

1 a job or applied for a job other than you feel like you need
2 to be home and be a full-time mother?

3 A Do you want me to elaborate? Because before you
4 asked me to only answer the question. You said is there a
5 reason. And I can't elaborate on a specific reason.

6 Q Well, I think, what the Judge might advise you is
7 to answer it and then go ahead and explain.

8 THE COURT: Answer it and then you can explain.

9 A Yes, there is a reason. Again, when my husband
10 took office in January of 2003 I found that my children
11 needed the extra attention and care of having a parent
12 available to them at all times for him being gone the first
13 quarter of the year, every year, since that time. And,
14 therefore, I've made it my duty and my responsibility to be
15 there for the children no matter what. Especially when your
16 father is not only around, he's not even in town. He's at
17 the capitol or doing whatever it is he's doing, whether it's
18 work related or senate related. That's the reason.

19 Q Okay. Now that was five years ago so the children
20 are all five years older.

21 A Right.

22 Q You had a newly born at that time so now that child
23 is in kindergarten.

24 A Yes.

25 Q And the children are in school, I believe we said,

1 from 8 to 3 or 3:30 when they get home.

2 A Yes.

3 Q Do you do any volunteer work anywhere else other
4 than schools?

5 A At West Rome Baptist Church.

6 Q And how long does that take?

7 A Well, it depends on preparation time.

8 Q Well, during the day -

9 A I'd say five to seven hours a week, I guess,
10 preparation. I teach Sunday school. I teach Wednesday
11 nights. I've done that for over a decade of my life. And
12 I've done it as my children have progressively aged. I've
13 been involved with all of their age levels.

14 Q Any other volunteer work?

15 A Let's see. No, not at this time. I've been
16 devoted to their school lately.

17 Q And that takes up the volunteer work maybe three
18 days a week?

19 A Yes.

20 Q All full days?

21 A Yes.

22 Q Could that be devoted to a job where you earn money
23 rather than volunteer work since you're not seeing the
24 children during that period of time?

25 A I am seeing my children during that time because

1 I'm in their classrooms. And their teachers that are in
2 those rooms are signing up for them to have art, which is
3 otherwise not available to their lower income school.

4 Q So your reason is you need to be around your
5 children all the time?

6 A No, I don't need to be there, but they are
7 successful because I'm there. And the studies would show
8 that. Research would show that.

9 Q Is your health good?

10 A I have ongoing chronic psoriasis which has been
11 very unnerving because of the long time we have been dealing
12 with this issue. And I'm quite overwhelmed and exhausted
13 really. I honestly don't know if I can physically do anymore
14 than what I do on a daily basis, Your Honor.

15 Q Now this has been ongoing for -- the divorce or the
16 separation -- for three/three and a half years. Is that
17 correct?

18 A Yes.

19 Q Have you been to counseling during that period of
20 time?

21 A We signed a settlement that involved counseling --

22 Q Have you been -- have you been to counseling during
23 that period of time?

24 A I'm trying to think. I did have about a year of
25 counseling. I don't remember if it was before he left or

1 after. I think it was before.

2 Q Do you take -- currently do you take medications?

3 A No, sir, I do not.

4 Q Okay. With regard to what you say Mr. Smith
5 actually pays, would this be a fair statement to say that he
6 pays the first mortgage on the house you live in which is
7 1505 a month?

8 A It's my understanding he pays the first and second
9 mortgage.

10 Q Well, I'm going to go through these and if you can

11 --

12 A Okay.

13 Q -- just answer and then if you want to explain.

14 A Yes.

15 Q And he pays the second mortgage, which is 205.

16 A Yes.

17 Q He pays the power bill.

18 A Yes.

19 Q He pays the water bill.

20 A Yes.

21 Q He pays the gas bill.

22 A He pays for all of the utilities, sir.

23 Q If you'd just answer the questions, please.

24 A Yes.

25 Q BellSouth. He pays the telephone bill.

1 A Yes.

2 Q City of Rome garbage.

3 A Yes.

4 Q Cable.

5 A Yes. But water and cable have been cut off at
6 times when he paid late.

7 Q Ackerman Security.

8 A Yes.

9 Q He pays -- you charge gas on a Shell credit card.
10 He pays that. Is that correct?

11 A Yes, unless it maxes out and then he doesn't pay.

12 Q And when it maxes out it's what?

13 A I don't know. I just know sometimes it doesn't
14 work. The card doesn't work.

15 Q It averages about \$300 a month?

16 A Three to four because gas prices have come down
17 now.

18 Q He pays the life insurance of 2,500. You have a
19 life insurance policy on Mr. Smith that you're the owner of.
20 Is that correct?

21 A Excuse me?

22 Q You have a life insurance on the life of your
23 husband and you're the owner of that policy. Is that
24 correct?

25 A He has controlled all of our finances in the

1 history of our marriage --

2 Q If you would, Ms. Smith --

3 THE COURT: Just answer the question, please, ma'am.

4 A I don't know of that policy.

5 THE COURT: If you don't know just say I don't know.

6 A I don't know. I don't know what you're talking
7 about.

8 Q (By Mr. Jones) Okay. All right. Would it surprise
9 you to know that that has a cash value of about \$3,500?

10 A Well, yes. I don't know of any of our insurance
11 policies.

12 Q And he pays the children's expenses that are listed
13 on the financial affidavit of about \$822 a month on his
14 financial affidavit.

15 A Yes.

16 Q And he pays you, in addition to that, \$500 per
17 month. Is that right? That's what you've testified to.

18 A I think so. I'm not looking at the numbers, sir,
19 so I'm not sure.

20 Q Well, didn't you just testify --

21 A Yes.

22 Q -- that your husband -- and your attorney stated
23 that he paid you \$500 a month?

24 A Yes, he did.

25 Q All right. So just coming up with those --

1 A I don't know what expenses he's listed on his.

2 Q Coming up with those totals it looks like he's
3 paying you about \$3,800 per month to you or for your benefit.
4 Is that correct?

5 A I don't ever see the money so I don't know exactly
6 the amount. But that sounds accurate to me.

7 Q Okay.

8 MR. MEDLIN: The 822 -- oh, I'm sorry, I thought you
9 were through.

10 Q (By Mr. Jones) And you have been providing to him
11 from time to time repair bills on the house and he's been
12 paying those. Is that correct?

13 A Yes. Sometimes I have to take grocery money to get
14 reimbursement.

15 Q But he pays those?

16 A Yes, he'll eventually pay them back.

17 Q Okay. The period of time when he went to law
18 school most of the income came from -- or what you lived on
19 would be student loans. Would that be correct?

20 A Again, I've never controlled the finances of our
21 family so I really don't know.

22 Q The student loans are substantial. Are you aware
23 of that?

24 A As are the substantial loans he's taken from my
25 family. But I don't know exactly how much percentagewise.

1 Q So your answer is you don't know?

2 A I don't -- I honestly don't know because I don't
3 handle the finances of our family.

4 Q He's been paying everything.

5 A As far as I know, unless the water gets cut off or
6 something happens where I -- then I know it hasn't been paid.
7 Which has happened at times.

8 Q Are you aware that there are approximately \$140,000
9 in unsecured debt?

10 A I suppose it's possible. I don't know how he's
11 refinanced his student loans.

12 Q Okay. Have you looked at his financial affidavit
13 at all?

14 A My attorney has on my behalf.

15 Q Okay. I thought in answer to a question that you
16 said you had reviewed it and it appeared to be in order.

17 MR. MEDLIN: Objection, Your Honor. I don't think
18 that was the testimony.

19 Q (By Mr. Jones) Have you looked at it?

20 A No. I mean, I looked -- we've done this before and
21 I looked at the initial financial affidavit from the first
22 time he sued me for divorce three years ago. But I haven't
23 seen the current one now that he's changed to a different
24 job.

25 Q Okay. Is there any reason -- and I'll ask it in a

1 little different way. But is there any reason that you
2 cannot apply for a meaningful job or use your real estate
3 license to assist the family in supplementing the income
4 that's needed to pay these expenses other than what you say,
5 your children need your time?

6 MR. MEDLIN: Objection. Asked and answered.

7 MR. JONES: I think it's a little different. I've-

8 THE COURT: I'm going to allow the question.

9 A Is there another reason? Is that what you said?

10 Q Yes.

11 A Well, one, I tried for over a year to sell our home
12 and so the market is way down. So, obviously, real estate is
13 not the way for me to go. And secondly, again, Your Honor, I
14 am devoted to these children. And because of his excessive
15 schedule between the senate and his law firm work, they
16 simply can't miss out on another parent at this point.

17 Q How often does Preston see his children?

18 A Every other weekend is what we agreed on. And on
19 Wednesday evenings he comes at 8:00 at night after church and
20 takes them and brings them to school in the morning.

21 Q Okay. Does he, in fact, take the children to
22 church on Wednesday evening?

23 A No, he does not.

24 Q Does he take Preston?

25 A No, sir. I take them and he picks them up.

1 Q Okay. So when do -- when do they get back?
2 Wednesday about 7:30?

3 A Well, he either takes them --

4 Q When do they get back so that he can pick them up?

5 A On Wednesday evenings?

6 Q Yes.

7 A 7:30 to 8. Between 7:30 and 8 on a typical
8 Wednesday night.

9 Q And your request under the parenting plan is what
10 on Wednesday?

11 A Until 8 or 8:30, I think.

12 Q I'm sorry. What do you mean until? That he get
13 them for thirty minutes?

14 A No, sir. It's that we're requesting that within
15 reason they not do the overnights during the week.

16 Q Well, my question is what are you requesting in the
17 parenting plan as far as his ability to see his children on
18 Wednesday evening? Do you have a copy of --

19 A That he's welcome to take them and then --

20 Q From what time till what time?

21 A I think we said 5 to 8, I believe is what Mr.
22 Medlin said a few moments ago.

23 Q I thought you said you took them to church and got
24 them home at 7:30.

25 A Well, I just have been historically because that's

1 just what we do on Wednesday nights. And I teach. But that
2 obviously would change. If we didn't do the overnight we
3 would have to change that situation.

4 Q And you're proposing 5 to 8?

5 A Well, yes, if he'd like to get home from -- he just
6 -- with the commute to Atlanta and all that he's doing he
7 doesn't get home or even through traffic before 7:30 or 8.
8 So we just go to church because that's what we've always
9 done.

10 Q So the visitation that you're proposing would
11 really be impossible because he doesn't get home to see them
12 until 7:30 or 8. Is that correct?

13 A I think it's reasonable to have dinner with his
14 children during the week and then return them back. I think
15 that's reasonable.

16 Q Even if he can't get back from Atlanta from his
17 job?

18 A I think until bedtime would be reasonable, which
19 would be approximately 9 or 9:30 (unintelligible) too. I
20 mean, it's just the overnight is what's hard on my children
21 because they're so exhausted the next day at school when it's
22 been such a late evening.

23 Q And how long has he been doing that, having them
24 overnight on Wednesday night?

25 A Maybe two years since I discovered where he was

1 living when I didn't know previously.

2 Q Okay. So that practice has been going on for two
3 years and that's what we've proposed in our parenting plan.
4 Is that correct?

5 A Approximately, yeah. I might be eschewed on the -
6 I don't remember when we started.

7 Q Well, close to two years.

8 A Something like that, yeah.

9 Q All right. And the every other weekend has been
10 going on for two years.

11 A Yeah.

12 Q And y'all have been dividing holidays on a regular
13 basis.

14 A Yes, revolving around his work schedule we have.

15 Q He also takes them to special events and occasions
16 and y'all have been able to work that out.

17 A Yes, sir. But I'm not able to do so, just Preston,
18 because he's making up for the lost time he's not with his
19 children.

20 Q My question is he -- he does take them to special
21 events and occasions.

22 A Yes, he does. But I'm unable to myself.

23 Q Okay. I just wanted to clarify the extent to which
24 he has seen his children and been involved in their lives and
25 that's what I'm --

1 A He tries with his limited time to be -- he's an
2 excellent father and we need him to come home.

3 Q In your financial affidavit -- and you've listed
4 certain expenses there. I'm not sure that I understood what
5 you were asking for. You said something about \$500 a week.
6 What does that -- are you asking for anything in addition to
7 that?

8 A No, sir. I'm -- I'm very conservative in that
9 estimate.

10 Q And what is that -

11 A We have lived on hand-me-down clothes for over a
12 decade.

13 Q Okay. And what is that for? What would that go
14 toward, the \$500 per week?

15 A I think Mr. Medlin has already explained that. But
16 it would be groceries. It would be field trips. It would be
17 anything that comes up like an emergency. It would be -- I
18 mean, eating out. Something I don't do frequently now
19 because I can't.

20 Q All right. And what would you expect Mr. Smith to
21 pay in addition to the \$500 per week?

22 A Nothing at this time except that he had been paying
23 their tuition at school, which is a minimal \$20 a month but
24 it's per child. And so when you add that up that's \$80 a
25 month. And I don't know between that and school lunches how

1 he would like to include that. But that would be between you
2 and Mr. Medlin.

3 Q Well, what I'm asking you about is do you expect
4 him to continue making all of these payments on the house,
5 the house payment, the second mortgage, your gas bill and
6 everything that he has --

7 A I do.

8 Q -- been paying in addition to the \$500 a week?

9 A I do, sir. If he were at home he'd be doing the
10 same thing, so, yes.

11 Q That was what I was asking. That was what I was
12 asking.

13 A Yes, sir.

14 Q Okay. What about child support? Is that what
15 you're requesting then for the children is \$500 per week?

16 MR. MEDLIN: Objection, Your Honor. That calls for
17 a legal conclusion.

18 THE COURT: Yeah, that's -- that's -- this is a
19 temporary.

20 MR. JONES: I mean, it said in the child support
21 worksheet, Your Honor --

22 THE COURT: I understand what you're saying and I'm
23 going to address this totally backwards from the way
24 they're doing it --

25 MR. JONES: Okay.

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THE COURT: -- because it's time that they moved on and therefore we need to make totally different financial arrangements. Now whether the numbers come -- the question is where the numbers come out.

MR. JONES: And that's what I was trying to figure out.

THE COURT: So let's not use the words alimony and child support right now because I think we're in a confused situation.

MR. MEDLIN: Thank you, Your Honor.

MR. JONES: That's all the questions I have right now.

THE COURT: Anything further?

REDIRECT EXAMINATION by: Mr. Medlin

Q The 822 that your husband has been paying, do you know what that is? Mr. Jones just asked you about your husband paying eight twenty-two right now.

A I -- I don't.

Q The amount that you've calculated for your monthly expenses, do you know what that is?

A Approximately seven to eight hundred dollars, I think.

Q Seventy-eight hundred?

A Seven to eight hundred dollars, I think,

1 approximately.

2 Q Okay. But that's in addition -- that's in addition
3 to what your husband is currently paying. Correct?

4 A Yes.

5 Q All right. So let's look at your financial
6 affidavit for just a minute to let the court know. If you
7 were going to pay all the expenses of the home -- in other
8 words, everything that your husband is paying now and what
9 your expenses are for the groceries, for the eating out -- in
10 other words, you don't have a disagreement with Mr. Jones
11 that there's a payment right now that your husband makes of
12 over \$3,000 a month.

13 A No.

14 Q Okay. And the 822 is the only part you're not sure
15 about in terms of what that -- he said he pays 822 for the
16 children. You don't know what that 822 is?

17 A Yes. It's possibly living expenses of where he is
18 because I don't think it's necessarily mine.

19 Q But you don't know that 822 -

20 A Right.

21 Q In other words, if it's his living expenses that
22 he's paying for the children --

23 A Right.

24 Q -- you don't know what that is?

25 A No.

1 Q Okay. But if you took just the amounts of the
2 money if you were to pay -- because one day you'll have to.
3 If you were to pay the mortgage as shown on this financial
4 affidavit, the utilities, and this minimal amount each week
5 so that you could buy groceries, buy gasoline for your car,
6 buy all the expenses for the clothes, you've come up with a
7 conservative \$5,670 as --

8 A Yes.

9 Q -- shown on this that we've already got into
10 evidence. Correct?

11 A Yes.

12 MEDLIN: Your Honor, do I need to tender this or do
13 you have that?

14 THE COURT: I've got -- I've got her financial
15 affidavit.

16 MR. MEDLIN: So I don't need to tender that?

17 THE COURT: No, I've got it.

18 Q (By Mr. Medlin) And have you tried to go through
19 this -- have you gone through this with Hannah, the paralegal
20 that's here with me today, to make sure that as far as you
21 know every one of these numbers are accurate?

22 A Yes, to my knowledge.

23 Q And it took some looking at some documents for you
24 to see what the water bill was, what the -- your grooming
25 bill was, what the entertainment costs were. And you went

1 through all those things.

2 A Yes.

3 Q And did you feel that there's anything in the
4 \$5,670 that you don't need? In other words, you put in here
5 some entertainment of \$100. I mean do you want the judge to
6 give you something so that you can occasionally maybe take
7 the children out to a movie?

8 A Yes, that's a very conservative amount when you
9 have four children. That's one movie or two depending on
10 popcorn, you know.

11 Q But you're asking this judge for something in that
12 category?

13 A Yes.

14 Q Because what the judge is going to have to do is
15 decide how you're going to do finances in the future. You
16 understand that?

17 A Yes.

18 Q But aside from the 5,600 you are asking that there
19 be a vehicle provided for you in the \$15,000 range.

20 A Yes.

21 Q And that you're asking for some amount of money
22 each month for your legal fees so that you can stay
23 represented in this case?

24 A Yes.

25 Q Let me ask you just a few follow-up questions about

1 what Mr. Jones asked you about.

2 The Wednesday nights 8 to 8:30 you -- is this a big
3 deal? In other words, if the court feels that even at the
4 age of five if they should still go overnight, are you okay
5 with that if the court feels that's the appropriate thing to
6 do?

7 A I've been extremely flexible during this terrible
8 situation.

9 Q And have you allowed him to take the kids
10 overnight?

11 A Yes.

12 Q And what has happened the next day when this has
13 happened?

14 A It just makes them extremely grouchy and exhausted
15 and it effects their school day. And then they melt down
16 when they get home because they're tired.

17 Q Are they different on a -- on a Thursday afternoon?
18 Because if he keeps them Wednesday night that means he's
19 taking them back to school on Thursday.

20 A Yes.

21 Q Are they different on a Thursday afternoon than
22 they are on the other afternoons during the week?

23 A Yes. They usually are a little bit more short
24 tempered and tired and -- just really tired. It's just --
25 getting through a school week is just an exhausting thing for

1 any child.

2 Q So are you just asking for a reprieve from that
3 every other Wednesday night?

4 A Yes.

5 Q Do you care whether it's a Wednesday or if there's
6 a more convenient night for Mr. Smith are you okay with it
7 moving to a different night so that he still gets a dinner
8 with his children?

9 A That's fine. I just know that my friend has
10 donated ballet lessons to my girls and so that's kind of a
11 proclutionary night as well. Because she allows us to come
12 to ballet for free so that they can have something to
13 distract them from their dad being gone. So that's another
14 night that's kind of time consuming.

15 Q Mr. Jones also asked you about you asking him to
16 move out in early '05 or late '04.

17 A That's not true.

18 Q Well, did you want him to be in a different bedroom
19 than you?

20 A Yes. We were trying to figure out how we were
21 going to work things out. But I did not tell him to move
22 out. He strategically planned to move out prior to that
23 time.

24 Q When you wanted him to live in a different bedroom,
25 was that after you had found him and the other young woman?

1 A Yes.

2 MR. MEDLIN: Nothing further. Oh, one other
3 question.

4 Q (By Mr. Medlin) The real estate market. Do you
5 have other realtors around you that you know of that are
6 doing well in this market right now?

7 A No, sir.

8 Q The \$100 a month that you make right now, tell the
9 judge how you make that \$100 a month.

10 A I just -- I run an at-home based creative memories
11 scrapbooking business where women come to my home once a
12 month and we do a workshop. And sometimes I get sales and
13 sometimes I don't.

14 Q Are you -- are you trying to do that as well as you
15 can to increase sales to the extent you can?

16 A I'm actually just doing it for the benefit of my
17 children because otherwise I can't buy supplies for them to
18 have their memories recorded. So that's the only reason I do
19 it. It's a (unintelligible) business and my customers
20 basically -- you know it's a self-supporting business. And I
21 don't take on any debt because of Preston who doesn't pay for
22 it either. So it's just self-sustaining.

23 Q And \$100 a month is about what you're making right
24 now?

25 A At the most. It varies but I -- it's just not a

1 good time to be selling luxury items right now.

2 MR. MEDLIN: Thank you.

3 -----
4 RECROSS-EXAMINATION by: Mr. Jones

5 Q The Wednesday nights -- I think Mr. Medlin said
6 every other Wednesday. But it's actually been every
7 Wednesday.

8 A Yes, it has.

9 Q Okay. It's every -

10 A He just was mistaken. It is every Wednesday.

11 Q All right.

12 A But during the session historically --

13 Q That was the only question I had asked you.

14 A Okay. Just not do overnights.

15 Q With regard to the children and the way you say it
16 is affecting them, both you and Preston are devoted to the
17 children and want to see them do well in school. And, in
18 fact, they are straight A students, aren't they?

19 A Yes, very much so.

20 Q And with regard to other people working in the real
21 estate market, you've not even made an effort to do that,
22 have you?

23 A Sir, I have my license under Harrington Realty here
24 in Rome under the parent company J.P. Cooper. And so, yes,
25 there is an effort and it is an active license sitting there.

1 It's just that my time is to my children.

2 Q My question was made an effort to. What was the
3 last time you even went to the office?

4 A Three years ago when Preston tried to get me to
5 sell the house.

6 MR. JONES: That's all.

7 THE COURT: Anything further, Mr. Medlin?

8 MR. MEDLIN: Nothing further from this witness.

9 THE COURT: You may go back down to your lawyers.

10 MR. JONES: Your Honor, may we take just about a five
11 minute break?

12 THE COURT: Well, there's not a clock. Let's take a
13 fifteen minute morning break.

14 MR. JONES: I'll look at their parenting plan now.

15 THE COURT: Huh?

16 MR. JONES: I'll look at their parenting plan.

17 THE COURT: Yeah, you look at that and we'll just
18 take a break.

19 (RECESS)

20 THE COURT: Anything further for you?

21 MR. MEDLIN: Yes, Your Honor. We would call Mr.
22 Preston Smith for cross-examination purposes only.

23 THE COURT: Okay. Come around, Mr. Smith.

24 THE CLERK: Raise your right hand.

25 (WITNESS IS DULY SWORN)

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WHEREUPON, **PRESTON WILLIAMS SMITH**, after first having been
duly sworn, testified as follows:

CROSS-EXAMINATION By Mr. Medlin

Q Morning, Mr. Smith.

A Good morning.

Q You're an attorney, licensed to practice law. Is
that correct?

A That is correct.

Q And you went to University of Georgia Law School.
Correct?

A That is correct.

Q You've been licensed here to practice law since
1998?

A Correct.

Q Approximately ten years.

A Correct.

Q Are you still a partner with Cox Dyington? With
that law firm?

A Cox Byington. And, no, I'm not.

Q When did that -- when did you leave that
partnership?

A March 31st or March 30th. The last day of March.

Q Are you still a member of the Georgia General
Assembly?

1 A Yes.

2 Q And do you represent this area?

3 A Yes.

4 Q What -- how do you describe the area that you
5 represent?

6 A I represent Senate District 52, which includes all
7 of Floyd County, the majority of Gordon County including the
8 cities of Calhoun and Resaca through the central portion of
9 the county, and the majority of the land mass of Bartow
10 County excluding the city limits of Cartersville and Emerson.

11 Q You currently work for -- in addition to being
12 state senator work for -- is it ApolloMD Business Services?

13 A That's correct.

14 Q Tell the judge what you do for Apollo, please.

15 A ApolloMD is a healthcare company. It's principle
16 function is to contract with hospitals to staff emergency
17 rooms with physicians that are employed by Apollo. So we
18 engage -- we recruit and engage physicians to be employed by
19 our company and then we obtain contract negotiations with
20 hospitals to staff those hospitals with their emergency
21 departments. So that's probably the core function of
22 ApolloMD. There's also an anesthesia wing to the business
23 that similarly contracts to staff anesthesia departments.
24 And there's a separate wing in the business called ValorMD,
25 which is an insurance program that provides professional

1 liability insurance to medical professionals -- physicians.

2 Q Is it fair to say that your employment agreement
3 with ApolloMD pays a total of \$200,000 plus commissions?

4 A That is correct.

5 MR. MEDLIN: May I approach, Your Honor?

6 THE COURT: Sure.

7 Q (By Mr. Medlin) I'm going to hand you what I've
8 marked as Plaintiff's Exhibit 1.

9 MR. MEDLIN: I don't think I've called anything else
10 1, have I? I think I've just used things that are
11 already in the record.

12 May I approach, Your Honor?

13 THE COURT: Uh-huh.

14 Q (By Mr. Medlin) This sets forth the commission
15 schedule that you obtain with ApolloMD plus the \$200,000 a
16 year. Is this a true and accurate copy of your employment
17 agreement that you signed?

18 A It appears to be.

19 Q And you signed it on the back page. Is that your
20 signature, sir?

21 A I signed it on the two back pages. And it appears
22 to be my signature.

23 Q In addition to the \$200,000 a year, the commission
24 schedule appears to give you certain percentages for each
25 level. Have they told you what others with the company have

1 made with their -- in a similar position for their
2 commissions?

3 A Essentially the answer to that question is nothing.
4 My predecessor that worked in this area worked for
5 approximately two years doing this side of the business and
6 received one new client and he received a commission with
7 that new client. And the commission with the new client was
8 one percent. I don't know the dollar amount, but I believe
9 it to be less than \$5,000. In any event, in his two years of
10 work he was able to obtain one new client and receive a
11 commission under his contract on that client.

12 Q Let me hand you what I've marked exhibit 2. What
13 is exhibit 2?

14 THE COURT: Do you have any objection to me seeing
15 exhibit 2, Mr. Jones?

16 MR. JONES: No objection, Your Honor, nor any
17 objection to No. 1.

18 MR. MEDLIN: Well, Your Honor, we'll just go ahead
19 and tender 1 and 2.

20 THE COURT: Okay. They're admitted without
21 objection.

22 A I don't believe I've seen this in this form unless
23 it was folded up in the paycheck envelope and looked
24 differently with the colors and so forth. But, generally
25 speaking, it appears to be an earning statement for the pay

1 period 8/31 -- 8/1 through 8/31, which is paid on 9/15.

2 Q (By Mr. Medlin) So of the \$200,000 the -- for
3 representing ApolloMD alone, the gross paid for each month is
4 \$16,666. Is that correct?

5 A If that is one-twelfth of two hundred, then that is
6 correct. And I believe that it is.

7 Q And there's also some other payments here, Expense
8 Reimbursement Reverse, Save 1, Check 1. And then those
9 numbers are minus 867 and then 300 and then 500. Can you
10 tell the judge what those are?

11 A Sure. The job requires some significant travel,
12 mostly within the state of Georgia. It takes me to Dalton,
13 Gainesville, Albany, Augusta, Valdosta, Atlanta, Stone
14 Mountain, Rome. And then there is some out-of-state travel
15 as well. And so when we participate in these events where
16 our business is a vendor or a provider of services, we will
17 typically travel to those events, provide incentives, door
18 prizes and so forth, for people to come by and meet with us
19 and leave their business card for a drawing, things of that
20 nature.

21 And so at each one of those events that I go to I
22 will incur travel expenses, be it automotive mileage or a
23 plane flight. If it's an overnight stay a hotel expense will
24 be incurred. Meals associated with that meeting would be
25 incurred. And then anything that I purchase, whether it's a

1 sponsorship level at the events or -- or a prize of some sort
2 to give away to people that come and speak to us about our
3 product, I will remit that back to the business, itemize it
4 and submit it as an expense report and get reimbursed. And
5 it shows up on the paycheck as an expense reimbursement
6 reversal.

7 And so for this particular month I had turned in
8 \$867.10 in items that I had spent out-of-pocket for the
9 business out of my personal account and they were reimbursing
10 me for those out-of-pocket expenses.

11 Underneath that there's a Save 1 and Check 1. And
12 what I do there is the Check 1 is an automatic deposit,
13 direct deposit, into a Wachovia checking account out of which
14 I pay Michelle a monthly \$500 amount in discretionary funds.
15 And by putting it this way it can be immediately available to
16 her and I can have her the check on the 15th that she can draw
17 from. So I have them go ahead and direct deposit it into
18 that account so that I can make it available to her
19 immediately. And then the Save 1 goes into the IBM account
20 which pays for -- a direct draft for my vehicle cost, which
21 is two forty a month. And then there's a little bit left
22 over I use to chip away at the Visa account with the bank.

23 Q So let's look at page 2 of that document. Does
24 this show a reconciliation of the expenses that were
25 reimbursed for that month with the 602.47?

1 A Well, let me say this is the first time I have seen
2 this document in this form. What I would have done is submit
3 it without the handwritten notes on it and it would go
4 through several levels of review before it's submitted to
5 accounting for reimbursement. So the handwritten check marks
6 and notes that you see there are our various auditing review
7 folks that go through and show that it's an appropriate
8 expense and that it's valid. And it then goes to accounting
9 and it is being processed to be put on my next paycheck.

10 Q You signed the bottom, is that right --

11 A That's correct.

12 Q -- at the bottom left-hand corner?

13 A That's correct. And all I'm saying is things were
14 added after that that you see on there, the handwritten
15 things. But, yes, I prepared the document and signed it.

16 Q So what you're saying is the document with the
17 typing on it, with your signature at the bottom, would have
18 been before these other handwritten -- like the reimbursed at
19 later payroll. Is that correct?

20 A Certainly would have been -- I wouldn't turn
21 anything in with any handwritten notes on it.

22 Q All right. So to be clear, if you are traveling,
23 you get a mileage reimbursement. If you are traveling, your
24 food gets paid for so that you've got to get that
25 compensated. And if you were spending the night, your

1 overnight stays would have been compensated. Correct?

2 A For the most part that's true.

3 Q Okay. Let me hand you exhibit 3 and ask you does
4 this appear to be a true and accurate copy of the pay
5 statement ending 10/31?

6 MR. MEDLIN: Your Honor, we would tender exhibit 3.

7 THE COURT: Mr. Jones?

8 MR. JONES: No objection, Your Honor.

9 THE COURT: It's admitted without objection.

10 A It's not the form that I'm used to seeing unless it
11 looks different when it's folded up and with the colored
12 paper. But it appears to be the check from the pay date
13 11/14/2008 reflecting the pay period 10/1 through 10/31.

14 Q Then if you turn the page, this month your
15 reimbursements included your mileage allowance, your taxi,
16 your business meals, your lodging. And then the daily totals
17 end up \$1,032 that you were reimbursed for that month.
18 Correct?

19 A That sounds right.

20 Q Same question for 4.

21 A And my response is the same. I'm not familiar with
22 it looking like this, but it appears to be the paycheck
23 statement dated 10/15/08 reflecting the pay period 9/1
24 through 9/30.

25 MR. MEDLIN: Your Honor, we would tender 4, D4.

1 MR. JONES: No objection.

2 THE COURT: It's admitted without objection.

3 MR. MEDLIN: We're calling it D4 even though we're
4 the movant at this time.

5 Q (By Mr. Medlin) Let me hand you 5. Does this
6 appear to be a true and accurate copy of one of your pay
7 stubs that's finally cut and given to you that's really a
8 duplicate of the document that shows a deposit. It's not a
9 check you cash. Does that appear to be true and accurate?

10 A I am familiar with this form. And this appears to
11 be the copy of what I received at my pay period of the 15th.

12 THE COURT: Your Honor, we would tender --

13 A This reflects the pay date of the 15th for the time
14 worked 9/1 through 9/30.

15 MR. MEDLIN: We would tender D5.

16 MR. JONES: No objection.

17 THE COURT: It's admitted without objection.

18 Q (By Mr. Medlin) Now in addition to this -- these
19 pays and these reimbursements that you receive each month,
20 it's also true that in 2007 you received just in excess of
21 \$32,000 from the general assembly. Is that correct?

22 A I don't think I know that number off the top of my
23 head. Is that off of --

24 Q It's always in excess of -- in excess of \$25,000,
25 correct, for both this year and last year?

1 A Well, just so I'm clear -- that we received --
2 there's two forms of payments we receive. One is our
3 statutory salary, and it is not that high, so that would not
4 be reflective of our salary. But we are also paid a per diem
5 amount based upon the number of days that we have worked
6 during -- performing legislative services. And that -- and
7 then there's an additional amount that's paid if we go out-
8 of-pocket and buy something, for example, for the office, in
9 furtherance of our legislative duties, then that would be
10 reimbursed to the out-of-pocket expense.

11 Q What's the per diem?

12 A I think the per diem is about a hundred and seventy
13 -- between \$170 to \$180. But that includes mileage now, I
14 believe.

15 Q Per day?

16 A It's set -- I'll tell you it's set to the federal
17 -- it's set to the federal per diem established by the
18 General Services Administration. So whatever that is is what
19 our per diem is.

20 Q And then what's the base salary of the general
21 assembly?

22 A The base salary is, I believe, \$16,000 and change.

23 Q If the documents that your attorney provided show
24 that you made \$32,008 in 2007, would that sound about right
25 to you?

1 A Well, I guess, if that figure were accurate it
2 would reflect the salary and the per diem amounts that we
3 never see for legislative work outside of the session.

4 Q And if to this day, or at least until the end of
5 October, your total was \$25,379.31, if that was reflected in
6 discovery, does that sound about right as well?

7 A Well, just -

8 Q Including what you just said with the same caveats.

9 A Just so I'm being clear, part of that appears to be
10 salary earned income. And part of that would be to
11 compensate for the expenses incurred in serving the general
12 assembly on a given committee day or day of work. So, in
13 other words, we may have mileage. We may even have an
14 overnight trip that we'll incur expenses for and the state
15 pays a per diem based upon that. So there are -- it's
16 intended to be, at least in part, a reimbursement for
17 expenses incurred, mileage, wear and tear on the vehicle,
18 hotel costs, and so forth, to repay you for any of those
19 expenses you have.

20 Q In the -- do you recall responding to
21 interrogatories, sir?

22 A I do.

23 Q We're on D6.

24 A I'm holding 5.

25 Q I'm going to hand you D6 and I'd ask you to look at