

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF HUMBOLDT

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6 MARILYN ANDREWS; KATE GREEN;)
ERIC TSCHILLARD; JOHN CHUDY; and)
7 DOES 1 through 13,)
8 Petitioners,) Case No.
9 vs.) CV170183
10 COUNTY OF HUMBOLDT; HUMBOLDT)
COUNTY BOARD OF SUPERVISORS; and)
11 DOES 1-50;)
12 Respondents.)

13
14 Videotaped Deposition of: DAVID MARCUS

15
16 Date: Monday, July 3, 2017

17 Time: 10:01 a.m.

18
19 Place: Coleman Reporters
730 Fifth Street, Suite M
20 Eureka, California 95501

21
22
23 Reporter: Melanie J. Savord, RPR, CSR 11322
COLEMAN REPORTERS
24 730 Fifth Street, Suite M
Eureka, California 95501
25 (707) 443-6465

1 A P P E A R A N C E S :

2 For Petitioners:

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Attorneys at Law
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5 Eureka, California 95501

6 BY: PATRIK GRIEGO, ESQ.

7 For Respondents:

8 OFFICE OF COUNTY COUNSEL
9 County of Humboldt
825 Fifth Street
10 Eureka, California 95501

11 BY: JEFFREY S. BLANCK, ESQ.

12 For the Witness:

13 CELLA LANGE & CELLA
Attorneys at Law
14 1600 South Main Plaza, Suite 180
15 Walnut Creek, California 94596

16 BY: CHRISTOPHER CELLA, ESQ.

17 Also present:

18 Marilyn Andrews
David Nims
19 Robert Cella

20
21 VIDEOTAPED DEPOSITION of David Marcus, taken on
22 behalf of the Petitioners, at Coleman Reporters, Eureka,
23 California, on the 3rd day of July, 2017, at 10:01 a.m.,
24 before Melanie J. Savord, RPR, CSR 11322.

1 I N D E X

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1 DAVID MARCUS,
2 called as a witness on behalf of the
3 Petitioners, being first duly sworn to testify
4 the truth, the whole truth, and nothing but
5 the truth, was examined and testified as follows:
6 ///
7 THE VIDEOGRAPHER: Going on the record. The
8 time is 10:01 a.m. This is the videotaped deposition of
9 David Marcus in the matter of Andrews, et al., versus
10 County of Humboldt, et al., in the Superior Court of
11 California, Case CV170183. Today is July 3rd, 2017. The
12 deposition is taking place at 730 Fifth Street, Eureka,
13 California.
14 I would like to ask the attorneys present please
15 introduce yourselves for the record.
16 MR. CELLA: Christopher Cella on behalf of
17 David Marcus.
18 MR. BLANCK: Jeff Blanck on behalf of the County
19 of Humboldt.
20 MR. GRIEGO: Patrik Griego on behalf of
21 Petitioners.
22 THE VIDEOGRAPHER: Thank you. My name is
23 Charles Wright; I'm the videographer. The court reporter
24 is Melanie Savord. Madam Court Reporter, would you now
25 swear in the witness, please.

1 DAVID MARCUS,
2 called as a witness on behalf of the
3 Petitioners, being first duly sworn to testify
4 the truth, the whole truth, and nothing but
5 the truth, was examined and testified as follows:

6 EXAMINATION

7 BY MR. GRIEGO:

8 Q Good morning, Mr. Marcus.

9 A Good morning.

10 Q I assume you have had your deposition taken
11 before?

12 A I have.

13 Q Are you familiar with the rules of the
14 deposition generally?

15 A Yes.

16 Q I will go over them very briefly then with the
17 assumption that you have done this before and have had a
18 chance to talk to your counsel about the deposition
19 process.

20 As you know, I'm going to be asking a series of
21 questions and there's a court reporter taking down
22 everything we say. So it's important for you to wait
23 until I finish the question before you start answering and
24 it's important for me to finish listening to you before I
25 start the next question. Does that make sense?

5

1 A Yes.

2 Q I'm going to assume that if I ask a question
3 that you are going to understand the question unless you
4 tell me otherwise. If there's something about my question
5 that you don't understand or that's ambiguous or vague,
6 please let me know, and I will rephrase the question.
7 Does that make sense?

8 A Yes.

9 Q Have you reviewed any documents to prepare for
10 your deposition today?

11 A Yes.

12 Q Which documents?

13 A The documents that we produced.

14 Q Okay. And when you say documents that we
15 produced, those are the documents that you produced
16 pursuant to a Subpoena to you, correct?

17 A Yes.

18 Q And also documents that the firm, the Cella
19 firm, produced in response to a deposition Subpoena to
20 them?

21 A Yes.

22 Q Okay. If I refer to the Cella Lange & Cella
23 firm as the Cella firm, you know which firm I am talking
24 about?

25 A I do.

6

1 Q Okay. Other than the documents that you
2 produced, any other documents that you have reviewed to
3 prepare for today's deposition?

4 A No.

5 Q I'm going to ask a series of questions. If you
6 get tired or need a break or need to speak to your
7 counsel, just ask me to take a break at any time.

8 A (Witness nods head.)

9 Q Prior to being appointed Public Defender for
10 Humboldt County, when was the last time that you had
11 stepped foot into a California courtroom to represent a
12 client?

13 A 2012.

14 Q Okay. And in 2012 in what capacity were you
15 representing clients in courtrooms?

16 A As an attorney.

17 Q As an attorney for whom?

18 A Defendant.

19 Q And was that a particular defendant or was
20 that -- who were you employed by in 2012 when you were in
21 a courtroom?

22 A That was self-employed.

23 Q Okay. So would that be subsequent to leaving
24 the Lassen County Public Defender's office?

25 A Yes.

7

1 Q So in 2012 after leaving Lassen County Public
2 Defender's office, you practiced as a solo attorney in
3 2012?

4 A I have been affiliated with the Cella firm
5 throughout. But that particular case I don't believe was
6 affiliated with the Cella firm.

7 Q Okay. Tell me the nature of the appearance
8 that you made in 2012 for a client in the courtroom.

9 MR. CELLA: Excuse me. Counsel, I'm going to
10 allow some background but as I think we can both agree,
11 the issue pertinent here is that Mr. Marcus is practicing
12 law and the fact of his practicing law in the State of
13 California for the year preceding his appointment. So I
14 would ask that you keep questions beyond that period of
15 time to a minimum. And, you know, if it gets too much,
16 I'm going to have to object and instruct.

17 MR. GRIEGO: Understood. Thank you.

18 THE WITNESS: I don't recall the specific
19 matter.

20 BY MR. GRIEGO: (Continuing)

21 Q Okay. Was it a criminal or civil matter? Do
22 you remember?

23 A Criminal.

24 Q Okay. And was that in Lassen County?

25 A No.

8

1 Q Do you remember which county it was in?
 2 A Orange County.
 3 Q Prior to being appointed Humboldt County Public
 4 Defender, when was the last time you submitted a pleading
 5 to a court?
 6 MR. CELLA: Well, I will object to the question,
 7 vague and ambiguous. By submitting, are we talking about
 8 him physically doing it or participating in a pleading
 9 that was submitted?
 10 BY MR. GRIEGO: (Continuing)
 11 Q I will rephrase. When was the last time that
 12 you as the attorney of record with your name on a pleading
 13 submitted a pleading to a court prior to being appointed
 14 Public Defender for Humboldt County?
 15 A 2013.
 16 Q And what was the nature of that matter?
 17 A Civil.
 18 Q Do you remember the county?
 19 A Orange.
 20 Q Now I'm going to just briefly probably for an
 21 outline and not go too deep into it ask about your
 22 employment history from the time you left Lassen County
 23 Public Defender's office.
 24 A Okay.
 25 Q All right. So starting after the time you left

9

1 Lassen County, where were you employed?
 2 A Well, I worked as a contract lawyer for the
 3 Cella Lange firm. I did some independent adjusting. At
 4 one point in time I was employed by Rapid Response Team as
 5 a field estimator adjuster. And after that I was
 6 independent adjuster and still working with the Cella
 7 Lange firm.
 8 Q So let me see if I have got everything correct
 9 and just for the timing. In 2012 you became a contract
 10 attorney for the Cella firm?
 11 A Right.
 12 Q Sorry. Go ahead.
 13 A I'm sorry. And one other thing I need to add.
 14 During that 2012 year I actually worked for a friend of
 15 mine's dental lab in New Jersey. Alpha Dental Lab.
 16 Q Okay. Just to get the sequencing of events,
 17 what was the first employment you had other than Lassen
 18 County Public Defender's office?
 19 A Alpha Dental.
 20 Q Alpha Dental?
 21 A Correct.
 22 Q And when did that end?
 23 A I don't recall for sure.
 24 Q Do you have an estimate of the time frame that
 25 you worked for Alpha Dental?

10

1 A A year approximately.
 2 Q And then what was the next place that you were
 3 employed after Alpha Dental?
 4 A As an employee, Rapid Response Team.
 5 Q And what was your position with Rapid Response
 6 Team?
 7 A Field estimator, adjuster.
 8 Q And was that in the state of Florida?
 9 A It was.
 10 Q And after Rapid Response Team, what was your
 11 next place of employment?
 12 A As an employee, Humboldt County.
 13 Q Okay. Now you have distinguished by your
 14 response as an employee. How were you employed after
 15 Rapid Response Team in any capacity whether employee or
 16 independent contractor or self-employed?
 17 A In addition for the work I was doing for the
 18 Cella firm I was an independent insurance adjuster on
 19 property loss claims.
 20 Q Did you work for any particular companies?
 21 A Most of my assignments came from one company.
 22 Q Which company was that?
 23 A Pacesetter.
 24 Q And just generally what did those duties
 25 involve for that job?

11

1 A Mostly I would go out on what were considered
 2 larger property loss and particularly fires. Structural
 3 fires.
 4 Q And what were your hours? Generally speaking
 5 what were your hours?
 6 A I had no set hours. Set my own schedule.
 7 Q Kind of help out a little bit more with
 8 Pacesetter. When did you leave Pacesetter?
 9 A When I took the job in Humboldt.
 10 Q Okay. So you're working for Pacesetter all the
 11 way up until the time that you became Public Defender for
 12 Humboldt?
 13 A Yes. I was an independent adjuster for them.
 14 Q Okay. I understand. So you were an
 15 independent adjuster for Pacesetter?
 16 A They were the ones that assigned claims.
 17 Q And what years did you work for Pacesetter?
 18 A '16 through January of '17.
 19 Q And what years did you work for Rapid Response?
 20 A '13 -- part of '13, '14, and '15 as I recall.
 21 Q If you were to estimate the number of hours you
 22 worked for Pacesetter or the average number of hours per
 23 week, could you do that?
 24 A There's a great -- there was a large amount of
 25 variability, depending how many claims you were assigned.

12

1 So an average I would be guessing.
 2 Q All right. We don't want you to guess. If you
 3 have been through any civil depositions, you are familiar
 4 with the difference between guessing and estimating.
 5 A Yes.
 6 Q So I don't want you to take a wild guess but
 7 could you give me an estimate as opposed to a wild guess?
 8 A If I were going to estimate, I would say about
 9 ten hours a week.
 10 Q So you were -- as an estimate, and I understand
 11 this is an estimate -- you were working ten hours a week
 12 for Pacesetter and that was for the year prior to being
 13 the Humboldt County Public Defender?
 14 A For a portion of the year.
 15 Q What else? When you say a portion of the year,
 16 what were you doing the rest of that year?
 17 A Independent claims, but they weren't coming
 18 from Pacesetter.
 19 Q Okay. If you were to estimate the amount of
 20 time you spent doing claim work as a field adjuster for
 21 Pacesetter or even independent of Pacesetter, what would
 22 you put that estimate in?
 23 A It would still be in the ten, perhaps 15 hours
 24 a week range on average.
 25 Q What else -- other than being a field adjuster

13

1 for the year prior to being Humboldt County Public
 2 Defender, what else did you do?
 3 A I worked as a contract lawyer for the Cella
 4 firm.
 5 Q Anything else besides those two jobs for the
 6 year prior to being appointed Public Defender?
 7 A I consulted briefly with the law firm in
 8 Florida.
 9 Q Anything else?
 10 A Not that I recall.
 11 Q All right. And what would you put the estimate
 12 at the number of hours that you worked for the Cella law
 13 firm prior to being appointed Humboldt County Public
 14 Defender?
 15 MR. CELLA: In the year prior?
 16 MR. GRIEGO: Yes.
 17 THE WITNESS: On average for the year?
 18 MR. GRIEGO: Yes.
 19 THE WITNESS: That particular year, five.
 20 MR. CELLA: I'm sorry. May I have the question
 21 read back.
 22 THE REPORTER: "QUESTION: And what would
 23 you put the estimate at the number of hours that
 24 you worked for the Cella law firm prior to
 25 being appointed Humboldt County Public Defender?"

14

1 MR. CELLA: That was a weekly number you were
 2 giving?
 3 THE WITNESS: Yes. We were talking about the
 4 year prior to my employment, correct?
 5 MR. GRIEGO: Yes.
 6 BY MR. GRIEGO: (Continuing)
 7 Q And so we have you at just -- I know these are
 8 estimates. We have you at ten to 15 hours doing insurance
 9 adjusting work prior to the year being appointed Public
 10 Defender and five hours a week working for the Cella law
 11 firm. Anything else that you were doing for the year
 12 prior to being appointed Public Defender? Other than you
 13 mentioned you did a little bit of consulting with a
 14 Florida law firm.
 15 A Not that I recall.
 16 Q Did you have a contract with the Cella law
 17 firm?
 18 A No written contract.
 19 Q When you say no written contract, did you have
 20 an oral contract with them?
 21 A Yes.
 22 Q And what was the nature of that contract?
 23 A Specifically?
 24 Q Yes.
 25 A That I would do work for the firm and as

15

1 matters came to resolution or depending on my level of my
 2 involvement with the case or how the case was resolved, I
 3 would be paid in accordance to what my contribution was.
 4 Specifically I was getting prepared in case matters went
 5 to trial. The firm was relying on my trial expertise in
 6 the number of jury trials I had done in the past.
 7 On transactional matters, largely real estate
 8 related, I have a strong background in transactional real
 9 estate matters so I would be consulted with the firm on
 10 those. And as those resolved -- or some of those were
 11 investment deals where ultimately I would get a percentage
 12 to be determined on how the transactional deal ultimately
 13 got structured and how it worked out and the number of
 14 investors and things like that.
 15 Q So there were no agreements ahead of time as to
 16 how you would get paid; you would get paid simply
 17 depending on the outcome that would be sorted out later?
 18 MR. CELLA: Objection, miscasts prior testimony.
 19 THE WITNESS: I'm sorry. Could I have the
 20 question again, please.
 21 BY MR. GRIEGO: (Continuing)
 22 Q Sure. Trying to understand the nature of the
 23 agreement and how you would get paid. And I set forth
 24 what I thought I understood you to say but please correct
 25 me if I am wrong. What I understood you to say there was

16

1 no understanding ahead of time when you worked on a matter
2 as to how much you would get paid. It just depended on
3 how it resolved and it would get sorted out after the
4 matter got resolved?

5 A There was no agreement on specific dollar
6 amounts.

7 Q Was there an agreement on specific percentage
8 amounts?

9 A No.

10 Q Were there any specifics as to how you would
11 get paid depending on the outcome of the matter?

12 A The structure depended in large part on how
13 ultimately the Cella Lange firm got paid in the deal and
14 how it was structured and the legal work we did on
15 structuring transactional investment issues. As you may
16 know, sometimes the firm or lots of times the firm
17 negotiated a percentage ultimately on how the investment
18 turned out. In other words, if through the efforts of the
19 firm's legal work and our work we structured a deal that
20 attracted investors, the firm may take a larger percentage
21 depending on how that ultimately got put together. And
22 then my understanding through our oral agreement was that
23 once we knew that, then I would be able to negotiate with
24 Chris and set my percentage of whatever that deal was.

25 Q Is it correct that the year prior to being

17

1 appointed Public Defender you were not paid anything by
2 the Cella law firm?

3 A That is correct.

4 MR. CELLA: Let me object to the question as
5 paid can come in two forms; accrued payment or actual
6 passage of money in that calendar year. And I guess you
7 took the question to mean actual passage of money in that
8 year.

9 THE WITNESS: I did take it that way.

10 BY MR. GRIEGO: (Continuing)

11 Q So to clarify then, you were never paid a
12 dollar by the Cella law firm in the year prior to being
13 appointed Public Defender?

14 A Correct.

15 Q But it was your hope and expectation that
16 depending on how work you did turned out, you may get paid
17 in the future for work you did the year prior to being
18 appointed Public Defender?

19 A It was my expectation.

20 Q Have you been paid for any work in the year
21 prior to being appointed Public Defender of Humboldt
22 County by the Cella law firm?

23 A Not yet.

24 Q Would you submit any time records to the Cella
25 law firm for the work you were doing the year prior to

18

1 being appointed Public Defender?

2 A No.

3 Q Did you keep track of your time for the work
4 you did for the Cella law firm for the year prior to being
5 appointed Public Defender?

6 A Nothing in writing.

7 Q Well, when you say nothing in writing, of
8 course my follow-up question is how, if at all, did you
9 keep track of the amount of time that you spent working
10 for the Cella law firm?

11 A Just mental notes.

12 Q Can you tell us then from your mental notes
13 specifically dates and times that you worked for the Cella
14 law firm for the year prior to being appointed Public
15 Defender?

16 A I cannot.

17 Q Due to the nature of the work for the Cella law
18 firm, would it be consistent -- a consistent amount of
19 work every week or would there be some weeks where you are
20 doing more work and some weeks you were doing no work?

21 A It was highly variable.

22 Q Can you tell us specifically which months you
23 did work for the Cella law firm for the year prior to
24 being appointed Public Defender?

25 A I don't recall specific months.

19

1 Q I'm going to ask you some questions regarding
2 the nature of that employment for the Cella law firm for
3 the year prior to being appointed Public Defender. We
4 will be careful not to get into any attorney-client or
5 work product privilege. If it gets that close, I'm sure
6 your counsel will object and that's not the intent of any
7 of these questions. Okay?

8 A Okay.

9 Q Based on the documents produced pursuant to the
10 Subpoena, I understand that you were involved in an
11 employment disability claim?

12 A Correct.

13 Q And those documents show that the first time
14 that case was brought to your attention was in August of
15 2016. Does that comport with your recollection?

16 A The document I don't recall at this present
17 time. I'm sure I have seen it, but I don't recall the
18 exact date. Plus I know that Chris and I -- Mr. Cella and
19 I would have talked about it before I saw any documents on
20 the matter. So I'm not sure initially when I got involved
21 in discussing it.

22 Q If there is an E-mail exchange between you and
23 Mr. Cella where it's the first time he mentions this case
24 and asks if you might want to be involved, would that be
25 the first time that you think you talked about it?

20

1 A I'm not sure.
 2 Q Okay. In the year prior to being appointed
 3 Public Defender, other than this employment disability
 4 claim what, if any, other matters did you work on for the
 5 Cella law firm?
 6 A Four other matters.
 7 Q So again just generally, what types of matters
 8 were those?
 9 A One matter involved a federal court case as
 10 well as a state court case in a transactional real estate
 11 matter involving trying to collect on fairly significant
 12 note. Complicated restructure on a financial deal on a
 13 commercial building in Northern California. Another
 14 matter involved the foreclosure financing of a deal
 15 structured around buying HOA foreclosures. All of that --
 16 the documents itself and the deal were all structured and
 17 review of documents and writing of documents and structure
 18 in that deal all that took place in California. The
 19 original investors were out of California. The other
 20 matter -- the other matter involved the import-export
 21 license of timber from Cameroon and the treaty issues that
 22 were involved in that. Also the sovereign risk in trying
 23 to get that deal financed as well. And the structure and
 24 the legal documents putting that deal together all took
 25 place in California.

21

1 Q All right. Is that it or were there any other
 2 matters?
 3 A Those were all I recall currently.
 4 Q Okay. So the federal-state matter in Northern
 5 California, was that in federal court?
 6 A Well, part of it was in federal court and part
 7 of it -- yes. Same basic client. It was a corporate
 8 structure that involved multiple corporations and
 9 individuals. So there was a state court action and a
 10 federal court action.
 11 Q All right. And did you ever appear in court on
 12 that matter?
 13 A No.
 14 Q Did you ever submit any pleadings on that
 15 matter?
 16 A No.
 17 MR. CELLA: Excuse me. Objection as to submit a
 18 pleading. The physical act of submitting it as opposed to
 19 did you participate in any drafting of them?
 20 BY MR. GRIEGO: (Continuing)
 21 Q All right. Let me break that down. Did you --
 22 did your name appear on any pleadings in that matter?
 23 A Not in that case.
 24 Q Did you draft any pleadings in that matter?
 25 A I was involved in the drafting of the pleadings

22

1 but specifically didn't sign any as I recall.
 2 Q What was your involvement in drafting
 3 pleadings?
 4 A Review of the documents, suggesting
 5 modifications, et cetera.
 6 Q Are there any records that you are aware of,
 7 any documents that validate that claim that you were
 8 receiving documents to review and sending your comments
 9 back?
 10 A Not that I have seen.
 11 Q How were you reviewing these documents and
 12 sending comments back? Through E-mail or what source?
 13 A Chris and I met in Florida in September.
 14 Q September of 2016?
 15 A Correct.
 16 Q And when you and Chris met in September of
 17 2016, you reviewed documents and provided your comments?
 18 A Yes. We went over several matters together.
 19 Q Okay. Other than meeting Chris in -- Chris
 20 Cella in September 2016 and reviewing those documents, any
 21 other review of documents that you recall performing?
 22 MR. CELLA: On that matter?
 23 MR. GRIEGO: On that matter.
 24 THE WITNESS: Not that I recall.
 25 ///

23

1 BY MR. GRIEGO: (Continuing)
 2 Q Did you ever have contact with the clients in
 3 that matter?
 4 A I believe I was involved in a conference call
 5 with the clients on that matter.
 6 Q Do you recall when that took place?
 7 A Not specifically.
 8 Q To your knowledge were you ever listed on any
 9 contracts with that client as stating that you were
 10 representing that client?
 11 A Not to my knowledge.
 12 Q During this year prior to being appointed
 13 Public Defender, did you have malpractice insurance?
 14 A I did not.
 15 Q Do you know if you were listed on the Cella
 16 firm's malpractice insurance?
 17 A I don't know if I was.
 18 Q So you mentioned potentially being involved in
 19 a conference call and reviewing documents with Chris Cella
 20 in September of 2016. Do you recall any work that you may
 21 have done on that case? This is the federal slash state
 22 case in Northern California.
 23 A No, not at this time.
 24 Q You also mentioned a foreclosure HOA matter,
 25 correct?

24

1 A Yes.
 2 Q That was, if I'm not mistaken, involving Nevada
 3 law and a Nevada venture, correct?
 4 A And federal law largely.
 5 Q Were you ever listed on any contracts with the
 6 clients in that matter?
 7 MR. CELLA: Assumes facts not in evidence.
 8 MR. GRIEGO: You can answer. I think your
 9 counsel is saying assumes there was a contract.
 10 THE WITNESS: I'm just trying to run through my
 11 head because that deal goes back to '12 or '13. I'm not
 12 sure.
 13 BY MR. GRIEGO: (Continuing)
 14 Q Does your name ever appear on any documents
 15 related to that matter?
 16 A I'm not sure.
 17 Q What was the nature of your involvement in that
 18 matter?
 19 A Again, it was a transactional deal that
 20 involves structuring, investors getting into foreclosed
 21 properties through HOA matters. Structuring the deal,
 22 reviewing documents, putting the various entities together
 23 that were going to buy the properties. Actually speaking
 24 with investors about what the documents said. That's all
 25 I can recall at the current time.

25

1 Q Are there any documents that would verify your
 2 review of any documents in that matter?
 3 A In the period that we are talking about?
 4 Q Yes.
 5 A Not that I know of.
 6 Q How was it that you would review documents in
 7 that matter?
 8 A Well, outside of the one year -- so are we
 9 still talking about the one year?
 10 Q Yeah. Until I say otherwise -- I appreciate
 11 the clarification though -- we are just talking about the
 12 one year prior to being appointed Public Defender.
 13 A Okay. The question again.
 14 Q And how was it that you would review documents
 15 or did you review documents during that one-year prior?
 16 A I'm not sure that I saw any documents in that
 17 one-year period for that particular deal.
 18 Q Are you sure whether you reviewed documents
 19 during that one year prior?
 20 A I am not. I'm not sure I didn't, but I'm not
 21 sure that I did.
 22 Q Is there anything specific that you can recall
 23 that you did on that deal for the year prior to being
 24 appointed Public Defender?
 25 A No.

26

1 Q You mentioned import-export involving licensing
 2 in Cameroon?
 3 A Actually there was a point we did -- that was
 4 another -- that particular foreclosure deal we did
 5 discuss -- Chris and I did discuss on the phone during the
 6 year period that we are talking about in addition to the
 7 in person when we were in Florida.
 8 Q All right. So let's go back.
 9 A Okay.
 10 Q For that foreclosure HOA deal, you recall
 11 speaking to Chris Cella on the telephone?
 12 A Yes.
 13 Q And do you recall when you spoke to him about
 14 that deal?
 15 A Not specifically.
 16 Q And you said in addition to reviewing
 17 documents. Does that mean you believe you reviewed
 18 documents at that September 2016 meeting related to the
 19 foreclosure HOA matter?
 20 A I'm not positive on that particular matter. We
 21 did look at a number of different things that were in
 22 process and working on and that was one of the principal
 23 reasons we got together in Florida at that time so I can't
 24 say for sure.
 25 Q So back to the import-export regarding

27

1 Cameroon. What was the nature of your involvement in that
 2 matter?
 3 A Again, that was reviewing and analyzing the
 4 documents and the deal documents and just overall
 5 structure and my suggestions on how it might work.
 6 Q Are you aware of any documents that would
 7 verify your review of documents or analyzing of the
 8 structure in that case?
 9 A I'm not aware of any documents.
 10 Q How was it that you would come to review
 11 documents in that matter?
 12 A E-mail attachments as I recall, but I'm not
 13 positive how many documents came that way. But at least
 14 some did. But I don't know what years. So if we are
 15 still talking about the period, I'm not positive at all.
 16 Q So if there are no E-mails with any attachments
 17 regarding that Cameroon matter for the year prior to
 18 appointment, would that indicate that you didn't review
 19 any documents on that matter for the year prior to
 20 appointment?
 21 MR. CELLA: I object; I think that assumes facts
 22 not in evidence. You could be reviewing documents you
 23 received previously. But answer the question.
 24 THE WITNESS: Not necessarily.
 25 ///

28

1 BY MR. GRIEGO: (Continuing)
2 Q Are you aware of any E-mails that would
3 indicate your reviewing documents on that Cameroon matter
4 during the year prior to being appointed Public Defender?
5 A I'm not aware of any.
6 Q Other than from E-mail attachments are you
7 aware of any other way that you would be involved in
8 reviewing documents related to that Cameroon matter?
9 A In person with Chris.
10 Q And that would be again in September 2016?
11 A Correct.
12 Q Any other meetings with Chris in person other
13 than the September 2016 meeting for the year prior to
14 being appointed Public Defender?
15 A No.
16 Q Were you ever on any contracts with the clients
17 in that Cameroon matter?
18 A No.
19 Q Did you ever have any communications with
20 clients in that matter directly?
21 A Again, I believe I was on a conference call
22 involving that matter as well.
23 Q Do you know if that was during the year prior
24 to being appointed Public Defender?
25 A Not sure.

29

1 Q And just the nature regarding this was this
2 involving international law?
3 A A portion of it, yes.
4 Q And what else was it involving other than
5 international law?
6 A Well, investment structure, corporate law.
7 Just general transactional issues that came up.
8 Q All right. And I want to see if I have covered
9 all the matters that you may have worked on during that
10 year prior to appointment. So we have gone over the
11 employment disability -- not in detail, but we have
12 mentioned the employment disability case, correct?
13 A Yes.
14 Q The what we will just call the federal-state
15 matter out of Northern California, correct?
16 A Yes.
17 Q The foreclosure HOA deal regarding investments
18 in Nevada?
19 MR. CELLA: Well, objection. Assumes facts not
20 in evidence.
21 BY MR. GRIEGO: (Continuing)
22 Q Let me back up then. Sorry. That foreclosure
23 HOA deal was that regarding investments in Nevada?
24 A Initially. We were looking at other states as
25 well.

30

1 Q What other states?
2 A Florida has similar law, and I believe there
3 were two other states that had a priority lien for similar
4 HOA issues, and I don't remember the others.
5 MR. CELLA: I'm sorry, Counsel. When he's
6 asking investment, he's asking for where were the
7 properties being bought or what about investment into the
8 entity.
9 THE WITNESS: The investments -- the only
10 monetary investments that I know of came from California.
11 BY MR. GRIEGO: (Continuing)
12 Q Meaning the investors themselves were located
13 in California?
14 A That's also where the documents were signed
15 involving those issues.
16 Q But the people residing in California were
17 investing in properties outside of California?
18 A Yes.
19 Q And then we mentioned the import-export case
20 involving Cameroon, correct?
21 A Correct.
22 Q Any others that I haven't just mentioned?
23 A Give me a second. I'm sorry.
24 Q Please take your time.
25 A That's all I can recall presently.

31

1 Q And the statement that you didn't keep track of
2 your hours, at least in writing, applies to all of those
3 matters, correct?
4 A That is true.
5 Q The fact that you were not paid for any work on
6 these matters for the year prior to being appointed Public
7 Defender that applies to all matters, correct?
8 MR. CELLA: Objection, miscasts prior testimony.
9 THE WITNESS: I didn't receive any cash.
10 BY MR. GRIEGO: (Continuing)
11 Q Okay. Now with respect to the employment
12 disability matter, what were your duties or what was your
13 involvement in that case?
14 A That case involved a lot of medical records
15 that I was reviewing.
16 Q So you reviewed medical records. Anything else
17 that you recall doing in that case?
18 A The pleadings in the administrative hearings.
19 Q When you say the pleadings, did you draft the
20 pleadings?
21 A I did not.
22 Q Did you review pleadings?
23 A I did.
24 Q And same as the other matters with respect to
25 your review of the pleadings that would normally come in

32

1 the form of getting a pleading and attachment on an
 2 E-mail?
 3 A In that case specifically my recollection is
 4 that is true.
 5 Q All right. And in addition to getting an
 6 attachment on E-mail, you may have discussed the pleadings
 7 during that September 2016 meeting with Chris Cella in
 8 Florida?
 9 A Yes, I may have.
 10 Q To your knowledge, were you ever listed on any
 11 contracts with the client in that employment disability
 12 matter?
 13 A Not to my knowledge.
 14 Q In that matter were you aware that counsel --
 15 opposing counsel in that matter objected to your
 16 involvement because of the fact you were not listed as
 17 attorney of record?
 18 A I saw that E-mail.
 19 Q And after that objection by counsel, wasn't too
 20 much longer after that that you were appointed Public
 21 Defender and stopped your involvement in that case?
 22 A I don't recall the date of the E-mail.
 23 Q Okay. Do you recall ever being listed as
 24 counsel of record in that case?
 25 A I don't recall.

33

1 Q With respect to your involvement in the
 2 Cella -- with the Cella law firm on a contract basis, were
 3 you ever an employee of the Cella law firm?
 4 A No.
 5 Q To your knowledge, were you ever listed on any
 6 promotional material from that firm?
 7 A Not to my knowledge.
 8 MR. CELLA: Objection, assumes facts not in
 9 evidence.
 10 BY MR. GRIEGO: (Continuing)
 11 Q To your knowledge, were you ever listed on
 12 their web site?
 13 MR. CELLA: Objection, assumes facts not in
 14 evidence.
 15 THE WITNESS: Not to my knowledge.
 16 BY MR. GRIEGO: (Continuing)
 17 Q To your knowledge, were you ever listed on
 18 letterhead of the Cella law firm? You have to have that.
 19 A I'm sorry; I missed that. What was the point
 20 of that exercise?
 21 Q I'm assuming they have letterhead so I'm asking
 22 if you were listed on the letterhead.
 23 A Not to my knowledge.
 24 Q During the year prior to being appointed Public
 25 Defender, did you do any work directly for clients apart

34

1 from anything that you did at the Cella law firm? I can
 2 rephrase if that's vague.
 3 MR. CELLA: Thank you.
 4 BY MR. GRIEGO: (Continuing)
 5 Q Were you ever employed directly by a client
 6 during the year prior to becoming Humboldt County Public
 7 Defender?
 8 A No.
 9 MR. BLANCK: Just to clarify, that's a legal --
 10 for legal matters.
 11 MR. GRIEGO: Yes. You understood that, correct?
 12 THE WITNESS: I understood you to be talking
 13 about legal matters, yes.
 14 BY MR. GRIEGO: (Continuing)
 15 Q You were, in fact, employed to do insurance
 16 adjusting work for the year prior; you would have had some
 17 contracts involving that work?
 18 A Employed as an independent adjuster most of
 19 that period that was a portion of my work, yes.
 20 Q But with respect to legal matters, you never
 21 had a contract with a client for the year prior to being
 22 appointed Public Defender?
 23 A No.
 24 Q Prior to being appointed Humboldt County Public
 25 Defender, when was the last time that you practiced

35

1 criminal law?
 2 A 2012, late 2011. Actually that's not correct.
 3 We did have one criminal matter that I discussed with the
 4 Cella firm in that time frame.
 5 Q All right. When was that? If you recall.
 6 A It lasted couple of years. It was in San Diego
 7 state court.
 8 Q About what time frame?
 9 A I want to say '13, '14, in that range.
 10 Q And did you make any appearances on that
 11 matter?
 12 A No.
 13 Q During the five-year period before being
 14 appointed Humboldt County Public Defender, did you take
 15 any MCLE courses directly related to criminal law?
 16 A I'm not certain.
 17 Q You have produced for us as part of discovery
 18 all the MCLE courses that you took during that period,
 19 correct?
 20 A I took courses that I believe were -- had MCLE
 21 credit attached that I didn't use for MCLE, you know, to
 22 stay continuously active with the bar. So I'm not sure.
 23 MR. CELLA: For clarity, I don't know this, but
 24 I thought we only produced your most recent. And he asked
 25 for a five-year period. So would there have been other

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1 CLE materials prior to that? Don't we do it every three
2 years?

3 THE WITNESS: I think the other MCLE compliance
4 period fell outside the five-year request. That's my
5 recollection.

6 BY MR. GRIEGO: (Continuing)

7 Q So for the last MCLE compliance period prior to
8 being appointed Public Defender, you provided MCLE
9 documents for that, correct?

10 A Correct.

11 Q And based on those MCLE documents, nothing you
12 did was related to criminal law, correct?

13 A Not that I recall.

14 Q Now is it correct that after being appointed
15 Humboldt County Public Defender you asked the deputy
16 Public Defenders to bring you up to speed on criminal
17 procedure and changes in criminal law?

18 A Not specifically.

19 Q All right. Generally?

20 A I have asked them for suggestions and what the
21 local procedures might be on specific cases, yes.

22 Q Did you ask a deputy Public Defender to give
23 you a five-minute overview of how realignment works?

24 A Not that I recall specifically.

25 Q Are you qualified to take a capital case?

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1 A Death penalty case?

2 Q Yes.

3 A No, not currently.

4 Q Have you been in the past?

5 A Yes.

6 Q Have you tried a murder case before?

7 A Yes.

8 Q How long ago?

9 A We talking any homicide or just straight
10 murder? Let's see. To trial. I would have to guess. I
11 would estimate, I believe, like '03, '02.

12 Q And maybe just to help narrow so it's not a
13 complete guess, do you recall trying any murder or
14 homicide cases while at the Lassen County Public
15 Defender's office?

16 A Did not try any.

17 Q All right. So when you are trying to recall
18 when that last time would be, that would be when you were
19 deputy Public Defender at which office?

20 A San Bernardino.

21 Q Currently you are doing conservatorship cases,
22 correct?

23 A That's part of what I do.

24 MR. CELLA: Excuse me, Counsel. What is the
25 relevance?

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1 MR. GRIEGO: I will follow up. I'm not going
2 very far into it with the relevance. Is that correct?

3 THE WITNESS: It's part of what I do, yes.

4 MR. GRIEGO: All right. I'm going to have this
5 marked Exhibit 1.

6 (Marked for identification:
7 Deposition Exhibit Number 1.)

8 MR. CELLA: We don't have a protective order,
9 Counsel. At the top of the page -- I know it's a blank
10 form. All right.

11 BY MR. GRIEGO: (Continuing)

12 Q Are you familiar with that form that you are
13 looking at which has been marked as Exhibit 1?

14 A Yes.

15 Q Is that something you have filled out?

16 A This is blank.

17 Q Yes. Have you filled out that form?

18 A I believe I have.

19 Q All right. And could you tell us -- turn to
20 page 2.

21 A Okay.

22 Q There's a box four that -- that refers
23 obviously to a deputy County Public Defender. But how, if
24 at all, would you be qualified to do conservatorships
25 under that category?

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1 A Two.

2 Q Okay. So it would be 4a(2)?

3 A Correct.

4 Q You mean that you had at least three years
5 representing minors in juvenile dependency or delinquency
6 proceedings; is that correct?

7 A Or the rest of the sentence.

8 Q Or the rest of that. And that's your
9 qualification?

10 A Yes.

11 Q And that three years' experience -- where was
12 that?

13 A San Bernardino County.

14 Q Okay. So none of that would have come during
15 the year prior to being appointed Public Defender?

16 A Not that I recall.

17 MR. GRIEGO: Just for housekeeping, you would
18 like to get this marked, right?

19 MR. CELLA: Yes, thank you.

20 MR. GRIEGO: Mark this next in order. That
21 would be Exhibit 2.

22 (Marked for identification:
23 Deposition Exhibit Number 2.)

24 MR. CELLA: If I may identify it.

25 MR. GRIEGO: Sure.

40

1 MR. CELLA: Being marked for identification by
2 Madam Reporter is Mr. Marcus's Objections and Responses to
3 Petitioner's Amended Subpoena.

4 BY MR. GRIEGO: (Continuing)

5 Q I'm going to mark that next in order,
6 Exhibit 3. I'm showing you what's been marked Exhibit 3.
7 And that was a request for documents to you, a deposition
8 Subpoena. Do you recall reviewing that?

9 (Marked for identification:
10 Deposition Exhibit Number 3.)

11 A Yes.

12 Q All right. And Items 1 and 2 ask for any
13 payments made by the Cella law firm -- first-- strike
14 that. Item 1 asks for any payments by the Cella law firm
15 to you for the year prior to being appointed Public
16 Defender. And there were no responsive documents,
17 correct?

18 A Correct.

19 Q Item 2 asks for any payments to you for any
20 legal work performed by anybody for the year prior to
21 being appointed Public Defender. And there were no
22 responsive documents, correct?

23 A Correct.

24 Q Item 3 asked for any documents reflecting any
25 court appearances in California by you for the year prior

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1 to being appointed Public Defender. And again, there were
2 no responsive documents, correct?

3 A Correct.

4 Q Number 4 asked for any documents showing that
5 you were retained by a client to perform legal work in
6 California. And there were no responsive documents,
7 correct?

8 MR. CELLA: Hold on just a moment. Okay.

9 THE WITNESS: We are on four?

10 MR. GRIEGO: Yes.

11 THE WITNESS: Correct.

12 BY MR. GRIEGO: (Continuing)

13 Q Number 5 asks for any documents reflecting the
14 number of hours you worked for the Cella law firm for the
15 year prior to appointment. And there were no responsive
16 documents?

17 MR. CELLA: Well, I will object in that I
18 believe the production includes documents that would
19 manifest hours. A specific number no, they don't answer
20 that question. But to the extent there's vagueness in the
21 inquiry.

22 MR. GRIEGO: You can go ahead and answer with
23 that objection.

24 THE WITNESS: Not that I know of.

25 ///

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1 BY MR. GRIEGO: (Continuing)

2 Q And number 6 asks for any documents reflecting
3 the number of hours you performed legal work for clients
4 in California for the year prior to being appointed Public
5 Defender. And again, there were no responsive documents,
6 correct?

7 MR. CELLA: Same objection.

8 THE WITNESS: Not that I know of.

9 BY MR. GRIEGO: (Continuing)

10 Q Turn to the next page and look at number 9.
11 That asked for all documents reflecting the number of
12 hours that you performed legal work for Cella Lange and
13 when that work took place during the year prior to
14 appointment. And there were no responsive documents,
15 correct?

16 MR. CELLA: Objection. I think our production
17 does, indeed, speak to that.

18 THE WITNESS: I'm not sure.

19 BY MR. GRIEGO: (Continuing)

20 Q Let me mark this to what we are talking about
21 as Exhibit 4. And I understand, and I will take the
22 objections at face value. But why I'm asking these
23 questions is in this first page of Exhibit 4 it's a letter
24 from your counsel saying that other than as produced,
25 there are no additional non-privileged documents of which

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1 we are aware that are responsive to items one through
2 three and six of the Subpoena directed to Cella Lange and
3 requests 1 through 6, 9, and 14 of the Subpoena directed
4 to you.

5 So to be clear on these questions, other than
6 the documents produced, you are aware of no other
7 documents that would demonstrate the number of hours or
8 when those hours took place for the Cella law firm. Would
9 that be correct?

10 A Yes. The documents I had I turned over to
11 counsel, and they produced whatever they produced.

12 Q All right. That's the same with item 14 on
13 your Subpoena asking for any pleading which your name
14 appears on for work done the year prior to appointment and
15 there were no responsive documents?

16 A As far as I know, that's correct.

17 Q Okay. Now with respect to the -- again, the
18 employment disability case you have mentioned review of
19 medical records and review of pleadings and work you did
20 in that matter, correct?

21 A Yes. Are we done with this document?

22 Q Yes. You can put them all right here in the
23 middle so none of us take them.

24 A I'm sorry. The question again?

25 Q The question is starting with that employment

44

1 disability matter, you mentioned you reviewed medical
2 records, and you reviewed pleadings in that matter,
3 correct?

4 A And discussed strategy and various other items
5 with Cella.

6 Q And discussed strategy with Mr. Cella?

7 A Correct.

8 Q Anything else that you recall regarding legal
9 work you did on that case during that year prior to
10 appointment?

11 A There was at least two conference calls
12 involving the client.

13 Q Anything else?

14 A Not that I'm certain about.

15 Q Okay. And with respect to the federal-state
16 Northern California case, I want to be fair and include
17 everything that you said you did. You recall potentially
18 reviewing pleadings with Mr. Cella in September 2016 in
19 that case, correct?

20 A Yes.

21 Q And you said you believe it's possible that you
22 were on a conference call in that case?

23 A Yes.

24 Q Anything else you recall doing as far as legal
25 work in that case for the year prior to being appointed?

45

1 A I had at least one telephone conversation with
2 Mr. Cella involving the potential foreclosure aspects of
3 one piece of litigation.

4 Q Do you know when that took place?

5 A Not precisely.

6 Q And going back to the foreclosure HOA matter,
7 you believe you may have reviewed documents in that
8 September of 2016 meeting with Mr. Cella, correct?

9 A Yes. And we also had a conversation about it.

10 Q Do you recall when that conversation occurred?

11 A That was at our meeting in Florida.

12 Q Anything else you recall with respect to work
13 on that matter?

14 A I know we have had a couple of calls late in
15 '16 regarding one of the investors and an accounting that
16 was due and things like that.

17 Q Anything else you can remember?

18 A Not at this time.

19 Q And regarding the Cameroon matter, you believe
20 you may have reviewed documents in that matter, correct?

21 A Yes.

22 Q And as you sit here today though, you don't
23 recall when you may have reviewed documents in that
24 matter?

25 A Other than the time I met Mr. Cella in Florida

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1 in person.

2 Q All right. Anything else you recall doing in
3 that matter other than reviewing documents during that
4 September of 2016 meeting?

5 MR. CELLA: Objection, miscasts prior testimony.
6 I'm sorry. You restricted it to that meeting?

7 MR. GRIEGO: Yes.

8 THE WITNESS: Not specifically.

9 BY MR. GRIEGO: (Continuing)

10 Q Anything else you recall doing in that matter,
11 any legal work in the Cameroon matter, during the year
12 prior to being appointed Public Defender?

13 A Not that I recall.

14 Q Have I covered all the matters that you can
15 recall you worked on for the -- all legal matters you
16 recall you worked on for the year prior to being appointed
17 Public Defender?

18 A All matters that I currently recall, yes.

19 Q Did you perform any pro bono work during the
20 year prior to being appointed Public Defender?

21 A Not in California.

22 Q In Florida?

23 A Pro bono legal work?

24 Q Yes.

25 A To the extent it related to California, there

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1 was one matter I helped somebody with, yeah.

2 Q Did you have a contract with them?

3 A No.

4 Q Do you recall the nature of that?

5 A It was a minor criminal matter that occurred.
6 They had some questions about it. So there was no formal
7 agreement or anything. Just kind of my view on what they
8 might want to do, things like that.

9 Q Somebody just called and asked you about a
10 criminal matter?

11 A Actually it was in person.

12 Q All right. Somebody talked to you about a
13 criminal matter. Do you recall when that occurred?

14 A My recollection is it was around Thanksgiving
15 of '16.

16 Q Okay. Can -- as far as work that you were paid
17 for in the year prior to being appointed Public Defender,
18 were you paid for anything other than work as an insurance
19 adjuster for the year prior to being appointed Public
20 Defender?

21 MR. CELLA: Objection. Again, paid, actual
22 passage of cash as opposed to anticipatory payment? If
23 you could clarify that.

24 MR. GRIEGO: Sure. Let me rephrase the
25 question.

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1 THE WITNESS: Sure.

2 BY MR. GRIEGO: (Continuing)

3 Q Did you actually receive money from any source
4 for legal work for the year prior to being appointed
5 Public Defender?

6 A I received some money from the one law firm I
7 was consulting with in Florida.

8 Q All right. But that was for matters related to
9 Florida?

10 A Real property loss claims matters.

11 Q Okay. Other than being paid for the -- by the
12 Florida law firm regarding real property loss matters,
13 were you paid money at all for legal work during the year
14 prior to being appointed Public Defender?

15 A Not that I recall.

16 Q So for the year prior to being appointed Public
17 Defender, did you receive money for any work other than
18 your work as an insurance adjuster?

19 A Consulting work. I guess two retirement checks
20 every month.

21 Q When you say consulting work, what does that
22 entail?

23 A Just working through claims issues that arose
24 in plaintiffs' property loss claims against their carrier.
25 Generally the scope of loss type issues.

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1 Q All right. And is that related to your work as
2 an insurance adjuster?

3 A No. It was related to my work as consultant
4 for that particular attorney.

5 Q So that was for an attorney in Florida?

6 A Correct.

7 Q Any other payments that you received or that
8 you can recall receiving for the year prior to being
9 appointed Public Defender other than the ones you just
10 mentioned?

11 A Not that I recall.

12 Q With respect to any contact with clients that
13 you had during the year prior to being appointed Public
14 Defender, did you make the clients aware that you did not
15 have malpractice insurance?

16 MR. CELLA: Object to that. Assumes a fact not
17 in evidence.

18 THE WITNESS: Not that I recall.

19 BY MR. GRIEGO: (Continuing)

20 Q To the extent that you would have received any
21 payment for work done for the Cella law firm, are you
22 aware whether that was listed in any contracts that the
23 Cella law firm had with any of its clients that you would
24 be paid out of any potential recoveries?

25 A I have no knowledge of that.

50

1 Q When applying for the job of Public Defender,
2 did you inform the Board of Supervisors that you had been
3 employed as an insurance adjuster for the year prior to
4 being appointed?

5 MR. BLANCK: Let me make an objection. There's
6 confidential information that was done in closed session
7 during the interview. If you mean outside of that, then I
8 don't have a problem if they became aware. So it's
9 really -- well, it's a confidentiality issue with the
10 Board of Supervisors. So outside of that.

11 THE WITNESS: Well then, you are going to have
12 to rephrase the question. Outside of what, I'm not
13 positive.

14 BY MR. GRIEGO: (Continuing)

15 Q Do you recall informing the Board of
16 Supervisors that you were employed as an insurance
17 adjuster for the year prior to being appointed Public
18 Defender in Humboldt County?

19 A Outside of the interview process?

20 Q Well, I'm basically asking exclusive of the
21 interview process.

22 A Then yes.

23 MR. GRIEGO: Okay. We have been going for about
24 an hour. Take about a ten-minute break. I will look and
25 see how much more I have. I don't have much. Maybe about

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1 ten minutes more.

2 (Recess.)

3 BY MR. GRIEGO: (Continuing)

4 Q So I am almost finished; I have only got a
5 couple of follow-up questions. We talked about what you
6 did to prepare for today's deposition. You reviewed all
7 the documents that have been produced to date, correct?

8 A I don't believe I reviewed them all
9 individually specifically, but I did review several.

10 Q You had a chance to talk to your attorney
11 before today's deposition, correct?

12 A Yes.

13 Q Is there anything else you believe you could or
14 should have done to be prepared for today's deposition?

15 MR. CELLA: Objection, calls for speculation.

16 THE WITNESS: Possibly.

17 BY MR. GRIEGO: (Continuing)

18 Q All right. Anything that comes to mind?

19 A Not specifically.

20 Q Any other documents that you are aware of that
21 you could review that would further assist you in
22 answering any of the questions that I asked today?

23 A Not that I'm aware of.

24 Q Just asking briefly a little bit about your
25 relationship with your counsel, Mr. Cella. Could you

52

1 describe that relationship.

2 A Currently he's my counsel as you have just
3 said. I have known Chris for 30-some years.

4 Q And how have you known Chris for that period?

5 A He was an associate at Gibson Dunn and
6 Crutcher, and I was an associate general counsel at
7 Mercury Savings, and we hired Gibson Dunn to handle some
8 litigation for us.

9 Q All right. And did you form a friendship with
10 Mr. Cella?

11 A I did.

12 Q And have you remained friends for that 30-plus
13 years?

14 A Yes.

15 Q Do you see each other socially?

16 A Yes.

17 Q Talk socially?

18 A Yes.

19 Q Has he actually come out to see you in Florida
20 socially as well as to discuss legal matters?

21 A The trip in September was a little of both I
22 would say. So yes.

23 Q Would you describe yourself as good friends?

24 A Yes.

25 MR. GRIEGO: Thanks. I have no further

53

1 Q Okay. And in those prior 12 months, in each
2 month did you actually practice law in each of those 12
3 months?

4 A My recollection is that I did.

5 Q Okay. I think you just touched on it. You
6 mentioned you were a Public Defender in San Bernardino
7 County. How long and what was your job title?

8 A I was a deputy Public Defender there twice;
9 once in the early '80s and once in the early '90s through
10 2004. I started out as a Deputy Public Defender 1 and
11 ended up as Deputy Public Defender 4, felony trial lawyer.

12 Q How many years did you work there?

13 A Both times together I believe it was 14.

14 Q I think you mentioned Lassen County. Were you
15 the Public Defender in Lassen County?

16 A I was.

17 Q For how long?

18 A Just under seven years. Right at seven years.

19 Q And during those prior 12 months, were you
20 licensed to practice law in California in front of all
21 courts of the State of California?

22 A Yes.

23 Q And do you also have an MPA degree in public
24 administration?

25 A I do have a master's in public administration.

55

1 questions.

2 ///

3 EXAMINATION

4 BY MR. BLANCK:

5 Q I do. Mr. Marcus, as you know, I'm the County
6 Counsel for Humboldt County. And I too want to focus on
7 just the previous 12 months to your appointment. In those
8 previous 12 months, were you a practicing attorney for
9 those previous 12 months?

10 MR. GRIEGO: Objection, vague as to time.

11 MR. BLANCK: February to February before you
12 were appointed Public Defender.

13 MR. GRIEGO: Object also as overbroad. You can
14 answer.

15 THE WITNESS: Yes.

16 BY MR. BLANCK: (Continuing)

17 Q Okay. So you were practicing law I think you
18 just testified in those 12 months for the firm of Cella
19 Lange and Cella?

20 A With the firm Cella.

21 Q Yes. And I think -- is it accurate to say that
22 for that firm you did some litigation and transactional
23 work; is that --

24 A In addition to the one criminal matter we
25 discussed.

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1 MR. BLANCK: No further questions.

2 ///

3 FURTHER EXAMINATION

4 BY MR. GRIEGO:

5 Q I do have some follow up. You stated you
6 believe you practiced law in each of the 12 months prior
7 to being appointed Public Defender?

8 A Yes.

9 Q What is the basis for that statement?

10 A Just my recollection that we were constantly in
11 contact about one thing or another. So I'm sure that we
12 covered each of the 12 months of that calendar year.

13 Q Are there any documents that you are aware of
14 that would show you doing any legal work for each of the
15 12 months prior to being a Public Defender?

16 A Not that I'm aware of.

17 Q You produced all documents that you are aware
18 of for you doing legal work for the 12 months prior to you
19 being appointed Public Defender, correct?

20 A That I could find; that's correct.

21 Q And you have been asked questions regarding --
22 some questions regarding what you recall with respect to
23 what legal work you did for the 12 months prior to
24 becoming Public Defender, correct?

25 MR. CELLA: Could I have the question again.

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1 THE REPORTER: "QUESTION: And you have
2 been asked some questions regarding what you
3 recall with respect to what legal work you did
4 for the 12 months prior to becoming Public
5 Defender, correct?"

6 THE WITNESS: The question is whether I have
7 been asked questions?

8 BY MR. GRIEGO: (Continuing)

9 Q I will rephrase it. Let's put it this way:
10 Can you tell us about any legal work you did in February
11 of 2016? Anything specifically?

12 A No.

13 Q Can you tell us any legal work you did in March
14 2016 specifically?

15 A No, not specifically.

16 Q How about April of 2016?

17 A No specific recollection of any one matter.

18 Q How about May of 2016?

19 A Again, no specific recollection.

20 Q June of 2016?

21 A No specific recollection.

22 Q July of 2016?

23 A Not for sure.

24 Q All right. How about August of 2016?

25 A Again, not for sure.

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1 Q September of 2016?
2 A Positively.
3 Q Yes, positively in September 2016?
4 A Correct.
5 Q And that was the meeting with Mr. Cella?
6 A At least that, yes.
7 Q And how about October of 2016?
8 A Not positive.
9 Q How about November of 2016?
10 A You are asking for specific dates and specific
11 instances that I remember?
12 Q Any recollection of specific legal work that
13 you did in November of 2016.
14 A My recollection is that we did -- I did some
15 work on Del Campa during that month, yeah.
16 Q Okay. How about December of 2016?
17 A Again, I have a recollection of working on at
18 least Del Campa.
19 Q That's the employment disability matter?
20 A It is.
21 Q Then how about January of 2017?
22 A Again, specifically Del Campa. May have been
23 other.
24 Q And same question February of 2017.
25 A Not specifically because I don't know exactly

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1 when in there I stopped.

2 MR. GRIEGO: Okay. Thank you. No further
3 questions.

4 ///

5 FURTHER EXAMINATION

6 BY MR. BLANCK:

7 Q One follow up here. Maybe two. You started
8 out -- you mentioned on average you did about five hours a
9 week for Cella Lange and Cella, correct?

10 A Correct.

11 Q And that was in the last 12 months prior to
12 becoming a Public Defender?

13 A Right. That's my estimate.

14 Q And the testimony now is that you don't recall
15 specific work you did in each month. However, do you
16 recall with certainty that you did do legal work in each
17 month prior to the year of being appointed Public
18 Defender?

19 A Yes.

20 Q You just can't remember exactly what it was?

21 A I'm comfortable saying yes, I specifically did
22 work each of those months. But no, I don't remember
23 specifically what matter.

24 Q Did some of these matters from this prior year
25 were they continuing matters that you had with Cella Lange

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1 and Cella established before that time?

2 A Yes.

3 MR. BLANCK: No further questions.

4 ///

5 FURTHER EXAMINATION

6 BY MR. GRIEGO:

7 Q I do have to follow up. Tell me how is it that
8 you specifically remember doing work in each of those
9 months prior to being appointed.

10 A We had ongoing matters, and I know that -- my
11 recollection is that I would have had at least one phone
12 call with Chris in each of those months, talking about one
13 of those matters or another and perhaps looking at
14 documents. So I'm comfortable with saying that I had some
15 contact with some of the Cella Lange work for each of the
16 months during that period we are talking about.

17 Q All right. With respect to E-mails, you
18 provided all the E-mails you had between yourself and
19 Mr. Cella during the year prior to appointment, correct?

20 A All that I could find, yes.

21 Q All right. And if those E-mails reflect months
22 where there's no exchanges between you and Mr. Cella,
23 would that -- how would you explain that?

24 A Explain that there are no E-mails?

25 Q Yes.

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1 A Just that there were no E-mails.
 2 Q What evidence could you provide, what
 3 documentary -- any evidence that you could have that would
 4 support your claim that you did work in each of the months
 5 prior to being appointed Public Defender?

6 MR. CELLA: Other than his sworn testimony.

7 MR. GRIEGO: Yes, other than your sworn
 8 testimony.

9 THE WITNESS: None.

10 MR. GRIEGO: No further questions.

11 ///

12 FURTHER EXAMINATION

13 BY MR. BLANCK:

14 Q Yeah, I have to have one more follow up.
 15 Mr. Marcus, talking about evidence to support your work
 16 over the 12 months before you became appointed as Public
 17 Defender, I guess is your sworn testimony -- is it your
 18 belief that Mr. Cella or someone from his firm's testimony
 19 would confirm that you did work every single month?

20 A I believe there's testimony, sure.

21 MR. BLANCK: Okay. No further questions.

22 ///

23 FURTHER EXAMINATION

24 BY MR. GRIEGO:

25 Q Sorry. Follow up. So we would see phone

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1 records of you having phone conversations with the Cella
 2 law firm each of those months?

3 A I'm not positive you would see phone records.

4 Q Okay. If you wouldn't see phone records, how
 5 would you explain the lack of phone records?

6 MR. BLANCK: Objection, calls for speculation.

7 MR. CELLA: Join.

8 THE WITNESS: I'm not sure I could.

9 MR. GRIEGO: Thank you. No further questions.

10 MR. BLANCK: No further questions.

11 THE WITNESS: Right. Go ahead.

12 (Interruption in the proceedings.)

13 BY MR. GRIEGO: (Continuing)

14 Q We are back on the record. You have had a
 15 chance to meet with County Counsel and your attorney and
 16 after that meeting you would like to add something; is
 17 that correct?

18 A Clarify something actually and it's this: You
 19 had asked a question earlier about the last murder case I
 20 tried.

21 Q The one about 2003, yeah.

22 A Right. And I believe that's incorrect. I
 23 think it's more like '96 or '97, and I believe we actually
 24 went to jury as a manslaughter. I don't think it went as
 25 a straight 187(1) or (2). I can't remember for sure. But

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1 I wanted to clarify that.

2 Q Thanks. My last question now that you gave me
 3 an opportunity to go back on the record is that when you
 4 did this work for the Cella law firm, where were you doing
 5 that work from?

6 A Primarily from my office home in Florida.

7 Q All right. And the --

8 A My home office.

9 Q You said primarily. Was there anywhere else
 10 primarily you would do that work?

11 A Any time I take a phone call, yes.

12 Q So you could be taking a phone call on your
 13 cell phone outside of your home office?

14 A Or in my car, yes.

15 Q Yes. As far as your home offices, the only
 16 witnesses to that would be your children and Mrs. Marcus
 17 for work you were doing in each of those months?

18 A As far as I know, that's true.

19 MR. GRIEGO: That's all my questions.

20 (End of video record.)

21 MR. CELLA: Counsel may proffer the following
 22 stipulation with respect to the deposition transcript:
 23 That Mr. Marcus will be provided the transcript, and he
 24 will have 30 days in which to note any changes. And if
 25 counsel does not receive notice of such changes within 30

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1 plus five days for mailing, then he can use his copy as an
 2 original for any purposes. And that you may sign the
 3 transcript under penalty of perjury.

4 MR. GRIEGO: So stipulated.

5 MR. BLANCK: So stipulated.

6 (Deposition concluded at 11:34 a.m.)

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2 WITNESS' SIGNATURE

3 Please be advised I have read the

4 foregoing deposition pages 1 through 64, inclusive. I

5 hereby state there are:

6

7 (check one)

8 _____ no corrections

9 _____ corrections per attached

10 _____

11 **David Marcus**

12 _____

13

14

15 ---o0o---

1 CERTIFICATE OF REPORTER

2

3 I, MELANIE J. SAVORD, CSR 11322, hereby

4 certify that the witness in the foregoing deposition,

5 David Marcus, has duly affirmed to tell the truth, the

6 whole truth, and nothing but the truth in the

7 within-entitled cause; that the testimony of said witness

8 was taken down in shorthand by me, a Certified Shorthand

9 Reporter and a disinterested person, at the time and place

10 herein stated, and that the testimony of the said witness

11 was thereafter reduced to typewriting, by computer, under

12 my direction and supervision;

13 I further certify that I am not of

14 counsel or attorney for either or any of the parties to

15 the said deposition, nor in any way interested in the

16 outcome of this cause, and that I am not related to any of

17 the parties thereto.

18 I hereto declare under penalty of

19 perjury that the foregoing is true and correct. I have

20 hereunto set my hand on July 17, 2017.

21 _____

22 MELANIE J. SAVORD, CSR #11322

1 WITNESS' CHANGES OR CORRECTIONS

2

3 NOTE: If you are adding to your testimony, print the

4 exact words you want to add. If you are deleting from

5 your testimony, print the exact words you want to delete.

6 Specify with "Add" or "Delete" and sign this form.

7 Deposition of: David Marcus

8 Case Title: **Andrews v. County of Humboldt**

9 Date of Deposition: July 3, 2017

10 I, _____, have

11 the following corrections to make to my deposition:

12

13 Page	14 Line	15 Change/Add/Delete
16	_____	_____
17	_____	_____
18	_____	_____
19	_____	_____
20	_____	_____
21	_____	_____
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24	_____	_____
25	_____	_____

COLEMAN REPORTERS
 Certified Shorthand Reporters
 730 Fifth Street
 Eureka, CA 95501
 (707) 443-6465

July 17, 2017

David Marcus
 c/o Christopher Cella
 1600 South Main Plaza, Suite 180
 Walnut Creek, CA 94596

RE: Andrews v. County of Humboldt

Dear Mr. Marcus:

Pursuant to Code of Civil Procedure Section 2025(q)(1), you are hereby notified that the transcript taken on July 3, 2017, has been transcribed and is now available for review. You have 30 days from the date of this letter to review and sign your transcript. If you fail to review and sign your transcript within the allotted time (30 days), the deposition shall be given the same effect as though it had been signed and approved. After said 30 days, the original transcript will be sealed and sent to the deposing attorney. If any changes and/or corrections are made to your transcript, please send them to this office via certified or registered mail and please sign the Witness' Signature page and send it along with the Witness' Signature or Corrections page.

If you are represented by counsel, you may elect to review your attorney's copy of the transcript (if a copy has been ordered) or you may choose to purchase a copy if you are not a party to this case. If you are not a party in this case, please make arrangements to come to our office to review your transcript, unless other arrangements have been made.

Should you have any questions, please do not hesitate to contact us.

Sincerely,

Melanie J. Savord, CSR

cc: All counsel

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RE: Andrews v. County of Humboldt
Deposition of: David Marcus
Date of Deposition: July 3, 2017

Dear Mr. Griego:

We wish to inform you of the disposition of the original transcript of the above deposition. The following procedure is being taken by our office:

----- The witness has read and signed
the deposition (see attached.)
----- The witness has waived signature.
----- The time for reading and signing
has expired.
----- The sealed original deposition is
being forwarded to your office.

Sincerely,

Tamara Trask
Office Manager

cc: All parties