in  
7 February, Your Honor?

8 THE COURT: I can give you March 3rd.

9 MR. ALVA: Let's add them up. If we  
10 have 25 minutes for her cross and 30 for  
11 her closing and 30 for my closing. That's  
12 an hour --

13 THE COURT: About 90 minutes.

14 MR. ALVA: So about 90 minutes. And  
15 if we limit the next session to exclude --  
16 how did you characterize it, Ms. Pearsall,  
17 the discipline?

18 MS. PEARSALL: The sanctions. Maybe  
19 we can do all of that at once, the  
20 sanctions/recommendations, unless the  
21 Court is going to do that on a separate  
22 day.

23 MR. ALVA: That only comes about if  
24 the Court finds that there was a  
25 violation, right? Am I understanding the

1 procedure correct?

2 THE COURT: Correct.

3 MR. ALVA: Maybe we can schedule the  
4 next one for 90 minutes without having to  
5 -- and you said March 3rd?

6 THE COURT: March 3rd.

7 MR. ALVA: March 3rd, Friday. I can  
8 make that work, Your Honor.

9 What time of day was it?

10 THE COURT: It would be 1:00 to 4:30  
11 again. 1:00 to 4:00. I'm sorry.

12 MS. PEARSALL: That's fine, Your  
13 Honor.

14 THE COURT: Ms. Pearsall, can you  
15 send in another extension to the Florida  
16 Supreme Court. Just indicate that we've  
17 completed five days of trial and we need a  
18 sixth day. The sixth day is going to  
19 happen in March and then some time to  
20 write up the report.

21 MS. PEARSALL: So another 60 days  
22 beyond?

23 THE COURT: I think 60 past  
24 March 3rd, yes.

25 MS. PEARSALL: Or beyond the

1 extension you already have? I think it's  
2 March 23rd, so 60 beyond that, if that's  
3 -- let me just look at the date, Your  
4 Honor. It's currently due on March 21st,  
5 so 60 beyond that is roughly May 21st?

6 Is that fine, Your Honor?

7 THE COURT: That's fine.

8 MR. ALVA: May 23rd is a Sunday.

9 MS. PEARSALL: I'll flip over to the  
10 22nd.

11 Is the 22nd fine with you, Your  
12 Honor?

13 THE COURT: That's fine.

14 MS. PEARSALL: Mr. Alva, is that fine  
15 so I can get it done and send it out?

16 MR. ALVA: It's fine, Ms. Pearsall,  
17 and thank you for preparing that.

18 THE COURT: So March 3rd. And you  
19 will do the notice?

20 MS. PEARSALL: Yes, Your Honor.

21 THE COURT: You all have a good  
22 weekend. Thank you.

23 MR. ALVA: Thank you, Your Honor.

24 MS. PEARSALL: Thank you, Your Honor.

25 (Thereupon, the hearing was concluded.)

## CERTIFICATE

STATE OF FLORIDA:  
: SS.  
COUNTY OF DADE:

I, Ileana L. Carril, Shorthand Reporter,  
certify that I was authorized to and did  
stenographically report the foregoing  
proceedings and that the transcript is a true  
record.

Dated this 23rd day of June 2023.



Ileana L. Carril



IN THE SUPREME COURT OF FLORIDA  
(Before a Referee)

THE FLORIDA BAR,  
Complainant,

vs.

CURTIS S. ALVA,  
Respondent.

Supreme Court Case  
No. SC21-1564

The Florida Bar File  
No. 2018-50,796(15A)

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PROCEEDINGS BEFORE THE
HONORABLE DALE C. COHEN

March 28, 2023
1:30 p.m. - 4:57 p.m.

Via Videoconference

APPEARANCES OF COUNSEL

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- - -

Proceedings in the Matter of
The Florida Bar vs. Curtis S. Alva
March 28, 2023

THE COURT: All right, it looks like we're all here. Ms. Pearsall, last time you were doing your cross. I don't remember if you finished your cross.

MS. PEARSALL: Good afternoon, your Honor. No, I didn't finish. I was completing my cross.

THE COURT: Okay.

All right, so Mr. Alva, let me swear you in once again. Please raise your right hand.

(Curtis Alva was sworn in by the Court.)

THE COURT: Ms. Pearsall, you may begin.

MS. PEARSALL: Thank you, your Honor.

CONTINUED CROSS-EXAMINATION

BY MS. PEARSALL:

Q. Good afternoon, Mr. Alva.

A. Good afternoon, Ms. Pearsall.

Q. I'm showing you what's marked as the Florida Bar Exhibit 22. Are you able to see that on your screen? Do you see the exhibit number down at the bottom there?

A. Hold on. Yes, I see that.

1 Q. Okay. So this is the Florida Bar's Exhibit
2 No. 22. And if you could just look at the exhibit on
3 the screen, please. Tell me if you recognize it.

4 A. It's a little small. You can make it bigger?
5 I can't read, for example, I can't read what invoice
6 number it is.

7 Q. Sure. Is that better?

8 A. Hold on just a minute. On my screen it
9 doesn't go from the top to the bottom. It starts
10 about one third down.

11 Q. Okay. Do you recognize Invoice No. 89,
12 Mr. Alva?

13 A. If you would scroll down for me.

14 Q. I'm scrolling down for you. This is page 1
15 of 4, 2, 3 of 4, and here is page 4 of 4, the final
16 page, the end.

17 A. Okay. This is something that you produced in
18 discovery? Is that Bates-numbered?

19 Q. Yes, it is. It's Florida Bar No. 22, as
20 previously provided. Do you recognize it?

21 A. Yes. Well, it appears to be Invoice No. 89
22 that was sent to Dr. ColorChip and Daniel McCool.

23 MS. PEARSALL: Your Honor, at his time the Bar
24 moves Exhibit 22 into evidence.

25 THE COURT: Okay. That will be Petitioner's

1 No. 22.

2 BY MS. PEARSALL:

3 Q. You already stated this is an invoice you
4 sent to Dr. ColorChip and Daniel McCool, the Florida
5 Bar Exhibit 22?

6 A. Invoice 89?

7 Q. Yes. What is the date on Invoice No. 89,
8 Mr. Alva?

9 A. The date on the face of the document is
10 12/20/17.

11 Q. And what is the due date on Invoice No. 89?

12 A. 12/30/17.

13 Q. And I want to go now to page 3 of 4 of
14 Florida Bar No. 22, which is Invoice No. 89. And what
15 is the subtotal dollar amount of Invoice No. 89?

16 A. 14,000.

17 Q. Dollars?

18 A. Yes.

19 Q. And on page 4 of 4 of Invoice 89, which is
20 Florida Bar 22, what is the total?

21 A. 14,000.

22 Q. And, again, that's dollars?

23 A. Yes.

24 Q. So this Invoice No. 89 was sent to
25 Dr. ColorChip in the month of December of 2017, due on

1 December 30, 2017, in the amount of \$14,000, is that
2 correct?

3 A. That's what it says on the face of the
4 document.

5 Q. And you testified earlier that Dr. ColorChip
6 had paid all of their invoices either early or on time
7 up until Invoice 90, is that correct?

8 A. That's my recollection. Are you asking me if
9 I recall saying that or if it's true?

10 Q. If you recall saying it.

11 A. I believe, in my testimony, I said that they
12 did pay all the invoices, prior to Invoice No. 90,
13 were paid within 10 days.

14 Q. So prior to issuing Invoice No. 90, which was
15 issued in January of 2018, you had sent Dr. ColorChip
16 an invoice in December requesting \$14,000 in payment,
17 and they paid that on time, correct?

18 A. Yeah. It's a compound question. But to
19 answer each part of it, this was sent in December
20 2017. It was paid, according to my recollection, I
21 don't have a, you know, a written proof of payment in
22 front of me, but my recollection is it was paid during
23 December.

24 What was the other part of your question?
25 When was it paid?

1 Q. Yeah, and if it was paid on time.

2 A. I believe so. The practice was -- maybe this
3 will help you. The practice was each month I would
4 send them an invoice for the work that had been done
5 in the prior month. All of those invoices were due in
6 10 days. Shortly after I sent the invoice, I would
7 send them a reminder, that this is due within 10 days
8 or words to that effect, that it's important that this
9 be paid on time. Can I stop by the office? Can I
10 meet you somewhere? Can we make arrangements? And we
11 would make some kind of arrangement so that payment
12 within 10 days would be accomplished.

13 And they always -- they always professionally
14 complied. Yeah, come by, pick up the invoice. So
15 they would always respond to these requests for
16 payment on time, and then they would always pay on
17 time, is my recollection.

18 Q. All right. I'll stop sharing the screen and
19 I'll move on to the next exhibit. I have on the
20 screen Florida Bar's Exhibit 50B, as in boy, which is
21 already in evidence. And if you look at the top of
22 the exhibit, Mr. Alva, and I'm going to read this into
23 the record, it says from Curtis Alva, sent Monday,
24 February 5, 2018, at 10:46 a.m., to Daniel McCool,
25 subject December invoice, and it says attachment

1 Invoice 90, Dr. C, December 2017 PDF.

2 And it reads: I know that you've been out of
3 the country so this invoice might still be in process.
4 It was sent on 01/09/18. Can you tell me the status?

5 My question to you, Mr. Alva, is, you admit
6 that on February 5, 2018, you knew that Dan McCool had
7 been out of the country and that there was a delay in
8 processing Invoice 90, correct?

9 A. Let's see. I did know he had been out of the
10 country. He traveled frequently, especially to
11 Australia, and so that was no surprise. The invoice
12 might still be in processing.

13 Well, obviously, they had not paid within the
14 deadline, which was January 19th, so one of two things
15 would have to be true, either they were still
16 processing the invoice for some reason, or they had
17 decided they weren't going to pay the invoice. I
18 think those are the only two alternatives.

19 My assumption was that they had not decided
20 they were not going to pay it but that they were
21 processing it and then they would pay it. And that's
22 what I asked, what's the status? So, is it still
23 processing, or is there something else going on?

24 Q. I'll stop sharing the screen.

25 Mr. Alva, even after the client informed you

1 that they were hiring other counsel, the client
2 continued to communicate with you about Invoice 90, is
3 that correct?

4 A. I'm sorry? Repeat the question.

5 Q. Even after the client informed you that they
6 were hiring other counsel, someone other than yourself
7 was going to be their counsel, the client continued to
8 communicate with you about Invoice 90, correct?

9 A. No, I don't think that the client told me that
10 someone else was going to be counsel for the -- you
11 know, their counsel, I think is the way you worded it,
12 which I understand to mean would be the sole counsel
13 representing them in the litigation. That was not
14 communicated to me until much later. Like I said --

15 MS. PEARSALL: Objection, your Honor,
16 nonresponsive.

17 THE COURT: Just answer the question that was
18 posed to you.

19 A. Would you repeat the question, Ms. Pearsall?
20 Maybe I didn't understand it.

21 Q. Okay. Even after the client informed you
22 that they were hiring other counsel or terminating
23 your services, the client continued to communicate
24 with you about Invoice 90, is that correct?

25 A. Let me look and see. I was notified that I

1 was terminated on February the 13th. So at no time
2 before February 13th was I told that I was going to be
3 terminated.

4 After February 13th, yes, I got an e-mail from
5 Ms. O'Rourke on February 16th. I got an e-mail -- two
6 e-mails from Ms. O'Rourke on February 16th, one about
7 Invoice 91 and one about Invoice 93. We traded
8 e-mails, it looks like, around February 21st, February
9 26th, February 27th.

10 So yes, the answer to your question is I was
11 terminated on the 13th, and after the 13th, I
12 continued -- or Dr. ColorChip continued to communicate
13 with me about Invoice 90.

14 Q. I am showing you what's been provided to me
15 as Respondent's 1. This is your exhibit that was
16 provided to me by your office, and I'll share this
17 now. It's six pages. This is the sixth page. I'll
18 go up to the first page so you can see the beginning.
19 I'm going to go down now to page 6.

20 A. Did you say that was Exhibit 1 for Respondent,
21 Ms. Pearsall?

22 Q. Yes.

23 A. Thank you.

24 Q. I'm going to the third page of Exhibit 6, no,
25 Respondent's Exhibit 6, and here's an e-mail from

1 Tricia O'Rourke dated February 14, 2018, at 8:25 a.m.,
2 and this is to you, Curtis Alva.

3 So this is after the termination. And,
4 according to you, the date was February 13th. And
5 I'll read the subject line. It's regarding answers to
6 your e-mail of today regarding January invoice. And
7 it says:

8 With regard to the review of the December
9 invoice, your bills have blocks of tasks in one
10 time period making it impossible to know how much
11 time was spent on each item. Can you please use
12 your time log to break down the December invoice
13 and put a time spent to each item? So, for
14 example, if on December 9th you spent one hour and
15 40 minutes, quote, continuing to work on Janeen
16 Serino deposition, read e-mail and advise client,
17 continue to work on tax issue, closed quote, I need
18 to know how long you spent on each of those three
19 items to make up the hour and 40 total. I will
20 also need that for the final invoice. Thank you.

21 So, Mr. Alva, as of February 14, 2018,
22 Ms. O'Rourke was still asking questions about the
23 December -- work done in December, so that would be
24 Invoice No. 90 or the December invoice, is that
25 correct?

1 A. Well, you say she was still asking questions.
2 I can't tell from the little bit you're showing me,
3 but my recollection is that that might have been the
4 first time she asked any questions about Invoice 90,
5 so it would not be accurate to say she was still
6 asking questions about Invoice 90. But I can look.
7 If you want to give me just a minute, I can look and
8 see if I can --

9 Q. That's okay, sir. I don't need you to look.
10 That's your response?

11 A. My response is that I don't believe it's
12 accurate to say she was still asking questions about
13 Invoice 90, because I believe those were the first
14 times she asked any questions about Invoice 90.

15 But if you let me look through the whole
16 e-mail string that you're using as an exhibit, I might
17 be able to tell you based on earlier e-mails. Would
18 you like me to do that?

19 Q. I'll ask my next question, sir.

20 A. Okay.

21 Q. I'm showing you, this is still Respondent's
22 Exhibit 1, and I'm showing you page 1 of 6, an e-mail
23 from Tricia O'Rourke sent Wednesday, February, 14,
24 2018, 5:14 p.m., to Curtis Alva, subject line, revised
25 answer to your e-mail of today re January invoice.

1 And it reads:

2 Who mentioned litigation? We have no
3 intention of litigating an invoice. That's
4 ridiculous. That's not how we roll. We are
5 professionals who expect to be treated
6 professionally and fairly. That's all. As I
7 mentioned, I will review and get back to you.

8 And you received this e-mail from Tricia
9 O'Rourke, is that correct, Mr. Alva?

10 A. I think so.

11 Q. And, to this date, you had not returned the
12 client's \$25,000 retainer, is that correct, Mr. Alva?

13 A. I had not returned it to the client. I had
14 put the retainer in a trust account.

15 Q. Whose trust account and where is the trust
16 account located?

17 A. It's the trust account for the Court in and
18 for Palm Beach County.

19 Q. Okay. Now I'm showing you what was provided
20 to me as Respondent's Exhibit 2. Can you see that,
21 Mr. Alva?

22 A. Hold on one second. Are you showing me the
23 first page or the last page?

24 Q. I'm showing you the first page.

25 A. Yes, I see that. It's still very hard to

1 read, but I see it.

2 Q. I'll make it bigger. Is that better?

3 A. Yes, that's better.

4 Q. So Respondent's Exhibit 2, this is page 1 of
5 17, and it's an e-mail from Dan McCool to Curtis Alva,
6 cc David McCool, subject, revised re, Dan re,
7 questions on the December bill. And it's Tuesday,
8 February 27, 2018.

9 So I'm going to go down now. It's at the top
10 of the e-mail, and I'm going to go down to the middle
11 of page 1. On February 27, 2018, at 12:32 p.m., Dan
12 McCool wrote:

13 Curtis, per Dave's advice, I have issued to
14 you full payment of the \$25,040 invoice to my bank
15 for payment yesterday.

16 Now I'm going up to the next e-mail on that
17 page, on February 27, 2018, at 2:16 p.m., Curtis Alva
18 wrote:

19 Thanks, I'm not sure what payment yesterday
20 means, but I think the rest of your e-mail means
21 I'll receive a check for \$25,040 in the mail within
22 a couple of days. I'll let you know when I receive
23 it. I received the check for the work in January
24 and February yesterday. Thanks for sending it so
25 promptly.

1 So you acknowledge that, even after the
2 client terminated your services, they promptly paid
3 you for the work that you did for them in January and
4 February, correct?

5 A. My recollection is that they did not pay that
6 invoice within the 10-day deadline, but we can pull up
7 the invoice and see. My recollection is that they
8 paid it -- they paid it late.

9 Q. I ask that you not pull up any documents
10 while you're on the stand, sir.

11 A. No, I'm asking if you want me to do that. I'm
12 not telling you I'm doing it. I have not pulled up
13 the invoice.

14 My recollection is that the invoice was sent
15 and that it was not paid within the 10 days. It was
16 paid late, but I don't recall how late. But I can
17 tell you how late if you want me to look at the
18 invoice.

19 Q. But your e-mail to the client says, it says,
20 thanks for sending it so promptly. Is that what it
21 says, sir?

22 A. That's what it says.

23 Q. Okay, thank you.

24 MS. PEARSALL: I have no further questions,
25 your Honor. Thank you.

1 THE COURT: Mr. Alva, did you want to do a
2 redirect of yourself?

3 MR. ALVA: Yes, your Honor, if I may.

4 REDIRECT EXAMINATION

5 MR. ALVA: And this is will be going down a
6 sequence, so why don't we start with the points
7 that Ms. Pearsall raised today, and then I'll go
8 back to the points that she raised in the first day
9 of cross-examination.

10 So as to Invoice 89, which was the invoice
11 for the work that was done in November of 2017, the
12 procedure that we followed for that invoice is the
13 procedure that we followed for, I believe, every
14 invoice before that; which was, the invoice would
15 be sent to the client using the e-mail address in
16 the contract.

17 The contract provides that, if that's the
18 e-mail that is used, then the payment is considered
19 received on the day that it is e-mailed. So they
20 were sent on the date of the -- on the face of the
21 invoice.

22 And then I would contact the client every
23 month, and I believe this was done without
24 exception, and say to them words of the effect of I
25 would like to come by and pick up payment within

1 the 10 days.

2 Going to the client's office to pick up the
3 payment gave us a good opportunity for the client
4 to ask me any questions they had about the status
5 of the litigation or the overall costs of the
6 litigation or the upcoming plans for the
7 litigation. And we would do that, it's my
8 recollection, without exception every month.

9 Actually, there was. There was one
10 exception, when I couldn't meet with the client to
11 pick up the check, so my wife went over and picked
12 up the check.

13 So, with that one exception, I met with the
14 client every single month. We went over whatever
15 questions the client had about the bill or the
16 litigation or any questions that the client had.
17 And that was always done within the 10 days.

18 It was very important that we pay within the
19 10-day period in the contract, because I am a very
20 small firm. Basically, there was myself, who was
21 generating income to the firm. I did have a
22 partner, Mr. Gleizer, but, by and large, he wasn't
23 generating income for the firm. And so this was
24 important, and we did it every single month.

25 As to Ms. Pearsall's next exhibits,

1 Exhibit 50B -- let me pull that up, your Honor. So
2 Exhibit 50B, your Honor, is Invoice 90. That's the
3 invoice that was not paid. And my recollection is
4 that it was 38 days before that invoice was -- it
5 was 38 days past due, so it was 48 days before the
6 invoice was paid. So that invoice was paid
7 eventually, but it was paid late and in breach of
8 the contract and paid 48 days after it had been
9 issued and 38 days after it was due.

10 As to Ms. Pearsall's next point, your Honor,
11 she wanted to establish that the client was still
12 e-mailing me about the payment after I was
13 terminated. And, that's correct, I was terminated
14 on February 13th. And after February 13th, we
15 still went back and forth about the invoices. But
16 they were not making payment.

17 Your Honor, I actually took all the questions
18 that Ms. O'Rourke eventually asked and added them
19 up and sent an e-mail to Ms. O'Rourke saying here's
20 the dollar value on each of the time items that you
21 had questioned. That leaves \$18,240 that is not
22 being questioned. I would like to receive payment
23 of that amount within three days.

24 They never did that. They never paid that.
25 Ms. O'Rourke originally said she would pay 14,000

1 on the invoice, and they never did that. So I did
2 receive e-mails, your Honor, but I did not receive
3 any payment of any kind. Not one penny, your
4 Honor, was paid until after the quantum meruit
5 invoice had been issued and after I had nullified
6 the contract. That's when the first penny came in
7 on Invoice No. 90, your Honor.

8 As to Respondent's Exhibit No. 1, your
9 Honor -- let me just pull that up. So, your Honor,
10 this is a very long e-mail. It's six pages long.
11 It begins on February 13th, which was the day that
12 I was terminated, and it continues until February
13 14th. And there's one, two, three, four, five,
14 six, seven, eight ... it looks like there are nine
15 e-mails in that string, your Honor. And this is a
16 very helpful string, I think, for the Court to
17 understand the chronology of what was going on
18 there.

19 So on February 13th, I did send an e-mail to
20 Ms. O'Rourke, and Ms. O'Rourke was the person who's
21 been designated by Dr. ColorChip to communicate
22 with me about invoices.

23 So -- actually, the last e-mail is from
24 Ms. O'Rourke to me. So she says, on the invoice
25 dated January 19th she -- I don't know if that's a

1 typo or if she just misremembered the invoice dated
2 January 9th. It was due on January 19th.

3 It had not been paid yet. I looked over the
4 last three months and asked if she had any
5 questions, and so she doesn't tell me what the
6 questions are. She says she has questions. But I
7 haven't really had time to dissect it.

8 So the invoice was due, your Honor, January
9 19th. And this is February 13th, so this is a full
10 three weeks overdue, and she still hasn't really
11 dissected the invoice. So the review that should
12 have been done by January 19th has still not even
13 begun. And, instead, she says, I just request that
14 you discount it by 50 percent to 12,520. And they
15 never sent that amount, your Honor.

16 She was just -- she just wanted to cut the
17 invoice in half and hadn't even looked at the
18 invoice to see if there was anything in the invoice
19 that, perhaps, shouldn't have been billed.

20 So I respond to her on February the 13th,
21 your Honor, and told her that I would not agree to
22 a 50 percent discount, but I would remain willing
23 to meet and discuss some other arrangement. So I'm
24 willing to talk with him, but I will not -- I'm not
25 willing to take a 50 percent discount, especially

1 when they first bring it up three weeks after it's
2 due and without indicating anything that actually
3 shouldn't be paid.

4 And then, your Honor, so I'm -- I'm
5 terminated, your Honor, on the 13th, but on the
6 13th, I am still fulfilling my duty to the client
7 to do my best to protect their interest. So
8 Ms. O'Rourke is now effectively managing the
9 litigation on the inside.

10 The litigation is being managed on the
11 outside by Mr. David McCool, and we'll get to that,
12 because there's an e-mail that Ms. Pearsall showed
13 you where Dan McCool, who's the CEO, actually says
14 per Dave's advice, and the Dave he's talking about
15 is Dave McCool, who is his brother, who is an
16 attorney, who was advising Dr. ColorChip throughout
17 the entire litigation.

18 In fact, he was advising Daniel McCool and
19 Dr. ColorChip about the dispute with Mr. McLean
20 before I was even retained, and he interviewed me
21 to see if I was a suitable person to be hired to
22 represent them of record.

23 So I said to Ms. O'Rourke that there is work
24 that needs to be done today. Ms. O'Rourke was not
25 aware of the risks that were facing the company at

1 this time, your Honor. There was an expedited
2 motion to dissolve the company, which would have
3 terminated the existence of the company. And this
4 was a very profitable company, your Honor. The
5 co-owners of the company were receiving millions of
6 dollars a year in distributions from this. So
7 there was an emergency motion to dissolve the
8 company and terminate its existence and that's what
9 we were --

10 MS. PEARSALL: Objection, outside of the scope
11 of cross.

12 THE COURT: Sustained.

13 A. So I responded and tell her I'm not going to
14 agree to a 50 percent discount, and there's work that
15 needs to be done to protect the client.

16 Your Honor, she writes back to me at 3:07
17 p.m., and as Ms. Pearsall noted, it says in the last
18 line of her February 13th e-mail:

19 Going forward, Mr. Matt Nelles will be filing
20 a substitution of counsel and will be taking over
21 the entire Dr. ColorChip case.

22 So Mr. Nelles had actually been engaged, I
23 believe, in November. That's when I was first told
24 that he was being engaged. And he was being engaged
25 as a specialist, that being intellectual property

1 litigation in federal court. And I was told that they
2 were going to hire him and he was going to bring an
3 expert --

4 MS. PEARSALL: Objection, outside of the scope
5 of cross.

6 THE COURT: Mr. Alva?

7 MR. ALVA: Your Honor, she had asked when I
8 was first told that Mr. Nelles was taking over the
9 entire case. Your Honor, in her questions, she
10 said, were you notified that Mr. Nelles was going
11 to be the counsel for Dr. ColorChip. So I'm
12 responding to that.

13 THE COURT: Okay, you can continue.

14 MR. ALVA: Thank you, your Honor.

15 So in November I was told Mr. Nelles was
16 going to come in and he was going to specialize in
17 intellectual property litigation and bring an
18 expedited lawsuit in federal court.

19 By the way, that was never done, to my
20 knowledge, no expedited litigation or litigation of
21 any kind was brought by Mr. Nelles to federal court
22 regarding intellectual property. And I was not
23 notified that Mr. Nelles was going to be counsel of
24 record in the state court matter and be sole
25 counsel until February 13th.

1 Then going, your Honor, going to the next
2 e-mail that Ms. Pearsall asked about, so it was her
3 e-mail that's on page 1 of this exhibit, which is
4 her e-mail of February 14th, at 5:14 p.m., where
5 she says, who mentioned litigation? That's
6 ridiculous. I will review and get back to you.

7 So she's still -- she's telling me that she's
8 going to review the invoice, and I'm still not
9 getting paid. And she still hasn't done a review
10 of the invoice, your Honor, to any degree that's
11 indicated here.

12 Ms. Pearsall then asked about the retainer.
13 I don't have any redirect on that, your Honor.

14 And then, your Honor, she asked about
15 Respondent's Exhibit No. 2. Respondent's
16 Exhibit No. 2, your Honor, is even a longer e-mail
17 string. It's 17 pages long. The first e-mail in
18 that string is from Ms. O'Rourke to me dated
19 February 16th. And actually, your Honor, this
20 helps to answer the question that Ms. Pearsall
21 didn't want me to research during the
22 cross-examination which is fine --

23 MS. PEARSALL: Objection, argumentative.

24 THE COURT: Sustained.

25 A. The first -- the earliest e-mail in this

1 string, your Honor, is dated February 16, 2018, and
2 this e-mail on February 16th, that has seven questions
3 in it, this is the first time that Ms. O'Rourke asked
4 any specific questions about the entries that were on
5 Invoice No. 90.

6 So I think during the cross-examination,
7 Ms. Pearsall was asking about whether on February 14th
8 Ms. O'Rourke was still asking questions about the
9 bill. And this e-mail that has the first questions
10 about the bill is dated February 16th. So it is not
11 true, then, that on February 14th she was still asking
12 questions. This is her list of questions, and it was
13 done on February 16th, your Honor.

14 Your Honor, here in the next e-mail in the
15 string, which is dated February 16th, to Ms. O'Rourke
16 from me, sent at 2:37 p.m., it gives your Honor the
17 specific document that I referred to in my answer on
18 cross-examination when I testified that I took all of
19 Ms. O'Rourke's questions and I added up the dollar
20 value for those that had a specific dollar value. And
21 it says in the middle of that, so I'm speaking to
22 Ms. O'Rourke:

23 So if I understand correctly, you potentially
24 dispute some or all of \$6,800 on the December
25 invoice plus whatever you assigned to the general

1 tax issue. That leaves \$18,240 apparently
2 undisputed, minus whatever you assign to the
3 general tax lien. I would like to pick up a check
4 for the undisputed amount on Monday, if you're
5 willing to provide that check.

6 This is very important, your Honor, for two
7 reasons. First of all, it's important, your Honor, as
8 to the issue of whether or not there was a willful
9 breach of the contract, because there were \$18,240
10 more or less to which there was no dispute. So there
11 was no reason for that not to have been paid on
12 January 19th and certainly no reason for it not to
13 have been paid as of February 16th, but it still was
14 not paid and they had no questions and no disputes
15 about it, number one.

16 Number Two, your Honor, this is important
17 because this demand that I make on February 16th, that
18 says that the invoice is overdue and I would like to
19 pick up a check for the undisputed amount, is evidence
20 to the Court that being paid within the 10 days is
21 important to the parties, and so I'm demanding that at
22 least the undisputed amount be paid.

23 Now, it can't be paid within 10 days on the
24 16th, but it still could be paid by the 16th, and it
25 was not. No payment was ever made of the 18,240 or

1 any of the other amounts that they suggested that they
2 might pay until 30 days past due, your Honor.

3 That same point, your Honor, shows up in the
4 e-mail that's on page 9 of this e-mail string, which
5 is an e-mail dated February 21st from me to
6 Ms. O'Rourke at 2:22 p.m. So we're still talking
7 about her set of questions and whether they're willing
8 to pay the \$18,240. And I say to Ms. O'Rourke:

9 It appears we have a number, 6,800.

10 Dr. ColorChip then pays in full the amount that is
11 not subject to dispute, \$18,240.

12 And I answer all of her several questions
13 about the 6,800 to see if that narrows the dispute to
14 a number we can agree upon.

15 I understand from your e-mail that Tricia does
16 not agree to that proposal. Your letter does not
17 say what Dan feels about it.

18 And here's the important part, your Honor:

19 However, if Dr. ColorChip does not pay in full
20 the undisputed amount of 18,240, then I will not
21 believe that your questions are being asked in good
22 faith. In that event, I will send you formal
23 notice of breach of contract and demand payment in
24 full in three days. Because Dr. ColorChip is
25 already in breach, I will have two options, A,

1 enforce the contract as written and seek \$25,040
2 or, B, seek payment for what Dr. ColorChip would
3 owe me if there was no contract, in other words, if
4 we had not agreed to discount my rate to 400 per
5 hour, in other words, \$550 per hour.

6 So, your Honor, this is the language where I
7 specifically notified Dr. ColorChip that I have the
8 option as the person who is the victim of a breach to
9 nullify the contract and to bill them in quantum
10 meruit for the fair value of my work. So they had
11 specific, explicit notice of that remedy on February
12 the 21st, and I demanded payment in three days, and no
13 payment in response to that demand was made.

14 On page 18, your Honor, I believe it says, I
15 do feel way too much time was spent thinking about the
16 Serino deposition. So this day, your Honor, February
17 26th, this is e-mail from Dan. So this -- Dan McCool
18 had been copied on all the earlier e-mails in the
19 string between myself and Ms. O'Rourke.

20 Now on the 26th, Mr. McCool is the person
21 writing the e-mail, and he copies it to me, and he
22 copies it to Trish, and he copies it to his brother,
23 Dave, who is also advising him, has been advising him
24 since day one on the breach, and this e-mail on
25 February 26th is the very first time that --

1 MS. PEARSALL: Objection, outside of the scope
2 of cross, your Honor.

3 MR. ALVA: Well, your Honor, this goes to her
4 point that Dr. ColorChip was communicating with me
5 about Invoice 90 after February 13th. So I'm
6 explaining who it is that's communicating to me and
7 where it fits in the chronology, your Honor.

8 THE COURT: You can continue.

9 MR. ALVA: Thank you, your Honor. So this is
10 February 26th. So now payment that comes due on
11 the 19th is now 5 weeks overdue, your Honor. The
12 review of the invoice should have been done by
13 January 19th. This is February 16th, and on
14 February 16th for the very first time Daniel
15 McCool, who is the CEO of Dr. ColorChip, asks
16 questions about the invoice 5 weeks after the
17 invoice was due, your Honor.

18 And then, your Honor, on page 7 is an e-mail
19 where I respond to Mr. McCool and his questions.
20 Actually, it begins on page 3, your Honor. It's an
21 e-mail of February 26th at 1:11 p.m. from myself to
22 Mr. McCool, and this answers his questions, and
23 these answers, your Honor, go upon page 3, page 4,
24 page 5, page 6, and page 7. So it's a very
25 detailed, specific response to each of Mr. McCool's

1 questions.

2 At the end of it, your Honor, it says: So,
3 as I stated in my February 21st e-mail -- this one
4 is dated February 26th, so this is 5 days later.

5 As I stated in my February 21st e-mail, I am
6 now demanding payment in full for all the work done
7 without the discounted hourly rates.

8 So here is the e-mail, your Honor, where the
9 contract is nullified, which is my right as the
10 victim of a material willful breach of contract.
11 So I'm demanding payment in full for all the work
12 without the discounted hourly rates down to 400 for
13 me and 100 for my assistant, and the invoice is
14 attached.

15 And that invoice, your Honor, is Invoice 95,
16 which is exhibit --

17 Is that Exhibit No. 2, Ms. Pearsall? I can
18 look up the exhibit number.

19 But the additional amount is \$126,834.95,
20 and, I hope we can resolve this quickly. So that's
21 the notice, your Honor, to the client, that the
22 contract has been nullified, that there's an
23 invoice that has been generated, which is not
24 pursuant to the contract, but is pursuant to
25 quantum meruit, because the contract has been

1 nullified, and I have the right to pursue the fair
2 value of my services.

3 Your Honor, let's go to page 1 of this e-mail
4 to the language that Ms. Pearsall referred to in
5 her cross-examination. This is halfway down, your
6 Honor, on page 1 of this e-mail string. And this
7 is from Daniel McCool at 12:32 p.m. Mr. McCool
8 writes to me, Curtis, per Dave's advice. So Dave
9 is David McCool, who is Dan McCool's brother.
10 David McCool is an attorney for a large Midwestern
11 manufacturing company in Missouri somewhere. David
12 Mr. McCool was advising Dan McCool and
13 Dr. ColorChip before I was even around.

14 MS. PEARSALL: Objection, calls for
15 speculation.

16 THE COURT: Sustained.

17 MR. ALVA: David McCool interviewed me for the
18 position of litigation counsel for the firm. David
19 McCool reviewed the complaint that was filed, the
20 motion for an emergency injunction that was filed,
21 and all material documents and material issues
22 throughout the life of the litigation, so they were
23 always represented by David McCool, and David
24 McCool advises them about this issue of whether or
25 not the payment should be made, and it says:

1 Per Dave's advice I have issued to you full
2 payment of the \$25,040.

3 So David McCool's advice is pay every penny
4 of the December invoice. Of course, it is now 37
5 days after payment was due and 47 days after the
6 invoice was sent out. But that's David McCool's
7 advice, and Dan follows that advice and says:

8 I'm going to issue full payment yesterday.

9 My response was I don't know what you mean by
10 you issued payment yesterday, because it wasn't
11 issued yesterday. And I didn't receive it until
12 thereafter.

13 But in terms of the chronology, your Honor,
14 February 26th is the day that the contract was
15 nullified. So the payment that was made, it was
16 made after February 27th, but I don't remember if
17 it was the 28th or the 29th. It was something like
18 that. That is after the contract is nullified and
19 after I have invoiced them for the fair value of my
20 services.

21 Ms. Pearsall did ask about the language
22 "thank you for paying Invoice 93 so promptly," your
23 Honor. That's the second e-mail on the first page
24 of this exhibit. So that's an e-mail from me to
25 Dan McCool, and I tried telling him I received a

1 check for work in January and February. My
2 recollection is that payment was not made on time,
3 but it was made, you know, one or two days late.
4 So I'm not including that as a breach of the
5 contract, your Honor.

6 But then it says thanks for sending it so
7 promptly; which, your Honor, that's a courtesy to a
8 client and nothing more. It is in no way an
9 admission that if they paid late, that that
10 satisfies the contract, and it's after the contract
11 has already been filed. So that's that, your
12 Honor.

13 Now, your Honor, let's go to the points that
14 Ms. Pearsall made in the first session of the
15 cross-examination. So, your Honor, the first
16 exhibit that Ms. Pearsall talked about was the
17 engagement agreement. And I'll pull that up for
18 the Court. So this is the Bar's Exhibit No. 1.

19 Ms. Pearsall, can you see that?

20 THE COURT: It's up on the screen.

21 MR. ALVA: Thank you, your Honor.

22 So Exhibit No. 1, your Honor, is the
23 September 19 engagement agreement. There was an
24 earlier engagement agreement, because there are two
25 clients in this engagement. There is Daniel McCool

1 and Dr. ColorChip. The earlier engagement
2 agreement was for only one of the two, and then on
3 September 19, we added the additional client, so
4 now, as of this point in time, I represent both of
5 them. And the point that we addressed in my first
6 cross-examination was that the hourly rate in the
7 contract, the typed hourly rate was \$550 an hour,
8 which was my standard hourly rate, and that's
9 scratched out by me and I write in the margin \$400,
10 so that represents an agreement that I made with
11 Dr. ColorChip and with Daniel McCool, that my time
12 pursuant to the contract would be discounted to
13 \$400.

14 But this contract, your Honor, was nullified
15 on February 26th when I wrote to them after they
16 were 5, 6 weeks past due on payment and in willful
17 material breach and I nullified the contract, and
18 so --

19 MS. PEARSALL: Objection, calls for a legal
20 conclusion.

21 MR. ALVA: Your Honor, I'm an attorney.

22 THE COURT: Okay. Well, listen, he said it
23 about at least 100 times in the first second, so
24 why would he stop now?

25 MR. ALVA: Thank you, your Honor.

1 So at this point the hourly rate that's set
2 forth in the contract does not govern Invoice 95.
3 That invoice is governed by Florida law that says
4 that a victim of such a breach can nullify the
5 contract and bill for the fair value of their
6 services. So the contract rate is \$400 an hour.
7 There's no dispute about that. The dispute is
8 whether I have the right under Florida law to
9 nullify the contract, which I did, and we just went
10 through the exhibits, your Honor. And I had a
11 right to do that.

12 So the rate in the contract no longer governs
13 the rate that I can charge to the client. Instead,
14 I'm entitled to bill for the fair value of my
15 services.

16 The second point that Ms. Pearsall made in
17 her first day of cross-examination, your Honor, was
18 as to Invoice No. 90, which is for the work that
19 was done in December of 2017. It's Florida Bar
20 Exhibit 50B. I'll pull that up for the Court.

21 So this is Bar Exhibit 50B. This is Invoice
22 No. 90. It's dated January 9, 2018. It was
23 e-mailed to the client on that day and received by
24 the client on that day using the e-mail address
25 that is in the contract, and the contract was fully

1 in effect on January the 9th, and the rate on this
2 invoice for the time that I billed was \$400 an
3 hour. Because, at the time that this invoice was
4 issued, the client was not in breach. They had
5 always paid within the 10 days, as they were
6 required to do. There was no breach in the
7 contract. So this rate gives the rate that was set
8 in the contract.

9 But when the contract is nullified on
10 February 26th, the rate on this invoice no longer
11 governs the amount that I can charge as a
12 reasonable fee under the Florida Bar rules. It was
13 due on the 19th, and by the 19th no response had
14 been made and no questions of any kind had been
15 asked and no payment was made.

16 The first response I received as to Invoice
17 No. 90 from Dr. ColorChip, and this was a question
18 your Honor had specifically asked earlier and we
19 spent some time discussing, the very first response
20 I got from Dr. ColorChip was on January the 23rd.
21 So the invoice is due on the 19th. It's not paid
22 by the 19th.

23 On January the 23rd, I received an e-mail.
24 And this is my Exhibit 3, your Honor. Let me pull
25 that up. This is my Exhibit No. 3, and at the

1 bottom of this exhibit is an e-mail from
2 Ms. O'Rourke to me and it's copied to Daniel
3 McCool, and this is the very first discussion of
4 Invoice No. 90, and she says in this e-mail: Did
5 you send the tax check to McLean? I didn't see any
6 communication about that.

7 So she's still asking me, in January, to do
8 work for the client. And then she says:

9 Also, I don't expect to see an Alva Gleizer
10 bill for January.

11 Now, I don't know how in good faith a client
12 can say we want you to do work in January and we
13 are not going to pay you. Don't send me an invoice
14 for January. That's just a willful breach of the
15 contract. The contract provides that I get paid
16 for my time, and she says don't send me a bill for
17 January.

18 And then she says: Don't to any work for us
19 this month. I think 14,000 for December is enough
20 for now.

21 So the very first time I hear from
22 Dr. ColorChip, I'm hearing that they are not going
23 to pay the December invoice, which was for \$25,040;
24 they do think that they would pay 14,000, which
25 they never did; and we're not paying anything for

1 the work in January, and by the way, send a check
2 to McLean, which was billable work, which I was
3 entitled to be paid.

4 So, at this time, there was no excuse, oh,
5 we've been out of town, the bill hasn't been
6 processed, we have a lot of questions about the
7 bill, whatever excuse. It was don't send me a bill
8 for the work that you're doing in January, and
9 we're not going to pay you for the amount of the
10 bill in December.

11 The next time that I hear anything from
12 Dr. ColorChip about Invoice No. 90, your Honor, is
13 in Respondent's Exhibit No. 4. I'll pull that up
14 for the Court.

15 So Respondent's Exhibit No. 4 is -- let's
16 start in chronological order, your Honor. This is
17 a four-page exhibit. It starts, on page 1, with an
18 e-mail from me to Daniel McCool and David McCool,
19 Esquire, on February 8th, and the first e-mail in
20 this string, your Honor, is an e-mail to me from
21 Ms. O'Rourke dated February 6th at 12:44 p.m.

22 So in the February 6th e-mail, your Honor,
23 Ms. O'Rourke asked me to continue to work even
24 though she's told me that I'm not going to get
25 paid. So on February 6th, she says:

1 Do you need anything from us with regard to
2 the answers you're sending to Coleman per our
3 meeting last week?

4 So I'm still meeting with them. I'm still
5 answering -- Mr. Coleman, your Honor is opposing
6 counsel in the litigation, and Mr. Coleman is
7 trying to expedite his motion for dissolution, and
8 what he wants is related to that. So where it says
9 his answers, it means the request for
10 interrogatories. And it says:

11 This should be the only work you are doing
12 for Dr. ColorChip at this time, because we are not
13 interested in incurring any more costs at this
14 time.

15 So on February 6th, after I've been told that
16 I cannot send an invoice for January and presumably
17 February, I guess, your Honor, I'm being told that
18 this work needs to be done. I need to send
19 interrogatory responses to Mr. Coleman.

20 So I write back to her on February 17th,
21 after I've been told I'm not going to get paid for
22 this work and that I'm not going to be paid the
23 amount of the December invoice, and I copy it to
24 Daniel McCool and I copy it -- no, it's addressed
25 to Daniel McCool and Trish, and it's copied to

1 David McCool, who is a lawyer. And I say:

2 In response to your question during our last
3 meeting, I got all of the information I need to do
4 the response to McLean's request for production of
5 documents. I said interrogatories, your Honor it's
6 a request for documents, sorry. The deadline for
7 the response is tomorrow, and I'll send the
8 response before the deadline. Additionally, there
9 are a couple of items that need doing.

10 So I had been told you're not getting paid
11 for January, and my conclusion is that I'm also not
12 getting paid for February, and I'm not getting paid
13 in full for December, but I am still protecting the
14 client's interests. There are discovery responses
15 due the next day, and I'm working on them, and I'm
16 going to send them on time.

17 On page 2, your Honor, of this exhibit, it
18 goes to the same point. This is February 7, 2018,
19 an e-mail from me again the Ms. O'Rourke, and it's
20 copied to Daniel McCool and to David McCool,
21 Esquire. And the re line is: Status of production
22 answers. So I talked to her about the responses to
23 the document production at paragraph 1.

24 And then, your Honor on page 2 of this
25 e-mail, remember, your Honor, she said to me you

1 can do these answers, but don't do anything else.

2 So I write back to her and I say:

3 I'm not going to try and change your position,
4 because we have already discussed this issue, but I
5 feel compelled to reiterate certain potential
6 consequences. Delaying the other items -- and
7 these are the other work items that that I told her
8 should be done beginning tomorrow -- seems to
9 involve substantial risks which may be imprudent
10 and could be incurable. For example, if the judge
11 issues an order setting a hearing on dissolution, I
12 would not expect him to change that order to delay
13 that hearing in order for us to have time to take
14 even a single deposition or obtain a single
15 document.

16 And I say: And even if he set the hearing 4
17 or more weeks away, I expect that Coleman -- he was
18 opposing counsel, your Honor -- would stall until
19 the hearing date, thus effectively preventing any
20 depositions and documents that otherwise could have
21 occurred. The lack of discovery may substantially
22 increase the risk that the judge would grant
23 dissolution. Additionally, as soon as the hearing
24 date is set on dissolution, if it even is, I expect
25 McLean and King to move to stay any federal suit

1 pending the outcome of the dissolution hearing. If
2 a dissolution hearing date is set, I would expect
3 that Coleman will demand that no assets of
4 Dr. ColorChip be transferred pending the outcome of
5 the dissolution hearing. I would expect Coleman to
6 threaten that if any assets transferred after a
7 hearing date would become the personal liability of
8 any Dr. ColorChip officer or employee participating
9 in that transfer, if dissolution is subsequently
10 granted.

11 So these are terrible consequences, your
12 Honor, that only I am currently aware of. The
13 client has no awareness. The client has said to
14 me, you are not getting paid and don't do any more
15 work.

16 And instead of just throwing up my hands and
17 saying, okay, I'm not getting paid and don't do
18 anymore work, great, I'm not doing anymore work, I
19 write back and instead say these are terrible
20 risks, that could be incurable. You might get
21 dissolved. You're going to have all your assets
22 frozen. You're going to get no discovery. We
23 really need to do this other work.

24 On the next page, your Honor, so now this is
25 the first page of this exhibit, there is an e-mail

1 from David McCool, so remember, David McCool, who
2 is the attorney who is Dan McCool's brother, who is
3 also representing -- advising Dr. ColorChip about
4 all the material issues --

5 MS. PEARSALL: Objection, calls for
6 speculation.

7 MR. ALVA: It's not speculation, your Honor.
8 I've received 60 e-mails from this guy advising me
9 about every material thing that occurred from the
10 filing of the complaint to the present day of this
11 e-mail. So there's no speculation to it.

12 THE COURT: But isn't it hearsay?

13 MR. ALVA: I'm sorry, your Honor?

14 THE COURT: Isn't it hearsay?

15 MR. ALVA: Your Honor, he is an agent of
16 Dr. ColorChip. He's an attorney who is giving them
17 advice, so I believe that he is speaking on behalf
18 of Dr. ColorChip, and so it's not hearsay, if I
19 understand correctly.

20 THE COURT: I don't know that it's relevant to
21 what the Florida Bar is prosecuting you for, so I'm
22 going to ask you to move on.

23 MR. ALVA: Thank you, your Honor.

24 So, your Honor, let's go up, then, to the
25 next e-mail. So this is from Daniel McCool, your

1 Honor, dated February 8th, the top of the page of
2 this exhibit, and Daniel McCool, who is the CEO,
3 says to me we do anticipate a proposal from Matt
4 tomorrow. So he's still addressing the issue of
5 whether this work should to be done, that I have
6 told him is important to protect him from --
7 against the catastrophic consequences:

8 Curtis, if we have a deadline to meet
9 tomorrow to reply to the judge, then proceed with
10 that as Dave suggested. Obviously we don't want to
11 hurt our chances in a dissolution hearing, so
12 prepare our response and e-mail to me and Dave, so
13 we can approve the response. So Dan and Dave are
14 going to look at the response, and they're going to
15 approve it. And then he says:

16 We hope to make a decision on our plan going
17 forward once we've seen Matt's thoughts and
18 recommendations.

19 So this is February 8th, your Honor. I am
20 not getting paid. December is not getting paid. I
21 am still fighting to protect this client who has
22 told me don't do any more work and you're not going
23 to get paid.

24 The next point, your Honor, that Ms. Pearsall
25 made -- she went through some of this again today,

1 your Honor. Let me see if I can shorten this up.
2 Your Honor, she introduced Respondent's Exhibit
3 No. 2 in the first day, and she asked about the
4 same things that were asked about today, so I don't
5 think we need to go through that again, your Honor.
6 So let's go to the next point that she made in
7 cross-examination, and that was as to Invoice
8 No. 90, your Honor. We've already done that, so I
9 don't think we need to spend any more time on that.

10 The next point she made was as to Invoice
11 No. 95, the quantum meruit invoice, your Honor.
12 Let's just pull that up real quick, your Honor.
13 That's the Bar's Exhibit No. 5. Exhibit No. 5, you
14 can see the date of the invoice is February 26,
15 2018. This is the invoice that I referred to in my
16 e-mail where I said I am nullifying the contract.
17 I am billing you for the fair value of my services,
18 and that would not include a discount.

19 And this invoice is dated February 26th. So
20 this invoice, your Honor, is generated after the
21 contract is nullified. This invoice is not
22 generated pursuant to the contract. This is -- the
23 contract is now gone. I've nullified it, and I
24 have the right to nullify it as a victim of
25 material willful breach. So, having now nullified

1 it, I'm now sending them a bill for the full value
2 of my services.

3 So you can see, your Honor, that the number
4 of hours that had been worked in the case was 806.7
5 by me and 225.8 by my paralegal. I think that's a
6 225.8. This invoice bills them \$150 per hour for
7 each of those 806.7 hours and \$25 an hour for each
8 of the 225.8 hours billed by the paralegal.

9 The law requires that if you nullify a
10 contract you have to give a credit to the person
11 who --

12 MS. PEARSALL: Objection, calls for a legal
13 conclusion.

14 THE COURT: Overruled.

15 MR. ALVA: Your Honor, I'm an -- did you say
16 overruled, sir?

17 THE COURT: Yes, I did.

18 MR. ALVA: Thank you.

19 The law requires that I give a credit to the
20 breaching party for any performance that they had
21 tendered before nullification. So they had already
22 paid \$400 per hour. So I gave them a credit of
23 \$400 an hour against \$550 an hour. And that leaves
24 \$150. And it's the same thing for the paralegal.
25 I give them a credit of \$100 an hour for the

1 payments they've already paid to the paralegal, and
2 I billed them the remaining \$25 per hour.

3 So there is a quantum meruit invoice with the
4 required credit for any performance that they have
5 already tendered. And it gives them full credit
6 for all the \$400 payments they made and all the
7 \$100 payments they made for the paralegal.

8 THE COURT: Mr. Alva, the \$25,040 invoice, the
9 last invoice that you sent them, they paid that
10 before you sent this new invoice, correct?

11 MR. ALVA: No, they did not. They had not
12 paid one penny on that invoice before this invoice
13 was sent.

14 THE COURT: Why isn't that reflected in this
15 invoice?

16 MR. ALVA: Why isn't 25,000 reflected, your
17 Honor?

18 THE COURT: The past due amount.

19 MR. ALVA: Because there was already -- and
20 this is not a statement, your Honor. This is an
21 invoice. So this is an invoice for the fair value
22 of the work done. They had already been invoiced
23 \$400 an hour for the work done in December, and
24 they had already been invoiced \$100 an hour for the
25 paralegal's work in December.

1 So this was not to duplicate that invoice,
2 your Honor. That invoice had already gone out.
3 This was to bill them for the fair value of my
4 services that was beyond what had already been
5 invoiced. That's why the December invoice in the
6 amount of \$25,040 is not on here.

7 THE COURT: All right. So earlier in the
8 testimony you said that the \$25,400 invoice was
9 paid on February 27th.

10 MR. ALVA: That's my recollection, your Honor.
11 It was paid -- well, they sent me an e-mail saying
12 they were paying it on the 27th, and we went
13 through it earlier, your Honor, I don't think I
14 actually received the money on the 27th. Let's
15 pull up that e-mail up from Mr. McCool, and we can
16 check it out. That's Respondent's No. 2, I
17 believe. I'll pull that up, your Honor.

18 So on February 27th, Daniel McCool, who is
19 the CEO, writes to me, I have issued you full
20 payment of 25,040 to my bank for payment yesterday,
21 but it was not paid on the 27th. It was not paid
22 on the 26th. I write to him on the 27th, at
23 5:08 p.m. and say -- or he writes to me at
24 5:08 p.m. and says as soon as the bank processes
25 it. I think the earliest, since that's already

1 5 p.m., that the bank processes, it would be the
2 28th.

3 So my best guess, your Honor, is that it was
4 not paid before the 28th. It was not paid before
5 the contract was nullified. It was not paid before
6 Invoice 95 was issued. And my understanding, your
7 Honor, is that they paid it because the contract
8 had been nullified and because Invoice 95 has
9 been --

10 MS. PEARSALL: Objection, calls for
11 speculation.

12 THE COURT: Well, I'm looking at the e-mail
13 that he sent you on February 27th, which is what's
14 on the screen: I issued you a check for full
15 payment for \$25,400 from my bank for payment
16 yesterday.

17 So that was the 27th, which means he sent you
18 out the payment on the 26th, assuming that that's
19 true.

20 MR. ALVA: Well, your Honor, it doesn't say he
21 sent a check. He said: I have issued to you a
22 full payment invoiced to my bank. So he says I
23 have instructed the bank to pay and I instructed
24 them yesterday. And my understanding is he did
25 that after he received Invoice 95 and he received

1 the nullification.

2 THE COURT: All right.

3 MR. ALVA: The next point, your Honor, that
4 was during the cross-examination is that the amount
5 of Invoice 95 is at the rate of 550, but the
6 contract rate is for 400. And, your Honor, we've
7 already gone through that. My understanding was
8 that it was willful material breach, and so the
9 rate of \$550 an hour was the fair value of my
10 services.

11 We've already gone through, your Honor, that
12 the willfulness of the breach that was established
13 by their e-mail after the invoice, saying we are
14 not going to pay you for January and we're not
15 going to pay you in full for December, but we
16 haven't even looked at the invoice yet, and a
17 review was promised to me before I had to do
18 anymore work, and that review did not occur until,
19 in part, Ms. O'Rourke sent me her seven questions,
20 your Honor, that we went through in Respondent's
21 Exhibit No. 1, and then Daniel McCool, I believe it
22 was 38 days after it was past due, sends me his
23 question.

24 So the review of the invoice that I was
25 promised before I would have to do any more work

1 was finished on February 26th and payment was due
2 on January 19th, so they never paid the 14,000 that
3 Ms. O'Rourke said that they would pay in her first
4 e-mail. They never paid the \$18,240 that was not
5 in dispute, and they never paid the half that they
6 offered that they would pay.

7 They continued to give me work assignments,
8 and I went 38 days past due and received not a
9 penny, and I did not receive one penny until after
10 I sent them Invoice 95 and nullified the contract,
11 and then I received the very first penny upon that
12 invoice, your Honor.

13 Your Honor, the next exhibit that
14 Ms. Pearsall looked at during her cross-examination
15 was Bar's Exhibit No. 6. Bar's Exhibit No. 6, your
16 Honor, is the statement -- let me see if I can make
17 that easier to read -- that was sent to
18 Dr. ColorChip.

19 My understanding in law was that I had to
20 give them credit for the \$400 that they paid and
21 the \$100 on the paralegal, and then, when the
22 retainer was used to pay the unpaid invoice, which
23 was Invoice No. 95, I had to give them a credit for
24 that.

25 So this statement of account, your Honor, was

1 sent to them to show that credit. So it shows
2 that, on March 20, 2018, \$25,000 was taken out of
3 the trust account and it was applied to Invoice
4 No. 95. That's what the next line shows. That
5 reduced the balance due on Invoice 95 from
6 126,834.95 to \$101,834.95. So now they have their
7 credit for their retainer, that was applied to the
8 past due, and they already had the credit for the
9 \$400 and the \$100, that they had paid, your Honor,
10 and they still owed \$101,000, your Honor, and not
11 one penny of that has been paid.

12 Next, your Honor, I think it's the Florida
13 Bar's Exhibit 21 --

14 MS. PEARSALL: I think it's No. 29.

15 MR. ALVA: Thank you, Ms. Pearsall, yes.

16 So, your Honor, the next exhibit that
17 Ms. Pearsall did in her cross-examination was Bar's
18 Exhibit No. 29, and it's an e-mail string, your
19 Honor.

20 The first e-mail is to me from Daniel McCool
21 dated April 9, 2018, and he says, please return all
22 retainer funds immediately, your correspondence
23 dated 03/20/18 indicates that the trust account
24 balance is 25,000. Please advise when the check
25 will be ready for pickup, and we will pick up at

1 your office.

2 So they demand the retainer be returned, and
3 I respond to Mr. McCool's demand in my e-mail of
4 April 10th, at 9:55 a.m.:

5 There was no return due. There was a balance
6 due in excess of \$100,000. The \$25,000 retainer
7 payment was applied to the unpaid invoice, and the
8 balance in your retainer account is zero. Please
9 make a check for the balance, and let me know when
10 I can pick it up. If you do not intend to pay in
11 full, please let me know promptly so I can pursue
12 collection.

13 So this is the demand for the return of the
14 retainer, and Ms. Pearsall was asking me about the
15 decision to not return their retainer at that time.
16 And, your Honor, the decision was made based on
17 Rule 5-1.1F. And I can pull that up for your
18 Honor.

19 Your Honor, here's Rule 5 of the Florida Bar
20 rules and 5-1.1, and if we scroll down to page 2,
21 your Honor, subparagraph F is titled disputed
22 ownership of trust funds, and it provides as
23 follows:

24 When in the course of representation, a
25 lawyer is in possession of property in which two or

1 more persons, open parenthesis, one of whom may be
2 the lawyer, closed parenthesis, claims interest,
3 comma, the property must be treated by the lawyer
4 as a trust property, comma, but the portion
5 belonging to the lawyer or law firm must be
6 withdrawn in a reasonable time after it becomes due
7 unless the right of the lawyer or law firm to
8 receive it is disputed.

9 So that's the situation we're in here, your
10 Honor. There was a dispute as to the \$25,000. The
11 rule then goes on to say, in which event, meaning
12 if it is disputed, the portion in dispute must be
13 kept separate by the lawyer until the dispute has
14 been solved.

15 So that's exactly what I did here. The
16 portion that was in dispute, I received an e-mail
17 from Dr. ColorChip saying we're disputing you
18 taking the retainer. That money needs to be put in
19 trust. And I transferred that money into my firm's
20 trust account, and subsequently, it was transferred
21 to the trust account before the Court in and for
22 Palm Beach County, which is where it is now, and
23 that was done pursuant to Rule 5-1.1F.

24 I researched that rule at the time. I
25 understand, I believe correctly, that my obligation

1 was to treat it as trust property and put it in the
2 trust account, which I did, and it remains there.

3 And, your Honor, I believe that that
4 addresses each of the points that Ms. Pearsall
5 raised in her cross-examination. I'll stop sharing
6 now.

7 THE COURT: All right. Mr. Alva, any other
8 witness?

9 MR. ALVA: Your Honor, I have, and you had
10 ruled on this earlier, I have the proffer of the
11 testimony by Mr. Hackleman, that the Court has
12 decided that he would not testify as a witness. So
13 other than Mr. Hackleman, I have no other
14 witnesses, your Honor.

15 THE COURT: Okay. Ms. Pearsall?

16 MS. PEARSALL: Yes, your Honor. Is Mr. Alva
17 resting? Because he didn't say the words.

18 MR. ALVA: Well, before I rest, your Honor, I
19 just wanted to go through the exhibits and the
20 judicial notice and make sure that I had gotten in
21 all the exhibits I intended to get in and that the
22 Court had taken judicial notice or has considered
23 to take judicial notice as to things that were on
24 my notice list.

25 My recollection is, your Honor, we already

1 went through both lists by each side as to the
2 documents as to which the Court would take judicial
3 notice, is that correct?

4 THE COURT: We may have done it before trial
5 started. We might have done it as we went along.

6 MR. ALVA: Ms. Pearsall? Do you remember
7 which --

8 THE COURT: The list the judicial notice
9 documents, if it's not in evidence, I don't keep a
10 list.

11 MS. PEARSALL: Both of the items that I
12 requested the Court to take judicial notice of,
13 they were both admitted as exhibits.

14 MR. ALVA: Your Honor, I'm going to have my
15 assistant bring that to me. Maybe we could do the
16 exhibit first, and I'll make sure I've got the
17 exhibits admitted that I intended to admit, and
18 then we can do the judicial notices, your Honor?

19 THE COURT: Okay.

20 MR. ALVA: As to exhibits, your Honor, the
21 list that I have is Respondent's Exhibit No. 1 was
22 the e-mail string we've been referring to, your
23 Honor.

24 And Respondent's 2, your Honor, is the e-mail
25 string that we've also spent substantial time on,

1 which is Bates numbered Florida Bar 1098 to 1114.

2 MS. PEARSALL: But again, Mr. Alva, none of
3 the exhibits that were recently provided, when I
4 asked for them to be provided, had Bates stamps
5 numbers on them. So, from your office, if you
6 could just --

7 MR. ALVA: Well, I thought my assistant sent
8 you the Bates-stamped copies when we had them.
9 Some don't have Bates stamps. But I believe the
10 ones that had Bates stamped were sent to you,
11 Ms. Pearsall, is that correct?

12 MS. PEARSALL: No, that is not correct. So
13 maybe refer to the first page, if you're looking at
14 it --

15 MR. ALVA: Oh, yeah, okay.

16 MS. PEARSALL: -- with the date or something,
17 so that would be helpful so we can move on.

18 MR. ALVA: That would be fine. Let's do that
19 so. I'll share the first page of each one,
20 Ms. Pearsall. So Exhibit 1, Ms. Pearsall, do you
21 see that one? That has your --

22 MS. PEARSALL: No.

23 MR. ALVA: That has your -- that has your
24 Bates number on it, if that helps.

25 MS. PEARSALL: I see that one. The ones I

1 received don't have Bates numbers. But that's
2 fine.

3 MR. ALVA: Okay.

4 MS. PEARSALL: Let's move on.

5 MR. ALVA: The second one is also your Bates
6 number, Ms. Pearsall?

7 MS. PEARSALL: Okay, but those aren't my
8 numbers. Those are your numbers. I didn't label
9 my exhibits that way. You put Florida Bar on them.
10 Just so we can keep the record clean --

11 MR. ALVA: Oh, I'm sorry.

12 MS. PEARSALL: -- those are your numbers.
13 Those aren't mine.

14 MR. ALVA: Okay, thank you.

15 The third one, your Honor, was Respondent's
16 Exhibit No. 3, Bates 1038.

17 MS. PEARSALL: That's fine. I have that one.

18 MR. ALVA: Okay. Respondent's No. 4, your
19 Honor, is an e-mail string that's three pages long,
20 and at the top of page 1 is an e-mail from
21 Ms. O'Rourke on February 7 at 3:32 p.m., and at
22 page 3 -- actually, yeah, at page 3 there's a
23 partial e-mail from me to Daniel McCool and
24 Ms. O'Rourke dated February 5 at 1:20 p.m.

25 MS. PEARSALL: I have that one.

1 MR. ALVA: Respondent's 5, your Honor, has a
2 Bates number from my firm 1122, a four-page e-mail,
3 your Honor, ending on 1125.

4 Do you have that one, Ms. Pearsall?

5 MS. PEARSALL: Yes, I have.

6 MR. ALVA: And Respondent's Exhibit No. 6,
7 your Honor, is a two-page e-mail string. The first
8 e-mail is from Ms. O'Rourke to me dated February 13
9 at 2:16 p.m.

10 Do you have that one, Ms. Pearsall?

11 MS. PEARSALL: Which number again, I'm sorry?

12 MR. ALVA: That's my Exhibit No. 6,
13 Ms. Pearsall.

14 MS. PEARSALL: Is that the first page? Are
15 you sure that's 6?

16 MR. ALVA: I believe this is it. Did you have
17 something else for Exhibit 6?

18 MS. PEARSALL: Yes. From what you sent me,
19 unless I labeled it wrong, it starts February 13,
20 2018 at 2:09. Let me see.

21 MR. ALVA: This one is February 13th at
22 2:16 p.m. for the first e-mail, and 12:07 for the
23 e-mail on the second page.

24 MS. PEARSALL: Okay, all right, for 6, okay.

25 MR. ALVA: Do you have that, Ms. Pearsall?

1 MS. PEARSALL: I just have a different
2 starting page. I only have one page for 6. I
3 don't have top page that you have.

4 MR. ALVA: On the first page?

5 MS. PEARSALL: Yeah, mine is labeled February
6 13th, is what I have for 6.

7 MR. ALVA: I can send you that, if you'd like,
8 Ms. Pearsall?

9 MS. PEARSALL: Yes, please.

10 MR. ALVA: Okay, so that's No. 6. I'm going
11 to send you R6.

12 Respondent's 7 is a five-page e-mail. At the
13 top of page 1 is an e-mail from Ms. O'Rourke to
14 myself dated February 16, 2018, and this one does
15 not have a Bates stamp number, your Honor, and on
16 page 4, your Honor, is the earliest e-mail in the
17 string, and it's from Ms. O'Rourke to me dated
18 February 16th at 10:01 a.m.

19 MS. PEARSALL: Okay, I have that one.

20 MR. ALVA: Respondent's 8, your Honor, is a
21 two-page e-mail with the Bates number at the top of
22 page 1, and it is an e-mail from Ms. O'Rourke to me
23 dated February 16th at 2:48 p.m. and --

24 THE COURT: So, Mr. Alva, I don't know if this
25 is going to help, but, I mean, before we finished

1 with today's session, I was going to tell both of
2 you, I'm going to need an index of all the exhibits
3 that you admitted and attach a copy of all the
4 exhibits themselves, because I need to prepare a
5 report, so I can include that in my report.

6 MR. ALVA: Do you want exhibit numbers on them
7 as well, your Honor?

8 THE COURT: The exhibit numbers that were
9 admitted into evidence, yes.

10 MR. ALVA: Okay. So I'll prepare an index.
11 Your Honor, we can do it that way. I will send
12 you, after we conclude today, my index, and it will
13 be all of the exhibits that I believe were admitted
14 on behalf of the respondents.

15 And can I just reserve my right, in case
16 there's some dispute as to one of them was actually
17 admitted, that I could reopen my case in order to
18 deal with the dispute?

19 THE COURT: The problem with what you're doing
20 now is I don't have -- I'm not the one that keeps a
21 list of all the exhibits that are admitted, so
22 that's the clerk. So we're kind of not
23 accomplishing anything here by you going through
24 them one at a time.

25 MR. ALVA: Oh, I see, your Honor.

1 THE COURT: That's why I'm -- what we can do
2 is you can submit them to me within 7 days and send
3 Ms. Pearsall a copy, and if she has any objections,
4 she can raise that, and then we can address that.
5 I won't close the case until we deal with that. I
6 can review everything, where, in the next two
7 weeks, I can make a ruling.

8 MR. ALVA: That would be fine with me, your
9 Honor.

10 THE COURT: But I also, in addition to that,
11 all the pleadings and motions and orders that have
12 been filed by each of you, Mr. Alva, any of the
13 motions or pleadings that you filed. Also, I would
14 like an index to that as well similar to the
15 invoices you're going to make for the exhibits.
16 That also needs to be provided.

17 MR. ALVA: So an index of everything that I
18 filed with the Court including copies of everything
19 in the index, right?

20 THE COURT: Correct, you'll have one index of
21 your pleadings, motions, and orders relating to
22 your motions, and one index just for your exhibits.

23 MR. ALVA: Thank you, your Honor.

24 THE COURT: My concern is that I had two
25 temporary judicial assistants during the time of

1 this trial, and I can't guarantee that we have
2 everything. So I know that you guys have
3 everything, and I don't want to have any mistakes
4 when it gets sent out.

5 MR. ALVA: I'm happy to do that, your Honor.
6 Do you want them exchanged with the parties before
7 sending them to you?

8 THE COURT: That would be good.

9 MR. ALVA: Do you want the indexes to be sent
10 to opposing counsel within seven days? Is that the
11 calendar we're on?

12 THE COURT: You could send them to me in a
13 FedEx box. I won't open it. You can send it to
14 Ms. Pearsall in a FedEx box. She'll open it,
15 review it, check it for mistakes. And Ms. Pearsall
16 will do the same to you and send me an index with
17 all of her exhibits and an index with all her
18 pleadings, motions, and orders. And then I'll hold
19 mine in the FedEx box. And then if you guys agree
20 to everything we'll just make it part of the record
21 going up, and if you dispute anything, obviously,
22 we'll have a conference on it.

23 MR. ALVA: That would be fine with me, your
24 Honor.

25 THE COURT: Do you want to do a rebuttal case,

1 Ms. Pearsall?

2 MS. PEARSALL: No, your Honor, I thought we
3 were going to do closings today once we finish
4 this. That's what I thought we were scheduled for.

5 THE COURT: Yes, we are. I have to give you
6 the option to put on a rebuttal case.

7 MS. PEARSALL: Once Mr. Alva makes his
8 announcement, I'll make mine.

9 THE COURT: So but for the exhibit list and
10 perhaps anything that may be missing, Mr. Alva,
11 you're resting at this time?

12 MR. ALVA: I am, your Honor.

13 THE COURT: Would you prefer to do written
14 closings, or do you want to do oral closings?

15 MS. PEARSALL: If I have a choice. I prefer
16 the oral. That's my vote.

17 MR. ALVA: Did you say oral, Ms. Pearsall?

18 MS. PEARSALL: Yes.

19 MR. ALVA: That's fine with me, your Honor.

20 THE COURT: Okay. Can we limit the closings
21 to 20 minutes?

22 MS. PEARSALL: Does that include both of my
23 times, your Honor, since I get first and second?

24 THE COURT: Yes, it would.

25 MS. PEARSALL: Okay. I will try, your Honor,

1 try my best. Let me know when you're ready to
2 begin, your Honor.

3 THE COURT: Let's take a quick restroom break
4 first.

5 (A short break was taken.)

6 MS. PEARSALL: Your Honor, the four corners of
7 the engagement letter did not put the client,
8 Dr. ColorChip and Daniel McCool about the
9 respondent's intention to increase the agreed-upon
10 hourly rate for attorney time and paralegal time if
11 the client did not remit payment to the respondent
12 within 10 days.

13 The engagement letter stated that the hourly
14 rate for attorney time would be \$400 per hour. The
15 respondent testified that he is the person who
16 wrote \$400 on the engagement letter. The
17 engagement letter also stated that the hourly rate
18 for paralegal time would be \$100 per hour.
19 Respondent also testified that he is the person
20 that wrote \$100 on the the engagement letter.

21 Respondent testified that it was customary
22 for this client to always pay on time, that he
23 would send the bill and go by and pick up the check
24 from the client's office. I wanted to go over the
25 amount of some of these invoices that Respondent

1 sent to the client who always paid promptly from
2 the start of the legal relationship.

3 Florida Bar Exhibit 7, which was Invoice
4 No. 64, that's in evidence dated September 30, 2016
5 and due on October 10, 2016, the amount of that
6 invoice was \$15,250. Invoice No. 65, dated October
7 17, 2016, and due on October 27, 2016, the amount
8 of that invoice is \$23,990.

9 And then we move on to Invoice No. 66.
10 Again, we're in 2016, that was dated October 27,
11 2016 and due on November 6, 2016. Now, that amount
12 was \$44,744. Now, this is the invoice where
13 Mr. Alva sent the e-mail to Daniel McCool and
14 copied Tricia O'Rourke asking to be paid early
15 because he would be traveling. That invoice is the
16 Florida Bar Exhibit No. 27 that's in evidence.

17 So moving on with these invoices, they've
18 been paid promptly on time. They're of various
19 amounts. Sometimes they're even due in the same
20 month. Like Invoice No. 64 and 65, they were both
21 due to be paid in October. And as the respondent
22 testified, these invoices were paid within the 10
23 days by the client.

24 So we move on to Invoice No. 85. This was in
25 October of 2017, dated October 13, 2017, and then

1 due October 23, 2017 in the amount of \$7,490. And
2 then there's Invoice No. 88, dated December 19,
3 2017, in the amount of \$5,440.

4 Then we move on to Invoice No. 89, which is
5 the Florida Bar's Exhibit No. 22, and that's the
6 invoice that's dated December 20, 2017, and that
7 was due on December 30, 2017, in the amount of
8 \$14,000, and that invoice in the amount of \$14,000
9 was paid by the client.

10 During Respondent's testimony, he insinuated
11 that an e-mail that he received from Tricia
12 O'Rourke on January I believe it was 23rd that
13 mentioned that the December bill was \$14,000,
14 somehow related to the January invoice or the
15 Invoice No. 90. They are two separate bills.

16 I took the time to go over that bill and that
17 invoice during Respondent's testimony to point out
18 that there was an actual bill that he sent them for
19 \$14,000 that they paid. The \$14,000 bill was
20 actually dated to be paid in December, so they paid
21 that. Invoice No. 90 for \$25,040 is separate and
22 apart from the \$14,000 that they paid for December.

23 So any insinuation by the respondent that
24 that e-mail from Ms. O'Rourke is that they were
25 only going to pay part of the bill, they were only

1 going to pay 14,000 of the bill, they are two
2 separate matters. They don't equate. One bill was
3 one bill, one was the other. They paid Invoice
4 No. 89.

5 So we move on to Invoice No. 90. And that's
6 the invoice for \$25,400 dated November 1, 2018, and
7 due January 19, 2018.

8 Now, I would point out up to this point,
9 there were no outstanding balances due from the
10 client when Respondent issued Invoice No. 90. In
11 fact, the Respondent sent an e-mail on January 9,
12 2018, where he told the client thanks so much for
13 getting the check out so quickly for the October
14 and November invoices.

15 And let's not forget the testimony of Daniel
16 McCool, where he told this Court that Respondent on
17 occasion would ask him to pay an invoice before it
18 was due, before the 10 days were even up, and in
19 the e-mails, in the Florida Bar's Exhibit 27 and
20 28, there's the e-mail where I just spoke of where
21 Respondent asked to be paid early because he was
22 traveling. And in that instance, the invoice
23 Respondent sent to the client on October 27, 2016,
24 he sent it by e-mail at 9:01 p.m., and he stated
25 because I will be traveling for 6 days beginning

1 November 2, I would appreciate payment by November
2 1st. Then on October 31th of 2016 at 11:11 a.m.,
3 Respondent sent the client another e-mail, which
4 stated, what time can I pick up the check and
5 where?

6 Now, all of these e-mails are in evidence,
7 and that particular invoice that Respondent
8 requested to be paid early is in evidence as
9 Florida Bar Exhibit 9, Invoice No. 66 in the amount
10 of \$44,744. He requested that it be paid early,
11 and the client obliged.

12 Any argument by this respondent in this case
13 that any actions of this client by this client was
14 willful and saying they weren't going to pay him,
15 that just is not true. This client did not say, in
16 any of the correspondence, that they were not going
17 to pay. The client said we will review the bill.
18 We have questions. Can you break down the block
19 billing for us?

20 There is nothing in the pattern of this
21 client's behavior to show that they had any
22 intention of not paying the bill. From \$44,000
23 invoices to 7,000 invoices, this client paid their
24 bills.

25 And at the time Respondent sent the client

1 Invoice No. 90, he testified that he only sent it
2 to one of the client's e-mail addresses that is
3 listed on the engagement agreement. Now, that
4 engagement agreement letter is in evidence. There
5 were two addresses on there. He only sent it to
6 one. He sent it to mccoolre2002@yahoo.com. And
7 this Court has already seen evidence in
8 Respondent's own words that he knew Daniel McCool
9 was out of town. I know you're out of town. Maybe
10 that's what's causing the delay in the process.

11 There was no willfulness on behalf or by this
12 client, and this respondent knew that. He knew it
13 as he held their \$25,000 on January 19, 2018.
14 Mr. Alva had \$25,000 of the client's money in his
15 possession. He had it. He had the money right
16 there. He's testified that, in his small firm,
17 payment is required. He has to -- he needs the
18 money because it's a small firm. The client had
19 the \$25,000 retainer with Mr. Alva per the
20 engagement letter. Mr. Alva had the money.

21 So as we go on through, you get to
22 Ms. O'Rourke. Now, you heard testimony from Tricia
23 O'Rourke that she hadn't been copied on certain
24 invoices. When we get up closer to Invoice 90, she
25 said he hasn't copied her. She even let Mr. Alva

1 know that. She said he hasn't coded her in on the
2 last few invoices so Daniel McCool forwarded them
3 to her.

4 You heard testimony from Mr. Alva, now, in
5 his own words saying that Dr. ColorChip had
6 authorized Tricia O'Rourke to communicate with him
7 about the invoices, but here we go where he's
8 saying they're refusing to pay me, they don't want
9 to pay me, they're saying they're not going to pay
10 me. But this invoice that he sent out, the point
11 of contention here, Invoice No. 90, he did not send
12 it to both e-mail addresses. He did not copy
13 Tricia O'Rourke on that e-mail.

14 So once she gets it, she lets Mr. Alva know,
15 and this is Florida Bar's Exhibit 50, in this
16 e-mail dated February 13, 2018:

17 Dan forwarded me the last three invoices.
18 You do not code me into those invoices for several
19 months now. So, as you know, the invoice dated
20 January 19 has not been paid yet, I have looked
21 over the last 3 months and have questions but have
22 not had time to really dissect it, however I will
23 if I need to.

24 There is no willfulness on the part of this
25 client. They said they're going to look over the

1 invoices.

2 Now let's take a little detour. In an e-mail
3 about Invoice No. 90, specifically there's Dan
4 McCool, he let Mr. Alva know that he knew about his
5 invoice and he told himself that it needed to be
6 reviewed. And that's in evidence before this
7 Court. The Respondent put it in as one of his own
8 exhibits, that Mr. McCool would be reviewing it.
9 And that e-mail was a February 5th e-mail of 2018.
10 So the client was not shirking its duties to review
11 the bill or to get back to Mr. Alva. Mr. Alva
12 continues to insist that the client had 10 days to
13 review the bill and get back to him. There's
14 nothing in that engagement letter that says if you
15 do not review this in 10 days, tell me all of your
16 objection, I am going to charge you from the
17 beginning of the legal relationship up until now my
18 regular billing rate, meaning you would owe me over
19 \$100,000, meaning you would have to pay me for the
20 work you've already paid me for.

21 There's nothing in that engagement letter.
22 There was no notice to these clients that this
23 would happen to them if they just took the time to
24 review a bill, ask for an itemized billing or break
25 down the block billing so they could review it.

1 And furthermore, Tricia O'Rourke, February
2 16, 2018, she sent another e-mail that she
3 testified about to Mr. Alva with questions about
4 the December bill in that she included a disclosure
5 that she had been undergoing cancer treatment. And
6 that's the Florida Bar's Exhibit 26.

7 So yes, there was information. He knew
8 Mr. McCool was out of town. He testified he goes
9 out of town, often goes out of the country, goes to
10 Australia. He knew the client had paid timely and
11 promptly. He even went over to their office to
12 pick up a check. And here, Ms. O'Rourke, after the
13 services of Mr. Alva have been terminated, February
14 16th, she's saying I was out with cancer treatment.
15 She's still asking questions or talking to Mr. Alva
16 about the invoice. The client had not cut off
17 communication with Mr. Alva.

18 So we go on. Respondent has admitted in his
19 testimony that when he sent the invoices, beginning
20 Invoice No. 90, Invoice 93, Invoice 95, which he's
21 labeled the quantum meruit invoice, he had the
22 entire time the \$25,000 retainer. Even when he was
23 threatening the client to seek damages, he had the
24 client's \$25,000 retainer. The entire time
25 Respondent was insinuating that the client was

1 acting in bad faith by asking him questions about
2 one invoice, Invoice No. 90, he possessed the
3 client's \$25,000 retainer.

4 Even when Respondent sent the client e-mails
5 saying he would increase his hourly rate for
6 paralegal time and attorney time, he had the
7 client's \$25,000 retainer. There was no chance
8 that this respondent would have been deprived of
9 the benefit which could reasonably be expected for
10 the offer of his legal services in this case. He
11 had the client's \$25,000 retainer. Let me change
12 my tense. He has the client's \$25,000 retainer and
13 continues to retain it, even though the client
14 asked him to return it.

15 Based on the client's history of continuously
16 paying either early or on time and even according
17 to respondent shows that the client had a stellar
18 history of paying the bills that the respondent
19 sent to them no matter the dollar amount. And the
20 argument is that because the Invoice No. 90, that's
21 the \$25,040 bill, was not paid within 10 days, that
22 is somehow a breach of the contract entitling him
23 to do what he did. Well, there was no reason for
24 Mr. Alva to charge his client a clearly excessive
25 fee, retain the \$25,000 retainer, or not return it

1 when they asked for it.

2 In the case of Centurian Air Cargo v. United
3 Parcel Service, now this is an Eleventh Circuit
4 case from 2005, 420, Third Federal Supplement 1146
5 and specifically on page 1151, the Court in that
6 case stated:

7 Under federal law failure to make a payment
8 on time does not constitute a per se material
9 breach of contract. Rather to constitute a
10 material breach, the late payment must occur when
11 time is of the essence.

12 In the case of Rose v. Ditto, D-i-t-t-o,
13 which is 804 So.2d 351, Florida 4th DCA, and it's a
14 2001 case, the appellate court of Rose observed
15 that the agreement between the husband and wife did
16 not provide a grace period that would have put the
17 husband on notice that any brief delay in payment
18 would accelerate payments due or trigger a total
19 default. The Rose court concluded that the
20 installment payment deadline was not absolute and
21 found that the husband was not in material breach.

22 In bringing that around to this case, in this
23 case, the engagement letter did not put the client
24 on notice that any brief delay in payment would
25 increase the hourly billing rate over the entire

1 legal relationship from the beginning to the
2 present time. The engagement letter should be
3 viewed in the light most favorable to the client.

4 This Court heard testimony from expert
5 witness Gary Betensky. Mr. Betensky testified that
6 it is his opinion that Mr. Alva should have
7 returned the \$25,000 retainer to the client, that
8 as of February 7, 2018, when the December invoice
9 was paid and the January and February invoice had
10 been paid, one could conclude that the account was
11 settled. There were no other invoices or financial
12 issues outstanding. The \$25,000 pursuant to the
13 engagement agreement should have been returned to
14 the client.

15 Now, in evidence, the Florida Bar's Exhibit
16 No. 29 is the e-mail, where on April 9, 2018, the
17 client, Dan McCool, sent an e-mail to the
18 respondent asking him to return the \$25,000
19 retainer. On April 10, 2018, the respondent sent
20 an e-mail to the client, Daniel McCool, stating,
21 quote, there is no return due. There is a balance
22 due in excess of \$100,000. The \$25,000 retainer
23 payment was applied to the unpaid invoice, and the
24 balance in your retainer is zero, closed quote.

25 Mr. Betensky testified that it was his

1 opinion, that on April 10, 2018, there was
2 unequivocally no basis for the law firm not to
3 return to the client the \$25,000 retainer.
4 Mr. Betensky also testified there was nothing in
5 the engagement agreement to put the client on
6 notice that, if you don't pay your bill within 10
7 days, then the law firm is going to revert back to
8 the standard hourly rate.

9 Mr. Betensky testified that it was his
10 opinion that Respondent's Invoice No. 95 in the
11 amount of \$126,650 was clearly excessive, clearly
12 overreaching, and clearly unconscionable.

13 Rule 4-1.5A requires a lawyer -- it says a
14 lawyer must not enter into an agreement for charge
15 or collect an illegal, prohibited, or clearly
16 excessive fee or cost or fee generated by
17 employment that is obtained through the
18 advertisement or solicitation not in compliance
19 with the rules regulating the Florida Bar. A fee
20 of costs is clearly excessive when, sub 1, after a
21 brief review of the facts, a lawyer of ordinary
22 prudence would be left with a definite, firm
23 conviction that the fee or cost exceeds a
24 reasonable fee or cost for services provided to
25 such a degree as to constitute a clear overreaching

1 or unconscionable demand by the attorney or, two,
2 the fee or cost is sought or secured by the
3 attorney by means of intentional misrepresentation
4 or fraud upon the client, a non-client party, or
5 any court as to either entitlement or amount of the
6 fee.

7 In this case, Respondent billed the client
8 twice for the same work. No additional hours were
9 worked by respondent. You heard testimony to that
10 effect. So Invoice No. 95, the quantum meruit
11 invoice and the statement of account, it does not
12 represent any additional work.

13 Mr. Alva was paid for the work he completed
14 in January, February, and December. The client
15 paid him. He's acknowledged he received the
16 payment. He should return the \$25,000 to the
17 client.

18 Moreover, there was no language on the face
19 of the engagement letter that would put the client
20 on notice before he entered into the legal
21 representation agreement with the respondent that
22 objection to the rates billed -- to the hours
23 billed had to be made within a fixed time after
24 each billing period. There's nothing there to that
25 effect.

1 Rule 4-1.4B states that a lawyer shall
2 explain a matter to the extent necessary to permit
3 the client to make an informed decision regarding
4 the representation. What could be more integral to
5 giving the client the opportunity to make informed
6 decisions about representation than the engagement
7 agreement?

8 The client entered a written engagement, a
9 legal representation agreement, where the client
10 was informed there was a \$400 hour fee for attorney
11 time and a \$100 hour fee for paralegal time. The
12 respondent's failure to put the client on notice at
13 the start of the representation, not on February
14 26, 2018, that he was going to increase the hourly
15 rate for his time and his paralegal time over the
16 entire span of the representation respectively is a
17 violation of Rule 4-1.4B.

18 Furthermore, there is competent and
19 substantial evidence presented during this trial
20 that respondent could have taken measures,
21 including his ability to, according to the
22 representation agreement, seek payment from the
23 actual retainer instead of triple-billing the
24 client or billing them for back hours. He could
25 have taken other measures. The client was not

1 willful in any of its actions. And in this case
2 restitution should be paid to Daniel McCool and
3 Dr. ColorChip. The engagement letter on its face
4 states that the retainer is refundable.

5 Restitution is addressed under Rule 3-5.1J of
6 the Rules Regulating the Florida Bar, and the
7 restitution in this case would be the \$25,000
8 retainer.

9 There's a Florida Bar case, the Florida Bar
10 v. Smith 866 So.2d 41 Florida 2004. That case
11 addresses restitution, and it says a referee may
12 order restitution if a respondent has received a
13 clearly excessive, illegal, or prohibited fee, or
14 the respondent has converted trust funds to
15 property.

16 The dispute that the respondent is speaking
17 of, the dispute regarding the \$25,000 retainer,
18 there is no dispute because the money was not his.
19 He should have returned it to the client. So it
20 should not be in dispute. It cannot be in dispute.
21 And there's no reasonable basis for it to be in
22 dispute.

23 In this case the evidence clearly and
24 convincingly shows that the actual rates and hours
25 billed by Respondent in Invoice No. 95 and the

1 March 2018 statement of account were clearly
2 excessive and is thus in violation of Rule 4-1.5 as
3 charged by the Bar in its complaint.

4 In this case Respondent did not return the
5 unearned money after he was discharged, even after
6 he was paid in full, even after he acknowledged
7 that the client had paid him, and even after the
8 client specifically asked him to return the
9 \$25,000. Notably, the client did not request the
10 retainer prior to the client paying Invoice No. 90
11 and Invoice No. 93, both which represent an actual
12 services that the respondent stated that he had
13 actually performed. In fact, it was not until
14 April of 2018 that the client, Daniel McCool, sent
15 respondent an e-mail asking him to please return
16 all retainer funds.

17 The Court granted the Bar's request to take
18 judicial notice of two court orders from the Palm
19 Beach Florida civil case of Dr. ColorChip, Daniel
20 McCool vs. Curtis Alva and Alva & Gleizer, and that
21 final judgment, dated June 28, 2022, was entered in
22 favor of the plaintiff, Dr. ColorChip and Daniel
23 McCool against Defendants Alva and Alva & Gleizer
24 PLLC in the amount of \$25,000. And there was the
25 March 31, 2022, order granting the plaintiffs',

1 Dr. ColorChip and Daniel McCool's, motion for
2 summary judgment as to Count 1.

3 Further, both of those orders of the civil
4 case, Dr. ColorChip and Daniel McCool v. Alva, were
5 admitted into evidence during these Bar proceedings
6 respectively as the Florida Bar's Exhibit 47 and
7 45. Bar disciplinary proceedings are
8 quasi-judicial rather than civil or criminal.

9 The Florida Supreme Court in Florida Bar v.
10 Gwynn, G-w-y-n-n, 94 So.3d 425, Florida Supreme
11 Court case 2012, stated that the Court has clearly
12 held that a referee in a Bar disciplinary
13 proceeding can properly rely upon facts established
14 in orders and decisions of other tribunals to
15 support his or her findings of fact.

16 Rule 3-4.3 states in part the commission by a
17 lawyer of any act that is unlawful or contrary to
18 honesty and justice may constitute cause for
19 discipline.

20 In this case, despite having been paid in
21 full, Respondent kept the client's property and
22 refused to return the property to the client upon
23 demand all while continuing to demand payments from
24 the client that he was not entitled to by sending
25 the client Invoices No. 95 and the statement of

1 account from March 2018. Wherein the respondent
2 demonstrated that he was not only charging the
3 client a clearly excessive fee, but that he had
4 collected a clearly excessive fee as well.
5 Respondent's conduct was contrary to honesty and
6 justice and a violation of Rule 3-4.3.

7 And Rule 4-8.4A provides that a lawyer shall
8 not violate or attempt to violate the rules of
9 professional conduct nor assist or induce another
10 to do so or do so through the act of another.

11 Competent and substantial evidence was
12 presented in this case shows that the respondent
13 violated all of the rules charged by the Florida
14 Bar in its complaint, 3-4.3, 4-1.4B, 4-1.5 sub
15 section A, and thusly, 4-8.4A.

16 The Bar asks that you find Respondent guilty
17 of all the rules charged in its complaint.

18 And, hopefully, I can have 5 more minutes at
19 the end to do my second conclusion. If not, I'll
20 do that now. But thank you, your Honor.

21 THE COURT: Mr. Alva?

22 MR. ALVA: Thank you, your Honor. I would
23 first like to address the argument made by the Bar
24 that there was no intent given to the client --
25 there was no notice given to the client of the

1 intent to unilaterally amend the contract and
2 change the rate from 400 to 550 if the client
3 failed to pay within 10 days or conduct a review
4 within 10 days. That is not what occurred here,
5 your Honor.

6 Invoice 95 was not issued pursuant to the
7 contract. There is no obligation that the Bar has
8 referred to the Court that an attorney, when they
9 enter a contract, has to notify their client of
10 what the noncontractual remedies are, and that's
11 what occurred here. This is not a contractual
12 remedy.

13 This was a willful, material breach by the
14 client of a contract which entitled the victim of
15 the breach to nullify the contract and seek payment
16 in quantum meruit.

17 So this engagement agreement was not amended
18 to change the rate to 550. There was no
19 back-billing pursuant to the time that had already
20 been paid under the contract. The law on quantum
21 meruit says that when a contract is nullified, the
22 victim of the breach goes back to the day before
23 the contract was signed and calculates the fair
24 value of their services from that day forward. And
25 the day before the contract was signed here is the

1 day before any services were rendered. That means
2 all of the services performed pursuant to the
3 contract are within the remedy of quantum meruit
4 because the contract is nullified.

5 Ms. Pearsall then went through all the bills
6 that were paid within 10 days, your Honor, and I
7 think by doing so clearly establishes, your Honor,
8 that payment within 10 days was material to this
9 contract, because payment was always made within 10
10 days. Even if there was a bill for \$44,000, it was
11 paid within 10 days. All of the bills 23,000,
12 7,000, 16,000 were all paid within 10 days. Within
13 10 days we discussed any issues that the client
14 had, and within 10 days every single bill was paid.
15 So clearly payment within 10 days was material to
16 these parties.

17 The e-mail that Ms. O'Rourke, that
18 Ms. O'Rourke sent on January 23rd, the day after
19 payment is past due, where she says 14,000 is
20 enough for December, if Ms. Pearsall's
21 interpretation of that e-mail is correct, then what
22 the Bar is saying is that we will not pay you for
23 January and we will not pay you for the work done
24 in December. So I was sort of giving the client
25 the benefit of the doubt by concluding that their

1 e-mail was offering at least to pay 14,000 on the
2 work done in December, but Ms. Pearsall's point is,
3 no, their offer was to pay nothing in December, and
4 the 14,000 was for the work in November.

5 So if we accept Ms. Pearsall's argument, that
6 the 14,000 is all that I was going to be getting
7 paid for January and February and December, that
8 means I was getting nothing for December, and I was
9 getting nothing for January and February, and that
10 I had been paid in full for November.

11 Ms. Pearsall refers the Court to the
12 engagement agreement, and so I would like to pull
13 that up. So the engagement agreement, your Honor,
14 is the Florida Bar's Exhibit No. 1, your Honor.
15 And I'll share the screen with the Court. Your
16 Honor, in the engagement agreement, it shows that
17 the rate is referred to as \$400, but as I testified
18 in redirect, the contract had been nullified by the
19 time this invoice was due. So if the contract has
20 been nullified, the \$400 rate has been nullified as
21 well, your Honor, and the amount that I'm entitled
22 to bill to the client is the reasonable value of my
23 services.

24 Ms. Pearsall's next argument, your Honor, is
25 that there was a retainer in the possession of the

1 firm in the amount of \$25,000, and the possession
2 of that \$25,000 means that I was not entitled to
3 seek payment in quantum meruit. But I'm aware of
4 no case, your Honor, that says that. Ms. Pearsall
5 gives the Court no case that says that. I'm trying
6 to turn off the screen-share. I think I've got it
7 turned off. There we go, your Honor.

8 No case says that an attorney who has a
9 retainer in his possession is not entitled to
10 exercise the remedies for a breach of contract.
11 I'm entitled to exercise those remedies. And one
12 of the remedies that I'm entitled to exercise, your
13 Honor, is to receive payment in quantum meruit.

14 There is nothing in the Bar rules that
15 requires an attorney to take the retainer money
16 rather than exercising the right, the remedies that
17 every person who is the victim of willful breach is
18 entitled to exercise.

19 In addition, your Honor, the time that she's
20 arguing to the Court that I could have been made
21 whole by taking the retainer, it is not true,
22 because the January and February bills had not been
23 paid, and I was still doing work. So taking the
24 25,000 for December would not have made me whole,
25 your Honor. I still would have been unpaid even if

1 I took the entire \$25,000.

2 Her next argument is that Ms. O'Rourke had
3 not been copied on the three most recent e-mails,
4 but the contract does not require that Ms. O'Rourke
5 be copied on them, and they had paid all of the
6 last three invoices without Ms. O'Rourke being
7 copied. And the reason Ms. O'Rourke was not
8 copied, as I testified to on direct, is because she
9 asked me not to communicate with her anymore about
10 the case. So I was following her instructions,
11 your Honor.

12 Her next argument, your Honor, is that the
13 retainer had not been returned when it was
14 demanded. Your Honor, we just went through some
15 testimony and Rule 5-15F specifically provides that
16 if there was retainer money in dispute, it was to
17 be put in trust, and that's where the money was
18 put. Ms. Pearsall, and perhaps she misspoke, said
19 that I still have that money. I do not. It is in
20 a trust account with the court, your Honor. I do
21 not have possession of it.

22 Ms. Pearsall's next thought, your Honor, was
23 that the fee was clearly excessive. And the only
24 testimony, your Honor, as to whether or not the fee
25 was excessive is the testimony of Mr. Betensky.

1 Mr. Betensky admits that he did not go through the
2 reasonableness factors that in the rules. He did
3 not look at any of those factors. I testified at
4 length as to each of those factors showing that the
5 fee, even when you add Invoice 95 to the fee, it
6 was reasonable and was not excessive. Mr. Betensky
7 in his -- or the Bar in their interrogatory
8 responses testified and Mr. Betensky confirmed
9 this, he did not do any research, your Honor, to
10 see whether or not a person who is a victim of a
11 willful material breach can nullify the contract.
12 He did admit, your Honor, in his testimony that he
13 was familiar with the first breach document, but he
14 was not taking that into account in his testimony
15 here.

16 His testimony was I looked at the contract,
17 there is nothing in the contract that allows you to
18 amend the rate; therefore, it's up-charging because
19 you increased the rate, and it's back-billing
20 because you go back to a time it was already
21 billed.

22 In fact, it's neither, because the remedy of
23 the quantum meruit goes back to the day before the
24 contract was signed, and it provides that you shall
25 receive a fair value of your services. And the

1 testimony before your Honor is that the fair value
2 of my services was at least \$550 an hour and could
3 have been substantially more, your Honor.

4 Now, your Honor, let's go to the issue of
5 willfulness because Ms. Pearsall spent some time
6 during her argument on willfulness. And let's just
7 go through the record before the Court on the issue
8 of willfulness.

9 So, first of all, you have the Invoice
10 No. 90, which was generated on December 9th and was
11 due on January 19th. It was e-mailed to the
12 address provided in the contract. It was received
13 on that day. There is no testimony from Mr. McCool
14 that he did not receive it at that time, even
15 though he was in Australia. There's no testimony
16 that his e-mail address doesn't work in Australia.
17 There's no testimony that his e-mail wasn't working
18 on January 9th.

19 January 19th the payment is due. No payment
20 is made. Under Florida law, in order for a breach
21 of contract to be willful, all that is required is
22 that the act constituting the breach be done
23 deliberately, rather than negligently or
24 accidentally.

25 So the act of breach here is a failure to pay

1 on January 19th. It is very clear that the failure
2 to pay on January 19th was intentional. And if the
3 failure to pay -- or let's call it the non-payment.
4 If the non-payment on January 19th was intentional,
5 that they intended not to pay on January 19th, then
6 it was willful. They intended to not pay that day.
7 And we know that from Respondent's Exhibit No. 3,
8 where Ms. O'Rourke says don't send the bill for
9 January and 14,000 is enough for December. We know
10 now from Ms. Pearsall, that that 14,000 was for
11 November.

12 So there is no payment coming on January 19th
13 and Ms. O'Rourke explains why, because paying you
14 for November is enough, and you're not going to get
15 paid for December, and you're not going to get paid
16 for January, and you're not going to get paid for
17 February. So this is not accidental. This is not
18 negligent. This is not excused. This is a
19 deliberate decision that the January 19th payment
20 is not going to be made.

21 Next, we have the e-mail that's Respondent's
22 Exhibit 4, where Mr. McCool says we're going to
23 begin the review of the invoice. Well, that review
24 of the invoice, your Honor, is after the time
25 period for making the payment has already passed.

1 Payment was due on January 19th. They say they're
2 going to begin the review -- let me get the exact
3 date here, your Honor.

4 Mr. McCool says the review will begin on
5 February 5th. We know it didn't begin on February
6 5th, your Honor, from later e-mails. But here we
7 have Mr. McCool saying, yes, we will review it, and
8 the time for reviewing has already passed.

9 Now, Ms. Pearsall argues that nothing in the
10 contract says that the invoice has to be reviewed
11 in 10 days. And she's correct. It doesn't say it
12 has to be reviewed. But it does say it has to be
13 paid. And it's a perfectly reasonable assumption
14 that they will review the invoice before they pay
15 it. But they're not required to review the
16 invoice.

17 So they can either decide to review it and
18 then pay it when its due, or they can decide not to
19 review it, but they still have to pay it when it's
20 due. There's nothing in the contract that says if
21 I haven't reviewed it within the 10 days, the 10
22 days no longer applies and I get additional time to
23 review it.

24 On February 5th I then write the Ms. O'Rourke
25 and say, okay, you're going to do your review. I

1 understand that. When do you expect to finish?
2 And Ms. O'Rourke writes back I will be done when
3 I'm done. So this is clearly -- there's no intent,
4 your Honor, to comply with the deadline. Even if
5 you were to credit Ms. Pearsall's guess that
6 Mr. McCool being out of town and Ms. O'Rourke being
7 treated for an unidentified cancer -- and I'm very
8 sorry to hear that. Before I got that e-mail, I
9 had no idea.

10 I forgot what point I was making.

11 When Ms. O'Rourke writes back I will be done
12 when I'm done, that is an indication that the
13 decision not to pay was deliberate. I'm going to
14 do my review when I'm good and ready. I will
15 finish my review and we'll let you know what we're
16 going to do.

17 That is Respondent's Exhibit No. 4, your
18 Honor, the February 7th e-mail from Ms. O'Rourke,
19 so payment is due on the 19th and this is now
20 February 7th, I will be done when I'm done.

21 On February 13th Ms. O'Rourke writes back
22 again, this Exhibit No. 1, your Honor, by the
23 respondent and says she hasn't had time even now to
24 really dissect the December invoice but I will pay
25 half. So she hasn't even begun the detailed

1 review, that Mr. McCool says would happen before I
2 was asked to do any more work. It hasn't been
3 done. So the decision to not do it, your Honor, is
4 clearly deliberate.

5 If the decision do not pay by the deadline is
6 deliberate or even 10 days after they claim that
7 they first saw it, it still wasn't paid in that
8 period of time, then the breach is willful. And if
9 the breach is willful, your Honor, then I'm allowed
10 to charge a rate that is in excess of the rate that
11 is in the contract. And your Honor I have the
12 cases --

13 THE COURT: I did review the cases you gave me
14 before the trial, if that's what you're referring
15 to.

16 MR. ALVA: I'm sorry, your Honor, I didn't
17 hear that.

18 THE COURT: I'm saying I did print out all of
19 the cases that were provided to me prior to trial
20 and during trial, and I have read through all of
21 them.

22 MR. ALVA: Okay, your Honor, so then I don't
23 need to --

24 THE COURT: You don't have to reargue them. I
25 have reviewed them. I have them in my pile of

1 materials to review prior to the ruling.

2 MR. ALVA: Yes, your Honor, those are the
3 cases. I'm not referring to any new cases.

4 THE COURT: Okay.

5 MR. ALVA: I had not seen Ms. Pearsall's cases
6 that she cited to, your Honor, about materiality
7 until about 10 minutes before the hearing.

8 But these cases are the ones that I gave to
9 the Court and to Ms. Pearsall before the hearing
10 and that were argued previously, your Honor. Those
11 cases specifically provide that if the breach is
12 willful, the rate that can be charged can exceed
13 the contract rate.

14 So Ms. Pearsall next argues, your Honor, that
15 the language in the contract requiring that the
16 retainer be returned when the account is settled,
17 she argues that the account is settled because
18 there are no outstanding invoices. But, of course,
19 there was an outstanding invoice, and there are
20 e-mails specifically between myself and the client
21 where we talked about we need to get the account
22 settled. I have claims for these invoices. And
23 those establish, your Honor, the understanding of
24 the parties as to whether or not the account was
25 settled was that the parties would be in agreement.

1 So Dr. ColorChip having paid belatedly an
2 amount that was no longer the amount due, because
3 the contract had been nullified, that does not
4 count as settling the account, your Honor.

5 The next point, your Honor, she goes into
6 some of the testimony given by Mr. Betensky, and
7 Mr. Betensky testified that the contract gives the
8 client no notice that the rate could be raised to
9 550 and, of course, the raising of the rate, it's
10 not a raising of the rate, the contract was
11 nullified. The contract rate no longer exists
12 after the nullification. After it's nullified, an
13 invoice is issued in quantum meruit for the
14 reasonable value of the services.

15 So there is no changing of the rate in the
16 contract. The contract no longer exists after it
17 was nullified. Now, she then testified that it was
18 Mr. Betensky's testimony that the amount in Invoice
19 No. 95 was clearly overreaching. But, again, his
20 sole basis for this testimony was because it was
21 higher than the \$400 in the contract.

22 There's no testimony that if you nullify the
23 contract and the contract rate doesn't exist, then
24 the 500 is overreaching. In fact, all the
25 testimony on that point is that 500 was a

1 reasonable rate.

2 Mr. Betensky, she also referred to that
3 Mr. Betensky said that that rate was improper
4 because it was the result of misrepresentation.
5 Mr. Betensky's testimony on misrepresentation was
6 that he assumed that I knew when I said Invoice 95
7 that there was no legal basis for sending Invoice
8 95 in the contract. But the legal basis for
9 sending Invoice No. 95 has nothing to do with the
10 contract. The contract no longer exists. It's
11 been nullified.

12 The basis is Florida law provides that a
13 victim of a willful material breach can nullify the
14 contract and seek payment in quantum meruit.

15 The next point that Ms. Pearsall makes is
16 that the breach here was not material, and she
17 cites to, your Honor, a divorce case where payment
18 was made two days after it was due and the Court
19 found that that was not material.

20 Here, payment was made 300 percent after it
21 was due. It was due in 10 days. It wasn't paid in
22 10 days or 20 days or 30 days. It was paid 38 days
23 past due, your Honor. So a case finding that 2
24 days is not material does not show that 38 days
25 past due is not material, number one.

1 Second, as to materiality, the law in Florida
2 is that a payment deadline is material if the
3 parties treat it as material, and here the parties
4 clearly treated the 10-day deadline as material,
5 because, number one, every single invoice is paid
6 within 10 days, and number two, I contacted the
7 client every single month for every single invoice
8 and made a meeting to receive payment in person of
9 the amount due, which was always done, so the
10 parties always treated it as material.

11 And the third point, your Honor, is she cites
12 to the Court, your Honor, the case that says that a
13 failure to pay is material if time is of the
14 essence. Well, that's one of the reasons why
15 nonpayment could be material, is if the contract
16 has a time-of-the-essence clause in it. This does
17 not have a time-is-of-the-essence clause in it, but
18 that does not mean that's the only time nonpayment
19 could be material.

20 If Ms. Pearsall is correct and I had a
21 contract with the client and they didn't pay at any
22 time within 10 years, referring to Ms. Pearsall's
23 explanation of this case, that is still not
24 material unless the contract has a
25 time-is-of-the-essence clause, which is not a

1 correct statement of Florida law.

2 You can breach a contract by nonpayment. In
3 fact, it is the most common way of breaching a
4 contract, even if there is no clause stating that
5 time is of the essence.

6 In addition to that, though, your Honor, her
7 case also says that nonpayment is material if
8 subpart 4, in her case, your Honor -- and I'm
9 reading from page 4 of the case that she cited,
10 Centurian Air Cargo v. United Parcel Service.
11 Sub-point 4 on materiality is that notice has been
12 given to the defaulting party requesting
13 performance within a reasonable time. Now, the
14 notice here is not in the contract. They mean
15 notice is made after payment is not made.

16 And that's exactly what happened here, your
17 Honor, because in this case, your Honor, when they
18 hadn't paid, they hadn't paid, and they hadn't
19 paid, I sent them an e-mail, that we went through
20 in my redirect, your Honor, requesting that payment
21 be made within three days on February 16, 2018, of
22 the amount that was not in dispute.

23 So I say you have 3 days to pay the \$18,240
24 that is not in dispute. So that's notice, pursuant
25 to this case, that they're requesting performance

1 within a reasonable time. So performance is now,
2 on February 16th, performance is now almost 30 days
3 past due. I give them three additional days. So
4 it's requesting performance within, if my math is
5 right, approximately 31 days, which is a reasonable
6 amount, especially if the contract originally said
7 10 days.

8 So even if Ms. Pearsall was correct and you
9 have to have a time-is-of-the-essence requirement
10 time is of the essence if you give them notice and
11 demand payment, which was what was done here, your
12 Honor.

13 Ms. Pearsall's next point, your Honor, is
14 that I failed to explain the matter to the clients
15 so they could make an informed decision. The
16 matter that she claims that I did explain to the
17 client is that if they didn't pay within the 10
18 days, I would unilaterally amend the contract and
19 raise the rate to \$550. And if I was going to
20 unilaterally amend the contract, I need to give
21 them notice that I'm going to unilaterally amend
22 the contract. But that's not what happened here,
23 your Honor. There was no amendment to the
24 contract. The contract was nullified.

25 And there's no requirement that you have to

1 say to the client, by the way, if you breach the
2 contract, I have contract remedies pursuant to the
3 law, especially when the client is already
4 represented by David McCool, your Honor, and is, at
5 this time, represented by Matt Nelles. So the
6 client has two clients that can explain to the
7 client on January 19th when payment is due, that,
8 if you do not make payment, you may be in breach of
9 contract. If your breach of contract is willful
10 and material, the contract could be nullified.

11 There's no requirement saying that a member
12 of the Bar who hasn't been paid has to tell the
13 client that they have contract remedies.

14 But even more material to your Honor's
15 decision is that here I specifically notified the
16 client in advance that I had the remedy of
17 nullification. I wrote to the client on February
18 21st, your Honor, in an e-mail that we looked here
19 and said, if you do not pay, within 3 days, the
20 undisputed amount, I have the option of treating
21 the contract as if it never existed and billing for
22 the reasonable value of my services. I told him
23 that on February 21st and I told them that, your
24 Honor, in the same e-mail string when I said, you
25 haven't paid, I can nullify the contract and bill

1 for the reasonable amount of my services.

2 So at the time the issue actually became real
3 and the client breached, they were given advance
4 notice, that I'm not required to give them, that I
5 have noncontract remedies.

6 Your Honor, I think it's also important for
7 the Court to see, is that all of the alleged
8 violations of the Bar rules occur chronologically
9 after the attorney/client relationship is
10 terminated. So this is no longer a client of mine
11 when I notified them that I can seek relief in
12 court and that I can receive contract and
13 noncontract remedies. This is no longer a client
14 of mine. The attorney/client relationship is
15 terminated on February 13th, and every act that the
16 Bar says is a violation of rules that occurred
17 after that time, and I have already showed to the
18 Court and the Court has explained that you have
19 those cases, shown the Court the cases that say
20 that, as to a former client, there is no duty of
21 loyalty. There is no duty to avoid the appearance
22 of impropriety.

23 The only obligations you owe to a former
24 client are the conflict rules, that you can't get
25 into a conflict, and the rule that you have to keep

1 confidential matters confidential. Those are your
2 only obligations. None of the things that the Bar
3 is saying that occurred that were a violation of
4 the Bar rules occurred while I was the attorney for
5 this client. All of them occurred between a former
6 client and a former attorney, as to whom I owe none
7 of the duties that you owe to a current client
8 except for confidentiality and conflicts.

9 The last point I want to make, your Honor, is
10 that the Bar is required to establish a violation
11 of the rules of ethics by clear and convincing
12 evidence, and the clear and convincing evidence
13 standard, your Honor, requires that you can reach a
14 conviction without hesitancy that there's been a
15 violation of the Bar rules.

16 Here, you have an attorney that did, if you
17 remember my direct testimony, that was
18 extraordinarily successful in representation, where
19 a client gained sole control of the board of
20 directors, sole control of all the shares of stock,
21 and sole control of all of the officer positions,
22 and that multiple motions, for preliminary
23 injunctions and for dissolution and for freezing
24 all the assets, none of that relief was ever
25 granted. The client got everything that they

1 wanted.

2 And after making this the only case that I
3 worked on, billing sometimes 44,000 worth of work
4 in a single month on behalf of this client, the
5 client then decides that, well, we've paid you
6 enough. We're not going to pay anymore. You're
7 not going to get December. You're not going to get
8 January. You're not going to get February. But we
9 still have a lot of work for you to do.

10 And, at that point in time, your Honor, where
11 they said do no more work and you're not getting
12 paid, I wrote, then, an e-mail that said you are at
13 risk of suffering irreversible damage, because the
14 Court is going to set an expedited hearing on this
15 motion for dissolution, and you've got to do things
16 to get your discovery done before the Court sets
17 that hearing date, because once the hearing date is
18 set, you're not going to get any more discovery,
19 your assets are going to be frozen under a request
20 saying there's a pending dissolution motion set for
21 a hearing. The company would have been put out of
22 business.

23 And I had the option, your Honor, under the
24 rules to say, do no more work? Fine, I'm not doing
25 any more work. You're not paying me, so I'm not

1 throwing any more money under this black hole. And
2 I wrote them a detailed letter that David McCool,
3 the attorney, who was also advising them in this
4 matter, said, you need to pay them, you need to pay
5 them every penny, \$25,040 needs to be paid. And
6 the client did. The client did not pay one penny
7 of this invoice. Until after I nullify the
8 contract and after I sent the invoice, after
9 quantum meruit, then I received payment, your
10 Honor.

11 So there's no intent here to do anything but
12 to fully protect the client, zealously do
13 everything in my power to make sure that the
14 client's interests are protected. And then, in a
15 billing dispute with a former client where the
16 former client has not paid a bill that was due in
17 10 days or in 38 days, I nullified the contract,
18 your Honor, and I sought the remedy that I am
19 allowed to receive.

20 I have great respect, your Honor, for
21 Ms. Pearsall, Ms. Pearsall and the Bar, and I have
22 great respect for the rules of ethics, and I have
23 great respect for my obligations to my client. I
24 think I did the best and more than many others
25 would have done to follow the rules of ethics. I

1 did the legal research at the time. I understood
2 what my legal remedies were.

3 I did nothing until I was discharged as a
4 client -- I mean, as an attorney, and after I was
5 discharged, I had the right to pursue my remedies,
6 which I did, your Honor, respectfully.

7 THE COURT: Ms. Pearsall, you have five
8 minutes.

9 MS. PEARSALL: Thank you, your Honor.

10 If a client hires an attorney with a fear of
11 excessive billing, with a fear of reprisal, with a
12 fear of the lawyer demanding a clearly excessive
13 fee or sending a bill with a clearly excessive
14 charge for retroactively instituting an up-charge
15 of the hourly rate from the beginning of a legal
16 representation to the time when the client
17 questioned the attorney's bill, this creates a
18 chilling effect.

19 This was Respondent's conduct towards his
20 client. Respondent's refusal to return the \$25,000
21 retainer to the client upon the client's request on
22 April 9, 2018, after the client had paid all
23 outstanding balances at the agreed hourly rate, was
24 indeed the retention of a clearly excessive fee.

25 Respondent's transmitting to the client

1 Invoice No. 95 in the March 20, 2018, statement of
2 account was indeed a clearly excessive charge and a
3 violation of Rule 4-1.5. Respondent's failure to
4 explain to the client at the inception of the
5 representation that the agreed-upon hourly rates,
6 although in writing, were not firm, and could be
7 changed arbitrarily by the respondent to a higher
8 rate, that would go back to the beginning of the
9 representation to the present date, this conduct by
10 Respondent violated Rule 4-1.4B.

11 At the start of the representation, it is
12 important that the lawyer laid out for the client
13 the matters that are to be considered prior to the
14 client hiring the lawyer. And that engagement
15 letter was supposed to do that, and this is what
16 was supposed to put Dr. ColorChip on notice. And
17 in paragraph 4 of the engagement letter, the
18 September 19, 2016, engagement letter, it says:

19 This retainer will be held in trust until the
20 end of the representation and the settling of the
21 account, but it may be applied to any invoices
22 unpaid after 10 days, and if so replied, it would
23 be replenished to \$12,500 with the intent of being
24 spent to pay any invoices.

25 This is what the client was on notice of,

1 that the retainer, if the invoice was not paid
2 within 10 days, it may be spent and applied to the
3 outstanding invoice.

4 Any argument that Mr. Alva was still doing
5 work for the client and so him having the retainer
6 was not enough, the only bill that was outstanding
7 on January 19, 2018, was Invoice No. 90.

8 Invoice No. 93 had not been sent out to the
9 client. Even though he might have been working, he
10 hadn't billed the client for it yet, so it was not
11 due on that day. Your Honor, I just wanted to
12 point that out.

13 The respondent has violated the rules
14 regulating the Florida Bar by his conduct. The Bar
15 has presented competent, substantial evidence in
16 this case. There's clear and convincing evidence
17 that the respondent has violated the rules charged
18 in this case.

19 Moreover, regarding Ms. O'Rourke and her
20 speaking about the \$14,000 that has been paid for
21 the December bill -- and I will read it in just one
22 moment. I believe it's Exhibit 1. Ms. O'Rourke
23 asked for an itemized bill, and in her reference to
24 the December bill for \$14,000, the bill that was
25 due in December, Exhibit 22, was \$14,000. The fact

1 that Mr. Alva may have done work in the months
2 prior, November, and then submitted the bill in
3 December, that does not change the fact that that
4 bill was due in December, was \$14,000, and was paid
5 by the client.

6 There was nothing in any of those e-mails
7 that said that the client was not going to pay
8 Mr. Alva. The e-mail says that there had already
9 been a bill for December for \$14,000. It did not
10 say that the work was done in December. It said
11 that the bill was for \$14,000 in December. That is
12 absolutely clear.

13 So there was no -- there's no credence to
14 this argument that Respondent is putting forth,
15 that the client said they weren't going to pay him,
16 that he had no expectation of payment.

17 But he kept working. There's even an e-mail
18 from Dan McCool, which we've discussed already, I
19 have your bill, we'll review it. Ms. O'Rourke: I
20 have cancer, we're working on it. None of these
21 bills, none of the communications say that we are
22 not going to pay you for your services. It just
23 says we need to review them.

24 And, again, the delay in this case was not a
25 material breach. It was not willful. The client

1 did pay Mr. Alva. There were no invoices in
2 dispute. The only invoice that Mr. Alva is saying
3 is in dispute now, and they paid all of them, was
4 Invoice No. 95, where he charged the client over
5 \$100,000 and added on hours.

6 The fair value for Mr. Alva's services was
7 what he told the client it was when they signed up
8 for him to provide them with legal representation.
9 The fact that he changed his mind about what he
10 wanted the fair value of his services to be, after
11 the representation started, it's wrong and it's not
12 right.

13 These clients paid him. They paid him on
14 time. And he should be required to return their
15 retainer. He has no remedy at law that he's
16 speaking about. There's no ethical basis for
17 Mr. Alva to have done what he did. He has violated
18 the Rules Regulating the Florida Bar. His actions
19 are contrary to the Rules Regulating the Florida
20 Bar.

21 And again, we ask that the Court find
22 Mr. Alva guilty of all the rules charged by the
23 Bar.

24 And, finally, all of the case law presented
25 by Mr. Alva is not -- is inapplicable in this case.

1 The case of -- (inaudible), that case is
2 distinguishable from the case at bar. In this case
3 there was no agreed-upon amount or agreed-upon
4 payment date in this engagement letter.

5 The Sublime (phonetic) case, that was a
6 commercial settlement agreement where both parties
7 had already agreed to a dollar amount. That amount
8 was specified in the settlement agreement. The
9 amount of future payments and dates was already
10 known to the lessee, which is Boardman (phonetic),
11 at the time of the settlement. There was no
12 language in the engagement letter that put Dan
13 McCool and Dr. ColorChip on notice that a delay in
14 payment would increase the balance due. There was
15 no grace period built into the agreement in the
16 ColorChip case.

17 Furthermore, there is nothing in the
18 engagement agreement that says you have only 10
19 days to review any bill. If you do not review this
20 bill within 10 days and pay me, that constitutes a
21 breach. There is nothing in that engagement
22 agreement.

23 Furthermore, like I stated earlier, this case
24 is more in line with the case of Rose v. Ditto.
25 Yes, the installment payment in that case was two

1 days late, but I think that is not the only reason
2 why the court found there was no material breach.
3 In Rose v. Ditto, the Court found that there was no
4 grace period to put the husband on notice that a
5 delay in payment would accelerate the payment due.
6 The agreement in the Rose case does not specify
7 that time was of the essence, and the Court in Rose
8 concluded that the breach not material.

9 In this case, again, we have clients who paid
10 time and time again early, often, all the time.
11 They questioned a bill, one client out of the
12 country, the other person battling cancer. They
13 communicated with Mr. Alva continuously, even after
14 he had been terminated, even through to telling him
15 the money is on the way, the bill is on the way,
16 asking questions, they did not leave him in the
17 lurch. In all the while, he had the \$25,000
18 retainer.

19 And we ask that you find that Mr. Alva has
20 violated the rules charged in this complaint and
21 find Mr. Alva guilty.

22 Thank you, your Honor.

23 THE COURT: Thank you. All right. So we set
24 up a timetable to provide copies of the pleadings
25 and exhibits to each other within 7 days. Just

1 send me a copy in a FedEx box. I won't open it
2 until we have a conference a week later. If you
3 guys could e-mail me that everything is okay, I'll
4 open the boxes. I want to review everything, my
5 notes. And then I will give you a ruling in a
6 week.

7 And then, if sanctions are applicable at that
8 point, then we'll discuss a date for that.

9 MS. PEARSALL: This may be -- this is probably
10 premature, so I apologize for that, your Honor.

11 THE COURT: Okay. My last day as a judge is
12 May 19th. I've resigned. So obviously, I need to
13 get the report in -- I want to get the report in
14 well before that, so we don't run into any
15 problems.

16 MS. PEARSALL: Sometimes the Courts ask the
17 parties to do a proposed report, but I guess we'll
18 get there when your Honor makes your decision.

19 I believe the report date is due May 28th. I
20 heard what your Honor just said. I just wanted to
21 make sure.

22 THE COURT: I'm going to get it in before the
23 report date, because -- I guess you're both going
24 to want to submit a proposed report.

25 MS. PEARSALL: Your Honor, I just reviewed the

1 report. A referee is due on May 22, 2023.

2 THE COURT: Okay. I need to get it in before
3 then, regardless.

4 How long is it going to take you both to do a
5 report?

6 MS. PEARSALL: Depending on when your Honor
7 lets us know, because there's only supposed to be
8 one actual report of referee, you know, one filing,
9 when you let us know what you determine regarding
10 the guilt phase, then we can -- it probably won't
11 take me more than a week or so, your Honor, 10 days
12 to be safe, but it probably won't take that long.
13 I don't know about Mr. Alva.

14 MR. ALVA: I've never done any report before.
15 But I'll get a lawyer quickly to help us. If I
16 understand correctly, your Honor --

17 THE COURT: Your proposed report wouldn't go
18 in the court file?

19 MS. PEARSALL: No. We would just submit it to
20 your Honor and, you know, for your review.

21 THE COURT: All right. You would want my oral
22 pronouncement, and if there's sanctions, you would
23 want that pronouncement before you submit the
24 report?

25 MS. PEARSALL: As far as your pronouncement

1 regarding any rule violations, I've seen it done in
2 a one-page sheet for violations of certain rules.
3 I've seen it done that way. I don't know if I've
4 seen it orally. But as far as the proposed report
5 and the sanctions, they can be combined. They can
6 be separated.

7 THE COURT: What I normally do in a family
8 case is I give an oral ruling at the end of the
9 case. Then the lawyers create a proposed final
10 judgment and send that into me. There may be
11 objections to the final judgment, and then I modify
12 it if necessary. Otherwise, I just sign off on it.
13 Is that a procedure that's done in a Florida Bar
14 case?

15 MS. PEARSALL: I've seen judges make
16 pronouncements regarding rule violations and then a
17 proposed report is done. Usually both sides do
18 one. It's usually not left to one side or the
19 other, and it's submitted to the Court because we
20 give findings of fact, and so Mr. Alva and I would
21 probably both do one and submit it to your Honor in
22 Word format.

23 THE COURT: Okay. That's fine. Let me get my
24 calendar out. Today is the 28th. So let's have
25 the record of the evidence and exhibits provided by

1 April 4th at noon. Any objection or missed -- or
2 exhibits that didn't make it for whatever reason,
3 just submit an e-mail to my division by April 6th.
4 And then April 10th, at 9 a.m., I'll give a ruling,
5 an oral pronouncement.

6 MS. PEARSALL: 9 a.m.?

7 MR. ALVA: 9 a.m. on April 10th, okay.

8 THE COURT: And then we will talk about -- if
9 we have to have another hearing regarding
10 sanctions, we can set that within a week or so and
11 then we can deal with that. That should give us
12 enough time.

13 MS. PEARSALL: Regarding the April 10th
14 hearing, your Honor, how is that going to be held?

15 THE COURT: Everything is Zoom.

16 April 17, 9 a.m. will be sanctions, if
17 applicable. I think most Mondays, at 9 a.m., is
18 the only time I'm free. So let me look at April
19 17th. Okay. No. The 17th I'll just cancel. I'll
20 make time available for you if we need anything
21 else in the future.

22 MS. PEARSALL: I'll forward any of the case
23 law as well.

24 THE COURT: I want to say that throughout the
25 proceedings, from day one through today, I found

1 you both to be very professional. I'm very
2 impressed.

3 MR. ALVA: Thank you, your Honor.

4 MS. PEARSALL: Thank you, your Honor.

5 THE COURT: Pat yourself on the back for these
6 proceedings. If makes my job easier. You all have
7 a good day.

8 MS. PEARSALL: Thank you, your Honor.

9 (The Final Hearing was adjourned at 4:57 p.m.)

10 - - -

COURT CERTIFICATE

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

I, Chloe Leroux, Florida Professional Reporter,
certify that I was authorized to and did
stenographically report the foregoing proceedings and
that the transcript is a true and complete record of my
stenographic notes.

Dated this 20th day of June, 2023.

Chloe Leroux
Chloe Leroux, FPR

