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STATE OF MICHIGAN
IN THE SUPREME COURT

LAW OFFICES OF JEFFREY SHERBOW, P.C.,

Plaintiff- Appellee

v

FIEGER & FIEGER, P.C., d/b/a FIEGER, FIEGER, KENNEY & HARRINGTON, P.C.,

Defendant-Appellant.

Supreme Court No. 159450

Court of Appeals No. 338997

Oakland County Circuit
Case No. 15-147488-CB

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STATE OF MICHIGAN

COURT OF APPEALS

LAW OFFICES OF JEFFREY SHERBOW, PC,

Plaintiff-Appellant/Cross-Appellee,

v

FIEGER & FIEGER, PC, doing business as FIEGER, FIEGER, KENNEY & HARRINGTON, PC,

Defendant-Appellee/Cross-Appellant.

FOR PUBLICATION
January 15, 2019
9:00 a.m.

No. 338997
Oakland Circuit Court
LC No. 2015-147488-CB

Before: MURRAY, C.J., and SHAPIRO and RIORDAN, JJ.

RIORDAN, J.

In this contract dispute regarding a referral fee between two law firms, plaintiff appeals as of right and defendant cross-appeals as of right the trial court's entry of judgment after a jury trial. Defendant's cross-appeal is of the trial court's previous order denying defendant's motion for summary disposition. We affirm in part, reverse in part, vacate in part, and remand for further proceedings consistent with this opinion.

I. BACKGROUND FACTS & PROCEDURAL HISTORY

In the years preceding 2012, Jeffrey Sherbow, an attorney and the sole proprietor of plaintiff, had a working relationship with Charles Rice, who ran a business in Detroit. During the early morning hours of July 13, 2012, Charles was in a fatal automobile accident in Ohio. The other passengers in the vehicle at the time of the accident—Mervie Rice, Dorothy Dixon, and Philip Hill—were seriously injured. Dixon was taken to an Ohio hospital and placed in a medically-induced coma.

When Dion Rice, Charles and Dixon's son, was informed of the accident, he called Charles's business associate, requesting Sherbow's contact information for legal advice. Over the course of the following days, Sherbow and Dion had several conversations via telephone and eventually agreed to meet at Charles's home, where Dion was staying. During that same time period, Sherbow also had several conversations with Jeffrey Danzig, who is an attorney and at

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the time was a named partner at defendant firm, and commenced the process of referring the personal injury and no-fault cases of Dixon, Mervie, Hill, and Charles's Estate to defendant. Danzig agreed that, for Sherbow's referral, he would be paid one-third of any contingent fee that defendant ultimately earned from the cases.

Sherbow testified he told Dion, when they met at Charles's house, that he was not equipped to deal with such serious cases, being a sole practitioner, but that he had a friend at defendant to whom he could refer the case. Sherbow said Dion was receptive to the suggestion and assisted Sherbow in reaching out to the other clients. Dion testified that, at the time of the meeting, he and his family had already decided to retain defendant. In either event, Sherbow, Dion, and Danzig set up a meeting for July 26, 2012, at defendant's office. Mervie also was present at the meeting. According to Sherbow, Hill originally was supposed to attend the meeting, but could not make it, and Dixon was still in a medically-induced coma in Ohio.

At the July 26, 2012 meeting, Mervie and Dion signed retainer agreements with defendant. Dion agreed to defendant's representation of Dixon and Charles's Estate. While those retainer agreements did not reflect any referral agreement that defendant had with plaintiff, Danzig and Sherbow testified that Danzig informed Mervie and Dion of the agreement and that those two did not object. Mervie and Dion testified that they did not believe they were informed, could not remember everything that was said during the meeting, but that if they had been informed, they would have objected. Mervie further testified that she decided to retain defendant after seeing a commercial on television and called defendant's office without being referred. Danzig later met with Hill and Dixon, where, according to Danzig, he informed them of the referral fee that plaintiff would be paid, and that Hill and Dixon did not object. Like Dion and Mervie, Hill and Dixon testified that they did not believe they were informed of the referral agreement, could not remember the entire conversation with Danzig, but that if they had been informed, they would have objected.

Danzig sent two letters to Sherbow, one on August 2, 2012, and the second on August 15, 2012, reciting that defendant had "accepted the above-captioned matters on referral from you and your office and are hereby acknowledging your one-third referral fee in these matters." Because the cases were being tried in Ohio, defendant sought the assistance of an Ohio law firm. When the Ohio firm demanded 20% of the contingent fee earned in the case, Sherbow agreed to have his referral fee lowered to 20% as well. Danzig memorialized that new agreement in a letter dated January 2, 2014, which specifically noted that Sherbow was to receive 20% of the contingent fee for his referral of the cases.

Eventually, defendant was successful in its representation of the clients, obtaining an award of $10.225 million, out of which a contingent fee of $3,408,333.34 was paid to defendant. When defendant refused to pay 20% of that fee, or $681,666.67, to Sherbow, plaintiff brought the instant litigation, asserting a claim of breach of contract. Defendant moved for summary disposition three separate times, arguing, among other things, that the referral fee contract violated MRPC 1.5(e) and thus was unenforceable, and that Danzig did not have the authority to bind defendant to a contract with plaintiff. With respect to a violation of MRPC 1.5(e), defendant provided evidence from Dion, Mervie, Dixon, and Hill that they were not aware of the referral fee agreement and even if they had been, they would have objected. Plaintiff countered with evidence from Sherbow and Danzig that the clients were informed and did not object.

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Further, plaintiff argued that Danzig had the apparent authority to bind defendant where Danzig was a named partner, appeared on the firm's letterhead, and was the head of defendant's intake department. The trial court agreed with plaintiff and denied the motions for summary disposition.

The case then proceeded to trial, largely focused on the issues of whether Danzig had the actual or apparent authority to bind defendant to the referral fee contract, and if so, whether the contract violated MRPC 1.5(e) and thus was unenforceable as a matter of public policy. After three days of testimony, the trial court, over plaintiff's repeated objections, instructed the jury that plaintiff had to prove by a preponderance of the evidence that MRPC 1.5(e) had not been violated and that, in order for plaintiff to be entitled to judgment, Sherbow had to have had attorney-client relationships with Dion on behalf of Charles's Estate, Mervie, Dixon, and Hill at the time of the referral. The verdict form, to which plaintiff also objected, asked the jury to answer two questions with respect to each client: "Were any of the following clients of Jeffrey Sherbow," and "[i]f yes to any part of 1, did Plaintiff refer one, some, or all of the following personal injury cases to Defendant?" The verdict form then had a third, general question: "If yes to any parts of 1 and 2, did Jeffrey Danzig have actual or apparent authority to bind Fieger Firm?"

The jury answered that Sherbow had an attorney-client relationship with Dion on behalf of Charles's Estate and actually referred that case to defendant. The jury found the opposite for the other three clients. As for the third question, the jury determined that Danzig did have the actual or apparent authority to bind defendant to a contract. Thus, the trial court entered judgment in favor of plaintiff with respect to the contingent fee earned for Charles's Estate, awarding plaintiff $93,333.33, and for no cause of action for the remaining three claims. Plaintiff moved for judgement notwithstanding the verdict (JNOV) with respect to the fees arising from Dixon's case, arguing that Dion acted on behalf of both Charles's Estate and Dixon while she was in the coma. The trial court denied that motion. This appeal followed.

II. SUMMARY DISPOSITION

Defendant argues that the trial court should have granted its motion for summary disposition. We disagree.

A. STANDARD OF REVIEW

"This Court [] reviews de novo decisions on motions for summary disposition brought under MCR 2.116(C)(10)." *Pace v Edel-Harrelson*, 499 Mich 1, 5; 878 NW2d 784 (2016). A motion for summary disposition pursuant to MCR 2.116(C)(10) "tests the factual sufficiency of the complaint." *Joseph v Auto Club Ins Assoc*, 491 Mich 200, 206; 815 NW2d 412 (2012). "In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Summary disposition is proper where there is no "genuine issue regarding any material fact." *Id*. "A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules." *Bennett v Detroit Police*

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Chief, 274 Mich App 307, 317; 732 NW2d 164 (2006). Similarly, a trial court's "construction of the rules of professional conduct" is a legal issue this Court reviews de novo. *Grievance Administrator v Fieger*, 476 Mich 231, 240; 719 NW2d 123 (2006). A trial court's decision regarding the existence of a contract is a question of law that we review de novo. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). "When there is a disputed question of agency, if there is any testimony, either direct or inferential, tending to establish it, it becomes a question of fact . . . ." *St Clair Intermediate Sch Dist v Intermediate Ed Ass'n/Mich Ed Ass'n*, 458 Mich 540, 556-557; 581 NW2d 707 (1998) (quotation marks omitted).

B. VIOLATION OF MRPC 1.5(e)

Defendant argues that there was no question of fact that the referral fee contract violated MRPC 1.5(e) and was therefore unenforceable as a matter of public policy. We disagree.

1. APPLICABLE LAW

"[A] contract is an agreement between parties for the doing or not doing of some particular thing and derives its binding force from the meeting of the minds of the parties[.]" *In re Mardigian Estate*, 312 Mich App 553, 562; 879 NW2d 313 (2015), aff'd 502 Mich 154 (2018). "Before a contract can be completed, there must be an offer and acceptance." *Clark v Al-Amin*, 309 Mich App 387, 394; 872 NW2d 730 (2015) (quotation marks omitted). "In order for there to be an enforceable agreement between the parties, there must be 'mutual assent' to be bound—that is, the parties must have a 'meeting of the minds' on all the essential elements of the agreement." *Huntington Nat'l Bank v Daniel J Aronoff Living Trust*, 305 Mich App 496, 508; 853 NW2d 481 (2014).

"Parties are free to contract as they see fit, and courts must enforce contracts as written unless they are in violation of law or public policy." *Village of Edmore v Crystal Automation Sys, Inc*, 322 Mich App 244, 263; 911 NW2d 241 (2017). "Absent some specific basis for finding them unlawful, courts cannot disregard private contracts and covenants in order to advance a particular social good." *Terrien v Zwit*, 467 Mich 56, 70; 648 NW2d 602 (2002). As this Court has held, Michigan courts apply "the fundamental principle that contracts that violate our ethical rules violate our public policy and therefore are unenforceable." *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 196; 650 NW2d 364 (2002). "[C]ontracts containing performance requirements that would violate the MRPC are not enforceable because such contracts contradict Michigan's public policy." *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 58; 672 NW2d 2003).

Defendant contends that the referral fee contract between it and plaintiff violated MRPC 1.5(e). "The rules of statutory construction also apply to rules promulgated by the Michigan Supreme Court, such as the Michigan Court Rules (MCR), the MRPC, and the SBR." *Morris & Doherty*, 259 Mich App at 44.[1] We begin with the plain language of MRPC 1.5(e), which states

[1] This Court recently restated the proper procedure for such interpretation:

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that, "[a] division of a fee between lawyers who are not in the same firm may be made only if . . . the client is advised of and does not object to the participation of all the lawyers involved; and . . . the total fee is reasonable."

2. ANALYSIS

The parties primarily disagree about the meaning of "advised of and does not object to" the agreement. MRPC 1.5(e). Defendant argues that the rule requires proof that the clients actually affirmatively consented to the agreement after being informed. Plaintiff, meanwhile, argues that the rule requires only proof that the clients were informed and remained silent. Plaintiff is correct. The words used in MRPC 1.5(e) are clear and unambiguous and require only that clients be "advised of" a referral fee agreement, and then do "not object" to it. A lack of objection by the clients, as required by the rule, does not mean that the client has to affirmatively approve of the agreement. If the drafters of MRPC 1.5(e) wished to require that clients had to give their affirmative consent to a referral fee agreement, they would have written that requirement into the rule. As it now stands, the rule unambiguously only requires that clients be advised and not object to the referral fee agreement. *Id*.

Thus, summary disposition properly was denied as there was a genuine issue of material fact regarding whether the clients were aware of the fee split agreement and did not object to it. MRPC 1.5(e). Defendant suggests that it provided such evidence based on affidavits, letters, and deposition testimony from the clients providing that they were not told of the fee split agreement, and, had they been, they would have objected.[2] However, Sherbow and Danzig, who both attended the meeting on July 26, 2012, averred and testified that Danzig did advise Dion and Mervie of the fee split agreement, to which they did not object. Further, Danzig averred and testified that he told Hill and Dixon about the same agreement, and that neither of them objected.

> [W]e look to the plain language of the [] rule in order to ascertain its meaning and the intent of the rule must be determined from an examination of the court rule itself and its place within the structure of the [] Rules as a whole. If the rule's language is plain and unambiguous, then judicial construction is not permitted and the rule must be applied as written. [*Sanders v McLaren-Macomb*, 323 Mich App 254, 266-267; 916 NW2d 305 (2018) (citations and quotations omitted).]

[2] Defendant claimed at oral argument that Sherbow could not have referred all of the clients because Mervie testified that she called defendant's office of her own accord on July 17, 2012. However, Sherbow's testified that he learned Dion wished to speak with him on July 13, 2012. Sherbow then spoke to Danzig that same day. After speaking with Dion, Sherbow began the referral process on July 14, 2012. Among those whom Sherbow claims he included in that referral were Charles's Estate, Dixon, Hill, and Mervie. Further, Danzig testified that he contacted Mervie for the first time using a telephone number provided by Sherbow. Thus, there still is a question of fact regarding the origin of the referral.

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Thus, there was a genuine issue of material fact regarding the relevant inquiry. MRPC 1.5(e). Consequently, summary disposition properly was denied. *Maiden*, 461 Mich at 120.[3]

C. APPARENT AUTHORITY OF DANZIG

Defendant also argues that the trial court should have granted its motion for summary disposition where there was no question of fact that Danzig did not have the authority to bind defendant to the referral fee contract. We disagree.

1. APPLICABLE LAW

"An agent is a person having express or implied authority to represent or act on behalf of another person, who is called his principal." *Stephenson v Golden*, 279 Mich 710, 734; 276 NW 849 (1937) (quotation marks omitted). More specifically, "[a]n agency is defined as a fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may

[3] Defendant contends that we should consider Howard Linden, not Dion, as the client with respect to Charles's Estate for purposes of MRPC 1.5(e). We decline to consider this argument for several reasons. First, defendant's cross-appeal was limited to the trial court's opinion and order regarding summary disposition, in which the trial court did not actually address defendant's contention that Linden properly was considered the client. *Elahham v Al-Jabban*, 319 Mich App 112, 120; 899 NW2d 768 (2017) (holding that an issue is unpreserved and need not be considered where "the trial court did not directly address and decide the . . . issue raised . . . ."). Second, the trial court actually addressed the issue during jury instructions, when it decided to instruct the jury that Dion was considered the client with respect to Charles's Estate. Defendant does not recognize that decision by the trial court nor mention anything regarding its argument that Linden actually was the client in its statement of questions presented. Instead, defendant only asserts that the trial court erred in deciding the motion for summary disposition. *Maple BPA, Inc v Bloomfield Charter Twp*, 302 Mich App 505, 517; 838 NW2d 915 (2013) ("A party abandons an issue when it fails to include the issue in the statement of questions presented in its appellate brief . . . ."). Third, we note that defendant's argument that Linden actually was the client for purposes of MRPC 1.5(e) is belied by defendant's own behavior. To wit, throughout discovery, defendant only provided one retainer agreement for its representation of Charles's Estate—the one signed by Dion. Thus, it is clear that defendant considered Dion as the legal representative of Charles's Estate, considering a contingent-fee agreement, such as the one at issue in this case, is required to be in writing. Absent the contract signed by Dion, defendant has provided no such written contract with Linden or any other party related to the estate. If there is no written contract with Linden, defendant's relationship with him, if he indeed, as claimed, was defendant's client, appears inconsistent with MRPC 1.5(c), which states that, "[a] contingent-fee agreement shall be in writing and shall state the method by which the fee is to be determined." Fourth, and finally, at the time defendant signed a retainer agreement with Dion on behalf of Charles's Estate, Linden had not yet been appointed as the personal representative of the estate. Consequently, at the time the bargain was struck between plaintiff and defendant regarding the referral fee, both plaintiff and defendant were treating Dion as the client with respect to Charles's Estate.

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act on behalf of another party (the principal) and bind that other party by words or actions." *Logan v Manpower of Lansing, Inc*, 304 Mich App 550, 559; 847 NW2d 679 (2014) (quotation marks omitted). With respect to agencies, "we consider 'the relations of the parties as they in fact exist under their agreements or acts' and note that in its broadest sense agency 'includes every relation in which one person acts for or represents another by his authority.' " *St Clair Intermediate Sch Dist*, 458 Mich at 557, quoting *Saums v Parfet*, 270 Mich 165, 170-171; 258 NW 235 (1935). "[F]undamental to the existence of an agency relationship is the right to control the conduct of the agent . . . with respect to the matters entrusted to him." *St Clair Intermediate Sch Dist*, 458 Mich at 558 (citation omitted).

"The authority of an agent to bind a principal may be either actual or apparent." *Alar v Mercy Mem Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995). "Actual authority may be express or implied. Implied authority is the authority which an agent believes he possesses." *Meretta v Peach*, 195 Mich App 695, 698; 491 NW2d 278 (1992). "Actual authority of an agent may be implied from the circumstances surrounding the transaction at issue." *Hertz Corp v Volvo Truck Corp*, 210 Mich App 243, 246; 533 NW2d 15 (1995). "These circumstances must show that the principal actually intended the agent to possess the authority to enter into the transaction on behalf of the principal." *Id*. "Apparent authority arises where the acts and appearances lead a third person reasonably to believe that an agency relationship exists. However, apparent authority must be traceable to the principal and cannot be established only by the acts and conduct of the agent." *Alar*, 208 Mich App at 528.[4]

2. ANALYSIS

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[4] The Michigan Supreme Court provided the following relevant summary of law involving apparent authority:

> Whenever the principal, by statements or conduct, places the agent in a position where he appears with reasonable certainty to be acting for the principal, or without interference suffers the agent to assume such a position, and thereby justifies those dealing with the agent in believing that he is acting within his mandate, an apparent authority results which replaces that actually conferred as the basis for determining rights and liabilities. The measure of authority consists of those powers which the principal has thus caused or permitted the agent to seem to possess, whether the agent had actual authority being immaterial if his conduct was within the apparent scope of his powers; the question involved is no longer what authority was actually given or was intended by the parties to the agency agreement, but resolves itself instead into the determination of what powers persons of reasonable prudence, ordinarily familiar with business practices, dealing with the agent might rightfully believe him to have on the basis of the principal's conduct. Absence of intention to confer any power of the character of that exercised cannot be asserted so as to avoid or vitiate the authority, for the agent's authority as to those with whom he deals is what it reasonably appears to be. [*Central Wholesale Co v Sefa*, 351 Mich 17, 25; 87 NW2d 94 (1957), quoting 2 CJS, Agency, § 96, pp 1210-1211.]

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On cross-appeal, defendant argues that the trial court should have granted summary disposition in its favor on the issue of Danzig's apparent or actual authority to bind defendant to the referral contract. Before the trial court and now on appeal, the parties' arguments center on the issue of Danzig's apparent authority. When arguing the summary disposition motion, defendant provided evidence that it had a policy barring any partner or employee from agreeing to pay referral fees without the express approval of Geoffrey Fieger. In response, plaintiff provided evidence that Danzig had such authority, exercised it often, and almost never got approval from Fieger. In determining whether summary disposition was warranted, a trial court is required to consider "all surrounding facts and circumstances" to determine "whether an ordinarily prudent person, conversant with" the business in question, "would be justified in assuming" that Danzig "had the authority to" enter into the relevant contract on defendant's behalf. *Meretta*, 195 Mich App at 699. The inquiry must focus on the actions of defendant when determining whether Danzig had apparent authority. *Alar*, 208 Mich App at 528.

Defendant argues that the trial court erred by relying on the statements and actions of Danzig in finding that there was a question of fact regarding Danzig's apparent authority. While defendant claims that it did nothing to establish a third party's reasonable belief in Danzig's apparent authority, the record shows otherwise. First, defendant made Danzig a partner in the law firm, which reasonably suggests to those dealing with Danzig that he acted on behalf of defendant. Second, defendant decided to put Danzig's name in the title of the firm which is listed on the firm's letterhead. Thus, those dealing with Danzig via written correspondence, as was the case here, could reasonably have believed that defendant had designated Danzig as an agent to make contracts on behalf of defendant. Third, defendant named Danzig as the head of the intake department. Therefore, in addition to being a named partner and appearing on the letterhead, defendant also cloaked Danzig in apparent authority by appointing him as the head of the department that was most particularly involved here—the intake department. Based on that evidence, a reasonable jury could determine (and did in this case) that, given defendant's actions and assertions, a third party could reasonably have believed that Danzig had the authority to enter into the given contract. See *id*. The fact that defendant had an internal policy that any referrals had to be approved by Fieger does not affect our conclusion, because the inquiry properly is focused on Danzig's apparent, rather than actual, authority. See *Central Wholesale Co v Sefa*, 351 Mich 17, 25; 87 NW2d 94 (1957) (quotation marks omitted).

The trial court properly denied defendant's motion for summary disposition because there was a genuine issue of material fact regarding whether Danzig had the apparent authority to bind defendant to the relevant contract.

III. EVIDENCE

Plaintiff argues that the trial court abused its discretion when it allowed Mervie, Dixon, and Hill to testify about objections to the referral fee agreement that occurred after the time they were informed of it.

A. STANDARD OF REVIEW

This Court recently restated the proper standard of review for evidentiary issues such as those presented here:

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> The decision whether to admit evidence falls within a trial court's discretion and will be reversed only when there is an abuse of that discretion. A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. However, preliminary questions of law, including the interpretation and application of statutes and legal doctrines, are reviewed de novo, and the trial court necessarily commits an abuse of discretion if it makes an incorrect legal determination. [*Mueller v Brannigan Bros Restaurants & Taverns LLC*, 323 Mich App 566, 571; 918 NW2d 545 (2018) (quotation marks and citations omitted).]

B. APPLICABLE LAW & ANALYSIS

"To be admissible, evidence must be relevant." *Rock v Crocker*, 499 Mich 248, 256; 884 NW2d 227 (2016), citing MRE 402. "Relevant evidence is 'evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' " *Rock*, 499 Mich at 256, quoting MRE 401. At issue here was whether the clients knew of the referral fee agreement and did not object, so as to conform to the mandates of MRPC 1.5(e).

Plaintiff posits that the only objection relevant to the case is an objection by the clients made at the time they were informed of the agreement. Therefore, plaintiff argues, the trial court should have barred the clients from testifying about any objections to the referral fee that arose *after* the agreement was made. While plaintiff is correct that defendant was required to prove that the clients objected to the referral fee agreement at the time they were informed, that does not render a later objection entirely irrelevant so as to be inadmissible. The United States District Court for the Eastern District of Michigan has provided persuasive analysis on the issue of when clients must object pursuant to MRPC 1.5(e):

> The rule does not specify when objections to a lawyer's participation must be lodged. Nor does the interpretive ethics opinion provide guidance on this issue; rather, pointing to other ethics rules, the opinion focuses on the type of advice that must be given by both the referring and receiving lawyer, such as "who will be working on the case, what services each lawyer will render to the client, and who is responsible for the matter." [State Bar of Michigan Ethics Opinion] RI–234, at 2 (1995).
>
> Since a fee agreement is a contract, obligations became fixed once there was a meeting of the minds. See *Port Huron Ed Assoc v Port Huron Area School Dist*, 452 Mich 309, 326-327; 550 NW2d 228 (1996) (binding contract created when there is meeting of the minds; meeting of the minds likewise required to modify or cancel contract); *Groulx v Carlson*, 176 Mich App 484, 491; 440 NW2d 644 (1989). To allow subsequent events, such as a mere change of heart, to upset the referral arrangement is inconsistent with basic contract law. *Port Huron Ed Assoc*, 452 Mich at 326-327. Further, it would be unwise as a matter of policy to permit a client by whim or fancy, or perhaps more nefarious motives, to undo a referral contract after the lawyers' work is finished but before final

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payment. [*Idalski v Crouse Cartage Co*, 229 F Supp 2d 730, 738-739 (ED Mich, 2002).]

We find this analysis to be persuasive. Plaintiff is correct that the clients must have objected at the time they were informed of the agreement in order for there to be a violation of MRPC 1.5(e). See *Idalski*, 229 F Supp 2d at 738-739.

However, later objections are not irrelevant and inadmissible. First, looking at the analysis in *Idalski*, later objections were not deemed irrelevant, only that an objection had to occur at the time of being informed in order for the contract to violate MRPC 1.5(e) and be rendered unenforceable. In a case like this, the later objections remain relevant. At trial, Danzig testified that he informed all of the clients of the fee agreement and that they did not object. Sherbow agreed with respect to the July 26, 2012 meeting that he attended. Mervie, Hill, and Dixon, however, testified that they did not believe they had been informed of the referral agreement, because they could not specifically remember the conversation that had taken place more than four years before trial, but that if they had been informed they would have objected.

While the objection by the clients voiced at trial could not invalidate the contract pursuant to MRPC 1.5(e), it does make it more likely that the clients *were not* informed of the referral fee agreement. Obviously, a person cannot object to information that they did not receive. Thus, when the clients testified that they either were not informed or did not remember being informed of the referral agreement, it was only logical that they did not object at the time. Therefore, their failure to remember objecting or being informed of the agreement in 2012, and their testimony that they believed they would have objected if informed, makes it more likely that they were not informed. That testimony is relevant because if the jury believed the clients that they would have objected if informed, but that they did not object at the time, then it would be logical to infer that they must not have been informed. Therefore, while the objections to the referral fee agreement at the time of trial were not relevant to whether the clients objected at the time they were informed, those objections *were* relevant to whether the clients in fact were informed.

Thus, because that testimony " 'ma[de] the existence of any fact that is of consequence to the determination of the action more probable . . . than it would be without the evidence,' " it was admissible. *Rock*, 499 Mich at 256, quoting MRE 401. The challenged evidence was relevant and admissible, and the trial court did not abuse its discretion in admitting it at trial. See *Mueller*, 323 Mich App at 571. However, given the limited relevance of the testimony, the trial court should consider any request for a limiting instruction regarding the evidence made by plaintiff during any retrial.

IV. JURY INSTRUCTIONS & VERDICT FORM

Plaintiff argues that it is entitled to a new trial based on prejudicial legal errors made by the trial court when instructing the jury and approving the proposed verdict form. We agree.

A. STANDARD OF REVIEW

"We review de novo properly preserved instructional errors . . . ." *Alpha Capital Mgt, Inc v Rentenbach*, 287 Mich App 589, 626; 792 NW2d 344 (2010). "Whether the trial court's

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instruction on the applicable burden of proof was proper is a question law that this Court reviews de novo." *Stein v Home-Owners Ins Co*, 303 Mich App 382, 386-387; 843 NW2d 780 (2013). We "consider the jury instructions as a whole to determine whether they adequately present the theories of the parties and the applicable law." *Alpha Capital*, 287 Mich App at 626-627. "Instructional error warrants reversal when it affects the outcome of the trial." *Hardrick v Auto Club Ins Ass'n*, 294 Mich App 651, 681; 819 NW2d 28 (2011), citing MCR 2.613(A). Stated differently, "a verdict should not be set aside unless failure to do so would be inconsistent with substantial justice." *Jimkoski v Shupe*, 282 Mich App 1, 9; 763 NW2d 1 (2008).

B. BURDEN OF PROOF

Plaintiff argues that the trial court committed reversible error by instructing the jury that plaintiff had the burden of proof with respect to defendant's affirmative defense that the contract violated MRPC 1.5(e). We agree.

1. APPLICABLE LAW & ANALYSIS

Pursuant to MCR 2.111(F)(3)(a)-(b), an argument "that an instrument or transaction is void, voidable, or cannot be recovered on by reason of statute or nondelivery," or "that by reason of other affirmative matter seeks to avoid the legal effect or defeat the claim of the opposing party, in whole or in part," is an affirmative defense. More generally, "[a]n affirmative defense is a defense that does not controvert the plaintiff's establishing a prima facie case, but that otherwise denies relief to the plaintiff." *Detroit Edison Co v Stenman*, 311 Mich App 367, 382; 875 NW2d 767 (2015), quoting *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 312; 503 NW2d 758 (1993). "[I]t is a matter that accepts the plaintiff's allegation as true and even admits the establishment of the plaintiff's prima facie case, but that denies that the plaintiff is entitled to recover on the claim for some reason not disclosed in the plaintiff's pleadings." *Detroit Edison Co*, 311 Mich App at 382, quoting *Stanke*, 200 Mich App at 312.

In this case, defendant and plaintiff had a written contract, which required defendant to pay plaintiff 20% of the contingent fee defendant earned in the litigation involving Mervie, Dixon, and Hill. Although defendant challenged Danzig's authority to bind defendant to that contract, the jury explicitly disagreed. Thus, under applicable agency and contract law, defendant and plaintiff had a contract. Defendant's alternate argument, which is at issue here, was that the contract should be found unenforceable as violative of Michigan's public policy. Defendant contends that the contract violated public policy because it was made without fully complying with MRPC 1.5(e), which required the clients to be informed of the referral fee agreement and to not object. Defendant sought "to avoid the legal effect" of the contract on public policy grounds, MCR 2.111(F)(3)(b), or to establish "that [the contract was] void [or] voidable," MCR 2.111(F)(3)(a). Pursuant to MCR 2.111(F)(3), such an argument is an affirmative defense, because it "is a defense that does not controvert [] plaintiff's establishing [that] a prima facie [contract exists], but that otherwise denies relief to [] plaintiff." *Detroit Edison Co*, 311 Mich App at 382.

For affirmative defenses, "a party must assert [them] and has the burden of providing evidence in support." *Williamstown Twp v Sandalwood Ranch, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2018) (Docket No. 337469), slip op at 6, lv pending, citing *Attorney General ex*

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rel Dep't of Environmental Quality v Bulk Petroleum Corp, 276 Mich App 654, 664; 741 NW2d 857 (2007). "Only after such evidence has been introduced does the burden shift to the plaintiff to produce clear and decisive evidence to negate the defense." *Williamstown Twp*, ___ Mich App at ___; slip op at 6 (quotation marks omitted). Thus, pursuant to the Michigan Court Rules and established caselaw, defendant was required to bear the burden of proof with respect to its affirmative defense. See *id*.; MCR 2.111(F)(3).

Defendant argues that to prove a contract, a party is required to prove that the contract involved a legal subject matter. It is true that one element of a valid contract is that the contract is in regards to "a proper subject matter . . . ." *Innovation Ventures*, 499 Mich at 508 (quotation marks omitted). However, defendant does not actually contend that the "subject matter" of the contract is illegal, because MRPC 1.5(e) specifically contemplates that referral fees between lawyers are legal, except under certain circumstances. See also *Morris & Doherty*, 259 Mich App 38. Instead, defendant's argument is that the specific contract in question was unenforceable as violative of public policy due to a failure to comply with MRPC 1.5(e). Thus, the trial court erred in instructing the jury to the contrary.[5]

C. ATTORNEY-CLIENT RELATIONSHIP REQUIREMENT

Plaintiff also argues that the trial court erred when it instructed the jury that Mervie, Hill, and Dixon must have had an attorney-client relationship with Sherbow before being referred to defendant in order to satisfy the requirements of MRPC 1.5(e). We agree.

1. APPLICABLE LAW & ANALYSIS

MRPC 1.5(e) (emphasis added), allows that "[a] division of a fee between lawyers who are not in the same firm may be made only if . . . *the client* is advised of and does not object to the participation of all the lawyers involved; and . . . the total fee is reasonable." Considering the plain language of the rule, as this Court must, *Sanders*, 323 Mich App at 266-267, a contract for a referral fee violates MRPC 1.5(e), and is thus unenforceable as against public policy, unless a client has been advised of the agreement and did not object.

Defendant contends, and the trial court agreed at trial, that the use of the word "client" meant that Dixon, Mervie, and Hill had to be Sherbow's clients in order to conform to the rule. Plaintiff argued to the contrary, citing that MRPC 1.5(e) only uses the term "client" to mean that the person would eventually become the client of the firm or lawyer receiving the referral. We agree with plaintiff. This Court's goal is to discover the intent of the Michigan Supreme Court in drafting the rule and to use the language of the rule, as a whole, to determine that intent.

[5] Long-standing caselaw establishes that such arguments are affirmative defenses for which a defendant bears the burden of proof. See *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 239; 615 NW2d 241 (2000); see also *Rothschild v Schneider*, 167 Mich 501, 503-506; 133 NW 530 (1911); see also *Great Lakes Gas Transmission Co v MacDonald*, 193 Mich App 571, 576-577; 485 NW2d 129 (1992); see also *Cheff v Terpstra*, 7 Mich App 141, 145; 151 NW2d 208 (1967) (holding that "illegality of contract is an affirmative defense in Michigan . . . .").

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Sanders, 323 Mich App at 266-267; *Morris & Doherty*, 259 Mich App at 44. As this Court has held, "MRPC 1.5(e) is designed to prohibit brokering, to protect a client from clandestine payment and employment, and to prohibit aggrandizement of fees." *McCroskey, Feldman, Cochrane & Brock, PC v Waters*, 197 Mich App 282, 286-287; 494 NW2d 826 (1992).

Requiring a party to establish an attorney-client relationship with the referring attorney before a referral takes place adds a new element to the rule and is not part of MRPC 1.5(e) as it is written. See *Waters*, 197 Mich App at 286-287. The requirement to advise the person of the referral fee split and allow them to object destroys the ability of attorneys to engage in clandestine payments to one another and impairs brokering by allowing the potential client to object to the referral fee. *Id*. As to *Waters* concern with "prohibit[ing the] aggrandizement of fees," the client requirement proposed by defendant likely would have the opposite effect, encouraging attorneys to engage in billable work with the person being referred so as to firmly ensure that an attorney-client relationship had been established. See *id*. After all, as our Supreme Court has held, an attorney-client relationship typically is not formed until an attorney "render[s] legal advice and legal services . . . and the client[] reli[es] on that advice or those services . . . ." *Macomb Co Taxpayers Ass'n v L'Anse Creuse Pub Sch*, 455 Mich 1, 11; 564 NW2d 457 (1997).

This additional requirement also has the potential to result in situations where an attorney, who typically would immediately refer a case that they knew they were not qualified or adequately able to handle, might retain the case for a certain period of time. In so doing, that underqualified or underprepared attorney might cause a detriment to the injured party's case. After all, Michigan law with respect to personal injury cases often have exacting statutory requirements (such as medical malpractice, the no-fault act, cases implicating governmental immunity, etc.) which an attorney not versed in that area of law might unwittingly fail to meet. Thus, the Michigan Supreme Court wrote MRPC 1.5(e) in a manner that protects clients from the aforementioned dangers by requiring attorneys who will be representing the party to inform the client of the referral fee and to allow for objection. See *Waters*, 197 Mich App at 286-287. Interpreting the rule's use of the word "client" as suggested by defendant and the trial court would add a requirement not explicitly listed in MRPC 1.5(e), and would work to undermine the overriding purpose of the rule, which is to protect clients. See *Waters*, 197 Mich App at 286-287.[6]

In fact, allowing defendant to misconstrue the rule and then use it to void a contract into which it willingly entered would be a plain misapplication of the MRPC in general. To wit, in the preamble to the MRPC, in the section regarding the scope of the rules, the drafters warned

[6] For example, in *Waters*, 197 Mich App at 287, in considering a case where two attorneys disputed the share of a contingent fee already paid, this Court reasoned that the dangers from which MRPC 1.5(e) sought to protect clients was only tangentially applicable: "Plainly, none of these concerns is implicated in this case. The agreement is simply a mechanism for dividing an already existing fee. In other words, this is not a referral situation contemplated by the rule."

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that "the purposes of the rules can be subverted when they are invoked by opposing parties as procedural weapons."

In sum, MRPC 1.5(e) does not contain a requirement that Sherbow have an attorney-client relationship with Mervie, Dixon, and Hill, and the trial court erred in instructing the jury to the contrary and including the question on the verdict form.[7]

D. REVERSAL IS REQUIRED

Errors regarding jury instructions and jury verdict forms only require reversal where they "affect[] the outcome of the trial." *Hardrick*, 294 Mich App at 681, citing MCR 2.613(A). Additionally, the Michigan Supreme Court has held that erroneous jury instructions require reversal where they "effectively relieved [a party] of their burden of proof and [were] not specific enough to allow the jury to decide the case intelligently, fairly, and impartially." *Cox ex rel Cox v Bd of Hosp Managers for City of Flint*, 467 Mich 1, 15; 651 NW2d 356 (2002) (quotation marks omitted).

The trial court committed two errors when providing jury instructions and provided a jury verdict form that was irredeemably deficient.[8] The issues tried were whether Danzig had the

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[7] Although a Michigan appellate court has not yet analyzed the word "client" in MRPC 1.5(e), the Kansas Supreme Court did so and reached the same conclusion. Despite lacking precedential value, the Kansas Supreme Court's reasoning in analyzing its identical rule is particularly persuasive:

> MRPC 1.5(g) lists two requirements for a division of a fee between lawyers: (1) the *client* is advised and does not object; and (2) the total fee is reasonable. The word "client" could refer either to the status of a litigant with regard to the referring attorney or with regard to the attorney to whom the matter is referred. If it refers to the relationship with regard to the referring attorney, the rule mandates an attorney-client relationship with the referring attorney. It is clear that the litigant would be a client of the attorney to whom the matter is referred. We adopt what we believe to be the logical interpretation, that "client" refers to the status of the litigant with the attorney to whom the matter is referred.
>
> Under this construction of the rule and the facts of this case, although it would be preferable, MRPC 1.5(g) does not require that the referring attorney have an attorney-client relationship with the person referred. Of course, the attorney accepting the referral may impose such a requirement before agreeing to pay a referral fee. This referral relationship between counsel is a matter of contract between attorneys. [*Ryder v Farmland Mut Ins Co*, 248 Kan 352, 363; 807 P2d 109 (1991).]

We now hold similarly.

[8] Interestingly, the trial court reached the same conclusion before trial, holding that there was no legal support for requiring Sherbow to have an attorney-client relationship with Mervie, Dixon,

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actual or apparent authority to bind defendant to the referral contract, and if so, whether the clients were informed about the referral fee and, if so, whether they objected. Despite that, the trial court instructed the jury that it had to determine whether Mervie, Hill, and Dixon were clients of Sherbow. The jury verdict form ordered the jury that if it found that the three individuals were not Sherbow's clients then plaintiff had no claim to its share of the attorney fees from Mervie's, Dixon's, and Hill's cases. The jury answered that there was no such relationship, thereby resulting in a verdict of no cause of action with respect to those three cases. Considering that the jury made a dispositive determination of plaintiff's claims against defendant based on an unnecessary requirement, the error clearly affected the outcome of trial. See *Hardrick*, 294 Mich App at 681.

Plaintiff and defendant both note, however, that the jury continued to answer the second question in the negative as well, finding that Sherbow did not refer Mervie, Dixon, or Hill to defendant. Based on the record provided and the issues that were to be tried, it is not clear what purpose the trial court had in asking that question but, presumably, the trial court was asking the jury to determine if there was consideration for the written referral fee contract. Assuming the trial court was attempting to determine whether there was an enforceable contract based on an actual referral, we believe it is relevant to consider each element the jury was instructed to reach a verdict on to determine the existence of a contract. The trial court instructed the jury that in order for there to be an enforceable, binding contract, plaintiff had to prove by a preponderance of the evidence that Mervie, Dixon, and Hill were aware of the referral agreement and did not object to it. As discussed, defendant actually bore the burden to prove the opposite: that the clients were not informed or did object. Thus, based on the instructions the jury was provided, the jury was required to answer the second question on the verdict form in the negative if it found that plaintiff did not meet its burden of proving that MRPC 1.5(e) was not violated. Considering the trial court's confusing and improper instructions given regarding MRPC 1.5(e) and on the party bearing the burden of proof, defendant was "effectively relieved" of its burden of proof and as a result the jury was not allowed "to decide the case intelligently, fairly, and impartially." *Cox ex rel Cox*, 467 Mich at 15.

We vacate the jury's verdict with respect to the first two questions asked on the verdict form, and remand for a new trial consistent with this opinion.

V. JNOV

Plaintiff argues both that the trial court erred in denying its motion for JNOV with respect to Dixon and that this Court should grant plaintiff JNOV with respect to Mervie. We disagree.

A. STANDARD OF REVIEW

This Court "reviews de novo a trial court's decisions regarding motions for JNOV." *Hecht v Nat'l Heritage Academies, Inc*, 499 Mich 586, 604; 886 NW2d 135 (2016). "The

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and Hill, and that defendant was to bear the burden of proving that MRPC 1.5(e) was violated. Yet, at trial, the trial court reversed course and instructed the jury to the exact opposite.

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appellate court is to review the evidence and all legitimate inferences in the light most favorable to the nonmoving party. Only if the evidence so viewed . . . establish[es] a claim as a matter of law, should the motion be granted." *Id.* (quotation marks omitted).

B. APPLICABLE LAW & ANALYSIS

Once again, this argument focuses on the interpretation and analysis of MRPC 1.5(e). With respect to Dixon's case, plaintiff presents this particular argument on appeal based on the assumption that the trial court properly instructed the jury and a new trial is not required. Therefore, if it has merit, a new trial would not be required with respect to plaintiff's claim to 20% of the fees from Dixon's case. Plaintiff's argument for JNOV relies on a series of presumptions, the first of which is that Dion entered into a contract for representation with defendant on behalf of Dixon, and thus, for the purposes of MRPC 1.5(e), he was considered the "client" who had to be informed of the referral fee agreement and not object. Plaintiff insists that the trial court erred by not applying the same logic to Dixon given its determination that Dion acted on behalf of Charles's Estate and was considered the "client" under the rule. The trial court's ruling in that regard, however, is not pertinent to the issue presented here. The language of the rule is plain and unambiguous: the client must be advised of the referral fee agreement and not object. MRPC 1.5(e). The record is not disputed that Dion agreed to defendant's representation of Dixon, his mother, at the July 26, 2012 meeting at defendant's office. Dion did so because Dixon was in a medically-induced coma at the time. However, Dixon eventually was brought out of the coma, regained consciousness, and was moved to a rehab facility. While there, testimony at trial showed that Danzig came to visit her and explained defendant's legal representation of her. Danzig further testified that he informed Dixon of the referral fee agreement and that she did not object to it. Dixon presented contrary testimony.

While Dion initially hired defendant on behalf of Dixon, she clearly was given the opportunity to either ratify or exit that contract. As the record makes clear, Dixon approved of the hire. Dixon's acknowledgement that she approved of Dion's decision to retain defendant to represent her does not morph Dion into a "client" with respect to either the contract between defendant and Dixon or pursuant to MRPC 1.5(e). When Dixon recovered from her injuries and had a clear mind, she was told that defendant represented her in the litigation arising out of the automobile accident. At that point, she had the opportunity to terminate that representation and seek alternate counsel. Similarly, when she was informed about the referral fee agreement—if she was—she also had the opportunity to object. Thus, with respect to Dixon, Dion was not considered the "client" pursuant to MRPC 1.5(e). Consequently, the jury's finding that Dion was Sherbow's client, Sherbow referred him to defendant, and that Dion was aware of the referral fee agreement and did not object, did not require a judgment with respect to Dixon. If the jury believed that Dixon was not made aware of the referral fee agreement when she ratified Dion's contract with defendant, then the contract violated MRPC 1.5(e) and was unenforceable as violative of public policy. *Morris & Doherty*, 259 Mich App at 58. Therefore, because judgment in plaintiff's favor was not required as a matter of law based on the jury's findings of fact, the trial court properly denied plaintiff's motion for JNOV. *Hecht*, 499 Mich at 604.

Next, plaintiff also argues that this Court should grant JNOV in its favor with respect to Mervie. Plaintiff readily admits on appeal that it did not raise this issue before the trial court.

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Thus, this issue is not preserved for appeal and we decline to consider it. *Elahham v Al-Jabban*, 319 Mich App 112, 120; 899 NW2d 768 (2017).

VI. CONCLUSION

We affirm the trial court's orders denying summary disposition and JNOV, vacate the jury's verdict with respect to the first two questions regarding Mervie, Hill, and Dixon, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro

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Court of Appeals, State of Michigan

ORDER

Law Offices of Jeffrey Sherbow v Fieger & Fieger PC

Docket No. 338997

LC No. 2015-147488-CB

Christopher M. Murray
Presiding Judge

Douglas B. Shapiro

Michael J. Riordan
Judges

The Court orders that the motion for leave to file a corrected motion for reconsideration is GRANTED, and the corrected motion is accepted.

It is further ordered that the motion for reconsideration is DENIED.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 05 2019
Date

Chief Clerk

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

LAW OFFICES OF JEFFREY SHERBOW, P.C.,

Plaintiff,

-vs-

FIEGER & FIEGER, P.C., d/b/a FIEGER, FIEGER, KENNEY & JOHNSON, P.C.,

Defendant.

Hon. James M. Alexander
Case No.: 15-147488-CB

/

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/

ORDER OF JUDGMENT

At a session of said Court held in the
City of Pontiac, County of Oakland,
State of Michigan, on _____ 2017

_____
PRESENT: Honorable James M. Alexander
Circuit Court Judge

This matter having come to be heard as a trial by jury, and the Court having conducted a full trial on the merits, and the jury having returned its verdict on the attached special verdict form (Exhibit "A"), and the Court being otherwise fully advised of the promises,

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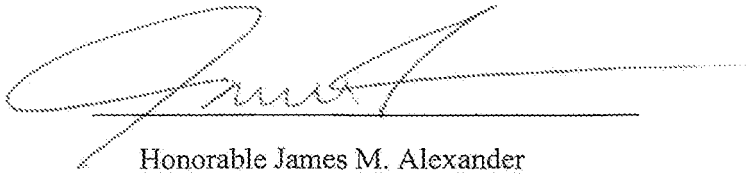
NOW, THEREFORE, it is herby ordered as follows:

1. A Judgment of No Cause of Action shall enter in favor of Defendant, and against Plaintiff, in the claims involving the cases of Mervie Rice, Philip Hill and Dorothy Dixon. Defendant shall be awarded pro rata all costs, interest and fees as provided by law;

2. Judgment be and the same is hereby entered in favor of the Plaintiff, and against Defendant in the claim involving the case of Dion Rice for the Estate of Charles Rice, in the amount of Ninety-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($93,333.33), together with pro rata costs, interest and fees as provided by law;

3. That pursuant to MCR 2.405, the Defendant having filed an offer of Judgment One Hundred ($100.00) and 00/100 Dollars on December 16, 2016 (Exhibit "B"), and the Plaintiff having filed a Counter-Offer of Judgment in the amount of Five Hundred Fifty Thousand ($550,000) and 00/100 Dollars on December 22, 2016 (Exhibit "C"), and it appearing that the adjusted offer is more favorable to the Defendant, therefore Defendant may seek actual costs and all other relief provided by MCR 2.405.

IT IS SO ORDERED.



Honorable James M. Alexander
Circuit Court Judge

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

LAW OFFICES OF JEFFREY SHERBOW, P.C.

Plaintiff,

Case No. 15-147488-CB
Hon. James M. Alexander

v.

FIEGER & FIEGER, P.C., d/b/a FIEGER, FIEGER, KENNEY & JOHNSON, P.C.

Defendant.

/

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/

Form of Verdict

1. Were any of the following clients of Jeffrey Sherbow:

(a) Mervie Rice — Yes _____ No ✓

(b) Dion Rice on behalf of the Estate of Charles Rice — Yes ✓ No _____

(c) Philip Hill — Yes _____ No ✓

(d) Dorothy Dixon — Yes _____ No ✓

If yes to any of these, go to 2. If no, you are done.

2. If yes to any part of 1, did Plaintiff refer one, some, or all of the following personal

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injury cases to Defendant?

(a) Mervie Rice Yes _____ No ✓

(b) Dion Rice on behalf of the Estate of Charles Rice Yes ✓ No _____

(c) Philip Hill Yes _____ No ✓

(d) Dorothy Dixon Yes _____ No ✓

3. If yes to any parts of 1 and 2, did Jeffrey Danzig have actual or apparent authority to bind Fieger Firm?

Yes ✓ No _____

Date: 3-3-2017

Signature of Foreperson

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Court Explorer

Register of Actions

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Case Number
2015-147488-CB
Entitlement
JEFFREY S SHERBOW vs. FIEGER & FIEGER
Judge Name
JAMES M. ALEXANDER
Case E-Filed
YES
Case Filed
06/10/2015
Case Disposed
03/03/2017

Date	Code	Desc
05/15/2017	TRN	TRANSCRIPT FILED MTN HRG 04/26/17
04/26/2017	M	MOTION TO SETTLE JUDGMENT - HEARD
04/26/2017	JGM	JUDGMENT FILED AGNST RICE
03/31/2017	NOH	NOTICE OF HEARING FILED /POS
03/31/2017	MPR	MOTION PRAECIPE FILED FOR 04262017 JUDGE 02
03/30/2017	OBJ	OBJECTION FILED TO DFT NTC 7 DAY/POS/PLF
03/30/2017	POR	PROPOSED ORDER FILED
03/30/2017	MPR	MOTION PRAECIPE FILED FOR 04192017 JUDGE 02
03/24/2017	NTC	NOTICE FILED 7DAY/PROP/POS
03/22/2017	CCR	CERTIF CT REPORTER FILED
03/03/2017	JTE	JURY TRIAL ENDED 0.75
03/03/2017	FDJ	FINAL DISPOSITION WITH JURY IN FAVOR OF PLAINTIFF
03/03/2017	JI	JURY INSTRUCTIONS FILED
03/03/2017	VFF	VERDICT FORM FILED
03/03/2017	JI	JURY INSTRUCTIONS FILED
03/03/2017	OTH	JUROR QUESTIONS FILED
03/02/2017	OBJ	OBJECTION FILED PLF/TO DFT REQUESTED JURY INST/POS
03/02/2017	JI	JURY INSTRUCTIONS FILED PLF #4
03/02/2017	JTC	JURY TRIAL CONTINUED DAY 1.00 (CONT TO 3/3/17)
03/01/2017	JI	JURY INSTRUCTIONS FILED PROP
02/28/2017	JTC	JURY TRIAL CONTINUED DAY 0.75 (CONT. TO 3/2/17)
02/27/2017	ORD	ORDER FILED GRANTED RE PROHIBITING ALAN MAY
02/27/2017	JI	JURY INSTRUCTIONS FILED /VERDICT/POS/PLF
02/27/2017	JTB	JURY TRIAL BEGUN 1.00 (CONT. TO 2/28/17)
02/24/2017	MTN	MOTION FILED OFF PROOF REQUIREMENT/DISMISS/NOH/POS/DFT
02/24/2017	JI	JURY INSTRUCTIONS FILED DFT/VFF

Circuit Court Docket Entries

Date	Code	Desc
02/21/2017	NTC	NOTICE FILED PRESENTMENT 7 DAY ORD/POS
02/16/2017	ORD	ORDER FILED RE OBJ TO PROP ORD RE MTN IN LIM
02/15/2017	M	MOTION OBJECTION TO ORDER - T.U.A.
02/15/2017	M	MOTION BAR ALAN MAY TESTIMONY - GRANTED
02/14/2017	NTC	NOTICE FILED TAKING DEP/POS
02/13/2017	TRN	TRANSCRIPT FILED MTN HRG 02/01/17
02/10/2017	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
02/10/2017	APC	ADJ-COUNSEL 02132017 TO 02272017 BY NOTICE
02/10/2017	APR	DATE SET FOR TRIAL ON 02272017 08 30 AM Y
02/10/2017	ADJ	ORDER OF ADJOURNMENT FILED TRIAL
02/10/2017	RES	RESPONSE FILED MTN BAR TSTMNY PRIOR CASE/POS/DFT
02/08/2017	NTC	NOTICE FILED TAKING VIDEO DEP/POS
02/08/2017	MPR	MOTION PRAECIPE FILED FOR 02152017 JUDGE 02
02/08/2017	MTN	MOTION FILED PLF/IN LIMINE/NOH/POS
02/06/2017	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/06/2017	OTH	PLF PROP VOIR DIRE QUESTIONS/POS FILED
02/06/2017	OTH	PLF FINAL PRETRIAL ORDER/POS FILED
02/06/2017	OTH	DFT PROPOSED VOIR DIRE FILED
02/06/2017	OTH	DFT FINAL PRETRIAL ORD FILED/POS
02/03/2017	NOH	NOTICE OF HEARING FILED /POS
02/03/2017	OBJ	OBJECTION FILED 7 DAY/MTN ENTER ORD/BRF/POS
02/03/2017	MPR	MOTION PRAECIPE FILED FOR 02152017 JUDGE 02
02/03/2017	POR	PROPOSED ORDER FILED
02/01/2017	DM	DEFENSE MOTION FOR DIRECTED VERDICT - DENIED
02/01/2017	M	MOTION TO SETTLE FINAL PRETRIAL ORDER - HEARD
02/01/2017	NTC	NOTICE FILED OF ENTRY OF ORD/PROP ORD/POS
02/01/2017	ORD	ORDER FILED RE PETRIAL MTN FOR DIRECT VERDICT
01/31/2017	REP	REPLY FILED BRF SUPL SUPT MTN DIR VERD/LVE SD/POS/DFT
01/31/2017	TRN	TRANSCRIPT FILED MTN HRG 01/25/17
01/27/2017	NOH	NOTICE OF HEARING FILED /POS
01/27/2017	MTN	MOTION FILED ADJ TRIAL/BRF/POS/PLF
01/27/2017	RES	RESPONSE FILED DFT/TO PLF MTN TO ADJOURN TRL/POS
01/27/2017	BRF	BRIEF FILED REPLY IN SUPT OF DFTS PRETRIAL MTN
01/26/2017	RES	RESPONSE FILED TO PRETRIAL MTN FOR DIRECTED VERDICT/PL
01/25/2017	NOH	NOTICE OF HEARING FILED /POS
01/25/2017	MTN	MOTION FILED PLF/TO SETTLE JOINT FINAL PRETRL/POS
01/25/2017	MPR	MOTION PRAECIPE FILED FOR 02012017 JUDGE 02
01/25/2017	DM	DEFENSE MOTION IN LIMINE TO PRECLUDE EXP WITNESS - HEARD
01/25/2017	DM	DEFENSE MOTION TO COMPEL ANSWERS - HEARD
01/25/2017	M	MOTION TO BAR DEFENSE EXPERT COOPER - HEARD
01/25/2017	M	MOTION TO STRIKE DEF EXPERTS MICHAEL - HEARD

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Date	Code	Desc
01/25/2017	M	MOTION TO CLARIFY OR LIMIT ISSUES - GRANTED
01/25/2017	M	MOTION TO ENTER PREV SUBMITTED ORDER - HEARD
01/25/2017	M	MOTION TO BAR TESTIMONY OF JAMES HARRINGTON - G.I.P.
01/25/2017	M	MOTION TO BAR TESTIMONY OF HOWARD LINDEN - DENIED
01/25/2017	M	MOTION TO BAR TESTIMONY OF FIEGER - PREV RULED ON
01/25/2017	M	MOTION TO OMNIBUS TO BAR TESTIMONY - HEARD
01/25/2017	M	MOTION TO EXCL TESTIMONY OF UNDERLYING PLAINTIFF - HEARD
01/25/2017	DM	DEFENSE MOTION IN LIMINE RE: REFERRAL FEE - HEARD
01/25/2017	DM	DEFENSE MOTION IN LIMINE RE: OTHER CLAIMED FEE - GRANTED
01/25/2017	DM	DEFENSE MOTION IN LIMINE RE - CLAIM FEE EXCESSIVE - DENIED
01/24/2017	MPR	MOTION PRAECIPE FILED FOR 02012017 JUDGE 02
01/24/2017	MTN	MOTION FILED DIR VERD/LVE FILE DEL SD/BRF/NOH/POS/DFT
01/20/2017	RES	RESPONSE FILED MTN COMPL ANS DISC REQ/POS/PLF
01/20/2017	RES	RESPONSE FILED TO DFT MTN RE EXCESSIVE FEE/POS/PLF
01/20/2017	RES	RESPONSE FILED TO DFT MTN CLAIMED FEE DISPUTES/POS/PLF
01/20/2017	RES	RESPONSE FILED DFT MTN RE AGREED FEE/POS/PLF
01/20/2017	RES	RESPONSE FILED MTN STRIK DFT EXPERTS/POS/DFT
01/20/2017	RES	RESPONSE FILED DFT TO PLF MTN BAR TEST/
01/20/2017	RES	RESPONSE FILED DFT TO PLF MTN BAR TEST FIEGER/POS
01/20/2017	RES	RESPONSE FILED DFT/TO PLF MTN TO BAR TESTIMONY/POS
01/20/2017	RES	RESPONSE FILED MTN BAR TSTMNY/POS/DFT
01/20/2017	RES	RESPONSE FILED DFT TO PLF MTN CLARIFY/POS
01/20/2017	RES	RESPONSE FILED DFT TO MTN STRIKE DEFENSE WITNESSES/POS
01/20/2017	RES	RESPONSE FILED DFT/TO PLF MTN LIMINE EXCLUDE TESTIMONY
01/20/2017	RES	RESPONSE FILED TO MTN IN LIM RE WITNESS/POS/PLF
01/18/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/18/2017	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/18/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/18/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/18/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/18/2017	MTN	MOTION FILED LIMINE/EXCESSIV FEE/NOH/POS/DFT
01/18/2017	MTN	MOTION FILED LIMINE/FEE DISPUTES/NOH/POS/DFT
01/18/2017	MTN	MOTION FILED IN LIM RE REFERRAL FEE/NOH/POS/DFT
01/17/2017	ORD	ORDER FILED RE OPN AND ORDER
01/17/2017	MTN	MOTION FILED PLF LIM EXCL TEST/BRF/POS
01/17/2017	NOH	NOTICE OF HEARING FILED /POS
01/13/2017	NOH	NOTICE OF HEARING FILED /POS
01/13/2017	MTN	MOTION FILED LIM/BAR TSTMNY/EXAMS/REFRNC/BRF/POS/PLF
01/13/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/12/2017	PTH	PRE-TRIAL HELD ON THE RECORD
01/11/2017	MTN	MOTION FILED PLF/IN LIMINE/BRF/POS

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Date	Code	Desc
01/11/2017	MTN	MOTION FILED PLF/IN LIMINE/BRF/POS
01/11/2017	NOH	NOTICE OF HEARING FILED /POS
01/11/2017	MTN	MOTION FILED PLF/IN LIMINE/BRF/POS
01/11/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/11/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/11/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/11/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/11/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/11/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/11/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/09/2017	MTN	MOTION FILED BAR DEFENS EXPERTS/TSTMNY/BRF/POS/PLF
01/09/2017	NOH	NOTICE OF HEARING FILED /POS
01/09/2017	MTN	MOTION FILED STRIK DEFENS EXPERTS/BRF/POS/PLF
01/09/2017	MTN	MOTION FILED PLF/TO ENTER PREVIOUSLY SUBMITTED ORD/BRF
01/09/2017	MTN	MOTION FILED PLF/TO CLARIFY/LIMIT ISS/BRF
01/06/2017	MTN	MOTION FILED DFT LIM PRECL CARE TEST/POS
01/06/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/06/2017	MPR	MOTION PRAECIPE FILED FOR 01252017 JUDGE 02
01/06/2017	MTN	MOTION FILED COMP ANS 2ND DISC REQ/POS/DFT
01/06/2017	NOH	NOTICE OF HEARING FILED /POS
12/22/2016	OFF	OFFER FILED /AMD/PLF
12/22/2016	NTC	NOTICE FILED TAKING VIDEO DEPO/POS
12/21/2016	OFF	OFFER FILED PLF/TO STIPULATE TO ENTRY JGM/POS
12/19/2016	ANS	ANSWER FILED PLF/TO SECOND SET OF DISC REQUEST/POS
12/15/2016	OFF	OFFER FILED TO STP ENTRY OF JGM/POS/DFT
12/12/2016	ANS	ANSWER FILED DFT/TO PLF INT/REQ/POS
12/01/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
11/29/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
11/29/2016	NTC	NOTICE FILED OF RECORDS ONLY DEP
11/28/2016	INT	INTERROGATORIES FILED PLF/REQ TO PRODUCE/POS
11/23/2016	DM	DEFENSE MOTION TO ADD WITNESS - G.I.P.
11/18/2016	REP	REPLY FILED PLF TO MTN ADD WITNESS/BRF/POS
11/16/2016	MTN	MOTION FILED FIEGER & FIEGER ADD WITNESS/NOH/POS
11/16/2016	OTH	EXH A TO MTN ADD WITNESS FILED/POS
11/15/2016	MPR	MOTION PRAECIPE FILED FOR 11232016 JUDGE 02
11/10/2016	NTC	NOTICE FILED TAKING DEP/POS
11/09/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
10/19/2016	NOH	NOTICE OF HEARING FILED /POS
10/18/2016	POR	PROPOSED ORDER FILED
10/18/2016	NOH	NOTICE OF HEARING FILED /POS
10/17/2016	OBJ	OBJECTION FILED DFT/TO PRESENTMENT OF ORD/NOH/POS

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Date	Code	Desc
10/13/2016	NTC	NOTICE FILED OF PRESENTMENT OF ORD/PROP ORD/POS
10/11/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
09/29/2016	ORD	ORDER FILED DENY MTN FOR RECONSIDERATION
09/27/2016	TRN	TRANSCRIPT FILED CRSSMTN SUM DISP 08/17/16
08/29/2016	MTN	MOTION FILED RECON/PLF
08/17/2016	M	MOTION FOR PARTIAL SUMMARY - DENIED
08/17/2016	DM	DEFENSE MOTION FOR SUMMARY DISPOSITION - G.I.P.
08/17/2016	OPN	OPINION FILED /ORD RE SUM DISP
08/11/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
08/10/2016	BRF	BRIEF FILED REP IN SUPPT MTN FOR SD/POS/DFT
08/09/2016	REP	REPLY FILED TO RESP TO MTN PRT SD/PLF
08/08/2016	ORD	ORDER FILED RE FACILITATION
08/03/2016	RES	RESPONSE FILED DFT MTN SUM DISP/BRF/POS/PLF
08/01/2016	NOH	NOTICE OF HEARING FILED
08/01/2016	BRF	BRIEF FILED DFT/IN RES TO PLF MTN SUM DISP/POS
07/27/2016	ORD	ORDER FILED COMPL DEP
07/26/2016	NTC	NOTICE FILED OF PRESENTMENT OF 7 DAY RULE/PROP ORD/POS
07/26/2016	OTH	W/DRAWN 7 DAY ORD FILED
07/25/2016	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
07/25/2016	APC	ADJ-COUNSEL 08052016 TO 01122017 BY NOTICE
07/25/2016	APR	DATE SET FOR PRETRIAL ON 01122017 08 30 AM Y
07/20/2016	MPR	MOTION PRAECIPE FILED FOR 08172016 JUDGE 02
07/20/2016	DM	DEFENSE MOTION TO ADJOURN TRIAL - GRANTED
07/20/2016	M	MOTION TO COMPEL DEPOSITION - GRANTED
07/20/2016	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
07/20/2016	APC	ADJ-COUNSEL 09122016 TO 02132017 BY NOTICE
07/20/2016	APR	DATE SET FOR TRIAL ON 02132017 08 30 AM Y
07/20/2016	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
07/20/2016	APC	ADJ-COUNSEL 08112016 TO 01122017 BY NOTICE
07/20/2016	APR	DATE SET FOR PRETRIAL ON 01122017 08 30 AM Y
07/20/2016	ORD	ORDER FILED RE RESULT FACILITATION DISC ISSUES
07/20/2016	ORD	ORDER FILED RE DATES
07/19/2016	MTN	MOTION FILED DFTS/TO QUASH DEP/POS
07/19/2016	MPR	MOTION PRAECIPE FILED FOR 07272016 JUDGE 02
07/19/2016	NOH	NOTICE OF HEARING FILED /POS
07/18/2016	NTC	NOTICE FILED TAKING DEP/POS
07/15/2016	RES	RESPONSE FILED DFTS/SUPPLEMENTAL TO PLF RENEWED MTN/PO
07/15/2016	RES	RESPONSE FILED TO DFT MTN ADJ TRIAL/BRF/POS/PLF
07/12/2016	OTH	STATUS CONF HELD IN CHAMBERS
07/12/2016	MPR	MOTION PRAECIPE FILED FOR 07202016 JUDGE 02
07/12/2016	MPR	MOTION PRAECIPE FILED FOR 07202016 JUDGE 02

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Date	Code	Desc
07/12/2016	MPR	MOTION PRAECIPE FILED FOR 07202016 JUDGE 02
07/12/2016	MPR	MOTION PRAECIPE FILED FOR 07202016 JUDGE 02
07/12/2016	MTN	MOTION FILED ADJ TRIAL/NOH/POS/DFT
07/12/2016	NOH	NOTICE OF HEARING FILED /POS
07/12/2016	MTN	MOTION FILED COMPL DEP/BRF/NOH/POS/PLF
07/12/2016	NOH	NOTICE OF HEARING FILED /POS
07/08/2016	RES	RESPONSE FILED MTN DISMISS/BRF/POS/PLF
07/06/2016	ORD	ORDER FILED RE CRC MTNS SUM DISP
07/05/2016	MPR	MOTION PRAECIPE FILED FOR 08172016 JUDGE 02
07/05/2016	MPR	MOTION PRAECIPE FILED FOR 08172016 JUDGE 02
07/05/2016	MPR	MOTION PRAECIPE FILED FOR 08172016 JUDGE 02
07/05/2016	MPR	MOTION PRAECIPE FILED FOR 08172016 JUDGE 02
07/05/2016	MPR	MOTION PRAECIPE FILED FOR 08172016 JUDGE 02
07/05/2016	MPR	MOTION PRAECIPE FILED FOR 08172016 JUDGE 02
07/01/2016	APP	APPEARANCE FILED /POS/PLF
07/01/2016	MTN	MOTION FILED PT SUM DISP/MEM/NOH/POS/PLF
07/01/2016	MTN	MOTION FILED FOR SD/BRF/NOH/POS/DFT
06/30/2016	MTN	MOTION FILED DISMISS/BRF/DFTS
06/30/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
06/27/2016	OTH	STATUS CONFERENCE HELD IN CHAMBERS
06/27/2016	ORD	ORDER FILED FINAL TRIAL
06/17/2016	ORD	ORDER FILED RE MTNS COMPL ANS/PROD
06/14/2016	RES	RESPONSE FILED DFT/TO PLF MTN TO COMPEL/POS
06/14/2016	RES	RESPONSE FILED TO MTN TO COMPEL PROD DOCS/POS/DFT
06/13/2016	ORD	ORDER FILED EXTEND SUM DISP FILING DATE
06/09/2016	APR	DATE SET FOR STAT CONF ON 06272016 08 30 AM Y
06/08/2016	OTH	NON PARTY DANZIG MTN FOR PROTECT ORDER - G.I.P
06/08/2016	M	MOTION UNOPPOSED MTN TO EXTEND DATES - GRANTED
06/06/2016	NOH	NOTICE OF HEARING FILED /POS
06/06/2016	NOH	NOTICE OF HEARING FILED /POS
06/06/2016	BRF	BRIEF FILED DFT IN RES DANZIG MTN PROTECT ORD/POS
06/03/2016	MPR	MOTION PRAECIPE FILED FOR 06222016 JUDGE 02
06/03/2016	MPR	MOTION PRAECIPE FILED FOR 06222016 JUDGE 02
05/31/2016	MTN	MOTION FILED PLF/TO COMPEL PRDTN DCMNTS/BRF/NOH/POS
05/31/2016	MTN	MOTION FILED PLF/TO COMPEL/BRF/NOH/POS
05/31/2016	MPR	MOTION PRAECIPE FILED FOR 06082016 JUDGE 02
05/31/2016	MPR	MOTION PRAECIPE FILED FOR 06082016 JUDGE 02
05/31/2016	MPR	MOTION PRAECIPE FILED FOR 06082016 JUDGE 02
05/31/2016	MTN	MOTION FILED PLF/TO EXTEND DISP FILING DATE/BRF/NOH
05/27/2016	ANS	ANSWER FILED REQ PROD/POS/DFT
05/26/2016	NTC	NOTICE FILED TO COURT OF OHIO COMPLIANCE

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Date	Code	Desc
05/23/2016	ORD	ORDER FILED COA
05/19/2016	ORD	ORDER FILED COMMISSION TO TAKE DEP
05/19/2016	ORD	ORDER FILED GRNT COMMISSION OUT STATE DEP
05/18/2016	DM	DEFENSE MOTION OBJECTIONS TO PROPOSED ORDER - G.I.P.
05/18/2016	M	MOTION FOR ISSUANCE - GRANTED
05/18/2016	DM	DEFENSE MOTION UNOPPOSED MTN TO ADJOURN - GRANTED
05/18/2016	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
05/18/2016	APC	ADJ-COUNSEL 08092016 TO 08112016 BY NOTICE
05/18/2016	APR	DATE SET FOR PRETRIAL ON 08112016 08 30 AM Y
05/18/2016	ORD	ORDER FILED RE PLF MTN ADDRESS DISC
05/17/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
05/16/2016	MTN	MOTION FILED JEFFREY DANZIG/FOR PROT ORD/BRF/POS
05/16/2016	MPR	MOTION PRAECIPE FILED FOR 06082016 JUDGE 02
05/16/2016	NOH	NOTICE OF HEARING FILED /POS
05/16/2016	ANS	ANSWER FILED DFT TO 2ND SET REQ PROD/POS
05/16/2016	MTN	MOTION FILED DANZIG AMD PROTECT ORD/BRF/POS
05/12/2016	REQ	REQUEST FILED PLF/THIRD SET TO PRODUCE/POS
05/12/2016	REP	REPLY FILED TO DFT RESP TO RENEW MTN COMM/POS/PLF
05/11/2016	REP	REPLY FILED TO DFT OBJ TO PROP ORD/POS/PLF
05/11/2016	REP	REPLY FILED PLF/TO DFT RES TO PLF REWED MTN/POS
05/10/2016	NTC	NOTICE FILED TAKING DEP/POS
05/09/2016	NTC	NOTICE FILED TAKING DEP/POS
05/06/2016	MTN	MOTION FILED RESCHEDULE PRETRIAL CONF/POS/NOH/
05/06/2016	MPR	MOTION PRAECIPE FILED FOR 05182016 JUDGE 02
05/05/2016	NTC	NOTICE FILED TAKING DEP/POS
05/05/2016	NTC	NOTICE FILED TAKING DEP/POS
05/05/2016	WLT	WITNESS LIST FILED DFT SUPPL EXPERT/POS
05/05/2016	RES	RESPONSE FILED DFT TO RENEW MTN ISSUE COMM & DEPO/POS
05/05/2016	OTH	SPLMT TO OBJ TO PROP ORD FILED/POS/DFT
05/03/2016	MPR	MOTION PRAECIPE FILED FOR 05182016 JUDGE 02
05/02/2016	TRN	TRANSCRIPT FILED MTN 04/13/16
05/02/2016	MTN	MOTION FILED ISSUE ORD OUT OF STATE DEP/BRF/NOHPOS/PLF
04/27/2016	NTC	NOTICE FILED TAKING DEPO/POS
04/25/2016	MPR	MOTION PRAECIPE FILED FOR 05182016 JUDGE 02
04/25/2016	OBJ	OBJECTION FILED TO PROP ORD/NOH/POS/DFT
04/25/2016	NTC	NOTICE FILED TAKING DEP/POS
04/22/2016	NTC	NOTICE FILED TAKING DEP/POS
04/20/2016	NTC	NOTICE FILED 7 DAY/PROP ORD/POS
04/19/2016	ANS	ANSWER FILED PLF/TO INT/POS
04/15/2016	REQ	REQUEST FILED 2ND/PROD/TO DFT/POS/PLF
04/13/2016	M	MOTION TO ADDRESS DISCOVERY ABUSES - G.I.P.

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Date	Code	Desc
04/13/2016	DM	DEFENSE MOTION FOR ENTRY OF ORDER - GRANTED
04/11/2016	RES	RESPONSE FILED MTN ENTRY ORD/POS/PLF
04/11/2016	RES	RESPONSE FILED DFT TO PLF MTN ADDRESS/POS
04/07/2016	NTC	NOTICE FILED TAKING VIDEO DEP
04/07/2016	NTC	NOTICE FILED TAKING DEP/POS
04/06/2016	MPR	MOTION PRAECIPE FILED FOR 04132016 JUDGE 02
04/06/2016	MTN	MOTION FILED DFT ENTRY ORD
04/06/2016	NOH	NOTICE OF HEARING FILED
04/06/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
04/05/2016	MPR	MOTION PRAECIPE FILED FOR 04132016 JUDGE 02
04/05/2016	MTN	MOTION FILED PLF/TO ADDRESS REPEATED DISC/BRF/NOH/POS
04/01/2016	WLT	WITNESS LIST FILED PLF/SUPPLEMENTAL EXPERT/POS
03/30/2016	M	MOTION FOR COMMISSION TO TAKE DEPOSITIONS - DENIED
03/28/2016	RES	RESPONSE FILED MTN FOR COMMISSION/POS/DFT
03/25/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
03/23/2016	MPR	MOTION PRAECIPE FILED FOR 03302016 JUDGE 02
03/23/2016	MTN	MOTION FILED PLF TAKE DEPO/BRF/NOH/POS
03/18/2016	NTC	NOTICE FILED TAKING VIDEO DEPO/POS
03/17/2016	NTC	NOTICE FILED TAKING DEPO (4)/POS
03/11/2016	NTC	NOTICE FILED TAKING DEPO/POS (4)
03/01/2016	NTC	NOTICE FILED TAKING DEP/POS
03/01/2016	INT	INTERROGATORIES FILED RE WLT/POS/DFT
03/01/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
02/22/2016	NTC	NOTICE FILED TAKING DEP/POS
02/22/2016	ANS	ANSWER FILED INT/REQ PROD/ADMIT/POS/PLF
02/18/2016	ADJ	ORDER OF ADJOURNMENT FILED SO DATES
02/17/2016	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
02/17/2016	APC	ADJ-COUNSEL 05262016 TO 08052016 BY NOTICE
02/17/2016	APR	DATE SET FOR PRETRIAL ON 08052016 01 30 PM Y
02/17/2016	AID	ADJOURN FOR INVESTIGATION/DISCOVERY
02/17/2016	APC	ADJ-COUNSEL 06202016 TO 09122016 BY NOTICE
02/17/2016	APR	DATE SET FOR TRIAL ON 09122016 08 30 AM Y
02/16/2016	MPR	MOTION PRAECIPE FILED FOR 03022016 JUDGE 02
02/16/2016	MTN	MOTION FILED COMPL ANS INT/BRF/NOH/POS/PLF
02/05/2016	MTN	MOTION FILED PLF/TO EXTEND DATES/NOH/POS
02/05/2016	MPR	MOTION PRAECIPE FILED FOR 02172016 JUDGE 02
01/26/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED
01/25/2016	STO	STIP/ORD FILED EXTEND SCHEDULING DATES
01/15/2016	WLT	WITNESS LIST FILED /LAY/POS/DFT
01/15/2016	WLT	WITNESS LIST FILED /LIST/POS/PLF
01/06/2016	POS	AFFIDAVIT/PROOF OF SERVICE FILED

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Date	Code	Desc
12/30/2015	WLT	WITNESS LIST FILED DFT/EXPERT/POS
12/28/2015	TRN	TRANSCRIPT FILED MTN 12/16/15
12/28/2015	ORD	ORDER FILED DENY DFT MTN STAY PROCDNGS
12/28/2015	ORD	ORDER FILED GRNT PRT PLF MTN ANS REQ PROD
12/28/2015	ORD	ORDER FILED GRNT PRT MTN COMPL ANS INT
12/28/2015	ORD	ORDER FILED ANS PLF REQ ADMIT
12/28/2015	ORD	ORDER FILED GRNT PRT DFT MTN STRIKE NTC DEPTS
12/16/2015	OPN	OPINION FILED ORD/GRNT PLF MTN SUM DISP
12/16/2015	DM	DEFENSE MOTION MSD - DENIED
12/16/2015	M	MOTION COMPEL MORE SPECIFIC ANSWERS - G.I.P.
12/16/2015	M	MOTION STRIKE DEFENDANTS ANSWERS - DENIED
12/16/2015	DM	DEFENSE MOTION STAY PENDING APPEAL - DENIED
12/16/2015	M	MOTION COMPEL ANSWERS - G.I.P.
12/16/2015	DM	DEFENSE MOTION STRIKE DEP NOTICE AND PROT. ORDER - G.I.P.
12/15/2015	WLT	WITNESS LIST FILED PLF/EXPERT/POS
12/11/2015	BRF	BRIEF FILED RS TO MTN STRIKE ANS TO REQ ADM/POS/DFTS
12/11/2015	BRF	BRIEF FILED IN RES TO MTN COMPEL ANS TO INT/POS/DFT
12/10/2015	BRF	BRIEF FILED DFT RES TO PLF MTN COMP ANS REQ PROD/POS
12/07/2015	MTN	MOTION FILED COMPEL ANS TO INT/BRF/POS/NOH/PLF
12/07/2015	ANS	ANSWER FILED PLF/TO DFT MTN TO STRIKE NTC/BRF
12/07/2015	MPR	MOTION PRAECIPE FILED FOR 12162015 JUDGE 02
12/01/2015	RES	RESPONSE FILED PLF/TO DFT MTN STAY/BRF/POS
11/25/2015	MPR	MOTION PRAECIPE FILED FOR 12162015 JUDGE 02
11/25/2015	NOH	NOTICE OF HEARING FILED /POS
11/24/2015	MPR	MOTION PRAECIPE FILED FOR 12162015 JUDGE 02
11/24/2015	MTN	MOTION FILED STRIKE DFT ANS TO REQ TO ADMIT/BRF/NOH/PL
11/24/2015	RES	RESPONSE FILED TO DFT SECOND MSD/BRF/POS/ PLF
11/24/2015	MPR	MOTION PRAECIPE FILED FOR 12092015 JUDGE 02
11/24/2015	NOH	NOTICE OF HEARING FILED /POS
11/23/2015	APP	APPEARANCE FILED /NTC/POS/DFT
11/23/2015	MTN	MOTION FILED FOR STAY OF PROCEEDINGS/POS/DFT
11/16/2015	MPR	MOTION PRAECIPE FILED FOR 12162015 JUDGE 02
11/16/2015	NOH	NOTICE OF HEARING FILED /POS
11/13/2015	ORD	ORDER FILED RE MTN TO COMPEL
11/10/2015	OTH	PHONE CONF HELD IN CHAMBERS
11/03/2015	MTN	MOTION FILED DFT/TO STRIKE NTC TAKING DEP/BRF/NOH/POS
11/03/2015	NOH	NOTICE OF HEARING FILED /POS
11/03/2015	RES	RESPONSE FILED DFT/TO PLF MTN TO COMPEL DISC
10/29/2015	MPR	MOTION PRAECIPE FILED FOR 11182015 JUDGE 02
10/29/2015	MTN	MOTION FILED COMPL ANS REQ PROD/BRF/POS/PLF
10/21/2015	ORD	ORDER FILED DENY MTN FOR RECONSIDERATION

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Circuit Court Docket Entries

Date	Code	Desc
10/08/2015	ATC	ANSWER TO COMPLAINT FILED /AFM/JD/POS/DFTS
10/08/2015	ANS	ANSWER FILED DFT TO REQ TO PROD/POS
09/25/2015	SO	SCHEDULING ORDER FILED RE DFT MTN SUM DISP
09/24/2015	MTN	MOTION FILED DFT/TO DISMISS/SUM DISP/BRF/NOH/POS
09/24/2015	MPR	MOTION PRAECIPE FILED FOR 12162015 JUDGE 02
09/18/2015	OTH	STATUS CONFERENCE HELD IN CHAMBERS
09/18/2015	APR	DATE SET FOR PRETRIAL ON 05262016 01 30 PM Y
09/18/2015	APR	DATE SET FOR TRIAL ON 06202016 08 30 AM Y
09/18/2015	SO	SCHEDULING ORDER FILED
09/17/2015	MTN	MOTION FILED RECONSID/BRF/NOH/POS/DFT
09/11/2015	OTH	JOINT CASE MANAGEMENT PLAN FILED
08/31/2015	OPN	OPINION FILED & ORD RE SUM DISP
08/26/2015	ORD	ORDER FILED TO APPEAR/NTC
08/25/2015	APR	DATE SET FOR STAT CONF ON 09182015 08 30 AM Y
08/24/2015	STO	STIP/ORD FILED AGREEING DATE/TIME ORAL ARGUMENT
08/11/2015	ANS	ANSWER FILED REQ ADMIT/POS/DFTS
08/11/2015	REP	REPLY FILED DFT/TO PLF ANS TO DFT MSD/POS
08/05/2015	RES	RESPONSE FILED PLF AND BRF TO DFT MSD/POS
07/21/2015	NOH	NOTICE OF HEARING FILED /POS
07/21/2015	MPR	MOTION PRAECIPE FILED FOR 09022015 JUDGE 02
07/06/2015	ORD	ORDER FILED RE DFT MSD
06/30/2015	MPR	MOTION PRAECIPE FILED FOR 08262015 JUDGE 02
06/30/2015	MTN	MOTION FILED SUM DISP/BRF/NOH/POS/DFT
06/26/2015	SUM	P/S ON SUMMONS FILED 06/12/15
06/11/2015	SI	SUMMONS ISSUED
06/10/2015	C	COMPLAINT FILED /NTC ASSIGN BUS CT
06/10/2015	REQ	REQUEST FILED PLF/TO ADMIT TO DFT
06/10/2015	REQ	REQUEST FILED PLF/TO PRODUCE TO DFT

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LAW OFFICES OF JEFFREY SHERBOW, P.C.,

Plaintiff,

v Case No. 15-147488-CB

FIEGER & FIEGER, P.C., d/b/a FIEGER,
FIEGER, KENNEY & HARRINGTON, P.C.,

Defendant. /

JURY TRIAL - VOLUME I of IV

BEFORE THE HONORABLE JAMES M. ALEXANDER, CIRCUIT JUDGE

Pontiac, Michigan - Monday, February 27, 2017

APPEARANCES:

For the Plaintiff: GREGORY M. JANKS P27696
Gregory M. Janks, PC
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For Defendant: GEOFFREY N. FIEGER P30441
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1 Pontiac, Michigan
2 Monday, February 27, 2017 - 9:07 a.m.
3 * * * * * *
4 THE CLERK: All rise. The Oakland County
5 Circuit Court is now in session, the Honorable James M.
6 Alexander, presiding.
7 THE COURT: Good morning. Please be seated.
8 THE CLERK: Now calling Sherbow v Fieger, 2000 -
9 -
10 THE COURT: No -- no -- no -- no, let's do the -
11 -
12 THE CLERK: You want to do that one?
13 THE COURT: -- default, yeah. Sorry, guys, we
14 got a quickie to do.
15 (Court in recess at 9:08 a.m.)
16 (Court in session at 9:09 a.m.)
17 THE CLERK: Now calling Sherbow v Fieger, 2015-
18 147488-CB.
19 THE COURT: Your appearances, please.
20 MR. JANKS: Greg Janks, on behalf of the
21 Plaintiff.
22 MR. FIEGER: Geoffrey Fieger, on behalf of
23 Fieger & Fieger.
24 THE COURT: Ready for the jury?
25 MR. JANKS: Ready.

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1 THE COURT: Anything preliminarily?
2 MR. FIEGER: Prior to the jury, no. I filed
3 proposed jury instructions, your Honor.
4 THE COURT: Yep, got those.
5 MR. FIEGER: I also filed a motion I'd like you
6 to read prior to the introduction of testimony. I think
7 it will --
8 THE COURT: It's way too late.
9 MR. FIEGER: -- speed the trial along, yeah.
10 THE COURT: Well, it's way too late to file
11 motions, so -- We will bring the jurors in.
12 THE CLERK: All right.
13 MR. JANKS: Judge, we -- we do have one thing.
14 We submitted an order under the seven-day rule about Mr.
15 Manning (ph). There were no objections filed. Mr.
16 Bendure asked me to change the language of the motion as I
17 originally had it. I did make the changes that Mr.
18 Bendure asked for. Mr. Fieger wanted an opportunity to
19 weigh in. I was gonna' be out of town so I wasn't gonna'
20 be able to deal with it, so I just submitted it under the
21 seven-day rule, and no objections have been filed, and I
22 wonder if --
23 THE COURT: If I signed it?
24 MR. JANKS: -- housekeeping wise, we should get
25 that entered.

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1 THE COURT: We'll check it, and see if I signed
2 it. Seven days have lapsed, there's no objections, I'll
3 sign it. Okay, I'll be back when we got jurors.
4 THE CLERK: All rise.
5 (Court in recess at 9:11 a.m.)
6 (Court in session at 9:27 a.m.)
7 THE CLERK: All rise for the jury. All rise.
8 The Oakland County Circuit Court is now in session, the
9 Honorable James M. Alexander, presiding.
10 THE COURT: Good morning. Before you sit, would
11 you join me in a moment of reflection for the men and
12 women serving our country. Thank you.
13 THE CLERK: Now calling Sherbow v Fieger &
14 Fieger --
15 THE COURT: You can be seated.
16 THE CLERK: -- 2015-147488-CB.
17 THE COURT: Your appearances, please.
18 MR. JANKS: Gregory Janks, on behalf of the
19 Plaintiff, the law offices of Jeffrey Sherbow.
20 MR. FIEGER: Geoffrey Fieger, on behalf of
21 Fieger & Fieger.
22 THE COURT: Thank you. Ladies and gentlemen,
23 good morning. My name is Judge Jim Alexander. It's my
24 pleasure and my privilege to welcome you to the Oakland
25 County Circuit Court.

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1 I know that jury duty may be a new experience
2 for most of you. Jury duty is one of the most serious
3 duties that members of a free society are asked to
4 perform. Our system of self-government could not exist
5 without it. The jury is an important part of this court.
6 The right to a jury trial is an ancient tradition and part
7 of our heritage. Now, my former colleague, Fred Mester
8 (ph), used to give a 45-minute lecture on the history of
9 the jury system. Anybody up for that this morning? If
10 you want it, let me know, and I'll send you a DVD. The
11 law says that both a person who is accused of a crime --
12 strike that. I'm readin' the wrong one.
13 The jury is an important part of the court. The
14 right to a jury trial is an ancient tradition. Parties
15 have a right to a jury that's selected fairly, that comes
16 to the case without bias, and that will attempt to reach a
17 verdict based on the evidence presented. Therefore,
18 jurors must be as free as humanely possible from
19 prejudice, bias or sympathy for either side. Each side in
20 a trial is entitled to jurors who keep open minds until
21 the time comes to decide the case.
22 This is a civil case regarding a claim of breach
23 of contract made by Mr. Sherbow against the Fieger law
24 firm which I will explain more fully later. The person
25 bringing this case is called the Plaintiff. The Plaintiff

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1 in this case is Mr. Jeffrey Sherbow. He is represented by
2 Mr. Gregg Janks. Mr. Janks. would you rise, introduce
3 yourself, your client, your associates as well as name
4 your witnesses.
5 MR. JANKS: Yes, certainly, Judge. Gregg Janks,
6 I'm the lawyer for Mr. Sherbow, Jeff Sherbow and his law
7 offices. From his law offices are Matt Wood, and
8 associate Oiler (ph) and Matt's wife, Kelly, who is gonna'
9 run the AV system for exhibits here. Witnesses will
10 include Mr. Sherbow himself, will include former
11 partner/shareholders of the Fieger law firm called Jeffrey
12 Danzig and Robert Giroux who are both lawyers. Also a
13 couple of ladies called Dorothy Lawrence and -- and --
14 what's (indiscernible) first name?
15 UNIDENTIFIED VOICE: Jennifer.
16 MR. JANKS: Jennifer, Jennifer Hatchett (ph).
17 And so those will probably be our witnesses in the case.
18 Thank you.
19 THE COURT: Okay. The Defendant is the Fieger
20 and Fieger law firm. They are represented by Mr. Geoffrey
21 Fieger. Mr. Fieger, if you'd rise, introduce yourself,
22 your associates, and name the witnesses that you will
23 call, please.
24 MR. FIEGER: Thank you. Good morning ladies and
25 gentlemen. I have a cold so I apologize if I don't speak.

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1 I apologize to the Court, too, I apologize. My name is
2 Geoffrey Fieger. I'm representing my law firm here. If
3 you get that far, our witnesses would include my client,
4 Mervie Rice (ph), my client, Dion Rice (ph), my client
5 Phillip Hill (ph), my client Dorothy Dixon (ph), attorney
6 Jody Lipton (ph), and my client Howard Linden (ph). Thank
7 you, your Honor.
8 THE COURT: Thank you. Okay. Does anybody know
9 any of the parties, Mr. Sherbow or Mr. Fieger? Has
10 anybody ever been represented by Mr. Sherbow or Mr.
11 Fieger? Anybody know any of the part -- names of
12 witnesses? Okay, good.
13 A trial begins with jury selection. The purpose
14 of this process is to obtain information about you that
15 will help us choose a fair and impartial jury to hear this
16 case. During jury selection, the lawyers will ask you
17 questions. The questions are meant to find out if you
18 know anything about the case. Also, we need to find out
19 if you have any opinions or personal experiences that
20 might influence you for or against a party or a witness.
21 One or more of these things could cause you to be excused
22 even though you may be otherwise qualified to sit as a
23 juror. The questions may probe deeply into your
24 attitudes, beliefs, and experiences. The law requires
25 that we get this information so that an impartial jury can

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1 be chosen. They're not meant to be an unreasonable prying
2 into your private life.
3 If you don't hear or understand a question, you
4 should say so. If you do understand it, you should answer
5 it truthfully and completely. Please don't hesitate to
6 speak freely about anything that you believe we should
7 know.
8 During jury selection, you may be excused from
9 serving on a jury in one of two ways. First, I may excuse
10 you for cause. That is, I may decide there's a valid
11 reason why you cannot or should not serve on this case.
12 The second way to be excused is by one of the lawyers.
13 The law gives the lawyers for each side the right to
14 excuse a limited number of jurors without giving any
15 reason for doing so. If you are excused, please don't
16 feel bad or take it personally.
17 During the course of the jury selection process,
18 if there's any matter you may wish to discuss in private,
19 please raise your hand or write a note that our clerks
20 will pick up.
21 I'm now gonna' ask you all to arise -- to rise,
22 to swear or affirm that you'll answer truthfully, fully,
23 and honestly all the questions you'll be asked. Please
24 raise your right hands. Do you solemnly swear or affirm
25 you will truthfully and completely answer all questions

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about your qualifications to serve as jurors in this case?

(Jury panel answers collectively.)

THE COURT: Great, please be seated.

MR. FIEGER: Your Honor?

THE COURT: Yes.

MR. FIEGER: I apologize. There were two other witnesses I forgot.

THE COURT: Okay.

MR. FIEGER: Names are Jim Harrington from my law office, and Eric Donahue (ph) from my law office.

THE COURT: Anybody know them? Sir -- or, ma'am?

UNIDENTIFIED JUROR: Uh-hmm.

THE COURT: Who do you know?

UNIDENTIFIED JUROR: Eric Donahue.

THE COURT: Okay. What's your name and your jury number?

JUROR HALOSAC: Theresa Halosac (ph), 36.

THE COURT: Okay. All right. I think this case will take the better part of this week. Does anybody have a pre-paid vacation? All right, ma'am, in the back? Stand up, tell me your name, and your juror number.

JUROR SANTONI: (Indiscernible) juror number four.

THE COURT: What's your last name?

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JUROR SANTONI: Feather-Santoni, hyphenated.

THE COURT: Gotcha'. What's up?

JUROR SANTONI: I'm going to be going to Kalamazoo on Friday.

THE COURT: Okay. Anybody else?

UNIDENTIFIED JUROR: Your Honor, it's not a vacation, but I have a doctor's note. I'm the prominent caretaker for my failing, ill granddaughter, and I was told by your office that if I produced a note from the pediatrician I might be excused.

THE COURT: All right, let's see what we got with you. Okay, you guys can be seated. Anybody have a -- any kind of a health or a hearing problem that precludes you from either sitting for a few hours at a shot or from seeing or hearing? Good. Fill the box.

THE CLERK: Putting in row one, seat one closest to Judge Alexander, is juror number 76, Brian Witt (ph). Sitting in seat number two is juror number 144, Crystal Brockdom (ph).

THE COURT: All you sitting against the wall, you're gonna' get called. Just -- it's the way it works.

THE CLERK: Sitting in seat number three is juror number 38, Derick Powell (ph). Sitting in seat number four is juror number 242, Wendy (indiscernible).

THE COURT: You thought I was kidding.

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UNIDENTIFIED JUROR: (Indiscernible).

THE CLERK: Sitting in seat number five is juror number 204, Andrea Hill (ph). Sitting in seat number six is juror number 178, James Puttin (ph). Sitting in seat number seven is juror number 33, Thomas (indiscernible). Sitting in sitting in row two, seat number eight closest to Judge Alexander is juror number 181, Deanne Dremo (ph).

THE COURT: Okay, Mr. Witt, I'm gonna' start with you, and go right down the line, and then end with Ms. -- Ms. Raymo (ph). Please tell me what you do for a living, and if you have a spouse or significant other, what that person does for a living.

JUROR WITT: I'm a kitchen supervisor at Buddy's Pizza, and I do not have a spouse yet.

JUROR RAYMO: Lawyer for General Motors.

THE COURT: Okay, do you have a spouse or significant other?

JUROR RAYMO: No, I do not.

THE COURT: Okay.

UNIDENTIFIED JUROR: I'm a college student, and I don't have a significant other.

THE COURT: Where do you go to school?

UNIDENTIFIED JUROR: U of M.

THE COURT: What are you studying?

UNIDENTIFIED JUROR: Go Blue. Computer

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1 engineering.
2 THE COURT: Okay, Ms. (indiscernible).
3 UNIDENTIFIED JUROR: I (indiscernible) ultra-
4 sound, and my husband is a UPS driver.
5 MR. FIEGER: Your Honor (indiscernible).
6 THE COURT: Yeah, keep your voice up a little
7 bit (indiscernible).
8 UNIDENTIFIED JUROR: Oh, sorry, cardiac and
9 vascular ultrasound, and my husband's a UPS driver.
10 THE COURT: Okay. You may notice I do not have
11 a jury -- or a court reporter here, so you gotta' keep
12 your voice up because we're recording everything. And
13 those of you in the audience, please listen carefully to
14 the questions that are asked 'cuz chances are you're going
15 to be called up at some point. Ms. Hill?
16 JUROR HILL: I'm a grand contract officer at
17 Wayne State University. My fiancé works for his comp --
18 his family at a small company, supplier company.
19 THE COURT: Okay, Mr. -- it is Hutton?
20 JUROR HUTTON: I am a teacher, and -- high school
21 teacher.
22 THE COURT: What kind of teacher?
23 JUROR HUTTON: High school.
24 THE COURT: Okay.
25 JUROR HUTTON: And my fiancé is a elementary

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1 teacher.
2 THE COURT: Whatta' you teach?
3 JUROR HUTTON: Social studies.
4 THE COURT: (Indiscernible).
5 UNIDENTIFIED JUROR: I'm a carpenter. My fiancé
6 is a nurse aid.
7 THE COURT: Okay, Ms. Raymo(ph).
8 JUROR RAYMO: I'm a psychologist. I work for
9 Beaumont, and I teach at Wayne State, and my husband is
10 (indiscernible).
11 THE COURT: Okay, has anybody ever served on a
12 jury before? Mr. Hutton, what kind of case and where?
13 JUROR HUTTON: It was a criminal case here in
14 Oakland County.
15 THE COURT: How long ago?
16 JUROR HUTTON: Three years ago.
17 THE COURT: Did it go to verdict?
18 JUROR HUTTON: Yes.
19 THE COURT: Were you the foreperson of that
20 jury?
21 JUROR HUTTON: What, the leader?
22 THE COURT: Yeah, the leader.
23 JUROR HUTTON: No.
24 THE COURT: Okay. Has anybody ever been
25 involved in litigation before? You have? What kind --

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1 what kind of case?
2 UNIDENTIFIED JUROR: I was a witness for a
3 patient of mine in a criminal case, domestic violence
4 criminal case.
5 THE COURT: Okay. Anything about that that
6 would preclude you from sitting here, listening to the
7 evidence, and --
8 UNIDENTIFIED JUROR: I don't think so, not from
9 what I've heard so far.
10 THE COURT: Did you have your hand raised, sir?
11 UNIDENTIFIED JUROR: Yeah, I've been in Oakland
12 County a few times in the jail and in, I think, this
13 courtroom.
14 THE COURT: In my courtroom?
15 UNIDENTIFIED JUROR: Yeah.
16 THE COURT: With me?
17 UNIDENTIFIED JUROR: Yeah, (indiscernible)
18 maybe.
19 THE COURT: Have you been convicted of a -- of a
20 felony?
21 UNIDENTIFIED JUROR: No, all misdemeanors. I
22 liked to drink as a kid.
23 THE COURT: You like to drink now?
24 UNIDENTIFIED JUROR: Not as much, no.
25 THE COURT: You weren't drinkin' before. No,

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1 don't answer.
2 UNIDENTIFIED JUROR: No -- no -- no -- no, I --
3 I (indiscernible).
4 THE COURT: All right, this is a pretty high-
5 profile case. Anybody have any preconceived notions of
6 either of the parties sitting here? Okay, good. Anybody
7 related to a lawyer?
8 UNIDENTIFIED JUROR: I am.
9 THE COURT: Okay, what kind --
10 UNIDENTIFIED JUROR: Mr. Philadelphia. She does
11 --
12 THE COURT: A Philadelphia lawyer?
13 UNIDENTIFIED JUROR: Yeah.
14 THE COURT: Okay.
15 UNIDENTIFIED JUROR: She actually does
16 bankruptcy.
17 THE COURT: All right.
18 UNIDENTIFIED JUROR: I have an uncle who does
19 (indiscernible) but my -- my best friend is a family law
20 attorney.
21 THE COURT: Here in Oakland County?
22 UNIDENTIFIED JUROR: Nope, she's in St. Claire
23 County.
24 THE COURT: Okay, anybody else?
25 UNIDENTIFIED JUROR: My mom is a para-legal. I

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1 don't know if that counts.
2 THE COURT: Where -- what kind of firm is she
3 in?
4 UNIDENTIFIED JUROR: Fraser law firm in Royal
5 Oak.
6 THE COURT: Okay. Sir, did you raise your hand?
7 UNIDENTIFIED JUROR: I have a cousin that's a
8 lawyer but out of state in Ohio.
9 THE COURT: Okay. Has anybody here ever used a
10 lawyer for anything other than criminal matters? Okay,
11 for what?
12 UNIDENTIFIED JUROR: My daughter was in a car
13 accident, so we had to use an insurance company lawyer to
14 (indiscernible) for the car accident.
15 THE COURT: Did you retain a lawyer?
16 UNIDENTIFIED JUROR: It was the insurance
17 company's lawyer. We didn't get ourself one.
18 THE COURT: Okay. Ma'am?
19 UNIDENTIFIED JUROR: A child custody case. I
20 had to get a lawyer.
21 THE COURT: Did you get a lawyer?
22 UNIDENTIFIED JUROR: My divorce.
23 THE COURT: All right. Any one of you ever had
24 a problem with your lawyers?
25 UNIDENTIFIED JUROR: My best friend was my

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1 attorney.
2 THE COURT: Oh, that's -- see, that's -- All
3 right, I'm gonna' start Mr. Witt with you. I don't wanna'
4 know if they're political. If they are political, just
5 tell me. Do you have any bumper stickers on your car?
6 Okay, what are they, other than if they're political, tell
7 me political. Otherwise, tell me what they are.
8 UNIDENTIFIED JUROR: I just have a A and an X
9 sticker.
10 THE COURT: Is that a radio station?
11 UNIDENTIFIED JUROR: Yeah.
12 THE COURT: Okay.
13 UNIDENTIFIED JUROR: And then --
14 THE COURT: Go ahead.
15 UNIDENTIFIED JUROR: -- it's like a Steelers
16 sticker, and a Red Wings.
17 THE COURT: Steelers?
18 UNIDENTIFIED JUROR: Yeah.
19 THE COURT: This is in Detroit.
20 UNIDENTIFIED JUROR: And a Red Wing's sticker.
21 THE COURT: Well, that's okay, that almost makes
22 up for it.
23 UNIDENTIFIED JUROR: No stickers.
24 UNIDENTIFIED JUROR: I don't have a car.
25 UNIDENTIFIED JUROR: No sticker.

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UNIDENTIFIED JUROR: No stickers.

UNIDENTIFIED JUROR: I have a fly fishing club sticker.

UNIDENTIFIED JUROR: No sticker.

MR. JANKS: I'm sorry, I didn't hear (indiscernible).

UNIDENTIFIED JUROR: Fly fish -- fly fishing club.

MR. JANKS: Fly fishing.

UNIDENTIFIED JUROR: I have the cheesy Royal Oak Hockey Association sticker. My boys (indiscernible).

THE COURT: Don't say it's cheesy. My -- my kid played hockey, too.

UNIDENTIFIED JUROR: It's kind of cheesy.

THE COURT: That's why I said (indiscernible).

UNIDENTIFIED JUROR: (Indiscernible).

THE COURT: Okay. If you were sitting where Mr. Sherbow and Mr. Fieger were sitting, would you like someone like you on this jury?

UNIDENTIFIED JUROR: Me?

THE COURT: No.

UNIDENTIFIED JUROR: Oh.

THE COURT: (Indiscernible) Mr. Witt. If you were sitting where these guys were sitting, would you like someone like you on this jury? You think you can be fair?

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JUROR WITT: Yeah, I can be fair.

THE COURT: What about you?

UNIDENTIFIED JUROR: Yes.

UNIDENTIFIED JUROR: I think I can be fair.

UNIDENTIFIED JUROR: I can be fair.

UNIDENTIFIED JUROR: Yes.

UNIDENTIFIED JUROR: Yes.

THE COURT: No?

UNIDENTIFIED JUROR: (Indiscernible).

THE COURT: Why not?

UNIDENTIFIED JUROR: I don't really care what happens, no offense guys.

THE COURT: Well, you're a perfect juror until you hear the evidence. Sitting here right now does anybody really know what's gonna' happen in this case?

(Some jurors answer no.)

THE COURT: (Indiscernible) do you want someone like you on this jury?

UNIDENTIFIED JUROR: I'm very detail oriented. I think I would listen well, and think a lot --

THE COURT: Okay.

UNIDENTIFIED JUROR: -- but I've also been told that I'm highly opinionated so I don't -- I don't --

THE COURT: Maybe you should be a lawyer.

UNIDENTIFIED JUROR: No, no way.

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1 THE COURT: Mr. Janks, do you have any
2 questions?
3 MR. JANKS: I wonder if any of the jurors know
4 anything about referral fees between lawyers or how cases,
5 personal injury cases come to certain law firms?
6 UNIDENTIFIED JUROR: Oh, a little bit. I've
7 heard of 'em.
8 UNIDENTIFIED JUROR: I've heard just bits and
9 pieces.
10 MR. JANKS: Okay. Mr. Persha (ph), what have
11 you heard?
12 JUROR PERSHA: Just about -- I just know my
13 mother use to, like go through them. That's about it.
14 She used to tell me about 'em all the time. Nothin' that
15 I can pick out off the top of my head.
16 MR. JANKS: Your mom's a paralegal at the Razor
17 (ph) law firm, I think you said?
18 JUROR PERSHA: Yes.
19 MR. JANKS: And does the Razor law firm get
20 referrals from other law firms or do they send referrals
21 to other law firms?
22 JUROR PERSHA: I'm not sure.
23 MR. JANKS: And do you know anything about the
24 economics of referrals at the Razor law firm?
25 JUROR PERSHA: No.

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1 MR. JANKS: Okay. Ms. Raymo?
2 JUROR RAYMO: Only just with my experience with
3 my best friend. I know if she refers a case to
4 (indiscernible) outside her law firm, more competent, she
5 refers it to someone else as a referral (indiscernible)
6 system.
7 MR. JANKS: There is or is not?
8 JUROR RAYMO: I believe there -- there is in some
9 of the cases she's used before.
10 MR. JANKS: Okay, and -- and that's your friend
11 that's a lawyer?
12 JUROR RAYMO: Uh-hmm.
13 MR. JANKS: They don't have referral fees in the
14 medical field or the psychological field, do they?
15 JUROR RAYMO: Actually, some psychologists do.
16 If you refer to another psychologist, some will do -- it's
17 typically an individual arrangement, and it's pretty
18 strictly guided by our ethics code, but it does happen
19 sometimes, yeah. I've never used it 'cuz I work for a
20 school and a hospital system, so it's (indiscernible) but
21 I know private practice (indiscernible).
22 MR. JANKS: Okay, and -- and if the ethics code
23 is followed, then the referral fee would be appropriate in
24 your field.
25 JUROR RAYMO: In the field of psychology, yes.

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1 MR. JANKS: All right. Is there somebody else
2 that said they knew something about referral fees?
3 UNIDENTIFIED JUROR: Well, just -- just from
4 bein' in school takin' law classes long time ago. I mean,
5 I just know I've heard of people gettin' referral fees
6 before.
7 MR. JANKS: Okay, when you say, "law school
8 takin' classes," can you tell us about that?
9 UNIDENTIFIED JUROR: Well, it's not in law
10 school, but I had to take law.
11 MR. JANKS: Business law?
12 UNIDENTIFIED JUROR: I took business law, yeah.
13 MR. JANKS: And did that involve personal injury
14 matters, and learning about them?
15 UNIDENTIFIED JUROR: That was a long time ago.
16 I can't answer that a hundred percent. You know, it was
17 about 20 years ago.
18 MR. JANKS: Okay, all right, Ms. Hill. Did it
19 involve anything about discussions of referral fees or
20 ethics of referral fees, those kinds of things?
21 JUROR HILL: I wanna' say maybe, but I -- like I
22 said, I don't remember a hundred percent because it was so
23 long ago.
24 MR. JANKS: All right, so as you sit here, you
25 don't remember anything about the ethics rules as it

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1 relates to --
2 JUROR HILL: Well, I just remember hearing
3 about, and maybe it just wasn't in law, just in general
4 about people receiving referral fees for someone referring
5 them for work related issues.
6 MR. JANKS: All right. Are -- are any of the
7 jurors in a position of work where you are able to bind
8 your employer to an agreement; you can sign a contract or
9 you can send a letter and say here's what we're gonna' do?
10 Okay, well, great, let's talk about that, Ms. Brogden
11 (ph).
12 JUROR BROGDEN: I issue contracts on behalf of
13 General Motors, so I negotiate engine components.
14 MR. JANKS: And -- and if you issue a contract,
15 does General Motors live up to that contract or -- or do
16 they not?
17 JUROR BROGDEN: They live up to the contract
18 just like the suppliers expect to live up to the
19 contract.
20 MR. JANKS: All right, very good. Ms.
21 (indiscernible)?
22 UNIDENTIFIED JUROR: I participated in union
23 negotiations for our radiology group at Crittenton, so I'm
24 one of the individuals who signed when negotiations were
25 done on the contract.

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1 MR. JANKS: Was that contract then binding once
2 you signed it?
3 UNIDENTIFIED JUROR: Well, I was one of the
4 individuals that signed it, yeah.
5 MR. JANKS: And what was your position there at
6 the hospital?
7 UNIDENTIFIED JUROR: Well, the union negotiators
8 on the negotiating team.
9 MR. JANKS: All right. Ms. Hill?
10 JUROR HILL: I am a grand -- grand contract
11 officer at Wayne State, so I'm a authorized official to
12 sign letter of intents to contracts, and oversee the legal
13 team (indiscernible) authorize grants for submission to
14 different agencies for funding. That's part of what I do.
15 MR. JANKS: All right, did I miss anybody else?
16 Yes, Mr. Hutton?
17 JUROR HUTTON: I'm part of the (indiscernible)
18 networks with -- Work a lot with both the district
19 administrators and principals as far as contract
20 negotiations and contract differences of opinion
21 (indiscernible.)
22 MR. JANKS: Are you one of the people that signs
23 off on the -- on a contract?
24 JUROR HUTTON: I -- I'm not a negotiating
25 leader, but the (indiscernible) that represents teachers

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1 and, like all -- part of the contract so to speak.
2 MR. JANKS: Is there anybody on the panel that
3 believes that if you make promise, that you don't have to
4 keep it? Everybody believes if you make a promise, you
5 should keep that promise?
6 UNIDENTIFIED JUROR: You should, but I guess,
7 no, I guess you don't have to but you should.
8 MR. JANKS: Thank you.
9 THE COURT: Thank you. Mr. Fieger.
10 MR. FIEGER: Good morning everybody.
11 (Some jurors answer, "Good morning.")
12 MR. FIEGER: I'll come a little closer. I won't
13 infect you. I'll come a little closer. Mr. Persha, in
14 the interest of full disclosure, your Honor, my firm does
15 business with the Razor law firm. We refer cases to the
16 Razor law firm.
17 JUROR PERSHA: That's why you sound familiar.
18 MR. FIEGER: I know you don't work there, your
19 mother does. You would not be permitted to talk to your
20 mother or does -- does that in any way prejudice you or
21 make you feel that you couldn't be a fair and impartial
22 juror?
23 JUROR PERSHA: Yeah. Well, I don't know. I
24 just -- I feel like I would ask questions to her about --
25 THE COURT: Do you live with your mother?

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JUROR PERSHA: I have a newborn child at home, and she sees him all the time. She's always at my house.

MR. FIEGER: Well, thank you. Is it Miss or Mrs. Huff (ph)?

JUROR HUFF: Mrs.

MR. FIEGER: You're a cardiac ultrasound tech?

JUROR HUFF: Yes.

MR. FIEGER: Where do you practice?

JUROR HUFF: At Crittenton.

MR. FIEGER: Have any of the doctors that you work for been sued?

JUROR HUFF: They've been investigated. I don't get direct knowledge of it, but I kinda' know who's been investigated and --

MR. FIEGER: You have not personally been involved in any malpractice suits or anything like that?

JUROR HUFF: No.

MR. FIEGER: Okay. Help me with the pronunciation, sir, of your last name.

JUROR WITTSPALIK: It's Wittspalik (ph).

MR. FIEGER: Wittspalik.

JUROR WITTSPALIK: Yeah.

MR. FIEGER: And you're studying what did you say?

JUROR WITTSPALIK: Computer engineering is what

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1 I'm thinking. I'm still undeclared, but I'm a freshman
2 this year.
3 MR. FIEGER: Okay, great. Judge Alexander asked
4 if you knew any of us. I don't feel like I know you, but
5 because I do have a high profile, I wonder if anybody has
6 a negative feeling about me that would in some way
7 interfere with your ability to be fair and impartial in
8 this case. If you do, I have a thick skin, so you can
9 tell me. How 'bout you, sir, Mr. Hutton?
10 JUROR HUTTON: Yes.
11 MR. FIEGER: No -- no negative feeling.
12 JUROR HUTTON: No.
13 MR. FIEGER: Where do you teach?
14 JUROR HUTTON: Royal Oak.
15 MR. FIEGER: You -- high school, I know.
16 JUROR HUTTON: High school, yes.
17 (Indiscernible) micro-economics and U.S. history and
18 government.
19 MR. FIEGER: Did I hear you say that you're the
20 union rep?
21 JUROR HUTTON: One of them, yes.
22 MR. FIEGER: Okay, is it the Education
23 Association?
24 JUROR HUTTON: Yes.
25 MR. FIEGER: This is kind of similar to the

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1 question that I think you were asked by counsel. Any of
2 you, but I'm asking, as an employee, do any of you have
3 the authority to promise to pay part of the business
4 income of your employer to another person; do any of you
5 have that authority? As an employee, do any of you have
6 the authority to promise to pay to another person part of
7 your employer's income?
8 UNIDENTIFIED JUROR: Well, I have the authority
9 to sign the letter of intent, but then the contract team
10 works on the actual contract, but I can --
11 MR. FIEGER: Explain. Okay.
12 UNIDENTIFIED JUROR: I work in the division of
13 research at Wayne State, so --
14 MR. FIEGER: Uh-hmm.
15 UNIDENTIFIED JUROR: -- we may sub-contract to
16 another agency. They may sub-contract services to us, so
17 we're agreeing to provide services to another agency. I
18 sign the letter of intent which will state the time frame,
19 the statement of work, how much money we're expecting to
20 get paid. I sign that letter of intent. It's still
21 gonna' be reviewed by the legal team, signed by them.
22 MR. FIEGER: And signed by them.
23 UNIDENTIFIED JUROR: Yes, so I don't actually
24 sign that part.
25 MR. FIEGER: Whatever you do is overseen by a

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1 superior or somebody else.
2 UNIDENTIFIED JUROR: Yes, uh-hmm.
3 MR. FIEGER: And, again, that's not exactly what
4 I'm asking. My question is do any of you have the
5 authority to independently promise to pay part of your
6 employer's income to somebody else without your employer
7 approving it. I think you were also asked a variation of
8 this question, maybe by Judge Alexander or counsel here.
9 Have any -- has anybody here ever been accused or somebody
10 claimed that you didn't live up to an agreement or a
11 contract? Has anybody had that experience at all?
12 Nobody, 'cuz if you don't raise your hand, I won't know.
13 Your friend -- it's Mrs. Raymo.
14 JUROR RAYMO: Uh, yeah, Dr. Raymo but Mrs. Raymo
15 is fine, yes.
16 MR. FIEGER: Okay, you're a psychologist.
17 JUROR RAYMO: Yeah.
18 MR. FIEGER: And you practice at Beaumont?
19 JUROR RAYMO: Uh-hmm, Center for (indiscernible)
20 Human Development also.
21 MR. FIEGER: What type of work do you do; do you
22 specialize in any particular area like children or adults
23 or --
24 JUROR RAYMO: Yeah, so I do a few things, but
25 two days a week I'm at the Center for Human Development,

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so I do evaluations on children and adolescents (indiscernible). And then a few days a week, I work in a public school district as a school psychologist (indiscernible) as well, and then I teach in the school psychology graduate program at Wayne State.

MR. FIEGER: Okay.

JUROR RAYMO: So mostly children and adolescents. And I have a private practice (indiscernible) at Beaumont (indiscernible).

MR. FIEGER: I -- I heard the question, but I wasn't really sure about what you were saying about referral fees. What -- what was your statement to counsel here about referral fees?

JUROR RAYMO: Just how it works in the field of psychology. So if you refer a patient to a therapist who maybe has more expertise in -- in a certain area, there are -- our ethics code allows for referral fees under those -- in those situations.

MR. FIEGER: Uh-hmm.

JUROR RAYMO: I never used -- I've never been part of an agreement like that --

MR. FIEGER: Uh-hmm.

JUROR RAYMO: -- and now it's (indiscernible) but I do know of psychologists who use referral fees.

MR. FIEGER: So, you -- I guess just in your

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1 practice, you're familiar with your eth -- ethics code
2 having to do with a doctor or psychologist --
3 JUROR RAYMO: Correct.
4 MR. FIEGER: -- refers one of their patients to
5 another?
6 JUROR RAYMO: Correct.
7 MR. FIEGER: That's psychologists.
8 JUROR RAYMO: Uh-hmm.
9 MR. FIEGER: Okay. I know you don't wanna' be
10 here, Mr. Persha, right?
11 JUROR PERSHA: My son's got shots at noon.
12 MR. FIEGER: I understand. But is there anybody
13 here who couldn't be a fair and impartial juror? Ms.
14 Broadman (ph), could you?
15 JUROR BROADMAN: Yes.
16 MR. FIEGER: How 'bout you, Mr. Witt. Tell me a
17 little bit about yourself. Which Buddy's do you work for?
18 JUROR WITT: Dearborn.
19 MR. FIEGER: And what do you do, specifically?
20 JUROR WITT: I'm a kitchen supervisor.
21 MR. FIEGER: Okay. And what's your duties on
22 that?
23 JUROR WITT: I am the kitchen manager when the
24 kitchen manager is off, and then I work a variation of
25 stations to cover shifts for people (indiscernible).

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1 MR. FIEGER: And as part of your job, can you
2 make a promise on behalf of another person? Ms. Broadman
3 (ph), your job is specifically what?
4 JUROR BROADMAN: I purchase engine components on
5 behalf of General Motors.
6 MR. FIEGER: Were you saying you can make a
7 promise on behalf of another person?
8 JUROR BROADMAN: I negotiate and -- and, well,
9 quote, "negotiate and issue contracts," on behalf of
10 General Motors.
11 MR. FIEGER: Okay. Who signs those contracts?
12 JUROR BROADMAN: General Motors. They're not
13 physically signed, but -- but the promise or the backup is
14 -- is made on behalf of General Motors.
15 MR. FIEGER: Okay. How 'bout you, Mr. Woodcock
16 (ph). Did I say it wrong?
17 JUROR WOODSPOLIK: It's Woodspolik (ph).
18 MR. FIEGER: Woodspolik.
19 JUROR WOODSPOLIK: No, there's nothing I can
20 sign on behalf of someone else.
21 MR. FIEGER: How 'bout you, Ms. (indiscernible)?
22 UNIDENTIFIED JUROR: Just when I was on the
23 negotiating team for our union contract. I can help set
24 guidelines that someone needs to follow, but I can't
25 (indiscernible).

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1 MR. FIEGER: And I don't think I've spoken to
2 you, Ms. Hill. Can you make a promise on behalf of
3 another person at your job?
4 JUROR HILL: No.
5 MR. FIEGER: What do you do again?
6 JUROR HILL: I'm a grant and contract officer at
7 Wayne State.
8 MR. FIEGER: And you, Mr. Hutton?
9 JUROR HUTTON: Yes.
10 MR. FIEGER: Can you make a promise on the part
11 of your employment on behalf of another person?
12 JUROR HUTTON: I think (indiscernible).
13 MR. FIEGER: Got it. And, finally, Ms. Raymo.
14 MS. RAYMO: (Indiscernible).
15 MR. FIEGER: Thank you very much.
16 THE COURT: Thank you.
17 MR. JANKS: Can I do one follow-up, Judge, on
18 that issue?
19 THE COURT: Nope. Cause, Mr. Janks.
20 MR. JANKS: Well, I think Mr. Persha has told us
21 that he doesn't wanna' be here under any circumstances.
22 THE COURT: That's not cause for me. Doesn't
23 wanna' be here, he's gotta' (indiscernible). It's one of
24 his responsibilities as a citizen to be here.
25 MR. JANKS: Well, I understand, Judge, but Mr.

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1 Persha did indicate that even if he was told not to talk
2 to his mom, he would talk to his mom from the Razor law
3 firm.
4 THE COURT: Any objection -- any objection as to
5 cause with Mr. Persha?
6 MR. FIEGER: Whatever you say, your Honor.
7 THE COURT: Okay, I wanna' stop the presses, I
8 wanna' get on the (indiscernible). Mr. Persha, you're
9 excused. You can go back to the jury room.
10 JUROR PERSHA: Thank you, your Honor. Sorry,
11 guys.
12 THE CLERK: Replacing -- well, seat number seven
13 with juror number 251, Rebecca Bowers (ph).
14 THE COURT: Good morning.
15 JUROR BOWERS: Good morning.
16 THE COURT: Ms. Bowers, what do you do for a
17 living?
18 JUROR BOWERS: I'm a stay-at-home mom, but I'm a
19 nurse. I don't work right now.
20 THE COURT: Do you have a spouse or significant
21 other?
22 JUROR BOWERS: Yes.
23 THE COURT: And what does that person do?
24 JUROR BOWERS: He (indiscernible) for the
25 aviation. It's an aircraft maintenance company at the

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1 Oakland airport.
2 THE COURT: At the airport? All right. Have
3 you heard all the questions that were asked?
4 JUROR BOWERS: Yes.
5 THE COURT: Would your answers be substantially
6 different in any way?
7 JUROR BOWERS: No.
8 THE COURT: Do you know either one of these
9 gentlemen?
10 JUROR BOWERS: No.
11 THE COURT: Got any preconceived notions about
12 either one of these gentlemen?
13 JUROR BOWERS: No.
14 THE COURT: Have you ever been involved in
15 litigation?
16 JUROR BOWERS: No.
17 THE COURT: Ever hired a lawyer?
18 JUROR BOWERS: Not that I know of, no.
19 THE COURT: Okay. Does your husband get
20 referrals?
21 JUROR BOWERS: Not anything -- I mean, money --
22 it doesn't --
23 THE COURT: You don't talk to him about referral
24 fees or if somebody does something for him, he pi --
25 JUROR BOWERS: No, it's like the honor system.

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1 Like I will get gas from his friend. Oh, you need
2 maintenance. Get it. They just -- it's like a buddy
3 system. It's not any money.
4 THE COURT: Any -- any reason you couldn't serve
5 on this case?
6 JUROR BOWERS: No.
7 THE COURT: If you were sitting where these
8 gentlemen were sitting, would you want someone like you on
9 this jury?
10 JUROR BOWERS: I guess so. I mean, I'm
11 impartial.
12 THE COURT: Okay. Mr. Janks, any questions?
13 MR. JANKS: Sure, Ms. Bowers, does your husband
14 have any partners or shareholders that are in business
15 with him?
16 THE COURT: No.
17 MR. JANKS: Okay. Does anybody believe that a
18 corporation cannot act through its partners or
19 shareholders; that it can only act through --
20 MR. FIEGER: Objection.
21 THE COURT: Okay, the way -- the way -- the way
22 --
23 MR. JANKS: (Indiscernible).
24 THE COURT: Just a second, Mr. Janks. The way I
25 do my voir dire is we've done the general. If you got

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1 specific questions for Ms. Bowers, go ahead, but we're not
2 getting back into voir dire.
3 MR. JANKS: Okay, all right, thanks. Ms.
4 Bowers, do you believe a corporation acts through its
5 shareholders and its partners?
6 MR. FIEGER: Objection.
7 JUROR BOWERS: He doesn't have any --
8 THE COURT: That's a -- that's kind of a legal
9 question, isn't it?
10 MR. JANKS: All right.
11 THE COURT: I'll -- I'll -- I'll -- what you're
12 gonna' find out, ladies and gentlemen, you know, I'll give
13 everybody the instruction right now is what the lawyers
14 say is what the lawyers say. It's not evidence at all.
15 The law that you apply to this case comes from one person
16 and one person only under our laws in Michigan, and that's
17 me, so it's a legal conclusion. I'll give you what the
18 law is. Go ahead, if you have any other questions.
19 MR. JANKS: All right. Ms. Bowers, are you
20 familiar with any situations in where a corporation has
21 acted through its partners or its shareholders?
22 JUROR BOWERS: (Indiscernible).
23 MR. JANKS: Okay, thank you.
24 THE COURT: Mr. Fieger.
25 MR. FIEGER: Hi. What did you indicate your

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1 husband did in aviation?
2 JUROR BOWERS: He is -- he owns -- it's like
3 mechanics. They just work on airplanes, and he owns that
4 company.
5 MR. FIEGER: Where do -- where is that; is that
6 at Oakland here?
7 JUROR BOWERS: Yeah, off the airport, M-59.
8 MR. FIEGER: Is he associated with anyone?
9 JUROR BOWERS: No, it's just his own company.
10 MR. FIEGER: He doesn't work with Pentastar --
11 JUROR BOWERS: No.
12 MR. FIEGER: -- or one of the other businesses
13 there.
14 JUROR BOWERS: No -- no.
15 MR. FIEGER: Okay. And what type of airplanes
16 does he work on?
17 JUROR BOWERS: Cirrus' and, like little -- I
18 think they're called Piper airplanes, nothing -- nothing
19 big, no jets or anything.
20 MR. FIEGER: Okay, thank you very much.
21 JUROR BOWERS: Uh-hmm.
22 THE COURT: Cause, Mr. Janks.
23 MR. JANKS: None for cause, your Honor.
24 THE COURT: Cause, Mr. Fieger.
25 MR. FIEGER: No, sir.

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1 THE COURT: Peremptory, Mr. Janks.
2 MR. JANKS: Half a minute, Judge?
3 THE COURT: Sure.
4 MR. JANKS: Plaintiff would thank and excuse Mr.
5 Litt (ph). Thanks for your time, Mr. Litt.
6 THE COURT: Okay, Mr. Litt, you're excused,
7 sir. Thank you for being here. You can go back, go right
8 through out there. You can go back to the jury room.
9 THE CLERK: Replacing seat number one is juror
10 number 141, (indiscernible) McDonald.
11 THE COURT: Good morning.
12 JUROR MCDONALD: Good morning.
13 THE COURT: Mr. McDonald, whatta' you do for a
14 living?
15 JUROR MCDONALD: Teach high school social
16 studies.
17 THE COURT: Where at?
18 JUROR MCDONALD: Melvindale High School.
19 THE COURT: Okay. Do you have a spouse or
20 significant other?
21 JUROR MCDONALD: Yes, my wife's a pharmacist.
22 THE COURT: All right. Have you heard all the
23 questions that were asked?
24 JUROR MCDONALD: Yes.
25 THE COURT: Would your answers be substantially

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1 different in any way?
2 JUROR MCDONALD: No.
3 THE COURT: Okay. Ever been on a jury before?
4 JUROR MCDONALD: Yes.
5 THE COURT: Okay, when and where?
6 JUROR MCDONALD: Probably about ten years ago in
7 Dearborn, and it was a criminal trial.
8 THE COURT: Were you the foreperson of that
9 jury?
10 JUROR MCDONALD: No.
11 THE COURT: Did the case go to verdict?
12 JUROR MCDONALD: Yes.
13 THE COURT: All right. Anything about that
14 situation that would preclude you from sitting here
15 listening to the evidence, and coming to a conclusion?
16 JUROR MCDONALD: No.
17 THE COURT: Do you know either one of these
18 gentlemen or have any preconceived notions?
19 JUROR MCDONALD: No, I don't know 'em. Of
20 course, I've heard of the Defendant.
21 THE COURT: Okay, anything about that that would
22 preclude you from sitting here and giving him a fair
23 trial?
24 JUROR MCDONALD: No -- no.
25 THE COURT: Okay. You ever hired a lawyer?

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1 JUROR MCDONALD: No.
2 THE COURT: Ever been involved in referring any
3 business to anybody?
4 JUROR MCDONALD: (Inaudible).
5 THE COURT: You a partner in any -- you're not
6 in any businesses?
7 JUROR MCDONALD: No.
8 THE COURT: All right. Have you ever negotiated
9 contracts on behalf of a union?
10 JUROR MCDONALD: No.
11 THE COURT: If you were sitting where these guys
12 were sitting, would you want someone like you on this
13 jury?
14 JUROR MCDONALD: Yes.
15 THE COURT: Mr. Janks, any questions?
16 MR. JANKS: None, thank you, Judge.
17 THE COURT: Mr. Fieger.
18 MR. FIEGER: Yes, Mr. McDonald, where do you
19 teach, I'm sorry?
20 JUROR MCDONALD: Melvindale High School
21 downriver.
22 MR. FIEGER: Okay, right. And where do you te -
23 - what do you teach?
24 JUROR MCDONALD: English as a second language,
25 law, and world history.

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1 MR. FIEGER: Tell us what you teach in the law.
2 JUROR MCDONALD: Well, it's actually my -- my
3 first year doing that. We do mock trials, simulate civil
4 and criminal. I'm also advisor for Michigan Youth in
5 Government, so two weeks we have a conference coming up in
6 Lansing, and we have some mock trials. We have some
7 debate teams. Just general constitutional law. Just
8 basic procedures, nothing to rigorous, but just tryin' to
9 give students a general understanding of the law.
10 MR. FIEGER: Great. Do you have contact with
11 lawyers in your position; do you work with any of 'em, I
12 guess I should say, that -- that help you or assist you in
13 your mock trials or any of your course work?
14 JUROR MCDONALD: Not really, no.
15 MR. FIEGER: Okay. You said you know who I am,
16 obviously, I think. Is there any hesitancy on your part,
17 though -- I'm representing my corporation in this case --
18 do you have any hesitancy about your ability to be fair
19 and impartial?
20 JUROR MCDONALD: (Indiscernible).
21 MR. FIEGER: Thank you very much.
22 THE COURT: Okay, thank you. Cause, Mr. Janks.
23 MR. JANKS: None, Judge.
24 THE COURT: Cause, Mr. Fieger.
25 MR. FIEGER: No, sir.

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THE COURT: Peremptory, Mr. Fieger.

MR. FIEGER: Ms. Hung (ph) I would excuse.

THE COURT: Okay, Ms. Hung, you're excused. You can go back to the jury room. Thank you for being here.

THE CLERK: Replacing seat number four with juror number 36, Cynthia (indiscernible).

THE COURT: Okay, this is the lady who had the doctor's note. Any objection to excusing her for cause?

MR. FIEGER: No -- no.

MR. JANKS: No objection, Judge.

THE COURT: Okay, you can go back to the jury room, too, ma'am.

JUROR THIRTY-SIX: Thank you.

THE CLERK: Replacing seat number four with juror number 280, Morgan (indiscernible).

THE COURT: Kerimov (ph), is it Kerimov?

THE CLERK: Kerimov.

THE COURT: Okay.

MR. FIEGER: How do you spell that, your Honor?

THE COURT: K-E-R-I-M-O-V.

MR. FIEGER: I see it, yeah, thank you.

THE COURT: Is it Kerimov?

JUROR KERIMOV: Kerimov, yep.

THE COURT: And whatta' you do, sir?

JUROR KERIMOV: Automotive consultant.

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1 THE COURT: What do you do as an automotive
2 consultant?
3 JUROR KERIMOV: Bring cutting edge technology to
4 automakers.
5 THE COURT: Oh, really? Are you an engineer by
6 trade?
7 JUROR KERIMOV: By trade, yeah.
8 THE COURT: Okay. Do you have a spouse or
9 significant other?
10 JUROR KERIMOV: Nope.
11 THE COURT: And what does that person -- oh,
12 okay. Have you heard all the questions that were asked
13 here today?
14 JUROR KERIMOV: Yes.
15 THE COURT: Would your answers be substantially
16 different in any way?
17 JUROR KERIMOV: No.
18 THE COURT: All right. Ever been involved in
19 litigation before?
20 JUROR KERIMOV: No.
21 THE COURT: Are you -- do you own your own
22 business?
23 JUROR KERIMOV: No.
24 THE COURT: You work for somebody else?
25 JUROR KERIMOV: Right.

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1 THE COURT: Do you have the ability to bind that
2 business by signing a contract?
3 JUROR KERIMOV: No.
4 THE COURT: All right. You ever heard of either
5 of these gentlemen?
6 JUROR KERIMOV: I've heard of the Fieger firm.
7 THE COURT: Okay. Do you have any preconceived
8 notions that would preclude you from listening to the
9 evidence and coming to a fair verdict?
10 JUROR KERIMOV: No.
11 THE COURT: All right. If you were sitting
12 where these guys were sitting, would you want someone like
13 you on this jury?
14 JUROR KERIMOV: Yes, although I have kind of an
15 urgency to getting on my way, so --
16 THE COURT: What's your urgency of getting on
17 your way?
18 JUROR KERIMOV: I haven't -- you said this case
19 may take the better part of the week. I've a client
20 meeting on Wednesday that is --
21 THE COURT: We don't have court on Wednesday.
22 JUROR KERIMOV: Oh, perfect.
23 THE COURT: I didn't tell you guys. Yeah,
24 surprise, I forgot. Our schedule is Monday, Tuesday,
25 Thursday, Friday. We go from 8:30 to noon, and 1:30 to

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1 4:30. But, yeah, we don't have court. Wednesday is
2 miscellaneous day.
3 JUROR KERIMOV: So I think I'm good.
4 THE COURT: We're all set?
5 JUROR KERIMOV: Yep.
6 THE COURT: Any questions, Mr. Janks?
7 MR. JANKS: Sure. Mr. Kerimov, have you seen
8 commercials that Mr. Fieger's been on --
9 JUROR KERIMOV: Yes.
10 MR. JANKS: -- on TV?
11 JUROR KERIMOV: Right.
12 MR. JANKS: And the fact that Mr. Fieger has
13 some level of publicity in the community, would that lead
14 you to either believe or disbelieve things that are -- are
15 said on behalf of the Fieger firm?
16 JUROR KERIMOV: I guess I have a leniency to
17 disbelieve what I hear in -- in the media so to say, so --
18 THE COURT: Do you believe in fake news?
19 (No audible response.)
20 THE COURT: My kind of guy, yes. That's okay.
21 MR. JANKS: Or -- or alternative facts?
22 JUROR MCDONALD: No.
23 MR. JANKS: Thank you, Mr. Kerimov.
24 JUROR MCDONALD: Sure.
25 THE COURT: Mr. Fieger.

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1 MR. FIEGER: Good morning.
2 JUROR MCDONALD: Good morning.
3 MR. FIEGER: How do you get business? Explain
4 what you do.
5 JUROR MCDONALD: I work for a large consultancy,
6 so I'm in business development, so kind of chasing and
7 developing opportunities, and doing some initial work to
8 develop that opportunity.
9 MR. FIEGER: So how do you do that; do you
10 network or do people refer you people or how does that
11 work?
12 JUROR MCDONALD: It -- it is primarily
13 networking, attending conferences, and also working for a
14 larger company there is some referral from, you know,
15 within the business, but without kickbacks sort of say.
16 MR. FIEGER: Thank you very much.
17 THE COURT: Cause, Mr. Janks.
18 MR. JANKS: No, pass, your Honor.
19 THE COURT: Cause, Mr. Fieger.
20 MR. FIEGER: No, sir.
21 THE COURT: Peremptory, Mr. Janks.
22 MR. JANKS: No, Plaintiff is satisfied with the
23 jury, Judge.
24 THE COURT: Peremptory, Mr. Fieger.
25 MR. FIEGER: May I have just a moment, your

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1 Honor?
2 THE COURT: Sure.
3 MR. FIEGER: No, we're fine.
4 THE COURT: Okay, great. Thank you. Ladies and
5 gentlemen, thank you very much for being here today.
6 You're excused. Go back to the jury room. All rise,
7 please, for the jurors to leave.
8 (Remainder of jury panel out at 10:14 a.m.)
9 THE COURT: I need you all to remain standing.
10 Would you please all raise your right hands. Do you
11 solemnly swear or affirm the case now before the court,
12 you will justly decide the questions submitted to you.
13 That unless you are discharged by the Court from further
14 deliberation, you will render a true verdict, and that you
15 will render your verdict only on the evidence introduced,
16 and in accordance with the instructions of the Court, so
17 help you God?
18 JURY PANEL: (Indiscernible).
19 THE COURT: Okay, please be seated. Now, I'm
20 gonna' briefly explain to you my responsibilities as the
21 Judge, and your responsibilities as jurors.
22 My responsibilities as the Judge in this trial
23 are to make sure that the trial is run fairly and
24 efficiently, to make decisions about the evidence, and to
25 instruct you about the law that applies to this case. You

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1 must take the law as I give it to you as I told you.
2 Nothing I say is meant to reflect my own opinions about
3 the facts of this case.
4 Your responsibilities as jurors is to decide
5 what the facts of this case are. This is your job and
6 nobody else's. You must think about all the evidence and
7 all the testimony, and then decide what each piece of
8 evidence means and how important you think it is.
9 I'll briefly explain the general order/procedure
10 in the trial from this point forward. First, the lawyer
11 for the Plaintiff, Mr. Janks, will make an opening
12 statement in which he outlines his theory of the case.
13 Mr. Fieger will then make an opening statement or he can
14 wait until later. As I've told you, these statements, the
15 remarks of the lawyers are not evidence. They're only
16 intended to assist you in understanding the viewpoints and
17 the claims of the parties.
18 After the opening statements, we'll begin the
19 taking of evidence. Plaintiff's lawyer will present
20 evidence first. He may call witnesses to testify, and he
21 may also offer exhibits such as documents or physical
22 objects. Defendant's lawyer has the right to cross-
23 examine the witnesses called by the Plaintiff. Following
24 the Plaintiff's presentation, the Defendant has the
25 opportunity to present evidence. Plaintiff's lawyer has a

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1 right to cross-examine the witnesses called by the
2 Defendant.
3 After all the evidence has been presented, the
4 lawyers for each side will make their closing arguments to
5 you in support of their case. You're again reminded that
6 the statements of the lawyers are not evidence, but are
7 only intended to help you in understanding the evidence
8 and the way each side sees the case. You must base your
9 decision only on the evidence.
10 In this case, Plaintiff has brought a claim
11 indicating he referred personal injury clients to
12 Defendant's office, and Defendant agreed to pay Plaintiff
13 referral fees. Plaintiff claims that Defendant, contrary
14 to the agreement, has not paid the promised referral fees.
15 Defendant claims that he did not refer the cases. It's
16 the Plaintiff's burden to show by a preponderance of the
17 evidence that his claims are true.
18 Because no one can predict the course of a
19 trial, these instructions may change at the end of the
20 trial, so you should follow the instructions given at the
21 conclusion of the trial. You'll be given a written copy
22 of the instructions I've just read to you for your --
23 while you're -- while you're in the jury room.
24 After all the evidence has been presented, and
25 the lawyers have given their arguments, I'll give you

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1 detailed instructions about the rules of law that apply to
2 this case. Then you'll go back to the jury room to decide
3 on the case.
4 The responsibility of the jury is to determine
5 the facts. You are the judges of the facts. You
6 determine the weight, effect, and value of the evidence as
7 well as the credibility of the witnesses. You must
8 consider and weigh the testimony of all the witnesses who
9 appear before you, and you determine whether to believe
10 any witnesses and the extent to which any witness should
11 be believed. It's your responsibility to consider any
12 conflicts in testimony which may arise during the course
13 of the trial. Your decision as to any fact in this case
14 is final. It's your duty to -- But on the other hand,
15 it's your duty to accept the law as I give it to you.
16 Because the law requires cases to be decided
17 only on evidence presented during the trial and only by
18 the deliberating jurors, you must keep an open mind and
19 not make a decision about anything in this case until
20 after you've heard all the evidence, heard the closing
21 arguments of counsel, received all my instructions on the
22 law and the verdict form, and any alternate jurors have
23 been excused. You may see that we've picked eight of you
24 to be here. Under the law, the jury is made up of six
25 people. We add a couple in case somebody has an

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1 emergency.
2 At the time -- at the time, after everything's
3 been done, you'll be sent to the jury room to decide the
4 case. Sympathy must not influence your decision nor
5 should your decision be influenced by prejudice regarding
6 race, sex, religion, national origin, age, handicap or any
7 other factor irrelevant to the actual parties.
8 Before you're sent to the jury room to decide
9 the case, you're not to discuss the case even with the
10 other members of the jury. This is to insure that all of
11 you are able to participate in all of the discussions
12 about the case, and so that you do not begin to express
13 opinions about the case until it's been submitted to you
14 for deliberation. Then you may only discuss the case when
15 all of you are together, all of you are in the jury room,
16 and no one else is present in the jury room. You must not
17 discuss the case under any other circumstances, and the
18 reason for that is that while -- and if you talk while
19 some of you are present, all of you are entitled to
20 participate in all of the discussions in the case. As I
21 stated before, you must keep an open mind until I send you
22 to the jury room to decide the case. Your discussions
23 before then would only be tentative.
24 A trial follows established rules of procedure
25 and evidence. During the trial, the lawyers may make

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1 objections and motions. I'll rule on these objections and
2 motions according to the law. Don't conclude from my
3 rulings that I have an opinion on the case or that I favor
4 one side over the other. If I sustain an objection to a
5 question and do not permit the witness to answer, please
6 don't guess what the answer might have been or draw any
7 inference from the question itself.
8 Sometimes, the lawyers and I are required to
9 consider objections and motions outside your hearing. We
10 may take care of these matters at my bench or in my
11 chambers or I may excuse you so that we can take care of
12 them in the courtroom. It's impossible to predict when
13 such a conference may be required or how long it will
14 last. I'll conduct these conferences so as to use as
15 little of your time as possible. I might also have to
16 take care of other matters that have nothing to do with
17 this case. Please don't concern yourselves with any of
18 these matters which must be decided out of your presence
19 or hearing.
20 I'll be giving you more detailed instructions
21 during the course of the trial. At the end of the trial,
22 I'll give you detailed instructions about the law that
23 you're to apply to the case. If you can't hear or see a
24 witness, let me know immediately.
25 During the testimony of a witness, you might

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1 think of an important question that you believe will help
2 you better understand the facts of the case. Please wait
3 to ask question until after the witness has finished
4 testifying, and both sides have finished their
5 questioning. If your question is still unanswered, please
6 write the question down, raise your hand, and give it to
7 our clerks. Don't give it to me. Don't ask the witnesses
8 your question yourself or show the question to other
9 jurors or announce what it is. There are rules of
10 evidence that a trial must follow. If your question is
11 allowed under the rules, I'll ask the witness the
12 question. If it's not, I won't ask it, and please don't
13 speculate as to what the answer might have been. And
14 please don't give more weight to a question a juror asks
15 than questions that the attorneys ask.
16 I do allow jurors to take notes during the
17 trial. We'll give you pads and pens, but you don't have
18 to. If you do take notes, you should be careful that it
19 does not distract you from paying attention to all the
20 evidence. When you go the jury room to decide your
21 verdict, you may use your notes to help you remember what
22 happened in the courtroom. If you do take notes, don't
23 let anyone see them, and after you've begun your
24 deliberations, it's then permissible to allow other jurors
25 to see your notes. You must turn your notes over to the

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1 clerks during recesses and at the end of the day, and
2 we'll destroy them at the end of trial. I do not allow
3 you to take notes during openings and closing because,
4 again, those aren't evi -- that's not evidence.
5 While you're serving a juror, please don't allow
6 anyone to say anything to you or say anything about the
7 case or in your presence. If anyone does that, advise
8 them you're on the jury hearing the case, please ask them
9 to stop, and then let me know. You can see the lawyers or
10 the parties in the hallway, they ignore you, don't take it
11 personally. They know that they can't talk to you.
12 During the trial of the case and until I have
13 discharged you, there are certain other persons you may
14 not talk to at all. Like I said, you may not talk to any
15 Plaintiff or Defendant or their lawyers or any witnesses,
16 again, even if your conversation has nothing to do with
17 the case. This is necessary to avoid even the appearance
18 of unfairness or improper conduct on your part. After you
19 are discharged as a juror, you may, of course, talk to
20 anyone you wish about the case.
21 Until I've discharged you as jurors, you may not
22 read, listen to or watch any news reports about the case.
23 Now, I doubt we'll have that but in the event that we do,
24 you're gonna' have to turn the TV off if something goes
25 up. Under the law, the evidence you consider to decide

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1 the case must meet certain standards. For example,
2 witnesses must swear to tell the truth, and the lawyers
3 must be able to cross-examine them. Because news reports
4 do not have to meet these standards, they could give you
5 incorrect and misleading information that might unfairly
6 favor one side or the other. So to be fair to both sides,
7 you must follow this instruction.
8 Now, while you're in the courtroom and while you
9 are deliberating, you're prohibited all together from
10 using a computer, a cellular telephone or any other
11 electronic device capable of making communications. You
12 may use these devices during recesses, but even then you
13 may not use them to obtain or disclose the kind of
14 information I'll describe next.
15 Until you're discharged as jurors in this case,
16 even when you're not in the courtroom, you must not use a
17 computer, a cellular phone or other electronic device
18 capable of making communications or any other method to
19 get information about this case. Information about this
20 case means any information about a party, witness,
21 attorney or court officer, news accounts about the case,
22 any information on the topics raised in the case or
23 testimony offered by any witness, and any other
24 information that you think would be helpful in deciding
25 the case. You can't go on the internet to get any

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information about anything in this case. The consequences are dire, up to having to pay the cost of a new trial or, and/or going to jail. It's very -- very serious these days with -- with the internet. Stay off the internet about the case.

You've met my clerk, Joanne Brody -- Kraft. You'll meet my other clerk, Audrey (indiscernible). You may meet case manager, Julie Whites-Adams (ph), our research attorney, Derrick Howard, and -- excuse me, I think I'm getting your cold, Mr. Fieger. And you may meet our -- my -- my judicial assistant, Donna LaBelle (ph), but she's off right now because she's got one of these, too, so --

With that, I'm gonna' excuse you to the jury room for about ten minutes. We'll get ready for openings. We'll come back and start the case.

THE CLERK: All rise for the jury.

UNIDENTIFIED JUROR: Can we take our things or leave 'em here?

THE COURT: I think you can take your things in the jury room. Yep. If you have anything in the pews, please pick them up.

(Jury out at 10:26 a.m.)

THE COURT: If you guys wanna' move the podium for your openings, that's okay, but be careful 'cuz there

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1 are cords and electronics on it.
2 MR. FIEGER: I'd move to sequester witnesses,
3 too, your Honor.
4 THE COURT: Yep, all witnesses are to be
5 sequestered. Are you a witness in this case?
6 UNIDENTIFIED VOICE: No, I am a -- I'm a student
7 at Oakland University, and I'm here for a business law
8 class to observe.
9 THE COURT: Oh, okay. All right, we'll see you
10 guys back here in about ten minutes.
11 (Court in recess at 10:27 a.m.)
12 (Court in session at 10:44 a.m.)
13 THE CLERK: All rise. The Oakland County
14 Circuit Court is now in session, the Honorable James M.
15 Alexander, presiding.
16 THE COURT: Please be seated.
17 THE CLERK: Now calling Sherbow v Fieger &
18 Fieger, 2015-147488-CB.
19 THE COURT: What I do is I need appearances
20 every time we start the case.
21 MR. FIEGER: Exactly.
22 MR. JANKS: Judge, Gregg Janks, on behalf of the
23 Plaintiff.
24 MR. FIEGER: Geoffrey Fieger, on behalf of the
25 Defendant. We have an issue, Judge, on -- on openings.

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1 THE COURT: Okay.
2 MR. FIEGER: Mr. -- I was -- I showed Mr. Janks
3 everything that I propose to use. It's -- it's what's in
4 evidence or may be in evidence. Mr. Janks was kind enough
5 to show me, but he's got an opening PowerPoint in which he
6 proposes to show the law to the jury, and tell them what
7 it means, and that's just absolutely improper. I've been
8 in cases long enough where he's not allowed to read 'em
9 the law, and -- and tell 'em what it means.
10 THE COURT: I read the jury instructions. The
11 Court's gonna' say the law is my bailiwick. I told you
12 guys that 800 times so far.
13 MR. FIEGER: Right.
14 THE COURT: That's what I do. Don't tell 'em
15 what the law is.
16 MR. JANKS: I understand, Judge, but --
17 THE COURT: Tell 'em what the facts are. I'll
18 worry about the law.
19 MR. JANKS: Your ruling is what this case is
20 about is 1.5(E) under the rules of professional conduct,
21 and I would like to tell them what 1.5(E) indicates.
22 That's what the case is about, and that's what they're
23 gonna' make a decision on, Judge.
24 MR. FIEGER: His -- his view of what it says and
25 what I believe it says or what the case law says are

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1 radically different, and that's why it's just gonna'
2 promote absolute confusion if he says read it and I'm
3 tellin' you what it says now. There's cases out there,
4 there's ethical opinions --
5 THE COURT: Look, guys, it's -- it's openings.
6 You know, all the time I've had lawyers who put it up. I
7 don't care. I'll tell 'em what the law is, and I tell 'em
8 and I caution them all the time, I tell you what the law
9 is. So if he wants to put it up, he can put it up.
10 MR. FIEGER: Could I have -- just a -- then an
11 admonition to them that you'll tell -- I -- I know you
12 said it already, but --
13 THE COURT: Yeah, absolutely, I've said it --
14 I've said it three times already. I'll say it again.
15 MR. FIEGER: I know, but -- Thank you.
16 MR. JANKS: Judge, I have one issue with one of
17 Mr. Fieger's opening exhibits. He has a phone message
18 which is his proposed trial exhibit L. I had filed
19 objections with Mr. Bendure about exhibits L and M
20 because, number one, it had never been provided to us
21 during discovery. They've only provided two weeks before
22 the trial. Friday, February 17, is when I wrote him and
23 told him that I objected to it. Additionally, there's no
24 foundation for it, and, additionally, it's not legible,
25 and you can't read it, and I said all that to Mr. Bendure.

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1 MR. FIEGER: This is --
2 MR. JANKS: I don't care about that.
3 MR. FIEGER: Well, this is what he's talking
4 about, Judge. Mervie (ph) Rice called on the 17th of -- of
5 July. In order to get to our department who writes this
6 up, she goes through the -- the receptionist who simply
7 wrote, and we gave it to him at the very beginning, who
8 simply wrote --
9 MR. JANKS: Didn't give it to us in the
10 beginning.
11 MR. FIEGER: -- "Mervie -- Mervie Rice, 7/17,"
12 which is -- goes exactly with that. Nobody's ever denied,
13 and Ms. Rice, everybody says she called on 7/17, everyone
14 in this case.
15 MR. JANKS: No, Mr. Danzig denies that she
16 called in. That was only produced two weeks ago, Judge.
17 THE COURT: This is opening, guys. I don't
18 care. Put it up. If he doesn't -- if he can't prove it
19 or I keep it out, I'll tell the jury to keep it out.
20 Right now, this is opening. I've told the jury three
21 times, the comments of lawyers are not evidence.
22 MR. JANKS: Well, I have my objection noted for
23 your record, obviously.
24 THE COURT: Objections are noted. Ready for the
25 jury?

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1 MR. JANKS: Ready.
2 MR. FIEGER: Yes, sir. Is your staff starting
3 to get this thing that's goin' around?
4 THE COURT: Somethin's goin' around. My
5 secretary's in the hospital with some kind of a viral lung
6 issue. That scares me.
7 MR. FIEGER: I know.
8 THE COURT: Claudia's been sick for three days.
9 We've all had it. I mean, Wendy and I, and my wife all
10 had it when we were in conference.
11 MR. FIEGER: Right.
12 THE COURT: Why -- why is -- what are we doin'
13 here; is this just local color?
14 MR. FIEGER: I don't know.
15 THE COURT: Or is this gonna' be an exhibit?
16 MR. JANKS: That's the screen saver on the
17 computer.
18 THE COURT: Oh, okay.
19 MR. JANKS: And then we're gonna' go to a
20 PowerPoint for the opening.
21 THE COURT: Where's Dan Gilbert's new 52 story --
22 MR. JANKS: Not there.
23 MR. FIEGER: Well, actually, wouldn't it -- it's
24 -- it would be ri --
25 THE COURT: It would be --

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1 MR. FIEGER: -- that's the Guardian building.
2 THE COURT: That's Penobscot building
3 (indiscernible)
4 MR. JANKS: That's the old Hudson building,
5 right?
6 THE COURT: Yeah.
7 MR. FIEGER: So it's behind that.
8 THE COURT: He's gotta' get a new architect.
9 MR. JANKS: It's ten feet taller than the --
10 THE COURT: Yeah, but you could use the Hudson's
11 footprint, make it real cool.
12 MR. FIEGER: Yeah, I agree.
13 THE CLERK: All rise for the jury.
14 (Jury in at 10:50 a.m.)
15 THE COURT: Okay, please be seated. We're
16 gonna' go into openings, ladies and gentlemen. Again, I'm
17 gonna' caution you that these are the lawyers comments.
18 They're not evidence. If they give you law, take it for
19 what it's worth. I'll give you what the actual law is.
20 So with that, Mr. Janks.
21 OPENING STATEMENT
22 BY MR. JANKS:
23 Yes, Judge, thank so much. Ladies and
24 gentlemen, as indicated, I'm Greg Janks. I represent
25 Jeffrey Sherbow. This is a breach of promise case, breach

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1 of contract case. Promises are legally enforceable under
2 the law. Miriam Webster has a definition of the word,
3 promise, and that is, "A declaration that one will do or
4 refrain from doing something specified; a legally binding
5 declaration that gives the person to whom it is made a
6 right to expect or to claim the performance or forbearance
7 of a specified act."
8 In this case, Jeffrey Sherbow, through his law
9 firm, law offices of Jeffrey Sherbow, referred four
10 individuals involved in a car crash to the Fieger law
11 firm. There was a car crash that happened on July 13,
12 2012 in Ohio. Mr. Sherbow had represented a fellow by the
13 name of Charles Rice who was a retired Detroit policeman.
14 Mr. Rice, the retired Detroit policeman, was involved in a
15 company called Gratiot McDougal (ph). That was a company
16 that involved low-income housing in the city of Detroit.
17 Mr. Sherbow was not the primary lawyer for Gratiot
18 McDougal, but he was a consulting lawyer, and had
19 established a relationship with Mr. Charles Rice, and also
20 with Mr. Rice's partner, a lady by the name of Jennifer
21 Hatchett (ph).
22 Now, Mr. Rice was driving his car or a car -- I
23 I don't know if it's his; it's not important if it is or
24 isn't -- in Ohio on -- on the date I told you, July 13 --
25 unfortunately, Friday, July 13, 2012, and he had three

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1 family members in the car. One of the family members name
2 was Dorothy Dixon. Dorothy Dixon and Charles Rice had a
3 son by the name of Dion Rice (ph). Dion Rice is a name
4 that you'll need to know because Dion Rice is involved in
5 the chain of or chain -- chain of events that deal with
6 Mr. Sherbow and Mr. Sherbow's friend who's a fellow by the
7 name of Jeffrey Danzig, D-A-N-Z-I-G, who was a partner and
8 a shareholder and a lawyer at the Fieger law firm.
9 So this crash happens. The other two people in
10 the vehicle are cousins of Charles Rice and Dorothy Dixon.
11 Their names are Phillip Hill and the other lady is Mervie
12 Rice, so it's a car, four people in the car traveling from
13 Michigan going down south. In Ohio, there's a
14 construction zone. The construction zone has some
15 problems with its markings and signage and barrels, and
16 therefore, Charles Rice, who Mr. Sherbow had established
17 an attorney-client relationship with before the car crash
18 ever happened, drove left into a lane that was not to be
19 driven into. It wasn't his intention to drive badly, but
20 the barrels that were supposed to demarcate that lane were
21 no longer demarcating it. In fact, another vehicle had
22 done the same thing before Charles Rice did this, and
23 Charles Rice's vehicle with the people in it landed on top
24 of the other vehicle which had gone the wrong way on the
25 freeway construction site.

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1 So, what happens then, because of this, is
2 Jennifer Hatchett, who's the partner of Charles Rice,
3 calls Jeffrey Sherbow and says, on that very day, July 13,
4 2012, says, "Mr. Sherbow, I heard my business partner,
5 Charles Rice and his family was involved in a terrible car
6 crash in Ohio. They're certainly going to need some legal
7 advice and guidance. We think you're the guy to provide
8 it because I, Jennifer Hatchett, and Charles Rice, who's
9 now deceased because he died in the car accident, had met
10 with you before, Mr. Sherbow, had talked to you before,
11 Mr. Sherbow, had asked for legal advice from you, Mr.
12 Sherbow."
13 Jennifer Hatchett will be here to tell us that
14 story and that connection. As I indicated, Charles Rice
15 can't be here to tell us that story because he's deceased.
16 Mr. Sherbow will be here to tell us that story, and that
17 connection. Immediately, on the very day of the accident,
18 July 13, 2012, Mr. Sherbow called Mr. Danzig, a
19 shareholder and partner of the Fieger law firm. He's
20 named on the letterhead as a partner. In law, you'll hear
21 that there's two columns of lawyers that are put on lawyer
22 letterhead. If you're over in the right column, you're an
23 associate. You have no rights, you have no say, you get
24 paid and that's about it. If you're on the left side or
25 if you're on the masthead and the name, you're a partner,

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1 you're a shareholder, you have rights, you have
2 responsibilities to the firm and you help run the firm,
3 and you make promises on behalf of the firm.
4 So, Mr. Sherbow talked to Mr. Danzig on the very
5 day of the crash said, "Hey, I've got this family that was
6 involved in a terrible crash. Mr. Sherbow's client is
7 dead. Other family members are seriously injured. One of
8 'em's in a coma. The other two are in hospital with
9 various fractures and things of that nature, and so let's
10 get that case to you because I, Mr. Sherbow, run a small
11 office. I know you, Mr. Danzig, worked for Mr. Fieger at
12 a big law office, and you specialize in personal injury,
13 auto accident, tort kinds of cases. I know you have the
14 resources and the staff to properly represent these
15 people. Let me bring these people to you so that you can
16 represent them if that's what you wish to do."
17 So, a promise is a contract that the law will
18 enforce. Fieger law, through its authorized
19 representative, Jeffrey Danzig, promised to pay Mr.
20 Sherbow for referral fees which created a contract. And
21 this type of agreement is common in Michigan injury cases.
22 You'll hear testimony that it's not common in criminal
23 cases. It's not common in divorce cases, referral fees
24 being paid. There are referrals made, so somebody says,
25 look, I'm gettin' divorced, and calls a lawyer, says do

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1 you know a good lawyer if you're not a lawyer that does
2 divorces, and as a referral you -- you say, oh, yeah, I
3 know someone who's a divorce lawyer, go ahead and call
4 them. In those situations or referring people for
5 criminal representation, divorce representation, those
6 kinds of things, it's not typical -- you'll hear the
7 testimony from the lawyers -- to pay referral fees. But
8 there is an area called personal injury where it is common
9 to pay referral fees if a personal injury case is sent to
10 your office. It's just what's done in the personal injury
11 arena. That's how it is.
12 So, Mr. Danzig, on January 2, 2014 -- and this
13 is after letters that came before this letter -- Mr.
14 Danzig left the Fieger law firm in January of 2014. Mr.
15 Danzig intook the cases that Mr. Sherbow referred of the
16 four injured people in July, August, and September of
17 2012. Mr. Danzig will be here to testify and tell you
18 what he did. There'll be documents that we'll show you
19 that documented what he did. There were letters back in
20 2012 from Mr. Danzig to Mr. Sherbow that said we're
21 accepting the four cases from you on referral, and we're
22 gonna' pay you 33 1/3 percent of our attorney fee. That
23 deal was changed in January of 2014 because the case was
24 pending in Ohio. They had to have an Ohio lawyer be local
25 counsel with Mr. Fieger's firm. And by the way, you'll

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1 hear testimony that it was Mr. Danzig that worked on the
2 case from the beginning until he left the firm. Mr.
3 Fieger never worked on the case. Mr. Fieger didn't know
4 the clients. Never interfaced with the clients until
5 after Mr. Danzig left the firm in 2014.
6 As part of his leaving, Mr. Danzig proffered the
7 January 2014 letter that's up on the board, and that
8 letter is to Mr. Sherbow as you can see. It's also to Mr.
9 Antilly (ph) who is the Ohio lawyer that I referred to
10 that was acting as the local counsel in Ohio because every
11 state, you'll hear, doesn't let out-of-state lawyers just
12 show up and practice law unless there's some local lawyer
13 there with them practicing.
14 So Mr. Antilly, originally, was going to get ten
15 percent on the case, Mr. Sherbow was going to get 33 1/3
16 percent, and the Fieger firm was going to get the balance.
17 As you can see, that changed, and the change was because
18 Mr. Antilly said, "Hey, I'm down here workin', showin' up
19 in court, doin' stuff. I need more, I need 20 percent."
20 Mr. Fieger told Mr. -- Mr. Danzig told Mr. Fieger about
21 the situation. Mr. Fieger said, "Look, I want 60 percent
22 for my firm. I don't care about the rest. You work it
23 out with Sherbow, you work it out with Antilly. So that's
24 what Mr. Danzig did. He worked it out with Mr. Sherbow
25 and Mr. Antilly, and came up with a new fee sharing

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1 arrangement.
2 The 60 percent that Mr. Fieger insisted that he
3 would get -- wouldn't take a dime less -- the 20 percent
4 that Mr. Antilly wanted because he was down there doin'
5 some work, and Mr. Sherbow agreed to go from 33 1/3
6 percent to 20 percent. So Mr. Sherbow was working to do
7 what was best for the clients and for the case to get it
8 resolved.
9 You also see that Mr. Danzig says that Geoff
10 Fieger approved this arrangement on 11/11/13. Mr.
11 Danzig's going to tell you he sat down with Mr. Fieger,
12 told Mr. Fieger about this, and personally got Mr.
13 Fieger's personal promise and agreement to abide by this
14 arrangement. You'll see the name of the firm, it's
15 Fieger, Fieger, Kenney, Drew, Danzig & Harrington. Danzig
16 is the name part -- in the front. So remember I told you
17 about a right column, associates, people that aren't
18 partners, aren't sharing in responsibility, aren't making
19 decisions on behalf of the firm, and the column on the
20 left that has the shareholders, the partners, the people
21 that are responsible for what goes on at the firm,
22 responsible for running the firm, responsible for making
23 decisions on behalf of the firm, responsible for binding
24 the firm, responsible for making promises on behalf of the
25 firm, and that's what this case is about is a promise, a

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1 promise that was reduced to writing or acknowledged in
2 writing, and we'll show you the other writings, and when
3 it comes time to move on -- And I guess I should tell you
4 that referral fees under Michigan law only require that
5 the clients, so the four -- four injured folks, they need
6 to be informed about the referral fee at the beginning
7 when everything starts, not like years later when somebody
8 gets them ten million dollars and says, hey, say that you
9 weren't referred in at the beginning. They have to be
10 told there's gonna' be fair sharing or a referral fee, and
11 not object.
12 The testimony in this case from Mr. Sherbow and
13 Mr. Danzig will be Mr. Sherbow was there when Dion Rice
14 and Mervie Rice met Mr. Danzig and signed up at the Fieger
15 firm on July 26, 2012, so that's 13 days after the
16 accident. Mr. Sherbow and Mr. Danzig will testify that
17 Mervie Rice and Dion Rice -- Dion Rice was there on behalf
18 of his deceased father and his comatose mother -- were
19 advised that the Fieger firm would take the case; that it
20 was a referral from Mr. Sherbow, and that Mr. Sherbow
21 would be paid a referral fee. Those clients did not, on
22 July 26, 2012, object.
23 Phillip Hill, another of the passengers, cousins
24 of the people in the case, was signed up on August 6 by
25 Mr. Danzig alone. Mr. Sherbow wasn't there. Mr. Sherbow

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1 didn't meet Phillip Hill. Mr. Sherbow didn't have to meet
2 Phillip Hill. Mr. Sherbow had given the information to
3 Mr. Danzig at the Fieger firm, and when Mr. Hill was met,
4 Mr. Danzig will testify that Mr. Hill was told you're part
5 of the package here. You're -- you're the -- get the
6 family deal. Mr. Sherbow brought us into the case,
7 brought everybody into the case. You're a cousin, do you
8 wanna' sign up with us. If you do, we're gonna' fee
9 share. We're gonna' send a referral fee to Mr. Sherbow.
10 Mr. Hill did not object.
11 Mr. Danzig then signed up Dorothy Dixon, the
12 mother of Dion Rice, in September, September 11, 2012,
13 when she came back from Ohio. She came out of the coma
14 after a month or two, and then came back to rehabilitation
15 in Michigan. Mr. Danzig says, "Look, I do this with every
16 client. I specifically remembered doing it with this
17 case, and Mr. Sherbow saying it was a referral, saying we
18 were gonna' share fees, and in fact what I also did is
19 brought in another outside lawyer, a lady called Jody
20 Lipton, L-I-P-T-O-N, that was gonna' handle what we call
21 the no fault benefit aspects of the case.
22 So the Fieger firm was going to work on the tort
23 liability for a bad construction site in Ohio, Jody Lipton
24 was going to work on getting no fault benefits which are
25 wage loss, medical bills paid, people helping you around

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1 the house, and Mr. Sherbow was the referral lawyer. And
2 there is no expectation nor no requirement under Michigan
3 law that the referral attorney, Mr. Sherbow, in this case,
4 is required to work on the case, and in fact, most lawyers
5 that take a referral -- you'll hear from other lawyers --
6 don't want the referral while they're workin' on the case,
7 they wanna' handle the case the way they wanna' handle the
8 case, and they don't want interference. A referral
9 lawyer's certainly able to work on the case if the client
10 wants it, if the referral lawyer wants to do it, if the
11 firm that accepts the referral wants it, but it's nowhere
12 required, and in fact it's not typical. And the reason
13 you'll hear it's not typical is because usually folks like
14 Mr. Sherbow that maybe do some divorces and do some real
15 estate stuff, and maybe do some commercial stuff aren't
16 specializing in or every day doing the kind of law that
17 personal injury lawyers do, and that's why they get
18 referred out. I mean, much like a general practice
19 doctor, if you have a brain problem, is gonna' send you to
20 a neurologist. That's the way it happens, so the general
21 people typically send folks to the specialist. The
22 specialists wanna' deal with it themselves.
23 Moving on next. The Judge, of course, will tell
24 you the law, and he's the only one that will tell you the
25 law, but -- but there is a rule of professional conduct in

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1 Michigan, the Michigan rules of professional conduct that
2 apply to lawyers, rule 1.5 talks about fees, and 1.5(E)
3 says, "A division of a fee between lawyers who are not in
4 the same firm may be made only if, one, the client is
5 advised and does not object to the participation of all
6 the lawyers involved, and, two, the total fee is
7 reasonable." So that's what we already talked about. The
8 client has to be told at the beginning of the case there's
9 gonna' be a referral fee paid, and the client, if they're
10 going to object which they have the right to do, has to
11 object at the beginning of the case, not at some later
12 time.
13 The testimony you're gonna' hear in this case is
14 that at a later time, the clients says they object to the
15 payment of a referral fee to Mr. Sherbow, not when they
16 were signed up, not a month later, not a year later, not
17 two years later, but two years, nine months later, when
18 the money was in, and the money was going to get
19 distributed -- and go back to that other letter -- that
20 suddenly the -- the -- there's letters that Mr. Fieger
21 drafts for the clients to sign that say we don't know a
22 Sherbow. We don't wanna' pay Sherbow. There's affidavits
23 that Mr. Fieger drafts and says to his clients, here, sign
24 these that say, oop, we don't know Sherbow, don't pay
25 Sherbow a referral fee, and that's not how we work it.

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1 You -- you don't -- once the money's in, once you've got
2 clients ten million bucks, convince the clients to disavow
3 a promise that you and your partners have made.
4 And, interestingly, of the money, you'll hear,
5 that came in, Fieger law got it's 60 percent. That part
6 of this agreement was fulfilled. Antilly, Mr. Antilly and
7 Groves got their 20 percent. That part of the agreement
8 was fulfilled. There's only one part of this agreement
9 that has not been fulfilled. Mr. Sherbow didn't get his
10 20 percent, and that's why we're here today.
11 So the four clients, as I said, were informed of
12 the referral fees at the beginning of the representation,
13 and the time to object is at the beginning, not at some
14 later time when encouraged to do so by the law firm that
15 accepted the referral and wants to keep the fees for
16 itself. It's a broken promise case. Before injury cases
17 settle for 10.225 million dollars, instead of the Fieger
18 firm saying thanks, Mr. Sherbow, you sent us a blockbuster
19 set of cases that -- that we were able to do some good
20 work on, we were able to make money, we were able to get
21 money for the underlying clients, they give Mr. Sherbow
22 one of their fingers.
23 Fieger law took a fee of 3.4 million dollars for
24 a promise of 20 percent for Mr. Antilly, $681,666.69 which
25 they paid. Now, that does come out of the 3.4. The 3.4

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1 is the -- the gross pot, let's say, and then from the
2 gross pot, 20 percent to Antilly is 681,666.69, and
3 obviously, the same 20 percent to Mr. Sherbow is the same
4 number, and that's what this case is about, and that's the
5 money that we're talking about in this case.
6 So what we have is broken promises. Mr. Fieger
7 refuses to pay what was promised, promised by himself,
8 promised by his partners, and the objections we say and
9 the evidence will show are objections that are belated,
10 too late, and they're manufactured in any event. They're
11 -- they're made up objections by Mr. Fieger, not by the
12 clients. And you'll hear the clients. They'll come in
13 here. Mr. Fieger will bring 'em in, and you'll hear what
14 they say. You'll observe them as witnesses. You'll see
15 what they're memory is and their capacity of their memory
16 about things that happened back in 2012. And you'll also
17 hear testimony that, you know, it -- the fee is the fee is
18 the fee is the fee. The fee's gonna' be the 3.4 million
19 dollars. There's no extra money that the clients pay to
20 Mr. Sherbow for referral or to Mr. Antilly for being co-
21 counsel down in Ohio. The fee is 33 1/3 percent. That's
22 the way it is, and the question is how did the lawyers
23 divvy up the total fee as between themselves.
24 The only beneficiary of the belated client
25 objections -- there's only -- there's only one beneficiary

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1 here, and it's Mr. Fieger and his law firm, and that's
2 worth considering in this case because no one is above the
3 law, whether you have ads on TV or you don't, whether you
4 have a big practice or you don't, whether you're a big
5 fish or you're not, you're not above the law, you're not
6 above your promises, you're not above your agreements that
7 you make, and so we're here, and at the end of the case
8 we're gonna' ask you to enforce the agreement that you
9 already say and give Mr. Sherbow the 20 percent of the
10 fees that were agreed to and have been hung on to since
11 2015, and he has not had that money or the use of that
12 money. And this isn't just lawyers fighting, so, you know,
13 why are you concerned about law -- we don't like lawyers,
14 we don't like politicians. This is serious business. This
15 is a promise and I think we all know, and we all grew up
16 understanding that promises are promises. They're there to
17 be kept, and if you make a promise, especially when it's a
18 promise that (indiscernible) to your benefit, you -- you
19 thank the person that helped you out and you take care of
20 your promise. Thanks so much.
21 THE COURT: Thank you. Mr. Fieger.
22 MR. FIEGER: May I have just a few moments to
23 set up, your Honor? I -- I don't need everybody to leave.
24 I just need a couple of minutes.
25 THE COURT: Go ahead.

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1 MR. FIEGER: Okay, thanks. Your Honor, there
2 was tri-pod here. Did somebody put it somewhere?
3 THE COURT: It's in the back.
4 MR. FIEGER: Okay. I had the tripod all set up.
5 Is that it?
6 OPENING STATEMENT
7 BY MR. FIEGER:
8 Good morning, ladies and gentlemen. My name is
9 Geoffrey FIEGER, and under the law, because this is, as
10 Judge Alexander told you, this is an important case.
11 Whatever case involves your name and your firm, and the
12 representation -- the rep -- reputation of my firm and the
13 people who work for me, that's very important. You'll
14 find out that I represent a law firm of roughly 70 to 80
15 employees. At any one time, there are usually about 20
16 lawyers that work in the firm. My firm was started in
17 1950 by my father, Bernie Fieger, who came to Michigan
18 after falling in love with my mother who's from Highland
19 Park, and began the law firm, second inter-racial law firm
20 in the city of Detroit, 1950, Fieger and Lee.
21 My father practiced continuously until he passed
22 away in 1988, and I joined the firm in 1976 when I started
23 law school, and so I've worked there continuously since
24 1976. This will be by 41st year of employment by the law
25 firm. I became a lawyer in 1979, so I've been a lawyer

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1 for just under 40 years practicing in Michigan.
2 I am, contrary to what you've heard, I'm the
3 sole shareholder of the corporation. I have no partners.
4 We have what's called, after you're in the firm for a
5 certain period of time, there's a sort of an
6 acknowledgment that is -- that's given to our attorneys.
7 It's called a nameplate presence, but they are never
8 partners, they are never shareholders. I own 100 shares --
9 100 percent of the shares of stock. I always have, and
10 counsel just was mistaken when he said that there were --
11 Mr. Danzig who worked for me for a period of time was a
12 shareholder or a partner. He's just mistaken on that, and
13 no one else was a partner in my law firm.
14 There are some excellent attorneys, and you will
15 hear that because of the notoriety of my law firm, and
16 because of my success in practicing law, a lot of people
17 desire for me to represent them in court. And Abraham
18 Lincoln said that a law -- and he was a lawyer by the way
19 -- he said, "A lawyer's stock and trade is his time," and
20 I appreciate that more as I get older because as I get
21 older, my time is dwindling. Days are shorter, years are
22 shorter. I'm hurtling through time, and my 24 hours a day
23 doesn't translate into enough time to allow me to practice
24 and handle all the cases that we handle.
25 But we're -- we've been blessed to handle some

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1 very -- very important cases. We've been blessed in the
2 sense that -- that people want me to represent them, and
3 if I'm able to, and our resources are such that we can do
4 it, I agree to represent a certain number of people.
5 In doing that, I have a certain responsibility.
6 I am not only the president. I am the sole shareholder.
7 I run the corporation so I make decisions for the
8 corporation. I'm the sole decision maker. As -- as
9 President George W. Bush once said, he was the decider,
10 and I'm the decider of my corporation.
11 THE COURT: The full quote was the decider in
12 chief.
13 MR. FIEGER: That's right, I am the decider in
14 chief, and I'm the decider in chief of my corporation.
15 It's a difficult task 'cuz it takes away the time, you'll
16 see, for me to handle my cases. There's a part of my
17 duties called administrative work. That means I have to -
18 - I have office managers, and I have supervisors, but,
19 ultimately, everybody -- I get blamed for the success and
20 I get blamed for the failures so that, ultimately, the
21 buck stops at my desk, and I must make all those decisions
22 in the case in -- in law firms.
23 One of my jobs, one of my most important jobs is
24 to protect the firm and the income of the firm from any
25 schemes or thievery or fraud or attempts to divert income

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1 of the firm that's owing to our firm, and that gets paid
2 both to our clients, to my employees, and all the
3 attorneys who work for me. I've got to ride herd on that
4 because those instances, unfortunately, in the law as in
5 any other business, exist.
6 And when they arise, I personally believe it's
7 necessary that we -- my firm not be a victim. And since
8 anyone can file a lawsuit, anyone's entitled to come down
9 here and I'm a champion of the rights of these gentlemen
10 to file a lawsuit in this courtroom, and have their day in
11 court. I champion that right. Anybody has the right to do
12 that. And that's why I'm here because of how important it
13 is and what this case is really about.
14 This case is about Mr. Sherbow, an attorney,
15 who's bound, like Mr. -- his attorney said with ethics, by
16 the law, who's claiming that he is owed a referral fee for
17 people claiming he referred clients he never had, and that
18 he's owed money as a result of a deal that he made with a
19 long-time friend of his, a golfing friend. They go to
20 each other's house up north, they write hundreds if not
21 thousands of emails together, and they've been close
22 friends. They stay at each other's house for 20 years.
23 And he claims that as a result of a deal that he allegedly
24 made with Mr. Danzig without my knowledge in the office,
25 that he is somehow owed over a half a million dollars of

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1 our firm's income, monies owing to my employees, my
2 clients, as a result of a deal that he secretly made with
3 Mr. Danzig because he claims to refer four people who were
4 never, ever his clients, ever, and therefore, he had
5 nothing -- nothing to refer.
6 None of my four clients -- I had four. The
7 estate of Charles Rice. That's a client, it's a separate
8 client. It's represented in court by Mr. Howard Linden
9 (ph) in this courthouse. Mr. Linden is appointed by
10 another judge who's co-equal to Judge Alexander in the
11 Probate Court, and he's appointed for the purpose of being
12 my client in that wrongful death case. Mervie Rice, who
13 he never represented ever in life, Phillip Hill, who he's
14 never even met in life, and Dorothy Dixon, who contrary --
15 you'll hear the testimony that he had never met her until
16 2014 which was just before the case was resolved in Ohio
17 that I represented these folks on. He claims he met her
18 for the first time when he went over to her house and
19 started to ask -- unannounced about how she was doing two
20 years later, but it turns out he actually had met her even
21 before that, and I'll tell you about that.
22 Not one of the clients signed a retainer
23 agreement, a legal contract with Mr. Sherbow to represent
24 them, but all of them signed a retainer agreement with my
25 office. If a client hasn't been told, if a client doesn't

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1 agree, if a client hasn't retained another attorney, then
2 you have nothing to refer. You can't claim that you made
3 a secret referral that you read somebody's names in the
4 paper and called your friend, Mr. Danzig, and said give me
5 a half a million dollars of Mr. Fieger's firm's money for
6 doing that.
7 The evidence will also show, besides the fact
8 that counsel is just mistaken about partnership or
9 shareholders, they're not, they never have been, ever. He
10 has no authority, Mr. Danzig, who left my office in 2014
11 in January. He has no authority to make a secret
12 agreement with his 20-year long friend, Mr. Sherbow, to
13 transfer half a million dollars of my firm's money to Mr.
14 Sherbow on behalf of four clients who called my office,
15 and who were never represented by Mr. Sherbow. He has no
16 authority to do that, ever. He never did. In fact, we
17 have strict written policy on that, ladies and gentlemen,
18 that you're gonna' see.
19 Bear with me. I -- I apologize here. One of
20 the methods that I encountered very early on that you'll
21 hear in my law firm was because the buck stops with me,
22 that I had to make sure, and I'm responsible for ever --
23 my name, because I'm a hundred percent owner of the
24 corporation, and if somebody does something wrong, if
25 someone steals, if someone cheats, if someone commits

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1 malpractice, I'm responsible -- I'm responsible.
2 Well, a long time ago I found out, and I always
3 think the best of people, but I found out that there's a
4 method by which funds from the firm could be diverted
5 without me knowing. The plan would go something like
6 this: Because I have so many lawyers and I have thousands
7 of cases in my law firm, and I can't be aware of every
8 case in my law firm nor am I expected, although I'm
9 expected as the primary partner to supervise that lawyers,
10 could claim that a friend of theirs referred them a case,
11 and without my knowing it, because I don't keep track. I
12 trust the lawyers. I have to, they work for me, and
13 lawyers are generally honest and dependable and
14 trustworthy, and honorable. But it's not true -- that's
15 not true in life. A hundred percent aren't. I found out
16 that you could do something by secretly make an agreement
17 where you had nothing to do with the firm, when suddenly
18 your name shows up on our firm records without my
19 knowledge as a referring attorney.
20 And so one of our attorneys makes a deal like
21 Mr. Danzig with Sherbow and says I'll agree, I'll put on
22 this that -- that you're a referring attorney, and when
23 the money comes in, you get a third of it or 20 percent or
24 whatever they put on the thing. And if I don't know about
25 it, and I trust them, the money comes in, it's divided, we

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1 take our fees and we take our costs, and I'll explain that
2 to you with this case, and then the money is divided among
3 the attorneys. Our firm takes our fee. And if attorney
4 says so and so referred a case, so and so referred a case,
5 he gets a third, could be hundreds, half a million
6 dollars.
7 Well, I found out that's a re -- that's a
8 prescription to cheat. What if you -- you -- you have a
9 friend and you just say he referred the case, and he
10 really didn't refer anything. And so now, out the back
11 door went half a million dollars. So I knew about this a
12 long time ago. And I said, well, the only way I can do
13 it, because I can't be aware of everything, I can't be
14 everywhere, every place to everything, is I'm going to
15 have to at least, at a minimum, supervise these people
16 where they have got to make it known to me in advance if
17 this type of arrangement between Sherbow and Danzig or
18 anybody else ever was taking place so that I knew upfront
19 -- upfront that this was a legitimate deal, and that I
20 don't find out two and a half years later like I did in
21 this case, and you'll find out, you'll see the letters,
22 that somebody was claiming a referral fee on a case they
23 had nothing ever to do with.
24 And this has been my policy since October 15,
25 2001, and I have repeated this constantly. And that

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1 doesn't mean having a policy like this and putting it out
2 to my employees and saying this is the thing, that doesn't
3 stop 'em. It didn't stop Mr. Danzig in this case from
4 doing what he did. I wrote to all attorneys. Listen,
5 'cuz it's -- it's identical to what happened in this case.
6 And I'm not a mind reader. This case happened in 2012. I
7 wrote this in 2001 and distributed it at the firm. I have
8 repeatedly, over the years, told all attorneys that no one
9 may accept a referral fee from another attorney, friend,
10 former friend or former associate 'cuz I knew what was
11 goin' on. That's a possibility. I'd seen it happen. Can't
12 accept a referral from another attorney, from a friend,
13 from a former friend without bringing the case to me to
14 determine if I wanna' take the case and invest the money
15 in it.
16 Apparently, this is continually being ignored.
17 As a result, I'm handling it another way. If you don't
18 have a signed document by me agreeing to accept the
19 referral, the firm will not pay you or the referring
20 attorney. You come to me first. You come to me and say,
21 Mr. Sherbow is claiming he's referring four cases of
22 people he never has been retained, who called our office,
23 Mr. Fieger, first, who he doesn't know, but we would like
24 to -- I want Mr. Fieger, you, to agree to give Mr. Sherbow
25 a referral fee. That's what you're required to do under

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1 this, and of course I would say no. However, the way you
2 get around this is you ignore the rules. You cheat. You
3 scam, and you hope that I won't find out. I found out. I
4 found out before the money was paid.
5 Here's what the facts are in this case. In this
6 case, contrary to client's -- counsel's representations,
7 it's not four family members, and I represented them in
8 trial in Ohio, and I won. We made a very -- very -- as a
9 result of winning the case, a large settlement was paid,
10 and I tried the case for almost a month in Dayton, Ohio in
11 2014 after Mr. Danzig left the law firm.
12 I would not have found out about what happened
13 here unless I had taken over the case because I would have
14 accepted I can't go into every file, I don't check every
15 file, and some things get beyond me, and if Mr. Danzig had
16 come to me and said Mr. Sherbow referred this case and he
17 had settled the case, I would never have known the worse.
18 However, I took over the case, I tried it to completion,
19 and then I started going through the file and said, okay,
20 now, we've got to decide how we're going to divide up this
21 money. Who's -- what money are we owed.
22 And I see letters in here from Mr. Danzig to Mr.
23 Sherbow -- I'll show you in a second -- claiming that he's
24 giving him a third on cases. And I said to my clients,
25 and you'll hear them, "Do you know Mr. Sherbow?" "No."

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1 "Well, he suppose -- he supposedly referred your case to
2 me." "What?" Now, by the way, you heard the list of
3 witnesses that the Plaintiff intends to call. He doesn't
4 intend to call, apparently, the clients who are more than
5 willing, who have given testimony in this case under oath
6 in depositions, in affidavits and in letters saying you
7 didn't ref -- we never retained you. We didn't ref -- you
8 didn't refer our cases to you. We called Mr. Fieger's
9 office. You're not entitled to any money whatsoever.
10 Now, contrary to what counsel said, this was not
11 four family members. Also, counsel said that Mr. Sherbow
12 was the lawyer for Mr. Charles Rice, which also isn't
13 true. Mr. Sherbow apparently knew Mr. Rice. Mr. Rice was
14 a participant in a non-profit corporation, and Mr. Sherbow
15 was not the lawyer for that corporation. There's no
16 retainer agreement, there's no nothing, but he apparently
17 knew Mr. Rice in life. He had met Mr. Rice. Doesn't
18 appear to be any question that Mr. Sherbow knew that, and
19 he was going to parlay this now into a real big hit.
20 Phillip Hill is no relationship to anybody,
21 contrary to what counsel said. Phillip Hill is Mr. Rice's
22 best friend. He is not a family member. Dorothy Dixon is
23 not a family member, and that's why she wasn't a member of
24 the estate of Charles Rice. She was his fiancé, and they
25 were traveling to Alabama to be married. Mervie Rice is

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1 the only relative in the car to Charles Rice. She is a
2 first cousin. And in 2011, they were involved in a
3 horrible auto accident that was the result of mis --
4 putting -- just terrible signage on a Ohio transportation
5 highway that was being reconstructed which was actually
6 funneling cars into a giant hole. It was a horrible --
7 horrible case.
8 Mr. Rice was killed in the case. The three
9 occupants in the car were -- he lived for about two to
10 three hours, terribly suffering. Was conscious for
11 awhile. Everyone else was horribly injured -- horribly
12 injured, brain injuries, Dorothy was in a coma for six
13 months, nearly six months. She was transferred from Dayton
14 to the Rainbow Rehabilitation Center, and she's made a
15 very remarkable recovery, but all -- all of the -- Phil
16 Hill, Mervie, and Dorothy Dixon were horribly -- horribly
17 injured, and -- and rightly deserved compensation.
18 Now, here's what happened in this case. I told
19 you already you'll never seen a signed agreement. You'll
20 see no retainer agreement for Mr. Sherbow. You'll see no
21 anything. He doesn't have any documentation of anything
22 with the clients except he's got four pages of notes where
23 he wrote Dion's name. I can find Dion's name on some
24 notes, and I'll explain that to you.
25 On July 17, 2012, Mervie had come back from the

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1 hospital and was home. The accident had happened on the
2 13th, and she had been transferred back to Michigan, and by
3 the 17th now, she is at home receiving treatment. She's
4 been operated on, and she is recovering at home. She's
5 got very serious injuries to her legs. She says, "I want
6 Geoffrey Fieger to be my lawyer." You'll see these.
7 These are our message pads that our receptionist fills
8 out. I'll explain how it works.
9 If someone calls my office, I have two
10 receptionists whose job is just to document the calls, and
11 then spread them out throughout the law firm to 80 people,
12 potentially. Let's make it clear, also. I have a
13 department called an intake department. At any one time,
14 five to ten people work in my intake department. So if a
15 client calls and says they want Geoffrey Fieger to be
16 their lawyer, the two receptionists write down the call,
17 and then send it either to -- directly to me if it's an
18 important case or they could send it to Mr. Danzig or they
19 could send it to any other lawyer or they could send it to
20 the intake department to have notes written about it, and
21 then it's assigned to lawyers from the intake department.
22 The intake department is not lawyers.
23 In this case, that's exactly what happened. All
24 procedures were followed. It's hard to read, but it says
25 7/17 -- 7/17, and that's Mervie Rice, that is her phone

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1 number, and says auto accident, July 13 -- auto accident
2 July 13.
3 What they did then is transfer her call down to
4 the Intake Department. The Intake Department is five to
5 ten individuals who sit in front of a computer, and have
6 headphones, and speak to the clients directly, and get a
7 write-up of the calls. Here is that intake sheet on
8 Mervie Rice. Date of the call, 7/17, 1:55. And that's
9 exactly corresponding with this. This is just backup to
10 this. And I frankly don't think anybody even contends
11 that Mervie Rice didn't call our office. A write-up was
12 issued. There is also a place where if somebody was
13 referred or had been referred by another lawyer, that we
14 write it up, okay.
15 Now, here's a place, July 18, 2012. Charles Rice
16 is known as Big Charles, and is a former client and friend
17 of Jeffrey Sherbow, the referring attorney. He's a
18 retired cop who resides in Farmington. Well, that was in
19 the file. That was interesting. 'Cuz Mervie Rice will
20 tell 'ya I wasn't referred by Jeffrey Sherbow. I don't
21 know Jeffrey Sherbow. 7/17, I was in my house calling
22 you, Mr. Fieger. I never heard of Mr. Sherbow. He didn't
23 refer me. Well, how did that get on there?
24 We had to do a little more investigation. Turns
25 out this is not the original, and this is not July 17. Is

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1 there an original still in our file in our computer? Yes,
2 there is. July 17, 2012. First page has some different
3 writing on it, but we found it in the file, too. But
4 there's one big difference in the file. Charles Rice is
5 known as Big Charles, and is a former client and friend of
6 Jeffrey Sherbow, a retired cop. Charles Rice's son is
7 Dion, and he is being -- he is assisting Dorothy. Nothing
8 -- nothing about Sherbow.
9 So we went into the computer, took the testimony
10 of Mr. Eric Donahue (ph), who's the head of our IT
11 department, and he was able to produce the first form that
12 had been written, and it was this one, July 17 without any
13 reference to referral. Somebody subsequently went into
14 the computer afterwards and wrote that Jeffrey Sherbow is
15 the referring attorney after this call was made. The only
16 person who would have access to do that is a long-time
17 friend of Mr. Sherbow, Mr. Jeffrey Danzig.
18 So we took Mr. Danzig's testimony under oath,
19 and you'll hear before he knew about how we could track on
20 a computer which one was done first, and which one was
21 done second, and he testified under oath that this one was
22 done first, and that somebody had gone in and taken it off
23 the computer when in fact we can track and audit the
24 computer trail, and it's exactly the opposite. This one
25 on July 17, which is the date, is the one where there's no

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1 referral because Mervie Rice doesn't know Jeffrey Sherbow
2 from Adam. Never retained him, never knew him in life, on
3 July 17, 2012 had never spoken to Jeffrey Sherbow. But
4 someone in my office by the name of Jeffrey Danzig, his
5 long-time friend for 15-20 years, the golf -- golfing
6 buddy where they stay together at the -- Mr. Danzig's home
7 up north, had gone into my computer and changed our
8 intake, and we can prove it.
9 Not simply this because one of the positions of
10 the Defendants in this case -- excuse me, the Plaintiff --
11 is that all of the clients are liars. Mervie Rice is a
12 liar. I don't know how. She never met Mr. Sherbow. She
13 never retained him. She testified to that, but she's a
14 liar. Mr. Howard Linden was brought in by my office on
15 the 25th, several days later, to be the estate, PR of the
16 estate of Charles Rice. On the 26th there was a meeting at
17 my office.
18 Now, here is the entire connection that Mr.
19 Sherbow claimed with Mr. Danzig to entitle him to half a
20 million dollars. When Mr. Rice died on the 12th, Mr.
21 Sherbow had called or been told by Jennifer Hatchett who
22 also is involved in Mr. Rice's corporation. It's not Mr.
23 Rice's corporation -- he doesn't own anything in that
24 corporation -- but who also knew Mr. Sherbow, and she told
25 him of Mr. Rice's unfortunate passing, and apparently that

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1 was -- that set Mr. Sherbow off on a belief that he could
2 somehow be retained even though he doesn't even handle
3 these cases by four people who don't know him, and that
4 somehow he would get half a million dollars in a referral
5 fee.
6 So he asked Ms. Hatchett, "How can I get a hold
7 of Mr. Rice's son," because Mr. Rice's son, Dion Rice,
8 until somebody else is appointed, like Mr. Linden, Dion
9 Rice is in charge of his father's estate. So Mr. Sherbow
10 asked Ms. Hatchett to get him in touch with Dion Rice.
11 And there's some question about whether he saw Dion Rice
12 at the father's wake, which was within the week of July 13
13 when the tragedy happened or whether he saw him at a
14 family member's house, but Sherbow showed up at the house
15 to try to solicit the case, unannounced, unasked for, but
16 tried to solicit the case. And he went up to Dion, and he
17 said, "You know, I was -- I was your father's lawyer,"
18 even though he never was a lawyer for his father ever in
19 life. He said, "You know, I was your father's lawyer,
20 and, you know, if you ever need any help I can give it to
21 you." He said, "Well, I'm sorry, but I've already called
22 Geoffrey Fieger's law firm." He said, "I'm going over
23 there. I have a meeting scheduled." And Mr. Sherbow said
24 -- and this is all been testified to under oath. Dion
25 Rice will tell you this. Mr. Sherbow says, "Oh, well, I

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1 have a good friend over there, Jeffrey Danzig. I'll go
2 over there with you to make sure you're well taken care
3 of." That is his only connection. So when Mr. Rice was
4 asked, "Did you ever retain Jeffrey Sherbow?" "No." "Did
5 you tell Mr. Sherbow you'd already called Geoffrey
6 Fieger?" "Yes." "Did any --
7 Then they go to a meeting. It's arranged on the
8 25th, and we actually know about that, too, because we
9 actually have a intake form from our receptionist, Jeffrey
10 Sherbow calling Mr. Danzig on the 25th wanting to be at
11 this meeting because Mervie Rice had called our office,
12 and we had set up a meeting with her to be at our office
13 on the 26th. Dion had called our office and he was going
14 to be there. Phillip Hill had never called our office
15 yet. We didn't represent Phillip yet. And Dion is the
16 son of Dorothy Dixon. Although his parents aren't
17 married, she was in a coma, and so he wanted to act on her
18 behalf also.
19 And so two people came to my office, one of
20 which was not the client, Dion, and one of which is our
21 client, Mervie, who had already told 'em. And lo and
22 behold they show up at our office, and Mr. Sherbow is
23 sitting there with Mr. Danzig, but he's not sitting there
24 alone. There's two other attorneys there, Jody Lipson --
25 Lipton, and Howard Linden, and they won't back them up.

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1 They claim, oh, the clients didn't object. They took
2 their testimony. Do you support our position? "No, that
3 didn't happen while I was there," Ms. Lipton said. She
4 won't be called. You didn't hear her name. Mr. Linden
5 said, "I'm the client, you have to tell me. Nobody told
6 me anything. I was appointed as personal representative.
7 I was there to be the personal representative. Nobody
8 ever said he's the referring attorney. I'm required to
9 approve that."
10 So there was a meeting, and the only two people
11 who claim that these clients were referred by this
12 gentleman here -- clients who don't even know him except
13 Mr. Dion Rice did meet him once at -- under the
14 circumstances -- is Mr. Danzig and Mr. Sherbow. That's
15 it.
16 Now, Phillip Hill never has met him. He admits
17 I've never met him. I never talked to him, but I'm -- I'm
18 entitled to a referral fee from him.
19 THE COURT: Mr. Fieger, I wanna' let the jury
20 break for lunch, so can we wrap it up pretty quickly?
21 MR. FIEGER: Yes, sir -- yes, sir.
22 THE COURT: Thank you.
23 MR. FIEGER: Mr. Hill called our office on
24 August 1, 2012. Said, "I need help." "Mr. Hill, have you
25 ever retained Mr. Sherbow?" "No." "Do you know Mr.

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1 Sherbow?" "No." Dorothy Dixon was in a coma 'till 2000.
2 She'd never seen him until 2014 when the settlement was
3 about to be made, and Mr. -- you'll hear Mr. Sherbow
4 showed up at her house. He said -- she said, "Who are --
5 what are you doing here?" Now, Mr. Sherbow testified
6 under oath he'd never met Dorothy Dixon. He claims in
7 this case he was referring attorney. Now listen. They
8 took Dorothy Dixon's deposition, said, "Have you ever met
9 Mr. Sherbow before?" She said, "Yeah, I met with him
10 once." "When was that?" "Oh, it was back in 2008 or '09.
11 I had been in an auto accident, and I had hurt my back,
12 and I was looking for an attorney, and my -- I retained
13 Mike Morris, the Michael Morris law firm." He said but my
14 -- my boyfriend, Charles, said he's got a friend, Mr.
15 Sherbow. He said, "Come over here and meet him. He wants
16 to be your lawyer."
17 So she went over to Charles' house. That's her
18 boyfriend, and the father of her child, although they
19 didn't live together all the time. And Sherbow was there,
20 and he said, "I wanna' be your lawyer for your auto
21 accident." She said, "No way, I don't -- who are you?
22 You're not gonna' be my lawyer. I don't want anything to
23 do with you." And she walked right out. Now that was
24 years before. But he claims he's her lawyer now.
25 All the clients signed fee agreements with our

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1 firm. You'll see under oath. This is the fee agreement,
2 and it's the same for all the clients, signed --
3 MR. JANKS: Well, not all, right, Mr. Fieger?
4 MR. FIEGER: Phillip -- Phillip Hill, 8/6, he
5 finally signed. No reference of Mr. Danzig. There are
6 also fee agreements signed in Ohio signed by all the fee
7 agrees -- attorneys. No represent -- no reference of Mr.
8 Sherbow whatsoever.
9 Nobody was aware of anything until the case was
10 settled. Mr. Sherbow writes -- files a lien on the case,
11 and says, "I'm entitled to the money." And then we begin
12 doing an investigation about what happened in this case,
13 and what were the circumstances of this case.
14 At the end of this case, and then we found out
15 what happened, and then we immediately wrote to Mr.
16 Sherbow and said, "We've uncovered some very troubling
17 evidence, Mr. Sherbow. Maybe you should think 15 times
18 before you start engaging in this kind of activity," but
19 nevertheless we're here -- nevertheless we're here.
20 You will find that no client consented, agreed
21 or was informed about a referral fee, no client retained
22 Mr. Sherbow, ever, no client had any understanding of a
23 referral arrangement as is required by law 'cuz none ever
24 existed. It was all between Danzig and Sherbow. And
25 you'll also find, because you see my policies, that Mr.

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1 Danzig nor anyone else in the office has the authority to
2 violate my policies and go behind our backs and sign up
3 cases or claim that there's a referral fee from a friend
4 where there never was one, unless I have been told in
5 advance and I sign off on it. There is a place in every
6 retainer agreement for me to sign that I approve it, and
7 that I've been informed. Nobody -- nobody gave me -- Mr.
8 Danzig did not give me this. That's his signature. He's
9 required to give me this on every client so that I can
10 examine it. It comes across my desk and I can see what's
11 been done in this case, and whether in fact his 20-year
12 friend really referred the case.
13 We uncovered all of this afterwards. These are
14 the proofs in this case, ladies and gentlemen. At the
15 conclusion of this case, I ask what I ask in every case,
16 justice -- justice, that's it. Thanks so much for
17 listening. Thank you, your Honor.
18 THE COURT: Thank you, Mr. Fieger. Ladies and
19 gentlemen, I'm going to excuse you now, ask you to be back
20 here around 1:30. I have a very quick matter to take, but
21 we'll get goin' with the evidence right after that.
22 UNIDENTIFIED JUROR: Did you say 1:30?
23 THE COURT: 1:30, yep. A couple of things.
24 You're lucky to be here today. It's mystery meat day in
25 the cafeteria downstairs. Otherwise, there's restaurants

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1 up and down Telegraph and Elizabeth Lake and M-59. Don't
2 talk about the case.
3 UNIDENTIFIED JUROR: What time do you think
4 you'll conclude today?
5 THE COURT: Conclude?
6 UNIDENTIFIED JUROR: 4:30 (indiscernible).
7 THE COURT: 4:30, yep.
8 THE CLERK: All rise for the jury.
9 THE COURT: You gotta' be some place -- some
10 place early?
11 UNIDENTIFIED JUROR: Yeah.
12 THE COURT: What time do you have to be out?
13 UNIDENTIFIED JUROR: Try to be -- I gotta' drop
14 my car off by 5 o'clock over on, like Van Dyke and
15 (indiscernible).
16 THE COURT: We'll try to get you out of here by
17 4:15.
18 UNIDENTIFIED JUROR: All right, thank you.
19 THE COURT: Okay.
20 THE CLERK: All rise for the jury.
21 (Jury out at 12:05 p.m.)
22 THE COURT: Mr. Janks, who's your first witness?
23 MR. JANKS: Mr. Danzig.
24 THE COURT: Okay. How long do you expect to go
25 with him, all afternoon?

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1 MR. JANKS: No, I hope not, but I'm -- I'm
2 gonna' be an hour, hour and a half. I have no idea about
3 cross-examination time.
4 THE COURT: Mr. Fieger, how long do you think
5 your exam --
6 MR. FIEGER: About an hour, yeah.
7 THE COURT: Okay, good. Do you got another
8 witness ready in case we're done?
9 MR. JANKS: Absolutely.
10 THE COURT: Okay, good.
11 (Court in recess at 12:05 p.m.)
12 (Court in session at 1:43 p.m.)
13 THE CLERK: All rise. The Oakland County
14 Circuit Court is now in session, the Honorable James M.
15 Alexander, presiding. Now calling Sherbow v Fieger, 2015-
16 147488-CB.
17 THE COURT: Your appearances, please.
18 MR. FIEGER: Geoffrey Fieger.
19 MR. JANKS: Greg Janks, for the Plaintiff.
20 Judge, I have the Plaintiff's exhibit books.
21 THE COURT: Okay.
22 MR. JANKS: And I --
23 THE COURT: Have you and Mr. Sherbow, er, Mr.
24 Fieger gone over the exhibits?
25 MR. JANKS: We have gone over the exhibits, and

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1 -- and --
2 THE COURT: Any -- any objections?
3 MR. JANKS: Yes, we each have objections.
4 THE COURT: All right, well.
5 MR. JANKS: How many would the Court like?
6 THE COURT: I'd like none of them until such
7 time as the exhibits are admitted.
8 MR. JANKS: Oh.
9 THE COURT: Quite honestly. I mean, I guess
10 that's -- well, I don't know. I mean, there are -- you
11 got three books of exhibits?
12 MR. JANKS: No, just one book. I have three
13 copies 'cuz I forgot how many copies I was supposed to
14 bring, so I brought three copies, but it's one book.
15 THE COURT: Give it to me. I just wanna' look
16 at it. Mr. Fieger, do you have your exhibits in a book?
17 MR. FIEGER: I do, your Honor. Could I have
18 them, please, for the Court? May I approach?
19 THE COURT: Yes, please. Anything preliminarily
20 before we bring the jury in?
21 MR. FIEGER: No, your Honor.
22 THE COURT: Okay.
23 MR. JANKS: We gotta' get the screen going.
24 THE COURT: Let's bring the jurors in.
25 UNIDENTIFIED VOICE: Are you just doing computer

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1 or are you just (indiscernible)?
2 MR. JANKS: Computer.
3 THE COURT: You know, for purposes of examining
4 the witnesses, let's move the podium back in the middle,
5 please. I don't want you guys to be near the jurors.
6 MR. JANKS: You want it in the middle --
7 THE COURT: Yeah, please.
8 MR. JANKS: -- in the front?
9 THE COURT: In the middle. Yeah, I need that
10 there so we can get you guys on camera and video, and
11 audio.
12 MR. JANKS: Is that the proper location?
13 THE COURT: Yeah, that's fine.
14 THE CLERK: All rise for the jury.
15 (Jury in at 1:45 p.m.)
16 THE COURT: Please be seated. Mr. Janks, you
17 got a witness for us?
18 MR. JANKS: I do, I have Mr. Jeffrey Danzig,
19 your Honor.
20 THE COURT: Okay.
21 MR. JANKS: In the hallway.
22 THE COURT: Mr. Danzig, come on up here, please,
23 sir. Raise your right hand to be sworn.
24 THE CLERK: Do you swear or affirm to tell the
25 truth, the whole truth, and nothing but the truth?

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1 MR. DANZIG: I do.
2 THE COURT: Okay, take the stand, please. State
3 and spell both your first and last names for the record.
4 THE WITNESS: Jeffrey A. Danzig, D-A-N-Z-I-G.
5 First name is spelled, J-E-F-F-R-E-Y.
6 THE COURT: Is there anybody in this case whose
7 first name is not Jeffrey?
8 MR. JANKS: No, everybody's Jeffrey, except me.
9 THE COURT: Go ahead, Mr. Janks, you're not, so
10 you get to go.
11 MR. JANKS: Thanks.
12 JEFFREY DANZIG
13 called as a witness at 1:47 p.m., sworn by the
14 Clerk, testified as follows:
15 DIRECT EXAMINATION
16 BY MR. JANKS:
17 Q Mr. Danzig, we have, as Plaintiff's proposed exhibit 49, a
18 copy of your curriculum vitae that will help -- help you
19 tell the jury about your background and who you are.
20 A Sure, I brought one as well so I can refer to mine easily.
21 MR. JANKS: Okay.
22 THE COURT: Before you put it up, do you have
23 any objection, Mr. Fieger?
24 MR. FIEGER: I'm sorry, but what?
25 THE COURT: To the CV.

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1 MR. FIEGER: What's the relevance? Yeah, just
2 relevance. I don't care other than that.
3 THE COURT: Okay, it's -- I'll admit it, and the
4 jury can give it whatever weight it desires.
5 (Plaintiff's 49 admitted at 1:47 p.m.)
6 BY MR. JANKS:
7 Q So Mr. Danzig, it says Esquire on your CV, and that means
8 what, please?
9 A I've been an attorney for 33 years.
10 Q All right, in Michigan?
11 A In Michigan, exclusively.
12 Q And has your license ever been suspended or revoked?
13 A No.
14 Q I see you live in Huntington Woods, and you work down on
15 Griswold Street in Detroit. What are you doing as a
16 lawyer these days?
17 A I'm doing exactly the same thing I've always done in 33
18 years. I'm a personal injury attorney. I handle intake
19 and referrals for my firm, currently, as well as handle a
20 case load which is what I've always done.
21 Q And -- and we'll get to the employment there later. Under
22 the personal data, why don't you tell us a little bit
23 about your background and age, and things like that,
24 marital status.
25 A I'm married. My wife is Wendy. I've been married for 23

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1 years.
2 Q Uh-oh.
3 A I am employed, currently, at the Johnson law firm, former
4 partner of Mr. Fieger. I went to Michigan State
5 University, James Madison College, graduated with honors.
6 Entered University of Detroit Law School, graduated in
7 three years which is standard course, and began my
8 employment with a law firm called Lopatin and Miller which
9 was a prominent personal injury firm in the state of
10 Michigan at that time. I worked there for 18 years. I
11 then went to the Fieger firm and worked there for 12 1/2
12 years, becoming a partner in the firm for the last 2 1/2
13 years. And then I switched over to Mr. Johnson's firm
14 after I left voluntarily from the Fieger firm.
15 Q You said you were a partner at the Fieger firm. Why do
16 you say that?
17 A Because I was named a partner. There was a party for me
18 at a local restaurant with friends and family. My name
19 went on the letterhead. There was an announcement made in
20 both Crane's as well as the Fieger Times publication,
21 which is our quarterly newsletter that announces
22 activities in the firm. The firm announced my partnership.
23 I think there was every reason to believe that I was a
24 partner at that time since my name appeared on the
25 letterhead and since there was this big announcement made

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1 about it.
2 Q What was your job at the Fieger firm when you were there?
3 A I had a three-fold job up until the time I became a
4 partner. My -- my responsibilities increased after that.
5 But when I was hired in, I was hired in to take control of
6 and administer the intake department, the referral
7 department, as well as handle a caseload, three large
8 responsibilities that I undertook and performed
9 exclusively. In other words, no one assisted me in that
10 endeavor. Mr. Fieger was not involved in the day-to-day
11 of that endeavor, and I undertook that role and
12 responsibility head on, and was very accomplished in that
13 regard being very successful with the firm, and the firm's
14 business. Because my principle job was generating
15 business for the firm, and securing the business for the
16 firm. That was my role.
17 Q You mentioned three different roles. Can you break them
18 down, time wise, for us or -- or hours of the day or days
19 of the week or however that worked?
20 A There weren't enough hours in the day to be quite honest.
21 I opened the office. I was usually the first one in at
22 six to 6:30 in the morning. I turned off the alarm. I
23 was usually gone, the last one of the day, 6:30 or so.
24 There weren't enough hours in a day, I can tell you that
25 quite honestly. The intake department that I set up was

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1 comprised of about five to six individuals beneath me,
2 clerical staff, that took phone calls that came in daily
3 to the Fieger switchboard. The Fieger switchboard,
4 usually, on a routine day, would take in over a hundred
5 phone calls from various clients who wanted the Fieger
6 firm to represent them. The intake department determined
7 to take their information in. My job was to assess that
8 information, and determine whether or not the Fieger firm
9 was going to accept that case, and then process that case
10 as a -- as a firm case, as firm business. It comprised a
11 lot of different duties and responsibilities. I had to
12 supervise my entire staff. I had to interface with both
13 clients as well as referring attorneys 'cuz various
14 attorneys out doing their job wanted to refer cases into
15 the Fieger firm. That's part of intake. So an attorney
16 might call in and say I wanna' refer this case to the
17 Fieger firm, and it would be my job to secure that
18 business, to make sure that it was a good enough case to
19 warrant our accepting the case. I ran a committee of
20 three attorneys. I was the chair of that committee that
21 twice a week looked over all the cases that came into the
22 firm that were generated by my department, and determine
23 whether or not we would accept these cases or not. Once
24 we did so, and the committee decided to accept a case or
25 not, it was my job to then process that information,

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1 provide memorandum and updates to Mr. Fieger and anybody
2 else who was looking at what business was coming in.
3 Twice a week the committee met, twice a week memos were
4 generated, what cases we were taking in, what cases were
5 being referred out. And when I say, "refer out," if a
6 case came in to the Fieger firm, and we were not inclined
7 to accept it, the decision then for me was whether or not
8 it's a case that had some merit that required maybe
9 another attorney to look at it and see whether or not they
10 would take it on, and that could be referred out. That
11 would generate income for the firm. So my other duties
12 and responsibilities was to generate referrals to other
13 attorneys out of the Fieger law firm in the state of
14 Michigan and across the United States to refer out
15 business from the Fieger firm to see whether or not I
16 could get a firm to accept that business, and ultimately
17 pay the Fieger firm a referral fee. That business was
18 quite lucrative as I generated the referral network and
19 established over 150 attorneys, both in state and out of
20 state, as my referral network to send business to. The
21 decisions of who to send it to were mine. The decisions
22 of who was on that list were mine, and they were mostly
23 generated by me through my endeavors, my knowledge of
24 attorneys, maybe some suggestions from Mr. Fieger and --
25 and other partners. We wanna' see you send it to this

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1 person or that person. They would be included in the
2 list. I have that list here if you'd like to see it. It
3 has names that I generated of over 150 attorneys, both in
4 state and out state that we referred business to,
5 regularly. So that's intake and referrals, very briefly.
6 Q As it relates to referrals, let me show you Plaintiff's
7 proposed exhibit number 78 consisting of three pages.
8 A Yes, sir, I know the document.
9 Q And ask if you can identify that document.
10 A It's a referral fee agreement that was generated on the
11 firm letterhead that is the relationship that I'm
12 referring out business to other firms as I've just
13 described, and these are basically contracts or referral
14 fee agreements that are entered into between the Fieger
15 firm and the other firm that I'm sending out the business
16 to that the Fieger firm had not agreed to accept. And at
17 every one of these contracts and agreements that was
18 entered into was signed by me, Jeffrey Danzig, for the
19 firm. I had the authority to do so. There was no one else
20 that signed these referral fee agreements. So amongst the
21 150 or so attorneys at any time that I'm referring --
22 THE COURT: Excuse me, right now we're just
23 talking about whether or not the exhibit --
24 THE WITNESS: Yes.
25 THE COURT: -- you're identifying the exhibit.

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1 THE WITNESS: Yes.
2 THE COURT: Are you moving its admission?
3 MR. JANKS: Yes, I'd move for the admission of
4 exhibit 78, your Honor.
5 THE COURT: Mr. Fieger.
6 MR. FIEGER: Judge, this was just given to me,
7 and I -- if I could voir dire.
8 THE COURT: Sure.
9 MR. FIEGER: Other than that, I -- I probably
10 don't have any objection. Counsel just gave it to me.
11 MR. JANKS: Well, I didn't just give it to him.
12 He's had it for weeks and months, Judge.
13 MR. FIEGER: Okay.
14 THE COURT: All right, guys, just -- let's --
15 MR. JANKS: Al -- alternative facts.
16 THE COURT: Let's just -- go ahead and voir
17 dire.
18 MR. FIEGER: What was that about, your Honor?
19 THE COURT: I have no idea, let's just go ahead.
20 MR. FIEGER: Okay.
21 THE COURT: Let's keep the -- let's keep the
22 side comments out of the case, please.
23 MR. JANKS: Sorry, Judge.
24 VOIR DIRE
25 BY MR. FIEGER:

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1 Q Mr. Danzig, this document, you gave this to counsel here?
2 A I did.
3 Q Did you give it to him for the purpose of you thought it
4 would help him in his suit here?
5 A No, he asked me what authority I had to process referrals,
6 and this was one of the documents that I pulled to
7 substantiate that authority because one of the questions I
8 was asked was what authority do you have to bind the firm
9 to any of this referral business. I thought of this, and
10 I thought it was a good example of the authority that I
11 had.
12 Q Okay, so, for instance, just so we don't confuse apples
13 and oranges, when you're talking about referrals, you're
14 talking about you weren't in charge of any department in
15 our firm regarding people sending cases to us. You were
16 in charge of a department of intake where cases that we
17 didn't want, we sent out to other people, isn't that true?
18 A No, it's not.
19 Q We didn't have a department of accepting referrals, ever.
20 Any attorney could try to get a referral. We had no such
21 department, did we?
22 A That was part of the intake department, sir.
23 Q And --
24 A There was work coming in from other attorneys outside of
25 the firm.

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1 THE COURT: Just a second -- just a second.
2 Right now, we're voir diring on the exhibit. Let's not
3 get into anything.
4 MR. FIEGER: Okay.
5 BY MR. FIEGER:
6 Q Now, this -- this document here is a writing. When we send
7 out a case to other firms, we have a document here, and
8 the other firm has to sign it and say that they accept our
9 case, and they have to pay us a referral fee, isn't that
10 right?
11 A I agree.
12 Q Okay, so this document here is a document that was
13 generated by our firm requiring another firm who -- who
14 gets a case from us, to acknowledge that they got the case
15 from us, and agree to pay us, right?
16 A I agree.
17 Q Okay, that -- and that's what this document is.
18 A I agree.
19 MR. FIEGER: Okay, I have no objection.
20 THE COURT: All right, exhibit 78 is received.
21 Thank you.
22 (Plaintiff's 78 admitted at 1:58 p.m.)
23 BY MR. JANKS: (cont.)
24 Q So let's -- let's stay on the first part of it. Can we
25 see the (indiscernible). So, Mr. Danzig, back on April

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1 29, 2009, exhibit 78 shows that your name is not on the
2 masthead, is that right?
3 A Correct -- correct.
4 Q So that's back when you were an associate as opposed to a
5 partner, is that the idea?
6 A Correct, yep.
7 Q All right, and when you were an associate, you're telling
8 us you had authority to do what binding of the firm as it
9 relates to this document?
10 A Binding the firm to a contractual relationship with
11 another firm.
12 Q And was there some requirement that Mr. Fieger sign off on
13 this?
14 A None whatsoever.
15 MR. JANKS: Can we scroll through the document,
16 please.
17 BY MR. JANKS:
18 Q The letter is signed by you, is that right, sir?
19 A Yes.
20 Q And how many of these types of letters did you author, did
21 you tell us (indiscernible) referring cases outside the
22 firm?
23 A At least equal to the number of referral sources I
24 generated which I have the document here, and by my count,
25 it consists of at least 150 different law firms in the

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1 state of Michigan and outside the state of Michigan across
2 the country who I generated and referred business to. They
3 are all here. This is the list of the -- sort of master
4 list that I used to refer out business for the firm, and
5 they were all generated -- well, I shouldn't say all. The
6 vast majority were generated by me through my contacts,
7 through my resources, and the development of business on
8 behalf of the Fieger firm, which is my only interest in
9 this matter, generating business and referral income for
10 the firm, not for myself, for the firm.
11 Q How much referral income were you able to generate for the
12 Fieger firm through your contacts, and through writing
13 these referral agreements with outside counsel where you'd
14 send cases out?
15 A When I started the referral network when I first came to
16 the firm, the referral business before I got there was
17 generating less than a half a million dollars a year.
18 When I left the firm in 2014, January, it was generating
19 2.2 million dollars a year.
20 Q And on those cases out where you, the Fieger firm, refer
21 the cases out, and some other firm is actually handling
22 the litigation, is the Fieger firm doing any work on those
23 cases?
24 A None whatsoever.
25 Q And yet they're getting a referral fee back even though

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1 they're not doing any work on the cases.
2 A Nature of the business.
3 Q Tell us about referral fees in Michigan and personal
4 injury. How -- how does that work?
5 A Well, if an attor -- I'll use an example. Let's say
6 attorney X works in Southfield, Michigan and wants to
7 refer a case to the Fieger firm. It's a different
8 situation than obviously me referring a case out to them.
9 Which one would you like me to -- to discuss? There are
10 two different aspects of referral business.
11 Q Okay, well, let's take each of them.
12 A Okay.
13 MR. JANKS: Since we're on exhibit 78, let's
14 take --
15 MR. FIEGER: Objection, what's the relevance,
16 Judge, for this case?
17 THE COURT: What is the rel -- what's the
18 relevance in referring things out. This -- this case
19 talks about referring things in.
20 MR. JANKS: All right, so let's --
21 THE WITNESS: That's the example I was gonna'
22 use.
23 MR. JANKS: Let's go with the ref --
24 THE COURT: I'll sustain -- I'll sustain the
25 objection.

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1 MR. JANKS: All right, thanks.
2 BY MR. JANKS:
3 Q Let's go with the referring in situation. How does that
4 work in Michigan personal injury law?
5 A So, if -- I'll call him attorney X in Southfield wants to
6 refer a case to the Fieger law firm. I'm the contact
7 point of person. The attorney gets a hold of me, says he
8 wants to refer a case in. My job is to obviously
9 determine the merits of that case, determine whether or
10 not the Fieger firm would accept that case, and I make the
11 determination, initially, whether or not the Fieger firm
12 would accept that case. You have to understand that if
13 it's an attorney referral, and he wants to send business
14 to the firm, that attorney can send that case anywhere.
15 My job is to secure that case if I think it's a good case
16 for the firm. So delay is not good to secure business.
17 That attorney can refer it to anywhere he wants. So my
18 job is to assess --
19 MR. FIEGER: Your Honor, please, objection.
20 He's -- answer the question.
21 THE WITNESS: I am.
22 MR. FIEGER: Nah.
23 THE COURT: All right. Again, let's -- let's not
24 get in too much of a narrative, but he can answer the
25 question. Go ahead.

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1 THE WITNESS: My job is to assess the case,
2 track it down, assess the merits, and establish the
3 relationship of the referral business to the firm by
4 accepting the case through the referring attorney on
5 behalf of my firm, and generating the business for my
6 firm.
7 BY MR. JANKS:
8 Q Did the Fieger firm, in 2012, accept referral cases from
9 other lawyers?
10 A Absolutely.
11 Q When the Fieger firm accepted referral cases from other
12 lawyers in 2012, did it enter into agreements to pay
13 referral fees to those referral lawyers that were sending
14 the cases in?
15 A There would be an acknowledgement of the referral fee,
16 both verbally and in writing, typically from me and/or if
17 I assigned the case in house, and I wasn't handling it,
18 the attorney handling the case would acknowledge it by a
19 letter to the referring attorney. Otherwise, the
20 referring attorney would get very anxious about why his
21 case hasn't been acknowledged in writing. He wants to see
22 it in writing so that the Fieger firm will be bound to the
23 referral arrangement.
24 Q Did you have authority in 2012 to bind the Fieger firm to
25 pay referral fees on cases that were referred in by

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1 outside lawyers?
2 A I did.
3 Q Was there any policy at the Fieger firm in 2012 that said
4 that you needed Mr. Fieger's written approval to agree to
5 pay referral fees to outside referral lawyers that sent
6 cases to the Fieger firm?
7 A An actual practice, never.
8 Q Could you explain that, please.
9 A Sure. There was a memo that Geoffrey wrote, amongst
10 hundreds of memos, that said that you need his approval,
11 but for every single referral that I took in from an
12 outside attorney coming into the firm as well as directly
13 to me, there was never any memo, never any approval, and
14 in 12 1/2 years of my working in the firm, none of those
15 referrals were ever rejected by Mr. Fieger, ever, and it -
16 - and it's in the thousands. So whether or not a memo was
17 required or not, it didn't require it in actual practice.
18 It was never done by me, and it was never a requirement
19 that said you need to do this this way or we're not gonna'
20 accept it. That never happened.
21 MR. JANKS: Did it happen to other lawyers in
22 the firm or other lawyers --
23 MR. FIEGER: Objection.
24 MR. JANKS: -- bound by something that you were
25 not bound by?

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1 MR. FIEGER: Objection.
2 THE COURT: First, Mr. Fieger, when you're in my
3 court, stand up.
4 MR. FIEGER: Yeah, no, I understand it. I'll
5 just --
6 THE COURT: All right, now, what's the
7 objection?
8 MR. FIEGER: Relevance.
9 MR. JANKS: It's -- it's the firm practice and
10 procedure I'm asking him about. He's in charge of the
11 intake --
12 MR. FIEGER: How would he know, foundation?
13 MR. JANKS: He's in charge of the intake
14 department.
15 THE COURT: He just said he was in charge of the
16 referral -- the intake department. I'll let him answer
17 the question. The jury can give it the weight they wish.
18 Go ahead. Overruled.
19 THE WITNESS: I'll answer your question in the
20 only way I know how. I don't keep track of everybody else
21 in the firm. I kept track of my business, what I was
22 doing, and my responsibilities. What other people did, I
23 certainly can't tell you.
24 BY MR. JANKS:
25 Q This has been touched on before, so I guess I'll get to

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1 this first. What relationship did you have with my
2 client, Jeffrey Sherbow, before July 13, 2012?
3 A He was a friend. I have many friends. He was one of
4 them. We, initially, met through competitive softball.
5 Lots of lawyers have softball teams. We had not a good
6 start to our relationship. We were sort of enemies on the
7 ball field. We grew to like and respect each other over
8 the years, developed the relationship, and had mutual
9 friends that we ultimately recognized. That sort of set us
10 on the road towards our own friendship, and we've been
11 friends ever since.
12 Q Let me show you Plaintiff's proposed exhibit number seven.
13 I wonder if after you've reviewed that, you could identify
14 that document, Mr. Danzig?
15 A Sure, this is a document generated as part of our Needles
16 intake system at the Fieger law firm. When a new case
17 comes into the office, it is always -- and I don't mean
18 this lightly -- it is always generated with a Needles
19 intake, a document that provides all of the information
20 necessary for me, initially, and my intake review
21 committee to determine the merits of a case. So not only
22 myself but my entire intake crew has to generate this type
23 of document before we can consider the case, and before
24 I'll even see a client.
25 THE COURT: What -- what exhibit -- exhibit

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1 number is this?
2 MR. JANKS: Seven, Judge.
3 THE COURT: Thank you.
4 BY MR. JANKS:
5 Q All right, can you -- can you tell us who authored that
6 document or who inputted the data into the Needles
7 computer system?
8 A I did on July 17, 2012, four days after the subject
9 accident.
10 Q And what -- what is that document used for at the firm?
11 A It's used to determine whether or not, in the assessment
12 process, we're gonna' take on the case, and who's going to
13 get the case.
14 Q All right. Is a document like that ever amended or added
15 to or supplemented?
16 A Absolutely. If additional information comes in in the
17 process of when you're about to meet with a client, you
18 wanna' document it, you can do it in a number of ways.
19 You can document by hand, you can do a memo or you can
20 update the intake information, which I did, not regularly,
21 but from time to time when necessary if I had more
22 information to put into the system as the initial input of
23 information. And there's a reason why there was two here.
24 Q All right, well, let's -- let's stick with that one,
25 exhibit seven. And what case is that about?

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1 A This is the Mervie Rice, one of the four clients that were
2 involved in this accident. She was the first one that I
3 had contact with, and the first pieces of information
4 coming through of the four potential clients that I
5 received from Mr. Sherbow.
6 Q Okay. So do you have a memory of -- of these cases coming
7 into the firm, the four cases, Mervie Rice, Charles Rice
8 (deceased), Dorothy Dixon, and Phillip Hill?
9 A I do.
10 Q So do you need to refer to that document to refresh your
11 recollection or you have a distinct recollection?
12 A I have a distinct recollection.
13 Q How -- how did the cases come to the Fieger firm?
14 A The accident happened on July 13 in the early morning
15 hours. The family, Charles Rice being the patriarch with
16 his family, was driving the vehicle, and he had three
17 family members with him. They were on their way to Ohio,
18 Cincinnati in particular, for a reunion weekend during
19 which time Charles is going to marry his long-time
20 girlfriend, Dorothy Dicker -- Dick -- Dickson.
21 Q Dickson.
22 A Dickson. And so they were on their way to Ohio. Their
23 car had gone off the roadway in a construction zone,
24 landed on another vehicle that had gone off the highway
25 just ahead of them, so two vehicles went off the roadway,

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1 and -- and landed in a viaduct or cement culvert that had
2 been dug out, one vehicle on top of the other with Charles
3 Rice, the driver, dying in the accident, and all three of
4 the occupants seriously injured in the accident. It was a
5 substantial case that I recognized the minute I heard the
6 information, and the information that I got on this sheet
7 came directly from Jeffrey Sherbow after we had an initial
8 conversation --
9 MR. FIEGER: Judge, there's no que -- I don't
10 know --
11 THE COURT: Yeah.
12 MR. FIEGER: -- I can't even object. He just
13 goes on.
14 THE COURT: Really, I mean I think we're getting
15 way far off. Is exhibit seven admitted into evidence;
16 have you moved its admission?
17 MR. JANKS: I'll -- I'll move for the admission
18 of exhibit seven, Judge.
19 MR. FIEGER: No objection.
20 THE COURT: All right, exhi -- exhi -- aah --
21 exhibit seven is received.
22 (Plaintiff's seven admitted at 2:11 p.m.)
23 THE COURT: Now, let's do questions and answers,
24 and not narrative, boys.
25 MR. JANKS: Yes, sir, Judge.

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1 THE COURT: This is correct.
2 MR. JANKS: Exhibit seven is now on the -- the
3 white board. Am I in your way here; can everybody see?
4 THE COURT: Be careful when you're moving that.
5 MR. JANKS: Is it okay if I move back a little,
6 Judge?
7 THE COURT: Okay.
8 MR. JANKS: Thank you.
9 MR. SHERBOW: Move back just a little more 'cuz
10 I can't see.
11 THE COURT: Mr. Sherbow, you're just the client
12 right now. Just calm down.
13 MR. SHERBOW: Yes, your Honor.
14 BY MR. JANKS:
15 Q Where it says, "Intake staff," upper left under Fieger
16 law, and it has the initials, J-A-D, who's J-A-D?
17 A That's me.
18 Q And so what does that mean as it relates to this document?
19 A It means I'm the person receiving the intake information,
20 and putting it into the system.
21 Q All right, over on the right side toward the top, it says,
22 "Date of call," giving us a date of July 17, 2012, 1:55
23 p.m. What -- what does that mean, Mr. Danzig?
24 A It's the date and time that I'm having the conversation
25 over the phone, and I have no control over that

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1 information. It's automatically inputted.
2 Q And -- and so who is it you're talking to that day?
3 A On this day, I'm talking to Jeffrey Sherbow who's giving
4 me information that he was tracking down with the
5 assistance of Dion Rice, the son of Charles and Dorothy.
6 Q Is -- is it Mervie Rice calling you 'cuz the primary
7 contact information there says, "Mervie Rice"?
8 A No, they are providing the information on one of the
9 occupants of the vehicle, Mervie Rice, one of the four.
10 MR. JANKS: All right. Can we scroll down
11 through the document.
12 BY MR. JANKS:
13 Q Now, I see some writing there next to the exhibit sticker
14 which was exhibit two from the Danzig deposition. What's
15 that writing, please, Mr. Danzig?
16 A My writing. The meeting -- the committee meeting that I
17 referenced twice a week happened on a Tuesday and
18 Thursday. This was a Tuesday, July 17. We met, the
19 committee met. It was my intent to accept the case. I
20 had enough information to tell me this was a great case
21 that I wanted to work on. It was being referred to me
22 directly by my friend, Mr. Sherbow. I put my initials
23 down to indicate that I would be handling the case, and it
24 was assigned to me later that night by the agreement of
25 the committee.

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1 MR. JANKS: Okay, can we scroll down further.
2 BY MR. JANKS:
3 Q Now, we see a number over in the left side under,
4 "Incident Details." What -- what does that tell us if
5 anything?
6 A My secretary's handwriting generating the file number on
7 this particular file.
8 Q And then we have incident details, and I think it
9 continues to the next page, if we can scroll.
10 A It does.
11 Q And those incident details came from whom?
12 A Jeffrey Sherbow on the phone with me on July 17 giving the
13 information that he had accumulated in the last -- in the
14 last four days since the accident.
15 Q Had you talked to Mr. Sherbow before July 17 when you
16 wrote up this intake sheet about these cases?
17 A On July 13 was our initial conversation where he told me
18 about the accident. I asked him to get as much
19 information on the four potential clients as possible so
20 that I can begin the process of running them down, and
21 determining whether we would accept all the cases.
22 Q So Mr. Sherbow talked to you on July 13, and what was the
23 date of the accident?
24 A The date was the morning of July 13, 2012.
25 MR. JANKS: So the very day of the accident, Mr.

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1 Sherbow's in contact with you to talk about the accident.
2 MR. FIEGER: Objection, Judge, this is all
3 leading.
4 THE COURT: Yes, it is. Can't lead him. This is
5 direct.
6 BY MR. JANKS:
7 Q As it relates to the date of the accident, Mr. Danzig,
8 when was Mr. Sherbow in touch with you about the accident,
9 and referring the cases in?
10 A The first time we spoke was July 13, 2012, and we spoke a
11 number of times thereafter leading up to July 17, 2012.
12 Q We also see some writing toward the bottom of the form.
13 What -- what does that tell us?
14 A I use the form to document further information as it
15 became available to me after July 17, so I'm just jotting
16 down notes regarding Mervie Rice having surgery on Monday,
17 July 23, and thereafter. I'm documenting who she's
18 treating with where she's having surgery, and the like.
19 It also mentions where Dion is at the time 'cuz he had
20 gone to Dayton to be with his mother.
21 Q Can I show you exhibit -- proposed exhibit eight, please,
22 Mr. Danzig. You can keep seven with you. They're
23 similar. Are you familiar with exhibit eight, sir?
24 A I am.
25 Q And -- and what is exhibit eight, please?

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A Exhibit eight is a second supplemental intake that I wrote to do the Needle system to generate the information pursuant to my conversation for the first time with Mervie Rice on July 18, 2012. If you look back on --

THE COURT: Okay, you've just identified it, so where we gonna' go now?

MR. JANKS: I'll move for the admission of exhibit eight, your Honor.

MR. FIEGER: May I voir dire?

THE COURT: Yes, you may.

VOIR DIRE

BY MR. FIEGER:

Q When did this -- you've testified -- strike this. Exhibit eight, you've given testimony and identified it in sworn testimony in your deposition, haven't you?

A I testified at a deposition.

Q Yeah, and you gave sworn testimony about exhibit eight.

A I did.

Q You said exhibit eight, which you have in your hand, was the first written.

A Well, the first --

Q And exhibit seven was somebody altered it. Didn't you say that?

A No, I didn't. I said exhibit seven --

THE COURT: If we're gonna' talk about deps,

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1 then I want the dep out, and I wanna' do it the right way.
2 MR. FIEGER: Sure.
3 BY MR. FIEGER:
4 Q Do you recall giving sworn testimony under oath?
5 A I do.
6 THE COURT: Can I have a copy of this deposition
7 so that we can make sure everybody's on the same page,
8 please. Go behind, go around, and bring it up to him,
9 please.
10 UNIDENTIFIED VOICE: Oh, I'm sorry.
11 THE COURT: Okay, thank you.
12 BY MR. FIEGER:
13 Q I'm just trying to -- in terms of what exhibit eight is,
14 are you claiming here in this court that exhibit eight was
15 written after exhibit seven?
16 A Correct.
17 MR. FIEGER: In your deposition, you claimed the
18 opposite, and that someone had changed exhibit eight which
19 was the first one you said you wrote, and deleted the
20 reference to --
21 THE COURT: Let's get the page and the line
22 number --
23 MR. FIEGER: Yes, sir.
24 THE COURT: -- and give it to him so he can take
25 a look at his deposition testimony.

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1 MR. FIEGER: Okay, I'll get the page and the
2 line number.
3 BY MR. FIEGER:
4 Q Page 27, line 12, referring to exhibit seven. "This is
5 not the original intake sheet. I'm certain of it because
6 Mr. Hill was not originally signed." Excuse me. "I'm
7 certain the first one we referenced, the one we referenced
8 where it said, 'Johnny Price,' who is the husband of
9 Mervie Rice, that's the original intake sheet that I
10 authored." And that is what you claim now is what, what
11 exhibit is that, sir?
12 A That's eight, and that was the second intake sheet that
13 was authored by me, and I was mistaken in this deposition,
14 page 27, when I said it was the first. But if you look at
15 page 25, I identified exhibit seven as the first. And
16 when I testified again (indiscernible) asked again on page
17 27, I misidentified that exhibit as the first one, but on
18 page 25, I clearly identified the exhibit seven as the
19 first one with my initials on it, and that's the first one
20 I wrote up.
21 Q Didn't you testify under oath that it was changed, and it
22 originally had a Sherbow referral on it --
23 A No.
24 Q -- and afterwards it was deleted, that was your claim?
25 A No, I didn't say that at all. I said I wouldn't have

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1 changed -- I'm reading from my transcript. "I wouldn't
2 have changed it in any way." That's what I said. I don't
3 know if anybody changed it or not. Anyone who had access
4 to Needles could have changed it. I didn't change it. On
5 the second date, I'm adding information that wasn't in the
6 initial Needles intake. I'm supplementing.
7 MR. FIEGER: No further questions. I have no
8 objection.
9 THE COURT: All right, exhibit eight's received.
10 Thank you.
11 (Plaintiff's exhibit eight admitted at 2:20
12 p.m.)
13 BY MR. JANKS: (cont.)
14 Q So exhibit eight, if we look in the upper left, what date
15 do we see?
16 A July 18.
17 Q And if we look back at exhibit seven in the upper left,
18 what date was on that?
19 A July 17.
20 Q So tell us how it came to be that there were two Mervie
21 Rice because I think they both say, "Primary contact
22 Mervie Rice, injured, contact information Mervie Rice,"
23 don't they?
24 A Yes. So if you look at exhibit seven, the information that
25 I obtained from Mr. Sherbow. I had Mervie Rice's name,

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1 address, and phone number, and immediately after he gave
2 me that information, I started calling Mervie Rice. I
3 needed to secure a client. Talk to her, set up an
4 appointment, arrange a meeting.
5 Q Can I -- can I stop you there? I'm sorry.
6 A It's -- it's your show.
7 Q Rude of me -- rude of me, but when you say you had to go
8 get a client, did -- did Mr. Sherbow have any signed
9 agreements with Mervie Rice or Dion Rice or anyone else?
10 A No, nor did he need one?
11 MR. FIEGER: Objection, please.
12 THE COURT: No, that's -- the -- the jury will
13 disres -- disregard the last part of that. The question
14 is, no, he didn't have one.
15 BY MR. JANKS:
16 Q When lawyers refer cases to the Fieger firm, and to the
17 intake department that you were running, in order to have
18 a referral to your intake department at the Fieger firm,
19 did the lawyer have to have signed up the client, have a
20 signed contract?
21 A (Indiscernible).
22 Q Why is that?
23 A There's no requirement under the law that I'm aware of in
24 my 33 years of practice that would require a referral
25 relationship to be established only if the referring

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1 attorney had a signed contract, and in my experience, some
2 of them like to have one, and go get one from the client
3 first, some don't. It's not required for me to go get
4 that case and establish a referral relationship and accept
5 the case for that referring attorney to have a contract
6 signed with a client. It's just not necessary.
7 MR. JANKS: Who is it that needs to have the
8 signed contract in a personal injury case in Michigan?
9 MR. FIEGER: Objection.
10 MR. JANKS: From your experience --
11 THE COURT: Just a second.
12 MR. FIEGER: It calls for legal conclusion.
13 He's not here as an expert.
14 MR. JANKS: As it relates to how the Fieger firm
15 practiced in Michigan in 2012
16 THE COURT: Well, that's a different question.
17 MR. JANKS: I'll ask a different question.
18 THE COURT: You wanna' withdraw your last
19 question?
20 MR. JANKS: I'll withdraw the last question.
21 THE COURT: Okay, go ahead.
22 MR. JANKS: Thanks, Judge.
23 BY MR. JANKS:
24 Q As to how the Fieger firm practiced, Fieger Law practiced
25 in 2012, who is it that would have a client sign an

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1 agreement to be represented as it might relate to the
2 referral lawyer or the Fieger firm or whoever else is
3 involved in a case?
4 A It would be my responsibility.
5 Q And -- and so that would be the Fieger firm that would get
6 the signed agreement, is that the idea?
7 A Yes, and whether or not that other attorney, the referring
8 attorney, had one or not, I'd need one. It was my
9 responsibility to get a signed fee agreement from the
10 client.
11 Q The way the Fieger firm operated when it accepted a
12 referral in 2012, what requirement did it have of the
13 referral lawyer, if any, to do anything on the case?
14 A Well, the responsibility of the referral lawyer would be
15 to direct the clients to us which is what Mr. Sherbow did
16 here.
17 Q Would the referral lawyer have a responsibility for
18 working on the case?
19 A Not at all. Some like to have a hand in it, wanna' help
20 out, wanna' do some things. They usually don't require
21 that. And, typically, when I get started on a case, I'm
22 not really interested in the assistance of the referring
23 attorney. I don't need his help.
24 Q Why is that?
25 A Because we have sufficient resources to handle the case,

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1 and I have sufficient knowledge and experience to process
2 and handle the case.
3 Q Did -- did Mr. Fieger have any attitude that you're aware
4 of as it relates to referral lawyers?
5 A Sure.
6 Q What was it; what was his attitude as to referral lawyers?
7 A He didn't like referral lawyers because that means he has
8 to pay out a fee, and he doesn't like paying out fees.
9 Once the case is over, he wants the entire fee. He
10 doesn't like paying referral fees.
11 MR. JANKS: Have there been other situations
12 besides the Sherbow matter?
13 MR. FIEGER: Objection, Judge, can we --
14 THE COURT: I thought I ru -- I --
15 MR. FIEGER: -- conference. No. Can we have a
16 con -- This -- he's --
17 THE COURT: Yeah, come on up, approach.
18 (Bench conference off record at 2:25 p.m.)
19 (Bench conference ends at 2:26 p.m.)
20 THE COURT: Disregard the question, ladies and
21 gentlemen. It's -- the objection's sustained. This is
22 not relevant. We're here on one case, and that's all we
23 care about is this case, okay.
24 MR. JANKS: Could we, Ms. Woods, scroll through
25 the document. I don't think we finished exhibit eight.

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1 Keep going, please. Okay.
2 BY MR. JANKS:
3 Q So, on page two of exhibit eight, if I compared that with
4 exhibit seven, and you have the exhibits, and the jury
5 can't see seven right now. We're only seeing page two of
6 eight, but there's -- it looks to me like there's more
7 verbiage on page two of exhibit eight than on seven.
8 A That's correct.
9 Q And why is that?
10 A Well, I'm talking to Mervie Rice. It's July 18. I've got
11 her on the phone. She's giving me more information that
12 I'm now adlibbing or I'm putting in additional information
13 to this intake sheet, and if you look at the document, the
14 last three or four lines of the second to last paragraph
15 where it starts, "Charles' son is Dion." Through that
16 paragraph, and then Mervie's significant other, the start
17 of the next paragraph, most of that information is coming
18 from Mervie who I have on the phone, and I'm putting more
19 information into the Needles document to tell me what the
20 facts are and what the logistics are of this case.
21 Q All right. And now we have something about Mr. Sherbow
22 where we didn't on the prior form. Why is that?
23 A If you look at the line starting, "Charles Rice is known
24 as Big Charles," it is the first information that I'm
25 getting that told me what the relationship was between Mr.

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1 Sherbow and who he described as a client of his; that he
2 had been doing business with, the nature of their
3 relationship, and the fact that Mr. Sherbow is the
4 referring attorney based upon his relationship with
5 Charles Rice, the deceased, based upon the information he
6 has been giving me. So I'm putting it in at this time in
7 order to be consistent with all the other information I'm
8 getting.
9 Q And just so I'm clear, is this information about the
10 Sherbow/Charles Rice relationship coming from Mr. Sherbow
11 or coming from Mervie Rice or who?
12 A A combination. Mr. Sherbow had informed me of that. I'm
13 not sure if I can tell you that Mervie Rice knew of that,
14 but this is a combination of both information I've gotten
15 since from Mr. Sherbow as well as Mervie Rice. So now
16 that I'm putting in more information, I'm putting it in
17 from not only Mervie's side but multiple sources.
18 Q And -- and to the extent that it's information from Mr.
19 Sherbow, why would that not be in exhibit seven; why would
20 it be in exhibit eight but not seven?
21 A I will tell you that when I generated exhibit seven, my
22 purpose was getting this in front of the committee, and
23 getting it assigned to me quickly. We were having a
24 meeting that evening. I wanted this case generated. I
25 wanted to be on top of this file quickly. My experience

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1 tells me that the sooner you get involved in a case and
2 start working with the clients, the better off you are in
3 securing all the clients which was my intent. And the
4 fact that I omitted Mr. Sherbow's name from this document
5 was completely unimportant to me at the time. Documenting
6 the fact that it was coming from him wasn't in my mind,
7 what was significant. What was significant is getting the
8 information, getting a recognition that this was a case we
9 were gonna' handle, getting it assigned to me that evening
10 so I could start working on the file. That was what was
11 important to me in relation to exhibit seven.
12 Q You mentioned this committee. Who was on this committee in
13 July of 2012?
14 A My partner, Bob Giroux and Jim Harrington. And I don't
15 know that Jim Harrington was a partner at the time. I
16 don't know when he became a partner.
17 MR. JANKS: Was there any discussion at that
18 meeting on July 17 between the committee members, you, Mr.
19 Giroux, and Mr. Harrington --
20 MR. FIEGER: Objection.
21 THE COURT: What's the objection?
22 MR. FIEGER: It's called hearsay.
23 THE COURT: What was the question? I don't
24 think he was getting to hearsay yet.
25 MR. JANKS: I'll restate the question.

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1 THE COURT: Okay.
2 BY MR. JANKS:
3 Q The July 17, 2012 committee meeting that was attended by
4 yourself and Mr. Harrington, and Mr. Giroux, what
5 information did you provide at that meeting as it may
6 relate to whether this was or was not a referral case?
7 A It told both of them that this case was a case that I
8 intended to work on. It had come to me from my referral
9 source, Mr. Sherbow, and I wanted it assigned to me, and
10 there were no objections.
11 MR. FIEGER: Objection, that's hearsay. Judge,
12 he just goes on and on. That's hearsay.
13 THE COURT: No, you know, he's not going on and
14 on. You're the -- the Defendant in this case is the
15 Fieger firm. It's not you, individually. So the question
16 is these people were members of the Fieger firm.
17 MR. FIEGER: Very good, I understand it. So
18 you're --
19 THE COURT: I'll allow it.
20 MR. FIEGER: Yeah, as -- as agents.
21 THE COURT: I'll allow it.
22 MR. FIEGER: I got it.
23 MR. JANKS: If I could show you Plaintiff's
24 proposed exhibit nine, Mr. Danzig.
25 THE COURT: So I just wanna' be clear. Your

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1 testimony is you told Giroux and Harrington that Sherbow
2 was the referring lawyer?
3 THE WITNESS: I absolutely did.
4 THE COURT: Okay, thank you.
5 BY MR. JANKS:
6 Q Would you tell us what exhibit nine is, please, Mr.
7 Danzig?
8 A This is a hand written intake sheet that I chose to use
9 for the purpose of generating an intake sheet for Dorothy
10 Dixon, who was incapacitated and in a coma in the
11 hospital. I had no way of getting information from her or
12 talking to her, so I hand wrote an intake sheet consistent
13 with generating four files that would all be the same
14 union of files together that I would be handling, so this
15 was my way of getting a file and a case assigned quickly.
16 I didn't have a client yet. She was incapacitated.
17 Q So that replaces the Needles intake sheet that we have,
18 like as exhibit seven and eight, is that the idea?
19 A Exactly.
20 MR. JANKS: Move for the admission of exhibit
21 nine, your Honor.
22 THE COURT: Any objection?
23 MR. FIEGER: No.
24 THE COURT: Without objection, exhibit nine is
25 received. Thank you.

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1 (Plaintiff's nine admitted at 2:32 p.m.)
2 BY MR. JANKS:
3 Q And -- and what does that sheet then tell us about who is
4 calling in, who's the client, things -- things like that,
5 Mr. Danzig?
6 A This is in anticipation. It says the date of the incident
7 on the top right. On the top left, it's the date that I'm
8 generating this information. It's a day before the
9 meeting with all the clients which is gonna' take place.
10 I shouldn't say all the clients. The clients that were
11 available at that time for a meeting on July 25, so I'm
12 generating the intakes so that I have all the files set up
13 at the time that I'm meeting with the clients.
14 Q And so this exhibit nine, it relates to which client?
15 A Dorothy Dixon, who is going to be represented --
16 anticipated.
17 MR. FIEGER: Objection. The answer is Dorothy
18 Dixon. He keeps goin' on. I don't know what the next
19 question's gonna' be or what he's gonna' say.
20 THE COURT: Okay, let's continue. Let's just
21 answer the questions. Let's move on.
22 BY MR. JANKS:
23 Q Who is it that you're talking to about Dorothy Dixon on
24 July 25, 2012, because as you told us, she's in a coma?
25 A Her son, Dion, whose name is indicated there who will be

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1 representing her as his guard -- her guardian and
2 conservator which was the initial plan.
3 Q Is there anything else on this form if we scroll that is
4 relevant in regards to anything? It looks like the case
5 was assigned to you.
6 A Correct, and then -- and then a file number was assigned
7 as it keeps going down on the bottom left. That's the
8 file number for Dorothy Dixon. And it indicates, "no
9 appointment necessary," 'cuz she's in a hospital in Ohio.
10 Q So, then you mentioned that there was a meeting the next
11 day, and who was that with, please?
12 A The meeting was organized by myself and Jeff Sherbow. It
13 included Jeff Sherbow, Dion Rice, Mervie Rice, Mervie's
14 daughter, Jody Lipton, and myself. Howard Linden was
15 anticipated and invited to attend. He didn't show up
16 until I retrieved him from Mr. Fieger's office later in
17 the meeting.
18 Q Who is Howard Linden?
19 A A probate attorney used by Mr. Fieger for most of the
20 probate matters for the firm.
21 Q And -- and how does a probate lawyer become necessary in a
22 case like this?
23 A Given not only the death of Charles Rice, but the
24 incapacity of Dorothy Dixon, one would need a probate
25 estate set up for both in order to represent their

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1 interests if they were incapacitated or not alive.
2 Q Charles Rice was dead so he needed an estate.
3 A Correct.
4 Q And did there come to be an estate for Dorothy Dixon?
5 A I don't believe there was because I didn't sign her up to
6 a contract until she returned to the state of Michigan.
7 By that time, she was of her own capacity to handle her
8 own affairs. And so when I signed her up, I -- I talked
9 with her, and she was competent and capable, so, no, it
10 was not necessary for her.
11 Q The July 26, 2012 meeting that we were just talking about,
12 that occurred where?
13 A In the east conference room right next to my office in the
14 Fieger firm.
15 Q Do you -- do you recall that meeting as we sit here today?
16 A As -- as much as I can give you the details, yes, I
17 remember everything from it.
18 Q Are -- are there any notes or anything or intake forms or
19 anything else that you fill out on that day when you're
20 having the meeting?
21 A Contracts are filled out, and signed by the clients.
22 Q So let me show you Plaintiff's proposed exhibit ten. Can
23 you identify that for us, please, Mr. Danzig?
24 A Contract signed by Mervie Rice on July 26, 2012. It's got
25 my handwriting on it. I wrote out what the case was going

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1 to be about, and after giving full explanations of how the
2 case would transpire, both Mervie Rice and myself executed
3 the contract.
4 Q What did you explain to her as to how the case would
5 transpire?
6 A I gave Mervie Rice ex -- full explanations like I give
7 every client. This case was no different than any other
8 case I was signing up.
9 THE COURT: The only question was what did you
10 tell her?
11 THE WITNESS: I told her that the Fieger firm
12 would agree to represent her in this matter; that I would
13 be the attorney with Mr. Fieger being the trial attorney;
14 that I would be handling the case from mostly beginning to
15 end. I told her that there was some unique aspects of
16 this case given the fact that it was in Ohio. I told her
17 that there were a number of referral relationships going
18 on here. I wanna' back up. When I first began the
19 meeting, I introduced everybody at the table. Mervie Rice
20 certainly didn't know me or Jeff Sherbow or Jody Lipton or
21 Howard Linden, so I started by making introductions. When
22 I introduced Jeff Sherbow, I introduced him as the
23 referring attorney who had referred the case to me and the
24 Fieger firm. I told both Mervie and Dion, who were the
25 clients at that time that I was speaking to, what the

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1 nature of the referral relationship would be; that Mr.
2 Sherbow would be entitled to a fee off of our fee, not off
3 of their fee. I then explained what a re -- what the fee
4 arrangement was, the two-third, one third split after
5 cost, and then I proceeded to explain the nature of the
6 second referral relationship that was with Jody Lipton.
7 Jody Lipton was brought in by me to handle the first party
8 benefits of this case, and all the cases, and I had
9 explained to both clients the nature of that referral
10 relationship 'cuz we brought Jody in. Jody would be
11 handling the no-fault benefit claim, and Jody would be
12 paying us a referral fee for bringing her into the case.
13 So I had to explain both of those referral relationships.
14 I did. The clients --
15 MR. FIEGER: Objection, Judge, hearsay.
16 THE COURT: So, what the clients said yep.
17 MR. JANKS: Was there any objection voiced by
18 anyone as it relates to that referral fee?
19 MR. FIEGER: Objection.
20 THE COURT: He just referred -- just a second.
21 I just sustained the objection. That's -- that's hearsay.
22 MR. JANKS: Let me show you -- can we admit
23 exhibit ten?
24 THE COURT: Any objection to exhibit ten, Mr.
25 Fieger?

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1 MR. FIEGER: Oh, I'm sorry, no.
2 THE COURT: That's the --
3 MR. FIEGER: All the fee agreements, I have no
4 objection, your Honor.
5 THE COURT: Okay, cool.
6 MR. FIEGER: Just to speed things along.
7 THE COURT: Exhibit ten's received. How many --
8 what are the other exhibit numbers for the contracts?
9 MR. JANKS: Exhibit 11 is the Dion Reese (ph) --
10 Rice --
11 THE COURT: Rice.
12 MR. JANKS: -- fee agreement.
13 THE COURT: That's admitted without objection.
14 Exhibit ten is Mervie, is that right?
15 MR. JANKS: Exhibit ten is Mervie.
16 THE COURT: Exhibit 11 is who?
17 MR. JANKS: Is Dion on behalf of the estate of
18 Charles Rice.
19 (Plaintiff's 10 and 11 admitted at 2:39 p.m.)
20 THE COURT: Okay, exhibit 12, is that a
21 contract?
22 MR. JANKS: No.
23 THE COURT: Okay.
24 MR. JANKS: No. Exhibit 12 is something I will
25 show the witness.

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1 BY MR. JANKS:
2 Q Can you tell us what exhibit 12 is?
3 A It is my letter to Mr. Sherbow acknowledging the referral
4 fee relationship on the Mervie Rice case.
5 MR. JANKS: Any objection to its admission, Mr.
6 Fieger?
7 THE COURT: What is it again, please? I'm
8 sorry.
9 MR. JANKS: This is the August 2, 2012 letter
10 from Mr. Danzig to Mr. Sherbow acknowledging the Mervie
11 Rice referral.
12 MR. FIEGER: Okay, just one question of voir
13 dire, your Honor.
14 THE COURT: Yeah.
15 VOIR DIRE
16 BY MR. FIEGER:
17 Q You identified that for the jury as acknowledging the
18 Mervie Rice. You say in that letter you're acknowledging
19 referrals on every case.
20 A Will you point out what you're speaking of.
21 Q "Please rest assured you are entitled to a referral fee on
22 all the cases."
23 A I see that. That's how they all came in.
24 Q So this wasn't a letter acknowledging Mervie Rice, it was
25 acknowledging all the cases.

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1 A There was a subsequent letter acknowledging the others.
2 Q No, not this case. This -- I'm only interested in this
3 letter.
4 A There was a subsequent letter acknowledging all the other
5 referral in this case, the other three.
6 Q This letter acknowl -- tells Mr. Sherbow he's getting a
7 referral fee on all cases, right?
8 A With the Mervie Rice caption on it, yes.
9 MR. FIEGER: Thank you, no further questions.
10 THE COURT: Any objection?
11 MR. FIEGER: No.
12 THE COURT: It's received. Thank you.
13 (Plaintiff's 12 admitted at 2:41 p.m.)
14 BY MR. JANKS:
15 Q And what was the referral agreement as indicated in
16 exhibit 12?
17 A A one-third referral fee which would consist of a third of
18 our third fee, standard fare in the industry.
19 MR. JANKS: Now, what -- what's the language
20 that Mr. Fieger was referring to in there? Can we put
21 that up, please.
22 BY MR. JANKS:
23 Q Why don't you just read that for us.
24 A Sure. Starting with, "Rest assured," or the whole thing?
25 Q Whole thing.

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1 A "Be advised that we accepted the above captioned matter on
2 referral from you and your office, and are hereby
3 acknowledging your one-third referral fee in this matter.
4 Separate letters acknowledging your referral fee on all
5 the other cases will be forthcoming as soon as those files
6 are opened. Rest assured you are entitled to a referral
7 fee on all four cases that we will be handling, and I will
8 send you separate letters to that effect for each case as
9 they are opened. Should you have any questions or
10 concerns, please feel free to contact me."
11 Q And that's signed by you.
12 A It is.
13 MR. JANKS: Could we scroll back to the top,
14 please?
15 BY MR. JANKS:
16 Q And at this time, unlike exhibit 78, your -- your name
17 appears in the title of the firm or the name of the firm,
18 is that right, sir?
19 A It does.
20 Q And why is that?
21 A I've been a partner now for over a year.
22 Q And -- and what does it mean in legal circles if lawyers
23 names are on the right side of the letterhead versus if
24 they're on the left side of the letterhead?
25 A The right side are associates in the firm, both litigators

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1 and appellate attorneys and of-counsel attorneys. On the
2 left side are those that are deceased and other partners,
3 and then you have the middle which is the letterhead of
4 the current partners, although Mr. Kenney's name remained
5 because he was no longer alive, but Mr. Fieger kept his
6 name on the letterhead.
7 Q All right, exhibit 12 mentioned to us about another letter
8 that might be forthcoming as it relates to this case.
9 Could I show you proposed exhibit 15, please.
10 A Do you want me to describe what this is?
11 Q Yes, could you please.
12 A It says, August 15, 2012, the letter as promised that I
13 indicated I would acknowledge the referral fees once the
14 other files were opened. Now, the files are all opened,
15 and I'm acknowledging each of the other three remaining
16 cases, acknowledging the referral fee relationship between
17 Mr. Sherbow and my firm.
18 MR. JANKS: Move for its admission, your Honor.
19 THE COURT: Any objection?
20 MR. JANKS: No object -- no objection, your
21 Honor.
22 THE COURT: It's received.
23 (Plaintiff's 15 admitted at 2:44 p.m.)
24 MR. JANKS: So let's stay down a little, and go
25 back up a little. Let's go down a little. Get the Re

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1 part, the R-E there. There you go.
2 BY MR. JANKS:
3 Q So this letter is about the estate of Charles Rice,
4 Dorothy Dixon, and Phillip Hill cases, is that right?
5 A Right, the other three clients.
6 Q Right, and the first letter was Mervie Rice.
7 A Correct.
8 Q So now we've encompassed all four clients, and we've sent
9 a letter.
10 A Correct.
11 Q Or two letters. All right, so what does this letter tell
12 us about the referral relationship between Mr. Sherbow and
13 the Fieger law firm?
14 A Acknowledges his entitlement to a referral fee should the
15 matters be successful.
16 Q And his referral fee was agreed to be what?
17 A One-third referral fees in these matters, same as Mervie
18 Rice's as I expressed.
19 Q Is that typical in Michigan PI, personal injury circles?
20 A Any referral attorney referring on a case to us would want
21 an acknowledgment of his one-third referral fee interest
22 in the case. It's standard fare.
23 Q And what does the referral fee do if anything to the
24 client's net money if the case is successful?
25 A Absolutely nothing.

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1 Q Why is that?
2 A Because the client's entitled to two-thirds regardless of
3 the referral relationship, and I explain this to each and
4 every client that their fee will not be affected
5 whatsoever, their two-thirds of the net proceeds will not
6 be affected in any way by virtue of the relationship
7 between Mr. Sherbow or any other referring attorney and
8 the firm.
9 MR. JANKS: Exhibit 14 is the fee agreement with
10 Phillip Hill, your Honor, and since we have an agreement
11 on fee agreements, I won't lay a foundation for that.
12 THE COURT: Any objection?
13 MR. FIEGER: No, your Honor.
14 THE COURT: It'll be received.
15 (Plaintiff's 14 admitted at 2:46 p.m.)
16 MR. JANKS: We can go to the last page of this
17 one.
18 THE COURT: What's the -- what -- just for the
19 record, what's the date of that?
20 MR. JANKS: That's where I'm going, to the last
21 page --
22 THE COURT: Okay.
23 MR. JANKS: -- so we can get to the date.
24 THE COURT: Up to you.
25 BY MR. JANKS:

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1 Q So Mr. Danzig, when was Phillip Hill signed up?
2 A August 6, 2012. Mr. Hill was not available to come to the
3 initial meeting.
4 Q On July 26, 2012.
5 A Correct.
6 Q Okay. Did -- did you personally sign up Mr. Hill?
7 A I did in his apartment in Detroit. No, I'm sorry, in
8 Highland Park.
9 Q Did you -- what did you tell Mr. Phillip Hill as it might
10 relate to who's who in the case, and who was gonna' do
11 what?
12 A I would repeat exactly what I told you regarding my
13 conversation with Mervie Rice, same conversation, same
14 explanation as I give to all my clients. There -- there's
15 no difference. I give a full and complete explanation on
16 relationships, what attorneys have brought the case in,
17 what our relationship will be. Jody Lipton was with me at
18 this meeting as well. I explained Jody Lipton's role and
19 responsibility, the relationship of her and the firm, just
20 like I did with Mervie Rice. No difference.
21 Q Did you tell Mr. Hill that your firm considered this to be
22 a referral from Mr. Sherbow?
23 A Absolutely.
24 Q Had Mr. Hill ever met Mr. Sherbow, to your knowledge?
25 A Not to my knowledge.

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1 MR. JANKS: Wouldn't it be required that Mr.
2 Hill meet Mr. Sherbow for Mr. Sherbow to have referred his
3 case?
4 MR. FIEGER: Objection, calls for a legal
5 conclusion.
6 THE COURT: I think it does. I'll sustain the
7 objection.
8 MR. JANKS: In the way that the Fieger firm did
9 business in 2012 as it relates to accepting referrals from
10 referral lawyers, did it require that the referral lawyers
11 meet each and every client that they referred?
12 MR. FIEGER: Objection. There's -- we have no po
13 -- nobody says anything about that.
14 MR. JANKS: I'm asking the business practice of
15 the Fieger law firm in accepting referrals in 2012.
16 THE COURT: Why don't you ask -- well, tell you
17 what. Why don't you ask the business practice of Mr.
18 Danzig, and I'll let that in.
19 BY MR. JANKS:
20 Q Okay, Mr. Danzig, as the manager of the case intake
21 department at the Fieger firm in 2012, what was your
22 business practice as it related to whether the referral
23 lawyer had to meet each and every client that they
24 referred in?
25 A It wasn't necessary.

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1 Q Why not?
2 A Because in order for the referral to be valid, Mr. Sherbow
3 had to direct the clients to my attention, not sign them
4 up or know who they were ahead of time. I can give you an
5 example if you wanted, and -- and if the Court would
6 allow, I'd give you an example that's pertinent to this
7 type of situation if it -- if it gives a little clarity to
8 the situation.
9 Q Please do.
10 A If --
11 MR. FIEGER: Objection.
12 THE COURT: Well, I'll allow it just for the --
13 just to put it in some perspective. Go ahead.
14 THE WITNESS: If a father's driving a car and
15 his kids are on board, and they're all injured in the
16 accident, and attorney X wants to refer the cases in and
17 he asks me to come meet with the father and obtain the
18 case on a referral from the attorney, I don't need to have
19 all the clients, the minors, present. I don't need to
20 have Jeffrey Sherbow, if he's the referring attorney, in
21 this case attorney X, have a relationship with all the
22 children in order for them to come to the office and be
23 represented by my firm.
24 THE COURT: Well, that's not -- that's -- that's
25 not --

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1 MR. FIEGER: Objection, that's completely wrong.
2 THE COURT: That's com -- that's -- that's --
3 well, I don't know if it's wrong, but that's not germane
4 to this. It's not an analogous to this situation, so the
5 objection's sustained.
6 MR. FIEGER: Thank you.
7 BY MR. JANKS:
8 Q What -- what was your understanding of what relationship
9 Mr. Sherbow had to any of the people that were involved in
10 the car crash?
11 A My understanding was that he was a lawyer who did business
12 with Charles Rice, and Charles Rice's partner.
13 Q And to your knowledge, had Mr. Sherbow met Charles Rice
14 prior to Charles Rice becoming deceased?
15 A Yes.
16 MR. JANKS: Sixteen, I think we already had that
17 up there. I think you said you had no objection to that,
18 right?
19 MR. FIEGER: No objection to 16, your Honor.
20 THE COURT: And 16 is?
21 MR. JANKS: Sixteen is the Danzig letter of
22 January 2, 2014 to Mr. Antilly and Mr. Sherbow.
23 (Plaintiff's 16 admitted at 2:51 p.m.)
24 BY MR. JANKS:
25 Q Could you tell us about that letter, please, Mr. Danzig.

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1 A Sure, it's a letter that I drafted on January 2, 2014 to
2 document the nature of the fee splitting relationship
3 between all the attorneys involved at the beginning of the
4 case because it was a case that was gonna' have a
5 jurisdiction in Ohio, we needed of counsel in Ohio. We
6 hired Mr. Antilly to be that person. Mr. Antilly wanted a
7 fee as of counsel on the case. We had originally agreed
8 on a ten percent fee. And, subsequently, Mr. Antilly
9 decided that that wasn't enough for him, so he began
10 dickering with me about a greater fee because he
11 recognized what kind of case this was. It was a
12 significant case so he wanted a larger fee.
13 Q And was he dickering only with you or did he talk to Mr.
14 Fieger or anyone else, to your knowledge, about his desire
15 as it relates to the fees?
16 A To the best of my knowledge it was me. I was the handling
17 attorney day-to-day.
18 Q Okay, so this is 2014. The cases came in in July of 2012.
19 What did Mr. Fieger do on the cases between July of 2012
20 and January of 2014 when you wrote this letter?
21 A Nothing.
22 Q Had he ever met the clients?
23 A No.
24 Q Had he ever taken a deposition on the cases?
25 A No, I did, I depped them all.

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1 Q Visited the scene of the accident?
2 A No, I did.
3 MR. JANKS: Talked to any of the doctors?
4 MR. FIEGER: Objection, relevance.
5 THE COURT: What's the relevance of who worked
6 on the file?
7 MR. JANKS: The relevance is that Mr. Fieger has
8 claimed as to my client not working on the file, and so it
9 would be interesting to know how much work he did on the
10 file as well to comparatively determine that.
11 THE COURT: I don't. Mr. Fieger, do you wanna'
12 (indiscernible)?
13 MR. FIEGER: I -- I didn't even understand.
14 That's not relevant to this case. He said it'd be
15 interesting to find out to compare me with Mr. Sherbow?
16 How? This isn't a (indiscernible) case. He just made
17 that up.
18 THE COURT: I'll sustain the objection. I will
19 allow a little questioning about the relationships so we
20 can figure out if there was a relationship between Mr. and
21 -- and the underlying clients.
22 BY MR. JANKS:
23 Q When these cases were initially signed up in July of 2012,
24 and August of 2012 -- Oh, and by the way, when was Dorothy
25 Dixon finally signed up?

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1 A September, I believe, 2012.
2 MR. JANKS: Okay, so in -- in July, we've got
3 Mervie and Dion, in August we have Phillip Hill, in
4 September we've got Dorothy Dixon, so in that period of
5 time, had -- had any of them said I want Mr. Fieger as my
6 lawyer?
7 MR. FIEGER: Objection, hearsay.
8 THE COURT: Yeah, it -- it is -- it is. I don't
9 think that's a proper question anyway, so --
10 MR. JANKS: When the cases came to the firm --
11 THE COURT: At what point did Mr. Fieger get
12 involved in the cases?
13 THE WITNESS: Throughout my handling of the
14 cases, he was never involved other than for me to discuss
15 what was going on with him. He didn't actively
16 participate in the cases at all through the time I
17 departed the firm.
18 THE COURT: And you departed the firm when?
19 THE WITNESS: In January of 2014.
20 THE COURT: What's the date of this letter?
21 Okay.
22 THE WITNESS: I think I left on the 10th or the
23 11th of January.
24 THE COURT: Okay.
25 BY MR. JANKS:

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1 Q So back to that exhibit which is what, exhibit 16, is it?
2 So what's -- what's the net result of Mr. Antilly saying
3 I'd like some more money?
4 A Well, I went immediately to Mr. Fieger to discuss this
5 issue with him, including Mr. Giroux, my other partner.
6 We discussed it, and I wasn't happy with the fact that Mr.
7 Antilly was trying to hold us up for another ten percent
8 fee that would come out of the attorney fee. I discussed
9 it with Mr. Fieger and Mr. Giroux, and they both told me
10 that -- that I should try and get Mr. Sherbow to agree to
11 a reduction in his fee to accommodate Mr. Antilly, which
12 is what I did.
13 Q So Mr. Sherbow then agreed to go from 33 1/3 percent to 20
14 percent.
15 A Because I asked him to -- to accommodate the situation and
16 allow me to continue. Otherwise, I was gonna' lose my of
17 counsel in Ohio, and have to start from the beginning. I
18 didn't want that to happen.
19 Q Did you discuss that situation with Mr. Fieger?
20 A I did.
21 Q Was Mr. Fieger aware of the situation that this was a
22 Sherbow referral, and that the fees were being
23 renegotiated?
24 A He knew that from July 26, 2012 when I signed the clients
25 up.

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1 Q How did he know it then?
2 A I told him about the case and Mr. Sherbow's referral in
3 his office immediately after I signed up the clients.
4 Q Why did you do that?
5 A So that he would know that I was gonna' be working on a
6 substantial case. I always liked to inform him that of
7 any, no less one referred to me by a friend, of any
8 substantial case, he wanted to know about those. I
9 informed him about it the day I signed these clients up.
10 He also gave me advice on that date on a certain issue
11 that I recall.
12 Q What was that?
13 A There was a little conflict in that Charles Rice was the
14 driver of a car, three other occupants are injured in that
15 accident, and it certainly was my belief that the
16 Defendants, whoever we were gonna' sue which ended up
17 being the construction company, were gonna' point the
18 finger at Charles Rice, so there was some conflict in
19 positions with regard to the four occupants 'cuz they
20 could look to Charles Rice to sue Charles Rice. So Mr.
21 Fieger advised me during that initial discussion to get
22 waivers from all the clients so that they would waive any
23 conflict of interest which I immediately obtained in order
24 to pursue the case.
25 Q So the clients had to be told that they could sue Charles

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1 Rice, potentially, and had to agree not to do that if
2 that's what they wanted to agree to.
3 A Exactly.
4 Q And then the Fieger firm could represent the Charles Rice
5 estate as well as the three passengers.
6 A It was the only way that we would be able to represent all
7 four in the accident, and we certainly wanted to, and I
8 certainly wanted to.
9 Q And Mr. Fieger wanted to.
10 A Absolutely.
11 Q Mr. Fieger wanted to take the case on referral from Mr.
12 Sherbow?
13 A I told him who it had been referred by. There was no
14 objection.
15 Q Mr. Fieger in his opening referred to this written memo or
16 policy of 2001 saying that there's not gonna' be referrals
17 accepted, and there's not gonna' be referral fees paid
18 unless he approves same. Did he approve the intake of
19 these cases and the referral of these cases and referral
20 fees paid to Mr. Sherbow?
21 A He made no objection when I told him the case had come in
22 from Mr. Sherbow.
23 Q Did anyone else object?
24 A Not --
25 MR. FIEGER: Objection. Now, he's trying to do

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1 what you already told him he can't do, Judge.
2 THE COURT: Which is?
3 MR. FIEGER: Hearsay.
4 THE COURT: Well, again, if they work for the
5 firm --
6 MR. FIEGER: Right, but he didn't limit it to
7 that.
8 THE COURT: Okay, you wanna' limit your
9 question?
10 BY MR. JANKS:
11 Q Did anyone at the Fieger firm object to accepting these
12 four cases on referral from Mr. Sherbow and agreeing to
13 pay Mr. Sherbow a referral fee?
14 A There was never any objection.
15 Q I'm gonna' show you exhibit 17, Plaintiff's proposed 17,
16 please, sir, and could you identify that?
17 A Sure, this is an agreement that I drafted with Mr.
18 Fieger's approval. We both executed it which I would call
19 my departure agreement which was putting all our affairs
20 in order so that I had a clean departure, and so that we
21 would have an agreement on all the cases that were my
22 referrals that I would have an interest in, and that I --
23 what I would be doing with those files upon my departure,
24 and this was an agreement we both reached.
25 MR. JANKS: Move for its admission, your Honor.

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1 THE COURT: Mr. Fieger.
2 MR. FIEGER: I have no objection.
3 THE COURT: Okay, it's received. Thank you.
4 (Plaintiff's 17 admitted at 3:00 p.m.)
5 BY MR. JANKS:
6 Q What if anything does that exhibit, exhibit 17, tell us as
7 it might relate to what we're here about which is the
8 Charles Rice group of cases?
9 A It indicates that with regards to those four cases, I have
10 a proprietary interest in the file since it had been
11 referred to me. I was leaving the file voluntarily with
12 the Fieger firm in order to maximize the potential for the
13 clients, and I agreed to leave the files voluntarily, of
14 my own desire, with the Fieger firm because I had an
15 agreement with them that there was a proprietary interest
16 of mine in these cases based upon the referral
17 relationships. He agreed.
18 Q Did Mr. Fieger say to you as you were leaving these cases
19 weren't really referred by Mr. Sherbow?
20 A No, this agreement would look a lot different if there was
21 an argument or discussion in that regard.
22 Q When it says you have a proprietary interest in files,
23 what does that mean?
24 A It means that I have an interest, given the fact that -- a
25 financial interest given the fact that they were referred

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1 to me. When a referral source of mine refers me a case, I
2 have a financial interest in that case if it is
3 successful.
4 Q Was your financial interest in these cases taken care of
5 when the cases were successfully resolved?
6 A Should I laugh now or later?
7 MR. FIEGER: Objection, Judge.
8 THE WITNESS: No.
9 THE COURT: Please ignore that comment, ladies
10 and gentlemen.
11 THE WITNESS: I'm sorry, your Honor. No.
12 THE COURT: Mr. Danzig, you're a member of the
13 bar. I expect more from you.
14 THE WITNESS: Thank you. I stand corrected, no,
15 I got nothin'.
16 BY MR. JANKS:
17 Q The date of that agreement was what; do we have a date on
18 the top -- top of it or bottom of it? Bottom, okay.
19 A January 10, 2014. I think that was the day before my last
20 day.
21 Q All right. Do you recognize the signatures at the bottom
22 of that exhibit?
23 A I do, I recognize both.
24 Q And whose signatures are they?
25 A Mine and Mr. Fieger's.

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1 THE COURT: Is this is a good time to take an
2 afternoon break?
3 MR. JANKS: Sure, that'd be fine. Thanks --
4 thanks so much, Judge.
5 THE COURT: We'll take five; well, maybe ten.
6 THE CLERK: All rise for the jury.
7 (Jury out at 3:03 p.m.; court in recess)
8 (Court in session at 3:22 p.m.)
9 THE CLERK: All rise. The Oakland County
10 Circuit Court is now in session, the Honorable James M.
11 Alexander, presiding. Now calling Sherbow v Fieger, 2015-
12 147488-CB.
13 MR. JANKS: Judge, Greg Janks, for the
14 Plaintiff, and I have just one quick thing before you
15 bring the jury back.
16 THE COURT: We need Mr. Fieger's appearance,
17 please.
18 MR. FIEGER: Ready, Geoffrey Fieger for the Pla
19 -- Defendant.
20 MR. JANKS: Judge, while Mr. Danzig is here, and
21 while the jury's not here, I would like to ask -- make a
22 record of the fact that Mr. Danzig, what he -- his answer
23 to the question would be if any of the underlying clients
24 objected when he told them of the referral fee situation.
25 I understand that you ruled that's hearsay. I don't think

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1 it is under 803(3), and I also don't think it is because
2 it's a verbal act, not for the truth of the matter but
3 essential to the validity of the agreement under 1.5 (E),
4 but if you're not going to let him say that, I'd like to
5 make the record so that we have it on the record.
6 MR. FIEGER: May I respond, your Honor?
7 THE COURT: Yeah.
8 MR. FIEGER: Counsel -- I don't know what
9 counsel's referring to. He is offering it for the proof
10 of the matter contained therein, and it is a -- a verbal
11 or non-verbal act, and it's not 803. It's 801. Quote,
12 "The following definitions apply under this article."
13 This is 801(c). "Hearsay is a statement other than that
14 made by the declarant while testifying at trial or hearing
15 offered to prove the truth of the matter contained
16 therein." And 2 RA statement, "A statement is an oral or
17 written assertion or non-verbal conduct of a person if
18 it's intended by the person as an assertion." That's what
19 he's exactly what he's doing. This is classic hearsay.
20 MR. JANKS: No, it's not an assertion.
21 THE COURT: Just a second -- just a second.
22 803(3) is an exemption to the hearsay rule, "for then
23 existing mental, emotional or physical condition." Is
24 that what you're talkin' about?
25 MR. JANKS: Yes, sir, where, in the parenthesis

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1 --
2 THE COURT: We're not talking about Mr. Danzig's
3 mental, emotional or physical condition, are we?
4 MR. JANKS: No, it goes -- no, we're talking
5 about the underlying four clients. And as you can see
6 under 803(3), such as intent, plan, etcetera. Their
7 intent or their plan was agreeing that they were agreeing
8 to a referral fee by not objecting. Also --
9 THE COURT: I think that's -- that's -- you know
10 what, I think that's really a unique argument, Mr. Janks,
11 but I don't think it's got anything to do with this.
12 MR. JANKS: Well, I appreciate what you're
13 saying, and I would -- that's why I'd like to make the
14 record because I believe that it's an 803(3) exception. I
15 think under 801(a) it's not an assertion. It's non-verbal
16 conduct. That's not an assertion.
17 THE COURT: It's non-verbal conduct.
18 MR. JANKS: Yes, I didn't say any -- they didn't
19 object. They didn't object is the point. What -- what
20 1.5 requires is that they be informed there's gonna' be
21 fee sharing, and not object.
22 MR. FIEGER: His -- your Honor, just so you
23 understand what's going on here, he claims that if he says
24 silence, that nobody said anything, which is a non-verbal
25 assertion of a -- of agreement --

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1 MR. JANKS: Yes.
2 MR. FIEGER: -- is -- is -- is -- is admissible.
3 And -- and you could just say it and get -- get a referral
4 fee.
5 THE COURT: I don't think there's any reason to
6 make a separate record. I think the -- the rule is clear.
7 They didn't say anything, and the -- Bring 'em in and let
8 'em testify, and then you can -- you can -- You know, if
9 you wanna' bring Mr. Danzig back on rebuttal if they
10 testify no, we didn't, and you think they're yes, we did,
11 and you wanna' bring Mr. Danzig back at that time, then I
12 might consider it, but at this point, until I hear from
13 the four underlying, I'm not ready to allow that, and I'm
14 not ready to make a separate record.
15 MR. JANKS: Okay, I -- I just thought since Mr.
16 Danzig was here, I'd take a minute to make a separate
17 record, but I understand your ruling, Judge.
18 THE COURT: Thank you, I appreciate it. In
19 light of that one lawyer -- juror's issue today, we'll go
20 to 4:15, so you'll probably have to come back tomorrow,
21 sir.
22 MR. JANKS: Well, I'm about done with him, so --
23 THE COURT: Oh, okay, maybe Mr. Fieger will --
24 MR. JANKS: -- maybe Mr. Fieger will get done
25 with him and let him go. I also have Mr. Giroux that I'd

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1 like to bring in if possible today.
2 THE COURT: No, I wanna' -- I mean this one
3 juror's indicated an issue, and I'd just as soon be
4 sensitive to his issue.
5 MR. JANKS: I think Mr. Danzig has an issue
6 tomorrow morning.
7 THE CLERK: All rise for the jury.
8 THE COURT: We can take 'em out of order some
9 other time.
10 (Jury in at 3:27 p.m.)
11 THE COURT: Please be seated. Do you still got
12 an issue with your car, sir; sir, you still got an issue
13 with your car?
14 UNIDENTIFIED JUROR: Yes.
15 THE COURT: Okay, we'll get you outta' here by
16 4:15.
17 UNIDENTIFIED JUROR: Thank you.
18 THE COURT: Mr. Danzig, you're still under oath.
19 THE WITNESS: Thank you, your Honor.
20 BY MR. JANKS:
21 Q Mr. Danzig, the last question I have for you is exhibit 17
22 which was your departure agreement signed by you and Mr.
23 Fieger. Did -- did that departure agreement indicate that
24 the Fieger firm would in fact honor and pay the referral
25 fee to Mr. Sherbow in the four cases that indicate that

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1 you had a proprietary interest in?
2 A Well, that's why I put down it has a proprietary interest
3 in the file grouping of four cases consistent with all of
4 the other understandings we had on this.
5 Q And that's signed by you, and signed by Mr. Fieger.
6 A Yes, sir.
7 MR. JANKS: Okay, thank you, sir, that's all the
8 questions I have.
9 MR. FIEGER: Good afternoon, ladies and
10 gentlemen.
11 CROSS-EXAMINATION
12 BY MR. FIEGER:
13 Q Good afternoon. Mr. Danzig, good afternoon.
14 A Good afternoon.
15 MR. FIEGER: Exhibit TT, I move for admission,
16 your Honor, the policy of October 15, 2001.
17 THE COURT: Any objection?
18 MR. JANKS: No objection, your Honor.
19 THE COURT: Without objection, exhibit TT is
20 received.
21 MR. FIEGER: Thank you.
22 (Defendant's TT admitted at 3:29 p.m.)
23 BY MR. FIEGER:
24 Q Mr. Danzig, you previously testified under oath in this
25 case, didn't you?

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1 A Yes.
2 Q I'm gonna' hand you your deposition again so you can refer
3 to it. You -- you're an attorney at law so you understand
4 you -- you were sworn to tell the truth, the whole truth,
5 and nothing but the truth, right?
6 A Yes.
7 Q Now, would it be fair to say that you've substantially
8 changed a lot of your testimony from your deposition in
9 May of 2016 to today to conform with what you've
10 subsequently found out were the facts?
11 A No.
12 Q Prior to that deposition, you were cooperating with Mr.
13 Sherbow, in other words, trying to help him in this case,
14 weren't you?
15 A No.
16 Q You met with his attorney, right?
17 A Yeah, for the purpose of displaying what I understood to
18 be the facts of the case.
19 Q You wrote a affidavit for the attorney for Mr. Sherbow.
20 A Well, I don't know, why don't you show it to me, and I'll
21 verify it.
22 Q Do you recall writing an affidavit? Here, I'll show it to
23 you.
24 A I authored many documents in respect to this file, so
25 you're gonna' have to show it to me.

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1 Q Sure, does that refresh your recollection?
2 A It has my signature, I recognize it.
3 Q So you authored an affidavit, right?
4 A Now that you've shown it to me, yeah, I can agree with
5 you.
6 Q And you authored a set of notes for him to kind of do a
7 time line to help him, right?
8 A This was information given to me by counsel for Mr.
9 Sherbow that I related in terms of the sequence of events
10 that occurred. It wasn't my factual information. It was
11 theirs based upon what they knew were the calls and the
12 sequence of calls and the dates, and the times.
13 Q So you wrote out in your own handwriting and attached to
14 your ex -- was used as an exhibit.
15 A I wrote it out --
16 Q A document that really was hand-fed to you by Mr.
17 Sherbow's attorney --
18 A No.
19 Q -- and then you claimed it was yours?
20 A No, I --
21 Q What?
22 A I wrote it out based upon information that they conveyed
23 to me based on information that I knew existed so that I
24 would have a time line in front of me at the time of my
25 deposition. It would assist me in the dates of when

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1 everything occurred.
2 Q You said in your deposition that exhibit four, which is
3 that hand-written thing, were your notes.
4 A They are my notes. I wrote those notes based upon
5 information that was provided to me by counsel for Mr.
6 Sherbow as well as what information I had, so I would say
7 it was a combination of information that I had, both what
8 I knew to exist, and what they were telling me was
9 occurring based upon documented phone calls and the like.
10 Q That's not what you to -- testified under oath. Turn to
11 page five --
12 A Why don't you tell me what --
13 Q -- of your deposition. On page five, you said, quote,
14 line 12, referring to exhibit four. "This is a note that
15 I made to myself regarding some dates that I couldn't
16 remember as opposed to reaching into my memory bank during
17 the deposition."
18 A Correct, that's essentially accurate. A note, I wrote the
19 note in my handwriting to myself regarding dates that I
20 couldn't remember that I was assisted with by counsel for
21 Mr. Sherbow.
22 Q So are they your notes or are they theirs?
23 A A combination of what I knew to exist in the case, and
24 what information they gave me in terms of dates of contact
25 with me.

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1 Q And --
2 A I'm not privy to Mr. Sherbow's phone records. I would say
3 when he called me, so I included those pieces of
4 information in my notes to myself that would tell me when
5 events occurred.
6 Q And the last thing you were asked was about a letter or
7 agreement that you drew up. He handed it to you. You
8 have it right there in front of you?
9 A I do.
10 MR. FIEGER: Can we put that on the board,
11 please? Do -- do you have that projecting; could you
12 project that up?
13 BY MR. FIEGER:
14 Q What exhibit is that, Mr. Danzig?
15 A Seventeen.
16 Q Thank you.
17 A You're welcome.
18 Q Okay, let's start at the top. Could you just -- we'll
19 scroll down. Where does that say -- I -- I heard you
20 testify to the Court and jury that says something about a
21 referral from Jeff Sherbow. Read -- read me Sherbow's
22 name on that document.
23 A It says, and I indicated proprietary interest which is
24 what told me that I had a financial interest in the cases
25 based upon a referral from Jeff Sherbow.

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1 Q No, you --
2 A That's what it says.
3 Q I didn't -- I'm asking you, is Jeffrey Sherbow's name on
4 this document?
5 A No.
6 Q Okay, now, proprietary inter -- interest means that I'm --
7 I'm a lawyer, and I think we use it in -- in vernacular is
8 that you have a personal, financial interest in a case.
9 A Correct, that was the intent and purpose of the use of the
10 word.
11 Q So you were admitting that you also were gonna' get money
12 from this case, weren't you?
13 A In any referral relationship, if somebody refers a case
14 directly to me, I have a financial interest, and a
15 referral interest in the case.
16 Q That's -- that's right.
17 A That's right.
18 Q In other words, it's to your financial advantage to claim
19 that someone referred a case to you because that will give
20 you a percentage under the way I pay attorneys. That will
21 give you a percentage of the case, won't it?
22 A I don't make false claims.
23 Q I didn't --
24 A That's the way it was.
25 THE COURT: Okay, all right.

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1 THE WITNESS: You're suggesting it's false.
2 MR. FIEGER: I didn't say it was, Judge.
3 THE COURT: Answer his -- answer -- listen to
4 his question, Mr. Danzig --
5 THE WITNESS: I will.
6 THE COURT: -- and answer the question that Mr.
7 Fieger asks, not that you wanna' answer. This isn't a
8 presidential debate.
9 BY MR. FIEGER:
10 Q In addition to Mr. Sherbow, you, if -- if this was
11 actually a referral, you would get a financial percentage.
12 You'd get money out of it, wouldn't you?
13 A Correct.
14 Q But if it wasn't a referral, you wouldn't get money out of
15 it, would you?
16 A Correct.
17 Q Okay, so in this document, you said I have a financial
18 interest in this case, right?
19 A Correct, and you agreed.
20 Q Now, you've also told the Court and jury, and I think
21 correctly, that as far as the referral fee is concerned,
22 there's no financial interest of Mervie Rice or Howard
23 Linden or Dorothy Dixon or Phil Hill. They have
24 absolutely no reason to care one way or the other, at
25 least financially, whether or not Mr. Sherbow gets a fee

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1 or not, isn't that true?
2 A I agree that's the case with all the clients.
3 Q Isn't -- isn't that what you testified to?
4 A I agree.
5 Q So as between the clients and you, you have an interest,
6 financially, and they don't, isn't that right?
7 A Well, they have their own financial interest in two-thirds
8 of the proceeds. They have no financial interest in the
9 attorney fee portion of the case.
10 Q So as between you and the clients, in terms of whether or
11 not there's a referral fee, you have a financial interest,
12 they don't, do they?
13 A I agree.
14 MR. FIEGER: Now, I would move, your Honor, for
15 admission of Defendant's exhibit number 19.
16 MR. JANKS: Well, you can't have a number. I got
17 the numbers.
18 THE COURT: No, you got -- you're letters, so --
19 MR. FIEGER: No, I know, but I'm moving for
20 admission of his exhibit.
21 MR. JANKS: All right.
22 THE COURT: For Plaintiff's -- you're -- you're
23 moving for admission of Plaintiff's exhibit 19?
24 MR. FIEGER: Plaintiff's exhibit 19.
25 THE COURT: Thank you.

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1 MR. FIEGER: I'm a little ahead of myself.
2 THE COURT: Any objection here? Mr. Fieger's so
3 used to being a Plaintiff.
4 MR. FIEGER: Right.
5 (Plaintiff's 19 admitted at 3:38 p.m.)
6 MR. JANKS: No, as long as we're -- 18 and 19
7 are coming in, they're like two peas in a pod, I'm okay.
8 THE COURT: All right, 19's received.
9 MR. FIEGER: Thank you very much.
10 MR. JANKS: (Indiscernible) on 18 being
11 received, Judge.
12 THE COURT: Are you moving for the admission of
13 18? Mr. Fieger --
14 MR. FIEGER: No, but I'm not -- I'm not --
15 MR. JANKS: I'll move for 18.
16 MR. FIEGER: I'm not going to object, your
17 Honor, at the time. They're not peas in a pod, but that's
18 fine.
19 THE COURT: All right, 18's in, 19's in, you
20 guys can go ahead.
21 MR. FIEGER: Thank you so much.
22 MR. JANKS: Thanks, Judge.
23 (Plaintiff's 18 admitted at 3:38 p.m.)
24 MR. FIEGER: Could you show that on the board,
25 please?

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1 THE COURT: Which one, 19?
2 MR. FIEGER: Yes, your -- sir.
3 THE COURT: Okay.
4 UNIDENTIFIED VOICE: Which one do you want?
5 MR. FIEGER: Okay.
6 UNIDENTIFIED VOICE: Nineteen.
7 UNIDENTIFIED VOICE: Nineteen?
8 BY MR. FIEGER:
9 Q Before we get there, I'd like to just -- you left the firm
10 the beginning of January 2014, isn't that right?
11 A Correct.
12 Q Now, you talked about what I do and what I don't do in
13 terms of the cases. In this particular case, you left the
14 firm and -- and you were the attorney that I had assigned
15 to handle the workup of the case, isn't that true?
16 A I don't agree at all.
17 Q Isn't it true in my ca -- in my firm that associates
18 handle the workup of the case, and when the case
19 approaches trial, that's when I decide if I'm going to try
20 the case or not, isn't that true?
21 A That typically happens.
22 Q Okay, and in fact it's happened many times in your careers
23 with me, hasn't it?
24 A Absolutely.
25 Q You handle cases and work them up. As they approach

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1 trial, I make decisions about whether the case will be
2 tried or settled, blah -- blah -- blah, is that a fair
3 statement?
4 A Yeah, and if they go to trial, we try 'em together.
5 Q Okay, so in July -- excuse me -- in -- in January of 2014,
6 the case had been in our office for about a -- roughly, a
7 year and a half, would -- is that a fair statement?
8 A That's fair.
9 Q And you had been handling it, right?
10 A Exclusively.
11 Q I would not have had access to the case or know what's
12 gone on in the case, would I?
13 A Not accurate at all.
14 Q You might report to me about things that are happening in
15 the case.
16 A Many things that are happening in the case.
17 Q Right. Actually, for instance, you testified today
18 something I'm sure you just were mistaken about. You
19 claimed -- remember, at the very start of the case, you
20 said I told you about the issue of a conflict of interest
21 between the three clients who weren't driving, and the one
22 client who was, and I told you to get waivers.
23 A I said that.
24 Q Yeah, and you told the Court that you did but, actually,
25 you were just mistaken. You forgot to do it.

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1 A I don't understand your -- your statement at all 'cuz I
2 don't see it as a question.
3 Q Well, you told the Court --
4 A So why don't you ask me a question, and I'll answer it.
5 Q Well, I'm just -- in terms of what you recall and what you
6 don't recall, you were very clear with the Court that I
7 told you about the problem with waivers, in other words
8 conflicts of interest, and I said get a waiver from the
9 clients because there could be a conflict of interest.
10 A I recall testifying to that.
11 Q And you said you did it.
12 A I recall testifying to that, and I recall doing that early
13 on in the case.
14 Q Unfortunately, as a matter of fact, you didn't do it, did
15 you?
16 A To the best of my recollection, I did.
17 Q And I had to do it when I came into the case when the
18 Defendants raised the issue, and they said there's no
19 waivers, and you had not drawn them up, isn't that true?
20 A Not to my recollection.
21 Q So it's just very possible that even though you're telling
22 the Court under oath right now that you did something like
23 waivers, it's possible you didn't do it, isn't it?
24 A In my mind, no, I remember doing it.
25 Q So we talked about exhibit -- or we haven't yet, but

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1 you've acknowledged in your deposition that there was a
2 policy that I had enforced at the office over many years
3 regarding acceptance of referrals, isn't that true?
4 A I acknowledged that in direct exam.
5 Q Well, not like you testified to it in -- in -- In your
6 deposition, you said it wasn't written, it was oral,
7 didn't you?
8 A Give me the page number, please.
9 Q Sure. Let's start with page eight. Do you recall in
10 response to this question saying -- by Mr. Janks beginning
11 at line one. "So were there any written policies at the
12 Fieger firm about accepting referrals, about attorneys
13 that worked at the Fieger firm accepting referrals from
14 other attorneys outside the firm? Answer: I'm not aware
15 of a written policy or a declaration in that regard. I
16 know it was probably -- was verbal, but a lot of things
17 were verbal in the office." Did you say that?
18 A That was my recollection at the time I was asked the
19 question.
20 Q Right, because at that time, you were just wrong, right?
21 A What?
22 Q You -- you were wrong, right, it wasn't just verbal?
23 A It was my recollection at the time I testified in May of
24 2016 that there was a verbal policy to that effect. I
25 said I didn't recall a written policy that you've just

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1 shown me.
2 Q Well, let's go on again. Page nine, you said it again.
3 Line 13, "I'm going to repeat myself. I think it was the
4 desire of Mr. Fieger to have everyone in the firm document
5 in writing the referral fee arrangement so that he could
6 approve it. With regards to myself, it never happened
7 that way."
8 A A truthful statement.
9 Q So you felt that you were kind of outside the rules,
10 right?
11 A No, I felt that with regards to my role and
12 responsibilities in the firm it didn't pertain to me, and
13 in fact what I testified to on direct exam was that it
14 never pertained to me because I was never called out for
15 hundreds of referral relationship and said Mr. Danzig, you
16 violated some policy, you didn't put it in writing. It
17 never happened, and you approved every referral fee that I
18 ever brought into the firm, personally, or through another
19 firm as part of the firm business without the requirement
20 of following that memo.
21 Q Let's -- can we not confuse apples and oranges. Are you
22 mixing the referral fees -- referrals that we send out of
23 the office with the referrals that we kept in the office;
24 are you mixing those?
25 A No, I'm not mixing -- I'm not mixing those up. I'm

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1 talking about referral fees that would come in to me --
2 Q Are you --
3 A -- at the firm or to the firm.
4 Q Are you claiming you got hundreds of referrals in my
5 office from hundreds of attorneys directed to you, Mr.
6 Danzig?
7 A No, I got many, not hundreds, but the com -- the
8 combination of what we're talking about here is both
9 referrals to me as well as referrals to the firm that I
10 was responsible to bring in and secure. That's what I'm
11 referring to.
12 Q And so you're saying that also I never called you out on
13 it, so help me understand, what was that about? I --
14 A My statement --
15 Q I never called you out on it, so what does that mean?
16 A My statement was that you never admonished me in any way
17 to say that I was not following your policy, and that I
18 needed to follow the policy in order to verify a referral.
19 Q I did in this case, didn't I?
20 A You did in 2015 after you achieved the result, not any
21 time in three years prior.
22 Q Three? I'm sorry, I took over the case --
23 A Twelve -- 2012, 2013, '14, '15, that's three years by my
24 count where you never raised any objection at any time
25 until the result or approximately the result that you

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1 achieved in this case.
2 Q When did I find out, Mr. Danzig, what you and Mr. Sherbow
3 had done?
4 A I don't understand your question 'cuz I didn't do anything
5 other than follow the dictates and policies of the firm to
6 secure business for the firm as well as for myself.
7 Q Do you know --
8 A And I did every -- every minute of every day in working
9 for you.
10 Q Do you know when I found out?
11 A I don't know what you found out, when or what you're
12 speaking of. You knew from day one this was a referral
13 from Mr. Sherbow from day one.
14 MR. FIEGER: Let's take a look at the
15 Plaintiff's exhibit number -- I believe it was 17, please.
16 UNIDENTIFIED VOICE: (Indiscernible).
17 MR. FIEGER: I think that's right.
18 UNIDENTIFIED VOICE: You want 19?
19 MR. FIEGER: Nineteen, excuse me. This is --
20 let's -- can we read it together. This is dated what; can
21 we scroll down to the date? Go down, yeah. March 31,
22 2015.
23 BY MR. FIEGER:
24 Q "Mr. Sherbow, a very troubling problem has arisen with the
25 cases I've been handling in Dayton, Ohio. I was

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1 originally informed by Mr. Danzig that you referred the
2 cases to us. I have now confirmed that you did not, and
3 that any representations to the contrary are untrue."
4 Can -- can you go up?
5 "Indeed, my office was initially contacted by
6 Mervie Rice within four days of the accident. You
7 obviously didn't refer her case. She doesn't even know
8 you. Neither does Mr. Hill or Ms. Dixon. Even Mr. Dion
9 Rice told you at his father's funeral he had contacted our
10 offices."
11 What prompted you and Mr. Danzig to think you
12 could claim a referral fee? Did you see that letter?
13 A It's dated March 2015. I was long gone from the firm.
14 Are you asking me at any time?
15 THE COURT: The question was have you seen the
16 letter, sir?
17 BY MR. FIEGER:
18 Q Have you seen the letter?
19 A I've seen up to today, yes.
20 Q Okay, yes, because, of course, your friend, Mr. Sherbow,
21 called you immediately.
22 A On the 13th of July, 2012.
23 Q No, when he got this letter from me.
24 A Oh, did he -- that's not what you asked me.
25 Q Yes, it is.

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A No, you didn't say did he call you on March 31.

THE COURT: All right, look, I read the -- I heard -- his question is did he call you right after he got the letter. Now, I don't want you arguing with Mr. Fieger. You got issues, but that doesn't belong in this courtroom.

MR. JANKS: Well, just let me note my objection, your Honor. It's hearsay. Mr. Fieger doesn't like hearsay. Mr. Fieger, if he wants to discuss this letter with Mr. Sherbow who he wrote it to, fine.

THE COURT: Excuse me, Mr. Janks, Mr. Sherbow's a party.

BY MR. FIEGER:

Q He called you right away, said Fieger knows, doesn't he?

A I don't know when he called me, whether it was right away or days after.

Q Well, you're very close with Mr. Sherbow, aren't you?

A No.

Q You've been friends for 15 or 20 years.

A He's not one of my closest friends or -- or what I would consider to be -- I don't socialize with him or his wife.

Q You -- he goes to your house up north and stays there, and plays golf every year.

A That's right, he's a golfing friend of mine, and we have a business relationship when he sends me cases.

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1 Q And you also have a quite a personal relationship don't
2 you?
3 A We have a pers -- I've admitted that, sir. I was pointing
4 out that we don't have a social relationship as if
5 couples, my wife and I go out with his wife and I. We
6 don't have that type of relationship.
7 Q You communicate thousands of times over the course of just
8 a few years on email with one another, you're that close,
9 aren't you?
10 A He likes to speak with me on many different issues. He
11 sends me cases. It's been that way since the inception of
12 our relationship.
13 Q In fact, you and he don't use my email only for business,
14 do you? You use it for personal things.
15 A We probably communicated both business and personal on
16 email as I do today, as I've done my entire career.
17 Q Probably --
18 A I don't see anything wrong with that.
19 MR. FIEGER: Well, would you -- in terms of
20 using my email for things other than business, personal
21 things or things that people might find morally offensive,
22 would you use your emails --
23 THE COURT: All right, let's be -- let's -- just
24 a second. Let's stop this right now. Let's move on.
25 BY MR. FIEGER:

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1 Q You do acknowledge that you communicate regularly with
2 him, don't you?
3 A I do.
4 Q Okay. Now, let's get back to the issue of exhibit TT.
5 Now, you know or at least there is clearly, since as far
6 back as 2001, a policy that would apply to this case,
7 isn't there?
8 A I've seen it, I acknowledge it. It's a written memo dated
9 October 15, 2001.
10 Q I have repeatedly over the years told all attorneys, is
11 that you?
12 A I was one of your attorneys.
13 Q That no one may accept -- does it say, "no one"?
14 A It does.
15 Q Does it say I'm exempting Jeff Danzig?
16 A It does not, but in actual practice it did.
17 Q "No one may accept a referral from another attorney, a
18 friend, a former friend, a former associate, etcetera
19 without bringing the case to determine if we wanna' take
20 the case and invest money in it."
21 A And that happened on July 26, 2012.
22 Q Apparently, this is continuing to be -- being ignored, and
23 as a result I'm handling it another way. If you don't
24 have a signed document by me agreeing to accept the
25 referral, the firm will not pay you or the referring

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1 attorney." Does it say that?
2 A It says that.
3 Q Now, you're aware that the reason for that was that people
4 were accepting cases or could accept cases outside the
5 normal course of business.
6 A And not bringing it to your attention.
7 Q Right.
8 A Exactly, and which was completely the opposite of this
9 case which I brought to your attention, and you approved
10 on numerous occasions.
11 Q We've talked about this in your deposition. You and Mr. -
12 - did Mr. Sherbow ever refer a case to us, ever before the
13 one you claim, these four that you claim he referred here?
14 A I think on multiple occasions, Mr. Sherbow had attempted
15 to refer me cases from himself. Up until July 2012 I had
16 never accepted one.
17 Q Well, there was one.
18 A No, there wasn't.
19 Q It was Tierra Frazier (ph).
20 A You're wrong.
21 MR. JANKS: Judge, you've already ruled on this.
22 MR. FIEGER: I don't believe you have, your
23 Honor.
24 THE COURT: What -- what did I -- Mr. Sherbow,
25 I'm gonna' tell you again, you are the -- not the lawyer.

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1 You wanna' talk to your attorney, you can do that.
2 PLAINTIFF: I apologize, your Honor.
3 THE COURT: How did I -- what did I rule -- what
4 did I rule?
5 MR. JANKS: You ruled that --
6 THE COURT: I mean, I ruled on, you know, a lot
7 on this case, guys, so --
8 MR. JANKS: I -- I -- I understand, your Honor.
9 THE COURT: -- if you have an order that I
10 should look at, show me.
11 MR. FIEGER: Yep, ask him -- I'd like to see the
12 order, too, your Honor.
13 THE COURT: Which -- which order are we talking
14 about, Mr. Janks?
15 MR. JANKS: (Indiscernible) this case of Mr.
16 Rice (indiscernible) and there were issues as it relates
17 to the other case that Mr. Fieger brought up, and you
18 mentioned that Mr. Harrington was not going to be
19 testifying about anything --
20 MR. FIEGER: Can we see the order, your Honor?
21 MR. JANKS: -- other than policy --
22 THE COURT: Are you talking about the order I
23 signed --
24 MR. JANKS: -- and practice.
25 THE COURT: -- February 16? That dealt with the

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1 many motions that were filed.
2 MR. FIEGER: I have it here, your Honor.
3 THE COURT: Motion to strike the matters not at
4 issue?
5 MR. JANKS: That is certainly one of the orders,
6 Judge, where -- where --
7 THE COURT: I mean, at this point, I had said if
8 Mr. Fieger's attempting to impeach Mr. Danzig, he's got
9 the right to do it.
10 MR. FIEGER: Thank you.
11 THE COURT: I'll let it go forward a little bit.
12 I'm not gonna' -- not gonna' spend a lot of time with it,
13 but if there's --
14 BY MR. FIEGER:
15 Q Tierra Fraser is a case that you became involved with,
16 didn't you?
17 A No.
18 Q Tierra Fraser --
19 A I think you have your facts wrong, Mr. Fieger. Tierra
20 Fraser came into the intake system. It was written up,
21 not by me. It wasn't referred by Mr. Sherbow to me. It
22 came in from a client. It was written up in intake. It
23 was assigned to Mr. Harrington. When Mr. Harrington went
24 to go sign up the client, we discovered that Mr. Sherbow
25 had already had a fee arrangement with the client. He

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1 called me. He asked me what was going on with respect to
2 Mr. Harrington. This had nothing to do with me. With
3 regards to Mr. Harrington signing up a client that he
4 already had a fee agreement on --
5 UNIDENTIFIED VOICE: Okay.
6 THE WITNESS: -- and he asked me to discuss the
7 issue with you and Mr. Harrington. That's what happened.
8 MR. FIEGER: I'm sorry, your Honor.
9 THE COURT: Go ahead.
10 BY MR. FIEGER:
11 Q You told Mr. Harrington to give him a referral -- to give
12 Sherbow a third referral fee on a case that he never even
13 handled.
14 A I did nothing of the sort, sir. That's made up by you.
15 Q Are you claiming this policy didn't apply to you?
16 A I'm claiming the policy, as written, was followed by me
17 when I brought this case to you, and you approved it
18 knowing full well there was a referral relationship
19 between Fei -- between Sherbow and I. He sent me the
20 case. I told you it came in. You agreed.
21 THE COURT: This horse is breathing it's last.
22 Let's move on, please.
23 MR. FIEGER: Yes.
24 BY MR. FIEGER:

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1 Q You, I believe, offered me money in another case if I
2 would pay Mr. Sherbow, didn't you?
3 A That's not how it went at all.
4 MR. FIEGER: Okay. Will you mark these, please.
5 BY MR. FIEGER:
6 Q Is your telephone number 2-4-8-4-0-8-3-7-6-7?
7 A It's one of my cell phones.
8 MR. FIEGER: I'm gonna' show you three documents
9 marked exhibits UU, VV, and XX. Take a look and see if
10 you recognize those as text messages that you wrote to me.
11 And what is the date there on those text messages, sir?
12 MR. JANKS: Judge, I'm trying to follow along
13 here. I don't see in the index that UU is a text message.
14 I don't see that VV is a text message. So, I believe I've
15 never seen these before or been provided them before. It
16 would be interesting to know what we're dealing with here.
17 MR. FIEGER: May I respond, your Honor?
18 THE COURT: Yes.
19 MR. FIEGER: I have never provided these. This
20 is for the purpose of impeachment. He denied that he
21 offered me money during the pro -- during this case to pay
22 Mr. Danzig, and I'm showing impeachment for interest,
23 credibility, and bias.
24 MR. JANKS: And so I --

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1 THE COURT: Well, is -- is U -- let me see
2 counsel up here.
3 (Bench conference off record at 4:00 p.m.)
4 (Bench conference ends at 4:03 p.m.)
5 THE COURT: This is some of the negotiations
6 that are specifically excluded. The objection's sustained.
7 They are not received. Please disregard the discussion,
8 ladies and gentlemen. Let's move forward.
9 BY MR. FIEGER:
10 Q Just to clarify, Mr. Danzig, were you acting ever as Mr. -
11 - in this case, were you acting as Mr. Sherbow's agent?
12 A I don't understand the question.
13 Q Are you clai --
14 A I know what agency is, but I don't understand your
15 question in the context that you put it.
16 Q Did you ever act on behalf of Mr. Dan -- er, in terms of
17 your interest in this case, did you ever act on behalf of
18 Mr. Sherbow to try to resolve this case?
19 A I made an effort to communicate with you to try and
20 resolve multiple things that were on the table, including
21 this case.
22 Q Okay, and including your money from this case.
23 A It had nothing to do with me and my money. It had
24 everything to do with Mr. Sherbow and resolving the
25 dispute with you --

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1 THE COURT: All right, I -- just -- I -- just
2 sec -- just a second. I've already ruled that some
3 negotiations aren't comin' in. We're done with this.
4 Please let's move on. Thank you.
5 BY MR. FIEGER:
6 Q Did you receive a letter from me in this case?
7 A Yes.
8 Q Let me just see if I can locate that letter.
9 A May 29, 2015.
10 Q This is exhibit LL. Do you have a copy of that letter?
11 A Is it May 29, 2015?
12 Q That's correct.
13 A I have it.
14 MR. FIEGER: I'd move for admission of exhibit
15 LL, your Honor.
16 THE COURT: Any objection?
17 MR. JANKS: No objection.
18 THE COURT: Without objection, exhibit LL is
19 received, letter dated May 29, 19 -- 2015 from Mr. Fieger.
20 (Defendant's LL admitted at 4:05 p.m.)
21 BY MR. FIEGER:
22 Q "Dear Geoff, I received your message. I still don't know
23 what your proposal is." This is May 29, 2015. "However,
24 absent something I don't already know, I am not inclined
25 to resolve anything with you and Mr. Sherbow. I put you

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1 in a position of trust with my firm. That trust involved
2 giving you responsibility for intake and referrals. In
3 that position, your loyalty was expected to be unfettered
4 to the firm, and not to your friends or your own self-
5 interest. I possess clear evidence that you played fast
6 and loose with that trust. I relied on you to protect the
7 firm. Instead, you purported to acknowledge referral fees
8 to friends of yours who you knew or should have known
9 didn't refer the files. Mervie Rice contacted this firm
10 by phone, and expressed her desire to retain us. So did
11 Phillip Hill. So did Dion Rice. The only connection Mr.
12 Sherbow had with anyone was Mr. Charles Rice prior to his
13 death. However, Dion didn't know Mr. Sherbow until he
14 came up to him at the funeral. At that time, Dion
15 informed Mr. Sherbow that he, along with others, had
16 contacted our firm. Mr. Sherbow then told Dion he had a
17 good friend, you, at my firm. That contact apparently
18 resulted in you purporting to give your friend a referral
19 fee from the firm's money. It is precisely this type of
20 duplicitous conduct that you were employed to prevent.
21 There is more. I realize Mr. Sherbow has remedy, so do I,
22 the first of which would be to examine every source of
23 money you had while you were employed at the firm.
24 There's no quid pro quo." You receive that from me?
25 A I did.

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1 Q Did you communicate to that to Mr. Sherbow?
2 A No, I communicated back to you with regards to the
3 complete fabrication that you were asserting.
4 Q Do you remember what you said?
5 A I have my response in front of me.
6 Q You do. What was your response and how was it -- what was
7 it, in what form?
8 A A text.
9 Q A text, okay. Do you have that there?
10 A I do, but it pertains to what the Judge has previously
11 ruled on.
12 Q Okay, all right, thank you, then we'll move on.
13 A I'd rather not violate the ruling.
14 Q Let's talk about, then, these documents that you spoke
15 about -- By the way, let's just go over -- You were shown
16 all of the fee agreements with the clients, weren't you?
17 A Correct.
18 Q There's on client you didn't speak about, Mr. Linden.
19 Who's Mr. Linden?
20 A It wasn't my client.
21 Q I'm sorry, he wasn't your client?
22 A No, he was not anybody that I met with for purposes of
23 signing up. You made him a client by inserting him as the
24 personal representative over Dion Rice, the son. That's

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1 who you wanted to represent the estates, and that's who
2 ultimately did represent the estate of Charles Rice.
3 Q I thought you said I wasn't involved in the case at all.
4 A You were involved to the extent you were communicating
5 with other people like Mr. Linden.
6 Q Mr. Danzig, you made him the personal representative.
7 A No, Mr. Linden came to the meeting to -- at my invite, to
8 sign up and establish an estate for Charles Rice with Dion
9 as the personal representative. Then that changed, and
10 Mr. Linden became the personal representative, not at my
11 request.
12 Q I'm gonna' give you a chance to think back and correct --
13 correct your statement.
14 A That's how -- as best as I recall it, I didn't call Mr.
15 Linden to become the personal representative of the estate
16 of Charles Rice.
17 Q You called Mr. Linden and you wrote a note before you ever
18 had the meeting that the client will be Mr. Linden, isn't
19 that true? Contrary to what you just told the Court and
20 jury, you did exactly the opposite of what you just said.
21 A Why don't you show me something that tells me that so I
22 can recall it.
23 MR. FIEGER: I'll be -- let's take a look at
24 propo -- exhibit DD, your Honor. I move for admission of
25 proposed exhibit DD.

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1 THE COURT: Why don't you have him identify it
2 first --
3 MR. FIEGER: Sure.
4 THE COURT: -- and then we'll worry about
5 admitting it.
6 BY MR. FIEGER:
7 Q Sure, let's identify exhibit DD.
8 A I'm looking at it.
9 Q Is that your handwriting?
10 A It is.
11 Q What's the date?
12 A July 25 --
13 Q Okay.
14 A -- which is the date that I'm opening up a file for
15 Charles Rice's estate.
16 Q That's before the meeting on July 26.
17 A It is.
18 MR. FIEGER: What does it say about Howard
19 Linden in your handwriting?
20 THE COURT: Just a second -- just a second.
21 MR. FIEGER: Yes, sir.
22 THE COURT: Before we talk about it, any
23 objection --
24 MR. FIEGER: Yes, sir. Oh, yep -- yep, I agree.
25 THE COURT: -- to its admission?

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1 MR. FIEGER: I agree, I apologize.
2 BY MR. FIEGER:
3 Q Is that your handwriting, sir?
4 A It is.
5 MR. FIEGER: Okay.
6 THE COURT: Any objection to its admission?
7 MR. JANKS: No objection, your Honor.
8 THE COURT: Without objection, exhibit DD is
9 admitted.
10 MR. FIEGER: Thank you, your Honor, I'm sorry.
11 (Defendant's DD admitted at 4:11 p.m.)
12 BY MR. FIEGER:
13 Q On your handwriting, does it say, "Howard Linden will be
14 the personal representative."
15 A Exactly consistent with what I said you wanted in this
16 case. Yes, it says that because that's what you wanted in
17 this case, and that's what happened. Howard Linden will
18 be PR, personal representative is what that means, and
19 this is the Charles Rice estate.
20 Q And he'll be the client, right?
21 A It's entirely consistent with what we just discussed.
22 Q Mr. Danzig, you wrote the day before you ever had a
23 meeting with anyone, he will be the client, didn't you?
24 A It doesn't say he will be the client. It says, "Howard
25 Linden will be PR."

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1 Q The PR is the client, aren't they?
2 A Ultimately, the PR will become the representative of the
3 estate.
4 Q The name of the case filed in Ohio for Charles Rice was
5 what?
6 A Well, among many others, there's four clients --
7 Q No, one -- one case for Charles Rice's estate. What was
8 the name of it?
9 A Okay, so you didn't say Charles Rice, you said, "the
10 case."
11 THE COURT: Look, you know --
12 THE WITNESS: I'm tryin' to answer the question.
13 THE COURT: Mr. Danzig, I understand, but you're
14 a member of the bar, and I expect you to be -- I hold you
15 to a little higher standard than other people who would
16 testify here. I want you to drop the issues, and answer
17 Mr. Fieger's questions, and answer Mr. Janks' questions.
18 THE WITNESS: That's part of our --
19 THE COURT: Don't argue.
20 THE WITNESS: As part of a large case caption,
21 Howard Linden was named as personal representative of the
22 estate of Charles Rice.
23 BY MR. FIEGER:
24 Q Okay, Howard Linden was the personal representative the es
25 -- the caption reads Howard Linden --

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1 A Yes.
2 Q -- as personal representative. He was the client, right?
3 A He was the client for the estate of Charles Rice.
4 Q Right, if you want to -- if I wanted this or you wanted to
5 resolve the case as their attorney when you were there,
6 when I was there, the client, Mr. Linden had to consent,
7 isn't that true?
8 A Ultimately, at the -- the end of the case, yes.
9 Q Okay, and you admit that at no time have you ever
10 discussed anything with Mr. Linden about Mr. Sherbow
11 referring any case, isn't that true?
12 A The fact of the matter is when I discussed the referral
13 arrangement with everybody at the table, Mr. Linden wasn't
14 physically present. He was in your office when he should
15 have been in the meeting with us, and he would have heard
16 everything at that time.
17 MR. FIEGER: You admit you never discussed with
18 Mr. Sherbow, the client, any referral.
19 THE COURT: You mean Mr. Linden?
20 MR. FIEGER: Linden, I apologize, your Honor.
21 BY MR. FIEGER:
22 Q You admit you never discussed with Mr. Linden, the client,
23 any referral by supposedly Mr. Sherbow, isn't that
24 correct?

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1 A I admit Mr. Linden and I had no such discussion 'cuz he
2 wasn't physically present when it was had.
3 Q You mean he wasn't in the room. You -- he was just in my
4 office.
5 A That's correct.
6 Q And apparently was there any reason other than the fact he
7 wasn't in the room that you would sit him down as the
8 client and explain to him what you claim to have explained
9 to everybody else that this case -- or his -- his case was
10 being referred by a gentleman by the name of Mr. Sherbow?
11 A When he came into the room, he knew Mr. Sherbow was
12 physically present, and participating in the discussion.
13 Q But I didn't ask you that. I asked you was there any
14 physical reason why you couldn't have explained it to him?
15 A No, no physical reason. I wasn't incapacitated in some
16 way.
17 Q Okay, and you admit that Mr. Sherbow has never in life met
18 Mr. Phillip Hill, don't you?
19 A He did not meet Mr. Hill.
20 Q And he claims to have referred a case of a man who he
21 never met, correct?
22 A That's correct because it was assembled and organized by
23 Dion, the son.
24 Q So you testified, I believe, that a -- according to you,
25 your belief is that the referring attorney doesn't ever

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1 have to meet the client or be retained by the client that
2 he -- he claims to be referring, right?
3 A That was my -- that was my testimony.
4 Q So that would mean that an attorney could read a person's
5 name in the newspaper, and claim that they referred a
6 case.
7 A No, you're -- you're exaggerating the truth here now. The
8 referring attorney would have to have some relationship to
9 one of the parties or participants that I'm gonna' be
10 representing. It doesn't -- I don't allow people to pull
11 names out of a hat and call me, and say, hey, I know these
12 people, let's -- let's go represent 'em and -- and -- and
13 make some money. That's not how it goes, nor would I ever
14 allow that to occur.
15 Q Well, you claimed, in your testimony to the Court and jury
16 this morning, that Mr. Sherbow was Mr. Charles Rice's
17 lawyer.
18 A I said my understanding was that he had a relationship
19 with Charles Rice, and he had done some legal work for
20 him. That's what I testified to.
21 Q So, if you -- if the Court and jury heard you say that you
22 claim Mr. Sherbow was his lawyer, that wasn't what you
23 were saying.

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1 A No, I said he had done some legal work or was doing some
2 legal work for him to the best of my understanding.
3 That's what I said.
4 Q Well, did you know as a matter -- I'm sorry, I didn't mean
5 to cut you off.
6 A It's okay.
7 Q Do you -- as a matter of fact, he's never done any legal
8 work for Mr. Charles Rice, did you know that?
9 A I wouldn't know that. I'm not an investigator into their
10 past relationship. I don't do that.
11 Q Did you know that Mr. Charles Rice was just a man who he
12 knew?
13 A No, I don't know that.
14 Q So how -- explain to us how you thought if Mr. Charles
15 Rice was just a man Mr. Sherbow knew, how he became the
16 lawyer for a man he just knew, the -- his estate, bu --
17 strike that. You told the Court and jury that all of my
18 clients were relatives of Mr. Rice.
19 A All these folks were related. That's what they told me.
20 They called -- they called themselves cousins. That's
21 what they told me.
22 MR. FIEGER: Mr. Dan --
23 THE COURT: And on that note, we'll cut for the
24 day. Ladies and gentlemen, I will see you here at 8:30
25 tomorrow morning. Again, please don't talk about the

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1 case. Don't go on the internet. It's Paczki Day
2 tomorrow. Anybody need to have Paczki's really bad?
3 Okay.
4 THE COURT: All rise for the jury. Have a good
5 evening.
6 THE CLERK: All rise for the jury.
7 (Jury out at 4:17 p.m.)
8 THE COURT: Okay, first of all, I don't know
9 what the deal is with Mr. Fieger and Mr. Danzig but I want
10 it stopped right now. This is a trial, this is a very
11 important trial, and I want the -- I want the attitudes
12 gone tomorrow. If they're not, if both lawyers, and
13 you're both answerable to me and the grievance commission,
14 so stop it.
15 Now, you've got a problem tomorrow morning?
16 THE WITNESS: I have a deposition starting at 9
17 o'clock in the morning.
18 THE COURT: On a case -- are you a witness?
19 THE WITNESS: No, I'm the -- I'm the attorney of
20 record.
21 THE COURT: Yeah, your deposition's gettin'
22 adjourned.
23 THE WITNESS: Okay.
24 THE COURT: See you guys tomorrow morning.
25 MR. FIEGER: Thank you.

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1 MR. JANKS: I -- I don't mind taking Mr. Danzig
2 out of order if that's helpful to -- to anybody.
3 THE COURT: Mr. Fieger?
4 MR. FIEGER: I have no objection. I'll
5 cooperate in any way.
6 THE COURT: Okay, all right, well, you guys can
7 work that out tonight, and that's fine.
8 MR. FIEGER: So who -- what would we do, Mr.
9 Danzig?
10 THE COURT: What time is your dep over?
11 THE WITNESS: Tell me what you'd suggest. It'll
12 be probably from -- from nine to (indiscernible).
13 THE COURT: We're off the record, aren't we?
14 UNIDENTIFIED VOICE: (Indiscernible).
15 (Court in recess at 4:19 p.m.)
16 * * * * * *

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STATE OF MICHIGAN)
COUNTY OF OAKLAND)ss.

I certify that this transcript is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable James M. Alexander, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: June 14, 2017

/S/ Brenda LaVanway

Brenda LaVanway, CER 4515

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LAW OFFICE OF JEFFREY SHERBOW, P.C.,

Plaintiff,

v Case No. 15-147488-CB

FIEGER & FIEGER, P.C., d/b/a FIEGER,
FIEGER, KENNEY & HARRINGTON, P.C.,

Defendant./

JURY TRIAL - VOLUME II OF IV

BEFORE THE HONORABLE JAMES M. ALEXANDER, CIRCUIT JUDGE

Pontiac, Michigan - Tuesday, February 28, 2017

APPEARANCES:

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1 Pontiac, Michigan
2 Tuesday, February 28, 2017 - 8:36 a.m.
3 * * * * * *
4 THE CLERK: All rise. The Oakland County
5 Circuit Court is now in session, the Honorable James M.
6 Alexander, presiding.
7 THE COURT: Good morning.
8 THE CLERK: Now calling Sherbow v Fieger, 2015-
9 147488-CB.
10 THE COURT: Appearances, please.
11 MR. JANKS: Gregory Janks, on behalf of the
12 Plaintiff.
13 MR. FIEGER: Geoffrey Fieger, (indiscernible).
14 THE COURT: You guys ready for the jury?
15 MR. JANKS: Yes, sir.
16 THE COURT: All right.
17 UNIDENTIFIED VOICE: Did you want it on computer
18 or a white board?
19 UNIDENTIFIED VOICE: On computer, please.
20 UNIDENTIFIED VOICE: Okay.
21 THE COURT: Who's the witness this morning
22 gonna' be?
23 MR. JANKS: Bob Giroux.
24 THE CLERK: All rise for the jury.
25 (Jury in at 8:37 a.m.)

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1 THE COURT: Good morning, ladies and gentlemen.
2 Before you sit, would you join me in a moment of
3 reflection for the men and women serving our country.
4 Thank you. Please be seated.
5 We're gonna' go a little out of order this
6 morning. Mr. Danzig will be here this afternoon. So, Mr.
7 Janks, do you have another client or another witness for
8 us?
9 MR. JANKS: Yes, Robert Giroux, your Honor.
10 THE COURT: Okay. Come here, please, sir, raise
11 your right hand to be sworn.
12 THE CLERK: Do you swear or affirm to tell the
13 truth, the whole truth, and nothing but the truth?
14 MR. GIROUX: Yes.
15 THE COURT: Okay, take the stand, please, state
16 and spell both your first and last names for the record.
17 THE WITNESS: Good morning. Robert Giroux, R-O-
18 B-E-R-T, G-I-R-O-U-X.
19 THE COURT: Thank you.
20 MR. JANKS: Good morning, Mr. Giroux, good
21 morning, ladies and gentlemen of the jury.
22 THE WITNESS: Good morning, Mr. Janks.
23 ROBERT GIROUX
24 called as a witness at 8:38 a.m., sworn by the
25 Clerk, testified as follows:

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1 DIRECT EXAMINATION

2 BY MR. JANKS:

3 Q Tell us what you do for a living, Mr. Giroux.

4 A I'm a lawyer.

5 Q In Michigan?

6 A Yes.

7 Q How long have you been a lawyer?

8 A Since 1993.

9 Q All right. We have a CV of sorts or a resume of sorts

10 from your website. Would that help you explain to the

11 jury who you are and what your background is, and what

12 you're about?

13 A Sure, but I can probably do that just on my own. I'm 52

14 years-old. I was raised in West Bloomfield, Michigan. I

15 went to school locally here. After graduating from

16 Oakland University in Rochester, Michigan, I went to

17 Detroit College of Law that was in Detroit. It's no

18 longer there. It's now MSU Law School. I graduated in

19 January of 1993, passed the bar, and began practicing in

20 May of 1993. I've worked at a number of law firms. I

21 worked -- The first firm I ever worked at was a three-year

22 clerkship at a place called Goodman Eden Milliner &

23 Bedrosian (ph), downtown Detroit. I then worked for the

24 Fieger firm. At that time it was called Fieger Fieger &

25 Schwartz. That was in '93 and '94. I left in '94. I

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1 went to a large defense firm in Oakland County called Cole
2 Secrest Wardle Lynch Clark & Hampton. I worked there for
3 seven years, mainly as a senior litigation attorney trying
4 cases for defendants in cases. I left there. Mr. Fieger
5 offered me a position at his firm again, and I went back
6 to work for him in January or February of 2001. I stayed
7 there for 14 years. While I was there in 2007, he
8 promoted me to partner, and then my last year there was
9 2014, and at that time, I was managing partner of the firm
10 pursuant to an agreement that he and I had together.
11 After that, in February of 2015, I started my own firm.
12 It's called Giroux Ratton P.C. We're located in
13 Southfield, Michigan, so not too far from the Fieger firm.
14 I handle mostly civil litigation, trials, and preparation
15 for trials, disputes, mainly personal injury, but also
16 commercial disputes between companies. We handle some
17 criminal defense type work, very little domestic, but a
18 little bit, and a general practice in addition to that.
19 But about 80-85 percent of our work is personal injury,
20 civil litigation. I'm married. I have three children.
21 They're all almost grown, 21, 19, and 16. That's about
22 it.
23 Q Thank you, sir. In relation to handling personal injury
24 cases in Michigan, are you able to tell us how it is that

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1 personal injury cases come to law firms such as your law
2 firm?
3 A Well, sure. A number of firms, and I'm sure the jury's is
4 probably very aware of it, advertise on TV. It's almost
5 inundating anymore. You can't watch a ballgame or a show
6 without being flooded with commercials. That's one way of
7 doing it. Another way of doing it is referrals. My firm
8 is based mostly on referrals, lawyer to lawyer referrals
9 or person to lawyer referrals, people who trust us in the
10 community, other lawyers, criminal defense attorneys,
11 corporate attorneys, patent attorneys, people who don't
12 handle this type of work or don't handle it at the level
13 that we do, send us cases. That's about 85 percent of my
14 firm's work, and that's about a relationship between two
15 professionals, and, you know, we -- we confirm the
16 referrals. We make sure that we take care of the client
17 so that not only the clients are happy in the end, but the
18 person who sent us, the person who trusted us and sent us
19 the case is satisfied in the end because we want more. We
20 have a small --
21 MR. FIEGER: Objection, Judge, what -- what's --
22 what's the question?
23 THE COURT: Just a second.
24 MR. JANKS: It was about --

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1 THE COURT: Okay, just a second. Yeah, let's
2 not do a narrative answer. Let's just answer the
3 questions that are asked. Go ahead.
4 MR. JANKS: As it relates to referrals of
5 personal injury cases that would come to your firm, what
6 is the --
7 MR. FIEGER: Objection, irrelevant.
8 THE COURT: Let him finish the question before
9 you object, Mr. Fieger. Go ahead.
10 MR. FIEGER: Okay, yes, sir.
11 MR. JANKS: As it relates to personal injury
12 cases that are referred to your firm, how are those kinds
13 of cases handled as it relates to the referral
14 relationship?
15 THE COURT: Sustain the objection.
16 MR. FIEGER: He's a fact witness, yes.
17 THE COURT: It's not -- it's not relevant to
18 this question or this case. Go ahead.
19 BY MR. JANKS:
20 Q When you worked at the Fieger law firm for your last 14
21 year stint at which time you were a partner since 2007,
22 how were referrals handled at the Fieger law firm,
23 referrals from outside in?
24 A Sure. Referrals were handled in a number of different
25 ways at the Fieger firm. Some of the cases that were

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1 referred to us were referred before there was a case. In
2 other words, when there's a thought of a case, and the
3 lawyer will send it over, and there typically will be a
4 meeting and an understanding, and everything is at the
5 beginning is the most important. That's when everything's
6 explained, and it's determined are we gonna' go forward or
7 not, are the clients on board or not, so the beginning was
8 always the most important. And it always is in all the
9 other situations. Other situations would include
10 sometimes if some attorney in the community worked up the
11 case up to a certain point, but hadn't had great success
12 in trial on his or her own, sometimes they would send us
13 cases and, you know, hope that one of us, Mr. Fieger or
14 Ven Johnson, when he was there, or myself or others would
15 try the case, and -- and then there'd be a fee-sharing
16 approach. But, again, that's all something that's
17 determined and decided at the very outset so that
18 everybody understands, and things don't change later on
19 down the road.
20 Q When you were at the Fieger firm during your second go-
21 round there, was it usual or unusual for a lawyer to call
22 somebody at the Fieger firm, a lawyer at the Fieger firm,
23 and say I have a possibility of a case that I'd like to
24 refer in?

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1 A It was not unusual. It was -- I mean it happened, and --
2 and it was encouraged.
3 Q What would be required of that potential referral lawyer
4 by the Fieger firm if anything?
5 A I don't know what you mean. I mean it -- it was required
6 that they refer the case over or assist in referring the
7 case over or, most importantly, assist in the retention of
8 the client by the Fieger firm to make sure that there was
9 a transition, and -- and that, ultimately, we got the
10 client signed up. Because even -- under either scenario,
11 ultimately, we had to be retained. The client has to sign
12 a contract, and -- and that's, again, all at the
13 beginning. And once that was done, then -- then the
14 referral lawyer is not involved, typically. Very rarely
15 would a referral lawyer be involved after that and, again,
16 it wouldn't be in a typical referral situation. It would
17 be a fee-sharing arrangement where the attorney -- some
18 attorneys wanna' stay involved. And in that sense, they
19 might ask for a little bit more of the fee, not a third of
20 a third, but maybe 40 or 45 percent just because they were
21 gonna' stay involved, and continue to invest their time.
22 That did happen from time to time, but it was very rare.
23 Q Do you know anything about the referral by Mr. Sherbow, my
24 client, of the Rice group of cases to the Fieger firm?
25 A I know a little bit.

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1 Q What is it that you know?
2 A I remember the day the case came in. I remember Jeff
3 Danzig being very excited about it. At the time, Jeff
4 Danzig was a partner. I was a partner. I don't believe
5 Geoff was -- Geoff Fieger was in the office that day. But
6 Mr. Danzig and I would talk from time to time. We would
7 all talk about cases that came in because we'd all be
8 excited, especially about the bigger ones because -- well,
9 for obvious reasons. I remember he came to me and told me
10 about the case. It was just at that point a phone call,
11 nothing more than a phone call. Much more has to be done
12 in order for us to feel secure or good that we're gonna'
13 get the case. But he was excited at the lead, and he was
14 going to work on the case himself, and we talked a little
15 bit about that because, again, we consulted, we talked, we
16 tried to make sure that the cases were spread around the
17 firm in a fair manner.
18 MR. FIEGER: Objection, it still -- it -- what's
19 the question?
20 THE COURT: I think the question was were you
21 there the day that the case came in or something
22 (indiscernible).
23 MR. JANKS: What was his knowledge about the case
24 coming in.

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1 THE COURT: That's kind of a broad, open-ended
2 question. Do you have some specific questions about it?
3 MR. JANKS: Sure.
4 BY MR. JANKS:
5 Q You indicated, I believe, Mr. Giroux, that Mr. Danzig was
6 excited about the case.
7 A Yes, sir.
8 MR. JANKS: To -- to what extent was he excited
9 about the case --
10 MR. FIEGER: Objection.
11 MR. JANKS: -- or why was he excited about the
12 case.
13 MR. FIEGER: Calls for pure speculation.
14 THE COURT: Well, if he knows, he can answer it.
15 Did you talk to Mr. Danzig about it?
16 THE WITNESS: I did, your Honor. He was excited
17 because it was a serious case. It involved multiple
18 parties, and he -- Again, those are cases you wanna' work
19 on because you feel like you can help somebody.
20 MR. JANKS: What was your understanding of what
21 Mr. Sherbow's role was in the case or cases?
22 MR. FIEGER: Foundation. It's not established.
23 BY MR. JANKS:
24 Q Did you have an understanding of what Mr. Sherbow's role
25 was?

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1 A I did. That was my second conversation with Mr. Danzig.
2 THE COURT: Go ahead.
3 MR. JANKS: What did you understand Mr.
4 Sherbow's role was?
5 MR. FIEGER: Can we get a time period, time?
6 THE COURT: Okay, when did that conversation
7 take place?
8 THE WITNESS: It was shortly after the first
9 conversation. I'm reasonably sure it was the same day.
10 It might have been the next day, but I'm reasonably sure
11 it was the same day because at the end of that day and at
12 the end of every day, when we go over sheets, there's
13 these sheets that we get that we print out from the intake
14 department. Our -- our IT guy, Eric Donahue, prints them
15 out for us every day. We go through them. I know that
16 that case was discussed very briefly that evening, so I'm
17 reasonably sure the conversation I had with Mr. Danzig the
18 second time was later that day, within hours is my best
19 recollection.
20 THE COURT: Okay, go ahead.
21 BY MR. JANKS:
22 Q So how -- how was that case assigned?
23 A Well, it was assigned, initially, to Mr. Danzig, and,
24 ultimately, it stayed that way, but I -- I say that just
25 because it doesn't always stay in the same person's hands.

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1 But in this instance, he was retained in the case, and he
2 had mentioned to me later about this conversation he had
3 which was, again, another source of excitement for him.
4 MR. JANKS: And, ultimately, we know that four
5 cases, four individual cases came in to the Fieger firm.
6 MR. FIEGER: Objection, leading.
7 THE COURT: Well, he hasn't asked the question
8 yet, Mr. Fieger, wait 'till he asks the question before
9 you start objecting.
10 BY MR. JANKS:
11 Q Do you have any information, Mr. Giroux, as to how many
12 cases came in to the Fieger firm as a result of Mr.
13 Sherbow's referral to Mr. Danzig?
14 A Yes, I recall that, again, there were a number of parties
15 involved. I recall that Mr. Danzig told me in the second
16 conversation that Jeff Sherbow, someone who he knew, and I
17 knew very loosely. I -- I had met Mr. Sherbow many years
18 ago playing softball.
19 THE COURT: I think the question was how many
20 cases came in, right?
21 THE WITNESS: Four.
22 THE COURT: Okay, good, that's the answer.
23 Thank you, let's move on.
24 BY MR. JANKS:

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1 Q Do you, as you sit here today, did you have any
2 involvement in the handling of any of those cases?
3 A Only to talk to Mr. Danzig from time to time while the
4 case progressed, and then to talk to Mr. Fieger about
5 trial strategy as he was getting ready to try the
6 liability portion of the case in Ohio, so, yes, in that
7 regard, yes.
8 Q And how were the cases designated in the Fieger firm as to
9 whether they had come in direct -- directly to the Fieger
10 firm or whether they were referrals, how -- how were they
11 labeled, as it were?
12 A Well, they weren't. I mean it didn't matter to us whether
13 or not the case came strictly from a phone call or if it
14 was referred in. We treated them all the same. We worked
15 on 'em all very diligently. And so once -- Again,
16 everything that was important was at the beginning of the
17 relationship, and once that was all in place and the
18 client retained us, and everybody was happy, we didn't
19 again reflect on whether -- whether it was a referral case
20 or not a referral case. You just worked on a case, so in
21 that sense, not designated. Cases were assigned to
22 attorneys, and -- and -- and so different cases were
23 assigned to different attorneys. Again, if someone was
24 referring a case to you, to me, then I would keep that
25 case most likely because referral fees would have to be

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1 paid, and -- and you'd wanna' put that burden on somebody
2 else. Burden, I mean, maybe if you were an associate and
3 you're getting paid a percentage of the recovery, there
4 seems to be then less money that you're gonna' make
5 because someone's gonna' get paid a referral fee before
6 you as an associate get a fee. So, I guess in short to
7 say if a case is referred to you or by a friend or an
8 acquaintance, then you typically held on to it.
9 MR. JANKS: I guess I was trying to find out
10 whether or not you know whether the Fieger firm believed
11 the cases were referred by Mr. Sherbow or --
12 MR. FIEGER: Objection.
13 MR. JANKS: -- were directed to the Fieger firm
14 by the clients.
15 THE COURT: What's the objection?
16 MR. FIEGER: The Fieger firm, who is he talking
17 about. Whether the Fieger firm believed? He can tell --
18 say what he thought.
19 THE COURT: In 2012, were you the managing
20 partner of the firm?
21 THE WITNESS: I was a partner. I was not the
22 managing partner.
23 THE COURT: Okay, so what was your question
24 again?
25 BY MR. JANKS:

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1 Q What was your understanding as to whether these cases were
2 coming into the Fieger firm directly from the clients or
3 on referral from Mr. Sherbow?
4 A My understanding was that it was a referral from Mr.
5 Sherbow in the sense that he was able to help round up the
6 clients, that there was initial meeting. Several people
7 were at the initial meeting. Mr. Linden, Mr. Sherbow, Ms.
8 Lipton, Jeff Danzig, and that's -- everything was
9 discussed at this meeting. The clients were successful,
10 er, were successfully retained or they successfully
11 retained us or mission accomplished, I guess I should say,
12 and it was my understanding from there on out that it was
13 a referral to or from Mr. Sherbow.
14 Q Did you ever have any discussions with Mr. Fieger as it
15 relates to what Mr. Fieger's understanding was as to how
16 these cases came into the firm?
17 A Yes.
18 MR. JANKS: Tell us about those conversations or
19 that conversation, please.
20 THE COURT: And give us a time frame, please.
21 THE WITNESS: Within days, at most five or six,
22 following the initial telephone calls and/or back and
23 forth with clients and lawyers, I talked to Jeff over the
24 phone. Again, my recollection is that he was in Alaska on
25 a case that had previously been handled by an attorney

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1 named Brian Garvis (ph) who had recently left the firm.
2 We talked about some issues that were more important to me
3 at the time, but we also talked about the fact that it was
4 a case that Danzig was working on that had come from Jeff
5 Sherbow. Over the course of the next year, we didn't talk
6 much at all about the case 'cuz it was handled by Jeff
7 Danzig. I talked to Jeff Danzig about the case. As we
8 were coming up to trial, as it, you know, as -- as that
9 thing was getting close, Jeff and I talked about the case
10 a number of times. There was counsel coming in from New
11 York, I believe, to try the case for the defense. There
12 were concerns and issues, but it was my understanding from
13 our conversations that Geoff didn't have any objection or
14 understanding or different understanding about the genesis
15 of the case at that point in time. And then we talked
16 again after he tried the liability portion of the case,
17 and was successful in Ohio.
18 Q And -- and the Geoff you've just been referring to is
19 Geoff Fieger.
20 A Yes, I'm sorry, and I apologize. I should refer to him as
21 Mr. Fieger.
22 Q 'Cuz we have a bunch of Jeff's in this case.
23 A Yes.
24 Q Now, after --
25 A Can I grab some water?

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1 Q Oh, sure.
2 A Thank you very much.
3 Q There's been some talk in this case, Mr. Giroux, about
4 Defense exhibit TT, which is admitted in the case, and
5 it's up on the white board. It's a memorandum to all
6 attorneys from G-N-F. Who's GNF?
7 A Mr. Fieger.
8 Q It's about -- it's entitled, "Referrals," dated October
9 15, 2001. Are you familiar with that memo?
10 A Yes, you asked me about it at my deposition, and I think
11 Mr. Harrington did as well.
12 Q Mr. Fieger's argued that that memo says that referrals
13 cannot be taken in by the Fieger firm from others such as
14 Mr. Sherbow unless there is something in writing from Mr.
15 Fieger confirming that agreement. In practice, was that
16 memo followed in the Fieger firm in the years that you
17 were there?
18 A Not after awhile, after a short while, no.
19 Q Now, what was your experience as it relates to the
20 dictates of that memo, exhibit TT?
21 A The partners changed, the way things were handled changed.
22 Ben was -- Ven Johnson -- I'm sorry, I don't mean to be
23 calling -- by the first name. Mr. Johnson, Ven Johnson,
24 was a partner at the time. Jeremiah Kenney was a partner
25 at the time. They had their way of handling things on

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1 their own teams, and Mr. Fieger didn't object. I mean he
2 was just happy if things were going along, and -- and
3 cases were successful, and things were working out, and --
4 and the lawyers were successful. And so as long as you
5 squared it with your team partner, it -- it was fine. It
6 was not something that I had ever experienced anybody
7 having trouble with. And the same was true when I became
8 a partner. Mr. Kenney had unfortunately passed away. But
9 the -- the -- the operation was -- if someone on my team
10 came in and said I have this referral, and I approved it,
11 then, ultimately, it was okay in the end. I -- I never
12 had -- Mr. Fieger never gave me a hard time about any of
13 those referral situations as long as -- as long as there
14 was a reasonable explanation and a discussion, and there
15 always was, so I never had a problem.
16 Q Okay. As it relates to your understanding of this case,
17 Sherbow referring in the Rice plaintiffs, do you have
18 information that suggests there was a reasonable
19 explanation for Mr. Sherbow's status in the process or
20 role in the process?
21 A I don't know -- I don't think I understand the question.
22 MR. JANKS: Sure. I -- I wonder if you have any
23 information as to whether in fact Mr. Sherbow referred
24 these cases in, and that there's a, as you talked about, a
25 reasonable explanation that he did so.

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1 MR. FIEGER: Wasn't that just asked and
2 answered? Somebody told him.
3 MR. JANKS: Well, I'm asking a different
4 question.
5 MR. FIEGER: What's the question, when did he
6 learn it, what's the foundation?
7 THE COURT: Okay, lay the foundation, and let's
8 go. Go ahead.
9 MR. JANKS: All right. So, let's go about it
10 this way. Let me show you Plaintiff's proposed exhibit
11 47.
12 THE COURT: Well, I mean didn't you answer the -
13 - I mean he said he had a conversation with Mr. Fieger
14 within a day or two of the case coming in when Mr. Fieger
15 was in Alaska, and they discussed it. What else do we
16 need to know?
17 MR. JANKS: I'll -- I'll move on, Judge.
18 THE COURT: Thank you.
19 BY MR. JANKS:
20 Q Can I show you Plaintiff's proposed exhibit 47, please.
21 A Yes.
22 Q Are you familiar with that document, Mr. Giroux?
23 A Of course.
24 Q What is that document?
25 A It's a handwritten agreement or contract.

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1 MR. FIEGER: Judge -- Judge --
2 THE COURT: Just a second -- just a second, Mr.
3 Fieger. Go ahead, what is it?
4 THE WITNESS: It's a handwritten contract
5 between myself and Mr. Fieger.
6 MR. JANKS: And what does it deal --
7 MR. FIEGER: Excuse me, what's the date of this?
8 This is --
9 THE COURT: Okay, relax, go ahead.
10 THE WITNESS: It was dated by Mr. Fieger
11 1/16/14.
12 THE COURT: What's the relevance?
13 THE WITNESS: January 16, 2014.
14 THE COURT: What's the relevance of this, Mr.
15 Janks?
16 MR. JANKS: The relevance of this is that Mr.
17 Giroux and Mr. Sherbow had discussions in 2014 and 2015
18 about this case, and that Mr. Giroux, as the authorized
19 representative and managing partner at the time of the
20 Fieger firm, indicated to Mr. Sherbow that Mr. Sherbow
21 would in fact be paid referral fees on these four cases.
22 THE COURT: That's in this document?
23 MR. FIEGER: No.
24 MR. JANKS: And this document is his authority
25 to do so, and then he will testify about the balance.

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1 MR. FIEGER: Excuse me, Judge, there's nothing
2 in this document like that, and according to his
3 conversation or his deposition, these conversations
4 happened after he left the law firm.
5 MR. JANKS: No, that's not an accurate
6 statement. We need -- we need -- we need to get the
7 testimony.
8 MR. FIEGER: Judge, can we address this 'cuz
9 this is --
10 THE COURT: Ladies and gentlemen, I'm gonna'
11 excuse you for a moment.
12 THE CLERK: All rise for the jury.
13 (Jury out at 9:02 a.m.)
14 THE COURT: Let me see the document, Mr. Giroux.
15 THE WITNESS: Yes, your Honor.
16 THE COURT: Sit down, everybody.
17 MR. FIEGER: Excuse me, Judge, just for the
18 record, this has nothing to do -- this document has
19 nothing to do with anything.
20 THE COURT: Give me -- give me a minute so I can
21 read it --
22 MR. FIEGER: Okay.
23 THE COURT: -- and make my own decision.
24 MR. FIEGER: And in fact it occurred years after
25 this case was allegedly referred.

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1 THE COURT: Just a second, relax, just a second.
2 Now, why do you wanna' put this in?
3 MR. JANKS: Judge, could I look at it and read
4 you one paragraph.
5 THE COURT: Well, let me read this paragraph.
6 Paying referral fees to outside firms bringing in cases
7 except when you are to be handling or trial attorney. So
8 how would this deal with this case?
9 MR. JANKS: It would deal with this case because
10 the handling attorney on this case, as we learned, was
11 Jeffrey Danzig.
12 MR. FIEGER: He just --
13 THE COURT: No, the hand -- the --
14 MR. FIEGER: No, he's an officer of the court.
15 THE COURT: Just -- just a second. The -- the
16 trial attorney in this case was Mr. Fieger as I understand
17 it.
18 MR. FIEGER: Not only that, Mr. Danzig -- by
19 this time, now, I was the trial attorney, Danzig wasn't.
20 That was ridiculous.
21 MR. JANKS: Judge, this is an agreement that
22 says that the handling attorney was -- well, Mr. Danzig
23 testified he was the handling attorney until he left the
24 firm. Mr. Fieger is designated as the trial lawyer later
25 in time, not at the beginning of the case, not at the time

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1 of the agreement. Mr. Giroux will tell you that he, on
2 behalf of the firm as the managing partner with the
3 authority given to him by that written agreement between
4 him and Mr. Fieger, had conversations with Mr. Sherbow
5 because he and Mr. Sherbow had a case together.
6 THE COURT: What am I missing here? Mr. Fieger
7 was the trial attorney. This -- this --
8 MR. FIEGER: Not only that, this case went to
9 trial in 2015 after he left the firm. Mr. Giroux left the
10 firm. What are we all missing? It says here, "paying
11 referral fees." Nothing was paid in this case until a
12 year after he left the firm.
13 THE COURT: Well, nothing's been paid anyways,
14 yeah, so that's why we're all here today.
15 MR. FIEGER: Right, but the case wasn't even
16 tried and settled until a year after he left the firm.
17 THE COURT: I'm not -- I don't think that this
18 is relevant. I'm not gonna' let it in.
19 MR. JANKS: Mr. Giroux, as an officer and an
20 agent, and a managing partner made admissions against
21 interest as to the Defendant firm, your Honor. They made
22 promises.
23 THE COURT: I just indicated I don't think this
24 is relevant and I'm not going to let it in, okay. Give me

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1 three -- let's take five. I wanna' go see these other
2 guys, and hopefully we adjourn that.
3 THE CLERK: All rise.
4 (Court in recess at 9:05 a.m.)
5 (Court in session at 9:11 a.m.)
6 THE COURT: Now calling Sherbow v Fieger, 2015-
7 147488-CB.
8 MR. JANKS: Gregory Janks, on behalf of the
9 Plaintiff.
10 MR. FIEGER: Geoffrey Fieger, your Honor.
11 THE COURT: Okay, ready for the jury?
12 MR. FIEGER: Yes.
13 THE COURT: All right.
14 THE CLERK: All rise for the jury.
15 (Jury in at 9:11 a.m.)
16 THE COURT: Please be seated. Go ahead, Mr.
17 Janks.
18 MR. JANKS: Thank you, Judge.
19 BY MR. JANKS:
20 Q Mr. Giroux, when you were the managing partner of the
21 Fieger firm was -- did that include the year 2014?
22 A Yes.
23 Q Would that include the year 2015 until you left the firm
24 in February of 2015?
25 A Part of it.

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1 Q In 2014, did you have any conversations with Mr. Sherbow
2 about the Rice cases?
3 A I did.
4 Q In 2014, did you promise Mr. Sherbow that he would be paid
5 a referral fee from the Fieger firm as you were the
6 managing partner of that firm in 2014?
7 A As I indicated in my deposition, I don't -- I'm sure I
8 didn't use the word, "promise," but it's just semantics.
9 I told him he would get paid.
10 Q How many times did you tell him that when you were an
11 employee and a managing partner of the Fieger firm?
12 A A few times. We had a case together. He was a defense
13 attorney. I represented a plaintiff suing Federal
14 Express, and he was the attorney, so we had a number of
15 occasions to talk. On at least two or three occasions, it
16 came up, and I told him I knew of it, and he would get
17 paid.
18 Q Did you ever have any discussions with Mr. Fieger as it
19 relates to paying the referral fee to Mr. Sherbow?
20 A I did.
21 Q Tell us about that, and when they were.
22 A Again, there were non-specific, general conversations that
23 indicated he had a general understanding as did I from Mr.
24 Danzig about how the case came in, and how it was signed
25 up with his involvement. We never -- Mr. Fieger and I

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1 never talked about it specifically until after he was
2 successful on the liability portion of the case. I'm
3 assuming it's been discussed that the -- the case was to
4 be tried in two -- two aspects, first, liability, and then
5 damages, so -- After the liability portion of the case was
6 tried and he was successful, we had a conversation where
7 he told me he didn't think he was gonna' pay Mr. Sherbow.
8 Q Did he tell you why he wasn't gonna' pay Mr. Sherbow?
9 A No, he said it seemed funny, it didn't seem right, and
10 that he was going to look into it.
11 Q Did he ever raise those kinds of concerns when the cases
12 were signed up in 2012 that you're aware of?
13 A Not to me.
14 MR. JANKS: Did Mr. Fieger ever confide in you
15 as to his opinion of Mr. Danzig and Mr. Danzig's role at
16 the firm, and -- and abilities or disabilities as the case
17 may be?
18 MR. FIEGER: Objection, relevance.
19 THE COURT: What's the relevance of that?
20 MR. JANKS: The relevance of that, Judge, is
21 that Mr. Fieger has argued in his opening statement that
22 Mr. Danzig and Mr. Sherbow are involved in a fraud or a
23 scheme to take money from Mr. Fieger, and I think Mr.
24 Danzig's reputation, having been assail by Mr. Fieger, it
25 may be important for us to all hear about what Mr. Fieger

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1 actually thought of Mr. Danzig and Mr. Danzig's work at
2 the firm.
3 MR. FIEGER: What rule of evidence is this, and
4 what's the relevance?
5 THE COURT: Well, you've raised the issue of --
6 rephrase your question. I'll sustain the objection.
7 Rephrase your question.
8 MR. JANKS: What has Mr. Fieger had to say
9 directly to you, Mr. Giroux, when you were an employee of
10 the firm as it relates to Mr. Danzig and his role at the
11 firm, and trustworthiness or lack of trustworthiness?
12 THE COURT: I'll allow that, go ahead.
13 THE WITNESS: We talked many times about all the
14 attorneys, especially when we were partners, including Mr.
15 Danzig, and it -- it was mostly good. Mr. Danzig -- you
16 asked me about the role. The role was he was the intake
17 coordinator. It was a role that he was the first one to
18 really put it in -- in a position where it was --
19 THE COURT: The only question on the table is
20 whether or not you had a -- what Mr. Fieger said. That's
21 the extent of it. You've answered the question to some
22 extent.
23 MR. JANKS: From your own personal observation,
24 how was Mr. Danzig at the firm as it relates to handling
25 the firm's money and resources?

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1 MR. FIEGER: Objection.
2 THE COURT: What's the objection?
3 MR. FIEGER: He doesn't handle the firm's money,
4 Mr. Danzig.
5 THE COURT: Okay, lay a foun -- lay a
6 foundation. Well --
7 MR. JANKS: Can you tell us, Mr. Giroux, from
8 your personal knowledge of being at the firm, what Mr.
9 Danzig --
10 THE COURT: I mean, just -- ladies and
11 gentlemen, I'm just gonna' reiterate that the arguments of
12 counsel, the questions asked by counsel aren't evidence.
13 The only evidence that you're getting in this case comes
14 from this witness stand and the exhibits, not from what
15 any of the lawyers say. So, keep that in mind. Go ahead.
16 MR. JANKS: What was Mr. Danzig's role as to the
17 firm's money and income, and stewardship of that money and
18 income?
19 THE COURT: I think did Mr. Danzig have a role.
20 MR. JANKS: Okay.
21 THE COURT: Let's -- let's try that.
22 BY MR. JANKS:
23 Q Did Mr. Danzig have a role in that regard?
24 A Yes, in one capacity.
25 Q In what capacity?

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1 A In the capacity that he was responsible and held
2 responsible for generating referral fees and/or fee
3 sharing fees coming into the firm.
4 Q And had there ever been a question at the firm as it
5 relates to those responsibilities being carried out
6 faithfully?
7 A By Mr. Fieger?
8 Q By -- by Mr. Danzig --
9 A Are you asking me --
10 Q -- being questioned by Mr. Fieger, yes.
11 A Mr. Fieger said very nice things about Mr. Danzig and his
12 abilities to run that facet of the firm and to generate
13 more revenue, and make it more profitable than ever
14 before.
15 Q Do you, personally, Mr. Giroux, have any evidence to
16 suggest that there is some scheme or fraud between Mr.
17 Sherbow and Mr. Danzig as it relates to trying to take
18 referral fees from the Fieger firm that they are not
19 entitled to?
20 A No, I believe the circumstances are to the contrary.
21 MR. JANKS: Thank you for your time.
22 THE COURT: Mr. Fieger.
23 CROSS-EXAMINATION
24 BY MR. FIEGER:
25 Q Good morning.

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1 A Good morning.
2 Q I've said more to you than I didn't think things were
3 right about the case of Mr. Sherbow's claimed referral,
4 didn't I?
5 A I don't understand what you mean. You said --
6 Q Mr. Giroux, I didn't, like, when I -- you -- you told the
7 Court and jury I talked to you about my concerns, and you
8 said about Mr. Sherbow after I had come back from Ohio,
9 and won the liability case, and you said, quote, "seemed
10 funny, didn't seem right." I said a lot more than that,
11 didn't I?
12 A You likely said a lot more words than that. I summed it
13 up, but that was the message to me was it didn't seem
14 right, it seemed funny, you were gonna' get to the bottom
15 of it.
16 MR. FIEGER: 'Cuz I told you that the clients --
17 I found out the clients had called our office, and didn't
18 even know Mr. Sherbow, didn't I?
19 MR. JANKS: Objection, hearsay. This -- Mr.
20 Fieger is now testifying.
21 THE COURT: Again, yeah, don't -- don't testify.
22 If you have a question --
23 MR. FIEGER: I'm leading.
24 THE COURT: You -- you can lead him, but when
25 you're -- you know, you gotta' be real careful here

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1 because you can't testify.
2 MR. FIEGER: I'm not testifying.
3 THE COURT: Yeah, you are, so let's watch it.
4 BY MR. FIEGER:
5 Q I said a lot more than that, didn't I?
6 A Again, you did, but that was the general message. But we,
7 all of us knew, you, and -- and me, and -- and Mr. Danzig,
8 and everybody that the call had come in first, and then
9 there was a subsequent conversation with Mr. Sherbow and
10 Mr. Danzig. But there was no question in my mind from the
11 beginning that there was a call first, but as you know,
12 that's not the end of the story.
13 MR. FIEGER: Excuse me, let's not con -- you
14 know --
15 THE COURT: Don't testify.
16 BY MR. FIEGER:
17 Q -- mix apples and oranges here. But are you saying that
18 you acknowledge that Mervie Rice, for instance, called our
19 office first?
20 A That's the way it was described to me, and that happens
21 sometimes.
22 MR. FIEGER: Right. So a client calls my
23 office, says I've been injured in an automobile accident,
24 I want you to represent us.
25 MR. JANKS: He's testifying again.

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1 THE COURT : Yeah, again, Mr. --
2 MR. FIEGER: I'm not, I'm leading.
3 THE COURT: Yeah, you are. Well, no, you're
4 testifying, and I'm no gonna' let it go on. You're not --
5 you're the lawyer. You can't testify. You got a
6 question, ask your question, but the testimony now stops.
7 Let's go.
8 BY MR. FIEGER:
9 Q If a client calls our office, and asks to be represented,
10 that's what happens in our firm, isn't it?
11 A They call and ask if they have a case, and we try to
12 advise them. I'll stop there.
13 Q And you were told that Mervie Rice had no connection with
14 Mr. Sherbow, weren't you?
15 A It didn't come up. I didn't expect that there was because
16 it didn't come up in the first conversation. I was only
17 told in the second conversation that Mr. Sherbow had some
18 sort of pre-existing relationship or contact with someone
19 in the family, and was going to help round everybody up to
20 get them hopefully in the case.
21 Q So you had no knowledge about anything, really, about any
22 of the clients, did you?
23 A So at the point that I'm told about these conversations
24 and excitement of Mr. Danzig, obviously I know nothing

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1 more than what Mr. Danzig told me because I have no prior
2 experience with any of these folks.
3 Q And you've never apparently seen my clients, have you?
4 A I know I've seen 'em, but I've never spoken to them.
5 Q Okay. And you don't know the circumstances under which
6 Mervie Rice called, do you?
7 A Only what was explained to me by Mr. Danzig was that she
8 was interested, and I'll -- I'll stop there.
9 Q Okay, so Mr. Danzig admitted to you that Mervie Rice, on
10 her own, called our firm.
11 A He didn't say it like that. He just said a call came in,
12 and it wa -- seemed like a really good case, and he was
13 very excited. We didn't get into exactly who called, and
14 exactly what she said or even generally what she said.
15 Q And in fact have you looked at any of the documents in
16 this case? I know you've been talking to Mr. Sherbow.
17 Have you looked at any of the documents in this case?
18 A To be fair, I talk to you, I talk to them, I talk to
19 anybody who asks me questions.
20 Q Okay.
21 A The only documents I've ever seen in this case would be
22 the ones shown to me at my deposition.
23 MR. FIEGER: First of all, I'm gonna' show you
24 what's been marked as exhibit L. It's been identified as
25 a phone answering sheet on the bottom.

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1 MR. JANKS: Judge, this exhibit has not been
2 identified or admitted through evidence as of this point.
3 Certainly, he can --
4 THE COURT: Right, so --
5 MR. JANKS: -- show it to him.
6 THE COURT: You can show it to him, see if he
7 can recognize it.
8 MR. FIEGER: Yeah, do you recognize our phone
9 answering sheets? I realize they're slightly --
10 THE COURT: Fieger, don't tell him what they
11 are. Let him see if he can identify them.
12 THE WITNESS: The page you handed me, I don't
13 really recognize. The second page I do because it's got --
14 on one of 'em it's more legible. I see Jenine's -- Jenine
15 Armstrong is our main receptionist or was when I was
16 there, I mean receptionist, so I would recognize her
17 handwriting, and her initials, but I don't see that on
18 this first page.
19 BY MR. FIEGER:
20 Q Whatta' you see --
21 A But since they're attached, I assume it's from the same
22 book.
23 MR. FIEGER: Okay, and is that how we took in --
24 THE COURT: Any objection?
25 MR. FIEGER: I'm sorry, your Honor?

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1 THE COURT: Any objection to its admissibility?
2 MR. JANKS: Sure, there's an objection, Judge,
3 because the first page, in fact, does not have the
4 initials of the intake person, and does not have any
5 dates, and there's no foundation laid for it by anyone nor
6 will there be. In fact, the first page was never produced
7 in this case until two weeks before the trial despite
8 requests to produce each and every piece of evidence that
9 the Defendant was going to rely on. And the fact of the
10 matter is since there is no initials, and there is no date
11 on there, that is very suspicious. Because, as Mr. Giroux
12 indicates, the receptionist always puts her initials and
13 dates on the messages such as the second page of that
14 proposed exhibit.
15 THE COURT: You can't identify page one, page
16 one's out, page two's in.
17 BY MR. FIEGER:
18 Q Isn't there a date on there, Mr. Giroux?
19 A The second page -- so on the first page, there's three
20 separate phone tag messages. Maybe it's just my -- I
21 can't read a date. The first one appears to be 7/17. The
22 second one appears to be 7/17.
23 THE COURT: Is that on page one?
24 THE WITNESS: Yes, your Honor.
25 THE COURT: All right.

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1 THE WITNESS: I can't read the third one, and
2 that's the one that apparently relates to Mervie Rice. Do
3 you have a more clear --
4 MR. FIEGER: I believe we do. I can't -- Your
5 Honor, I gave -- can I have another book (indiscernible).
6 THE COURT: I mean I'll -- I'll say this, that
7 whatever exhibits in the book, proposed exhibit, there's
8 only one page.
9 MR. FIEGER: Right (indiscernible).
10 THE COURT: I don't know what the two pages are.
11 THE WITNESS: Now I can see that the bottom one
12 now has a date or had a date of 7, slash, 17, but it's not
13 initialed by anybody, and I don't believe this is Jenine's
14 writing.
15 MR. FIEGER: Is there any indication to you --
16 isn't it the same writing on every one of those sheets?
17 MR. JANKS: Judge, he's testified it's different
18 writing on page one and page two. That's the problem.
19 THE COURT: No, but the problem -- let me see
20 what you've got there. Just let me see what you got here.
21 Well, there's only one page. Where's page one, page two?
22 THE WITNESS: That's what I was trying
23 (indiscernible).
24 MR. FIEGER: When I -- that's the only page from
25 that date.

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1 THE WITNESS: But -- but the other page had --
2 THE COURT: Just a second. What other page did
3 --
4 MR. FIEGER: I have --
5 THE COURT: The exhibit in your book, Mr.
6 Fieger, proposed exhibit, is only one page.
7 MR. FIEGER: That's correct.
8 THE COURT: That's -- let me see that again,
9 please, Mr. Giroux. Thank you. I'm sorry. Okay, what --
10 what you -- what the witness has handed me is the page
11 that's in the book. Go ahead, you can have that back,
12 sir. What's the -- So you -- you recognized -- do you
13 recognize the handwriting on this page?
14 THE WITNESS: I do not. It -- it doesn't look
15 like Jenine's. It may be, but it doesn't look like it to
16 me, and it's not initialed.
17 THE COURT: All right, it's not in 'cuz he can't
18 recognize it. We'll have to work on it some other way.
19 BY MR. FIEGER:
20 Q The way clients would call our office --
21 A Yes.
22 Q -- just -- maybe this is, you know, we've agreed. You
23 agree that Mervie Rice called our office.
24 A I -- I can't say that from my own knowledge. I can only
25 tell you that a call -- I was told that a call came in

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1 from a family. And, again, Danzig described -- Mr. Danzig
2 described for me the general circumstances, the car going
3 off the roadway. I mean it was dramatic, he was excited
4 about it.
5 Q Did he also tell you that in addition to Mervie Rice, Dion
6 Rice called our office?
7 A Again, he didn't tell me who called so, no.
8 MR. FIEGER: Did he also tell you that Phillip
9 Hill called our office?
10 MR. JANKS: Objection, Judge, we keep getting
11 testimony from Mr. Fieger. Mr. Danzig testified. He
12 didn't testify to any of that, that anybody else called
13 the office. In fact, he said the only person that called
14 the office was Mr. Sherbow.
15 THE COURT: Just ask him questions. It's o --
16 this is okay. Overruled.
17 BY MR. FIEGER:
18 Q Did he tell you that Phillip Hill had called our office?
19 A I think you know the answer to that question.
20 Q What?
21 A I was told two things by Mr. Danzig, and only two things.
22 Number one, a call come in. It was -- concerned a serious
23 case. He was excited about it, and then later he told me
24 that he had conversation with Mr. Sherbow about the same
25 case about somebody that he had previously represented,

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1 and he might -- he -- he will be able to help. Those are
2 the only two things I was told that day.
3 Q During your deposition, you were shown the intakes sheets
4 from Mervie Rice and Phil Hill, weren't you?
5 A I was.
6 Q Did -- does that refresh your recollection that Mr. Hill
7 called my office?
8 A I didn't say my recollection was -- I didn't say my
9 recollection was bad. I didn't take the intake sheets or
10 the calls. Those were just shown to me at my deposition.
11 Q And after I told you something seemed funny and didn't
12 seem right, and I was gonna' get to the bottom of it, what
13 happened?
14 A I don't know, I left the firm within a couple of months.
15 MR. FIEGER: Okay, and do you know why Mr.
16 Sherbow kept asking you in 2014 whether you were gonna'
17 get paid on a case that hadn't been completed; what --
18 what -- did he seem worried to you that he -- that
19 somebody --
20 THE COURT: You have to ask one question at a
21 time.
22 MR. FIEGER: Yeah, you're right.
23 BY MR. FIEGER:
24 Q Why -- why did he keep asking you whether he was gonna'
25 get paid, do you know, did he tell you?

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1 A He didn't keep asking me, but he was concerned, and then I
2 -- I think probably the most benign way I can say it is
3 that he knew the history of the firm relative to that
4 particular topic, and it made him uncomfortable. And it
5 made him even more uncomfortable once Mr. Danzig left
6 because he didn't feel like he had someone who was gonna'
7 get his back.
8 Q He didn't feel like someone who was gonna' get his back,
9 did you say that?
10 A Someone that was going to honor what he believed was an
11 agreement.
12 Q Well, you -- during your deposition, you were also asked
13 about complaints in our office about Mr. Danzig, do you
14 recall that?
15 A The question was whether or not anybody had ever said
16 anything about Mr. Danzig and -- and complained about --
17 or not complained about, but had said disparaging things
18 about him.
19 MR. FIEGER: No, actually, wasn't the questions
20 about Mr. Danzig --
21 THE COURT: Well, why don't you show him the
22 deposition, and let's do it the right way.
23 BY MR. FIEGER:

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1 Q Well, let me ask this a different way. Are -- you're aw -
2 - are you aware of complaints in the office about Mr.
3 Danzig mishandling referrals among his friends?
4 A I wouldn't say mishandling. I would say that there were
5 complaints about the way Jeff assigned cases in house and
6 out house, meaning that so at the Fieger firm, we would
7 get about a hundred calls a day. We didn't keep a hundred
8 calls a day. Very few, maybe one a day that we would look
9 into or two or three. All those other cases would be
10 referred out, and if those cases were referred out to
11 other attorneys and they were successful, they would pay
12 us back referral fees. That was one of his main
13 functions, and we wanted to make sure, the partners wanted
14 to make sure that was always maximized, where people
15 taking these cases and working them up and paying us back
16 the referral fees. And at times there were criticisms
17 about whether or not he was just sending it to his friends
18 or whether or not he was sending it to people who really
19 didn't care to take care of these files. But I'll tell
20 you like I said in the deposition, everybody who was ever
21 in that position besides Mr. Danzig was criticized for the
22 same things because --
23 Q I didn't ask you that. I asked you if there was criticism
24 about him mishandling referrals and giving them to his
25 friends. Was there?

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1 A There was, and it goes hand in hand with the job, frankly,
2 unfortunately.
3 Q And --
4 A I think lawyers are suspicious by nature.
5 THE COURT: All right, you can ignore that
6 comment, ladies and gentlemen, true as it might be.
7 BY MR. FIEGER:
8 Q And, also, finally your memory about the events, is it
9 possible you're mistaken about the memories of your
10 events?
11 A I don't believe I am.
12 Q Well, you testified to the Court and jury I was in Alaska
13 in July of 2012 when the case -- when Mervie Rice called,
14 didn't 'ya?
15 A I testified I thought you were in Alaska when I called
16 about the referral part of the case to the Lipton firm
17 which was what I was very upset about. I'm sure you
18 remember the call because you told me to calm down.
19 Q Excuse me. In fact, if what you're refer -- referencing
20 is true, you thought that Mr. Danzig had improperly given
21 something to his friend, the Lipton's.
22 A Not improperly because we were gonna' get a referral fee
23 on it, but he was not helping me set up a -- a no-fault
24 department which is something you knew I thought was
25 really important because we were losing funds or fees in

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1 other areas, like 1983 cases and medical malpractice
2 cases, and I wanted to generate fees and revenues from
3 other areas like no-fault which we didn't do. We -- up to
4 that point we had referred it all out, and I wanted to
5 keep it in house, and this was a big no-fault case.
6 Q And you thought that he had gone behind your back and done
7 exactly what you had told him not to do, isn't that true?
8 A Yeah -- yeah, I thought he was referring on a no-fault
9 case when I was trying to keep them in house.
10 Q Well, how did you factor that in in terms of his honesty,
11 your testimony about his honesty in following direction?
12 A Well, when I asked him, he told me. He said, "Yeah, I
13 did." He said, "Bob, I thought Jody Lipton is the best
14 no-fault attorney I know, and I thought this case was so
15 big that it belonged in her hands, not Ken Letherwood's
16 (ph) hands, and my guess is you would agree with that." I
17 was trying to do something. He apologized for -- for not
18 assisting me in that or maybe communicating as well, and I
19 apologized to him for what I said.
20 MR. FIEGER: And assuming that I tried a case in
21 Alaska in February of 2013, how do you explain the
22 discrepancy of the dates?
23 THE COURT: Again, don't testify.
24 MR. FIEGER: I -- I won't.
25 BY MR. FIEGER:

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1 Q Assume that is true, I don't think it's even questionable.
2 A I -- I don't know, Geoffrey. I had a recollection that
3 you were out of town when we talked about this no-fault
4 referral issue that I had.
5 MR. FIEGER: Thank you.
6 THE COURT: Redirect.
7 MR. JANKS: Thank you, Judge. Mr. Giroux, you
8 mentioned when you were talking to Mr. Fieger there
9 something about the history of the firm in regards to
10 referral fees. What were you referring to?
11 MR. FIEGER: Objection. Judge --
12 THE COURT: Ladies and gentlemen, I need -- I
13 need to excuse you for a moment.
14 THE CLERK: All rise for the jury.
15 (Jury out at 9:36 a.m.)
16 THE COURT: I'll make it real clear. You do it
17 one more time, I'm gonna' find you in contempt. You're
18 violating my order. I said we're not gonna' talk about
19 that.
20 MR. JANKS: Well, my understanding of the
21 questioning, Judge, is Mr. Fieger --
22 THE COURT: I know what the question was, and
23 we're gonna' leave it right where it was, and not get into
24 it.
25 MR. JANKS: Okay.

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1 THE COURT: You tried to bring it up, there was
2 a motion in limine, I granted the motion, and now you ask
3 the question. You do it one more time, you're in
4 contempt. You understand me?
5 MR. JANKS: I hear you, Judge, but --
6 THE COURT: Thank you.
7 MR. JANKS: -- so the record's clear, Mr. Fieger
8 opened that door by asking questions and getting the
9 answers that he got.
10 THE COURT: No, he an -- this gentleman answered
11 the question. I got very nervous about it. He -- Mr.
12 Fieger let it go, and I wanna' leave it where it is.
13 MR. JANKS: I hear you, Judge.
14 THE COURT: Thank you. Let's bring the jury
15 back. You know what? 'Cuz if you open that door, then
16 May (ph) comes in and testifies, and you don't want that.
17 THE CLERK: All rise for the jury.
18 (Jury in at 9:38 a.m.)
19 THE COURT: I don't want you guys to get too
20 much of a sugar high. Please be seated. Okay, let's move
21 on.
22 MR. JANKS: All right, thank you, that's all I
23 have.
24 THE COURT: Any jurors have any questions?
25 Okay, thank you, Mr. Giroux. Appreciate your coming in.

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1 THE WITNESS: Thank you, your Honor.
2 THE COURT: Have a good day.
3 THE WITNESS: You, too.
4 THE COURT: Yeah, thanks.
5 (Witness excused at 9:39 a.m.)
6 THE COURT: Do you have another witness for us?
7 MR. JANKS: We have Dorothy Lawrence, Judge.
8 THE COURT: Okay. Come on up here, please,
9 ma'am, right up here.
10 THE CLERK: Please raise your right hand to be
11 sworn in. Do you swear or affirm to tell the truth, the
12 whole truth, and nothing but the truth?
13 MS. LAWRENCE: Yes.
14 THE COURT: Okay, take the stand, please, and
15 state and spell both your first and last names for the
16 record.
17 THE WITNESS: Dorothy, D-O-R-O-T-H-Y, Lawrence,
18 L-A-W-R-E-N-C-E.
19 THE COURT: Thank you.
20 DOROTHY LAWRENCE
21 called as a witness at 9:40 a.m., sworn by the
22 Clerk, testified as follows:
23 DIRECT EXAMINATION
24 BY MR. JANKS:

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1 Q Hi, Ms. Lawrence. My name's Greg Janks. I represent
2 Jeffrey Sherbow in this case. Where do you live?
3 A Right now, I live in Desmond, Alabama.
4 Q How long have you lived down there?
5 A About six-seven years.
6 Q Had you ever lived in Michigan?
7 A Yes.
8 Q Okay, when did you live in Michigan?
9 A 1970 until 2007.
10 Q Do you know Charles Rice?
11 A Yes.
12 Q Do you know Mervie Rice?
13 A Yes.
14 Q Do you know Phillip Hill?
15 A Yes.
16 Q Do you know Dion Rice?
17 A Yes.
18 Q Do you know Dorothy Dixon?
19 A Yes.
20 Q Do you know anything about the accident that those folks,
21 not Dion, but the other folks, Charles Rice, Dorothy
22 Dixon, Phillip Hill, and Mervie Rice were in?
23 A Yes.
24 Q Whatta' you know about it?
25 A That they were --

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1 MR. FIEGER: Objection. She has no personal
2 knowledge of anything. It would have to be hearsay.
3 What's the foundation?
4 MR. JANKS: Did -- did you hear -- I'll ask a
5 different question, Judge.
6 BY MR. JANKS:
7 Q Did you hear that they were in an accident?
8 A Yes, I did.
9 Q When you heard about that, what did you do?
10 A My mother told us to pack up and go to Dayton, and check
11 on her child.
12 Q And so who is it you were checking on in Dayton?
13 A Charles.
14 Q Charles Rice?
15 A Yes.
16 Q When you got to Dayton, what did you find out about
17 Charles?
18 A I found out he had passed.
19 Q Did you find out anything about the other people that were
20 in the car?
21 A Yes.
22 Q What did you find out about Dorothy Dixon?
23 A Dorothy and Charles were in the same hospital, and Phillip
24 and Mervie was in another hospital.
25 Q Did Dorothy and Charles have a son?

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1 A Yes.
2 Q What was -- what was that son's name?
3 A Dion Rice.
4 Q Did you then, after going to Ohio, where did you go?
5 A We went to the hospital.
6 Q Okay, and -- and how long did you stay in Ohio?
7 A Stayed there from the 13th up until that Monday or
8 Tuesday.
9 Q So do you think you got there the same day as the
10 accident, is that the idea, July 13, 2012?
11 A Yes.
12 Q And you stayed there 'till the Monday or Tuesday
13 following.
14 A Yes.
15 Q Then what did you do?
16 A Dion and I, we left, I came back to Detroit with him. I
17 brought him back on the bus, but first of all we went to
18 the funeral home the day we came back on the bus, and came
19 back to Detroit.
20 Q The funeral home was where?
21 A Swanson.
22 Q In Detroit?
23 A Yes.
24 Q Okay, who paid for the bus fare back home?
25 A I did.

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1 Q Where did you go in Detroit with Dion after the funeral
2 home?
3 A I went to my cousin house, and then I went to Charles'
4 house.
5 Q Where was Charles' house located?
6 A On Virginia Park.
7 Q And is that downtown Detroit?
8 A Well, it's off the boulevard.
9 Q Outside of downtown, slightly?
10 A Yes.
11 MR. JANKS: Okay. How long did you stay there?
12 MR. FIEGER: Judge, what's the relevance of
13 this?
14 THE COURT: I was tryin' to wonder that --
15 wondering that myself. What is the relevance of all this?
16 MR. JANKS: The relevance is that Mr. Sherbow
17 went to the same house on Virginia Park to meet with Dion
18 Rice, and get information on the case to which this lady
19 witnessed the meeting.
20 THE COURT: Well, let's get into that then.
21 MR. JANKS: Well, I'm -- I'm gettin' there.
22 THE COURT: Okay, let's get there.
23 MR. JANKS: How long did you stay --
24 THE COURT: Do you wanna' know what she had for
25 breakfast that day, too? Let's move on. Thank you.

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1 BY MR. JANKS:
2 Q How long did you stay at the Virginia Park house, ma'am?
3 A Stayed there 'till that evening, and Mr. Sherbow, he came
4 over there, and met us there.
5 Q Do you know what day that was?
6 A It was a Monday, Tuesday, Monday or Tuesday.
7 Q Was that when you got back in town from Dayton, is that
8 the idea?
9 A Yes.
10 Q And do you recognize Mr. Sherbow sitting here in the
11 courtroom to my left at the Plaintiff counsel table?
12 A Yes.
13 MR. JANKS: What -- what is your understanding
14 why Mr. Sherbow came to the house?
15 MR. FIEGER: Objection.
16 THE COURT: Just a second.
17 MR. FIEGER: Foundation.
18 THE COURT: Lay a foundation.
19 BY MR. JANKS:
20 Q What did Mr. Sherbow do when he came to the house?
21 A He came to the house and he questioned us on different
22 things, and he said that he was -- he came (indiscernible)
23 did the leg work, and he was gonna' refer -- told me that
24 he was gonna' refer the case to Geoffrey Fieger because it
25 was better for him to deal with the financial

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1 (indiscernible) 'cuz how it was such an extensive case.
2 And, you know, he had that little yellow pad. He was
3 writing out everything that was said. I remember that
4 well.
5 Q So who did Mr. Sherbow take the information from that he
6 wrote down on his yellow pad?
7 A From Dion and I.
8 Q What kind of information was he taking down?
9 A Just askin' us about, you know, what the situation, what
10 happened, that we knew of what happened.
11 Q And Mr. Sherbow indicated that the case was a significant
12 case, did you say? I didn't quite catch your word.
13 A Well, it was a very bad case. The accident, when somebody
14 passed.
15 Q What did Mr. Sherbow suggest needed to be done to look at
16 the case?
17 A He said that he was going to -- all the information he got
18 he was gonna' refer -- gonna' turn over (indiscernible) go
19 to Geoffrey Fieger.
20 Q And that's some -- that's something you heard him say?
21 A Yeah, he said himself.
22 Q And Dion Rice was there at the time?
23 A Yes.
24 Q Dion Rice was providing information?
25 A Yes.

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1 Q And you were providing information?
2 A Yes.
3 Q Were there any other family members there providing
4 information?
5 A No.
6 Q Do you have any idea if Dion Rice talked to Mervie Rice
7 after that?
8 A Well, I'm sure she did, he did talk to her.
9 Q Do you know when?
10 A No, I didn't see him.
11 Q Do you know if Dion Rice went to the Fieger law firm after
12 that?
13 A No, 'cuz he was talkin' to this one. They were gonna'
14 refer Geoffrey Fieger.
15 Q And you have -- you have a clear memory of that, ma'am?
16 A Uh-hmm.
17 MR. JANKS: All right, thank you for your time.
18 THE COURT: Mr. Fieger.
19 CROSS-EXAMINATION
20 BY MR. FIEGER:
21 Q Good morning.
22 A Good morning.
23 Q Ms. Lawrence, you and I have never met, have we?
24 A No, we haven't.
25 Q Okay. How do you happen to be up here?

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1 A I lived here for 40 some years.
2 Q Oh, I know. You said you live in Alabama now?
3 A Right.
4 Q And how do you happen to be here today?
5 A Well, I had to come up here for some work done, that need
6 some work done, having some medical stuff done.
7 Q Okay, how did -- when did you come up?
8 A Sunday.
9 MR. FIEGER: Okay, and is it just a coincidence
10 that this trial is starting or had you talked to Mr. --
11 THE COURT: Janks.
12 BY MR. FIEGER:
13 Q -- Janks about the case? I'm sorry?
14 A Did I talk to who?
15 Q Mr. Janks, this gentleman.
16 A No.
17 Q How did you know to come today?
18 A I was told.
19 Q By?
20 A By attorney.
21 Q Who?
22 A Sherbow.
23 Q Oh, Mr. Sherbow called you.
24 A Uh-hmm.
25 Q Did he pay your way here from Atlanta, er, Alabama?

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1 A Did he pay my way?
2 Q Yes.
3 A I had no other means of doin' it.
4 Q No, I know. So Mr. Sherbow paid for you to come up here.
5 A Yes.
6 MR. FIEGER: Okay, that's all I wanted to know.
7 Did you ask him why he was paying you to come up here?
8 MR. JANKS: Objection, there's no testimony that
9 Mr. Sherbow paid her to come up here. Paid her way is
10 different than paying her to come up here. The inference
11 is objectionable, Judge.
12 THE COURT: Rephrase.
13 BY MR. FIEGER:
14 Q Did you ask him why he was paying your way to come up
15 here?
16 A No.
17 Q Okay, did you know Mr. Sherbow?
18 A I met him on Virginia Park.
19 Q Just that day?
20 A No, I knew him before through Charlie.
21 Q Okay. You had met him before.
22 A Yes, through Charlie.
23 Q Okay, and that would be Mr. Charles Rice.
24 A Yes.

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1 Q Okay. And I've listened to your testimony. Mervie Rice
2 wasn't there at the home on Virginia Park, right?
3 A No.
4 Q Dorothy Dixon wasn't there, was she?
5 A No, she was in the hospital.
6 Q Phillip Hill wasn't there, was he?
7 A No.
8 Q And Howard Linden wasn't there, were they?
9 A Who?
10 Q Howard Linden.
11 A I don't know Howard Linden.
12 MR. FIEGER: Okay, thank you.
13 THE COURT: Redirect?
14 MR. JANKS: No, nothing else, Judge, thank you.
15 THE COURT: Jurors have any questions? Okay,
16 Ms. Lawrence, thank you so much for being here today.
17 THE WITNESS: Uh-hmm.
18 THE COURT: You're excused. Can the witness be
19 excused?
20 MR. JANKS: Yes, thank you.
21 THE COURT: Okay, thank you, ma'am.
22 (Witness excused at 9:49 a.m.)
23 THE COURT: Who is this, Mr. Janks?
24 MR. JANKS: Jennifer Hatchett.
25 THE COURT: Come on up here, please, ma'am.

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1 THE CLERK: Please raise your right hand to be
2 sworn in. Do you swear or affirm to tell the truth, the
3 whole truth, and nothing but the truth?
4 MS. HATCHETT: Yes, I do.
5 THE COURT: Take the stand, please. And then
6 state and spell both your first and last names for the
7 record.
8 THE WITNESS: Jennifer Hatchett, J-E-N-N-I-F-E-
9 R, last name Hatchett, H-A-T-C-H-E-T-T.
10 THE COURT: Thank you, go ahead, Mr. Janks.
11 JENNIFER HATCHETT
12 called as a witness at 9:51 a.m., sworn by the
13 Clerk, testified as follows:
14 DIRECT EXAMINATION
15 BY MR. JANKS:
16 Q Hi, Ms. Hatchett, I'm Greg Janks. I represent Jeffrey
17 Sherbow. You and I met at a deposition some time ago.
18 Can you tell us where you live, please.
19 A Right now I live at 2-3-9-5-1 Berg Road, Southfield,
20 Michigan 4-8-0-3-3.
21 Q Are you employed, presently?
22 A No.
23 Q Do you know Mr. Sherbow?
24 A Yes.
25 Q How do you know Mr. Sherbow?

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1 A He was a friend of Charles Rice.
2 Q Who -- who was Charles Rice?
3 A Charles was the president of Gratiot McDougal Community
4 Development Corporation, and a friend of (indiscernible).
5 Q And Gratiot McDougal city -- I'm sorry?
6 A Gratiot McDougal United Community Development Corporation.
7 Q Okay, right, and what was that business?
8 A We're actually building affordable housing, and bringing
9 back the east side of Detroit because it was a black
10 neighborhood, so we wanted to bring affordable housing in,
11 and we got other programs as well.
12 Q And Mr. Rice was -- Charles Rice was involved in that?
13 A Yes, he was the president.
14 Q You were involved in that.
15 A Yes, I was the executive director.
16 Q And -- and so was there any consultation with Mr. Sherbow
17 as it relates to Gratiot McDougal United Community
18 Development by either you or Mr. Charles Rice?
19 A Yes, well, Charles actually initiated the visit with
20 attorney Sherbow because we was tryin' to get community
21 legal services, and our case was not something that they
22 would actually look into, so Charles suggested that we go
23 to his friend, Jeffrey Sherbow.
24 Q Did you do so?
25 A Yes, we did.

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1 Q Do you know when this was, time wise?
2 A Probably, actually, probably in 2011.
3 Q Did Mr. Sherbow do anything for the corporation or for you
4 or Mr. Rice?
5 A Yes, he did.
6 Q What did he do, to your memory?
7 A He looked over some of my contracts and he looked at our
8 developers and all the agreements and invoices that we
9 actually had, and realized that we were really gettin'
10 screwed, so that's what he did for us. And, also, I'm
11 sorry, he went and met with the attorneys with the what I
12 call developers.
13 Q Did Mr. Sherbow actually file any papers or pleadings in
14 court or appear for you guys in court or give you
15 consultations or how did that work?
16 A No, we never made it to court, but he actually kind of
17 consulted with us. We had a meetin' set up for, I think,
18 July 17, right after Charles' return from his family
19 reunion, and my reunion was the same time, a Tuesday.
20 Q That would be July 17 of 2012, the year that he died?
21 A 2012, yes.
22 Q And -- and so Mr. Rice wasn't able to keep the meeting
23 'cuz he died in the crash, is that the idea?
24 A Yes.

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1 Q But before the crash occurred, there was a meeting
2 scheduled between Charles Rice and Mr. Sherbow for legal
3 consultation.
4 A Yes.
5 Q I'd like to show you Plaintiff's proposed exhibit one, and
6 ask you to take a look at that, Ms. Hatchett.
7 A May I have my glasses? (Indiscernible) brought my purse
8 (indiscernible).
9 Q (Indiscernible)?
10 A Oh, I think she has it. My daughter -- in my purse. Uh-
11 hmm.
12 Q We're gonna' get your -- we're gonna' get your glasses for
13 you.
14 A (Indiscernible).
15 MR. JANKS: I'd let you use mine, but I don't
16 think you could see out of 'em.
17 UNIDENTIFIED VOICE: May I approach, your Honor?
18 THE COURT: Yes, you may. Now, what was the
19 question?
20 BY MR. JANKS:
21 Q The question, Ms. Hatchett, is do you recognize that
22 letter?
23 A Yes.
24 Q What is that letter?

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1 A Well, this letter here is from attorney Sherbow's office
2 with some of his findings.
3 Q What's the date of that letter?
4 A August 30, 2011.
5 Q Who was it sent to?
6 A To -- to Jennifer Hatchett, to Gratiot McDougal United.
7 MR. JANKS: Okay, I'd move for the admission of
8 exhibit one, I think that is.
9 MR. FIEGER: What's the relevance, Judge, of a
10 letter written to her a year before the events in this
11 case by Mr. Sherbow? What's -- I -- I don't have any
12 objection other than relevance.
13 MR. JANKS: Yeah, I mean I think it goes to
14 weight, not admissibility. I'll admit it, and the jury
15 can give whatever weight it desire, so it's admitted.
16 (Plaintiff's one admitted at 9:58 a.m.)
17 MR. JANKS: So was that letter Mr. Sherbow's
18 advice to Gratiot McDougal after the consultation you and
19 Mr. Rice had?
20 MR. FIEGER: Judge, may I pose an obje -- Every
21 one of these is leading. I -- I haven't said anything --
22 THE COURT: Yeah, you can't lead. This is --
23 this is -- this is direct, so you can ask her what the
24 letter is if you wish to go forward, but the letter does

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1 speak for itself, and the jury will have the opportunity
2 to look at it, so the objection's sustained.
3 BY MR. JANKS:
4 Q Ms. Hatchett, did you hear about the car crash that
5 Charles Rice and the family were involved in?
6 A Yes, I did.
7 Q When -- when you heard about that, what did you do?
8 A Oh, I couldn't believe it because I just talked to him
9 that morning, and I just broke down.
10 Q Did any -- anyone ask you for the name of a lawyer?
11 A Yes, Dion asked me the name of attorney because he knew
12 about Charles' friend, so, yes.
13 Q What -- did you give Dion the name of an attorney?
14 A Yes, I gave him attorney Sherbow phone number and name.
15 Q When was it that Dion asked for the name of attorney
16 Sherbow?
17 A The day of the accident.
18 MR. JANKS: And the day of the accident, you
19 gave Dion Rice the name and phone number of attorney
20 Sherbow?
21 MR. FIEGER: Objection, leading.
22 THE COURT: She just answered -- she just
23 answered that question. Go ahead. Sustained.
24 MR. JANKS: When Dion asked for the phone number
25 and name of the attorney, did you give it to him?

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1 MR. FIEGER: Objection.
2 MR. JANKS: That's the third time you've asked
3 the question. Did you have any other conversations with
4 Dion Rice other than that day?
5 MR. FIEGER: Objection, leading, er, excuse me,
6 hearsay.
7 THE COURT: No -- no -- no. What -- he just
8 asked her if she had any conversation.
9 MR. FIEGER: Right, okay.
10 THE COURT: He didn't ask her what the gist was.
11 You can answer the question. Did you have any other
12 conversations with Dion Rice on that day, ma'am?
13 THE WITNESS: Yes, more than one conversation,
14 yes.
15 THE COURT: Okay.
16 MR. JANKS: Did any of the conversations involve
17 obtaining legal representation?
18 MR. FIEGER: Hearsay. How would this, any of
19 this --
20 THE COURT: That -- that --
21 BY MR. JANKS:
22 Q Did you make any other recommendations to Dion Rice as it
23 relates to legal representation on that day?
24 A Only, he wanted attorney Sherbow's phone number, and I
25 gave him his name and phone number.

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1 Q Do you have any information as to whether Dion contacted
2 attorney Sherbow with the information you provided?
3 A Yes, I talked to him. He said he got in touch with him,
4 and I think they set up a meeting that they were gonna'
5 meet.
6 Q Do you know when it was that Dion got in touch with
7 attorney Sherbow?
8 A No, I'm not really sure. It should have been that
9 (indiscernible).
10 MR. FIEGER: Objection.
11 THE COURT: Okay, she's answered the question;
12 she's not sure.
13 BY MR. JANKS:
14 Q Were you at any meetings that were attended by attorney
15 Sherbow and any of the family members?
16 A Repeat that again.
17 Q Sure. Were you at any meetings that had Mr. Sherbow at
18 them as well as Dion Rice or any other family member of
19 the Charles Rice/Dorothy Dixon family?
20 A Oh, you mean after the accident?
21 Q After the accident.
22 A No.
23 MR. JANKS: Okay, thanks for your time.
24 THE COURT: Mr. Fieger, cross.
25 CROSS-EXAMINATION

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1 BY MR. FIEGER:
2 Q Good morning, Ms. Hatchett, how are you?
3 A Pretty good.
4 Q Good. You and I haven't had the pleasure of meeting
5 before, have we?
6 A No, not really, no.
7 Q Okay. But you -- I did read your deposition.
8 A Uh-hmm.
9 Q And you were asked some questions by Mr. Janks at that
10 time. One of the questions you were asked was about
11 whether Dion even knew Mr. Sherbow's name, and you
12 indicated he didn't know his name.
13 A Well, I'm not really sure if he knew it, but he asked for
14 his name and number.
15 Q Okay, 'cuz he didn't know his name, did he?
16 A No, I don't think so.
17 MR. FIEGER: Okay, thank you.
18 THE COURT: Anything else on redirect?
19 MR. JANKS: Nope, that's it, thanks, Judge.
20 THE COURT: Jurors have any questions? Okay.
21 Ms. Hatchett, thank you very much for comin' in. Can this
22 witness be excused?
23 MR. JANKS: Yes, sir.
24 THE COURT: Okay, great. Ladies and gentlemen,
25 I need to take a short recess so I can meet with some

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1 other lawyers on another case. Give you about ten, 15
2 minutes to get high again with the sugar high.
3 THE CLERK: All rise for the jury.
4 (Jury out at 10:03; court in recess.)
5 (Court in session at 10:31 a.m.)
6 THE CLERK: All rise. Oakland County Circuit
7 Court is now in session, the Honorable James M. Alexander,
8 presiding. Now calling Sherbow v Fieger, 2015-147488-CB.
9 MR. JANKS: Greg Janks, for the Plaintiff.
10 MR. FIEGER: Jeffrey Fieger, your Honor.
11 THE COURT: Ready for the jury?
12 MR. FIEGER: Yes.
13 THE COURT: Okay, who's our next witness?
14 MR. JANKS: Mr. Sherbow.
15 THE COURT: Good. How many more witnesses do
16 you have besides Mr. Danzig after Mr. Sherbow?
17 MR. JANKS: I'm done.
18 THE COURT: Cool, all right.
19 MR. FIEGER: I have a motion.
20 THE COURT: Well, we'll deal with that at the
21 proper time.
22 MR. FIEGER: Okay.
23 MR. JANKS: I have an expert, but --
24 THE CLERK: All rise for the jury.
25 (Jury in at 10:32 a.m.)

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1 THE COURT: Please be seated. Mr. Janks.
2 MR. JANKS: Yes, sir, we'd call Mr. Sherbow to
3 the stand.
4 THE CLERK: Have a seat right here, and raise
5 your right hand to be sworn in. Do you swear or affirm to
6 tell the truth, the whole truth, and nothing but the
7 truth?
8 MR. SHERBOW: I do.
9 THE COURT: Okay, take the stand, state and
10 spell both your first and last names for the record,
11 please.
12 THE WITNESS: Thank you. Jeffrey, J-E-F-F-R-E-
13 Y, Sherbow, S-H-E-R-B-O-W.
14 THE COURT: Okay, go ahead.
15 JEFFREY SHERBOW
16 called as a witness at 10:33 a.m., sworn by the
17 Clerk, testified as follows:
18 DIRECT EXAMINATION
19 BY MR. JANKS:
20 Q Mr. Sherbow, you're a lawyer in the state of Michigan,
21 correct?
22 A Yes, sir.
23 Q How long have you been licensed here?
24 A Since October 15, 1975.

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1 Q Proposed exhibit 48 is your CV. Would that help you
2 briefly tell the jury about your background?
3 A Yeah, I know it, but you could -- I -- yes, it would help.
4 MR. JANKS: All right, we'd move for the
5 admission of exhibit 48, your Honor.
6 THE COURT: Mr. Fieger.
7 MR. FIEGER: No objection.
8 THE COURT: It's -- it's received.
9 (Plaintiff's 48 admitted at 10:34 a.m.)
10 BY MR. JANKS:
11 Q While we're getting it up there, why don't you tell us
12 what -- what's your educational background.
13 A In 1968, I graduated high school from Mumford High School
14 in the city of Detroit, went to Wayne State University,
15 and graduated from Monteith College which was a school
16 within a school at Wayne. In 1972, I was accepted at the
17 John Marshall Law School in the city of Chicago.
18 Completed all my requirements in June of 1975. Came back
19 and took the Michigan bar exam, passed on the first
20 attempt, and began practicing law in October of 1975. I
21 continued to work continuously for the next 41 1/2 years
22 as a lawyer, various -- various aspects of the practice.
23 Initially, I worked for a firm named Lieberson (ph) and
24 Crystal (ph) for a very short period of time. And then
25 from that period, I went -- I did a lot of insurance

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1 defense work. I did a lot of trial work. I represented
2 some major national companies. Then over the course of
3 the years, my practice grew, and I now am a -- I have my
4 own office in Sylvan Lake, Michigan. I have more of a
5 general practice. I do some defense work still. I do some
6 divorce work. I do some criminal law. Do a little bit of
7 trademark work with my associate that I have. And I also
8 am a member of various state bar associations, and I sit
9 as a facilitator/mediator in Wayne County. I'm a
10 facilitator. I was licensed by the State of Michigan
11 after a 40-hour certification class, and I have
12 facilitated cases over the years, and just really
13 practicing law, doing a little bit of this, a little bit
14 of that. I'm in a store front, and a store front lawyer.
15 Q During the course of your practice, did you ever meet a
16 fellow called Charles Rice?
17 A I did.
18 Q Tell us about when you met Mr. Rice, and under what
19 circumstances, please.
20 A Years ago, I was -- I'll give you the short version.
21 Years ago, I was -- I met a guy who liked my tie, and I
22 gave him my tie. He came up to me and said, "Mr.
23 Sherbow," or, "Sir, I like your tie." I took it off, and
24 I gave it to him. The next week, the man showed up at my
25 office with his mother wearing a suit, and said, "This is

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1 my mother. You gave me a tie. You're gonna' change my
2 life." And we became friends, and then about six months
3 later, he said, "I have a good friend I want you to meet."
4 It was Big Rice, Charles Rice, who was a retired sergeant
5 for the Detroit Police Department. Worked for the force
6 for many years. And then we became -- we didn't go out to
7 dinner, but every so often I meet Big Rice down at --
8 there's a diner across the street from Henry Ford
9 Hospital. We'd meet, we'd talk. I helped out some of his
10 family members. He and Jennifer Hatchett had this Gratiot
11 McDougal entity that they needed some advice on. So over
12 the course of years, we became friends. I mean were we
13 best friends? No. Charles would call me. He knew a lot
14 of people in the city of Detroit.
15 Q Did you do any legal work or consulting for Mr. Rice or
16 Gratiot McDougal United Community Development Corporation?
17 A I did, I did some consulting.
18 Q We already marked as exhibit one a letter that Ms.
19 Hatchett talked about. Do you recognize that letter, Mr.
20 Sherbow?
21 A That is a letter that I wrote in August of 2011.
22 Q What -- what was the purpose of writing that letter?
23 A Jennifer and Charles came to me, and they had an attorney
24 representing them in some litigation, and there wasn't a
25 lot of progress. There was a little dual representation

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1 with the lawyer representing because Charles and Jennifer
2 were the minority shareholders of the firm, and the lawyer
3 that was representing the company represented the other
4 shareholders, and there were some issues as to whether or
5 not there was inadequate representation going on both
6 sides of the aisle. So I reviewed some documents, and I
7 met with 'em. I went to a meeting with the lawyers, and
8 had advice, and we had a meeting scheduled when Charles
9 was supposed to come back from the reunion, and that's
10 really what precipitated this letter.
11 Q Were you actually retained by Gratiot McDougal or anyone
12 else?
13 A I was retained at a diner table, and I said, "Give me a
14 dollar, I'll be a lawyer." So I had a dollar. I got
15 paid. I was representing 'em, and that gave me the legal
16 right to do it.
17 Q Did -- did you actually appear in court on behalf of them;
18 file pleadings or anything like that?
19 A No, but there was -- no, nothing was ever filed. There
20 were more meetings. I went to the lawyer's office,
21 reviewed a few documents, but I did get paid a dollar.
22 Q How many times did you meet Charles Rice?
23 A A dozen times over the years, maybe a few more. Talked to
24 him on the phone. For this, the Gratiot McDougal, three
25 or four times.

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1 Q Had you ever met Dorothy Dixon who was the mother of Dion
2 Rice with Charles Rice?
3 A I didn't recall. I mean I was told, today or yesterday,
4 that I did but I don't recall meeting Dorothy until after
5 this incident.
6 Q Phillip Hill, who was involved in this incident, did you
7 ever meet him?
8 A Met him at his deposition. Never met him before.
9 Q Mervie Rice, who was involved in this crash, did you meet
10 her?
11 A I met -- I met Mervie Rice on July 26 at the Fieger
12 office.
13 Q What was the purpose of that meeting?
14 A July 26 meeting was the meeting that had been set up to
15 round up all of the clients emanating from the first
16 weekend when I made contact with Dion, and Dion and I had
17 started talking. Dion Rice is Charles' son, and Dorothy
18 Dixon's son. On the weekend after the accident, I had
19 talked to Dion. We had numerous phone calls over the next
20 week. I set them up. I -- I gave all the information to
21 Mr. Danzig, and then he continued to reach out. And it
22 culminated in the July 26 meeting at the Fieger office
23 where Dion was there, Dion Rice, Mervie Rice was there,
24 Mervie's daughter was there, Mr. Danzig, myself, Ms.
25 Lipton, Jody Lipton, the no-fault attorney, the wage loss

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1 kind of lawyer, not the personal injury lawyer, and later
2 at that meeting, Lin -- Mr. Linden walked in, and left.
3 Those are the -- so that's when I met Mervie.
4 Q That's July 26 of what year?
5 A 2012, I'm sorry.
6 Q Before that meeting occurred, what contact had any of the
7 family members had with you, any of the people involved in
8 the family about the crash?
9 A Okay. On July 13, which was really the day of the
10 accident, 'cuz it happened after 12 o'clock, I received a
11 phone call in the middle of the afternoon from Jennifer
12 Hatchett. Jennifer Hatchett called me, I think the phone
13 records are gonna' say 4 o'clock, somethin' like that,
14 4:22 -- told me that Charles was dead; that Dorothy was in
15 a coma; and it was just a mess. It was a very tearful
16 time. They were all very close. And I immediately then
17 called Danzig at -- I think I tried calling him at the
18 office which would be the Fieger office, then I called him
19 on his cell phone because as it was related to me, this
20 was a very -- very serious case, potential great exposure,
21 and it's tough to see somebody's misfortune, but you try
22 to take care of them and help them as best you can. So
23 over the course of the next week, there were various phone
24 calls between Danzig and I. There were some phone calls
25 between Dion and I. And I supplied Danzig some of the

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1 phone numbers, and then I scheduled a meeting with Dion at
2 the Virginia Park house. And Dion had gone to see his
3 mother and his dad in -- in Dayton, I think, that weekend,
4 so the July 26 meeting was a culmination of the two weeks
5 from the date of the accident until then to gather
6 everybody together as best as possible. Phil Hill was
7 supposed to be there on July 26, but he couldn't be there.
8 Dorothy, of course, was in Dayton, but she couldn't be
9 here 'cuz she was in a coma. But Dion really was there
10 for his mom and his dad, both Dorothy and Charles. So
11 those were the contacts that led up to that date.
12 Q Let me show you what's Plaintiff's proposed exhibit six,
13 and ask if you can identify that, Mr. Sherbow.
14 A Yes, there are my cell phone records for the month of
15 July, although they only go July 7 to August 5 or 6 of
16 2012.
17 Q And how did you obtain those records?
18 A I contacted Verizon, really, to see if they could go back
19 that far, and they were able to provide me with the cell
20 phone records as indicated here 'cuz it has the call
21 listing.
22 Q Do those records help indicate what dates and times you
23 talked to various players in this situation of referring
24 the Rice cases?
25 A Yes.

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1 Q And I think you made a color-coded copy. Do you have a
2 color-coded copy?
3 A I do.
4 MR. JANKS: Judge, I'd move for the admission of
5 exhibit six.
6 MR. FIEGER: Does -- if he needs it for -- to
7 refresh his recollection, Judge.
8 THE COURT: I'll allow it.
9 (Plaintiff's six admitted at 10:45 a.m.)
10 BY MR. JANKS:
11 Q So could -- could you take us through, specifically, who
12 called who and on what dates relative to the car crash
13 that happened on July 13, 2012 in Dayton, Ohio?
14 A On July 13, I received a phone call from Jennifer
15 Hatchett. Her number is 2-0-7-15-31, a 3-1-3, and the
16 records reflect at 4:23. It was a short call, but she
17 told me -- and -- and she was pretty upset -- that Charles
18 had died, and the car went off a bridge in Ohio. And I
19 said all -- we had some conversation, and, clearly, as a
20 sole practitioner, that's not the kinda' case I can
21 handle. It talked -- you know, have a lot of investment.
22 You need people to go to Ohio. That's just not somethin'
23 a sole, low guy can do. So I called, really, within,
24 according to the records, two or three minutes I made a
25 phone call to the Fieger firm to talk to Jeff Danzig. And

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1 Jeff Danzig was -- you know, everybody said I've known
2 him, I've played golf with him, but he's a highly --
3 highly competent attorney. He works for a firm that has a
4 lot of money that can fund these types of cases. They
5 have contacts all over. I called Jeff right away, and the
6 records show that I -- obviously didn't get him at the
7 office, but I got him on his cell, and told him,
8 basically, a thumb nail sketch of what happened. And then
9 I got an incoming call back from Jennifer at 4:27. So we
10 probably started talking -- we started talking at 4:23,
11 then she was -- said she had to go. I called Danzig, she
12 called me back, and then we had a longer conversation, and
13 she gave me more detail about what happened because it was
14 coming in in bits and pieces. It really hadn't hit the
15 news media yet, but she had gotten the call that Charles
16 was dead. And then I called Danzig again after that at 5
17 o'clock. So there was a series of calls in that 40
18 minutes between Jennifer, me, and Danzig on that day.
19 Q All right, and so you told us the Jennifer number is
20 highlighted in yellow, the 3-1-3-2-0-7-15-31, is that the
21 idea?
22 A That is correct.
23 Q And there's two of those calls?
24 A Yes, sir.
25 MR. JANKS: And the highlighting in --

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1 MR. FIEGER: Objection, leading. He just goes
2 back and asks the same question, Judge.
3 THE COURT: Thank you, I'll allow it. We're
4 just goin' through the phone calls, that's fine.
5 BY MR. JANKS:
6 Q The -- the 2-4-8-3-5-5-5-5-5-5-5 call, if you --
7 A You threw in an extra five, but that's Fieger.
8 Q -- if you told me -- I'm sorry -- if you told me what that
9 was, I missed it. What is that?
10 A That's Fieger's office, Mr. Fieger's office.
11 Q That's the main number, is that the idea?
12 A The switchboard, I guess.
13 Q Okay, and then what's the blue line, the 2-4-8-4-0-8-3-7-
14 6-7?
15 A That's Jeffrey Danzig's cell phone.
16 Q Okay, all right, I'm sorry, I wasn't sure I was following
17 along there. All right, so you told us about the 7/13
18 calls. That's the date of the actual crash. What comes
19 next in relation to talking to people about this crash?
20 A You call it pink, but it's really magenta. The -- the 3-
21 1-3-9-7-8-7-4-6-2 on July 14, I had two calls with Dion
22 Rice because that's Dion's cell phone number. That 9-7-8-
23 7-4-6-2, which was the day after the accident, is me
24 talking to Dion for an extended period of time.
25 Q So --

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1 A And Dion Rice is the son of Charles and -- and Dorothy.
2 Q All right, any other times you talked to Dion Rice?
3 A On that day, no. I believe he was on his way or in
4 Dayton.
5 Q So when's your next conversation with Dion Rice?
6 A My next conversation, he called me on July 17, mid-day
7 because we were trying to arrange a date to get together,
8 and he was back from Dayton 'cuz he came back with --
9 eventually, I met Dorothy, Dorothy Lawrence, and so we
10 talked on that day to set up a meeting for me to go to the
11 Virginia Park address, really, to meet Dion and talk to
12 him about what happened, and give him some counsel and
13 advice.
14 Q Do you know what day that was that you had that meeting on
15 Virginia Park?
16 A No, it was that week. I can't remember. I know the
17 weather was nice. I know I went to the house, and I know
18 it was the week before we met at Mr. Fieger's office. I
19 know it was at least ten days before the funeral and the
20 wake, but I know it was the week of -- I -- the week of
21 the 16th, but I can't pinpoint the day. At the time, it -
22 - it -- that wasn't the important thing.
23 Q I'm sorry, what wasn't important?
24 A It was an important day. It was important to get 'em the
25 help, and give 'em the advice. The man had lost his

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1 father, his mother was in a coma. The actual day I went I
2 -- I can't tell 'ya, but I was there.
3 Q Let me show you Plaintiff's proposed exhibit five. Can
4 you identify that document, Mr. Sherbow?
5 A I can identify these white pages which are from my yellow
6 legal pad that I took with me, and these are the pages
7 from the yellow legal pad that I went in and took notes at
8 Virginia Park. They're both of my notes.
9 Q So that's a copy, is that the idea?
10 A This is a copy.
11 Q Who's writing is on those pages?
12 A That is all my handwriting.
13 Q How many pages are there there?
14 A Seven.
15 Q Is there any date on any of those pages?
16 A I don't think so. There are dates of birth and addresses,
17 and things like that, but I don't think there's the dates
18 that I took the notes. No, sir.
19 Q What was your purpose in generating that document?
20 A I was in a fact-gathering stage. I had to get some
21 information because of the death of Charles and the
22 injuries to Dorothy, and the unknown injuries to the
23 others, I had to get as much information as I could
24 because I was talking to Mr. Danzig about getting all of
25 the Plaintiffs, all the parties to them, and the more

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1 information you can get the better. The more information
2 you get to provide to Mr. Danzig or whoever you refer a
3 case to, the better. It gives them information to go on
4 to the next step once we gather them. So I was writing
5 down information about the cars. I wrote information about
6 where Charles was living, who the insurance companies were
7 that were involved because there's a question as to which
8 car was being driven, whether it was Charles' car or Ms.
9 Dixon's car. I have -- So just to get background
10 information.
11 MR. JANKS: Move for the admission of exhibit
12 five, your Honor.
13 THE COURT: Any objection?
14 MR. FIEGER: No object -- no objection, your
15 Honor.
16 THE COURT: Without objection, exhibit five is
17 received. Thank you.
18 (Plaintiff's five admitted at 10:53 a.m.)
19 BY MR. JANKS:
20 Q And so you told us, generally, what was on there. Is
21 there anything specifically on there as it relates to who
22 you were talking to, how you were gathering the
23 information, where it was coming from in other words?

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1 A I don't think I -- well, the only one there was Dion, so
2 Dion and Dorothy was there, but I -- it had to be from
3 Dion because he's the only --
4 MR. FIEGER: Objection, Judge.
5 THE COURT: What's the objection?
6 MR. FIEGER: Dion doesn't know his mother's
7 name? Her name is Dorothy Dickerson. I mean that's just
8 pa --
9 THE COURT: Well, that's -- that goes to the
10 weight of the exhibit.
11 MR. FIEGER: Oh.
12 THE COURT: Thank you. Overruled.
13 THE WITNESS: Well, see, I do have Dorothy Dixon
14 over to the right, and I do have Dorothy Dickerson up to
15 the top. And at the time, when I walked in, I had gotten
16 the names, and, obviously, it was very stressful for the
17 family, and I wrote down what I thought I heard because,
18 see, I even went to misspell Dorothy. It came to be known
19 how -- what her name was, and how it was spelled, but that
20 first meeting was to decompress the family, talk to them,
21 and deal with Dion for the losses that he was having. So
22 I wrote down as much as I could. Is there a question?
23 BY MR. JANKS:
24 Q All right, so why don't we scroll through, and if there's
25 anything that you need to talk about, let's talk about it.

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1 A Well, in talking to Dion, I found out he wasn't working.
2 That's his date of birth. That's the house we met.
3 That's his phone number, and we're tryin' to figure out
4 all the people involved in the accident on the right. And
5 then as we scroll down, we're talking about the cars
6 involved. It was titled to Dorothy. The policy numbers.
7 That's her -- I see Dorothy Dixon. That's -- so it wasn't
8 that far off. We got the address that she lived at in
9 Farmington, and the insurance company. Just more
10 background information I'm getting about who talked to
11 whom about what, and we got -- I got the date of births,
12 and -- and, again, just trying to get the background
13 information.
14 Q So you're collecting address information. Who's Phyllis
15 Thorpe (ph)?
16 A Phyllis Thorpe owned the Virginia Park house. There was n
17 is -- issue as to who I was visiting at Virginia Park, who
18 owned Virginia Park. I didn't know whether it was
19 Charles' house. I didn't know who really lived there, but
20 the family was there. And it ended up that Phyllis
21 Thorpe, who's a friend of Charles, actually may have been
22 the title holder to the house. That house ended up
23 getting burned down the day before the funeral. On July
24 26, it was burned to the ground.

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1 Q All right, so what other information are we collecting
2 there. As we scroll through, I see --
3 A We ha -- well, we have some car information about the
4 Cadillac, and who -- 'cuz we were trying to get the title
5 information for the Cadillac and who owned it. And there
6 was a need for a power of attorney for Dorothy. And then
7 there's the location of where the accident was, and
8 Dorothy was at Miami Valley Hospital 'cuz I got all that
9 from Dion. And then there's reference to Casandra Fuller
10 (ph). I believe she was the lady at the funeral home in
11 Dayton that I spoke with because we were gonna' help
12 facilitate, get the body back from -- Charles back to
13 Michigan. And then even on the last right, I wanna' --
14 even on the last page, we were playing around with the
15 names a little bit. We have Mervie and Dorothy Dickerson-
16 Dixon, until that was all cleared up. So -- and I gave --
17 these notes ended up with Danzig, Mr. Danzig.
18 Q All right, and after that meeting that day, and -- and was
19 that meeting before the funeral of Charles Rice?
20 A Oh, yes, two weeks before. Well, may -- a week and a half
21 before.
22 Q Was -- was the first time you met Dion Rice at the funeral
23 of Charles Rice?
24 A Absolutely not. I'm not Paul Newman in, "The Verdict." I
25 didn't walk up to Dion at the funeral. I had been talking

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1 to Dion. I was -- I met Dion at Virginia Park which was
2 at least ten days before the funeral, and I met Dion at
3 the Fieger firm on July 26 which was two days before the
4 funeral.
5 Q If we could go back to the telephone exhibit, and pick up
6 with other contacts and calls you had with folks.
7 A Yeah, on July -- I don't know if we did July 17, but I did
8 -- Dion called me 'cuz we were workin' on settin' up the
9 meeting at the Virginia Park address.
10 Q And that's two calls on that day highlighted in blue?
11 A Well, those are calls to Danzig because what I'm doing is
12 I'm keeping Danzig in the loop because, again, we're in
13 the fact-gathering stage because it's important to get all
14 the information to Danzig because he was making phone
15 calls trying to get in contact with Mervie and Phillip,
16 and Dion and I really had the contact with -- because we
17 were trying to get them all to show up at the same time on
18 the 26th, and, really, they were all supposed to show up,
19 except Dorothy. Phillip Hill was supposed to be there.
20 Mervie was sup -- Ms. Rice, and Dion were supposed to all
21 be there on the 26th, but Mr. Hill couldn't be there. So,
22 then -- so I had the two phone calls with Danzig, again,
23 filling him in with what I'd been learning from Dion. And
24 then, really, we move to the 20th, I think is the next
25 phone call, yeah, from my cell phone. I try -- I can't --

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1 I couldn't get records for my office 'cuz I know that I
2 had some other calls with Dion during the week where I
3 actually used my office line, but Comcast couldn't give me
4 the phone numbers. Because -- so these weren't the only
5 calls, but these were the only ones from my cell phone.
6 And I drive around a lot because I do traffic tickets and
7 stuff like that, so I do drive around a lot.
8 Q So on July 20, who were you talking to?
9 A Those are three phone calls to Jeff Danzig until I got in
10 touch with him giving him an update, and we were in the
11 process of scheduling the meeting with everybody.
12 Q Then what's the next contact with anybody about --
13 A July 25 I have two phone calls with Dion, and the
14 significance is that the July 26 is when we had the
15 meeting at the Fieger office. So on July 25, I'm talking
16 to Dion. We're talking about getting him out to Fieger's
17 office. Says you want me to pick him up? Is he -- is he
18 gonna' meet me there? Is he gonna' get a ride? How's the
19 family doin'? They're getting ready for the funeral on
20 Saturday. Charles was back from Dayton. His mom was still
21 in a coma. Mervie was back in town. Ms. Rice was back in
22 town. Phillip Hill was back in town. So he and I had two
23 conversations mid-morning about setting up the Thursday,
24 July 26 -- oh, and I see I had a -- even one -- more phone

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1 calls later on that night. Yeah, so we had one phone
2 call, 5:18, also. Again --
3 Q And that's between you and Dion, are you saying?
4 A Me and Dion, and another call with Danzig right after.
5 Danzig's the blue at 5:19. Again, we're coordinating
6 everything for the Thursday meeting.
7 Q All right, next calls?
8 A July 26, I'm calling Danzig. That's the day of the
9 meeting. This is 12:17, basically, confirming
10 everything's goin', and everybody's gonna' be there 'cuz
11 he told me he was gonna' have Ms. Lipton there, again, to
12 handle the wage loss that's happened here, the economic
13 contract kind of stuff that you were at no fault, where he
14 was gonna' handle the injury part, and so he wanted her at
15 the meeting also. And then July 26, I talked to Dion, but
16 that's after the meeting.
17 Q What time was the meeting?
18 A 2 o'clock, I believe, two or 1 o'clock. And then --
19 Q How long -- hang on -- how long did the meeting last?
20 A I think it had to last an hour and a half, hour, hour and
21 a half. There were a lot of people there, and everybody
22 had to get their roles played, and who was who, and why we
23 were all there.
24 Q Who was doing the talking at the meeting?

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1 A When we got in, Mr. Danzig took the lead. It -- it was
2 his show. I was there, but Danzig took the -- did most of
3 the talking.
4 Q Were you introduced at that meeting?
5 A I was.
6 MR. JANKS: As?
7 MR. FIEGER: Well, objection, hear -- this is
8 hearsay. Somebody said somebody -- something to somebody
9 about him?
10 MR. JANKS: It's an exception to the hearsay
11 rule. It also goes to the --
12 THE COURT: What's the -- what's the exception?
13 MR. JANKS: 8-0-3-3. And -- and -- for plan,
14 intent. It also goes to the formation of the
15 relationship, and the formation of the agreement of the
16 referral fee which takes it out of the hearsay rule.
17 THE COURT: Well, I didn't think what Danzig
18 said is outside the scope of hearsay since he was an
19 employee of the Fieger firm who's the Defendant. What
20 other people said there, I think, is objectionable. So if
21 you wanna' talk about what Danzig said, I'll allow it.
22 MR. JANKS: All right, thank you, Judge.
23 BY MR. JANKS:
24 Q What -- what did ma -- Mr. Danzig indicate your role was
25 in being at the meeting, Mr. Sherbow?

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1 A I was the referring lawyer, and I would get a fee, but it
2 wouldn't affect the fees that Mervie Rice would get, the
3 money that Mervie Rice would get, nor would it affect any
4 fee, any recovery from Dorothy Dixon or the estate of
5 Charles Rice; that my role there was to help introduce and
6 bring everybody to the table, and I would be getting a
7 referral fee, and it would not affect the bottom line to
8 any of those three parties 'cuz Phillip Hill wasn't there
9 at that time.
10 Q Did the people that were injured in the accident sign fee
11 agreements that day to retain the Fieger firm?
12 A After Danzig explained everything, they signed two sets of
13 fee agreements. But after everything was explained, they
14 signed the Fieger attorney fee documents. I think they're
15 exhibits.
16 MR. JANKS: Was there any objection to a
17 referral fee?
18 MR. FIEGER: Objection. Judge -- judge, didn't
19 you just -- hearsay.
20 THE COURT: Yeah, we've already talked about
21 that. That's sustained.
22 THE WITNESS: They signed the documents.
23 BY MR. JANKS:
24 Q Understood. What else was discussed by Mr. Danzig at that
25 meeting?

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1 A He discussed that he would be the principal lawyer
2 handling the file; that there be no expectations for me to
3 do any work because that's why they're the pros from
4 Dover, that's why they do what they do, and that there be
5 no expectation of my involvement, but he would be the
6 principal lawyer and contact.
7 Q From your experience in handling various kinds of cases in
8 Michigan, is -- is that a typical or atypical arrangement
9 that someone such as you that brings some cases to a
10 specialist firm gets a referral fee?
11 A Yes, it is.
12 Q Is it typical or not typical?
13 A Oh, it's very -- I'm sorry, it's very -- very typical.
14 It's how people make their money. It's how lawyers make
15 their money. They -- not everybody's gonna' go knockin'
16 at the Fieger firm or the Morris firm or the Sherbow firm.
17 They -- sometimes they get referred, and that's how you
18 get a base of referral sources. I have some for some
19 criminal work and divorce work. Danzig has some for
20 personal injury. I'm sure Mr. Fieger, in his years, has
21 probably had a few people refer him work. It's because
22 they have an expertise, and that's what you do. That is
23 the nature of our business. I -- I like to consider
24 myself a Greek man where I'm a little -- I have a little
25 knowledge in a lot of areas, but it takes an expertise,

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1 and that's why I looked to Danzig and the Fieger firm on
2 this.
3 Q And -- and you didn't handle any of these cases, why?
4 A Because if I was gonna' -- I wouldn't have referred it out
5 if I was gonna' handle 'em. I don't ha -- I don't have
6 the kind of money that this kind of case would have taken
7 to prosecute, to bring forth. It -- it was an expensive
8 case, out of state, serious injuries. The best interest
9 of the clients are to get them to a lawyer that is best
10 suited for the work, and the best suited person I knew was
11 Jeffrey Danzig who did have the Fieger firm behind him,
12 and that's why I directed Dion and then his family to
13 there.
14 Q What was you relationship with Mr. Danzig at -- at any
15 time before this; how had you known him, how had you come
16 to know that, hey, I should refer these cases to Jeff
17 Danzig?
18 A Jeff and I have golf partnered. We play golf once in a
19 blue moon. I get invited in his groups. We take one golf
20 trip with six other guys once a year. He does have a
21 place up north that we go as a group for -- except when I
22 had a heart attack or I had back -- knee surgery. I went,
23 but -- On an annual basis, we'd go with a group as guys
24 do, and we play golf for two days and we come home, the
25 weekend before Father's Day. I -- I went to his

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1 daughter's bat mitzvah, but I've never been out socially
2 with he and his wife for dinner. It's not like I call him
3 up and say, hey, let's go to dinner, let's go to the show.
4 We are (indiscernible.) I have, in spite of what some
5 people may say, a pretty good reputation. Jeff's got a
6 great reputation. I like referring him work. A lot of
7 work has not been fruitful. I would call and try to get
8 him work over the years because there's a referral fee,
9 and it's income for me. So I have great professional
10 respect for him, and he's a great golfer, and it's --
11 that's our relationship.
12 Q At any time in your relationship with -- with Mr. Danzig,
13 did you and he ever engage in anything illegal, illegal
14 conduct?
15 A Never -- never.
16 Q Did you and Mr. Danzig put together some kind of scheme as
17 it relates to this case to steal money from the Fieger
18 firm?
19 A That's the furthest thing from reality and truth.
20 MR. JANKS: Let me show you exhibit 12 that's
21 been admitted. Put up 12, please.
22 BY MR. JANKS:
23 Q Did you re -- receive this letter, Mr. Sherbow?
24 A I -- I did.
25 Q Did you rely on this letter?

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1 A Absolutely.
2 Q Did you feel that Mr. Danzig had authority to promise to
3 pay you 33 1/3 percent referral fee on the Mervie Rice
4 case?
5 A On multiple levels, I relied on that, that he had that
6 authority, multiple levels.
7 Q Why don't you explain that to us.
8 A When Mr. Danzig sent me this letter his name was in the
9 letterhead, top, and, you know, a partner's a partner, and
10 it appears as a partner. I relied on it as a partner.
11 Then I see his name on the left, and -- and there's been
12 reference. I've only been a lawyer 41 years, but I'm
13 still learnin'. You make it to the left side of a paper,
14 you're a partner. It gives you significance. It gives
15 you an ability, I would think. I get a letter
16 acknowledging a one-third referral fee on the Mervie Rice
17 case because Mervie was there that day, on the 26th. This
18 is the week after. Dion was there, and they -- although
19 Dion had signed -- Dion Rice had signed some fee
20 agreements, I believe, or some documents on behalf of his
21 mother and then maybe on behalf of his father. Those files
22 weren't totally put together yet, so in the letter, Jeff,
23 Mr. Danzig says to me I'm gonna' send him a follow-up
24 letter confirming. A letter confirmation, to me, was what
25 I relied on.

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1 Q Did Mr. Danzig ever say to you, Mr. Sherbow, I'm gonna'
2 send you a letter promising you a referral fee in the
3 Mervie Rice case, but I have no authority at my firm to
4 issue such a letter?
5 A Absolutely not.
6 Q Or that Mr. Fieger has some kind of policy that says that
7 Mr. Fieger has to, in writing, approve such an
8 arrangement?
9 A Absolutely not. They were excited to have the file.
10 Absolutely not.
11 Q All right, and that date's August 2. I think we had some
12 more phone contacts before August 2, so maybe we should
13 pick up the phone contacts, and fill in what went on up
14 'till you got that letter.
15 A July --
16 Q We have the July 26 which was the meeting that -- that we
17 talked about. So then the next thing is July --
18 A Then July 27 is really the night of the wake for Charles,
19 and I had briefly called Dion, probably tryin' to figure
20 out where it was. It was on the lower east side
21 somewhere, and I didn't know exactly where it was, but I
22 talked to Dion.
23 Q Did you go to the wake of Charles Rice?
24 A Yes, I did -- yes, I did.
25 Q Did you go to the funeral of Charles Rice?

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1 A Yes, I did.
2 Q At the wake of Charles Rice, which you said was on July
3 27, 2012, would that be the first time you met Dion Rice?
4 A Absolutely not. I met him at Virginia Park. I'd been
5 talking to him ten days before. I -- absolutely.
6 Q And is that the end of the phone records as it relates to
7 that month?
8 A That's the end of the phone records. Yes, sir.
9 Q Let me show you exhibit 15 which has already been marked
10 and admitted. Ask if you can identify that, and tell us
11 the significance of it as it relates to you.
12 A Greg, there's some more underneath on the back.
13 UNIDENTIFIED VOICE: Oh, I'm sorry.
14 MR. JANKS: I'll get it.
15 THE WITNESS: Thank you. I can identify that.
16 That is the letter dated August 15 which was the follow-up
17 letter from Mr. Danzig confirming the other three files
18 which they opened up; 1-2-8-6-8, 6-9-8-7, and confirming
19 the referral fee of 33 per -- 1/3 of the attorney fee.
20 BY MR. JANKS:
21 Q Did you rely on that letter and that representation?
22 A Absolutely, this was a follow-up to the first letter, and
23 I totally relied on that.
24 Q Is this letter signed?
25 A Yes, it is, by Mr. Danzig.

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1 Q Okay. And then we have exhibit 16 which has already been
2 marked and admitted. What's that letter, Mr. Sherbow?
3 A This is the January 2, 2014 letter, so now we're almost a
4 year and a half post the initial sign up of the clients in
5 July '12. We're now January 14, and this is a
6 confirmation of a new deal. There had been a series of
7 contacts between myself and Mr. Danzig, and he asked me if
8 I would reduce my referral fee by 13 1/3 percent down to
9 20 percent, and I agreed.
10 Q Why -- why did you agree to do that?
11 A My wife told me I shouldn't have, but I did it because he
12 called me and said that he had been talking to Mr. Fieger,
13 and Mr. Antilly (ph). Mr. Antilly wouldn't continue
14 without gettin' 20 percent. Mr. Fieger, according to Jeff
15 Danzig, said I don't care what you do, but get me 60
16 percent because that's what I want on my cases. So Danzig
17 came to me and said I'm in a bind. Antilly wants 20
18 percent. He's holdin' me up a little bit. Could you do
19 this? And at this point in time, there were no values on
20 the files. You know, it was a good case, but nobody knew
21 to what extent. And I said if it helps you out, I will do
22 what you want. So I agreed to accept the 20 percent
23 because it made his life easier, and it was the right
24 thing to do for the clients because Antilly had already
25 been involved. It was the right thing to do to benefit

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1 the four plaintiffs 'cuz they have a fee dispute behind
2 the two -- by the lawyers at the end, it could affect
3 their benefit, so I agreed even though I felt I was
4 entitled to a third.
5 Q Had -- had you ever worked on any part of the tort cases,
6 the personal injury cases in Ohio for either Charles Rice,
7 Mervie Rice, Phillip Hill or Dorothy Dixon?
8 A Never.
9 Q Was there ever any anticipation that you would or
10 agreement that you would?
11 A To the contrary, never.
12 Q Now, let me show you Plaintiff's proposed exhibit number
13 18, and ask if you can identify that, please.
14 A I can. This is a letter I wrote February 20, 2015 to Mr.
15 Fieger and Mr. Antilly, the Ohio lawyer.
16 Q All right, and -- and what was the purpose in you writing
17 that letter?
18 A The purpose of me writing the letter was that Mr. Danzig
19 was no longer --
20 MR. FIEGER: Can we get that into evidence,
21 Judge, this letter, this supposed letter?
22 MR. JANKS: Sure, I'd move for the admission.
23 THE COURT: What is it again?
24 THE WITNESS: February 20, 2015, exhibit 18.
25 MR. JANKS: Eighteen.

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1 THE COURT: Any objection?
2 MR. FIEGER: No.
3 THE COURT: All right, it's admitted.
4 (Plaintiff's 18 admitted at 11:19 a.m.)
5 THE WITNESS: The purpose of the letter is that
6 Danzig was gone, and I would make an occasional phone call
7 to some -- to Mr. Heston (ph) or somebody at the Fieger
8 firm trying to get updates as to what was goin' on with
9 the case. I had reached out to Dorothy Dixon in the
10 summer, and I had learned that there was a favorable
11 outcome of the liability phase because as was explained.
12 You had the liability case that Mr. Fieger successfully
13 tried, and then they were gonna' go into the damage phase.
14 And I was just writing a letter, and I was complementary,
15 fabulously successful, and I reached out to the Fieger
16 firm to see whether or not I could help them at all with
17 the family. I'd been told that there's a $20 million
18 dollar demand for settlement. I knew there was an $11
19 million insurance policy. I was told, and it might have
20 been from Dorothy, I can't remember -- that there was an
21 $11 million offer on the table, and I was trying to reach
22 and help with the family to understand what was goin' on
23 with the settlement. That's what this was about.
24 BY MR. JANKS:

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1 Q And you also inquired about or reminded them about your
2 referral fee.
3 A Oh, yeah, I did do that, reminded them.
4 Q Them being the Fieger firm.
5 A The Fieger firm. Well, and Antilly.
6 Q And -- and Antilly, sure. Had, as of that time of you
7 writing that letter, what -- what's the date?
8 A February -- February 20.
9 Q 20th, okay.
10 A 2015.
11 Q 2015. At that time, other than Mr. Danzig's
12 correspondences that we went through already, the three
13 different letters confirming the referral arrangement, had
14 Mr. Giroux confirmed a referral arrangement with you, and
15 that fees would be paid?
16 A Yes, he did.
17 Q On how many occasions?
18 A A few -- a few. We had -- we had a case together, and I
19 would, you know, say, you know, I got my referral fee 'cuz
20 at the time, we still didn't know what the value was. And
21 he said you're -- you're gonna' get your fee. Your fee's
22 there, we acknowledge it. Words to that effect. I used
23 to -- in the 70's and 80's there was a lot of baseball
24 being played, softball, and all the lawyers played
25 softball, so I knew Giroux from softball. I knew Danzig

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1 from softball. I knew Mr. Janks from softball. So
2 there's always this comradery, so I could talk to Giroux
3 and say, you know, what's goin' on with the fee. He never
4 denied I wasn't entitled to the fee, and acknowledged I
5 was entitled to the fee.
6 Q Did you rely on Mr. Giroux's representations as a partner
7 at the Fieger firm?
8 A Absolutely.
9 MR. JANKS: I'm gonna' show you exhibit 19,
10 proposed exhibit 19. Can you tell us what that is, Mr.
11 Sherbow?
12 MR. FIEGER: I have no objection, your Honor.
13 THE COURT: Okay, let's identify it for the
14 record. Thank you.
15 THE WITNESS: This is a letter to me dated March
16 31, 2015, signed by Geoffrey Fieger.
17 (Plaintiff's 19 admitted at 11:23 a.m.)
18 BY MR. JANKS:
19 Q All right, and what does it say?
20 A Well, it basically says that he was having --
21 MR. FIEGER: Objection, can he read it, your
22 Honor?
23 THE COURT: Yeah, I mean it speaks for itself.
24 It's up on the board.
25 THE WITNESS: Do you want me to read it?

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1 THE COURT: Read it.
2 THE WITNESS: Okay. "A very troubling problem
3 has arisen with the cases I have been handling in Dayton,
4 Ohio. I was originally informed by Mr. Danzig that you
5 referred the cases to us. I have now confirmed that you
6 did not, and that any representations to the contrary are
7 untrue. Indeed, my office was initially directed --
8 directly contacted by Ms. Rice within four days of the
9 accident. You obviously didn't refer her case. She
10 doesn't even know you. Neither does Mr. Hill nor Ms.
11 Dixon. Indeed, even Dion Rice told you at his father's
12 funeral that he had contacted our offices. What prompted
13 you and Mr. Danzig to think that you could claim a
14 referral fee? I remain."
15 BY MR. JANKS:
16 Q Do you have any information for us as to whether Ms. Rice,
17 within four days of the accident, directly contacted the
18 Fieger offices?
19 A I have no information about that.
20 Q Is it --
21 A I do know that Mr. Danzig called her, and left messages
22 for her. That's what he's gonna' say.
23 Q Do you have any information -- I think you told us you had
24 not met or known Mr. Hill, is that true?
25 A Absolutely, I didn't, didn't have to.

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1 Q Or Ms. Dixon.
2 A She was in -- at that point in time, in '15, I had met
3 her, but not at the initial time of the sign-ups in July
4 and August, and September. She was in the hospital in
5 Ohio until she was put in attended care.
6 Q Were you told by Dion Rice at his father's funeral that he
7 had contacted the Fieger offices?
8 A This is absolutely not true. Dion was grieving for his
9 father. We had already been at the Fieger office. I had
10 been meeting, talking to him. That is absolutely a
11 fabrication and untrue.
12 Q The funeral was what date?
13 A July 28, 2012.
14 MR. JANKS: The meeting at the Fieger office was
15 at what date?
16 MR. FIEGER: Objection, this has been answered
17 15 times, Judge. 26th.
18 THE COURT: He can testify. Go ahead, you can
19 ask the question.
20 THE WITNESS: The -- the funeral was July 28.
21 The meeting at the Fieger office was July 26. The meeting
22 at Virginia Park was the week of the 16th of July which
23 even was earlier than that -- than the funeral.
24 BY MR. JANKS:

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1 Q Let me show you proposed exhibit 29, Mr. Sherbow. Can you
2 identify that, please?
3 A This is my April 17 letter sent to Mr. Fieger.
4 Q About this matter, about the referral fees and --
5 A About the -- oh, about the estate of Charles Rice, I'm
6 sorry.
7 Q What -- what number -- I'm sorry, the 28th?
8 A You have 29.
9 MR. JANKS: 29? I'd move for the admission.
10 THE COURT: Any objection, Mr. Fieger?
11 MR. FIEGER: Have we admit -- this is -- just
12 for -- I don't know. This is -- says, "This is in
13 response to my letter of April 15." Is that in, my letter
14 of April 15?
15 THE COURT: Yeah, that's exhibit -- no, I'm
16 sorry.
17 THE WITNESS: He sent me two letters, the 31st
18 and the 15th.
19 THE COURT: Okay, the April 15 letter --
20 MR. JANKS: Here, proposed 28 is the April 15
21 letter of Fieger, so I'd move for 28 and 29.
22 MR. FIEGER: No objection.
23 THE COURT: All right, they're received.
24 (Plaintiff's 28-29 admitted at 11:27 a.m.)

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1 THE WITNESS: 28 is the April 15, 2015 letter I
2 wrote in response to his March letter, and then April 17,
3 he wrote me back April 15. Oh, that is -- this is April
4 15. 28's April 15 letter Mr. Fieger sent to me.
5 BY MR. JANKS:
6 Q And -- and in those letters, essentially, we have an
7 ongoing dispute about whether you referred the cases or
8 didn't refer the cases, is that the idea?
9 A That is true.
10 Q Okay. So let's look at the letters. 28 is Mr. Fieger's
11 letter to you. He has a claim that you filed a false lien
12 with the Ohio court. Did you file some kind of false
13 lien?
14 A No, I filed an attorney lien in the Ohio court. I filed a
15 lien in the Ohio court protecting my portion of the
16 referral fee, giving -- which is really a way of giving
17 notice to all interested parties that there is a claim to
18 a part of the attorney fee.
19 MR. JANKS: All right, and -- and, again, Mr.
20 Fieger's claiming you have no right to the proceeds,
21 you're not the referral lawyer on the case. Could we
22 scroll on the letter, please.
23 BY MR. JANKS:
24 Q And Mr. Fieger says you need to take immediate steps to
25 withdraw your, quote, "false, scandalous, and improper

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1 pleadings in Ohio," or he and his clients will take
2 further action against you, is that right?
3 A That's what the letter says.
4 Q You take that as a threat?
5 A Well, yeah, yes, I did.
6 Q Did -- did you understand why Mr. Fieger would be
7 threatening you if you had referred these cases?
8 A I didn't understand why he was threatening me. I don't
9 understand the question.
10 Q I -- I wondered if you understood -- well --
11 A It was a threat. He basically --
12 Q Never mind -- never -- never mind, you're not in Mr.
13 Fieger's mind, so fine. Let's go to the next --
14 A It was a threat.
15 Q Okay, understood.
16 A I mean, he's tellin' me that my valid claim, I should
17 withdraw.
18 Q And you filed a response which is exhibit 29.
19 A I did.
20 Q What -- what did you have to say?
21 A I was politely reminding him of all the verification of my
22 attorney lien. I sent him the letters from August 2,
23 January 2. I sent him my letters. He basically was
24 knockin' his partner, Jeffrey Danzig. And we did -- I did
25 try to reach out to Mr. Fieger to resolve any potential

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1 issues we had, and I also put him on notice that there is
2 a rule of ethics saying if there's a dispute as to a fee,
3 as I understood it, he had to segregate the money before
4 he could distribute it until the fee dispute is resolved.
5 Q Did he ever segregate the money?
6 A No.
7 Q Did he ever pay you the money?
8 A No.
9 Q There was a question, if I recall it correctly, that Mr.
10 Fieger was asking Mr. Danzig about another -- some other
11 case, Dawkins (ph)? Did you have anything to do with the
12 Dawkins case?
13 A Yes.
14 Q Let me show you Plaintiff's proposed exhibit 68. I'd ask
15 you can identify that?
16 A This is a letter dated July 18, 2012 on the Dawkins case
17 confirming that I was entitled to an attorney fee,
18 referral fee from Jim Harrington from the Fieger firm.
19 MR. JANKS: Move for the admission of exhibit
20 68, your Honor.
21 MR. FIEGER: No objection.
22 THE COURT: It'll be received.
23 (Plaintiff's 68 admitted at 11:33 a.m.)
24 BY MR. JANKS:

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1 Q And that's -- July 18, 2012, that's the same month that
2 you're referring the Rice cases into the Fieger firm,
3 correct?
4 A That is correct.
5 Q Okay. And the letter that we just marked as exhibit 68 is
6 authored by Mr. Harrington?
7 A Yes, sir.
8 Q Did you believe Mr. Harrington had authority to bind the
9 Fieger firm, and promise you a referral fee?
10 A I got the letter, yes, I did.
11 Q Did you get that referral fee?
12 A Yes.
13 MR. JANKS: Did you have any expectation that
14 the Fieger firm would not pay you the referral fees
15 promised on --
16 MR. FIEGER: Objection, asked and answered.
17 MR. JANKS: -- the Rice cases?
18 THE COURT: Nah, I'll allow it.
19 THE WITNESS: Could you rephra -- I -- there was
20 interruption.
21 BY MR. JANKS:
22 Q Sure, was there any point in time that you expected that
23 the Fieger firm would not honor the referral fees promised
24 on the Rice group of four cases?

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1 A I had no concern until Mr. Danzig left the firm, and then,
2 you know, we all -- I didn't have my champion within the
3 firm because I didn't have the relationship except with
4 Danzig, so I had concerns, and that's where I made the
5 contacts. So, yeah, I had some concerns.
6 Q Those concerns came about after Danzig left, is that what
7 you're saying?
8 A Yeah, he wasn't at the firm. I had talked to Gir -- yeah,
9 I would talk to Giroux every once in a blue moon. But as
10 this case was developing into a very good case for a
11 lawyer, not so good for the people, unfortunately, the
12 numbers started getting higher in value, and there's --
13 you're always concerned. You don't, you know, you don't
14 cash a check until you know the money's good. It was a
15 concern.
16 MR. JANKS: What -- what is it that you're
17 asking the jury to do in this case, Mr. Sherbow?
18 MR. FIEGER: Objection.
19 THE COURT: What -- what's the objection?
20 MR. FIEGER: That's not -- he's a fact witness.
21 MR. JANKS: He's the Plaintiff.
22 THE COURT: Rephrase your -- rephrase your
23 question.
24 MR. JANKS: Sure. What -- what damages are you
25 seeking in this case, Mr. Sherbow?

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1 THE COURT: Thank you.
2 THE WITNESS: I am seeking my referral fee equal
3 to a referral fee that Tom Antilly got which was $681,000
4 because I referred the case into the firm. I referred the
5 pro -- all the cases that came from them because of the
6 initial contact. That's the way we do it in our business.
7 It's been stressful, obviously. Trials are stressful.
8 I've had economic loss of that money. I haven't seen a
9 doctor, I haven't seen a psychiatrist or anything like
10 that, but this case has cost me emotionally, it's cost me
11 time, it's cost me money. There are things I could be
12 doing with that money to improve my life, my practice, my
13 work, and that's what I want. I want what's right. I
14 want my -- I want justice. I want my $681,000, and I want
15 Mr. Fieger to be told he can't do this.
16 MR. JANKS: Thank you for your time.
17 THE COURT: Mr. Fieger.
18 MR. FIEGER: Thank you, your Honor.
19 CROSS-EXAMINATION
20 BY MR. FIEGER:
21 Q Did you say, in response to Mr. Janks' questions that you
22 and Mr. Danzig don't commit crimes?
23 A That's true, I don't.
24 Q Are you familiar with the crime of solicitation by an
25 attorney?

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1 A No.
2 Q You weren't familiar with the fact that's it's a crime to
3 try to solicit a personal injury client?
4 A No, you solicit on TV every day, so, no, I'm not.
5 Q So you're denying that there's a statute and a rule of
6 ethics on soliciting a personal injury client.
7 A I don't know that.
8 Q You said I threatened you.
9 A Well, I could interpret that letter as a threat.
10 Q What did I -- do you have that letter there?
11 A I don't.
12 MR. FIEGER: Could you put it up on the board,
13 please, the exhibit -- my April 15 letter to Mr. Sherbow?
14 MR. JANKS: 28.
15 MR. FIEGER: Maybe keep that up, too. I'm
16 gonna' -- we're gonna' go over the phone records. Okay.
17 Right there.
18 BY MR. FIEGER:
19 Q "If you do not take immediate steps to withdraw your
20 false, scandalous, and improper pleading in the Ohio
21 court, both myself and Mr. Antilly, and my clients will
22 take further action against you."
23 A That's a threat.
24 MR. FIEGER: Uh-hmm. Here's my exhibit KK. I'd
25 move for admission. Is that your pleading?

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1 MR. JANKS: No objection, Judge.
2 THE COURT: Okay, exhibit KK is received.
3 MR. FIEGER: Thank you.
4 (Defendant's KK admitted at 11:39 a.m.)
5 BY MR. FIEGER:
6 Q That -- you did exactly what I told you to do, withdraw
7 your false and scandalous lien in the Ohio court that was
8 improperly filed, didn't you?
9 A Well, is that a question or are you testifying? Is he
10 asking a question?
11 THE COURT: Just answer -- just --
12 MR. FIEGER: You did exactly --
13 THE COURT: All right -- all right -- all right.
14 I'm not gonna' let this go. I'm gonna' stop both you guys
15 right now. You can ask a question. I don't want you to
16 testify.
17 MR. FIEGER: Thank you.
18 THE COURT: I don't want the jury to think that
19 it was a false, scandalous or somethin' else.
20 BY MR. FIEGER:
21 Q You did exactly what I told you to do, didn't you?
22 A Absolutely, I did not -- I ended up withdrawing the lien
23 after you took all the money you weren't supposed to take.
24 So it wasn't because it was an improperly. My lawyer in
25 Ohio -- I did hire a lawyer in Ohio. I spent a lot of

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1 money. Filed a lien for me properly under the Ohio rules
2 of evidence and procedure. We decided it was best, since
3 you already took the money and spent the money that there
4 was no need for the lien 'cuz you already violated it.
5 Q And is that your testimony under oath?
6 A What, that you violated or you took the money, 'cuz you
7 did take the money.
8 Q As to the reason why you withdrew the lien?
9 A Well, it's because the money was gone. There's no sense
10 in having the lien.
11 Q Mr. -- was -- was a pleading filed in the court reporting
12 that you were not an Ohio attorney, and that you were
13 seeking monies in Ohio for an Ohio case?
14 A That's not what -- I don't think --
15 THE COURT: That's -- the question is was there
16 a pleading filed that said that. It's a yes or no.
17 THE WITNESS: I don't know -- I don't know. I
18 had a lawyer in Ohio file the pleadings.
19 BY MR. FIEGER:
20 Q And then you withdrew the lien, didn't you?
21 A And I told you why, because you already took the money,
22 there's no sense in having a lien 'cuz there were
23 additional pleadings filed, and I would have to pay for
24 more lawyer fees, and the bottom line was the money was
25 gone, so the lien wouldn't have a purpose because of the

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1 Michigan rule that says if there's a dispute between
2 lawyers, you're supposed to segregate the money. You
3 didn't segregate the money, there's no money, I withdrew
4 the lien. It was cheaper for me in the long run.
5 Q And then you came to Michigan, and filed this case after
6 you went to Ohio.
7 A It was probably all being done concurrently. I don't know
8 when this was filed.
9 MR. FIEGER: Could we pull up the phone records,
10 please.
11 MR. JANKS: Six.
12 MR. FIEGER: Thank you. Let's start with the
13 phone records. Let's start at the earliest, if we could,
14 please.
15 MR. JANKS: Thirteen.
16 MR. FIEGER: On the 13th, and you correct me if
17 I'm wrong, you testified that at about 4:25 p.m., you got
18 a call from -- this is 7/13, and I want you to assume that
19 my clients were injured in the early morning hours of
20 7/13, just shortly after midnight. On 7/13 at four --
21 approximately, 4:25 p.m., you claim you got a call from
22 who?
23 MR. JANKS: I think it says 4/23, your Honor.
24 BY MR. FIEGER:
25 Q 4/25, 4/23. From who?

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1 A I -- I got a phone call from Jennifer Hatchett.
2 Q From Jennifer Hatchett. And Ms. Hatchett, we met today,
3 said --
4 A It's Hatchett, not Hackett (ph).
5 Q Okay, I never met her before. Hatchett, that she informed
6 you that -- of this tragedy, is that correct?
7 A Yes.
8 Q Mr. Danzig told us yesterday he was working on the case,
9 and calling the people on the 13th. How would it be
10 possible for him to be calling the people on the 13th when
11 Jennifer Hatchett didn't even notify you until 4:25?
12 A I don't think -- I don't think he said that or he was
13 mistaken.
14 Q Oh, okay.
15 A Or you didn't hear it right.
16 Q Then you apparently -- there's a one-minute call to my law
17 office on 4/13.
18 A Yes.
19 Q Okay. So on 7/13, at about the same time, about 4:25, you
20 call my office, right?
21 A Well, I called Mr. Danzig's office.
22 Q Right. Now, at that time -- and I don't think you -- you
23 -- you'd never spoken to Mervie Rice, had you?
24 A No.
25 Q You'd never spoken to Dorothy Dixon, had you?

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1 A Nope.
2 Q You'd never spoken to Phillip Hill, had you?
3 A Nope.
4 Q Other than at his deposition in this lawsuit, you've never
5 met him before at all.
6 A True.
7 Q And you'd never spoken to Dion Rice, had you?
8 A When -- when?
9 Q And yet you're calling Mr. Danzig tellin' him, you know, I
10 knew somebody who died in an accident, right?
11 A Well, I talked to him later, yeah, but that's true. I
12 told Danzig that -- to get ready 'cuz I've got somethin'
13 comin'.
14 MR. FIEGER: What do you mean, you have
15 somethin' comin'? They had never retained you. Nobody --
16 you weren't retained. You were callin' him tellin him
17 what?
18 MR. JANKS: Objection, your Honor, there's no
19 requirement under Michigan law that he have a signed
20 retainer agreement. Mr. Fieger knows that, and has agreed
21 to that.
22 THE COURT: All right, I'll be -- I'll be givin'
23 -- I'll be given the jury the law in this case.
24 BY MR. FIEGER:

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1 Q What were you telling him? There's nobody had retained
2 you. You just found out that somebody that you knew had
3 been killed. What are you doing with Mr. Danzig?
4 A Really, that's not true because I got the phone call from
5 Jennifer telling me that Dion wanted to talk to me; that
6 Dion wanted to talk to me because I had been his father's
7 advisor. Jennifer, one of the two ladies that was here
8 today, called me and said Dion wants to get in touch with
9 you. She told me what happened. I knew Dion and I were
10 gonna' talk. I called Danzig and said we've got this
11 issue in Ohio. We may have to get somebody out there
12 quickly about the barricades. They had to do barricades
13 and all this stuff. So, really, what you're sayin' is
14 wrong because I did know there was somethin' comin', and
15 Dion had wanted to talk to me.
16 Q Your phone call with Ms. Hatchett lasted one minute.
17 A Right.
18 Q Sixty seconds. You didn't know anything about the case.
19 A Well, really, four minutes later I talked to her again.
20 If you notice that we -- she or I, somehow we
21 disconnected. I called Danzig and we called back, and we
22 talked about four minutes.
23 Q So you called my office for a minute, and then you called
24 Mr. Danzig's cell phone for two minutes.
25 A Right, and then she called.

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1 Q And then you called Mrs. -- or she called you -- Ms.
2 Hatchett called you back.
3 A Right.
4 Q So you didn't have -- nobody had retained you, nobody had
5 asked you to be their lawyer, and yet you're calling Mr.
6 Danzig about what case?
7 A Is that -- is that a question, sir, or are you testifying?
8 MR. FIEGER: At any -- at that poi --
9 THE COURT: All right, I'll -- I'll make those
10 questions. You just -- I'll make those decisions.
11 Rephrase your question, please.
12 BY MR. FIEGER:
13 Q Since -- since nobody had called you, no -- none of the
14 four clients one -- had called you. What -- what were you
15 doing with Mr. Danzig?
16 A What part of the question is what was I doing with Mr.
17 Danzig or the other part? I was setting up Mr. Danzig,
18 and getting the people to come to Mr. Danzig. We were
19 going to refer -- I was going to refer the case to your
20 office.
21 Q How were you gonna' refer a case, clients that had never
22 spoken to you?
23 A Because I had been told that Dion wanted to speak to me,
24 and I did speak to him at 8-0 -- 6:01 that night for a
25 substantial period of time, and I was just layin' the

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1 ground work to get into Danzig, so I called him, said we
2 had this case, I'm bringin' him, let's talk about it.
3 Q No, you didn't speak to him at 6:01 that night. You spoke
4 to him at 6:01 the next day, more than 24 hours later.
5 A Oh, you're right.
6 Q So let's go back now. How were you -- you and Mr. Danzig,
7 without soliciting a case, going to refer a case that you
8 didn't have -- cases, refer four clients that you didn't
9 even know, how were you going to do that with Mr. Danzig?
10 Explain that.
11 A I'll explain it again. I had received a phone call from
12 Jennifer Hatchett that Dion Rice, whose father had been
13 killed, and mother was severely injured wanted to talk to
14 me. I contacted Mr. Danzig to tell him about what
15 happened, and that there was an expectation that Dion and
16 I would talk because that's what I was told from Jennifer
17 Hatchett. And Mr. Fieger's right, it was the next day
18 because, obviously, things were hectic at the Rice
19 household. I did get in touch, and Dion and I spoke the
20 very next day.
21 Q Well, you had no idea what Mr. Dion Rice wanted to talk to
22 you about. You'd never met him.
23 A When?
24 Q Isn't that true?
25 A When?

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1 Q Jennifer Hatchett calls you on the phone and says Charles
2 Rice has died. You don't know -- his son wants to talk to
3 you or wants to talk to a lawyer. Do you know if he asked
4 for you or not?
5 A He did. According to her, she did.
6 Q Okay, do you know what he wanted to talk to you about; the
7 funeral, expenses, what?
8 A I can only assume about his father's tragic loss, and his
9 mother's injuries.
10 Q So without talking to him at all, you and Mr. Danzig spoke
11 twice, correct?
12 A That's what the records show.
13 Q Okay, and then you did not speak to Mr. Dion Rice, my
14 client, for a day and a half.
15 A 'Till the next -- I guess 6 o'clock, it says.
16 Q You didn't call him or did he call you?
17 A Well, I think it goes both ways, but it doesn't mean I
18 didn't get a phone call from Dion in the afternoon on the
19 13th in my office, but I don't recall. But these are one
20 incoming and one outcoming.
21 Q Okay.
22 A I guess.
23 Q So one outgoing is one minute, and then he called you
24 back?
25 A I guess, he called me.

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1 Q So you were calling him, okay. Now, I'm gonna' skip ahead
2 --
3 A Is that a question, sir?
4 Q You were calling him first.
5 A The records reflect that I was given -- well, yeah, it
6 says I called him for one minute, and then he called me
7 back.
8 Q Okay, now, I'm skipping ahead for just a second. I don't
9 -- I wanna' stay right on here, but let's go forward to
10 the meeting that you claim Mr. -- you heard Mr. Danzig say
11 all these things, remember, you testified to that with Mr.
12 Janks Do you remember?
13 A Sure.
14 Q Okay, and you had also been involved in this case. I know
15 you've been at all the depositions, and the testimony,
16 right?
17 A Not all of them, but most of them.
18 MR. FIEGER: You would -- at that meeting,
19 attorney Jody Lipton was there, correct? You're aware she
20 never heard Mr. Danzig say any of this.
21 MR. JANKS: Objection, if Ms. Lipton is going to
22 testify, she's going to testify.
23 THE COURT: Sustained.
24 MR. FIEGER: That's not my point.

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1 THE COURT: Sustained. I don't care if it's your
2 point or not, it's sustained. Don't say what other people
3 said at this point, at least the depositions.
4 MR. FIEGER: All I'm talking about is Danzig.
5 BY MR. FIEGER:
6 Q Do you know of anyone other than you and Mr. Danzig who
7 claimed to have heard what you heard in that meeting from
8 Mr. Danzig?
9 A Do I know any -- No, I know that Danzig and I heard it,
10 and I know Ms. Lipton didn't remember, even though she's
11 paid you a lot for attorney fees.
12 THE COURT: All right, stop it. Ignore that
13 comment, ladies and gentlemen, please.
14 BY MR. FIEGER:
15 Q Okay, so you apparently spoke with Dion, according to your
16 records, on the 14th. Let's go on. Okay, excuse me.
17 Nothing on the 15th that we see, right?
18 A The records speak for themselves. I don't think so.
19 Q Okay, nothing on the 16th that we see.
20 A That was a Sunday.
21 Q Right?
22 A Okay.
23 Q Okay?
24 A That's right.

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1 Q The next thing we see is the 17th, correct? Let's just
2 stop right there. There's a four-minute incoming call,
3 you say.
4 A Correct.
5 Q Okay. That's it, right?
6 A Well, I don't have my office records because I can't get
7 those. There might have been other phone calls, but on my
8 cell phone I did get a phone call from Dion on the 17th.
9 Q Okay, now, between those times, is there any phone call
10 from Mervie Rice?
11 A No.
12 Q Is there any phone call from Phil Hill?
13 A Nope.
14 Q Okay. Now, are you aware that on the 17th, Ms. Rice
15 called my office to retain our office.
16 A Well, I don't know what she did to call your office 'cuz
17 that's what you say, but I don't know whether she called
18 you or not.
19 MR. FIEGER: Well, it's in evidence. Mr. --
20 excuse me, strike that. Did you hear Miss Dan -- Mr.
21 Danzig tell you yesterday that she called my office.
22 MR. JANKS: Well, the jury will have to remember
23 what he said, but that's not what he said.

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1 THE COURT: Yeah, it's not for this -- the jury
2 will use its best recollection as to what the testimony
3 was. Do you have a question for Mr. Sherbow?
4 BY MR. FIEGER:
5 Q We have a -- we have a record of her calling my office.
6 How did she --
7 A Danzig said it was in response to his phone call to her, I
8 thought, his phone call to her, and she was calling back.
9 That's what --
10 Q Well, how would Mr. Danzig be calling Mervie Rice without
11 soliciting her? You don't know Ms. Rice. She didn't ask
12 you to have anybody call. How would Mr. Danzig be calling
13 her?
14 A Because, really, they all asked, through Dion. Dion gave
15 me information. We were tracking down the people to try to
16 get 'em all to come to the meeting on the 25th -- 26th,
17 excuse me, of July.
18 Q I'm -- I'm sorry. Mervie Rice didn't call you. She
19 didn't ask you to have anybody call her. How would Mr.
20 Danzig have called her?
21 A You'd have to ask Mr. Danzig. I -- I -- the first part of
22 that wasn't a question.
23 Q I see -- I see your notes here. Do you have Mervie Rice's
24 phone number here?
25 A Nope.

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1 Q Had you ever met Mervie Rice?
2 A On July 26, I met her at your office.
3 Q No, on July 17, four days after the event when she called
4 my office to retain us.
5 A No, I told you I met her at your office for the first time
6 on the 26th.
7 MR. FIEGER: Then how would you -- if -- if a
8 client calls my office to represent her, how in the world
9 are you entitled to a referral fee?
10 MR. JANKS: I have to object because it assumes
11 facts not in evidence.
12 THE COURT: Yeah, I'm gonna' sustain that.
13 That's gonna' be a question for the jury to answer, not
14 for Mr. Sherbow.
15 MR. FIEGER: You claim that you referred a
16 client to my office who you'd never spoke to, who called
17 on her own, but nevertheless it's your claim, is it not in
18 this case, that you referred her?
19 MR. JANKS: Same objection, your Honor.
20 THE COURT: No, he can ask what the claim was.
21 Overruled.
22 MR. FIEGER: Thank you.
23 BY MR. FIEGER:
24 Q That's your claim, right?

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1 A I'm entitled to a referral fee because I brought the
2 package in, and there was an agreement with your office
3 through all -- all these letters and your partners to pay
4 me a referral fee because I brought in Dion and the
5 family, and I helped set up the July 26 meeting.
6 Q And you'd never met Mr. Hill.
7 A Never did.
8 Q You claim --
9 A Don't have to.
10 Q You claim Mr. Hill was back.
11 A Well, I don't know when he was back. I thought he was
12 back.
13 Q You testified under oath just a few moments ago to the
14 jury that he was back in town. Didn't you? I heard you
15 say that.
16 A That's what I was told. I don't know for a -- I -- I
17 never met Mr. Hill until the depositions.
18 Q Were you aware that Mr. Hill didn't get back in town until
19 August 1?
20 A Nope.
21 Q Were you aware that Mr. Hill contacted my office --
22 A Nope.
23 Q -- to represent him in his automobile accident on August
24 1?
25 A I don't believe that's true. And --

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1 MR. JANKS: That exhibit has not been admitted or
2 offered.
3 THE COURT: Okay, then let's not put it up.
4 Let's let it --
5 MR. JANKS: There's also no (indiscernible) no --
6 --
7 MR. FIEGER: I thought we --
8 THE COURT: Which exhibit -- which -- which
9 exhibit is this, Mr. Fieger?
10 MR. FIEGER: Mr. Hill's exhibit two.
11 THE COURT: Well, I don't think -- I'm not sure.
12 Has that been admitted yet?
13 MR. FIEGER: I -- I thought it was admitted
14 yesterday with Mr. Danzig.
15 MR. JANKS: It has not been admitted, your
16 Honor, and I -- and I have an objection to it because if
17 you'll note the date on it is actually January 6, 2016, so
18 it has completely no relevance to 2012.
19 MR. FIEGER: That's when it was printed off our
20 computer, Judge.
21 THE COURT: All right, gentlemen, I'll tell you
22 what. Ladies and gentlemen, I'm gonna' excuse you for
23 lunch. We'll deal with this. I'll need you back here
24 about 1:40.
25 THE CLERK: All rise for the jury.

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1 (Jury out at 11:59 a.m.)
2 THE COURT: You can sit down. Let me see Mr.
3 Fieger and Mr. Janks in my chambers, please.
4 MR. JANKS: Yes, sir.
5 (Court in recess at 11:59 a.m.)
6 (Court in session at 1:48 p.m.)
7 THE CLERK: All rise. The Oakland County Circuit
8 Court is now in session, the Honorable James M. Alexander,
9 presiding.
10 THE COURT: Good afternoon.
11 MR. FIEGER: Good afternoon.
12 MR. JANKS: Good afternoon, Judge.
13 THE CLERK: Now calling Sherbow v Fieger, 2015--
14 147488-CB.
15 MR. JANKS: Greg Janks, for the Plaintiff.
16 MR. FIEGER: Geoffrey Fieger, your Honor.
17 THE COURT: Okay, ready for the jury?
18 MR. FIEGER: Yes.
19 MR. JANKS: Yes, sir.
20 THE COURT: Okay, let's bring 'em back. Go
21 ahead and finish with Mr. Sherbow before we start Mr.
22 Danzig, is that right?
23 MR. JANKS: Right, we'll finish Mr. Sherbow and
24 then we'll -- Mr. Danzig was kind enough (indiscernible)
25 stand out in the hallway.

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1 THE COURT: Okay.
2 THE CLERK: All rise for the jury.
3 (Jury in at 1:49 p.m.)
4 THE COURT: Please be seated. Mr. Sherbow, you
5 wanna' come back. You're still under oath, sir.
6 THE WITNESS: Thank you, your Honor.
7 THE COURT: Okay. Mr. Fieger.
8 MR. FIEGER: Thanks. Good afternoon, ladies and
9 gentlemen. Good afternoon.
10 BY MR. FIEGER:
11 Q Mr. Sherbow, did Mr. Danzig ever inform you that he needed
12 my approval to enter into this so-called agreement with
13 you?
14 A Not that I can recall.
15 Q Do you see my signature on any of the -- they're in
16 evidence -- the fee agreements that we sign with our
17 clients?
18 A Your signature or your name?
19 MR. FIEGER: Yeah, there is a -- in -- in order
20 for me to approve -- I approve all the cases that come
21 into my office.
22 MR. JANKS: Judge, again, we're testifying.
23 THE COURT: Yeah, you can't testify, Mr. Fieger.
24 MR. FIEGER: Well, there -- I'm sorry.
25 BY MR. FIEGER:

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1 Q Assuming the testimony is that I approve all cases that
2 come in my office, do you know why I didn't sign that?
3 A Nope, you weren't there.
4 BY MR. FIEGER: Do you know if Mr. Danzig or
5 anybody else at any time brought it to my attention that
6 none of the clients had really retained you?
7 MR. JANKS: Objection. Again, the clients
8 didn't need to retain Mr. Sherbow.
9 MR. FIEGER: Where is he coming from?
10 THE COURT: Just -- it's testimony right now.
11 MR. FIEGER: Why does he keep saying that?
12 THE COURT: I don't know why he keeps saying it,
13 Mr. Fieger, I'm not gonna' answer the question either. I
14 just --
15 THE COURT: Thank you.
16 MR. JANKS: I -- I'm (indiscernible)
17 THE COURT: It's -- I'll sustain the objection.
18 MR. JANKS: Thank you.
19 MR. FIEGER: Well --
20 MR. JANKS: I'm sorry, I'll overrule the
21 objection, so --
22 MR. FIEGER: Thank you -- thank you.
23 THE COURT: Overrule the objection. Go ahead.
24 MR. FIEGER: Thanks. Did -- I've forgotten the
25 question, frankly. Do you have it up there, your Honor?

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1 THE COURT: No, but we can run the tape back.
2 MR. FIEGER: No, it's okay.
3 THE COURT: I think it was assuming -- it had
4 somethin' to do with the -- with the fee agreement.
5 BY MR. FIEGER:
6 Q Do you know if he ever discussed with me the fact that you
7 had never even -- but when you called him you had never
8 even met any one of the clients; do you know if he
9 discussed that with me?
10 A Discussed what?
11 MR. FIEGER: The fact that -- well, let's start
12 with that none of the clients ever retained you.
13 MR. JANKS: Judge, I have to object. There's no
14 requirement under MRPC 1.5 that the clients have retained
15 Mr. Sherbow.
16 THE COURT: Okay, I'm gonna' deal with that in
17 my instructions to the jury.
18 MR. JANKS: But he keeps saying it, Judge. He
19 shouldn't be allowed to keep saying that he --
20 MR. FIEGER: He shouldn't be allowed to keep
21 saying this.
22 THE COURT: Just a second. You know, let's not
23 be twelve. Let's go on, finish your statement.

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1 MR. JANKS: Sure. Mr. Fieger keeps implying
2 that Mr. Sherbow didn't have retainer agreements with the
3 clients. We stipulate to that.
4 THE COURT: Right.
5 MR. JANKS: He didn't have retainer --
6 THE COURT: So you don't have to ask the
7 question.
8 MR. JANKS: -- agreements with the clients.
9 MR. FIEGER: Thank you -- thank you.
10 THE COURT: We're done.
11 BY MR. FIEGER:
12 Q Your attorney has stipulated that you had no retainer
13 agreements with the client. Do you know if Mr. Danzig had
14 ever informed me of that?
15 A I don't know.
16 Q Okay. Did -- do you know if he ever informed me whether
17 you -- the fact that you had never even spoken to the
18 clients the first time you talked to him?
19 A I don't know that.
20 Q Okay. And did we establish -- I apologize. I'm just not
21 feeling good. Did we establish, did he ever inform you
22 that he needed my approval?
23 A Never did.

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1 Q Okay. Now, you also testified, both in your deposition
2 and here, that it was your memory the first time you met
3 Dorothy Dixon, my client, was in 2014 in the summer.
4 A That was my recollection at the time.
5 Q When had you met her? When -- that would have been two --
6 more than two years after, er, at least two years after.
7 When did you claim to have met her, two years after the
8 incident and two years after she had retained our firm.
9 A So, the question, I -- I guess --
10 Q When?
11 A I did meet her in the summer --
12 Q I guess I'm trying to --
13 A In the summer of 2014, I reached out to Dorothy, and I
14 went to her apartment, and took a lunch.
15 Q Unannounced.
16 A Absolutely untrue.
17 Q You didn't have her phone number.
18 A That's not true.
19 Q Was it before or after we won the case in Dayton, Ohio?
20 A I think it was -- I'm not sure. I knew it was when she --
21 I was told that she was offered $11 million to settle the
22 case.
23 Q So they offered her $11 million. You claim --
24 A And you demanded 20.

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1 Q You claim that they offered $11 million when they only had
2 $11 million policy, is that your claim?
3 A That's what she told me.
4 Q And -- but you didn't remember ever having met her before.
5 A Before when?
6 Q Before 2014.
7 A That's true.
8 Q You had.
9 A And I didn't recall that.
10 Q As a matter of fact, you had met her because you asked
11 Charles Rice to help you solicit her automobile case,
12 isn't that true?
13 A No.
14 Q Do you recall or have you been made aware of the fact that
15 she claims to have met you in 2010 or '11?
16 A You said that.
17 Q Do you recall that?
18 A No, I told you I don't recall that.
19 Q Do you recall being present with Mr. Rice where he
20 introduced you, and asked you -- asked her if you would
21 rec -- if she would allow you to represent her in a car
22 accident that she had had?
23 A I don't have a specific recollection. I see a lot of
24 people. I may have met her with Charles at some point in
25 time. I don't recall that meeting.

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1 Q And you don't deny that she said no, I'm not interested in
2 retaining you.
3 A I have to deny it 'cuz I don't recall the meeting. I know
4 that I didn't represent her, so I don't know.
5 Q Well, explain how that would work, assuming that Charles
6 Rice and you were together. How would that work where Mr.
7 Rice would try to secure clients for you?
8 A It didn't work that way. I don't even recall the meeting,
9 so I can't even opine as to what you're talking about.
10 Q Now, let's turn -- these notes that are in evidence, we
11 went over today, they're your only notes that you claim
12 exist in this file.
13 A They're the only notes I --
14 Q Have we established that?
15 A I think we did.
16 Q Okay.
17 A At least the ones that I have.
18 Q And, also, you don't know where you got this information
19 from either, do you?
20 A I got most of the information from Dion when -- at the
21 house.
22 Q Well, let's start with the first one, Dorothy Dickerson.
23 You think that Dion told you his mother's name was Dorothy
24 Dickerson.
25 A Probably not.

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1 Q So probably that you got your information through the two
2 young ladies that we saw in this courtroom, Ms. Hatchett,
3 and -- I for -- I apologize, the other young woman.
4 A Ms. Lawrence.
5 Q Ms. Lawrence. Is it possible that those two ladies are
6 the ladies who you got this information?
7 A No, because I never met Ms. Lawrence until I went to the
8 house.
9 Q And is it possible that Ms. Lawrence and Ms. Hatchett were
10 in the same position as Mr. Rice when he called Dorothy
11 and said why don't you have -- why don't you have Mr.
12 Sherbow represent you. Is it possible they're in the same
13 position where you --
14 A I don't know what you mean by position because Dorothy
15 never called me. I met Dorothy at the house. Jennifer
16 called me, and she's the one who said she talked to Dion,
17 and that's how I got the number, and how the contact was
18 made.
19 Q Would it be a fair statement to say that Jennifer -- that
20 you thought Jennifer could provide you access to this
21 family that you didn't know?
22 A Well, I knew the family in terms of Charles, but she gave
23 me the phone number for Dion, yes, and gave Dion my phone
24 number, I believe.
25 Q So you were using Ms. Hatchett as an access to the family.

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1 A I don't know if "using" would be a right word.
2 Q Now, when -- assuming that it took place with Dorothy, and
3 Dorothy was called by Mr. Rice, it appears Mr. Sherbow
4 would like to be your lawyer in your car accident. Did
5 she have a right to say yes or no?
6 A Who, Dorothy?
7 Q Yeah.
8 A Dorothy who?
9 Q Dixon -- Dixon, not Dickerson, Dixon.
10 A And not Dorothy Lawrence.
11 Q No, did Dorothy Dixon have a right to tell you no when --
12 A When?
13 Q When she told you no.
14 A Dorothy Dixon never told me no.
15 Q So you're claiming now you do remember or you --
16 A What -- what are you tryin' -- If you're talking about the
17 12 accident --
18 Q No, I'm talking about the one before where you met her
19 with Mr. Rice.
20 A I don't remember that. I don't know --
21 THE COURT: Mr. Fieger, just a second. Mr.
22 Fieger, he's already testified a couple of times, he
23 doesn't remember meeting her, so let's not continue to
24 beat that horse, please.
25 BY MR. FIEGER:

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1 Q If you've never spoken to a client, and you never met
2 them, how do they tell you yes or not that they want you
3 to be their lawyer?
4 A I don't understand your question. You were talking about
5 the 2012 accident, not anything previous to that.
6 Q I didn't ask you eith -- any of that. I'm asking you if
7 you've never met a client, if you've never spoken to a
8 person, how do you have any right to do anything with
9 them?
10 A I -- I guess -- I just don't understand your question, Mr.
11 Fieger. I'm sorry.
12 Q You're claiming six hundred -- you're -- that you're
13 entitled to $600,000 from my firm for, quote, unquote,
14 "referring people you never met or talked to." How did
15 you get that right?
16 A Because through Jennifer Hatchett, and then through Dion
17 Rice, I worked with Mr. Danzig and helped facilitate Mr.
18 Hill, Dorothy Dixon, and Mervie Rice to your office for a
19 meeting on July 26 by helping that facilitation and that
20 referral and meeting with Dion, and meeting with his
21 family, that's how.
22 Q If the facts in this case are -- Mervie Rice had nothing
23 to do with you. She called me and my firm on her own when
24 she -- 'cuz she knows my reputation. What's your response
25 to that?

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1 A I think you're mistaken.
2 Q If Dion Rice's position was that he had called my firm,
3 and he wanted Fieger to be his lawyer, what's your
4 response to that?
5 A I think he's being urged 'cuz that's not what happened.
6 Q If Phil Hill says he didn't meet you, he doesn't know you,
7 and he called my firm on August 1 to be his lawyer, what's
8 your response to that?
9 A I would agree. I never met Mr. Hill, but he spoke with
10 Mr. Danzig because he was supposed to be at the meeting
11 July 26.
12 Q So your entire case is two letters that Mr. Danzig wrote
13 to you promising you money from my firm for clients you
14 never spoke to or met, that's your case.
15 A That's not true, Mr. Fieger.
16 Q Okay, let's look at this here, this information. We've
17 got Dion Rice's -- says here -- is there any phone number
18 for Mervie? Have we established there's no phone number
19 for Mervie here?
20 A I wouldn't know. I don't think there's a phone number for
21 Mervie.
22 Q Okay, I don't wanna' go through it all. Have we
23 established there's no phone number for Phil?
24 A I would imagine there's no number for Phil.
25 Q Okay, I don't see any phone number for Dorothy, do you?

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A Dorothy was in Ohio, no, there's no phone number.
Q Okay.
A I have her address there somewhere on one of the sheets. Oh, in the right-hand lower corner.
Q Okay.
A And her policy information from her car insurance and her car title stuff.
Q Uh-hmm, okay, well, here's another page. We went through this in your direct examination. I don't see any phone numbers here. You have Charlie and Dorothy with some birth dates, and Dion birthdates, do you see that?
A Yes, sir.
Q And then here's the third page. You have Charles' address in Farmington Hills, is that correct?
A Yes, sir.
Q I don't see any phone numbers here. And here's the fourth page. You have Dorothy, Montgomery County, Ohio, is that right?
A That's what it says.
Q Miami Valley Hospital. Is that what you have?
A That's what it says.
Q Next, Cassandra Fuller, who is that?
A Think she was from the nursing ho -- or the funeral home in Ohio.

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1 Q Okay, and next -- the last page you have Dion again. Do
2 you see that?
3 A Yes, sir.
4 Q You have his number written there on the last page. You
5 have his number written here again. Why?
6 A I can't tell you why it's twice.
7 Q Where are the facts of the accident since you were working
8 so feverishly about this case, and working it up, where
9 are any of the facts of the accident on any of these six
10 pages about what actually happened?
11 A I didn't have to write the facts down. They told me what
12 happened.
13 Q So you're claiming, as a lawyer, who's they?
14 A When I talked to Dion, and I -- I was advised as to what
15 happened, there was media on the internet that we had
16 gotten, that I had gotten or I had looked at.
17 Q So you're claiming you don't have to write facts down
18 about a case.
19 A Well, I didn't because, really, Mr. Danzig was because I
20 referred the case to Mr. Danzig to investigate.
21 Q Actually, this'll be -- if you had read a case in the
22 newspaper, you could take their names and send it to Mr.
23 Danzig, said go do -- go get 'em, and he'd owe you the
24 money, right?
25 A Are you talking about this case?

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1 Q Any case.
2 A I guess anything's possible, but that's not what happened
3 here.
4 Q And here, in the final page, she became Dorothy Dickerson
5 again. What was that?
6 A Is that a question?
7 Q Yes, how did she become Dorothy Dickerson again? I mean,
8 now, this is the fifth page.
9 A She only was Dorothy Dixon, Dorothy Dickerson. At the
10 time it was hard to comprehend what her name was, and it
11 ended up being Dorothy Dixon. It's okay. I don't have an
12 issue.
13 Q Here is your deposition then. You didn't have her number,
14 did you; you didn't have anybody's number except -- except
15 Dion's right?
16 A That's true.
17 Q Turn to page 31, line 23.
18 "Question: Did Mr. Danzig inform you that prior
19 to that date," that was the -- I think it's referring
20 the 26th meeting -- "Ms. Rice had contacted our
21 office and asked us to represent her.
22 Answer: I don't think that happened because I
23 gave Danzig the phone numbers, and he called her.
24 Question: Did he?
25 Answer: I don't know.

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1 Question: I'm not asking what you think
2 happened.
3 Answer: I know what happened.
4 Question: I'm asking you whether he told you at
5 any time during that meeting that Ms. Rice had
6 already contacted our office to retain us?
7 ANSWER: No, he told me he had contacted Ms.
8 Rice based on the phone numbers that I had given
9 him."
10 You didn't have Ms. Rice's number.
11 A That's true. I had Mr. Dion Rice's number.
12 Q So how did he contact Mervie -- I asked you about Mervie.
13 You told him you -- that question refers to Mervie Rice.
14 How did Danzig end up calling Mervie Rice, and you said I
15 gave him Mervie Rice's number.
16 A That's not what I said here. I said based on the phone
17 numbers I gave him that I had, and then he said he
18 followed up, and got the number for Ms. Rice. This doesn't
19 say I gave Mervie Rice's number.
20 Q Quote, "I don't think that's what happened because I gave
21 Danzig the phone numbers, and he called her." That was
22 Mervie Rice I was referring to.
23 A Well, but the ques -- then you didn't ask the right
24 question. I said -- my answer was -- well, my answer was

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1 I gave you the phone numbers then he went and got Mervie
2 Rice. I didn't have Mervie Rice's number.
3 Q So you're claim --
4 A Even if that's what it says.
5 Q So you're claiming that Mr. Danzig, in my office, without
6 a client ever speaking to you, calling you, picked up a
7 phone and solicited Mrs. Rice, Mervie Rice, he solicited
8 her?
9 A I don't think that's solicitation. I had contact with the
10 family.
11 MR. FIEGER: I have no further questions.
12 THE COURT: Redirect?
13 MR. JANKS: I would just like to be clear, Mr.
14 Sherbow. What is your understanding of exactly what cases
15 you referred to the Fieger office, and how is it that you
16 referred them there?
17 MR. FIEGER: Objection, that just calls for a
18 narrative.
19 THE COURT: I'll allow it.
20 THE WITNESS: On Friday, July 13, I got the
21 phone call from Jennifer, Jennifer Hatchett, the lady that
22 was here today. From that conversation, she told me she
23 wanted Dion had said I wanna' talk to my dad's lawyer.
24 He's trustworthy. I wanna' talk to him. On Saturday, I
25 ended up finally hookin' up with Dion by telephone because

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1 of all the hectic things that were going on. We had some
2 conversations. I kept in touch with them during the week.
3 I went to Virginia Park which is where they were staying
4 that week until the house burned down on the 27th of July.
5 I met with Dion and Dorothy Lawrence, the other lady that
6 was here. Dion and I spoke about his dad and his mom, and
7 the significant injuries that they had. I said I have a
8 friend, Jeff Danzig is my friend. He's a competent --
9 competent lawyer, works for a big law firm. I said I will
10 get you to Geoffrey Fieger's office, and my buddy, Jeff
11 Danzig, they have the wherewithal and the means to support
12 his lawsuit. I put -- I didn't have the finances or the
13 ability to go do that kind of stuff. I followed up with
14 Dion. I gave the information to Danzig. I -- I mean,
15 really, you have to have some --
16 THE COURT: You've answered the question, thank
17 you.
18 THE WITNESS: I'm trying. You have to have --
19 THE COURT: You answered the question, thank you.
20 THE WITNESS: Oh.
21 THE COURT: Go ahead.
22 THE WITNESS: Okay.
23 THE COURT: Thank you.
24 THE WITNESS: Yes, sir.
25 THE COURT: Go ahead.

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1 MR. JANKS: So what case did -- what cases --
2 case or cases did you refer to the Fieger firm?
3 MR. FIEGER: Asked and answered, Judge.
4 THE COURT: It's been asked a few times. I
5 mean, but I'll allow it one more time.
6 THE WITNESS: I took Dion and met Mervie. I gave
7 Danzig the information on Dion. He followed up with
8 Mervie. He followed up with Phillip Hill. Dorothy Dixon
9 was in a coma in Ohio. Dion was the son of Dorothy Dixon,
10 and signed papers on behalf of his mom. Dion was there on
11 behalf of his dad, so I believe that I directly brought in
12 Dorothy Dixon and Charles Rice. Through the contact, and
13 through Danzig's efforts, he contacted Mervie Rice, and he
14 contacted Phillip Hill. I've never denied I never met
15 Phil Hill. I never denied that I didn't meet Mervie Rice
16 for the first time when we signed up those cases. Never
17 denied that. But as a referring lawyer in our state,
18 that's what we do. I gave Danzig the information for
19 Mervie and for Phillip, I brought in Dion, so that's how I
20 feel I should get a referral fee on all four. That's why.
21 MR. JANKS: Thank you.
22 THE COURT: Mr. Fieger, anything else?
23 MR. FIEGER: Nothing, your Honor.
24 THE COURT: Jurors have any questions? Okay,
25 thank you, Mr. Sherbow, you can step down.

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1 THE WITNESS: Thank you, your Honor.
2 (Witness excused at 2:11 p.m.)
3 THE COURT: Do you have another witness for us?
4 MR. JANKS: We would bring Mr. Danzig back.
5 THE COURT: Okay. Good afternoon, Mr. Danzig.
6 MR. DANZIG: Good afternoon, your Honor.
7 THE COURT: We're gonna' ask you to be re-sworn.
8 It's a new day.
9 THE CLERK: Please raise your right hand. Do
10 you swear or affirm to tell the truth, the whole truth,
11 and nothing but the truth?
12 MR. DANZIG: I do.
13 THE COURT: Okay. Again, please state and spell
14 both your first and last names for the record.
15 THE WITNESS: Jeffrey Alan Danzig, J-E-F-F-R-E-
16 Y, D-A-N-Z-I-G.
17 THE COURT: Thank you.
18 THE WITNESS: Thank you, your Honor.
19 RECROSS-EXAMINATION
20 BY MR. FIEGER:
21 Q Mr. Danzig, here's your deposition. I just have a couple
22 more questions.
23 A Okay.
24 Q There you go.
25 A Thank you.

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Q I thought we established the other day. I apologize. There was some question. I'm gonna' hand you proposed exhibit L. Do you see that? Do you -- what do we call this at our office, these telephone message notes?

A Yeah, it's a message pad that comes from the front desk, from Jeannine, typically.

Q All right, correct. And do you see, on exhibit L, Mervie Rice, 3-1-3-2-9-2-8-3-7-2?

A I see the message on the bottom of the sheet.

Q And I thought we agreed yesterday that you had no dispute that she called our office.

A I don't think we talked about that yesterday, not to my knowledge.

Q Are you disputing she called our office?

A No, I'm just saying she didn't -- we didn't talk about that yesterday.

Q Okay, that's fair enough.

A So if you wanna' ask me that, I'll certainly answer. Are you asking me a question now?

Q Yeah, does that say she called our office?

A It says that she called the office, but it looks unusual to me.

Q Okay.

A Would you like me to explain?

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1 MR. FIEGER: No, I move for admission, your
2 Honor.
3 THE COURT: Of exhibit L?
4 MR. FIEGER: Yeah.
5 THE COURT: Any objection?
6 MR. JANKS: Yes, we already ruled that it was
7 out, and that there's no foundation. Mr. Giroux testified
8 about it, that it didn't have the hallmarks of a message
9 from the front desk.
10 MR. FIEGER: Judge, this is not a fraud. This is
11 a message, and he identified it.
12 THE COURT: Just a minute. You know, I'm gonna'
13 tell you again, don't testify.
14 MR. FIEGER: Okay.
15 THE COURT: You're the lawyer. Do you recognize
16 this document, sir?
17 THE WITNESS: I recognize it as a message pad.
18 It doesn't have the hallmarks of a message from the front
19 desk. It does not.
20 MR. FIEGER: That goes to weight.
21 MR. JANKS: It -- it goes to foundation and
22 admissibility.
23 THE COURT: It goes to foun -- yeah, I think it
24 does. I think it's out. It's not in, sorry.
25 BY MR. FIEGER:

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1 Q And on that very same date that we were just talking
2 about, there is also an intake form that was admitted that
3 you acknowledged, 7/12 at 1:55, the very time of that
4 message, did you know that?
5 A I --
6 MR. JANKS: Well, I'd have to object to that.
7 He's talking about a message that's not in evidence, and
8 also doesn't have a time on it.
9 THE COURT: I told you not to testify, Mr.
10 Fieger, please.
11 BY MR. FIEGER:
12 Q Do you think it's a coincidence that there's a call here
13 from Mervie Rice at 1:55 that she called our office on the
14 17th of July. Do you think that's a coincidence?
15 A That's not what I testified to, yesterday.
16 Q I didn't ask you that. Do you think that's a coincidence?
17 A Well, there's no time on this message, so you're asking me
18 to link up this message with that information, and it's --
19 there's no link there. There's no time on this message.
20 MR. FIEGER: There is a date on that.
21 THE COURT: You know what, I'm gonna' make it
22 easier. I'll allow exhibit L in, and the jury can give
23 whatever weight it wants, and you guys can go talk about
24 it all afternoon.
25 MR. FIEGER: Thank you.

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1 THE COURT: Be my guest.
2 (Defendant's L admitted at 2:15 p.m.)
3 MR. FIEGER: Assuming that message -- and the
4 procedure in our office, Mr. Danzig --
5 THE COURT: Don't testify.
6 MR. FIEGER: Excuse me.
7 BY MR. FIEGER:
8 Q Is the procedure in our office, Mr. Danzig, that a call
9 goes from the receptionist who logs it to the intake
10 department who starts typing it up, is that the general
11 procedure?
12 A That's the general procedure.
13 Q Okay, so if this case followed the general procedure, a
14 call from Mervie Rice would come in through the
15 switchboard, it would be logged by one of our
16 receptionists, the call would then be transferred to our
17 intake department who would begin writing up this
18 document, isn't that true?
19 A Well, that would be me, and according to my testimony
20 yesterday, that's not what happened.
21 Q Did you claim yesterday that there -- Mervie Rice did not
22 call our office?
23 A I did not know that she called my office or your office.
24 I didn't know that. When -- on July 17 when I wrote up

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1 that mess -- that note, intake, I hadn't spoken to her. I
2 did not know that she called.
3 Q So --
4 A I have no way of knowing that.
5 Q This information, date of call, 1:55.
6 A That's the date? As I explained yesterday, that's the
7 time and the date that I am logging in information in my
8 conversation with Mr. Sherbow. That was my testimony.
9 MR. FIEGER: And under the procedure of our
10 office, that date and time is logged in -- is logged in --
11 is logged in --
12 THE COURT: Don't testify.
13 BY MR. FIEGER:
14 Q Is it not true that that date and time is logged in first
15 when the call is received in our intake department. Strike
16 that. We don't use these records to do -- just take
17 notes. We -- there is a procedure in my law office is
18 there not as to how and the manner in which these forms
19 are to be filled out, isn't that true?
20 A Well, it's not one procedure. It depends on who's logging
21 in the information, the circumstances of how the
22 information is coming in. Information comes into the firm
23 in a number of different ways, not just through the
24 switchboard.

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1 Q It never comes into the intake department on this form
2 unless it's logged in under the procedures that we
3 followed, is that true?
4 A No.
5 Q And as a matter of fact, Mervie Rice called into our
6 office, didn't she?
7 A I already told you, I didn't know that.
8 Q Do you claim you called her?
9 A The next day on the 18th.
10 Q On the 18th.
11 A Correct.
12 Q What -- why -- the next day from what, the next day from
13 this?
14 A Correct, that's the next intake sheet that I explained
15 yesterday that's dated the 18th where I called her, and
16 got supplemental information, and put that on the second
17 intake sheet. That was my testimony yesterday.
18 Q Mr. Danzig, this is the same sheet, 7/17, 1:55. There
19 wasn't a second call, and put on this sheet, was there?
20 A I'm looking at the top left corner. It says, "July 18."
21 That's the date in which that information was placed on
22 that sheet by me in my conversation with Mervie Rice on
23 that date, actual.
24 Q Actual.

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1 A And -- and I can expound on that because the phone number
2 that I was calling -- if you look at the sheet on the 17th
3 -- the phone number that I was calling that's logged in on
4 the 17th is a number that I could not reach her on. The
5 number that's on there, that's not handwritten. You see
6 the number that says the cell phone number next to Mervie
7 Rice. That's was added by me in my hand -- that's my
8 handwriting there -- based upon information that I got
9 from Jeff Sherbow when I couldn't reach Mervie Rice on the
10 17th. I finally got a second phone number for her, and
11 reached her on the 18th with that cell phone number.
12 Q You got confused, Mr. Danzig. This is the form from the
13 17th.
14 A That's the 17th, correct. I added that --
15 Q You said -- you said you got --
16 A I added that to the sheet.
17 Q -- a cell phone --
18 A I'm -- I'm not confused in any way, Mr. Fieger. I added
19 that handwritten information on the 18th when I got that
20 information from Mr. Sherbow 'cuz I couldn't reach her on
21 the 17th. When I got the information from Mr. Sherbow on
22 the 17th, I tried calling Mervie Rice. My job was to get
23 her on the phone, communicate with her, and see if I could
24 be of assistance to her in this case.

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1 Q As a matter of fact, you didn't add that information on
2 the 18th. You wrote, and altered the form on the 18th,
3 isn't that true?
4 A I completely disagree.
5 Q And you -- on the 18th, you added Charles Rice is known as
6 Big Charles and is a former client, and friend of
7 Sherbow's, the referring attorney. You added that, didn't
8 you, on the 18th?
9 A It was a new or supplemental intake sheet on the 18th.
10 That's what I testified to yesterday.
11 Q Where'd you get her number?
12 A I got it from Mr. Sherbow who got it from Dion, Dion Rice.
13 Q I want you to assume that Mr. Sherbow just testified he
14 never had Mervie Rice's number. How did he ge -- just
15 less than ten minutes ago. Would you please tell the
16 Court and jury, assuming Mr. Sherbow just testified he
17 never had Mervie Rice's number, how did you get it?
18 A I got all my information from Mr. Sherbow. I don't know
19 how Mr. Sherbow actually got the information, but that's
20 where I got all the information. I didn't dream anything
21 up that came onto those sheets. I got it from the sources
22 that were calling me to ask me to pursue the case. I
23 didn't dream it up.
24 Q And I thought this is in evidence, but it may not. This
25 is the intake summary for Charles Rice.

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1 A It says, "Phillip Hill."
2 MR. FIEGER: Phillip Hill, excuse me.
3 MR. JANKS: Well, Judge, I'm not sure how we'd
4 publish it until it's admitted, and it's not admitted.
5 THE COURT: Okay.
6 MR. FIEGER: Do you recognize that?
7 THE COURT: Let's not -- let's not put it up
8 until we get it admitted.
9 BY MR. FIEGER:
10 Q Exhibit CC, do you recognize that?
11 A I don't have anything in front of me to look at, Mr.
12 Fieger.
13 THE COURT: (Indiscernible).
14 THE WITNESS: Thank you, Mr. Fieger. Thank you.
15 BY MR. FIEGER:
16 Q Do you recognize it?
17 A Are you asking me if I recognize it as an intake sheet or
18 something that I did?
19 Q No, it's an intake sheet from our office, isn't it.
20 A It's an intake sheet from your office.
21 MR. FIEGER: Thank you, I'd move for admission
22 of exhibit CC, your Honor.
23 THE COURT: Any objection?
24 MR. JANKS: Yes, Judge, objection. There's no
25 foundation that it's an intake sheet contemporaneous in

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1 time with July 2012 or August 2012 which is the date of
2 issue. And in fact, on the sheet itself, it says it's
3 from January 6, 2016. It also has initials on it as
4 somebody other than Mr. Danzig doing the inputting of it.
5 THE COURT: Well, now that you've discu -- openly
6 discussed everything that's on this sheet, I'll let it in,
7 and the jury can give it such weight as they deser -- they
8 believe it deserves.
9 MR. FIEGER: Thank you.
10 BY MR. FIEGER:
11 Q Now, this is the same sheet, type of sheet, that was used
12 on the 17th of July with Mervie Rice, isn't it?
13 A There's no association with Mervie Rice's intake sheet
14 whatsoever. It's dated January 6, 2016, and it's
15 generated at a time when the file is being transferred to
16 another attorney in the office much later than and longer
17 than I've departed.
18 Q First call -- excuse me, sir. I want you to assume that
19 that was printed January 6, 2016 was printed in response
20 to a document request by the Plaintiff in this case. And
21 this, the date on this is 8/1/2012, isn't that your
22 understanding of these sheets?
23 A If you look at the bottom, it'll tell you exactly what you
24 need to know. It's the intake comments that are being
25 made at this time by whoever C-D was at the time, and

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1 they're indicating a voice mail message was left, and it
2 looks like, as it says, "Mr. Hill has been assigned to R.
3 Heston's team," which is an additional comment which is
4 being generated at this time. This case was not assigned
5 or reassigned to Mr. Heston's team until long after I
6 left.
7 Q Mr. Danzig, you know very well it says there's additional
8 comments there. It says, "5/9/2014." There's a place on
9 this form for additional comments. This form was first
10 generated on 8/1/2012 as a result of a call by Mr. Hill
11 from my office -- to my office, isn't that true?
12 A No, it's not.
13 Q Are you denying that this form that they u -- did you use
14 this form 10,000 times in my office?
15 A I don't know if it's 10,000 times, but it was certainly a
16 lot.
17 Q Are you claiming that the call didn't happen on 8/1/2012,
18 is that your testimony under oath?
19 A My testimony under oath would be that if Mr. Hill called
20 in on August 1, 2012, he would have spoken to me, and I
21 never spoke to him until I met him at his apartment when I
22 went to go sign him up, whatever date that contract is. I
23 think it's August 2?
24 Q Tell --

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1 A I already had an appointment with Mr. Hill. I was talking
2 to Mr. Hill to coordinate him to meet with Mervie Rice and
3 Dion Rice at the initial meeting.
4 Q Got it. So it's your testimony --
5 A I was calling him.
6 Q -- under oath that you were contacting and calling Mr.
7 Hill to try to get him to the meeting on July 26, right?
8 A I -- I tried.
9 Q Mr. --
10 A I tried.
11 Q Do you understand that you're under oath -- do you
12 understand that you're under oath?
13 A Five minutes ago I took an oath of office. I -- I
14 certainly understand that.
15 Q Does this email from you refresh your recollection that as
16 of July 31, you hadn't ever spoken to Phillip Hill?
17 A It says, on July 31, I'm still waiting to hear about
18 Phillip Hill, who I understand is back in town. That
19 doesn't negate that I was trying to call him to set up an
20 appointment with him.
21 Q You told us just a moment ago you had been talking to him
22 the whole time. He wasn't even back in town, and you had
23 never talked to him.
24 A I didn't say that at all. I said I was attempting to call
25 him to arrange the appointment with him on the 26th. He

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1 wasn't available for that appointment, Mr. Fieger. That's
2 why he didn't show.
3 MR. FIEGER: I have no further questions.
4 THE COURT: Redirect?
5 MR. JANKS: Yes, please, Judge.
6 MR. FIEGER: Just one last question, Judge.
7 THE COURT: I get really nervous when a lawyer
8 says one last question, sit back and relax, you're gonna'
9 be here for awhile. Go ahead, Mr. Fieger.
10 BY MR. FIEGER:
11 Q If at that time --
12 A What time?
13 Q Around or about this time, I had come to you, and asked
14 you what's goin' on about this referrals with Mr. Sherbow?
15 Is this the story, the -- is this the information that you
16 would have given to me just like you've given it to us in
17 court?
18 A On July 26, the date that I told you for the very first
19 time about his referral, I communicated to you what this
20 case was all about, and that it had come from Mr. Sherbow,
21 my friend. It was very clear what I told you at that
22 time. You had no problems with it at that time. And you
23 didn't have any problems aft -- until after the result was
24 achieved. That's the first time I ever heard you had a
25 problem with this referral, Mr. Fieger.

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1 Q I lied. My second question. So you would have told me
2 that our intake sheets don't mean what they say?
3 A That's completely false.
4 MR. FIEGER: Thank you, I have no further
5 questions.
6 THE COURT: Okay.
7 REDIRECT EXAMINATION
8 BY MR. JANKS:
9 Q Here's a blowup of exhibit L. I'm not sure we can see it
10 very well because it's --
11 A I recall it.
12 Q -- what it is.
13 A I can see it from here. My distance vision is a lot
14 better than my close-up.
15 Q Okay. I think Mr. Fieger might have shown you the smaller
16 copy of it.
17 A I -- I remember -- I remember it.
18 Q Is there anything irregular about exhibit L as it might
19 relate to the Fieger intake practices?
20 A Absolutely.
21 Q Can you tell us what's irregular about it.
22 A Sure, if this message came in to the front desk, through
23 Jeannine, who's a very proficient individual, has been
24 there forever, I know exactly how she would take messages
25 'cuz I get messages from her every day for 12 1/2 years.

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1 It would have her initials on it which she puts her
2 initials on every page of the pad before she starts
3 writing the first message at the top of the pad. Her
4 initial's always there, and she times every message, and
5 she indicates information about what's it about. That's
6 missing from this message at the bottom of that page.
7 Q And -- and where would her initials be --
8 A Right there.
9 Q -- in the area that says, "by"?
10 A Right where you pointed, it would say her initials, J-A.
11 There'll be a date --
12 Q (Indiscernible).
13 A -- and there'd be a time of the call. She's very specific
14 about it.
15 Q And on this message, there's no initials, and there's no
16 time.
17 A There is none.
18 Q Also, does that phone number match up with Mervie Rice's
19 phone number that we have on the intake sheet?
20 A You'd have to show me the intake sheets again 'cuz I don't
21 remember both phone numbers that I have listed for Mervie
22 Rice. My memory's not that good.
23 Q I think we have a cell phone number --
24 A So, now, can you read me the number on the message pad.
25 Q And we have another number.

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1 A Yeah --
2 Q Okay, so the --
3 A It's not the same -- for one, there's a number missing it
4 looks like, 2-8-2 versus 2-9-2, is that right; does that
5 message pad say 2-9-2?
6 Q 2--8--2--8--3--7--2 --
7 A No, okay, fine.
8 Q -- so I think the mobile (indiscernible) --
9 A So that's the number.
10 Q -- matches --
11 A That's the number that I couldn't reach her at when I was
12 calling her on the 17th which prompted the hand-written
13 note that gave me a new phone number where I reached her
14 on the cell phone on the 18th.
15 Q And that's the 3-1-3-8-2-8-1-1-6-3 number.
16 A Correct, that's the number I reached her at the following
17 day on the 18th when I couldn't reach her on the 17th.
18 MR. JANKS: If her cell phone number was the
19 number to reach her at, is it likely that she would call
20 in to the Fieger law firm --
21 MR. FIEGER: Objection.
22 MR. JANKS: And give some different number to
23 reach her on the day before?
24 MR. FIEGER: (Indiscernible) foundation. Does
25 he have an ex --

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1 THE COURT: I'll sustain the objection.
2 BY MR. JANKS:
3 Q The writing on this blowup of exhibit L, does that appear
4 to you to be Jeannine's writing?
5 A It's not.
6 Q I just wanna' be clear on -- on the meaning of this blowup
7 of this exhibit about Phillip Hill even though you've
8 explained some things about it. Where it says date of
9 call, "8/1/2012," did Mr. Hill call the Fieger law firm
10 that day to your knowledge?
11 A Not to my knowledge.
12 Q Okay. And as it relates to the Mervie Rice intake sheet
13 where it says, "date of call 7/17/2012," did Mervie Rice
14 call the Fieger law firm on that day and that time to your
15 knowledge?
16 A I wouldn't know. The message pad that allegedly says she
17 calls is not timed, so how would I know that? I don't
18 know if she called or when she called. I have no idea.
19 MR. JANKS: The -- the other day -- well, not
20 the other day, it was this morning. Mr. -- Mr. Giroux
21 used exhibit number 68 which has been offered and
22 admitted, and if I could show it to you because I don't
23 think we dealt with it with you.
24 MR. FIEGER: Judge, this is beyond the scope,
25 and then I'll go into this.

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1 THE COURT: I'll allow it.
2 MR. FIEGER: Okay.
3 THE COURT: You can go into it on recross.
4 MR. FIEGER: Thank you.
5 BY MR. JANKS:
6 Q What's the date of that, I forget?
7 A July 18, 2012.
8 Q And that's the letter where Mr. Harrington is confirming a
9 referral fee payable to Mr. Sherbow on the Dawkins case,
10 is that right?
11 A It appears that way, yes.
12 Q So did Mr. Harrington have authority in 2012 to promise to
13 pay referral fees on cases to outside lawyers that
14 referred them in?
15 A In my mind, yes.
16 Q And that's the same authority you had?
17 A My belief, yes.
18 Q Did Mr. Giroux have that authority as well?
19 A My belief, yes.
20 MR. JANKS: Was there a requirement that Mr.
21 Fieger sign something to allow those things to happen?
22 MR. FIEGER: This was asked and answered, your
23 Honor.
24 THE COURT: I'll take an answer again.
25 THE WITNESS: Can you ask it again, please.

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1 MR. JANKS: Yes.
2 BY MR. JANKS:
3 Q Was Mr. Fieger required to sign some kind of form in order
4 for lawyers such as yourself, such as Mr. Harrington, such
5 as Mr. Giroux, to promise to pay referral fees to lawyers
6 that referred cases to Fieger law?
7 A No, this was a common, everyday practice.
8 MR. JANKS: Yesterday, when you were here, there
9 was some colloquy about you and Mr. Fieger being a little
10 bit defensive with each other or rise -- raising your
11 voices at all. Why would it be that you were -- were like
12 that?
13 MR. FIEGER: Objection, Judge.
14 THE COURT: Sustained, that's sustained.
15 MR. JANKS: Do you understand in this case, Mr.
16 Danzig, that -- that Mr. Fieger has said that you are
17 involved in a scheme or a fraud --
18 MR. FIEGER: This was asked and answered, Judge.
19 THE COURT: I'll allow it for a little while.
20 THE WITNESS: I understand that's his opinion,
21 and it hurts me greatly, and it upset me which is the
22 reason why I had a little bit of an attitude yesterday
23 because I've never been accused of such actions in 33
24 years of my career, and it upsets me when someone makes
25 such -- such accusations that are unfounded, and -- and I

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1 was upset by it, and I apologize for my attitude
2 yesterday.
3 MR. JANKS: All right thank you for your time.
4 THE COURT: Mr. Fieger, recross?
5 MR. FIEGER: Judge, whatta' I do with the last
6 statement, "I've never been accused in 32 years," is that
7 door open?
8 THE COURT: Do you have a question you wanna'
9 ask him about that?
10 MR. FIEGER: Yeah.
11 THE COURT: Go ahead.
12 MR. FIEGER: Mr. Giroux testified this morning
13 that you have been -- of manipulating referral files to
14 your friends, did you know that?
15 MR. JANKS: Objection, your Honor, that's not
16 what Mr. Giroux testified to at all, so we're assuming
17 facts not in evidence.
18 THE COURT: Well, but Mr. Giroux did indicate
19 that there was concerns raised about Mr. Danzig referring
20 files to his friends. Let's use that language.
21 MR. FIEGER: Okay, there were complaints about
22 you, and how you --
23 THE COURT: I said let's use the word, concerns.
24 MR. FIEGER: Concerns.
25 THE COURT: Thank you.

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1 THE WITNESS: There was one raised by you before
2 I ever became your partner. You accused me of something,
3 wrongdoing in the office. I asked you for evidence of it.
4 You couldn't give me any evidence of it, and I
5 subsequently became your partner.
6 RECROSS-EXAMINATION
7 BY MR. FIEGER:
8 Q Arnold -- Arnold Matoose (ph).
9 A He was the -- he was the protagonist in that adventure
10 because he was jealous that he wasn't getting good cases
11 from the committee. You accepted that version, came to me
12 and accused me of wrongdoing. I asked you for the
13 evidence of such wrongdoing. You showed me nothing of the
14 sort. You then went away, and, subsequently, asked me to
15 be your partner which told me a lot about the accusation
16 in substance.
17 THE COURT: And that's enough of as the world
18 turns in the Fieger firm. Let's move on.
19 MR. FIEGER: Can I move for admission of the
20 email from you, Mr. Danzig.
21 THE COURT: Which email?
22 MR. FIEGER: July 31, "Still waiting to hear
23 about Phil Hill who I understand is out of town."
24 THE COURT: Is that a marked exhibit in your
25 book at this point?

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1 MR. FIEGER: No.
2 THE COURT: Have you shown it to Mr. --
3 MR. FIEGER: What's the exhibit number
4 (indiscernible)?
5 MR. JANKS: No, never seen it, Judge.
6 Mr. Fieger discusses exhibit with other staff
7 members present.)
8 MR. FIEGER: What -- what -- where was the last
9 one, your Honor?
10 THE COURT: In yours, Mr. Fieger?
11 MR. FIEGER: Yeah. I think we marked --
12 THE COURT: I think you have W-W-W-W. No, that
13 was a radio station.
14 MR. FIEGER: Okay, so would it be Y-Y-Y?
15 THE COURT: Isn't that why we're here today?
16 MR. FIEGER: Uh-huh. Y-Y-Y.
17 THE COURT: It's Y-Y.
18 MR. FIEGER: Y-Y, okay. And then --
19 THE COURT: Do you have a copy for Mr. Janks?
20 MR. FIEGER: Yes, I do, your Honor.
21 THE COURT: Okay.
22 MR. FIEGER: Next --
23 THE COURT: Why don't you show the -- the
24 witness the exhibit, see if he can identify it so that we
25 can figure out if we're getting it in or not.

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1 MR. FIEGER: I'm sorry, your Honor?
2 THE COURT: Show the witness the exhibit if
3 we're gonna' try to put it in.
4 MR. FIEGER: I thought he did. He -- he
5 identified it earlier. I just forgot to ask him to put it
6 in.
7 THE COURT: Oh, did you identify --
8 THE WITNESS: I did.
9 THE COURT: All right, I'm sorry. All right,
10 any objection to YY?
11 MR. JANKS: Just reading it now, Judge, sorry,
12 just got it. No, no objection, Judge.
13 THE COURT: All right, YY is received.
14 (Defendant's YY admitted at 2:38 p.m.)
15 BY MR. FIEGER:
16 Q Here is proposed exhibit M, two more pages from the
17 receptionist's journal. Take a look at those, Mr. Danzig.
18 Those are different dates. Those would be July 25 and
19 July 30.
20 A There are no dates on these, Mr. Fieger.
21 Q Oh, yeah, there are.
22 A Oh, show me, please. On the da -- on the ones that you're
23 look -- asking me to look at?
24 Q There's three on each one.

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A Yes, sir, but, obviously, two of three don't pertain, right?

Q I'm just asking you to look at them, and see if there's two more pages of my -- of our receptionist's notes --

A Okay.

Q Okay?

A We've got M.

Q Okay.

A It looks like they're both marked M.

Q Two pages.

A Okay, two pages.

Q Okay.

A So the first one starts with an Angel --

Q No, we -- we don't need to say the names other than -- Mr. Sherbow's name is on one of them, isn't it?

A There is.

Q Okay.

A A message from, allegedly, Mr. Sherbow with no other information, date, time or anything on it.

Q Right.

A Okay, is that what you want me to attest to?

Q Right, how did that get there?

A How would I know?

Q Well, you're not claiming that somehow --

A I don't work at the front desk.

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1 Q -- in our system, receptionists don't write down names
2 without times are you? I thought that's what you did.
3 A I'm suggesting to you that there's no initials, date or
4 time on this message just like there wasn't on the last
5 one I was shown. If you're asking me another question,
6 please let me know.
7 Q Mr. Danzig, look at the second page. They're all
8 connected, aren't they?
9 A Whatta' you mean, they're all connected?
10 Q They're three messages --
11 A There's different dates on these.
12 MR. FIEGER: -- all connected on one page, all
13 connected with one another, aren't there?
14 MR. JANKS: Aren't we beyond the scope now,
15 Judge?
16 THE COURT: Well, I'm tryin' to figure out what
17 we're doing here.
18 THE WITNESS: So am I.
19 THE COURT: I mean, first of all, the exhibit
20 hasn't been admitted, and we're asking all kinds of
21 questions about it. No one's objected to it, but are you
22 moving its admission?
23 MR. FIEGER: Well, let me ask this
24 preliminarily.
25 BY MR. FIEGER:

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1 Q They leave off dates or times all the time on our message
2 pads, don't they?
3 A Well, on most of these messages, it has Jeannine's
4 initials. I recognize her writing. It had dates on some
5 of them. Did not dates on others. Time is missing. So
6 they're all not uniform in their taking of messages.
7 MR. JANKS: Judge, what --
8 BY MR. FIEGER:
9 Q That doesn't make them not reliable, does it?
10 A I -- I don't know what you're asking me. Are these
11 messages reliable? They look like messages. I don't know
12 whether they're reliable or not.
13 Q From our firm.
14 A Do I know that these messages came in from the front desk?
15 The only thing that would tell me that is Jeannine's
16 initials on the ones that have Jeannine's initials.
17 MR. FIEGER: Thank you. I move for admission,
18 your Honor.
19 THE COURT: Any objection?
20 MR. JANKS: Yes, Judge, I don't believe that
21 they're relevant, and I don't believe a foundation has
22 been established.
23 THE COURT: I'll allow them. I think they're
24 relevant.
25 BY MR. FIEGER:

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1 Q Finally, Mr. Danzig, they asked you to take a look at a
2 letter from Mr. Harrington to Mr. Sherbow.
3 A I'm looking at it.
4 Q That's in evidence, right?
5 A I'm looking at it.
6 Q That's a case in which Shawnta Dawkins' (ph) daughter,
7 Tierra Frazier (ph), was injured, isn't it?
8 A I don't know much about the case. I told you yesterday I
9 didn't write up this case. It wasn't assigned to me. I
10 didn't handle the case. If you're asking me whether or
11 not it appears that a couple of minors are involved here,
12 I would say yes.
13 MR. FIEGER: And I want you to assume for the
14 purpose of this question that Shawntay (ph), Shawnta (ph)
15 Dawkins called our firm --
16 MR. JANKS: Objection, Mr. Fieger's testifying
17 again.
18 MR. FIEGER: I'm not, I'm asking -- it'll --
19 I'll tie it up.
20 MR. JANKS: There's also been a ruling by the
21 Court as it relates to this matter, and there was the
22 limited issue of this letter and Mr. Giroux being able to
23 promise to pay referral fees --
24 MR. FIEGER: What?

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1 MR. JANKS: -- and -- and that's it. That's all
2 there is.
3 THE COURT: Well, the letter's in evidence. I'll
4 allow some questions about it.
5 MR. FIEGER: Thank you, your Honor.
6 THE COURT: Go ahead.
7 BY MR. FIEGER:
8 Q This call came into our office, documented, written up in
9 a -- but were you aware that it was signed by the --
10 assigned by the committee to James Harrington?
11 A I testified to that yesterday.
12 Q That's what I thought you did. And do you know that James
13 Harrington went out to Shawntay (ph) Dawkins' daughter's
14 hospital bed and the family was there, and they signed her
15 up?
16 A I testified to that yesterday.
17 Q Okay, and are you aware that when he came back to the
18 office after signing her up, you called him into his
19 office, your office, and told him to give Mr. Sherbow a
20 one-third referral fee.
21 A I denied that yesterday.
22 Q And that is why he sent you on your -- be -- on a case
23 that you have nothing to do with, that's why your name is
24 cc'd on a case you have nothing to do with because you

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1 called him into your office, and told him to give a
2 referral fee on a case that Mr. Sherbow didn't refer.
3 A Not true.
4 Q And you didn't tell me. Isn't it true that you never told
5 me that you were giving Mr. Sherbow a referral fee on a
6 case that he didn't refer?
7 A Well, if the first part wasn't true, how could the second
8 part be true? It's complete fabrication on your part. It
9 didn't happen that way at all.
10 MR. FIEGER: I have no further questions.
11 REDIRECT EXAMINATION
12 BY MR. JANKS:
13 Q Mr. Danzig, did you ever see the contingent fee agreement
14 that Mr. Sherbow had with Ms. Dawkins that pre-existed the
15 Fieger firm trying to also get the Dawkins' case?
16 A No.
17 Q Did you understand that Mr. Sherbow in fact had a signed
18 referral free (ph) with Ms. Dawkins prior to Mr.
19 Harrington going to the hospital to try to sign up the
20 case?
21 A That was my understanding, and my concern was over that
22 which I expressed to Mr. Harrington.
23 MR. JANKS: Thank you.
24 THE COURT: Jurors have any questions? Okay,
25 thank you, Mr. Danzig, you can be excused.

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1 (Witness excused at 2:44 p.m.)
2 THE COURT: We're gonna' take a ten-minute break
3 at this point. Oh, just as second, I'm sorry, go ahead.
4 Mr. Danzig, you're excused.
5 MR. FIEGER: Thank you -- thank you.
6 THE COURT: Do you have any other witnesses?
7 MR. JANKS: No, no other witnesses, your Honor.
8 THE COURT: Plaintiff rests?
9 MR. JANKS: Plaintiff rests.
10 THE COURT: Do we have matters we have to take
11 up outside the province of the jury, Mr. Fieger?
12 MR. FIEGER: Yes.
13 THE COURT: Okay, ladies and gentlemen, I'm
14 gonna' excuse you for a few minutes.
15 THE CLERK: All rise for the jury.
16 (Jury out at 2:45 p.m.; court in recess.)
17 (Court in session at 2:59 p.m.)
18 THE CLERK: All rise. The Oakland County
19 Circuit Court is now in session, the Honorable James M.
20 Alexander, presiding. Now calling Sherbow v Fieger &
21 Fieger, 2015-147488-CB.
22 MR. JANKS: Greg Janks, for the Plaintiff.
23 MR. FIEGER: Geoffrey Fieger, your Honor, for
24 the Defendant.

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1 THE COURT: Okay, Mr. Fieger, you gotta' motion?
2 You all can be seated.
3 MR. FIEGER: Yes, do you have the copy of the
4 motion I filed earlier in the week?
5 THE COURT: I do, I've read it, 'cuz --
6 MR. FIEGER: You did. Okay.
7 THE COURT: -- I (indiscernible) motions that
8 are filed the day before trial -- but go ahead.
9 MR. FIEGER: Okay. Now asking this Court at
10 this time to put an end to what's been going on to me and
11 my firm for the last two years by the Plaintiff in this
12 case. We have a case where the Plaintiff has attempted to
13 apparently gloss over all known rules of law, and by that
14 I mean as follows: First of all, this is obviously a case,
15 was there a referral, and the Defendant claims, I guess,
16 bizarrely, that he can litigate a case in which an
17 attorney doesn't even know, has not met, and can claim a
18 referral, and -- and subst -- su -- sufficient so that
19 proofs go to the jury on that issue, and that's -- that's
20 truly bizarre.
21 Also, this is a contract case. Before you ever
22 get to the issue of whether apparent authority exists is -
23 - is there a contract, is there consideration, is there a
24 bargain for exchange, is there consideration, and then if
25 there is there's a deal. And then, of course, would the

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1 agent have the apparent authority to enter into that
2 contract which is a sub-issue of the contract case.
3 And then, finally, and most importantly, were
4 the Defendant completely ignores the law is the
5 requirement that in order to prevail in this case, they
6 must comply with the requirements of rule 1.5(e). And it
7 has gotten so bizarre that the only way I can respond to
8 this, and -- and make the argument is to read to you what
9 Mr. Janks filed with this court to ask you to instruct the
10 jury about what the law is.
11 It is not required, he says, that the client
12 affirmatively express his agreement. In -- in other
13 words, Mr. Janks has always known that the clients have
14 said we didn't -- nobody explained anything to us. And
15 that, by the way, is supported by Jody Lipton, who was in
16 the meeting, and Mr. Linden.
17 But the clients, Mervie Rice said you didn't say
18 anything to us about a referral fee, and we didn't agree
19 to one. We didn't then, and we don't now.
20 THE COURT: Okay, this is a motion for directed
21 verdict.
22 MR. FIEGER: I understand.
23 THE COURT: A motion for directed verdict is
24 based on the evidence that was presented. I haven't heard

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1 from Jody Lipton, and I haven't heard from Mervie Rice, so
2 I don't --
3 MR. FIEGER: That's fair.
4 THE COURT: -- know. All I know -- all I know
5 is right now the evidence is that two members of your law
6 firm came in and said they'd agreed to pay him a referral.
7 MR. FIEGER: That's fair.
8 THE COURT: That's where we are right now.
9 MR. FIEGER: In the light most favorable to the
10 non-moving party, the Defendant -- the Plaintiff has
11 absolutely failed in the proofs required under 1.5(e).
12 Now, 1.5(e) says -- and -- and we all know what
13 it says -- but it actually has been applied in cases. It
14 was a ca -- it was applied by -- in the Kazinski (ph) case
15 by Judge Zerose (ph) on the Supreme Court, Judge Hood, and
16 Judge Murphy. They addressed this very issue in the case,
17 and they said as follows: "We do not agree that the
18 minimal evidence," and here there is zero evidence, "that
19 the contemporaneous," agreement -- "argument regarding the
20 circumstances equates to a showing of Camilari's (ph)
21 understanding of and agreement to an otherwise unspoken
22 division of fees."
23 Then they go on to say: "Because no material
24 question of fact exists regarding the compliance with the
25 requirements of 1.5(e), that the client knowingly approve

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1 of a division of fees arrangement." That that is an
2 absolute requirement. That is on the second page in the
3 last paragraph of the Kazinski case. The Court held that
4 the requirement of 1.5(e) is that a client must knowingly
5 approve of a division of fees. There's zero evidence of
6 that. He hasn't offered a scintilla of evidence from
7 which a jury could conclude that any of the clients
8 knowingly approved a division of fees. He can't present
9 it because -- He could have called all of them. I guess
10 I'm -- I'm -- I'm -- I am saying, I guess, in argument
11 that he could easily, if the proofs were there, meet that
12 requirement. But, otherwise, you would have a -- a gross
13 injustice by doing what's being claimed here. The client
14 doesn't have to say anything. The client doesn't have to
15 knowingly approve. I don't have to present any proofs of
16 that whatsoever, and that would be me -- that would be
17 shifting the burden of proof to me, and that's totally
18 unfair.
19 Right now, if I rest, there is no evidence from
20 which the jury could conclude that the clients knowingly
21 approved the fee. Zero. And so unless the Court wants to
22 make me, and shift the burden of proof, now, to me to
23 affirmatively show that the clients didn't knowingly
24 approve, there's zero evidence to that, and this case
25 needs to be dismissed, your Honor.

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1 I don't think I could say it more succinctly,
2 and I -- I am quoting exactly what the case says. The
3 client -- 1.5(e) requires that a client knowingly approve
4 of the division of fees.
5 Interestingly enough, your Honor, I attached to
6 your motion the ethics opinion regarding 1.5(e) that
7 nobody had ever brought to your attention. And 1.5(e), to
8 be ethically applied, actually requires much more than
9 that. If I could, I'd just read you the --
10 THE COURT: Go ahead.
11 MR. FIEGER: -- first paragraph of the syllabus.
12 And this is R-I-2-34 dated May 10, 1995, and it is the
13 ethics opinion, the outstanding ethics opinion on 1.5(e).
14 "Prior to the division of a fee between lawyers who are
15 not in the same firm, the client must be advised of the
16 identify of the lawyers who will divide the fee, which
17 lawyer the client should contact for information on the
18 case, what services each lawyer will be providing on the
19 case, and which lawyer or lawyers will be responsible for
20 the matter."
21 That's in addition to the requirement that the
22 client knowingly approve of the division of fees. We have
23 nothing here. We have nothing. And so I'm asking the
24 Court not to shift the burden of proof because there is no
25 -- there is nothing that the Plaintiff could go forward to

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1 the jury, and say I have proved, by a preponderance of the
2 evidence, that the clients knowingly approved the division
3 of fees, and without that, the Court would be shifting the
4 burden of proof to me, and it would be upending, and it
5 would be a miscarriage of justice. Because what we have
6 here, really, is a situation where Mr. Sherbow knew
7 nobody, and fenagled himself in and, apparently, was lucky
8 in the sense that my clients called my firm, and had
9 Danzig give him a referral fee. And when it was
10 discovered, there's not one iota of proof that the clients
11 ever knowingly approved, at any time, of the division of
12 any fee, period. And his position is they don't have to
13 say anything. They don't have to say anything. We don't
14 have to prove that. All we have to do is have Mr. Danzig
15 up there saying I claim to have said that in a meeting.
16 And that satisfies the requirement that the clients
17 knowingly approve.
18 And he's also claiming that the words, do not
19 object, doesn't mean knowingly approve. I don't think the
20 courts would substantiate that; that you could get away
21 with saying, well, the client didn't say anything or I
22 didn't hear the client say anything or it was in a crowded
23 room or maybe the client didn't hear or maybe the didn't
24 understand. Maybe they didn't even speak English. You

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1 could get away with every type of shenanigans if that was
2 the law. Thank you.
3 THE COURT: Thank you, Mr. Fieger. Mr. Janks.
4 MR. JANKS: Yes, Judge. You issued an opinion
5 dated February 16, 2017 which is entitled, Order Re:
6 Objections to Proposed Order Re: Motions in Limine.
7 Paragraph three on page two of your order says as follows:
8 "The Court grants Plaintiff's motion to strike matters not
9 at issue, and motion to clarify as follows, and finds the
10 only issues for trial are as follows (all other issues are
11 excluded): Sub-paragraph A, did Plaintiff refer the
12 underlying clients to Defendant in compliance with MRPC
13 1.5(e); and sub B, did Mr. Danzig have actual or apparent
14 authority to bind the Defendant."
15 As it relates to Mr. Fieger's argument about
16 sub-paragraph A, and 1.5(e), we've read it before, but
17 MRPC 1.5(e) says, "A division of fee between lawyers who
18 are not in the same firm may be made only if: Sub-
19 paragraph 1, the client is advised of, and does not object
20 to the participation of all lawyers involved; and sub-
21 paragraph 2, the total fee is reasonable."
22 So there is no requirement in the plain meaning
23 of the rule that the client have an affirmative assent or
24 any writing or sense of understanding or anything else
25 that Mr. Fieger says the law requires. He cites the case

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1 of Kasinski which is an unpublished opinion, as we know.
2 Your Honor has already ruled because he filed a similar
3 motion on Kasinski under your February 1, 2017 order that
4 Kasinski is completely inapplicable, and, quote, "reliance
5 on Kasinski is misplaced."
6 So we've got strict constructionists up in
7 Lansing, and the strict constructionists reading of MRPC
8 1.5 simply requires the client be advised and not object.
9 Your Honor previously ruled -- I think it was the August
10 16, 2017 (sic) summary disposition order -- that the
11 timing for the client to file an objection, if they're
12 going to file an objection to fee sharing, has to be at
13 the outset of representation, not later, and -- and we
14 haven't got to it yet because we only get to it if we get
15 his proofs. But the clients in this case, as we know from
16 discovery and affidavits and letters, the only file
17 objections two years, nine months after the case was
18 incepted or -- or started or they signed fee agreements.
19 So that -- that's irrelevant to the matter.
20 And the Court also has ruled on -- in its August
21 17, 2016 opinion and order, re: summary disposition, on
22 page 7, quote, "The Court finds that Defendant's claim
23 that the fee sharing agreement is void as a matter of
24 public policy is an affirmative defense on which the
25 defendant carries the burden."

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1 So it's -- it is not burden shifting. It's his
2 affirmative defense that the clients apparently object to
3 the fee sharing. Mr. Danzig testified, and Mr. Sherbow
4 testified as it relates to two of the clients, Dion Rice
5 and Mervie Rice, that they were told at the initial sign
6 up meeting on July 26, 2017 that there would be fee
7 sharing. They were told under the ethics rules that Mr.
8 Fieger signed, and what are the various roles of the
9 various lawyers involved in the case, and -- and so we
10 have that.
11 We also have Mr. Danzig's testimony that when he
12 signed up Phillip Hill, and he signed up Dorothy Dixon,
13 that he also explained the roles of the lawyers. He also
14 explained there would be fee sharing, and -- and that no
15 objections were made, and then the fact they signed
16 contracts. And -- and you talked about the fact that we -
17 - we couldn't necessarily talk about the fact that no
18 objection was made, but that that would be something that
19 we would come back to on redirect if we wished after the
20 exam of the underlying clients by Mr. Fieger in his case
21 in chief if they in fact said, hey, at the beginning, I
22 never -- or at the beginning, I objected. I mean, it
23 doesn't really matter whether they understood or not under
24 the plain meaning of the rule.

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1 So, for all those reasons, I -- I believe that a
2 DV is improper at this point in time, and the case should
3 go forward. Thank you, Judge.
4 THE COURT: In ruling on a motion for directed
5 verdict, the Court has to look at the evidence in a light
6 most favorable to the non-moving party. In this case, we
7 have exhibits 12 and 15 which are letters on Fieger firm
8 letterhead signed by Mr. Danzig who testified he had the
9 authority at that point to offer a referral fee to Mr.
10 Sherbow. Those letters are in evidence, and one could at
11 least imply from those letters that Mr. Danzig has
12 obtained consent from the clients. His testimony and the
13 testimony of Mr. Sherbow, which for the purposes of
14 directed verdict the Court has to accept, is that they did
15 discuss fee sharing with the clients. Well, that they
16 discussed fee sharing with Dion Rice, who at that point
17 was the son of the deceased, and the son of one of the
18 injured party who was in a coma, and with Mervie Rice, and
19 that later Mr. Danzig discussed fee sharing with Phillip
20 Hill.
21 The Court is concerned that there is no
22 affirmative indication from any of the underlying clients
23 that they knew of or approved the fee sharing at the time
24 that they were signed up. However, for the purposes of
25 directed verdict, at this point, the Court thinks that

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1 there is enough to go forward on based on the testimony of
2 Mr. Danzig and Mr. Sherbow, and the Court will deny the
3 motion for directed verdict.
4 Do you have witnesses this afternoon?
5 MR. FIEGER: I don't, your Honor.
6 THE COURT: Do you intend to call any witnesses?
7 MR. FIEGER: Yes -- yes, of course, on Thursday.
8 I didn't know what time we would be done, and I am deathly
9 ill, so I'm -- I beg the Court's indulgence.
10 THE COURT: All right, let's call the jury in.
11 We'll excuse them for the afternoon, and we'll come back
12 Thursday.
13 MR. FIEGER: I will have witnesses Thursday.
14 THE COURT: Okay.
15 MR. JANKS: Who -- who will they be?
16 MR. FIEGER: I will have all of the clients. I
17 will have Mr. Linden who has been deposed, de bene esse,
18 and I will have Miss Jody Lipton and Jim Harrington.
19 THE COURT: Are we going to use Mr. Linden's
20 deposition or is he going to be here live?
21 MR. FIEGER: No, we've taken it de bene esse.
22 THE COURT: Okay.
23 MR. JANKS: So I'll go over objections with who,
24 you or Ben Dure (ph)?
25 MR. FIEGER: Me.

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1 MR. JANKS: Okay.
2 MR. FIEGER: I'm -- I'm proposing to waive --
3 I've -- I've read it. I'll waive all my objections. You
4 didn't have that many objections.
5 MR. JANKS: Okay, I -- I haven't looked at it.
6 MR. FIEGER: If you want.
7 MR. JANKS: Okay, I appreciate the offer.
8 MR. FIEGER: And we can just run it. Okay.
9 THE COURT: All right, the other thing I'd like
10 you guys to do at time tomorrow is kinda' go over jury
11 instructions, and see if there's ones you can agree on.
12 MR. FIEGER: I've seen his. I mean, he thinks
13 there's another case being tried here.
14 THE COURT: Okay, bring the jury back.
15 THE CLERK: All rise for the jury.
16 (Jury in at 3:16 p.m.)
17 THE COURT: Don't get too comfortable. At this
18 point, I'm going to have excuse you for the day. Remind
19 you not to talk about the case, and see you bright and
20 early on Thursday morning at 8:30, okay. You can go to
21 your meeting tomorrow.
22 UNIDENTIFIED VOICE: There you go.
23 THE COURT: All right, thank you all for your
24 attention. We all deeply appreciate it. Have a good day
25 tomorrow.

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1 THE CLERK: All rise for the jury.
2 (Jury out at 3:17 p.m.)
3 THE COURT: Okay, see you guys tomorrow.
4 MR. FIEGER: Thank you.
5 THE COURT: Er, Thursday.
6 MR. FIEGER: Thursday.
7 MR. JANKS: Would it be possible, Judge, if Mr.
8 Fieger and I could email each other with our respective
9 objections to our respective jury instructions?
10 MR. FIEGER: It's -- it's -- I've seen his jury
11 instructions. The standard jury instructions that apply
12 to every case, there's no objection to, but he's got tort
13 jury instructions which aren't applicable, and other --
14 THE COURT: All right, what I'd like -- what I'd
15 like you guys to do is just specifically set out for me
16 Thursday morning which ones you object to, and then I'll
17 deal with them, okay?
18 MR. FIEGER: Okay.
19 THE COURT: Thank you, gentlemen.
20 MR. JANKS: Thanks, Judge.
21 THE CLERK: All rise.
22 (Court in recess at 3:18 p.m.)
23 * * * * * *

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STATE OF MICHIGAN)
COUNTY OF OAKLAND)ss.

I certify that this transcript is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable James M. Alexander, as recorded by the clerk.

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Dated: June 14, 2017

/S/ Brenda LaVanway

Brenda LaVanway, CER 4515

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LAW OFFICES OF JEFFREY SHERBOW, P.C.,

Plaintiff,

v Case No. 15-147488-CB

FIEGER & FIEGER, P.C., d/b/a FIEGER,
FIEGER, KENNEY & HARRINGTON, P.C.,

Defendant. /

JURY TRIAL - VOLUME III of IV

BEFORE THE HONORABLE JAMES M. ALEXANDER, CIRCUIT JUDGE

Pontiac, Michigan - Thursday, March 2, 2017

APPEARANCES:

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1 Pontiac, Michigan
2 Thursday, March 2, 2017 - 8:48 a.m.
3 * * * * * *
4 THE CLERK: All rise. Oakland County Circuit
5 Court is now in session, the Honorable James M. Alexander,
6 presiding.
7 THE COURT: Good morning.
8 MR. FIEGER: Good morning, your Honor.
9 MR. JANKS: Good morning, Judge.
10 THE CLERK: Now calling Sherbow v Fieger, 2015-
11 147488-CB
12 MR. JANKS: Greg Janks, for the Plaintiff.
13 MR. FIEGER: Geoffrey Fieger, your Honor.
14 THE COURT: Ready for the jury?
15 MR. JANKS: Yes, sir.
16 THE COURT: Okay.
17 MR. JANKS: Before we play a video, when Mr.
18 Fieger's gonna' play a video, and it's not right now, and
19 he says he's gonna' play that later, there's this one
20 issue --
21 MR. FIEGER: Well, after Mr. -- yeah, go ahead.
22 MR. JANKS: Okay, so let's talk about it now.
23 On -- on -- on -- on the video, we both had objections,
24 and my understanding is that we both have agreed to waive
25 our objections, and play the video while silencing the

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1 objections.
2 THE COURT: Okay, that's fine.
3 MR. FIEGER: Is it all right?
4 THE COURT: Yeah, that's fine. Thank you.
5 THE CLERK: All rise for the jury.
6 (Jury in at 8:49 a.m.)
7 THE COURT: Good morning, ladies and gentlemen.
8 Before you sit, would you join me in a moment of
9 reflection honoring the men and women serving our country.
10 Thank you. Mr. Fieger.
11 MR. FIEGER: Yes, sir, good morning, your Honor.
12 THE COURT: You have a witness for us?
13 MR. FIEGER: Good morning, ladies and gentlemen.
14 I call Jim Harrington to the stand.
15 THE COURT: Okay.
16 THE CLERK: Please raise your right hand to be
17 sworn in. Do you swear or affirm to tell the truth, the
18 whole truth, and nothing but the truth?
19 MR. HARRINGTON: I do.
20 THE COURT: Take the stand, please, Mr.
21 Harrington, state and spell both your first and last names
22 for the record.
23 THE WITNESS: Yes, your Honor. James
24 Harrington, J-A-M-E-S, H-A-R-R-I-N-G-T-O-N.
25 THE COURT: Okay.

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1 MR. FIEGER: Good morning, ladies and gentlemen,
2 good morning.
3 JAMES HARRINGTON
4 called as a witness at 8:50 a.m., sworn by the
5 Clerk, testified as follows:
6 DIRECT EXAMINATION
7 BY MR. FIEGER:
8 Q I know you just said your name, but would you say it for
9 me.
10 A Hi. Jim Harrington or James Harrington.
11 Q And Mr. Harrington, do you practice a profession?
12 A Yes, I'm an attorney.
13 Q Where do you practice?
14 A I practice with you, Mr. Fieger.
15 Q And how long have you practiced with me?
16 A My entire career. I started with you as a law clerk, and
17 you hired me, and I've been there since, and I think I
18 started in -- it was 2000.
19 Q Okay. And so that's, what, 17 years?
20 A Yes.
21 Q And tell us what you do?
22 A Currently, I --it's kind of a -- it's broad. I'm -- I'm
23 Jeffrey's -- I'm referred to as a partner and I do a lot.
24 If somebody asks me, a lot of times I say I'm a janitor,
25 so to speak, where I help out with a lot of administrative

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1 stuff, mentoring young lawyers in our office, I deal with
2 a lot of support staff, I manage a full docket, and I'm
3 also in day three right now of a trial going on in Flint,
4 and the Judge in Flint is allowing me to come here to
5 testify to you, so quite a bit handling cases, internal
6 office personnel stuff, so pretty much everything under
7 the sun that you could ever imagine.
8 Q And you're married?
9 A Yes.
10 Q Children?
11 A Yes, I have three children.
12 Q And their ages are what?
13 A My youngest just turned six last week. I have an eight
14 year-old, and a nine year-old. They go to school at St.
15 Fabian over in Farmington Hills.
16 Q And -- and how long have you been married?
17 A It'll be 11 years this April.
18 Q Okay, and in your experience at my office, you've met --
19 there's been some gentlemen who've testified. Mr. Giroux,
20 correct?
21 A Yes.
22 Q What -- if you know, when did he leave the office?
23 A I don't know the exact date, but he -- I think he's been
24 gone two or three years, maybe, two years, three years,
25 but I've known -- I knew Mr. Giroux since, really, the

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1 year before I came to work for you, Geoffrey. I worked
2 with Bob over at Secrest Wardle, and I did clerk work with
3 Bob, and then Bob, when he joined with Mr. Fieger, called
4 me, and asked me to come and be his law clerk at the firm.
5 Q And Mr. Danzig?
6 A Yes, I know Mr. Danzig.
7 Q And how do you know him?
8 A Mr. Danzig was one of the partners at the firm, and I was
9 an associate at the time, and he did a lot of work with
10 intake. He handled a relatively light docket, case wise,
11 'cuz he was doing most of the intake work. I think he
12 would handle, maybe, seven, eight, ten cases at the most
13 at any one time.
14 Q Approximately, and I don't want you to -- just so the jury
15 could get some understanding of what our office does, and
16 how large it is. Could you explain to the jury?
17 A Currently, Geoffrey?
18 Q Yeah, in the last five years.
19 A We're at about, I'd say, 20 attorneys about -- right about
20 now. We have two attorneys that do appellate work, we
21 have one attorney right now that supervises the intake
22 over about six members who take calls. There are 14 or so
23 that actually litigate cases. There's myself, there's Mr.
24 Fieger, there is --
25 Q You don't have to name everybody.

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1 A That's fine.
2 Q Okay, and how many support staff; so how many total
3 employees do we have?
4 A Over 60.
5 MR. FIEGER: If I told you --
6 THE COURT: Over 60 support staff or over 60 --
7 THE WITNESS: Oh, total, with attorneys, your
8 Honor.
9 MR. FIEGER: Nah, it's actually --
10 THE WITNESS: Is it 50?
11 THE COURT: Don't -- don't -- don't testify.
12 BY MR. FIEGER:
13 Q Is it, okay. Could it -- could it be more?
14 A With the amount of people that come into my office on a
15 daily basis, it feels that it's that number, but --
16 Q Okay. And, anyways, have you, as -- as being part of our
17 staff and in your positions, have you come to understand
18 our procedures?'
19 A Yes.
20 Q Do -- do -- do we enforce, and do we have procedures for -
21 - that -- by which attorneys and -- and staff are expected
22 to follow?
23 A Yes, we have procedures and, yes, they are enforced.
24 Q Why -- why do we have procedures?
25 A We need order, we need -- we have a pretty strong case

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1 flow. We get quite a few calls on a daily basis, and we
2 have to manage things appropriately with the number of
3 employees we have, the case load, in order to give good
4 client care, we have to have procedures. Without
5 procedures, the place would run amuck.
6 Q Are -- are people expected to follow?
7 A Absolutely.
8 Q What happens in your experience if people don't follow the
9 procedure?
10 A Well, there's -- there could -- there could be problems.
11 There could be discipline if it gets brought up to --
12 currently, if it's brought up to my attention, I -- I deal
13 with it, and if it's something I think I need to bring up
14 to Mr. Fieger's attention, I'll -- I'll deal with it in
15 that way, but if there's a violation of, you know, a
16 procedure or a policy, then it gets dealt with.
17 Q Do we have policies regarding -- and have we had policies
18 regarding referrals to our firm?
19 A Yes, for as long as I can remember we have.
20 Q Explain to the jury what the policy is.
21 A When there's a case that is referred to the firm, many
22 times because of, you know, who Geoffrey is, there are
23 lawyers that like to refer cases to Geoffrey. And, also,
24 when you balance that against the amount of cases that we
25 get at any one time, Mr. Fieger wants control on what we

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1 take. So he needs to have a say, literally, on every
2 single case that gets referred to the office. So we just
3 don't have this influx of people having, you know, their
4 own personal cases, and he -- he wants control on that.
5 Q And are you familiar why -- what would be the purpose of -
6 - of controlling the cases that come into our office?
7 A So we're managing quality, we're keeping good client care,
8 and we're not taking cases that we shouldn't be taking,
9 and that Geoffrey knows what's going on.
10 Q This is in evidence, Mr. Harrington. It's a policy
11 leading back to 2001. Are you familiar with this policy?
12 A I am.
13 Q It's -- this one's dated October 15, 2001. It says, "I've
14 repeatedly over the years told all attorneys that no one
15 may accept a referral from another attorney, friend,
16 former friend, former associate without bringing the case
17 to me to determine if we wanna' take the case, and invest
18 money in it. Apparently, this is continually being
19 ignored. As a result, I'm handling it another way. If
20 you don't have a signed document by me agreeing to accept
21 the referral, the firm will not pay you or the referring
22 attorney." Has that been the policy, to your knowledge
23 since 2001?
24 A Yes -- yes.
25 Q Have I ever changed the policy?

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1 A No.
2 Q Would there be a way to get around that policy, if you
3 know?
4 A No, if -- if I wanna' refer a case to the firm, I come to
5 you and I say, Geoffrey, I have this case, I think it's a
6 case that we should take a look at, you say, tell me about
7 it, I tell you about it, and I'd have you sign off on
8 something so it's -- it's documented. I also would wanna'
9 do that if, let's say it was a friend of mine, and I
10 wanted to get a -- a third of that, I wanna' have the -- I
11 wanna' have it on paper.
12 Q Well, what if you didn't tell me then, how would I know?
13 A You wouldn't know, and I could make things up.
14 Q Whatta' you mean?
15 A Well, if I didn't bring it to your attention, if I didn't
16 have -- if I didn't follow this policy, what's to say that
17 I couldn't do this with other cases? Let's say, you know,
18 I get a call, and somebody's hurt, and it came through the
19 firm. I could easily say, hey, Geoffrey, this is so and
20 so, can you sign off on a referral for this. I -- I could
21 do that.
22 Q Wha -- wha -- and -- and what would that do? I don't --
23 explain to the jury if you -- if you were so inclined to
24 do something like that, what would that mean in terms of
25 the firm's money?

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1 A I'd be stealing from you.
2 Q Explain to the Court and jury how that would work.
3 A Well, Geoffrey spends money on advertising. I'm sure some
4 of you have seen his advertisements and commercials, and
5 those aren't free, they cost money. So he's -- and he's
6 worked very hard to become who he is. The call -- let's
7 say a call comes in, and I was somehow able to get it, and
8 it wasn't tracked or anything like that. I could,
9 literally, if I wanted to run any type of scam or a side
10 business, I could just say, you know, something to the
11 client, and get the little bit of background from 'em, and
12 then I could go up to Geoffrey and explain the case to
13 him, and tell him that it's a, you know, a friend of mine
14 or whoever it is and he could sign off on it, and I
15 probably wouldn't even think twice about it.
16 Q Now, Mr. Giroux and Mr. Danzig have testified that -- I
17 want you to assume they've testified to the Court that
18 they're aware of a policy, but they just didn't follow it;
19 that it wasn't expected that it be followed. What would
20 be your response to somebody who said we just don't follow
21 that policy?
22 A Well, I -- I -- my first gut response is I still work
23 there and they don't, but I -- I follow the, you know, the
24 policy, and I don't know why they would say that.
25 Q Have you ever been aware of anything in our office that

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1 said you don't have to follow this policy.
2 A Geoffrey --
3 Q You can keep referrals secret. You don't have to tell me
4 about it.
5 A Your policies aren't optional, Geoffrey. If I came to you
6 and said, Geoffrey, I'm not gonna' follow your policy, I --
7 - I don't think you would respond to kindly to that.
8 Q Does this policy allow me to determine whether in fact the
9 case really got referred to us also?
10 A What it does is it -- it -- in essence, yes, because it
11 requires the person to bring it to you to give you that
12 opportunity to vet that person, ask the person questions
13 to really find out if this is a valid referral. So, yes,
14 in essence, it does.
15 Q Okay. If -- just talking about valid referrals, for
16 instance, if a client calls our office or a potential
17 client calls our office looking for representation -- I'm
18 just gonna' give you a hypothetical for the purpose of
19 this. And later on, some -- for instance, you came to me
20 and said, well, you know, the client that called our
21 office, client X that called our office yesterday, is a
22 friend of attorney Smith, so we'll give him a referral
23 fee. What would -- what's our procedure on that?
24 A Can you repeat? You lost me.
25 Q If client X calls our office, says we wanna' retain you,

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1 and then we get a call the next day from attorney Smith
2 who says, by the way, that client X is a friend of mine.
3 Why don't you give me a referral fee. How does that work?
4 A Well, that doesn't really make sense because the client
5 called our office. If that was -- if that was brought to
6 my attention, I think red flags would start going up
7 because the person had already called first, and I'd
8 wanna' find out a little bit more about that 'cuz that
9 doesn't pass my smell test.
10 Q Whatta' you mean?
11 A Well, if -- like I said, if the client calls, it's -- it's
12 -- it's like a -- it's a lead that came straight into the
13 firm. It's a client who's looking for Geoffrey. If that
14 was the case -- 'cuz there's many cases that Mr. Fieger
15 has that have been in the paper at one point in time.
16 There's many times where, you know, an attorney could
17 call, see something, and say, hey, that was, you know, I
18 told them to call you, and they could literally troll --
19 people could literally troll the papers, and call and say
20 that they sent them here. Oh, that was a person that I go
21 to church with, and I told 'em to call. So, I -- I think
22 in that scenario, that's -- that would raise some red
23 flags. I mean, the best way is when an attorney will
24 sometimes show up to the office with clients, and say --
25 and -- and there's, you know, like a good exchange of the

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1 client.
2 MR. FIEGER: Counsel has -- counsel for the
3 Plaintiff has introduced a letter that you wrote in this
4 case. Let me hand that to you. This is the letter from
5 Harrington. What -- counsel, what number is that?
6 MR. JANKS: Sixty-eight.
7 BY MR. FIEGER:
8 Q That's exhibit number 68. Do you recognize that letter?
9 A I do.
10 Q Could you tell us -- and it's in evidence so you can talk
11 about it. Tell us what -- your name, did you write that
12 letter?
13 A I did.
14 Q All right. What's the date of that letter?
15 A July 18, 2012.
16 Q Okay, and July 18, 2012. This is in evidence. This is a
17 -- our intake sheet for Mervie Rice dated 7/17/2012. In
18 relationship to 7/17/2012, when was that letter written?
19 A One day after.
20 Q Okay. Could you explain to me the circumstances under
21 which -- or explain to the jury the circumstances under
22 which you wrote that letter?
23 A Sure, this is a letter that I wrote to Mr. Sherbow, and
24 gave -- at the bottom it says, "cc." I gave a copy of the
25 letter to Mr. Danzig. And this was a very sad case. This

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1 is a -- the client was a mother, Shawntay Dawkins (ph),
2 and she was in a horrific crash. The car -- it was really
3 -- really sad. The car that she was driving was rear-
4 ended. She had children in the back. And Tierra Frazier
5 (ph), the young girl, had multiple skull fractures, and
6 awful brain bleeding.
7 THE COURT: You know, we're not trying that
8 case.
9 THE WITNESS: Yes, your Honor, I'll keep going.
10 THE COURT: Let's keep it on what the letter is.
11 THE WITNESS: Well, I went --
12 THE COURT: Yeah, I don't -- we don't need to
13 hear the background and everything else.
14 THE WITNESS: Yes, your Honor.
15 THE COURT: Let's talk about this case.
16 THE WITNESS: So I -- what happened was Mr.
17 Danzig called me into his office, and directed me to --
18 ask me if I wanted to take this case. When I read it, I
19 said yes, and I went straight to the hospital, Beaumont
20 Hospital, and signed the client up.
21 BY MR. FIEGER:
22 Q Now, to your knowledge, had the client's mother called our
23 office?
24 A Yes.
25 MR. FIEGER: Okay.

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1 MR. JANKS: Again, Judge, I think we're not
2 trying that case, and so I don't understand the testimony.
3 THE COURT: Yeah, if the mother called or didn't
4 call, that's a hearsay question, and objection sustained.
5 BY MR. FIEGER:
6 Q How did the case come to you?
7 A I was given an intake sheet that had a -- it was li -- it
8 was a write up similar to that that had the information of
9 the case.
10 Q Okay, and did you go to the hospital?
11 A I did.
12 Q And did you see the clients?
13 A I did.
14 Q And did you sign them up?
15 A I did.
16 Q Okay, then did you come back to prepare the case?
17 A I came back, and I let Mr. Danzig know that I was able to
18 get the firm retained by the client.
19 Q And then what happened?
20 A Then he asked me to write a letter confirming the one-
21 third referral to Mr. Sherbow.
22 Q Well, was -- to your knowledge, had the case been referred
23 by -- did you see any evidence that Mr. Sherbow had
24 referred the case?
25 A No, there's nothing on the write up. He never told me

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1 anything about that.
2 Q So why did you write the letter to Mr. Sherbow confirming
3 the one-third referral fee?
4 A He told me to.
5 Q Who did?
6 A Mr. Danzig.
7 Q Well, why did you listen to him?
8 A Well, he was a partner, and I was an associate at the
9 time, and he just told me to do it.
10 Q To your knowledge, did anybody tell me about this letter
11 of referral?
12 A I didn't.
13 Q Was I given a copy of it?
14 A I didn't cc you on the letter.
15 MR. FIEGER: Okay. Did Mr. Danzig tell you why
16 he was telling you to write a referral letter to Mr.
17 Sherbow?
18 THE WITNESS: No.
19 MR. JANKS: Objection, hearsay, and we're not
20 trying that case.
21 THE COURT: Mr. Danzig, at that point, would
22 have been a partner in the firm and, therefore, it would
23 be not (indiscernible) admission against interest, so it's
24 an exception.
25 BY MR. FIEGER:

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1 Q Did he explain to you why or how Mr. Sherbow would get a
2 referral fee on a case --
3 A No.
4 Q -- that you had signed up?
5 A No.
6 Q Okay. Finally, you said -- and this is in evidence, too.
7 Are you familiar with our intake summary sheets?
8 A Yes.
9 Q Why don't you explain to the Court and jury what these
10 things are, specifically, now, I'm speaking of the intake
11 sheet, for instance Mervie Rice, 7/17/2015. For inst --
12 well, actually, before we go there -- This is in evidence,
13 exhibit L. Do you recognize this? (Indiscernible).
14 A Yes, these are the -- the -- like the yellow pad note
15 forms that Jenine, up front, write on.
16 Q Okay, and they're attached this way. Do you see the name,
17 Mervie Rice, on exhibit L?
18 A Yes.
19 Q Okay. The fact that Jenine didn't put down, put the date,
20 but didn't put the time, is that, in your experience,
21 unusual?
22 A No, and Jenine is extremely busy. She writes these
23 furiously, and I believe that she writes them with,
24 literally, every call that comes into the office.
25 Q Okay. This says Mervie Rice, her telephone number, July

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13, auto accident in Ohio, I believe. What happens after we get a call, assuming we get a call from Mervie Rice, what happens?

A Well, one of two things will happen. The case will go down to either the intake department to process, to create one of those sheets or if it's considered, you know, what we would think is a very traumatic or, you know, a -- a high-end type of case, Jenine will do her best to find a lawyer right away to talk about it or to take the information from the client because in the intake department, it's mostly receptionist or para-legal types, and sometimes potential clients wanna' talk to a lawyer, so she may try to find a lawyer.

Q Okay, this call sheet from Jenine is -- is dated 7/17. There is an intake sheet, 7/17 at 1:55. What does that mean to you?

A Looking at these two together, it means that the call came in on July 17, 2012 at 1:55 p.m.

Q From who?

A I'm sorry?

Q From who?

A From Mervie Rice.

Q Okay. And -- and then if anyone wants to, can they write in the incident details?

A Well, only if you have access to the NEEDLES program, then

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1 they can write in the crash details or incident details.
2 Q Okay. Same question with regard to -- this is also in
3 evidence, Phillip Hill. What is this, sir?
4 A That's also an intake sheet.
5 Q Dated 8/1/2012, 9:08. What does that mean to you?
6 A That that's when the call came in.
7 Q Says, "Intake staff." What does that mean?
8 A That means that MAR took the call.
9 Q Do you know who MAR is?
10 A Yes, that's Malory Richard (ph).
11 Q Okay, and who is Malory Richard?
12 A She was an intake personnel.
13 Q Okay, would she then put in this information from this
14 client, Phil Hill?
15 A Well, it would have either been her or EB, who is Erin
16 Birchill (ph).
17 Q Okay.
18 A So it would be one of those two, and I -- I don't see --
19 okay, at the bottom, it would have been -- see where it
20 says, "MAS," at the back, at the very -- on the -- looks -
21 - where it says, "incident details," Geoffrey.
22 Q Uh-hmm.
23 A Go down over to your right --
24 Q Uh-hmm.
25 A -- and see MAS.

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1 Q Yes.
2 A That's Malory's initials, also, so she would have wrote
3 that.
4 Q Okay, who is Malory?
5 A Just an intake personnel.
6 Q Okay, why would she be involved in writing a intake
7 summary for a person named Phillip Hill who called or
8 apparently called on 8/1/2012?
9 A Because the call would have come in, and it would have
10 been, I guess, dispatched for lack of a better word,
11 dispatched down to the intake department, and that's who
12 would have taken the call.
13 Q Finally, this is in evidence. It's exhibit DD. I wanna'
14 show you this. It is a form, time 7:25, with regard to
15 the estate of Charles Rice, but what I'm particularly
16 interested in is a notation there about a person by the
17 name of Howard Linden. What does it say there in that --
18 that's in evidence.
19 A It says, "Howard Linden will be PR," which means personal
20 representative.
21 Q What is a personal representative for an estate?
22 A A personal representative for an estate is the legal
23 entity required to bring a lawsuit. Without -- there are
24 certain types of individuals that can't bring a lawsuit on
25 their own, a child, somebody who's incapacitated with,

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1 let's say, a really bad brain injury or somebody who is
2 deceased. They just don't have capacity to sue or be
3 sued, so somebody has to be appointed on their behalf.
4 Q Are they -- to your knowledge, is the personal
5 representative, when we represent an estate such as the
6 estate of Charles Rice, is the personal representative our
7 client?
8 A Yeah, they're the party of interest, they're the client.
9 MR. FIEGER: I have no further questions. Thank
10 you.
11 THE COURT: Thank you. Cross-exam.
12 MR. JANKS: Yes, thanks, Judge.
13 CROSS-EXAMINATION
14 BY MR. JANKS:
15 Q Hi, Mr. Harrington.
16 A Hi, Mr. Janks.
17 Q As you know, I'm Greg Janks. You and I --
18 A Yes, sir.
19 Q -- have talked on this case before.
20 A Yes, we have.
21 Q All right. So you're a partner at the Fieger firm.
22 A That's my title, yes.
23 Q So the Fieger firm has partners.
24 A I don't think so. It's a -- it's a interesting -- I mean,
25 I refer to myself as partner, but it's -- it's Geoffrey's

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1 company.
2 Q Mr. Giroux was a partner when he was there, right?
3 A Yes.
4 Q Mr. Danzig was a partner when he was there, right?
5 A Again, by title, yes.
6 Q And -- and on the letterhead, it listed all those names,
7 and it now lists your name as somebody being in the name
8 of the firm, right?
9 A That's correct.
10 Q So that means you guys are all partners.
11 A Well, I mean, you gotta' be careful with how you're saying
12 that because partner has a certain legal definition, and
13 as far as being a partner, I don't stand on equal footing
14 with -- with Geoffrey. We don't sit down and have, you
15 know, like votes or discussions like that. What he says,
16 basically, goes, and I give my opinion, and he either
17 takes it or he doesn't.
18 THE COURT: So it's a true democracy. It's one
19 man, one vote, he's the man with the vote.
20 THE WITNESS: Yes, your Honor.
21 MR. FIEGER: Sorta' like here, Judge.
22 THE COURT: This is a fiefdom, not a democracy.
23 BY MR. JANKS:
24 Q And -- and, you, Mr. Harrington, owe your living and your
25 income at this point solely to Mr. Fieger, true?

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1 A Well, I mean, I don't work anywhere else, so yes.
2 Q Sure, and -- and you make a good living at the Fieger law
3 firm, a six-figure kind of living, right, sir?
4 A I've been very blessed.
5 Q And you wouldn't want that living to go away by saying
6 anything against the Fieger firm, would you?
7 A Well, no, but even if I said something against the Fieger
8 firm, I would still feel confident that it wouldn't affect
9 my position with the firm.
10 Q Mr. Fieger's kind of a mercurial figure, isn't he?
11 A What's that word mean?
12 Q Mr. Fieger's a little bit volatile, and expects people to
13 do what he wants them to do when he wants them to do it,
14 isn't he?
15 A I don't think he's volatile. He's just always expects
16 people to do what he wants to do, and he expects -- he --
17 I kinda' equate him like a Jim Harbaugh. He expects a
18 lot, and he's loud, and he wants a lot of things done his
19 way, and he wants to win. He's good.
20 Q Well, I think there's no question that he's able to secure
21 nice verdicts for clients, right?
22 A He's a talented lawyer.
23 Q All right. Now, exhibit TT, which you and Mr. Fieger went
24 over, is the policy from October 2001, and you say that
25 that policy is followed religiously?

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1 A To the best of my knowledge, yes.
2 Q There's no deviations from it?
3 A Not from me.
4 Q How 'bout exhibit 68, which you were shown by Mr. Fieger
5 which is your letter to Mr. Sherbow on the Dawkins case
6 promising Mr. Sherbow a one-third referral fee. That
7 violated this policy, didn't it?
8 A Well, I guess, in it's true sense, you're probably right,
9 that it, I guess, I may have because I was relying on Mr.
10 Danzig, and Mr. Danzig told me to write the referral, so I
11 did.
12 Q Now, Mr. Danzig's testified that that's not how it
13 happened, right?
14 A I have no idea. No, I don't know what he said or what he
15 claims.
16 Q Let me show you Plaintiff's proposed exhibit number 62.
17 That's a fee agreement between Mr. Sherbow and Shawntay
18 Dawkins, the mother of the injured children that you were
19 starting to tell the story about, isn't it?
20 A I think so. It looks like -- I've never seen this before,
21 but I -- if you said that's what it is, I don't -- I've
22 never seen it.
23 Q So would you assume for a minute that Mr. Sherbow actually
24 had signed up Shantay (ph) Dawkins before you ever went to
25 the hospital to try and sign her and her family up. And

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1 if you assume that, then it would be true that he would be
2 entitled to a referral fee from the Fieger firm if he
3 turned the case over to the Fieger firm.
4 A Well, I disagree. I mean, if -- if this is a
5 hypothetical, if the client had discharged Mr. Sherbow for
6 any reason, he wouldn't be entitled to a referral fee.
7 Q What if the client did not discharge Mr. Sherbow, and the
8 Fieger firm was trying to hustle the case, and take it
9 away from Mr. Sherbow?
10 A Well, I can tell you that didn't happen because I didn't
11 hustle a thing. I was given the case by Mr. Danzig, and
12 went to the hospital. I had never met Mr. Sherbow before.
13 Q Now, as it relates to this policy, the TT, what it talks
14 about is Mr. Fieger wants to determine if we want to take
15 the case, and invest money in it. So that's the reason
16 behind the policy, right, sir, (indiscernible) TT?
17 A I think, yeah, I mean, I think part of it is that, but I
18 think Geoffrey would also -- this gives Geoffrey the
19 opportunity to, as I said earlier, to vet the attorney
20 referring the case, to be able to talk to him, and find
21 out -- just to make sure that it's -- it's a clean
22 referral.
23 Q So the --
24 A So --
25 Q Go ahead.

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1 A So, what you are saying is in part yes, but also you
2 wanna' make sure that it's clean, and that there isn't
3 anything going on under the surface.
4 Q And the Rice cases, the four cases of Charles Rice,
5 deceased, Dorothy Dixon, Mervie Rice, and Phillip Hill
6 were cases that the firm wanted to take, and wanted to
7 invest money in, right?
8 A Well, we did take the case, and Geoffrey worked -- did
9 what he did with the case.
10 Q Right, did invest money in it, and -- and did resolve the
11 case for over $10 million, right?
12 A Yes.
13 Q So it was a case the firm wanted to take, and it was a
14 case that was smart to take.
15 A Yes.
16 Q Do you understand that the second part of the policy -- I
17 mean, you do understand, you did tell us that the second
18 part of this policy, which doesn't seem to be written
19 there, is that Mr. Fieger wants to vet whether it's truly
20 a referral or not, is that right?
21 A Yes.
22 Q And you understand in this instance, as it relates to
23 intake of these cases, this group of four cases, that Mr.
24 Danzig, on July 26, 2012, the date that Dion Rice signed
25 his fee agreement, the date that Mervie Rice signed her

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1 fee agreement, went up to Mr. Fieger's office after he had
2 the signed fee agreements, presented them to Mr. Fieger,
3 and said, Mr. Fieger, I just signed up these great cases,
4 and they're a referral from Jeffrey Sherbow. You
5 understand that happened, right?
6 A Well, you asked me about that in my deposition, and I told
7 you I have no knowledge at all about what Mr. Danzig did,
8 and I told you I -- I don't -- I don't know the circum --
9 I didn't work on those cases. I don't know, really,
10 anything about 'em other than what Jeffrey did with them
11 at the end.
12 Q Okay, and -- and you told me at that deposition that the
13 best person to ask about what Mr. Danzig was Mr. Danzig.
14 A Well, it wouldn't be me, yeah.
15 Q Okay, so you don't have any information to offer us on the
16 situation as to whether these cases were referred in by
17 Mr. Sherbow or not referred in by Mr. Sherbow, true?
18 A Well, I -- what I could do is I could look at some of the
19 intake sheets. I could look at the call records, and I
20 can make a reasonable deduction from those, but as far as
21 having any conversations with Mr. Sherbow about it,
22 talking to the clients about it, I told you in the
23 deposition that I don't have any knowledge on that.
24 Q Are -- are you accusing Mr. Danzig of committing a fraud,
25 and -- and saying this case was referred in by Mr.

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1 Sherbow, and it really was not?
2 A I'm not accusing Mr. Danzig. What I am saying is that
3 when you look at these documents, you look at some of
4 these past issues, you look at some of the things that
5 happened in the firm where we use to have an intake
6 process where it was only these Jenine notes that would go
7 straight to Mr. Danzig, and I had conversations with Mr.
8 Giroux about this that it was -- it didn't smell right
9 that he had all the control with all of the cases, and we
10 formed an intake committee where now three lawyers sit on
11 that because we had concerns about cases and the integrity
12 of distributions, integrity of outside referrals. Note
13 that Mr. Danzig also was in charge, a hundred percent, of
14 when we would send the cases out, and so, you know, Bob
15 Giroux and myself had conversations about some things
16 didn't smell right. So, look, I'm not gonna' sit up here,
17 and -- and point a finger at Mr. Danzig, and say that this
18 was some scheme, but there are things here that don't
19 smell right.
20 Q And maybe it's because you don't know all the facts of the
21 case.
22 A Or maybe you don't.
23 MR. JANKS: Have you --
24 THE COURT: All right, gentlemen, let's stop the
25 arguing.

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1 BY MR. JANKS:
2 Q When the cases came in in July of 2012, you were actually
3 on the intake committee, weren't you, Mr. Harrington?
4 A 2012?
5 Q Yes.
6 A I don't -- I don't think so. I don't know if I was or
7 not.
8 Q You and Mr. Giroux, and Mr. Danzig were on the intake
9 committee that intook these very cases in July of 2012,
10 weren't you, sir?
11 A The -- it started off with, I think it was Jeff Danzig,
12 Ven Johnson, and then Bob. And then after Ven left, it
13 was -- oh, and I think Arnie Matoose (ph) was on there as
14 well. And then it was Jeff, Bob, then Arnie. And then
15 Arnie left, and then it was Jeff, Bob, then Mike Ratton
16 (ph), and then I eventually came onto the panel, and to
17 give you the exact date, I -- I don't remember.
18 Q When these Rice group of cases came in, the intake
19 committee was told by Mr. Danzig that he was taking the
20 cases, and going to be the primary responsible lawyer for
21 them, and that they were referred in by Mr. Sherbow. And
22 that committee consisted of you, Mr. Giroux, and Mr.
23 Danzig, so you knew from the day the cases came in that
24 these were Sherbow referrals, didn't you?
25 A No, I -- I didn't know that. I don't remember being on a

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1 panel. This is a pretty memorable case. It was very
2 tragic. I don't remember any discussion about this case
3 in any intake meeting if I was there.
4 Q This exhibit L, I believe it is, Defense exhibit, you'd
5 agree with me that the Mervie Rice phone message has no
6 initials by Jenine, correct or by whoever took the
7 message.
8 A Yeah, I don't see her name or anybody who wrote their name
9 on there.
10 Q And are you familiar with Jenine's writing and her style
11 of writing?
12 A I've seen it for a long time.
13 Q And that's not her writing, is it, on that message?
14 A It looks like -- I mean, it's hard to tell from here, but
15 I don't have any reason to disbelieve that it isn't hers.
16 Q Except that her initial isn't there, and she puts her
17 initials on her messages when she takes them, right?
18 A I've seen 'em with her initials, I've seen 'em without her
19 initials.
20 Q You -- you indicated that the best way to protect the
21 Fieger firm to make sure that referrals to the Fieger firm
22 are legitimate is af -- the attorney making the referral
23 actually comes to the Fieger firm with the clients, right?
24 A That is a -- it's a pretty good way.
25 Q And you understand on July 26, 2012 when Dion Rice came to

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1 the Fieger firm, and signed a contract on behalf of the
2 deceased father and his comatose mother, and when Mervie
3 Rice came to the law firm to sign her fee agreement to
4 retain the firm, that Mr. Sherbow was with them at the
5 firm in the room while they signed those agreements,
6 right?
7 A I don't know that.
8 Q If Mr. Sherbow was in fact there, and was with the clients
9 when they first came to the firm, and were signed up by
10 the firm, then that is the best way to show that he was in
11 fact the referral lawyer, true?
12 A I disagree. I think the best way to look at this is when
13 you look at the chronology of when the calls came in to
14 the office, this kind of goes back to the whole trolling
15 thing that I was telling you about earlier. You know, you
16 look at when the calls come in, and I think that's the
17 best way to tell.
18 Q Have you ever seen Mr. Sherbow's cell phone records?
19 A No.
20 Q Whose number is 2-4-8-3-5-5-5-5-5-5?
21 A That's Fieger Law.
22 Q Do you know whose phone number 2-4-8-4-0-8-3-7-6-7 is?
23 A No.
24 Q If I tell you that this is the cell phone of Mr. Danzig,
25 do you dispute that?

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1 A If -- if it is -- it's either it is or it isn't, I don't
2 know.
3 Q Okay. You understand that on July -- do you understand
4 the accident that happened in which four people were
5 injured, and the one -- three people injured, one person
6 killed, happened on July 13, 2012?
7 A I'll accept that. I -- I mean, I don't -- I don't know the
8 case. I had nothing to do with the case.
9 Q These two calls in yellow are from a lady by the name of
10 Jennifer Hatchett to Mr. Sherbow's cell phone on the date
11 of the crash. Did you know that that was something that
12 happened?
13 A I don't know who Jennifer Hatchett is.
14 Q And you certainly didn't do any investigation into whether
15 these cases were or were not referred by Mr. Sherbow to
16 the Fieger firm, right?
17 A No, I didn't do any investigation. I do know that, you
18 know, Mr. Sherbow's very good friends with Mr. Danzig.
19 They've been friends for years, and, you know, to what
20 extent those calls had to do with anything involving the
21 Rice case, they could have had anything to do with
22 anything.
23 Q Uh-hmm, but you don't know what they testified to the
24 calls had to do with.
25 A No, I don't know.

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1 Q And did you know that Ms. Hatchett, who made two calls
2 that day, was the business partner of Charles Rice, the
3 fellow that died in the car crash?
4 A I told you I don't know who Ms. Hatchett is, and I don't
5 know what those conversations entailed.
6 Q Did you know that Mr. Sherbow represented or gave legal
7 advice to Charles Rice and Ms. Hatchett prior to the car
8 crash?
9 A No.
10 Q Did you know that he had met with them at his office prior
11 to the car crash?
12 A No.
13 Q Did you know that Mr. Sherbow had a scheduled meeting with
14 Charles Rice for a week after the car crash, a pre-
15 scheduled meeting that Mr. Rice obviously couldn't keep
16 because he was in the car crash?
17 A No, but none of this means that it's a referral to the
18 office.
19 Q Did you know that Dion Rice, on the next day, July 14,
20 called Mr. Sherbow's cell phone, Dion Rice being the son
21 of Charles Rice and Dorothy Dixon who were involved in the
22 car crash?
23 A No.
24 Q Did you know that that call to Mr. Sherbow was certainly
25 prior to any call by anyone to the Fieger law firm from

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1 anyone involved in the car crash?
2 A What was the date again? If --
3 Q July 14, 2012, the day after the car crash.
4 A I don't know anything about these calls.
5 Q So, really, you don't know anything at all about whether
6 this was a valid referral or it wasn't a valid referral,
7 true?
8 A The only thing I can do is I can -- if I was asked to
9 investigate this, and look at this, knowing what I know
10 about the firm, how the firm works, knowing the personal
11 relationship with Mr. Danzig and Mr. Sherbow, I could look
12 at the referral, er, not the referral, but I could look at
13 the -- the write ups and the -- the calls, and I could
14 give you my opinion, and that -- that's all that it would
15 be based on.
16 Q In fact, you were talking to Mr. Fieger about this auto-
17 intake form regarding Mervie Rice dated July 17, and --
18 and the person that actually intook this information was
19 who?
20 A Mr. Danzig.
21 Q Right, and so if Mr. Danzig that either talked to Mervie
22 Rice on that date, if he did, although he said he didn't,
23 and put the information in there, right?
24 A Well, first, I would -- I think that would be impossible
25 because I think the date of call auto-populates, meaning

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1 that there's literally no control over that, so if he says
2 that he didn't write that on that date, I would say that's
3 not true. And then you've got exhibit L which is the --
4 the -- the call sheet that was taken when they came in.
5 So, I mean, it looks like the call came in on the 17th,
6 and I would say at 1:55.
7 Q I don't understand what you just said. Mr. Danzig didn't
8 say he didn't write that that date and that time. He
9 said, in fact, on July 17, 2012 at 1:55 p.m., he, JAD,
10 inputted all this data --
11 A Okay.
12 Q -- into the intake sheet.
13 A I'm sorry, then I thought -- I think I misheard you then.
14 Q Are you familiar with the supplemental intake sheet from
15 the next day, July 18, 2012, also input by JAD, Jeffrey A.
16 Danzig, that says Charles' son is Dion, and he is being
17 assisted by Dorothy Lawrence, who came here and testified
18 before us. Charles Rice is known as Big Charles, and is a
19 former client and friend of Jeffrey Sherbow, the referring
20 attorney, have you seen that?
21 A Yes, I understand that is -- Mr. Danzig went back into the
22 system, and then added that language to the initial intake
23 sheet.
24 Q Well, sure, and he added a bunch of other language about
25 the injuries, and the nature and extent of the injuries.

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1 He was supplementing the first sheet, right?
2 A Yeah, he's adding language to what he initially wrote.
3 Q Right, and that's not unusual, is it?
4 A Well, it's -- in reading it, it -- I think it's curious,
5 but, you know, sometimes do get updated, but --
6 THE COURT: Do any of your intake sheets have a
7 name or a line for the referring attorney?
8 THE WITNESS: No, there -- I don't think there
9 is. I don't think there's a line.
10 THE COURT: There isn't on this one, but I'm
11 just asking you, do your sheets now have names of
12 referring attorneys?
13 THE WITNESS: Your Honor, I don't -- I don't
14 know if that's changed. I don't think they do, but if
15 there's an updated one --
16 THE COURT: Well, I mean, (indiscernible) firm,
17 you're the administrative manager of the firm, aren't 'ya?
18 THE WITNESS: Yes, your Honor, I am.
19 THE COURT: So you'd notice if it was there.
20 THE WITNESS: I don't think that there is one,
21 but (indiscernible).
22 THE COURT: Okay, thank you.
23 BY MR. JANKS:
24 Q And this Dorothy Lawrence lady, did you know she came here
25 yesterday or the day before, actually, and testified that

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1 she and Mr. Sherbow, and Dion Rice met at a house down on
2 Virginia Park within a week of the accident, and they
3 discussed the accident, and they discussed Mr. Sherbow
4 referring Dion and the cases to the Fieger law firm?
5 A No, I -- I don't know what she -- I have no knowledge of
6 what she testified to.
7 Q Can I show you Plaintiff's proposed exhibit 80. The
8 Fieger firm has to make annual filings with the State of
9 Michigan, is that right, sir, as a law professional
10 corporation?
11 A You mean for taxes or for what?
12 Q To -- there's an annual corporate filing that's required
13 of each and every corporation in the state of Michigan,
14 true?
15 A Okay, yeah.
16 Q All right, and -- and that filing was made for 2013 by Ms.
17 Fisher (ph), I think, the office manager at the Fieger
18 firm at the time, right?
19 A Yeah, I've never seen this before, but --
20 Q Okay, look at page two. There's a number of shareholders
21 in the Fieger firm listed, right? It was Mr. Fieger, it
22 was Mr. Giroux, it was Mr. Danzig, and it lists yourself
23 as shareholders in that law firm, right?
24 A It does.
25 Q Now, this is a law firm that Mr. Fieger has no -- says has

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1 no shareholders, and he's the only guy at the firm that
2 can ever decide and do anything, right?
3 A Well, I -- I -- I guess I was a shareholder. I didn't
4 know I had any shares. I didn't -- I've never seen
5 anything that says I have a share.
6 Q And as a shareholder at a firm in Michigan, you have the
7 right to make decisions, and bind the firm to business
8 decisions, and make business for the firm, right, sir?
9 A Listen, I don't -- I mean, whatta' you mean? I don't know
10 if -- I've never seen this before. I've always been told
11 that --
12 THE COURT: Which exhibit is this?
13 THE WITNESS: This is Plaintiff's exhibit 80.
14 MR. JANKS: Eighty, Judge. I'd move -- I'd move
15 for its admission. It's an annual filing. It's a -- it's
16 a business record.
17 THE COURT: You want a copy of it? I don't
18 have a copy of it.
19 THE WITNESS: Your Honor, you want me to --
20 THE COURT: No.
21 THE WITNESS: Okay.
22 THE COURT: There's a right way and a wrong way
23 to introduce exhibits, and let's do it the right way.
24 MR. JANKS: I -- I only had the copy I gave Mr.
25 Fieger, and the copy that I gave to Mr. Harrington, Judge.

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1 THE COURT: Am what am I, chopped liver?
2 MR. JANKS: I'm sorry?
3 THE COURT: Am I chopped liver?
4 MR. JANKS: No, yeah, I'm sorry, Judge, I --
5 THE COURT: Well, if you're gonna' mark it, let's
6 mark it --
7 MR. JANKS: I -- I marked it. Could I -- could
8 I take it from Mr. Harrington, and give it to you?
9 THE COURT: Well, Mr. Fieger, do you have any
10 objection to exhibit 80?
11 MR. FIEGER: Well, yeah, it's not co -- it's
12 absolutely not. I -- let me do this.
13 THE COURT: Would you like to voir dire?
14 MR. FIEGER: Yes, please.
15 THE COURT: Go right ahead.
16 VOIR DIRE
17 BY MR. FIEGER:
18 Q Do you see my signature there?
19 A No.
20 Q Okay, is Nancy Fisher capable of making a mistake?
21 A Yeah.
22 MR. FIEGER: Okay, to your knowledge, were you a
23 shareholder; was Jeff Dan -- were you a shareholder, just
24 to your knowledge?
25 THE COURT: That's not -- that's not -- that's

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1 not the issue right now. The issue is is this -- what is
2 this; is this something that was filed with the state?
3 MR. JANKS: Yes, this was filed with the state.
4 There's a stamp on it. It's filed every year. Each
5 corporation in Michigan has to --
6 THE COURT: Is it a certified copy of the
7 document filed from the state?
8 MR. FIEGER: No.
9 MR. JANKS: It -- it's -- no, it's a copy of the
10 document filed from LARA.
11 MR. FIEGER: It's not true.
12 MR. JANKS: It's a pub -- public record and
13 report.
14 THE COURT: Time out -- time out. If it's a
15 public record, it was filed with the state, Mr. Fieger,
16 it's comin' in.
17 MR. FIEGER: I'm not saying it's not coming in,
18 Judge.
19 THE COURT: Oh, okay.
20 MR. FIEGER: I'm saying it's -- whether -- it's
21 true. Things can -- there could be mistakes on public
22 records.
23 BY MR. FIEGER:
24 Q Are you a shareholder, were you a shareholder in 2013 to
25 your knowledge?

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1 A No.
2 Q The fact that somebody wrote that down there, does that
3 make you a shareholder?
4 A No.
5 MR. FIEGER: Thank you. So what's -- my
6 objection is why is it coming in?
7 MR. JANKS: It -- it is an 8-0-3-8 public record
8 and report.
9 THE COURT: It's admitted, let me see it.
10 THE WITNESS: Yes, your Honor.
11 (Plaintiff's exhibit 80 admitted at 9:39 a.m.)
12 THE COURT: The document speaks for itself. Mr.
13 Fieger, you can cross-examine to your heart's content.
14 MR. JANKS: (Indiscernible) first page, please.
15 BY MR. JANKS:
16 Q So this is -- this document is signed by an authorized
17 officer or agent, Nancy Fisher, office manager at the
18 Fieger law firm on 2/12/13 according to the document,
19 right, Mr. Harrington?
20 A Yes, that's what it says.
21 Q And Nancy Fisher was in fact the office manager at that
22 time, right, sir?
23 A Yes, she was.
24 Q And I think she's no longer there.
25 A That's correct.

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1 MR. JANKS: And if we could scroll again to the
2 second page to see all the names.
3 BY MR. JANKS:
4 Q It says, "List names and complete addresses of all
5 shareholders," and as I said earlier, it shows Mr. Fieger,
6 Mr. Giroux, Mr. Danzig, and yourself, Mr. Harrington,
7 right?
8 A Well, that's what it says, but --
9 Q Okay, and your name is James Harrington, right?
10 A And still is.
11 Q And you live at that address as listed on that form,
12 right, sir?
13 A At the time, I did. I've moved.
14 Q Okay, since moved, but back then, you lived there.
15 A Yes.
16 Q All right, and, apparently, it's news to you that you're a
17 shareholder in the corporation.
18 A Well, I'm kinda' smiling because I -- I -- I've never had
19 any type of an agreement with -- with Geoffrey, literally,
20 when -- when we had this partner designation, I was
21 walking -- I remember it. I was walking to my truck, and
22 Geoff pulls up in his -- his car, and -- and goes like
23 this, come here, like gives me this kinda' come here, and
24 says, I wanna' talk to you. And I -- okay, I'd like you
25 to be partner, I said okay, and that was pretty much the

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1 discussion. There was no document signed, there was no
2 partnership agreement. I wasn't issued any shares of
3 stock, and I'm smiling because I've never seen anything,
4 you know, like this. It's really all I understood now is
5 I've gotta' try more cases, I've gotta' help manage the
6 firm, and my responsibilities went up, that's all I knew.
7 MR. JANKS: So now you have more authority,
8 maybe you should ask for a raise.
9 MR. FIEGER: Judge, excuse me, what's the date
10 on this document?
11 THE WITNESS: It's 2013.
12 MR. JANKS: February, '13.
13 MR. FIEGER: Well, what would that have to do
14 with this case, Judge?
15 THE COURT: Mr. Janks.
16 MR. JANKS: The case was intook in 2012, worked
17 on in 2013, 2014. The question that Mr. Fieger has raised
18 is whether Mr. Giroux and, more specifically, Mr. Danzig
19 had any authority to do anything, and claimed that he was
20 the sole shareholder, he being Mr. Fieger.
21 THE COURT: Do you have the 2012 A-R?
22 MR. JANKS: 2012 filing did not list
23 shareholders. The 2009 one did, and then '10 and '11, and
24 '12 did not list shareholders. This, then, was the
25 shareholders.

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1 THE COURT: I'll let it in. I'll let the jury
2 have -- make whatever determination as to the weight that
3 they wish to give it.
4 THE WITNESS: This helps refresh my --
5 THE COURT: Just -- there's --
6 THE WITNESS: Yes, your Honor, I'm sorry.
7 THE COURT: -- no question on the floor.
8 MR. JANKS: Yeah, and I don't have any other
9 questions. Thanks, Mr. Harrington.
10 MR. SHERBOW: Go ahead.
11 MR. JANKS: I want to (indiscernible).
12 THE COURT: No -- no -- no, you just don't say
13 go ahead.
14 MR. FIEGER: Okay.
15 THE COURT: Do you have a question?
16 REDIRECT EXAMINATION
17 BY MR. FIEGER:
18 Q Do you -- does something refresh your recollection?
19 A Yes.
20 Q Okay, go ahead.
21 A This -- this refreshes --
22 Q About this document.
23 A Well, this re -- well, it refreshes my memory to a prior
24 question that I'd like to clear up if that's okay about
25 when I was sitting on the intake panel.

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1 Q Oh, okay.
2 A And I don't know if that's an important --
3 THE COURT: Do you have any objection to him
4 clearing that up, Mr. Janks?
5 MR. JANKS: No.
6 THE COURT: Go ahead.
7 THE WITNESS: It was -- it was -- I believe in
8 October, Geoffrey, when --
9 THE COURT: October of what year?
10 THE WITNESS: I'm sorry, thank you, your Honor,
11 of -- of 2012 when you stopped me in the parking lot, and
12 I wasn't on the panel until after I was a -- you asked me
13 to be a partner, so I wouldn't have been on the panel in
14 the July of 2012 time frame.
15 MR. FIEGER: Okay.
16 THE COURT: Okay.
17 BY MR. FIEGER:
18 Q Just a couple of things. Mr. Janks asked you to take a
19 look at a fee agreement that he had with -- Mr. Sherbow
20 said he had with Shontay (ph) Dawkins, do you recall that
21 question?
22 A Yes, I do.
23 Q Are attorneys, er, are clients permitted to re -- fire
24 attorneys?
25 A Yes.

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1 Q What's your understanding of how that happens or what the
2 rights are of clients and attorneys?
3 A The client can hire an attorney any time, and fire at any
4 time. And it's happened to me where I've had a client who
5 decided to discharge, and go somewhere else. I've had
6 clients who have discharged lawyers, and have come to me
7 before.
8 Q And if a client fires the first attorney, let's just say,
9 Mr. Sherbow, does that mean -- and hires you, does that
10 mean Mr. Sherbow gets a referral fee?
11 A No.
12 MR. JANKS: I'd object to the relevance, your
13 Honor, unless that's what happened in this case, and it's
14 not.
15 THE COURT: Well, is that -- was -- is that what
16 happened in this case, in the Dawkins case?
17 THE WITNESS: No, I don't know.
18 BY MR. FIEGER:
19 Q To your knowledge, did Mr. Sherbow ever refer this case?
20 A No, I didn't have any knowledge of that. All I knew is
21 Mr. Danzig said -- he called me into his office and gave
22 me the intake sheet, and told me to go sign up the client
23 in -- at Beaumont Hospital.
24 Q Proposed exhibit D. Do you recognize that as the intake
25 sheet of Shontay Dawkins?

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1 A Yes.
2 THE COURT: Has that been admitted?
3 MR. FIEGER: No, I'm moving for its admission.
4 THE COURT: Any objection?
5 MR. JANKS: Well, I gotta' see it, Judge.
6 MR. FIEGER: It's listed in your book, your
7 Honor, (indiscernible) date.
8 MR. JANKS: No objection, your Honor.
9 THE COURT: Okay, exhibit D is received.
10 MR. FIEGER: Thank you.
11 (Defendant's D admitted at 9:46 a.m.)
12 BY MR. FIEGER:
13 Q Does that indicate that Shontay Dawkins contacted our
14 firm?
15 A Yes.
16 Q Is that the intake sheet that you were given to go sign up
17 the client?
18 A Yes.
19 Q Is there any indication on that sheet that it was actually
20 Mr. Sherbow who was referring the case?
21 A No, the intake person was Justin Fisher, who took the
22 call, and I see Jeff --
23 Q Who's -- let's stop there. Who's Justin Fisher?
24 A He works in intake, and at the time he was taking calls,
25 and doing write ups.

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1 Q Okay.
2 A And I see Jeff Danzig's handwriting on the right side of
3 this document.
4 Q Okay. The Court asked a question of you regarding the
5 intake form, whether there was a space for -- indicating
6 referrals. Do you recall that?
7 A Yes.
8 MR. FIEGER: I'm gonna' show 'ya, beginning with
9 the proposed exhibit CC, your Honor.
10 BY MR. FIEGER:
11 Q Do you recognize that form?
12 A Yes, these -- yes, I do, these were the old in take
13 sheets.
14 Q Okay, do you recognize the handwriting on that form?
15 A It's Jeff Danzig's.
16 MR. FIEGER: All right. Move for admission,
17 your Honor, proposed exhibit CC.
18 THE COURT: Any objection?
19 MR. JANKS: No objection.
20 THE COURT: Exhibit CC is received.
21 MR. FIEGER: Thank you.
22 (Defendant's CC admitted at 9:48 a.m.)
23 BY MR. FIEGER:
24 Q See, there is a space to denote a referral, isn't there?
25 A Yes.

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1 Q Is it filled out?
2 A It looks blank.
3 MR. FIEGER: Okay. Next, proposed exhibit DD
4 which are two sheets in regard to Dion Rice. Move for
5 admission of proposed exhibit DD, your Honor.
6 MR. JANKS: It's already admitted.
7 MR. FIEGER: Thank you. Those are already in.
8 BY MR. FIEGER:
9 Q There's a space for a referral, isn't there?
10 A Yeah, it says, "Date referral," there's a discussion about
11 referral on it. It's the same form.
12 Q Right. Any indication on those two forms of a referral?
13 A No.
14 Q Who wrote that sheet?
15 A Yes, it looks like Danzig's handwriting.
16 Q Okay.
17 A Mr. Danzig's handwriting.
18 MR. FIEGER: All right, fine.
19 MR. JANKS: Dis we admit CC?
20 THE COURT: Yes, we did admit CC.
21 MR. JANKS: Okay, thank you.
22 MR. FIEGER: Thank you very much, I have no
23 further questions.
24 THE COURT: Any recross?
25 MR. JANKS: No, thanks.

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1 THE COURT: Jurors have any questions?
2 UNIDENTIFIED JUROR: I have one.
3 THE COURT: Okay, no -- no -- no. Do you have
4 it written down?
5 UNIDENTIFIED JUROR: Yes, I do.
6 THE COURT: No -- no, give it to him. Counsel.
7 (Bench conference off record at 9:50 a.m.)
8 (Bench conference ends at 9:50 a.m.)
9 THE COURT: Mr. Harrington, how were calls
10 routed when Jenine needs to be away from her desk or she's
11 unable to answer the phone?
12 THE WITNESS: Say that again.
13 THE COURT: How are the calls routed when Jenine
14 needs to be away from her desk or is unable to answer the
15 phone.
16 THE WITNESS: Sure. In the same --
17 MR. JANKS: In -- in 2012?
18 THE COURT: She just asked the que --
19 MR. JANKS: Okay.
20 THE WITNESS: In -- in the same way. If -- if
21 Jenine was away from her desk, say she had to use the
22 restroom or, you know, we use -- we would have back up.
23 It might be somebody there, I don't know. They've
24 mentioned there was a person named Anna who would
25 sometimes take cover on the phones. Erin would take cover

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1 on the phones 'cuz, you know, Jenine would go to lunch
2 sometimes, and we'd have somebody cover. So, in -- but
3 the process was the same.
4 THE COURT: Okay. Raise any questions, Mr.
5 Fieger?
6 MR. FIEGER: No, thank you.
7 THE COURT: Raise any questions, Mr. Janks?
8 MR. JANKS: Just one question, Judge, if I
9 might, and -- and not on that. I should have asked it a
10 minute ago.
11 THE COURT: No, you're done.
12 MR. JANKS: I'm done?
13 THE COURT: Yeah.
14 MR. JANKS: Can't ask one question?
15 THE COURT: Nope. Okay, stay here for a second,
16 Mr. Harrington. I'm gonna' excuse the jury for a few
17 minutes.
18 THE CLERK: All rise for the jury.
19 (Jury out at 9:51 a.m.)
20 THE COURT: I'm gonna' take five, but you make me
21 feel very old today 'cuz I remember the day for some
22 reason, your dad told me that you'd gone to work for him.
23 That was 17 years ago.
24 MR. FIEGER: Yeah.
25 THE WITNESS: Yeah, you know my dad?

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1 THE COURT: (Indiscernible). Tell him I said
2 hi.
3 THE WITNESS: I will.
4 THE COURT: We'll be back around ten.
5 THE WITNESS: Your Honor, am I excused then?
6 THE COURT: Yeah (indiscernible).
7 THE WITNESS: I have a trial up in Genesee.
8 THE COURT: Who are you in front of?
9 THE WITNESS: Judge (indiscernible).
10 THE COURT: Okay.
11 THE WITNESS: (Indiscernible).
12 THE COURT: Have a good time.
13 THE WITNESS: Thank you, Judge.
14 (Court in recess at 9:52 a.m.)
15 (Court in session at 10:10 a.m.)
16 THE CLERK: All rise. Oakland County Circuit
17 Court is now in session, the Honorable James M. Alexander,
18 presiding. Now calling Sherbow v Fieger, 2015-147488-CB.
19 MR. JANKS: Greg Janks, for the Plaintiff.
20 MR. FIEGER: Geoffrey Fieger, for Defendant,
21 your Honor.
22 THE COURT: Okay, ready for the jury?
23 MR. FIEGER: Yes, your Honor. Next, is gonna'
24 be de bene esse deposition of Mr. Linden. Perhaps, do you
25 give an instruction about video?

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1 THE COURT: How long is it?
2 UNIDENTIFIED VOICE: Just a little over an hour,
3 about an hour and ten minutes.
4 THE COURT: Okay, good.
5 THE CLERK: All rise for the jury.
6 (Jury in at 10:11 a.m.)
7 THE COURT: Please be seated. Okay, we're --
8 who's your next witness, Mr. Fieger?
9 MR. FIEGER: Mr. Howard Linden, your Honor.
10 THE COURT: All right, this is gonna' be a video
11 deposition. There's gonna' be some points of the
12 deposition that are gonna' be silence. You don't have to
13 worry about that. You can give this testimony the same
14 weight that you give any testimony coming from somebody
15 sitting here. So with that, I will now make my staff very
16 nervous because I have no clue how to do the lights.
17 MR. FIEGER: Thank you, your Honor.
18 THE COURT: (Indiscernible).
19 (At 10:11 a.m. video deposition of Mr. Linden
20 played for the jury.)
21 (At 11:06 a.m., Judge asks to stop the playing
22 of the video.)
23 THE COURT: I'm gonna' excuse you for a minute.
24 THE CLERK: All rise for the jury.
25 (Jury out at 11:06 a.m.)

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1 THE COURT: Didn't we spend a little bit of time
2 talking about whether or not the attorney fee was right or
3 wrong?
4 MR. FIEGER: Yes.
5 THE COURT: Why are we getting into it on this,
6 and why is this being brought in front of the jury?
7 MR. JANKS: Because Mr. Fieger agreed that he was
8 withdrawing his objections, and we were reading the entire
9 transcript to the jury.
10 THE COURT: Yeah, I understand, but I've still
11 got an overriding order that said we're not talkin' about
12 the fees.
13 MR. JANKS: Well, if Mr. Fieger stipulated to
14 have the entire transcript, absent objections, be read to
15 the jury, that's why I told --
16 THE COURT: You know, I'll tell you a couple of
17 things, gentlemen. I wish, if you're gonna' do that, you
18 tell me 'cuz I've got an order here that says we're not
19 gonna' do that.
20 MR. FIEGER: I'm just -- I -- I apologize. I'm
21 just tired of fighting with him. You re -- did that
22 order, and he ke -- he keeps asking those questions
23 anyways. I'm just tired of fightin' with him. It's --
24 THE COURT: No, I -- I understand, but you're
25 gonna' open up some doors then, you know. I guess if you

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1 wanna' open 'em up, open 'em up. You know, the other
2 thing is as a Judge, I'm very concerned about Mr. Linden's
3 testimony that he ignored a subpoena, and that nobody did
4 anything about it. I may do something about it. When's
5 Mr. Linden -- Linden gonna' be back in the country, Mr.
6 Fieger, do you know?
7 MR. FIEGER: No, I don't, your Honor.
8 THE COURT: Okay.
9 MR. FIEGER: He left Monday.
10 THE COURT: All right. I just want you to know
11 I'm very concerned about it. He's an attorney, he's a
12 special assistant AG, he's got a great reputation, he
13 ignores a subpoena. That's not good.
14 MR. FIEGER: Well, I --
15 THE COURT: I probably would -- I probably would
16 have -- I probably would have quashed it anyways.
17 MR. FIEGER: You -- you have quashed it. We --
18 we issued a subpoena --
19 THE COURT: Did I quash that?
20 MR. FIEGER: -- for Mr. Danzig, you quashed.
21 MR. JANKS: You did quash one for Mr. Danzig
22 because there was a motion. You did not quash one for Mr.
23 Linden. There was no motion.
24 THE COURT: Okay, all right, I'll be right back.
25 THE CLERK: All rise.

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1 (Court in recess at 11:08 a.m.)
2 (Court in session at 11:18 a.m.)
3 THE CLERK: All rise. Oakland County Circuit
4 Court is now in session, the Honorable James M. Alexander,
5 presiding. Now calling Sherbow v Fieger, 2015-147488-CB.
6 MR. JANKS: Greg Janks, for the Plaintiff.
7 MR. FIEGER: Ready, your Honor, Geoffrey Fieger,
8 for the Defendant.
9 THE COURT: Are we gonna' -- we gonna' continue
10 this then?
11 MR. FIEGER: No, we're gonna' -- we're skippin'
12 over all of it.
13 THE COURT: Good.
14 UNIDENTIFIED VOICE: Can I have a minute to scan
15 up to the point where we wanna' start?
16 THE COURT: Sure, yep.
17 UNIDENTIFIED VOICE: Thank you, your Honor.
18 MR. JANKS: For the record, we agreed, starting
19 on page 43 at line 21. We would line out that all the way
20 through page 51, line 12.
21 THE COURT: Okay, cool, thank you.
22 MR. JANKS: And I'll give credit where credit is
23 due. That was Mr. Fieger's suggestion, and my client
24 accepted that suggestion, your Honor.
25 THE COURT: I appreciate that.

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1 MR. SHERBOW: Oh, if you -- wait a minute, you
2 tellin' me you didn't want me to do that?
3 MR. JANKS: Said to Mr. Fieger, Judge, that's why
4 I have the benefit of having a lawyer as a client. I can
5 let him make the decisions.
6 THE COURT: Mr. Janks and Mr. Sherbow, because
7 you guys have asked, Ms. Labelle will be in the hospital
8 until Saturday, and she'll be released to come back to
9 work sometime, probably, the week after that, and then she
10 still needs to go in for some significant testing.
11 MR. JANKS: Oh, that's too bad.
12 UNIDENTIFIED VOICE: Thanks, Judge.
13 MR. JANKS: Which -- which hospital?
14 THE COURT: Beaumont.
15 MR. FIEGER: Does she have what I had 'cuz I
16 felt like I was joinin' her?
17 THE COURT: Either that or she's got some kind
18 of staph infection in her bloodstream.
19 MR. JANKS: Ooh.
20 THE COURT: But she started off sounding like
21 you, Mr. Fieger, so I really (indiscernible).
22 MR. FIEGER: It was bad.
23 THE COURT: (Indiscernible).
24 UNIDENTIFIED VOICE: I had it, too.
25 THE COURT: A staph infection in your

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1 bloodstream?
2 UNIDENTIFIED VOICE: No, just what he had, a
3 sinus infection.
4 THE COURT: You got it, too? You're shakin'
5 your head, yes.
6 UNIDENTIFIED VOICE: In December I did. Right
7 before -- right before Christmas, I -- I did.
8 THE COURT: It's goin' around. Everybody's --
9 everybody I know has got somethin'.
10 UNIDENTIFIED VOICE: Where do you wanna' pick up,
11 at line 14?
12 MR. FIEGER: Right.
13 MR. JANKS: Yeah, I think that's what we said.
14 Let's see, 51, line 14, right. Hold on. Okay, we're
15 ready, your Honor.
16 THE CLERK: All rise for the jury.
17 (Jury in at 11:22 a.m.)
18 THE COURT: Please be seated. Sorry to do that,
19 ladies and gentlemen. You heard some beginning
20 discussions regarding the attorney fee. That's not your
21 concern, and don't worry about how it was determined, so
22 we'll move forward now. Ready to go?
23 UNIDENTIFIED VOICE: Yes.
24 MR. FIEGER: Yes, your Honor.
25 THE COURT: Okay, good, thank you.

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1 (At 11:23 a.m., playing of video deposition of
2 Mr. Linden continues.)
3 (At 11:29 a.m., playback ends.)
4 THE COURT: Okay, great. Do you have another
5 witness for us?
6 MR. FIEGER: Yes, your Honor. Thank you. Your
7 Honor, at this time, I call Mervie Rice to the stand.
8 THE COURT: Okay. Ma'am, come right up here,
9 please.
10 THE CLERK: Please raise your right hand to be
11 sworn in. Do you swear or affirm to tell the truth, the
12 whole truth, and nothing but the truth?
13 MS. RICE: I do.
14 THE COURT: Okay, ma'am, you should take the
15 stand, and state and spell both your first and last names
16 for the record, please.
17 THE WITNESS: Sure, I'm Mervie, that's M-E-R-V,
18 as in Victor, I-E. Last name, Rice, R-I-C-E.
19 THE COURT: Okay, have a seat.
20 THE WITNESS: Thank you.
21 THE COURT: Mr. Fieger.
22 MERVIE RICE
23 called as a witness at 11:31 a.m., sworn by the
24 Clerk, testified as follows:
25 DIRECT EXAMINATION

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1 BY MR. FIEGER:
2 Q Good afternoon. Would you introduce yourself again. I'm
3 sorry, it's a little confusing, but for the record, to the
4 Court and jury.
5 A Sure, my name is Mervie Rice.
6 Q Okay, and where do you reside, Ms. Rice?
7 A Detroit, Michigan.
8 Q Okay, and you have been introduced to the Court and jury
9 as my client. Did you retain my law firm?
10 A Yes, I did.
11 Q All right. Why did you retain my law firm?
12 A Me and my family was in a car accident. Excuse me.
13 Q Okay, and so how did it come about that you retained my
14 law firm?
15 A I was sitting on the couch, and the commercial came on,
16 and I was speaking to my old man. We were sitting there.
17 I said, you know what, I'm calling him. He said, well,
18 what's you got to lose, call him.
19 Q And did you call my office?
20 A Yes, sir, I sure did.
21 Q And did somebody from my office speak to you?
22 A Yes, they did.
23 Q And was an appointment arranged for you to come into my
24 office?
25 A Yes, it was.

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1 Q Now, prior to you coming into my office, and -- Did you
2 ever, er, have you ever known this gentleman, Mr. Sherbow?
3 A No.
4 Q Did you ever retain him as your lawyer?
5 A No, I didn't.
6 Q Have you ever met him before?
7 A No.
8 Q Do you know that he claims to have referred your case to
9 my office?
10 A Do I know this?
11 Q Yes.
12 A As in sayin' have I heard about it?
13 Q Have you heard about it, right.
14 A Yes, I have.
15 Q Do you have any understanding how a man who you don't
16 know, you've never met -- well, strike that. Did you --
17 have you ever spoken to him?
18 A No.
19 Q Did you come to my office?
20 A Yes, I did.
21 Q Okay. When you came to my office, did you meet with a
22 number of people?
23 A Yes, I did.
24 Q All right. Included in tho -- that number of people, was
25 that Mr. Danzig was also there from my office?

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1 A To my knowledge.
2 Q Okay.
3 A Vaguely, now, vaguely to my knowledge, yes, okay. That's
4 been a while ago.
5 Q Do you recall Mr. Sherbow being there, too?
6 A As in seeing him?
7 Q Yeah.
8 A I don't recall him being there or seeing him.
9 Q At any time, did Mr. Danzig say to you, at my office, when
10 you came in to retain my firm, this gentleman, Mr.
11 Sherbow, claims to have referred your case, and is going
12 to take a referral fee, did he ever say that?
13 A Mr. Fieger, I cannot recall that, sir.
14 Q Did it happen to your knowledge?
15 A Not to my knowledge, no.
16 Q Well, do you recall or would you have ever approved a
17 referral for somebody you don't know?
18 A No.
19 Q Why not?
20 A 'Cuz I was sittin' there. I called you. Why would I do
21 that?
22 Q I know it's --
23 A I'm -- I'm -- I'm coming to you, sir, and then I'm gonna'
24 have someone else there? No, that don't even sound right,
25 sir. Mr. Fieger, no. For what?

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1 Q Now, you've told this story. I know Mr. Janks has taken
2 your deposition, is that correct?
3 A That's correct.
4 Q Did you tell him the same thing you've told the Court and
5 jury today?
6 A Yes, sir, yes, I did, yes.
7 Q Okay, he's taken your deposition twice. Did you tell him
8 the same thing that time?
9 A Yes, I did.
10 Q Did you also write an affidavit saying the same thing?
11 A Yes, I did.
12 Q Did you write a letter saying the same thing?
13 A Yes, I did.
14 Q Now, you're here in court. Is this the fifth time you've
15 told, under oath or in an affidavit or a deposition, that
16 you don't know Mr. Sherbow?
17 A Yes, sir, I don't know how many times. It's been more --
18 maybe more than five, okay. I lost count.
19 Q Okay.
20 A But, yes.
21 Q Thank you. Did you have any understanding whatsoever that
22 Mr. Sherbow was claiming that he was referring your case,
23 and that he was to receive a referral fee; did you have
24 any understanding of that?
25 A No -- no.

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1 Q Thank you. And did you ever agree to it?
2 A No.
3 MR. FIEGER: I have no further questions.
4 THE COURT: Mr. Janks.
5 MR. JANKS: Yes, thanks, Judge.
6 CROSS-EXAMINATION
7 BY MR. JANKS:
8 Q Hi, Ms. Rice. We -- we have met before.
9 A Yes.
10 Q I did take your deposition.
11 A Yes.
12 Q And as Mr. Fieger says you did a second deposition on a
13 limited issue that took us about ten minutes, right?
14 A Yes.
15 Q And I didn't badger you at any of the depositions, did
16 I, ma'am?
17 A No -- no, you did not.
18 Q And I wasn't abusing you by finding out what you had to
19 say in the case, was I?
20 A No, you did not.
21 Q And you did tell us that you did make a call to the Fieger
22 office because of your car crash that you were in, right?
23 A Yes.
24 Q You told us that you had no idea of the date that you made
25 that call, true?

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1 A True.
2 Q I asked you for your phone records so that we could
3 determine what the date was that you made that call, and
4 you refused to give me your phone records, true?
5 A True.
6 Q And Mr. Fieger refused to allow you to get -- give me the
7 phone records, true?
8 A True.
9 Q And if we had your phone records, we would know what date
10 you called the Fieger law firm, true?
11 A True.
12 Q So what we have right now is your memory that you called
13 the Fieger law firm on some date after your accident,
14 true?
15 A True.
16 Q And when you called the Fieger law firm, you didn't talk
17 to Jeffrey Fieger, did you?
18 A No.
19 Q When you called the Fieger law firm, you told us in your
20 deposition that they set up an appointment for you to come
21 in, and be interviewed, is that right?
22 A Yes -- yes.
23 Q And then you did come in and be interviewed on July 26, we
24 do know that date, of 2012 because there were papers
25 signed that date, right?

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1 A Yes.
2 Q And as you say, Mr. Sherbow was in the room at the meeting
3 where you signed the papers.
4 A Yes.
5 Q Mr. Danzig was in the room where you signed the papers to
6 retain the Fieger law firm, true?
7 A Yes.
8 Q Mr. Danzig did most of the talking during that meeting,
9 correct?
10 A Hmm, yes, him along with the lady -- hmm -- hmm -- hmm.
11 There was a lady that was there from the insurance company
12 for the caring of ours -- the medical part of it. I can't
13 call her name off right now, but she was also there, and
14 she was talkin' too.
15 Q Was it possibly Jody Lipton?
16 A That was her, Ms. Lipton.
17 Q Okay, but she's not really for the insurance company.
18 She's really your lawyer for the no-fault benefit.
19 A Okay, well --
20 Q Is that right?
21 A Okay, that's -- that's what she was there for. It's been
22 a while ago, sir, you know.
23 Q Understood -- understood.
24 A But, you know, it's more than just Mr. Danzig in the room.
25 Q I understand.

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1 A That's what I'm sayin', that was talking to me that day.
2 Q And that was a new experience for you, right?
3 A Very much so, sir.
4 Q Hadn't retained a law --
5 A Still is.
6 Q Hadn't retained a lawyer before.
7 A Never.
8 Q Okay, and as you just told Mr. Fieger, there's a lot of
9 things you can't recall because we're goin' back to July
10 of 2012, right?
11 A Yes.
12 Q And you don't remember everything that was said to you in
13 that room that day or who said it, isn't that true, Ms.
14 Rice?
15 A Hmm, not exactly, but, now, far as that was concerned, me
16 being there in pain and all of this being new to me, sir,
17 I didn't know that I had to actually do anything but just
18 listen, you know, and payin' attention, sure.
19 Q And so you did that as best you could, being in pain ----
20 A Yes -- yes.
21 Q -- and just had been in an accident two weeks ago.
22 A Yes.
23 Q And you've been in the hospital?
24 A Yes. Well, I was on my way. I hadn't completed. My arm
25 was still broke.

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1 Q You were in the hospital, initially, and then you got out,
2 and then you were gonna' have to go back in --
3 A Yes -- yes.
4 Q -- and have surgery.
5 A Yes, sir, that's what happened.
6 Q And so you did the best you could to take in the
7 information that came in.
8 A Uh-hmm.
9 Q And assimilated from whoever you assimilated it from,
10 right?
11 A Correct.
12 Q So Mr. Danzig has told us at that meeting that he
13 described that he was gonna' be the lawyer handling the
14 case for the Fieger firm, do you recall him saying that?
15 A Not exactly.
16 Q And Mr. Danzig said that he said that Ms. Lipton would be
17 the person handling your no-fault benefit case, do you
18 recall that?
19 A Not exactly.
20 Q And Mr. Danzig said that Mr. Sherbow had known Charles
21 Rice, and had talked to Dion Rice the day after the car
22 crash, and that Mr. Sherbow had facilitated the family
23 that was in the crash coming to the Fieger firm, do you
24 recall that?
25 A Do not recall that, sir.

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1 Q Do you recall Mr. Danzig saying that Mr. Sherbow was going
2 to get a referral fee from all the cases of all the family
3 members that were, hopefully, gonna' agree to be
4 represented by the Fieger firm?
5 A I do not recall that, sir.
6 Q So that may have been said, but you don't recall it.
7 A I do not recall it.
8 Q Phillip Hill is one of the people that was in the crash,
9 right, ma'am?
10 A (Inaudible).
11 Q And he's your cousin, do I have that right?
12 A Yes, he is.
13 Q Okay, Dorothy Dixon was in the crash, and she's your --
14 your cousin, too, or what is she?
15 A I would say so, sir.
16 Q Okay, and Charles Rice was your first cousin?
17 A Yes, sir.
18 Q All right, so -- so you're all family that were in the
19 car.
20 A Yes.
21 Q And -- and Dion Rice, his mother is Dorothy Dixon, and she
22 was at -- in the crash, and in a coma for a while.
23 A Yes.
24 Q And Charles Rice was Dion Rice's father?
25 A Yes.

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1 Q And Charles was killed, unfortunately, in the crash.
2 A Yes.
3 (Witness begins to cry.)
4 BY MR. JANKS:
5 Q Sorry to bring up a painful memory. And -- and you
6 suffered in the crash yourself
7 A Yes.
8 Q And Mr. Fieger did a -- his office did a nice job
9 representing you, and got you a fair amount of money,
10 correct?
11 A Yes.
12 Q Did you ever see any of the letters from the Fieger firm
13 that said -- that were to my client saying that my client
14 was going to be entitled to a referral fee on the case?
15 A No.
16 Q Do you need a minute?
17 A I'm okay, I'm all right -- I'm all right.
18 Q I'm giving you a minute anyway by fumbling.
19 A That's okay.
20 Q Can I show you Plaintiff's proposed exhibit 21, Ms. Rice?
21 That -- that's a letter signed by you, correct?
22 A Uh-hmm.
23 Q And -- and that letter was not drafted by you or typed by
24 you. That was a letter that Mr. Fieger put in front of
25 you, and said please sign, true?

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1 A Uh-hmm, he didn't say, Please, sign." He said, "Read it
2 first, and then sign it if it's true."
3 Q And -- and that's what you did?
4 A Yes, I did.
5 MR. JANKS: Okay, move for admission of 21.
6 THE COURT: Any objection?
7 MR. FIEGER: Maybe I could see it. I have no
8 objection.
9 THE COURT: It's received.
10 (Plaintiff's 21 admitted at 11:43 a.m.)
11 BY MR. JANKS:
12 Q And it says, "Dear Mr. Fieger: This is to confirm that I
13 retained your office directly. I never retained an
14 attorney that goes by the name of Jeffrey Sherbow. I have
15 no relation whatsoever with Mr. Sherbow, and he did not
16 refer my case to you." That's what it says, right, ma'am?
17 A Yes, it does.
18 MR. JANKS: And -- and those aren't your words,
19 those are Mr. Fieger's words that he put in front of you
20 which -- which you then --
21 MR. FIEGER: Well, what's the rel --
22 THE COURT: Just a -- just a second.
23 MR. JANKS: -- which you then --
24 THE COURT: Just a second, sir.
25 MR. FIEGER: What case are we litigating, Judge?

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1 It -- this has gone -- what case is this that he's
2 litigating?
3 THE COURT: Well, it's litigated in the case
4 against you, and this is a letter that goes right to that,
5 so I guess I don't know why he's putting it in, but I'll
6 overrule the objection.
7 BY MR. JANKS:
8 Q So that letter, ma'am, was presented to you by Mr. Fieger,
9 you didn't type the letter, you didn't dictate the letter,
10 true?
11 A True.
12 Q Okay, and then a little later, the same thing was done.
13 There was an affidavit that Mr. Fieger presented to you,
14 and said sign this as well, and I presume he said, read
15 it, and sign it if it's true, right?
16 A Correct.
17 Q Okay. And in that affidavit -- and I'll get it if we need
18 to -- but in that affidavit, essentially, you said that
19 you didn't think that Mr. Sherbow deserved a referral fee
20 because he did no work on your case, right?
21 A He did -- no, he didn't do any work on my case.
22 Q Right, and -- and so the reason that you believe that he
23 shouldn't have a referral fee is because you say he did no
24 work on your case, true?
25 A Is that what it said? Well, if that's what it said. Let

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1 me see what it said for I say yes to that.
2 MR. JANKS: I -- I can -- I can get it. Let's -
3 - let's -- let's be -- yeah, let's be clear, sure.
4 THE COURT: Which exhibit is this?
5 MR. JANKS: Thirty-two, your Honor.
6 MR. FIEGER: No objection.
7 THE COURT: Okay, exhibit 32 is received.
8 (Plaintiff's 32 admitted at 11:45 a.m.)
9 THE WITNESS: I signed this, yes.
10 MR. JANKS: Keep goin'.
11 BY MR. JANKS:
12 Q So paragraph six is what I'm concerned with at this
13 minute, and it said, "Had I been aware that Sherbow was to
14 receive any fees from my case I would have objected
15 because, to the best of my knowledge, Sherbow did
16 absolutely nothing to represent me in my case in Ohio to
17 perform any legal services in connection with that case to
18 bring about the settlement of that case or to do anything
19 which was beneficial to me in connection with that case."
20 Did I read that paragraph correctly? You -- you have the
21 same thing in your hands that's on the board, ma'am.
22 A Yes, and that I did, I sign -- correct, I signed it.
23 Q Okay, and -- and you --
24 A And he did not.
25 MR. JANKS: -- and you said, in paragraph six,

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1 the reason you thought Mr. Sherbow wasn't entitled to a
2 fee was because he didn't do any work on your case, true?
3 MR. FIEGER: No, ob -- objection. It -- it --
4 THE COURT: The -- the document speaks for
5 itself, ladies and gentlemen. Objection sustained.
6 MR. FIEGER: Thank you.
7 MR. JANKS: Can we move down to --
8 THE COURT: They can re -- they can read the
9 document, it speaks for itself. Do you have any other
10 questions for her about what's here?
11 MR. JANKS: Let's move to the -- let's move to
12 the date.
13 THE COURT: The date?
14 MR. JANKS: The date of the document.
15 THE COURT: Okay.
16 MR. JANKS: So that was June 30 of 2015,
17 correct, ma'am? Down, bottom left. All right. And --
18 and on July 26, 2012 when you were at the Fieger firm for
19 the first time, and met Mr. Danzig and Mr. Sherbow and Ms.
20 Lipton, and the people we talked about, you did not, at
21 that time, voice any objection to any referral fee being
22 paid to Mr. Sherbow, did you, ma'am?
23 THE COURT: At what time?
24 BY MR. JANKS:
25 Q On July 26, 2012 at the time the case was signed up, you -

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1 - you did not voice any objection to a referral fee being
2 paid to Mr. Sherbow, did you, ma'am?
3 A No.
4 Q The fir -- the first time that you had any objection was
5 in the letter that we saw as exhibit 21 which was March
6 31, 2015, and in the affidavit of June 30, 2015, is that
7 right, ma'am?
8 A Correct.
9 Q And -- and that objection came about after Mr. Fieger
10 called you, and said I need you to sign a letter, I need
11 you to sign an affidavit objecting to the referral fee
12 being paid to Mr. Sherbow, true?
13 A Mis -- yes, he did. Now, can I -- can -- please, for me,
14 to the Courts also, would you go back to that first part,
15 that first question you asked me?
16 THE COURT: Which first question?
17 BY MR. JANKS:
18 Q Which first question, yeah.
19 A I know Mr. Sherbow being ob -- ob -- objected about him
20 being in -- in -- on the case?
21 Q Right.
22 A No, I didn't know Mr. Sherbow at all, so the objection of
23 Mr. Sherbow, how would I be able to, you know, if I don't
24 know him. I didn't (indiscernible) him.
25 Q Did you have any discussion with Dion Rice after the

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1 accident about Dion Rice having contacted Mr. Sherbow?
2 A No, it was so much going on to bury his dad, no, sir, that
3 was the last thing that would be of a conversation.
4 Excuse me.
5 Q Did you know Dion Rice talked to Mr. Sherbow the day after
6 the accident?
7 A No -- no, I did not, no, I did not, not at all.
8 Q So you don't know what Mr. Rice talked about with Mr.
9 Sherbow if anything up until July 26.
10 A That's it, until then, sir.
11 Q All right, and -- and did you know that Mr. Sherbow had a
12 meeting with Dion Rice and Dorothy Lawrence at the
13 Virginia Park address where Charles Rice had been living
14 prior to his being deceased?
15 A Afterwards, after all of this came about, that's when I
16 heard of that.
17 Q So sometime in 2015, is that what you're telling me you
18 heard that there was that meeting?
19 A Yes, sometime in 2015.
20 Q All right, and so you heard that Mr. Sherbow and Dion Rice
21 and Dorothy Lawrence had met about the accident, and that
22 Mr. Sherbow had indicated to Dion Rice that he was gonna'
23 refer Mr. Rice and the rest of the family to the Fieger
24 law firm, correct?
25 A That's not how it was said to me, sir, and I -- no, not at

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1 all.
2 Q Have you ever talked to Dorothy Lawrence about her being
3 at that meeting and hearing what was said at that meeting?
4 A No.
5 Q At that original meeting on July 26, 2012 at -- at the
6 Fieger law firm, you did retain the Fieger law firm to
7 represent you, correct?
8 A Correct.
9 Q All right, and also you retained the Lipton law firm to
10 represent you in relation to the no-fault benefit part of
11 the case, right? That's the lady that was there.
12 A Yes.
13 MR. JANKS: Okay. And -- and you did not object
14 to the Lipton law firm paying referral fees to the Fieger
15 law firm, did you?
16 MR. FIEGER: Objection, Judge, what --
17 THE WITNESS: I don't know anything about that,
18 sir.
19 THE COURT: Just a second -- just -- just a
20 second.
21 MR. FIEGER: What's the relevance of that?
22 THE WITNESS: I don't know anything about that
23 part. The procedures are --
24 THE COURT: Just a second, ma'am -- ma'am,
25 please, hold on.

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1 THE WITNESS: Excuse me.
2 THE COURT: Hold on. I thought we did --
3 MR. FIEGER: You did.
4 THE COURT: I -- I thought we ruled we weren't
5 gonna' talk about that.
6 MR. FIEGER: But, yeah --
7 MR. JANKS: What we're talking about is the
8 meeting of July 26, and whether any objections were made
9 to statements about referral fees being paid.
10 MR. FIEGER: Number 11, your Honor, on your
11 order.
12 THE COURT: Yeah, I granted that part of it.
13 Ignore that question, ladies and gentlemen. Objection
14 sustained.
15 MR. JANKS: Do you understand that the Fieger
16 law firm did no work on the no-fault benefit case?
17 MR. FIEGER: Objection, irrelevant.
18 THE COURT: What's that got to do with anything?
19 Sustained.
20 MR. JANKS: Well, she's concerned about whether
21 somebody does work on a case, and whether they would be
22 paid a fee.
23 THE COURT: The affidavit says a lot more than
24 that, so let's move on.
25 BY MR. JANKS:

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1 Q Did you know that Dion Rice had -- had indicated in his
2 deposition that at the meeting that you were at with Dion
3 Rice and Mr. Sherbow and Ms. Lipton, and Mr. Danzig that
4 Dion Rice understood that Mr. Sherbow was going to get his
5 fee on the back end?
6 A Know nothin' of that, sir.
7 MR. JANKS: All right, thanks for your time.
8 THE COURT: Mr. Fieger, anything else?
9 MR. FIEGER: Just one question.
10 REDIRECT EXAMINATION
11 BY MR. FIEGER:
12 Q If nobody tells you anything, and you don't know that
13 you're not fully informed, how could you object to
14 something you don't know about?
15 A (Indiscernible).
16 MR. FIEGER: Thank you.
17 THE COURT: Any jurors have any questions?
18 Okay, Ms. Rice, thank you very much for being here. How
19 'ya feelin'?
20 THE WITNESS: Pretty good.
21 THE COURT: Better?
22 THE WITNESS: Yes, sir, it'll get better later
23 on in the day. I have (indiscernible), sir, I
24 (indiscernible) about that one.
25 THE COURT: Okay, you take care.

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1 THE WITNESS: All right.
2 THE COURT: Thank you for being here. Can this
3 witness be excused?
4 MR. FIEGER: Thank you, your Honor.
5 MR. JANKS: Yes.
6 THE COURT: Thank you.
7 (Witness excused at 11:53 a.m.)
8 THE COURT: Ladies and gentlemen, I'm gonna'
9 excuse you for lunch at this point, ask you to be back
10 here at 1:30, please.
11 THE CLERK: All rise for the jury.
12 (Jury out at 11:54 a.m.)
13 THE COURT: We have Ms. Lipton, and the other
14 three?
15 MR. FIEGER: Yes.
16 THE COURT: This afternoon?
17 MR. FIEGER: That's corr -- just the other three.
18 THE COURT: Okay. Ms. Lipton's not testifying?
19 MR. FIEGER: It -- there's -- I -- I --
20 THE COURT: Oh, okay.
21 MR. FIEGER: I've spoken to her. She's
22 available if I need her, but I don't believe I need her.
23 THE COURT: You guys given any thought to giving
24 up the claims for Mervie and Mr. Hill?
25 MR. JANKS: Judge, as I told you in chambers the

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1 other day --
2 THE COURT: Well, don't tell me what you told me
3 in chambers. I'm askin' would -- do you have any thought
4 of givin' up those two claims?
5 MR. JANKS: That -- that was a -- our demand
6 before.
7 THE COURT: I don't wanna' give up demand. I'm
8 just askin' do you have any thought of givin' those two
9 claims up.
10 MR. JANKS: Oh, I see what you're sayin'. I'll
11 -- I'll have to speak to my client.
12 THE COURT: Talk to your client about it.
13 THE CLERK: All rise.
14 (Court in recess at 11:55 a.m.)
15 (Court in session at 1:48 p.m.)
16 THE CLERK: All rise, the Oakland County Circuit
17 Court is now in session, the Honorable James M. Alexander,
18 presiding.
19 THE COURT: Good afternoon.
20 THE CLERK: Now calling Sherbow v Fieger &
21 Fieger, 2015-147488-CB.
22 MR. JANKS: Greg Janks, for the Plaintiff,
23 Judge.
24 MR. FIEGER: Geoff Fieger, your Honor, for the
25 Defendant.

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1 THE COURT: Ready for the jury?
2 MR. FIEGER: Yes, your Honor.
3 MR. JANKS: Yes, sir.
4 THE COURT: Bring the jurors in.
5 THE CLERK: All rise for the jury.
6 (Jury in at 1:50 p.m.)
7 THE COURT: Good afternoon, please be seated.
8 Mr. Fieger, you got a witness?
9 MR. FIEGER: Yes, your Honor, thank you. Good
10 afternoon, your Honor, ladies and gentlemen. Dorothy
11 Dixon, please.
12 THE COURT: Okay, Ms. Dixon. Go on behind the
13 tables if you can, ma'am. That'll work there.
14 THE CLERK: Please raise your right hand. Do
15 you swear or affirm to tell the truth, the whole truth,
16 and nothing but the truth?
17 MS. DIXON: I do.
18 THE COURT: Okay, Ms. Dixon, if you'll take the
19 stand, and I need you to spell, then, both your first and
20 last names for the record. Can you make it?
21 THE WITNESS: Uh-hmm. My last name?
22 THE COURT: First and last name, please.
23 THE WITNESS: Dorothy Dixon, that's D-O-R-O-T-H-
24 Y, Dixon, D-I-X-O-N.
25 THE COURT: Okay, thank you. Go ahead, Mr.

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1 Fieger.

2 DOROTHY DIXON

3 called as a witness at 1:50 p.m., sworn by the

4 Clerk, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FIEGER:

7 Q Good afternoon. I know this sounds strange, but would you

8 just introduce yourself to the Court and jury, please.

9 A Dorothy Dixon.

10 Q And Ms. Dixon, where do you reside?

11 A Livonia, Michigan.

12 Q Okay, and do you live alone or with a caretaker?

13 A I have 24 hour care.

14 Q Okay. Is that be -- you need to speak up.

15 A I'm sorry.

16 Q Is that because of the injuries that you suffered in the

17 automobile accident with Charles?

18 A Yes.

19 Q Ms. Dixon, do you know the Plaintiff, Mr. Sherbow; had you

20 met him in the past?

21 A I met him once.

22 Q Why don't you tell the jury when you met him.

23 A I was in a accident prior to this, the accident where

24 Charles got killed, and he took me to see Mr. Sherbow, so

25 I met him once. And it was about a case. I was in

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1 another accident prior to it. And I didn't want him then,
2 and I didn't want him now. That's all I can say, and you
3 know that.
4 Q Well, you were introduced by Mr. -- by Charles to Mr.
5 Sherbow --
6 A Yes, that's how I first met him.
7 Q -- and did Mr. Sherbow want to be your lawyer for this
8 other accident?
9 A No, I was in a coma.
10 Q No -- no, I'm talkin' about the first one.
11 A Oh, yes, he took me to talk to him.
12 Q Okay, for what purpose?
13 A The car accident.
14 Q No, but what was Mr. Sherbow going to do for you?
15 A Be a lawyer.
16 Q Okay, and did Mr. Sherbow offer his services to you?
17 A Yes.
18 Q And what did you say?
19 A No.
20 Q Okay, and did you go and hire your own lawyer?
21 A Yes.
22 Q Who did you hire?
23 A Michael Morris.
24 Q Okay, and that case apparently got completed, correct?
25 A Yes, it did.

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1 Q You were in a -- everyone knows about it -- a terrible
2 accident with Charles and Mervie, and Phil. At some
3 point, did you come home from Ohio?
4 A Yes.
5 Q Okay. When you were home, did you -- were you visited by
6 Mr. Danzig from my office?
7 A No.
8 Q Okay. At what point did you learn that I was your
9 attorney?
10 A My son came to -- I was in a nursin' home for a year and a
11 half, and while I was there they came. He came and he
12 told me that he had hired Mr. Fieger. I have a memory
13 problem, too.
14 Q And how did you feel about that?
15 A I was happy, I think he done good. He got you.
16 Q Okay. In this court, we've had testimony that Mr. Danzig
17 claims, and the jury will remember, that he visited you in
18 September after the accident. Did he ever come and
19 explain to you that Mr. Sherbow had referred your case to
20 him?
21 A No.
22 MR. FIEGER: If he had told you Mr. Sherbow had
23 referred your case to him, what would have been your
24 response?
25 MR. JANKS: Doesn't that call for speculation,

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1 your Honor, and under 3 --
2 THE COURT: Sustained.
3 MR. FIEGER: That's fine, I withdraw the
4 question. Thank you, your Honor.
5 THE COURT: Thank you.
6 THE WITNESS: Uh --
7 MR. FIEGER: Would --
8 THE COURT: That's okay, ma'am, thank you.
9 BY MR. FIEGER:
10 Q Did he explain to you at all or ask that a portion of the
11 attorney fees be paid to Mr. Sherbow?
12 A No.
13 Q Did he ever meet with you about that?
14 A No.
15 Q Has any -- did -- did Mr. Danzig or Mr. Sherbow ever meet
16 with you, and give you an understanding that Mr. Sherbow
17 was claiming he referred your case, and that he was going
18 to receive a portion of your attorney's fees?
19 A No.
20 Q A portion of the attorney's fees.
21 A When they -- when they was hired, I was in a coma for two
22 months in Ohio, so I really don't even know anything about
23 anybody comin' to my house 'cuz I was in a coma.
24 Q Uh-hmm.
25 A For two months. When I left there, I went to the brain

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1 center because I had a brain bleed. And, no, I have no
2 knowledge of even bein' hired, and if it was, he wouldn't
3 have hired him 'cuz I know him.
4 Q Whatta' you mean?
5 A I didn't hire -- I didn't hire him then at the last one,
6 and I wouldn't have hired him at this one.
7 Q Okay.
8 A This was too sensitive.
9 Q Whatta' you mean?
10 A My life was at stake.
11 Q Go ahead.
12 A My life was at stake, and I needed someone more reliable.
13 Q So is it your testimony that no time did anybody explain
14 to you from my off -- Mr. Danzig or anybody or Mr. Sherbow
15 explain to you that he was the referring attorney, and was
16 to receive a re -- attorney fees?
17 A No, I heard from Mr. Sherbow, I think, two years after I
18 was in the accident.
19 Q Well, tell us about that.
20 A He call, and he said he wanted to meet with me; that he
21 was sorry about Charles, and he came to my apartment which
22 he bombarded his way in. Yes, you did, 'cuz I didn't let
23 you in the door. 'Cuz once I had to understand who he
24 was, the door wasn't open, and he forced his way in by
25 another tenant.

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1 Q And then what happened?
2 A I opened the door, he shocked me.
3 Q Whatta' you mean?
4 A 'Cuz I didn't let him in 'cuz I was expectin' him. I'm
5 sorry, but I didn't, I didn't wanna' see him. Anyways, he
6 came in, and he was talkin' money. I talked to him for a
7 while. And I let him out. I called my son, and I told my
8 son do not answer that phone 'cuz all he was talkin' about
9 is money. If he cared about me, he would have said
10 somethin' to me prior to two years. And I advised my son
11 not to talk with him.
12 Q Did he ever try to reach you again?
13 A Yes.
14 Q And what did you do?
15 A Just didn't answer.
16 Q And is that the only contact then you've ever had with Mr.
17 Sherbow?
18 A Yes, that's it.
19 MR. FIEGER: Thank you, I have no further
20 questions.
21 THE COURT: Thank you. Cross.
22 MR. JANKS: Sure, thanks, Judge.
23 CROSS-EXAMINATION
24 BY MR. JANKS:
25 Q Hi, Ms. Dixon. As you know, I'm Greg Janks. You and I

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1 have met before. I think what you're saying is that you
2 believe that your son, Dion Rice, hired lawyers for you
3 for the Ohio accident, is that the idea?
4 A No way.
5 Q Your son, Dion Rice, didn't hire the lawyers?
6 A No way.
7 Q 'Cuz -- 'cuz I thought you said you didn't hire the
8 lawyers.
9 A No, I didn't.
10 Q So who hired the lawyers for you?
11 A My son.
12 Q Okay, and Dion Rice if your son.
13 A Yes.
14 Q All right, and Dion Rice's father was Charles Rice?
15 A Yes.
16 Q Charles was killed in the accident.
17 A Yes.
18 Q You had a brain injury in the accident.
19 A Yes.
20 Q Okay, and you have some memory difficulties because of the
21 brain injury and the accident, correct?
22 A Yes.
23 Q You do not remember Mr. Danzig coming to the Rainbow
24 rehabilitation facility to talk to you about the accident,
25 and sign you up, correct?

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1 A No, I -- no, he never been there.
2 Q And -- and you don't remember Mr. Danzig telling you that
3 Ms. Lipton would help you out in the no-fault case.
4 A No.
5 Q And you don't recall Mr. Danzig telling you that Mr.
6 Sherbow referred the case through Dion to the Fieger firm.
7 A No.
8 Q You do know that Mr. Sherbow had a prior relationship with
9 Charles Rice and Jennifer Hatchett, true?
10 A Yes.
11 Q And you do know that Mr. Sherbow acted in lawyerly
12 capacity for their Gratiot-McDougall business, you had
13 heard that through Ms. Hatchett, true?
14 A Yes, I heard.
15 Q Had you also heard that through Charles?
16 A Yes.
17 Q Now, you did give your deposition. You were kind enough
18 to do that back on February 4, 2017.
19 A Uh-hmm.
20 Q Sixteen -- 16, this is -- I'm sorry, let me get the right
21 date. This is the date I wrote my note. On April 11,
22 2016, you -- you did give a deposition. You were kind
23 enough to do that, do you remember that, ma'am?
24 A Yes.
25 Q Okay, and at that time you did say that you had never,

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1 ever met Mr. Sherbow before, isn't that true?
2 A No.
3 Q That's not what you said?
4 A No.
5 MR. JANKS: Okay. We have your deposition.
6 Could -- could we have the white board, please? Page
7 seven.
8 BY MR. JANKS:
9 Q All right, Ms. Dixon.
10 A Uh-hmm.
11 Q Could I show you right there, and could you read those few
12 questions and answers on page seven.
13 A Which one?
14 Q Starting on line 15, ma'am.
15 A Question --
16 Q No just read it to yourself first.
17 A "Two to three year after the accident, you heard from Mr.
18 Sherbow. Did he tell you why he was calling you? He said
19 he was concerned. He wanted to meet me because of
20 Charles. He never met me, and I never met him, and he
21 wanted to come over to see how I was doin'."
22 Q So you indicated that you had never met him.
23 A Uh-uh.
24 Q No, that's not what you said there?
25 A Uh-uh, no, 'cuz I know I met Mr. Sherbow, and I indicated

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1 that I met him once. Yes, I did, and I don't know where
2 that come from, but that's not right.
3 Q Okay, let's look at page --
4 A I met him once and --
5 Q -- 13. Can I show you page 12 --
6 A Uh-hmm.
7 Q -- starting at line 23, and the continuing over to page
8 13.
9 A "Question: Did Mr. Rice ever tell you that he knew Mr.
10 Sherbow, and that Mr. Sherbow had been his lawyer?
11 Answer: I had heard his name mentioned, but to know him,
12 no, I don't know him, but I met him."
13 Q Does it say, "but I met him," there, ma'am, what you
14 described?
15 A It just said, "No, I," that's it.
16 Q And what does it say on the next page?
17 A It got number one, "Don't know anything about it." It's
18 not a -- it's not a continuation.
19 Q What -- what does it say on line two and three?
20 A Two and three line?
21 Q Yes, please, ma'am.
22 A "Question: You -- you had never met Mr. Sherbow. A --
23 answer: Never." What was this to --
24 Q So did you say you had never met Mr. Sherbow in your first
25 deposition?

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1 A No, I never said that -- I never said that. I know I met
2 Mr. Sherbow, and Mr. Sherbow know I met him once until he
3 came to my apartment. Other than that, no. Now, what's
4 that about, I have no idea, but that's not me.
5 Q Could I direct you to page 21.
6 A You sure can.
7 Q Thank you. Question starting on line 18, question and
8 answer, ma'am.
9 A "Question: Do you recall meeting Mr. Danzig, Jeffrey
10 Danzig, at the Rainbow rehab facility once you got back in
11 town? Yes, I did meet him."
12 Q All right, so --
13 A "And he came to Rainbow to meet you? Yes."
14 Q Okay, so you did tell me in this deposition that you did
15 meet Mr. Danzig at the Rainbow rehab facility.
16 A With Jody Lipton, yes.
17 Q And today, you said to Mr. Fieger that you had never met
18 Mr. Danzig at the Rainbow rehab facility or anywhere else,
19 right, ma'am?
20 A Well, I know Jody Lipton. I didn't meet Mr. Danzig. It
21 was Mr. Lipton or somebody else with him.
22 Q At the --
23 A Mr. Danzig, I don't recall that, not at Rainbow. I met
24 him at the office.
25 Q Your objection to Mr. Sherbow receiving any referral fee

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1 in this case is because he did not work on your case, is
2 that true, ma'am?
3 A No, he did not.
4 Q Okay, so you didn't see him working on the case, you
5 hadn't heard about Mr. Sherbow working on the case.
6 A Mr. Sherbow haven't done anything for me but came to try
7 to get some money.
8 Q You, like Mervie Rice, signed a letter and an affidavit at
9 Mr. Fieger's request as it relates to Mr. Sherbow and his
10 referral fee request, is that right, ma'am?
11 A His referral fee? Go back.
12 Q Did -- did you sign -- well, let me just ask you this.
13 Exhibit 23 and exhibit 34, are -- are these your
14 signatures on these documents? Ma'am, you -- you can read
15 that if you want. I -- I don't mean to encroach on your
16 space or anything. I -- I just wondered --
17 A You asked me to read.
18 Q No, I was asking if that's your signature on there.
19 A I wanna' read what I signed if I sees it. I have no
20 (indiscernible). Yeah, this my signature.
21 Q All right, and that's on exhibit 23. On exhibit 34, is
22 that also your signature?
23 A Yes.
24 Q All right, thank you, ma'am.
25 A Can I see what else it is, so that I will (indiscernible)

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1 to?
2 Q Oh, sure, absolutely.
3 A Thank you. Do I have time to read it?
4 Q Sure. I'm not gonna' ask you any questions about it, but
5 you -- you have time to read it. I just wondered if it
6 was your signature.
7 A Okay.
8 Q Thank you.
9 A Thank you.
10 Q Now, I think that you, again, had told us that you had not
11 met Mr. Danzig, is that -- did I understand you to say
12 that?
13 A I just said I met him.
14 Q Oh, you did meet Mr. Danzig.
15 A Yes, I met Mr. Danzig.
16 Q You met him where?
17 A In the office.
18 Q Oh, in the office.
19 A Yes.
20 Q Okay. How many times do you think you met Mr. Danzig?
21 A Ooh, I -- I -- maybe two or three times.
22 Q He was handling your case on behalf of the Fieger firm, is
23 that right?
24 A He was giving me words from Mr. Fieger, I know that.
25 Q I'm sorry, he was what?

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1 A He would come to me, talk to me about Mr. Fieger and what
2 he ever he told him to bring to me.
3 Q Did you understand that Mr. Danzig was handling your case
4 and taking the depositions, and doing the leg work on the
5 case?
6 A No, I was under the understanding that Mr. Fieger was my
7 lawyer.
8 Q Okay, did you understand that Mr. --
9 A You know, who -- what -- what they do -- okay.
10 Q No, go ahead, I didn't mean to cut you off. I was --
11 A No, you're right.
12 Q Did you understand that Mr. Fieger didn't become involved
13 in the case until Mr. Danzig left the law firm?
14 A Again?
15 Q Did you understand that Mr. Fieger did not become involved
16 in being your lawyer on the case until Mr. Danzig had left
17 the law firm?
18 A No.
19 Q Did you -- did you know that there were letters between
20 the Fieger law firm and Mr. Sherbow saying that Mr.
21 Sherbow would get a referral fee on your case?
22 A No.
23 Q On Charles' Rice's case.
24 A No.
25 Q On Phillip Hill's case?

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1 A I don't know about what they done.
2 Q Okay. And -- and, really, that's between them, isn't it,
3 between the law firms?
4 A No, it's -- it's -- it's up to me, too, but I don't know
5 what they talked to them about.
6 Q You understand that Mr. Sherbow is not asking for any
7 money from you, correct?
8 A Well, I don't -- just don't understand why should he get -
9 - why should you get anything. What did you do for us?
10 Q Right, your thought is he didn't work on your case.
11 A He didn't do nothin' for me.
12 Q (Indiscernible).
13 A What -- what are you talkin' about?
14 Q Okay.
15 A I just really don't get it. As God is my witness, I don't
16 get it.
17 MR. JANKS: Thank you for your time, ma'am.
18 THE COURT: Any other questions?
19 MR. FIEGER: Yeah.
20 REDIRECT EXAMINATION
21 BY MR. FIEGER:
22 Q What Mr. Janks was referring to is were you aware of two
23 letters that Jeff Danzig, Mr. Sherbow's friend, wrote to
24 Mr. Sherbow saying that he would get a portion of your --
25 of the attorneys' fees of your case, were you aware of

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1 that?
2 A No.
3 Q Did anybody ever -- did Mr. Danzig ever explain to you
4 that he had done that --
5 A No.
6 Q -- and asked you for your permission and understanding?
7 A No.
8 Q And if he did, if he had -- in light of your history with
9 Mr. Sherbow --
10 A Uh-hmm.
11 Q -- do you -- what would (indiscernible) -- Did your
12 feelings change from the time before your accident with
13 Charles, and you say you had met Mr. Sherbow and he had
14 tried to be your lawyer, and you said no, had your
15 feelings changed about him so you wanted him to be your
16 lawyer afterwards?
17 A No, they didn't change then, they haven't changed now.
18 MR. FIEGER: Thank you, I have no further --
19 THE WITNESS: If I need another one in the
20 future, it'll be the same.
21 MR. FIEGER: Thank you.
22 THE COURT: Okay, ma'am, hang on just a second.
23 Anything else?
24 RECROSS-EXAMINATION
25 BY MR. JANKS:

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1 Q You also did tell us, ma'am, in your first deposition that
2 you had never met Mr. Sherbow before that time, correct?
3 A No, I didn't.
4 THE COURT: Before what time?
5 MR. JANKS: Before her second accident, the
6 accident of July of 2012.
7 THE WITNESS: No, I didn't. I met Mr. Sherbow.
8 MR. JANKS: All right, thank you.
9 THE WITNESS: I told you the opposite.
10 THE COURT: Okay, thank you. Any jurors have
11 any questions? Okay, thank you, Ms. Dixon.
12 THE WITNESS: You're welcome.
13 MR. FIEGER: Thank you.
14 THE COURT: Thank you for being here today. Can
15 this witness be excused?
16 MR. FIEGER: Yes, your Honor.
17 THE COURT: Thank you. You can go out this way,
18 ma'am, it's okay.
19 THE WITNESS: Thank you, okay.
20 THE COURT: Are you all right?
21 THE WITNESS: Uh-hmm, thank you.
22 (Witness excused at 2:14 p.m.)
23 THE COURT: Do you have another witness, Mr.
24 Fieger?
25 MR. FIEGER: Yes, your Honor. Call Dion Rice to

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1 the stand.
2 THE COURT: Move around here, please, sir.
3 MR. RICE: Pardon?
4 THE COURT: Around here. Come on up to the
5 stand, and raise your right hand to be sworn, please.
6 THE CLERK: Please raise your right hand. Do
7 you swear or affirm to tell the truth, the whole truth,
8 and nothing but the truth?
9 MR. RICE: I do.
10 THE COURT: Mr. Rice, if you'll take the stand,
11 state and spell both your first and last names for the
12 record, please.
13 THE WITNESS: Okay. It's Dion Rice, D-I-O-N,
14 last name Rice, R-I-C-E.
15 THE COURT: Thank you. Go ahead.
16 DION RICE
17 called as a witness at 2:16 p.m., sworn by the
18 Clerk, testified as follows:
19 DIRECT EXAMINATION
20 BY MR. FIEGER:
21 Q That microphone will pick you up a little, and I know
22 you're soft-spoken, so try to speak up a little.
23 A Gotcha'.
24 Q Would you introduce yourself to the Court and jury.
25 A How 'ya doin'? I'm Dion Rice, Charles Rice's son.

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1 Q And who is Dorothy Rice?
2 A Dorothy Dixon's my mother.
3 Q Dorothy Dixon, I apologize.
4 A That's fine.
5 Q Who is Dorothy Dixon? We just --
6 A My mother.
7 Q Okay. Where do you reside, sir?
8 A Detroit, Michigan.
9 Q And who do you reside there with?
10 A Me, and my kids.
11 Q Okay, and who are your kids?
12 A Dion Rice and Mary Gardner.
13 Q I'm sorry?
14 A Mary Gardner.
15 Q All right, and are you employed?
16 A Yes.
17 Q Tell the Court and jury where you're employed.
18 A I work for Chrysler.
19 Q Okay, and whatta' you do for Chrysler?
20 A Line worker for Warren truck -- line worker for Warren
21 truck.
22 Q And how long have you been on the line at Warren truck?
23 A Three years now.
24 Q Very good, okay. I'm gonna' take you back now to 2012,
25 and ask you some questions, Mr. -- I know you've gone

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1 through this before.
2 A Yes.
3 Q Mr. Janks has taken your deposition twice, and you've --
4 have you written an affidavit in this case also?
5 A Have I written it?
6 Q I mean signed an affidavit, do you recall?
7 A Yes.
8 Q And a letter, too?
9 A Yes.
10 Q I think you're gonna' be shown those, and you've taken two
11 depositions, correct?
12 A Yes.
13 Q Okay. By the way, and I mean no disrespect, how old are
14 you?
15 A Thirty-four.
16 Q Okay, and so if we take you back to 2012, July of 2012,
17 how old are you?
18 A Well, 30, well, 29, I'm sorry.
19 Q Okay. Are you Dorothy and Charles only son?
20 A Yes.
21 Q Okay. Where were you living at the time of the accident,
22 July 13, 2012?
23 A Well, I was stayin' at Virginia Park, 14-16 Virginia Park.
24 Q Okay, was that your home or somebody else's home?
25 A It was my father's.

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1 Q Okay. We've heard of that Virginia Park address, a house
2 that subsequently burned down. Is that that house?
3 A Yes.
4 Q And that's where you were living?
5 A Yes.
6 Q Okay. Is that also where there was a wake for your
7 father?
8 A No, the wake was at the funeral home.
9 MR. FIEGER: Okay. We've seen some telephone
10 records, and I want you to assume there's been testimony
11 in this case that about 4:30 in the afternoon on January
12 13 --
13 THE COURT: July 13.
14 MR. FIEGER: July 13, thank you, your Honor.
15 See, now I can tell that I'm -- I'm gettin' old 'cuz I
16 can't remember anything.
17 BY MR. FIEGER:
18 Q On July 13, 2012, the -- the day of your parents'
19 accident, that a phone call was made by a Jennifer
20 Hatchett to Mr. Sherbow. Do you know who Jennifer
21 Hatchett is?
22 A Yes, it's my dad's old business partner with Gratiot-
23 McDougall United.
24 Q Okay. According to the testimony -- I just want you to
25 assume -- that Ms. Hatchett informed Mr. Sherbow of the

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1 tragedy that occurred, and that Mr. Sherbow called Mr.
2 Danzig from my office. Did you know a Jeffrey Danzig at
3 my office?
4 A No.
5 Q Did you know Mr. Sherbow?
6 A I heard of him.
7 Q Had you ever met him?
8 A No.
9 Q Had you ever used him to be an attorney?
10 A No.
11 Q Did you know anything about him other than your -- having
12 heard his name from your father?
13 A No.
14 Q There's also been, I want you to assume, some testimony
15 that Jennifer Hatchett may have provided your number or
16 given you his number to call, and that there was a
17 conversation the next day in the evening. That would have
18 been January -- or July 14. Do you recall speaking to Mr.
19 Sherbow?
20 A Yes.
21 Q Tell us what you recall.
22 A I really -- I don't -- I can't remember if I called him or
23 --
24 THE COURT: Keep your voice up, please, sir.
25 BY MR. FIEGER:

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1 Q Yeah, just keep your voice up.
2 A I don't remember if I called him or if he called me, but
3 we had a conversation, and he introduced himself, you
4 know, I'm Jeffrey Sherbow, you know, I'm your dad's
5 friend. I'm like, yeah, you know, I heard about you. And
6 he's, like, look, if you need anything -- need anything,
7 any help on the case or anything, and -- or if you tryin'
8 to find a lawyer, any of that, let me know. And I told
9 him, you know, that I would get back in touch with you,
10 and we'll touch bases on it. I gotta' see what the rest
11 of the family's gonna' do, and everything else.
12 Q Keep your voice up.
13 A Yeah. And I, you know, I wanted to see what the family
14 was gonna' do first, you know. So, he ended up calling me
15 back, I wanna' say the next day or stopped by the next
16 day.
17 Q That was at the Virginia Park house?
18 A Yes.
19 Q He just stopped by?
20 A Yeah, well, he told me he was gonna', you know, drop in on
21 me, and check on me.
22 Q Okay, and what happened then, sir?
23 A We talked a little more, and he said, well, you know, I
24 know a couple of guys down at Fieger's. And I was, like,
25 well, you know, that's actually who we and the family was

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1 kinda' talkin' about anyway. We were gonna' try to go
2 with them anyway. So --
3 Q Did you tell him that?
4 A Yes.
5 Q What did you tell him with regard to what you and the
6 family wanted to do regarding my firm?
7 A We were goin' with Geoffrey Fieger's firm.
8 Q I'm sorry?
9 A We were gonna' go with the Fieger firm.
10 Q Okay, and did you tell him that?
11 A Yes.
12 Q Okay, and then what happened?
13 A Well, he said, well, I got a buddy there.
14 Q What, I'm sorry?
15 A He says I had a buddy there, and, you know, we're gonna'
16 talk about it, and I'll give you a call later and let you
17 know what's goin' on.
18 Q Okay.
19 A So later he calls me, and -- well, actually, the firm
20 called me, and let me know when the -- when the date was
21 set up for the -- for the meetin', and he also called me
22 and say, yeah, you know, I know about it, I'll see you
23 there.
24 Q Now, did you know about a meeting that was set up between
25 you and -- and also involving Mervie Rice. Do you know

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1 who Mervie Rice is?
2 A Yes.
3 Q Who is Mervie Rice?
4 A My cousin.
5 Q And had you been talking to your cousin?
6 A Yes.
7 Q Were you aware that Mervie Rice had called our office?
8 A Yes.
9 Q How were you aware of that?
10 A She told me.
11 Q Okay.
12 A After I talked to her about, you know what I mean, I -- I
13 talked to him, and I talked back to her, she said, well,
14 you know, if that's your decision 'cuz, you know, we had -
15 - you know, we're gonna' rock with it. We wanna' go ahead
16 and go see about this. So we -- we came to the office and
17 --
18 Q Before you came to the office, did you tell Mr. Sherbow
19 anything about whether anybody else had contacted our
20 office on your behalf?
21 A Yes.
22 Q What did you tell him?
23 A I told him that my -- my friend also, she -- well, my
24 friend's mother, she also had contacted the office 'cuz
25 she said, Dion, you need to call Fieger. I'm, like, well,

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1 cool, you know. I've already kind of talked to the family
2 about it, so we're gonna' go ahead and talk to him
3 anyways, so thank you.
4 Q Okay, did Mr. Sherbow say that he would like to be your
5 lawyer at that time?
6 A No.
7 Q Did he say he would like to take the opportunity to refer
8 your case to my office?
9 A No.
10 Q In fact, did you need Mr. Sherbow to refer your case to me
11 or my firm?
12 A No.
13 Q Why didn't you need him to refer your case to me?
14 A Because he had already told me to come to you.
15 Q Were you intending to come to me?
16 A Yes.
17 Q Okay. Did you come to my office?
18 A No, I called.
19 Q And did you finally come?
20 A Yes.
21 Q And who was there?
22 A Mr. Sherbow met me there. Jeffrey Danzig, I believe
23 Howard Linden, and the people that was taking care of my
24 mother's accident stuff, you know, as far as her medical
25 billing, and all. I can't remember --

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1 Q The Lipton law firm, Jody Lipton?
2 A The Lipton law firm, Jody Lipton, yes.
3 Q Okay. We've heard some testimony. At that time did you
4 sign papers to retain Howard Linden to be the attorney for
5 your father's estate?
6 A Yes.
7 Q Did you attend a meeting where Mr. Danzig was present?
8 A Yes.
9 Q Did Mr. Danzig at any time inform you that Mr. Sherbow was
10 claiming to refer your, I guess, mom and dad's case to our
11 firm?
12 A Not that I recall, no.
13 Q Did he at any time explain to you that Mr. Sherbow would
14 be sharing in the attorney fees?
15 A No.
16 Q Did he at all explain or ask you to give your approval for
17 Mr. Sherbow to receive monies as attorney's fees in the
18 case?
19 A No.
20 Q Did he explain anything about Mr. Sherbow?
21 A No, Sherbow talked to me, personally, and he said, well, I
22 was the liaison on the case, and I'll help you, you know,
23 through the whole thing just (indiscernible) you
24 understand some things, you know. He never said anything
25 about retainer fees or nothin' like that.

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1 Q And did you ever hear from Mr. Sherbow again?
2 A After about October of that year, no, not until April or
3 March of 2015.
4 Q Then what happened?
5 A He took me out to MGM. We met up for lunch, and we had a
6 talk. He, you know, he was tellin' me things about the
7 case, and I'm, like, wow, I didn't talk to you in years,
8 and it was kinda' shocking how he knew everything, and I
9 hadn't seen or heard from him in three years, basically,
10 at that point.
11 Q Did he tell you he was -- that Mr. Danzig, his friend, had
12 written a letter giving a referral fee to him on your
13 cases?
14 A No.
15 Q Did he ever ask for your approval?
16 A No.
17 Q Did he or Mr. Danzig ever explain anything --
18 A No.
19 Q -- to you about his desired involvement in this case?
20 A No.
21 Q Did -- in -- in fact, did he have anything to do with
22 referring you to my office?
23 A No.
24 Q Anything?
25 A No, sir.

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1 Q What's his involvement; how did he get involved other than
2 being your dad's friend?
3 A That's the only involvement I really knew.
4 Q Well, of course, he did know Jeff Danzig.
5 A Yes, he did.
6 MR. FIEGER: I have no further questions.
7 THE COURT: Cross.
8 MR. JANKS: Sure, thanks.
9 CROSS-EXAMINATION
10 BY MR. JANKS:
11 Q Hi, Mr. Rice, you and I have met before.
12 A Yes, how 'ya doin'?
13 MR. JANKS: Greg Janks. Can we look at the
14 phone records, please, which is Plaintiff's exhibit six.
15 BY MR. JANKS:
16 Q Mr. Rice, did you ever talk to Jennifer Hatchett about
17 what she told -- strike that, let's start over. Mr. Rice,
18 did you ask Jennifer Hatchett for Jeff Sherbow's contact
19 information so that you could call him to discuss the
20 unfortunate accident that your family was involved in?
21 A Yes.
22 Q And Jennifer Hatchett gave you Mr. Sherbow's contact
23 information so -- so that you and Mr. Sherbow talked by
24 phone the day after the accident, correct?
25 A Correct.

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1 Q Okay, and it looks like there were two calls the day after
2 the accident, one for one minute, and one for 11 minutes.
3 Is this your phone number, 3-1-3-3-9 -- 3-1 -- start over.
4 A At the time, sir, yes.
5 Q 3-1-3-9-7-8-7-4-6-2?
6 A At the time, yes.
7 Q And -- and is it accurate to say that you looked to Mr.
8 Sherbow for what you should do at that point in time as it
9 relates to your family, and their accident?
10 A Correct.
11 Q Because at that point, you didn't know anybody or know any
12 lawyers other than Mr. Sherbow, and you had specifically
13 asked Ms. Hatchett to get you in touch with Mr. Sherbow,
14 true?
15 A Correct.
16 Q Okay, and -- and you had a discussion with Mr. Sherbow,
17 both on that day and on subsequent days, is that right,
18 sir?
19 A Yes.
20 MR. JANKS: In other words, you talked to him
21 other times. Let's see, pink is when you talked to him.
22 You would have talked to him again on February 17 --
23 MR. SHERBOW: July.
24 MR. JANKS: For four min - er, July.
25 THE COURT: Mr. Sherbow, be quiet.

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1 MR. SHERBOW: Yes, sir.
2 BY MR. JANKS:
3 Q July 17 for four minutes. Do you recall anything about
4 that conversation as we sit here today?
5 A No, sir.
6 Q Okay, let me see what else we have here. Looks like you
7 might have talked to Mr. Sherbow on July 25, two different
8 occasions, four minutes each, do you recall anything about
9 those conversations?
10 A It probably was retaining to my father's funeral because I
11 believe it might have been that day or the next day if I'm
12 not mistaken. I believe that's a Friday.
13 Q I think it -- I think the next day, July 26, is the day
14 you went to the Fieger law firm with Mervie Rice and were
15 at the meeting that you were talking to Mr. Fieger about.
16 A Okay.
17 Q And -- and so I think this is the day before that meeting,
18 does that sound right? I think your father's funeral was
19 July 28.
20 A That's -- I know it was that week, that's what I'm sayin'.
21 Q All right.
22 A Me and Mr. Danzig -- I mean Mr. Sherbow also had a
23 conversations because he personally knew my father, so it
24 was not like we talked about this case all the time, so,
25 no.

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1 Q Now, let's see what other conversations you had. On July
2 25, it looks like you had another conversation, so three
3 conversations that day, this one for two minutes. I'm
4 guessing you don't remember, specifically, what was
5 discussed being that that was five years ago.
6 A Yeah.
7 Q Okay, fair enough. July 26, I -- I think that's the day
8 of the meeting at Mr. Fieger's office because we have some
9 documents signed by you that day. And -- and so it looks
10 like you talked to Mr. Sherbow. Do you know if that was
11 before or after the meeting?
12 A I don't have a clue.
13 MR. JANKS: All right. July 27, the day after
14 the meeting, and the day before the funeral, looks like
15 you had another one minute conversation with Mr. Sherbow.
16 Anything you recall about that conversation, sir?
17 MR. FIEGER: Judge, could I just place an
18 objection?
19 THE COURT: Sure, go ahead.
20 MR. FIEGER: His characterization of a
21 conversation, says one minute, it -- the call is from
22 Sherbow to him, and that's the least amount of time you
23 can have, and you don't even have to talk to anybody. If
24 you make a call, it appears for one minute.
25 THE COURT: Well, Mr. Fieger, again, I'm gonna'

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1 tell you don't testify.
2 MR. FIEGER: But he -- that's my point. He is.
3 He's saying there's a conversation that took place. It
4 doesn't say that. It just says there's a call from
5 Sherbow.
6 THE COURT: Okay, all right, the exhibit speaks
7 for itself. If you guys can figure what it means, do it.
8 MR. JANKS: Any other thing?
9 BY MR. JANKS:
10 Q All right, Mr. Rice, do -- do you recall meeting Mr.
11 Sherbow at the house on Virginia Park?
12 A Yes, sir.
13 Q And Dorothy Lawrence was at that meeting as well, is that
14 true?
15 A She was there, yeah.
16 Q At that meeting, Mr. Sherbow said to you I'll refer you to
17 the Fieger firm because I have a friend at the Fieger
18 firm, and they'll be able to fully and fairly investigate
19 this case, and handle it, is that right?
20 A No, he said I will give them a call, and I will talk to
21 them about the case. He never said refer anything.
22 Q And -- and in fact you know that he talked to them about
23 the case on -- on the day that he heard from Jennifer
24 Hatchett being the day of the accident, July 13, 2012?
25 A No, I know he was gonna' -- he said he was gonna' look out

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1 for me, yeah. He said he was gonna' call a couple of his
2 buddies, and see what's goin' on, see what he can do
3 because that wasn't his specialty.
4 Q All right, so if he got you to a firm whose specialty it
5 was to handle big accident cases, then he was looking out
6 for your dad, right?
7 A Yeah, I will say he looked out as far as the firm, but he
8 didn't refer me. I had already called.
9 Q So, in -- in terms of you calling the Fieger firm, I -- I
10 did ask you for your phone records, and you refused to
11 produce them, true?
12 A True.
13 Q And Mr. Fieger refused to allow you to produce your phone
14 records so that we could see if and when you called the
15 Fieger firm, true, sir?
16 A True.
17 Q You did understand from the meeting on July 26 that Mr.
18 Sherbow was going to get his, quote, "on the back end,"
19 end quote, right, sir?
20 A Pardon?
21 Q You understood from the July 26 meeting where you met with
22 Mr. Danzig, you met with Mr. Sherbow, you met with Ms.
23 Lipton, that Mr. Sherbow told you that him and Danzig had
24 a thing going on, and he will get his on the back end, is
25 that true, sir?

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1 A I don't recall.
2 Q Do you recall testifying to that in your deposition?
3 A Yeah, I remember from my deposition, but I don't remember
4 our exact conversation back then.
5 Q But you do recall saying at your deposition when you were
6 sworn to tell the truth, and when you were under oath that
7 you understood that Danzig and Sherbow had a thing going
8 on, and he, Mr. Sherbow will get his on the back end,
9 true?
10 A At the deposition, I did say that, but I can't remember
11 our exact conversation, no.
12 Q All right, and -- and is it fair to say you don't remember
13 everything that was said in the July 26 meeting where you
14 signed a fee agreement to hire the Fieger firm?
15 A I don't remember everything I did a year ago. That's five
16 years ago.
17 Q Fair enough. And -- and at that point in time, I think
18 you told me when we last met, that you had lost your
19 father, you had lost your mother who -- or at least your
20 mother was 300 miles away in a hospital, and you didn't
21 remember every instance, every conversation, everything
22 that happened because there was so much going on at the
23 time, is that right, sir?
24 A (Indiscernible).
25 Q You -- you also authored, er, you also signed a letter and

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1 an affidavit in this case, I believe, and I wonder if I
2 could show you exhibit 20 and 31, and ask if those are
3 your signatures on those exhibits, Mr. Rice?
4 A Yes, sir.
5 Q Thank you, sir. And -- and another thing that you told me
6 at your deposition when we met on March 22, 2016, that all
7 this is really between Mr. Danzig, Mr. Fieger, and Mr.
8 Sherbow, and doesn't really involve you, isn't that right,
9 sir?
10 A Correct.
11 MR. JANKS: Thanks for your time.
12 THE COURT: Anything else, Mr. Fieger?
13 REDIRECT EXAMINATION
14 BY MR. FIEGER:
15 Q If you had already called our office, and were coming
16 here, what did you need him for?
17 A My father always me to talk to this man if I got into any
18 trouble or anything because my father used to retain him -
19 - my father used to retain him, so this was the only
20 person that I knew as far as a lawyer like that. Once I
21 talked to my people, we said we're goin' to Fieger. When
22 he came over to talk to me at 14-16 Virginia Park, I told
23 him at that time. He said I has a buddy there. We're
24 gonna' talk about it. We're gonna' get you squared away.
25 Q Had you already decided to come to my office?

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1 A Yes.
2 Q And did you tell him that?
3 A Yes, that's how he knew I was going to the Fieger law
4 firm. He said, well, I got a buddy there, I'm gonna' talk
5 to him.
6 Q Did he tell you -- well, at least according to the phone
7 conversations that his attorney has put up -- that he
8 called my office right after speaking to Ms. Hatchett.
9 A No.
10 Q Did he tell you that he had already spoken to Mr. Danzig
11 about the case?
12 A No.
13 MR. FIEGER: I have no further questions.
14 THE COURT: Any more cross?
15 MR. JANKS: No, thanks, Judge.
16 THE COURT: Do the jurors have any questions?
17 Okay, great, thank you. Can this witness be excused?
18 MR. FIEGER: Yes, please, thank you.
19 THE COURT: Thank you, Mr. Rice, thanks for being
20 here.
21 THE WITNESS: Thank you.
22 (Witness excused at 2:39 p.m.)
23 MR. FIEGER: I call Mr. Phillip Hill.
24 THE COURT: Mr. Hill, come on up here, please,
25 sir.

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1 THE CLERK: Please raise your right hand. Do you
2 swear to tell the truth, the whole truth, and nothing but
3 the truth?
4 MR. HILL: Yes.
5 THE COURT: Take the stand, please, sir, and I
6 need you to state and spell both your first and last names
7 for the record.
8 PHILLIP HILL
9 called as a witness at 2:40 p.m., sworn by the
10 Clerk, testified as follows:
11 DIRECT EXAMINATION
12 BY MR. FIEGER:
13 Q Mr. Hill, will you state your first and last name, and
14 spell it for the record.
15 A Phillip Hill, P-H-I-L-I-P, H-I-L-L.
16 THE COURT: Thank you. Go ahead, Mr. Fieger.
17 MR. FIEGER: Thank you, your Honor.
18 BY MR. FIEGER:
19 Q Mr. Hill, would you introduce yourself again to the Court
20 and jury.
21 A I'm Phillip Hill.
22 Q And Mr. Hill, where do you live?
23 A Detroit, Michigan.
24 Q Okay. Are you presently employed?
25 A No.

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1 Q Okay, have you been employed in the past?
2 A No.
3 Q Ever?
4 A Yes.
5 Q Oh, what'd you do?
6 A I was a -- I was a labor worker, labor worker.
7 Q Okay, we've all heard that you were hurt in an auto
8 accident with Charles Rice and Dorothy, and Mervie. Who
9 is Charles Rice to you?
10 A He's like family.
11 Q How long have you guys been friends?
12 A For over forty some years.
13 Q All right. After you were hurt, did you eventually come
14 home to Detroit from the hospital?
15 A Yes.
16 Q Did you call my office to have my office represent you?
17 A Yes.
18 Q Okay. We have a phone message here that's in evidence. I
19 don't know if you remember the date. Does this refresh
20 your recollection that you called on August 1, 2012
21 telling about an auto accident, does that sound right to
22 you?
23 A Yes.
24 Q Okay. Do you know who Mr. Sherbow is?
25 A No.

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1 Q Did you ever retain him?
2 A No.
3 Q Did you ever ask him to be your lawyer?
4 A No.
5 MR. JANKS: Again, Judge, just let me interpose
6 an objection. There's no legal requirement that Mr.
7 Sherbow be retained to refer a case.
8 MR. FIEGER: Well, that's what he keeps saying.
9 What -- what --
10 THE COURT: I'll -- I'll -- I'll give the law,
11 Mr. Janks.
12 MR. FIEGER: Thank you.
13 THE COURT: This is examination right now.
14 BY MR. FIEGER:
15 Q I want you to assume that Mr. Sherbow claims he referred
16 your case to my office. Do you have any knowledge of that?
17 A No.
18 Q Did Mr. Danzig ever come to your house, and explain to you
19 that a man who's unknown to you referred your case to him?
20 A No.
21 Q Did you ever approve or agree to a referral fee from him -
22 - to him, to Mr. Sherbow?
23 A No.
24 Q Did you ever have any understanding of a referral fee from
25 a man you don't know?

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1 A No.
2 Q Other than this lawsuit -- and I know you've been deposed
3 twice, and now this is the third time -- have you ever met
4 this man at all?
5 A No.
6 Q Have you ever seen him or spoke to him?
7 A No.
8 MR. FIEGER: I have no further questions.
9 THE COURT: Mr. Janks.
10 MR. JANKS: Yes, Judge, thank you.
11 CROSS-EXAMINATION
12 BY MR. JANKS:
13 Q Hi, Mr. Hill, I'm Greg Janks. We've met before. Do you
14 recall meeting Mr. Danzig at your house, and signing a fee
15 agreement to hire Mr. Danzig, and the Fieger law firm?
16 A Yes.
17 Q And do you recall Mr. Danzig explaining to you how fees
18 would be charged?
19 A Yes.
20 Q Do you recall Mr. Danzig explaining to you that the case
21 was referred to the Fieger firm by Mr. Sherbow?
22 A No.
23 Q And that Mr. Sherbow would get a referral fee?
24 A No.
25 Q Do you recall Ms. Lipton being at that meeting as well?

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1 A Yes.
2 MR. JANKS: Do you recall being told that Ms.
3 Lipton would pay a referral fee to the Fieger firm?
4 MR. FIEGER: Objection, Judge.
5 THE COURT: Yeah, we've already discussed that.
6 Just ignore the question, ladies and gentlemen. Objection
7 sustained.
8 BY MR. JANKS:
9 Q Mr. Hill, if I can show you your deposition on 18 -- page
10 18, line 5. Let me ask you this first. Do -- do you
11 recall being asked to be at the July 26, 2012 meeting at
12 the Fieger law firm with Mr. Sherbow, Mr. Danzig, Ms.
13 Lipton, Dion Rice, and Mervie Rice, and not being able to
14 make that meeting?
15 A No.
16 MR. JANKS: Okay. I wonder if I could show you
17 -- I guess we got it on the board -- page 18, line 5. Do
18 you recall being deposed on March 22, 2016, Mr. Hill? If
19 it's easier, I can give you a personal copy, would that be
20 better for you or are you okay reading the board?
21 THE COURT: Well, the question is do you remember
22 your deposition being taken, sir?
23 THE WITNESS: I can't remember.
24 THE COURT: Can't remember your deposition being
25 taken?

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1 THE WITNESS: Let me see.
2 THE COURT: No -- no -- no, not that. Do you
3 remember giving your deposition, having people questioning
4 you back in March -- about a year ago.
5 THE WITNESS: Uh, no.
6 THE COURT: You don't remember your deposition
7 being taken?
8 THE WITNESS: No.
9 THE COURT: Okay.
10 BY MR. JANKS:
11 Q Mr. Hill, do I understand that you had a head injury as
12 part of the injuries in the car crash?
13 A Yes.
14 Q Do -- do I understand that you don't have the best memory
15 of events that are in the past?
16 A No.
17 Q No, I'm wrong or yes, I'm right.
18 A Well, um, go and come.
19 Q So you have good days and bad days with your memory?
20 A Yeah.
21 THE COURT: Why should you be different from any
22 of us?
23 MR. JANKS: And is it fair to say --
24 THE COURT: Do we have any other questions for
25 this gentleman?

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1 MR. JANKS: Yes, Judge, just a couple.
2 BY MR. JANKS:
3 Q And -- and is it fair to say, Mr. Hill, that your memory
4 of things that happened in 2012 isn't really good as we're
5 here today in 2017?
6 A Yeah.
7 Q The last thing I have, Mr. Hill, is I wanted to ask you if
8 you could identify your signature on two documents,
9 exhibit 22 and exhibit 33. If I could show you exhibit
10 22, is that your signature at the bottom there, sir?
11 A Yes.
12 Q And exhibit 33, is that your signature at the bottom?
13 Well, not the bottom, it's more towards the top on that
14 one.
15 A Yes.
16 MR. JANKS: All right, thank you, sir. That's
17 all the questions I have. Thank you, sir.
18 THE COURT: Any redirect?
19 MR. FIEGER: Just one.
20 REDIRECT EXAMINATION
21 BY MR. FIEGER:
22 Q But do you remember, in terms of your testimony, that
23 you've just given, has anybody ever told you that he's
24 your referring attorney, and is going to get a referral
25 fee?

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1 A No.
2 MR. FIEGER: Thank you.
3 RECROSS-EXAMINATION
4 BY MR. JANKS:
5 Q Mr. Hill, isn't it a fact that the reason that you recall
6 that no one has told you that Mr. Sherbow is the referring
7 lawyer would get a referral fee is because Mr. Fieger has
8 put that in your memory?
9 A No.
10 MR. JANKS: Thanks for your time.
11 THE COURT: Thank you. Any jurors have any
12 questions? Okay, thank you, Mr. Hill, appreciate you
13 being here today. Can this witness be excused?
14 MR. FIEGER: Please.
15 THE COURT: Thank you. Have a good day, sir.
16 THE WITNESS: Thank you.
17 MR. FIEGER: Thank you.
18 (Witness excused at 2:50 p.m.)
19 THE COURT: Any other witnesses?
20 MR. FIEGER: I'm done, your Honor, we rest.
21 THE COURT: Okay. Any rebuttal?
22 MR. JANKS: Yes, sir, we do have some rebuttal.
23 THE COURT: Okay.
24 MR. FIEGER: Your Honor, could we ask, before we
25 start, can excuse the jury, and address something?

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1 THE COURT: Yeah. Ladies and gentlemen, I'll
2 excuse you for a few moments.
3 THE CLERK: All rise for the jury.
4 (Jury out at 2:50 p.m.)
5 THE COURT: Mr. Fieger.
6 MR. FIEGER: Thank you. Can Mr. -- I -- I --
7 there's -- I'll be quite honest. I'm not tryin' to be
8 facetious or glib. I mean, things are being done and said
9 by Plaintiff's counsel in this case that are beyond me.
10 The Court has ruled 50 times on things; he keeps doing it.
11 My now understanding, and I've only been doing this for 40
12 years, is that rebuttal witnesses are witnesses who could
13 not be disclosed or presented in Plaintiff's case in
14 chief, and who are required to rebut evidence that could
15 not be addressed in Plaintiff's case in chief. I suspect,
16 since I see him sitting here, it's Mr. Danzig. Mr. Danzig
17 can't come up and say he's a rebuttal witness, and say all
18 the witnesses that Plaintiff said are liars. He could
19 have said whatever he wanted to say, and he said it in his
20 direct testimony. You can't -- parties can't do this.
21 There's no allowance of this. Cases would go on forever.
22 We could recall Mr. Sherbow and Mr. Danzig, and just say,
23 you know, now we've heard all this, is it true? He's not
24 allowed to say that. Rebuttal is only from evidence that
25 could not have been anticipated in Plaintiff's case in

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1 chief. I think that's the classic definition of rebuttal
2 evidence. And if there's any evidence that I presented
3 that could not have been anticipated in Plaintiff's case,
4 er -- er, by Plaintiff's case in chief, then we could
5 discuss that. But there's nothing I put on that he hasn't
6 known for 50 -- since he started this two years ago.
7 THE COURT: Mr. Janks.
8 MR. JANKS: Yes, Judge. Re -- rebuttal evidence
9 is to rebut witnesses and testimony that Mr. Fieger put on
10 in his case in chief, and we are calling Mr. Sherbow and
11 Mr. Danzig on limited issues as it relates to things that
12 were testified to by Mr. Harrington, and by the four
13 underlying Plaintiffs, Mervie Rice, Dion Rice, Phillip
14 Hill, and Dorothy Dixon.
15 MR. FIEGER: Unless it -- what -- it's evidence
16 that was -- could not have been anticipated, it is not
17 permitted, Judge.
18 MR. JANKS: The -- the -- the word, "rebuttal,"
19 is --
20 MR. FIEGER: Judge, I mean, I --
21 THE COURT: All right, guys, I'm gonna' take a
22 moment, and I'll let you know.
23 MR. FIEGER: Thank you very much.
24 THE CLERK: All rise.
25 (Court in recess at 2:53 p.m.)

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1 (Court in session at 3:05 p.m.)
2 THE CLERK: All rise. The Oakland County
3 Circuit Court is now in session, the Honorable James M.
4 Alexander, presiding. Now calling --
5 THE COURT: See if you can find everybody else,
6 please.
7 THE CLERK: Now calling Sherbow v Fieger &
8 Fieger, 2015-147488-CB.
9 MR. FIEGER: Geoffrey Fieger, for Defendants.
10 MR. JANKS: Greg Janks, on behalf of Plaintiff,
11 your Honor. And -- and the only -- could I say one other
12 thing, Judge?
13 THE COURT: (Inaudible).
14 MR. JANKS: That was that when Mr. Danzig was on
15 the stand talking about the fact that he had told each of
16 the underlying clients that the case was being handled by
17 him for the Fieger law firm, Lipton for the PIP, and it
18 was referred by Sherbow, and there would be referral fees
19 paid to Sherbow, I asked whether the clients objected at
20 that point to that. You indicated that he couldn't
21 testify to that unless the clients came in, and said that
22 wasn't said. So, in part, you've already ruled on the
23 issue of Mr. Danzig coming back on that issue.
24 MR. FIEGER: You did not. You did no such
25 thing. Judge, I -- I've never been in a case where a -- a

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1 -- You told him at least three times today about your
2 order forbidding evidence on the Fieger-Lipton referral
3 agreement, and he kept bringing it up. I don't know why
4 he's not in -- this is ju -- it's just outrageous what's
5 been going on here for two years.
6 THE COURT: All right, it's not outrageous, it's
7 litigation.
8 MR. FIEGER: Okay.
9 THE COURT: Basically, where we are is according
10 to Kirk v Ford Motor Company, 147 Mich. App. 337, it's
11 within the sound discretion of the trial court. What I'm
12 gonna' allow is rebuttal. If you guys are gonna' put
13 witnesses on who said she said, and he said, and I said,
14 and they lied, and I didn't lie, then that's the trial
15 strategy you're gonna' make, but I think you're wrong. So
16 if that's what this is gonna' be, if Sherbow is gonna'
17 stand up and go on the stand, and say, oh, no, I told 'em,
18 well, you've al -- they've already heard that. If
19 Danzig's gonna' say I already told 'em, they've already
20 heard that. Do you have any -- do you have anything new
21 that you wanna' present other than what you just told me
22 because I said that they couldn't talk about -- that he
23 could come back and say that he did tell them, which he's
24 already testified to.
25 MR. JANKS: Well, what -- what happened, as I

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1 recall it, Judge, is that he testified that he told them,
2 and then I asked him, did they object at the time that you
3 told 'em about the referral fee, and you said -- hang on --
4 he can't testify about that unless the clients come in
5 and say that we did object. Well, they've now come in,
6 and testified they object, so I think Mr. Danzig is able
7 to say --
8 THE COURT: I'll let Danzig on for the very
9 limited purpose of that question.
10 MR. JANKS: Okay. Also, Ms. Dixon said that Mr.
11 Danzig didn't visit her at Rainbow rehab, and sign her up,
12 and I -- I think he has --
13 THE COURT: Did Mr. -- did she --
14 MR. FIEGER: He already testified to that.
15 THE COURT: Yeah, I mean, you know, it's --
16 MR. JANKS: I -- I don't intend to take long,
17 Judge. I'll be ten or 15 minutes with any given witness.
18 THE COURT: I mean, that's not the point is.
19 The point isn't how long, the point is he's already
20 testified. As to things that he's testified to, you can't
21 -- I don't want you bringin' -- you know, gettin' --
22 getting' -- goin' back over that.
23 MR. JANKS: Mr. Harrington brought up the
24 circumstances of Dawkins, so I -- I wanted to go into
25 Dawkins just slightly.

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1 MR. FIEGER: He brought it up, Judge.
2 MR. JANKS: Mr. Harrington is the one that
3 testified about it today, and said that Mr. Danzig told
4 him to write the letter to Sherbow saying there would be a
5 referral fee.
6 THE COURT: Didn't Danzig say that that's what
7 he did?
8 MR. JANKS: No -- no, absolutely didn't say
9 that's what he did. And then I think there is the -- the
10 issue of the Phillip Hill intake and the Mervie intake
11 that Mr. Fieger trotted back out and said that means they
12 called in on a particular date, and Mr. Danzig was in
13 charge of that department, and has information to the
14 contrary that that's not what those intake sheets mean.
15 MR. FIEGER: He testified to all that, Judge.
16 He just -- this would be allowing him to retry a case.
17 MR. JANKS: I would bet that in any case that Mr.
18 Fieger has when he's the Plaintiff's lawyer, he puts on a
19 rebuttal.
20 THE COURT: All right. I mean, really, he
21 testified on September 12 he signed up Ms. Dorothy Dixon.
22 Ms. Dixon said he didn't come, so he's already testified
23 to that, so you gonna' go over that again?
24 MR. JANKS: I was just gonna' ask him to confirm
25 that in fact he signed her up and --

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1 THE COURT: Well, you can't. You already asked
2 him the question, and now she's -- she's -- she said no.
3 So I don't wanna' be in the position where things that
4 were said before on testimony, now he's gonna' reiterate
5 his testimony. You can -- you can deal with that on -- on
6 closing. You wanna' talk to him about the fact that the
7 witness, the things that I wouldn't allow until the
8 witness has testified, that's fine, but I'm gonna' give
9 you a very -- very -- very short rope if you wanna' bring
10 him in.
11 MR. JANKS: All right, and how 'bout the intake
12 of Hill and Mervie intake, about the fact that that does
13 not mean they called in as they testified for Mr. Fieger
14 that in fact they called in on those days?
15 MR. FIEGER: He -- he testified about that,
16 Judge.
17 THE COURT: Well, I mean, he testified that on
18 August 6, he -- he signed up Phillip Hill, so why do we
19 have to go back and look at the other thing?
20 MR. JANKS: Well, Mr. Fieger is suggesting that
21 Phillip Hill called in on August 1, and we're suggesting
22 that Phillip Hill did not call the Fieger firm on August
23 1.
24 MR. FIEGER: Judge --
25 THE COURT: That you're not gonna' -- no. I mean

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1 --

2 MR. JANKS: Because Mr. Danzig is the one that

3 is in charge of that department, and filling out those

4 kinds of forms, so he's the one with knowledge.

5 THE COURT: Well, yeah, he is.

6 MR. FIEGER: No he isn't, Judge. His intake

7 staff filled 'em out. His name isn't even on this.

8 MR. JANKS: It is on the one for Mervie Rice.

9 And, in addition, Mr. Danzig will indicate that, really,

10 there was no intake sheet filled out on Phillip Hill other

11 than a handwritten one.

12 THE COURT: I'll let Mr. Danzig testify to the

13 in -- things that the three indi -- the four individuals

14 said about -- that I wouldn't let him testify to. That's

15 as far as I'm gonna' go.

16 MR. JANKS: All right, okay, and we have Mr.

17 Sherbow, and I wanted to have Mr. Sherbow talk about the

18 fee agreement that he had with Ms. Dawkins since Mr.

19 Harrington brought up Ms. Dawkins, and suggested that

20 somehow there was something improper going on, and that

21 somehow Mr. Danzig told Mr. Harrington to give Mr. Sherbow

22 a referral fee that he didn't deserve, and I would like to

23 show that Mr. Sherbow had a fee agreement with Ms. Dawkins

24 prior to the Fieger firm fee agreement with Ms. Dawkins.

25 THE COURT: Do you have that -- do you have that

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1 as an exhibit?
2 MR. JANKS: Plaintiff's exhibit 62 is the
3 contingent fee agreement that Mr. Sherbow had with Ms.
4 Dawkins, and Defendant's exhibit C is the fee agreement
5 that Ms. Dawkins had with the Fieger firm.
6 THE COURT: Well, how come you didn't show this
7 to Ms. Dawkins?
8 MR. JANKS: Ms. Dawkins hasn't been here to
9 testify, Judge.
10 MR. FIEGER: He did show it to Sherbow.
11 THE COURT: Oh, Dawkins, I'm sorry, I was
12 thinking of Dixon. I'm confused. Wait a minute -- wait a
13 minute. Oh, okay. I'll allow that question for Mr.
14 Sherbow.
15 MR. JANKS: One other thing, I was gonna' ask
16 Mr. Sherbow, since Dion testified that he was not told by
17 Mr. Sherbow to go to the Fieger firm, Ms. Lawrence
18 testified that she heard the conversation, and Mr. Sherbow
19 did tell Dion to go to the Fieger firm. I'd like to have
20 --
21 THE COURT: Nah, that's -- that's he said, she
22 said. That I'm not gonna' allow. Fieger's already, er,
23 Sherbow's already testified.
24 MR. JANKS: I'd also like to have Mr. Sherbow,
25 lastly, testify to the fact that at the meeting of July

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1 26, 2012, when Mervie Rice and Dion Rice were signed up,
2 that they did not object to referral fees.
3 THE COURT: You've already said that about 42
4 different times. You don't have to say it again. You can
5 deal with it in closing.
6 MR. JANKS: Okay.
7 THE COURT: Okay?
8 MR. JANKS: Understood.
9 THE COURT: Bring in the jury.
10 THE CLERK: All rise for the jury.
11 (Jury in at 3:17 p.m.)
12 THE COURT: Please be seated. Mr. Danzig.
13 MR. JANKS: Actually, I'm gonna' have Mr.
14 Sherbow for one brief minute. Mr. Danzig's --
15 THE COURT: Mr. Sherbow, you wanna' swear him
16 again.
17 THE CLERK: Please raise your right hand. Do
18 you swear or affirm to tell the truth, the whole truth,
19 and nothing but the truth?
20 MR. SHERBOW: I do.
21 THE COURT: Okay, take the stand, please.
22 JEFFREY SHERBOW
23 recalled as a rebuttal witness at 3:15 p.m.,
24 sworn by the Clerk, testified as follows:
25 REDIRECT EXAMINATION

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1 BY MR. JANKS:
2 Q Mr. Sherbow, if I could show you Plaintiff's proposed
3 trial exhibit 62, sir, and if you could identify that.
4 A I can identify it. It's a contingency fee agreement that
5 I had with Shawnta Dawkins dated May 24, 2012.
6 MR. JANKS: I'd move for its admission, your
7 Honor.
8 THE COURT: Any objection?
9 MR. FIEGER: No.
10 THE COURT: Without objection, it's received.
11 (Plaintiff's 62 admitted at 3:18 p.m.)
12 BY MR. JANKS:
13 Q I'd also like to show you Defendant's exhibit C, and ask
14 you if you can identify that.
15 A Well, I can tell you what it appears to be. It appears to
16 be a Fieger, Fieger, Kenney, Drew, and Danzig contract for
17 legal representation dated June 5, 2012.
18 Q Regarding Shawnta Dawkins?
19 A Oh, yes, regarding Shawnta Dawkins which was a couple of
20 weeks after mine.
21 Q And what was the date of yours?
22 A May 24, 2012.
23 Q All right.
24 A Two weeks before.
25 MR. JANKS: Thank you. I'd also move for

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1 admission of exhibit C, your Honor.
2 MR. FIEGER: I thought I did already.
3 THE COURT: It's not, it's in.
4 MR. FIEGER: Was (indiscernible).
5 THE COURT: Okay.
6 MR. JANKS: That's all, thank you, Mr. Sherbow.
7 THE COURT: Well, then it was the first exhibit
8 or what number was the first exhibit that we --
9 MR. JANKS: 62 was the first exhibit, and C was
10 the second exhibit.
11 THE COURT: Okay, thank you.
12 (Defendant's C admitted at 3:19 p.m.)
13 MR. FIEGER: Just a couple of questions, Mr.
14 Sherbow. Here is a exhibit that you just wrote.
15 THE COURT: Is that 62 or C?
16 MR. FIEGER: Right.
17 THE WITNESS: This is 62, your Honor.
18 MR. FIEGER: Correct.
19 THE COURT: Okay.
20 MR. FIEGER: Your Honor, is -- is exhibit D in,
21 Defendant's exhibit D?
22 THE COURT: Is it in?
23 THE CLERK: Yes.
24 THE COURT: Yes.
25 MR. FIEGER: Okay.

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1 RECROSS-EXAMINATION
2 BY MR. FIEGER:
3 Q What's the date of that?
4 A May 24, 2012.
5 Q Okay, are you aware that on May 23, 2012 Shawntay (ph)
6 Dawkins called our office?
7 A No. Coming up and showing me this, I wasn't aware.
8 Q Okay, that's in evidence. There's an indication on our
9 intake summary that on May 23, she called our office, do
10 you see that?
11 A Whatever it says, sir.
12 Q Okay, people are allowed to -- even if they've retained
13 another attorney, they can fire that attorney and hire
14 another one.
15 A This is after -- this is after your phone call. I -- I
16 had Shawnta (ph) at the hospital sign this on May 24,
17 2012, in the lobby of Beaumont Hospital with her family.
18 Q That's fine. I'm just asking. They're allowed to fire
19 their attorney, aren't they?
20 A I didn't get fired.
21 Q On -- here's exhibit C your counsel just entered. Is that
22 a fee agreement?
23 A It app -- says that. It's your firm's.
24 Q Okay, all right. Show us the evidence that -- The
25 testimony in this case was that Mr. Harrington came back

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1 to his office, and was told by Mr. Danzig to write a
2 letter to you referring the ca -- er, paying you a one-
3 third referral fee. Did you hear that testimony?
4 A I heard that testimony from Mr. Harrington.
5 Q You didn't refer this case to our office.
6 A That's not true, sir.
7 Q Well, you testified you didn't.
8 A It was a warm transfer.
9 Q Well, why don't you tell the Court and jury what -- since
10 I've been practicing a long time -- what a warm transfer
11 is.
12 A Well, I've been practicing longer than you have, and a
13 warm transfer is I had signed up Shawnta (ph) Dawkins to
14 be my client. She contacted me. We had some meetings. I
15 found out that Mr. Harrington had shown up at the hospital
16 that week with some contact, and she had told me it wasn't
17 her. And I called Mr. Danzig and said, Jeff, it's my
18 understanding somebody from your firm went to see my
19 client at the hospital. And he said I don't know anything
20 about it. It's Mr. Harrington. I talked to Mr.
21 Harrington. This was a relatively easy case. These
22 people were -- had a stand-still on the expressway, and
23 were rear-ended. I was gonna' handle the case. I talked
24 to Mr. Harrington. We worked out an arrangement that I
25 would make sure that Shawnta would make it to the Fieger

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1 office, and it was construed as a referral fee. And then
2 I got paid a referral fee from the Fieger office on the
3 Dawkins case. So it was my client, and then I allowed her
4 to be transferred to the Fieger office. That's what a
5 warm transfer is. And I made it because she, also, was in
6 a time of need and grief. Her daughter was severely
7 injured, and I still talk to Shawnta to this day.
8 Q So you're claiming that what Mr. Harrington told the Court
9 and jury this morning is untrue.
10 A No, I'm saying he's mistaken.
11 MR. FIEGER: I have no further questions.
12 THE COURT: Anything else?
13 MR. JANKS: No, thank you, Judge.
14 THE COURT: Any witness -- jurors have any
15 questions? Go ahead, Mr. Sherbow, you can step down.
16 THE WITNESS: Thank you.
17 (Witness excused at 3:23 p.m.)
18 THE COURT: Anything else, Mr. Janks.
19 MR. JANKS: Mr. Danzig. Judge, could we
20 approach for one minute?
21 THE COURT: Yeah.
22 (Bench conference off record at 3:24 p.m.)
23 (Bench conference ends at 3:24 p.m.)
24 THE CLERK: Please raise your right hand. Do you
25 swear or affirm to tell the truth, the whole truth, and

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1 nothing but the truth?
2 MR. DANZIG: I do.
3 THE COURT: Thank you, Mr. Danzig, take the
4 stand, state and spell both your first and last names for
5 the record.
6 THE WITNESS: Thank you, your Honor. Jeffrey A.
7 Danzig, D-A-N-Z-I-G, first name, J-E-F-F-R-E-Y.
8 JEFFREY DANZIG
9 recalled as a rebuttal witness at 3:25 p.m.,
10 sworn by the Clerk, testified as follows:
11 REDIRECT EXAMINATION
12 BY MR. JANKS:
13 Q Mr. Danzig, there's been some testimony between Mr.
14 Harrington and Mr. Sherbow about a completely different
15 case than we're here on called the Shawntay Dawkins case,
16 and I wondered did you direct Mr. Harrington to pay a 33
17 1/3 percent referral fee to Mr. Sherbow in that matter?
18 A I did not.
19 Q What involvement if any did you have in that matter?
20 A I understood through Mr. Sherbow that he had signed a
21 client up. I understood that Mr. Harrington had
22 subsequently been assigned a case through the intake
23 process. He went out to the hospital, signed the client
24 up. I understood that two different law firms had signed
25 the client up. I told Mr. Harrington, since it was his

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1 case, that he should be concerned about the fact that
2 there might have been a pre-existing fee agreement
3 executed by the client. I was concerned for the firm, by
4 virtue of the conflict. I asked him to check it out. He
5 did. That was my role.
6 MR. JANKS: Did you have Defendant's C?
7 MR. FIEGER: Judge, can --
8 THE COURT: What?
9 MR. FIEGER: I -- I'll -- that's --
10 THE COURT: Thank you.
11 BY MR. JANKS:
12 Q Mr. Danzig, the only other area of inquiry that I have for
13 you today is you previously testified about what you told
14 each of the Rice clients, Dion Rice, Mervie Rice, Dorothy
15 Dixon, Phillip Hill, at the time you signed them up, and
16 in court today they've testified that they were never
17 advised that this was a Sherbow referral or -- well,
18 that's what they testified to. What -- what's your
19 response to that?
20 A Well, my response is I exactly did what I told you I did
21 previously. I gave them all lengthy explanations of the
22 nature of the firm's relationship, the nature of the fee
23 agreement that they were executing, and the nature of two
24 different referral relationships, one that my firm would
25 have with them, and one that Jody Lipton, as the no-fault

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1 attorney would have with them. So it was not just one
2 explanation about referral relationships, it was two. I
3 was covering both ends.
4 Q Did any of them object at the time of the sign-ups to that
5 relationship or those relationships?
6 A There was no objection.
7 MR. JANKS: Thank you.
8 THE COURT: Mr. Fieger, any questions?
9 RECROSS-EXAMINATION
10 BY MR. FIEGER:
11 Q Did you tell the Court and jury there's a conflict if an
12 attorney has a case, and we take it from that attorney,
13 did you say there's a conflict?
14 A No, I didn't say a conflict. I said there could be a
15 problem. My experience in that regard is that if we as a
16 firm have a fee agreement with a client, and someone else
17 comes in and tries to sign the client up, and does so,
18 that would be a problem. That would be a violation, in my
19 opinion, if I sign that client up that is already signed
20 up with another firm. All I did was ask Mr. Harrington to
21 check it out, and determine whether or not that was the
22 case or not. 'Cuz in my experience, personally, if I'm
23 involved in that situation, the client has to reject or
24 terminate the first relationship before they can sign
25 another fee agreement. I was concerned about that issue.

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1 I asked Mr. Harrington to check it out.
2 MR. FIEGER: Mr. Danzig, it happens every single
3 day in our firm that people come to us, and have retained
4 other attorneys. There's no conflict whatsoever.
5 THE COURT: All right, Mr. Fieger, is that a
6 question. I don't want you testifying.
7 BY MR. FIEGER:
8 Q Isn't that true?
9 A I disagree. My advice to the client --
10 Q Mr. Danzig, how many people in your experience have come
11 to my firm asking me to represent 'em even though they're
12 represented by other counsel, how many hundreds?
13 A It hap -- it happens on occasion, and if it does, I ask
14 the client to kindly send the initial attorney a letter
15 terminating their relationship so that we can get
16 involved. I would never get involved in a relationship
17 with a client that already has an attorney. I believe it
18 violates the canons of ethics. That's what I think.
19 MR. FIEGER: Cite the rule that violates the
20 canons of ethics that permits an att -- a client to retain
21 another counsel. That's preposterous.
22 THE COURT: Well, we're way beyond where we need
23 to be. Let's -- do you have any other questions?
24 BY MR. FIEGER:
25 Q Well, Mr. Danzig, also, finally, you told us that -- what

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1 did the circumstances about Mr. Harrington giving a one-
2 third referral fee to your friend, Mr. Sherbow in the
3 Dawkins case, how'd that happen?
4 A You'd have to ask yourself and Mr. Harrington. I wasn't
5 involved in that situation. I didn't make any decision or
6 determination whether to pay Mr. Sherbow a referral fee in
7 the Dawkins matter. It wasn't my call, wasn't my case.
8 Q Why were you carboned on the letter then?
9 A I have no idea. That's Mr. Harrington's decision, not
10 mine. I didn't tell him to copy me in on the letter. He
11 decided to do so. You'd have to ask him.
12 Q What's a warm transfer?
13 A A what?
14 Q A warm transfer.
15 A I have no idea what you're taking about. A warm transfer?
16 Q Yeah, tell -- tell the Court and jury what this warm
17 transfer is.
18 A I have no idea what you're talking about. I don't
19 understand --
20 Q You don't know what a warm transfer is?
21 A I just told you I don't know what you're talking about.
22 THE COURT: Okay, that -- that horse is dead.
23 You wanna' move on.
24 MR. FIEGER: No, thank you.
25 THE COURT: Any other questions?

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1 MR. JANKS: No, nothing else for client, Judge.
2 THE COURT: Okay, jurors -- jurors have any
3 questions? Thank you, Mr. Danzig.
4 THE WITNESS: Thank you.
5 (Witness excused at 3:30 p.m.)
6 THE COURT: Any other witnesses?
7 MR. JANKS: No other witnesses, Judge.
8 THE COURT: Any surrebuttal?
9 MR. FIEGER: No, sir.
10 THE COURT: Ladies and gentlemen, testimony in
11 this case is over. We have some matters that we have to
12 go over so that we can get you in and out of here
13 tomorrow. So I'm gonna' excuse you for the evening.
14 Again, caution you not to talk about the case with
15 anybody. Don't go on the internet about this case with
16 any -- for any reason. Other than that, have a good
17 night. I will see you at 8:40 -- say, 9 o'clock tomorrow
18 morning just to be safe. We'll get you in and out of
19 here.
20 THE CLERK: All rise for the jury.
21 THE COURT: Or at least in your nego -- your
22 deliberations.
23 (Jury out at 3:31 p.m.)
24 THE COURT: Okay. Let's talk about jury
25 instructions. Let's start with what we agree on.

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1 MR. JANKS: Can I do one housekeeping thing,
2 Judge, since I'm old and senile?
3 THE COURT: What?
4 MR. JANKS: That is the exhibits here. Oh, I
5 guess we admitted them, didn't we; 20, 22, 23, 31, 33, 34,
6 62. Those are the statements by each of the clients, the
7 affidavits by each of the underlying clients --
8 THE COURT: Any objections, Mr. Fieger?
9 MR. FIEGER: No.
10 MR. JANKS: -- and the fee -- fee contract.
11 MR. FIEGER: And the what? I'm sorry, the what?
12 MR. JANKS: The fee -- the Shawntay Dawkins fee
13 -- fee contract.
14 MR. FIEGER: Yeah.
15 THE COURT: Those are all admitted.
16 MR. JANKS: I thought -- I thought I might have
17 said that, but I thought maybe I didn't.
18 THE COURT: If I haven't admitted 'em -- if I
19 haven't, they are. We'll check and see what we have
20 admitted. Okay, we're gonna' give Faithful Performance,
21 301; 302; 303; 309.
22 MR. FIEGER: Not 305?
23 THE COURT: Yeah, 305. Do you have a staple
24 remover?
25 THE CLERK: (Indiscernible) back there.

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1 THE COURT: Do you have a --
2 THE CLERK: Oh, yes, I do.
3 THE COURT: I have no idea how to use this.
4 (Judge and Clerk have a conversation.)
5 THE COURT: 305; 309; 310; 311. I haven't taken
6 judicial notice of any --
7 MR. FIEGER: No.
8 THE COURT: -- facts, so 315, Prior Inconsistent
9 Statement; 401 on credibility; 406, Witness Who's Been
10 Interviewed by a Lawyer, both want that. Conflicting
11 Evidence/Number of Witnesses, 407; 411, because we did
12 have a deposition; 601 is out, isn't it?
13 MR. FIEGER: Yeah.
14 MR. JANKS: I -- I had requested it, Judge, based
15 on the phone records that were never produced by the
16 underlying Plaintiffs, and despite my request, and they
17 all admitted on the stand that they refused to produce
18 'em, at least Dion did, and Mervie did. I guess I didn't
19 ask Phillip Hill or Dorothy Dixon, and Dorothy Dixon's
20 irrelevant. But as to Mer -- as to Mervie and as to Dion,
21 I had asked for the phone records in discovery. I had
22 asked during their deposition. Mr. Fieger objected during
23 the depositions, claimed attorney-client privilege,
24 claimed I was harassing his clients, and it was only a
25 week or two before trial that Mr. Fieger withdrew his

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1 attorney-client privilege objection, and I then did send
2 out a subpoena for the phone records, but you can't get
3 anything back from 2012 at this late date. So had I been
4 able to get into that earlier, I might have gotten those,
5 and I would have gotten those records from 2012, so they
6 didn't produce 'em.
7 MR. FIEGER: That's complete nonsense, Judge. He
8 -- and he's harassed these people for two and a half
9 years. You can't imag -- you know how many times he's
10 been here. I -- those people are -- he can -- he'd have --
11 he'd have to -- the only thing he can do 'cuz they're not
12 parties to this action, and he never did any discovery, is
13 subpoena them. He's had their records since day one.
14 Their records, their phone numbers are all over my
15 records. They were given to him on day one. He never
16 subpoenaed them. The only thing he asked 'em to do was go
17 home and dig through their files. And I said they don't
18 have to do that. What kind of nonsense is that?
19 THE COURT: I -- I don't -- I don't think that
20 that -- I mean, the witnesses were here. I -- I don't
21 think the phone records -- there was no -- no issue made
22 of it today in front of the jury. I'm not gonna' deal
23 with it. Theories of the parties, I'm gonna' let you guys
24 tell what the theories are. I don't like giving those
25 'cuz -- Okay. 801, Burden of Proof.

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1 MR. FIEGER: Just one second, your Honor.
2 THE COURT: Just list (indiscernible)
3 propositions on which -- well, I guess I do have some good
4 theories. Do you have your theory in here, Mr. Fieger?
5 MR. FIEGER: No, I don't have a theory because
6 the theory wouldn't pertain to the burden of proof.
7 THE COURT: Yeah, but we say, "I've listed for
8 you the propositions on which the Plaintiff and Defendant
9 have the burdens of proof."
10 MR. FIEGER: Right, because that goes to not our
11 theory -- not theories under seven, it goes to our causes
12 of action, breach of contract, referral, 1.5.
13 THE COURT: Yeah, I'll give it -- I'll give 801,
14 it's easy.
15 MR. FIEGER: Right.
16 THE COURT: Basically, Defendant -- Plaintiff or
17 Defendant satisfy the burden, the evidence must persuade
18 you it's more likely or not the propositions true. That's
19 fine. 38-0-1, Agency Relationship.
20 MR. FIEGER: That's fine, as long as we instruct
21 them on contract.
22 THE COURT: Okay. 38-10, Apparent Agency. 38-
23 10, why would I deal with vicarious tort liability? This
24 is a contract case.
25 MR. FIEGER: 'Cuz he -- who --

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1 THE COURT: You guys both want me to give that?
2 MR. FIEGER: No.
3 THE COURT: Why would I give a vicarious tort
4 liability instruction, Mr. Danzig, er, Mr. Janks, sorry.
5 You guys are all starting to look alike to me.
6 MR. JANKS: Well, simply based on -- on the
7 issue of letterhead, being on the letterhead and --
8 THE COURT: That's vicarious tort liability.
9 This isn't a tort case. Why would I give this?
10 MR. FIEGER: Commit error, if you wanted to
11 commit error, I guess.
12 THE COURT: It's only harmless, Mr. Fieger,
13 that's all (indiscernible) to do. You got an apparent
14 agency relationship which I'm giving on 38-10.
15 MR. JANKS: All right, we can withdraw 38-10.
16 THE COURT: Thank you. Jury Deliberations, 6-3-
17 0-1, obviously everybody gets that. 1-42 on Introduction
18 and Burden of Proof.
19 MR. FIEGER: That's 1-42-1?
20 THE COURT: 1-32 (sic?)-0-1.
21 MR. FIEGER: Okay.
22 THE COURT: 1-42-30.
23 MR. FIEGER: What's that?
24 THE COURT: That's the introduction to damages,
25 and this --

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1 MR. FIEGER: Well, before we get there, how
2 'bout the contract?
3 THE COURT: I'm gonna' -- I'm just goin' through
4 the spec -- the regular ones now.
5 MR. FIEGER: I'm talkin' about 1-42-10; 1-42-13;
6 1-42-16.
7 THE COURT: Is somebody givin' me those?
8 MR. FIEGER: Yes, sir. They're in my pile.
9 THE COURT: Here we go.
10 MR. FIEGER: Starting with one --
11 THE COURT: Yep, 1-42-10? Yep.
12 MR. SHERBOW: Judge, would you just
13 (indiscernible) number? What -- I --
14 THE COURT: 1-42-10.
15 MR. SHERBOW: We're (indiscernible) -- I'm
16 sorry.
17 THE COURT: Your attorney can talk for you, Mr.
18 Sherbow, you're the client.
19 MR. JANKS: Well, for some reason, Judge, I don't
20 have a hard copy (indiscernible).
21 THE COURT: "1-42-10: In order for there to be
22 a contract -- This is one of Mr. Fieger's set. "In order
23 for there to be a contract, there must be an offer by one
24 party, and acceptance of the offer by the other party in
25 consideration for the offer and acceptance. Mere

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1 discussions and negotiations are not a substitute for the
2 formal requirements of a contract. I'll now define those
3 terms for you. An offer to make a contract is a proposal
4 to enter into a bargain communicated by words or conduct
5 that would reason -- reasonably lead the person to whom
6 the proposal is made to believe -- believe that the
7 proposal is intended to create a contract. No particular
8 form of an offer is required, although the essential terms
9 of the contract must be reasonably clear, definite, and
10 certain. In this case, you must return a verdict for
11 Defendant unless you find, by a preponderance of the
12 evidence, that Jeffrey Sherbow legally offered to refer to
13 the Fieger firm the cases of Rice, the estate of Rice,
14 Hill, and Dixon, and that he had the legal authority to
15 make such an offer by virtue of his control of each of the
16 clients."
17 I think I will probably take that out and just
18 say that he had the legal authority to make such an offer.
19 MR. JANKS: Well, also, usually, what we have is,
20 if you find for the Plaintiff that these elements have
21 been proven, then you find for the Plaintiff. You don't
22 just immediately go to -- do you find for the Defendant.
23 And, also, as you've indicated in an earlier opinion, this
24 is kind of like a bifurcated four-pronged case, so it
25 doesn't have to be all of them. It can be one, all, some,

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1 more.
2 THE COURT: Well, the problem, Mr. -- Mr. Janks,
3 with that argument, is that you only put in evidence of
4 the whole amount, and I was worried about that. You
5 didn't put in any evidence as to what each of these
6 individuals would have been worth, so I don't know how the
7 jury makes that determination based on the evidence that
8 you put in, so I think it's all or nothing --
9 MR. JANKS: Okay.
10 THE COURT: -- at this point.
11 MR. JANKS: Well, ex -- except that --
12 THE COURT: I don't have a problem changing that
13 to -- so you --
14 MR. JANKS: Well, I -- I will say this, Judge.
15 Exhibits 41 through 44, which are the Fieger firm
16 settlement agreements with Charles Rice, Mervie Rice,
17 Phillip Hill, and Dorothy Dixon are exhibits that we have
18 in our exhibits.
19 THE COURT: Have they been -- have they been
20 admitted?
21 MR. JANKS: Not at this point, Judge, but --
22 THE COURT: Well, you've rested.
23 MR. JANKS: The Defendant did indicate that they
24 have no objection to putting the numbers in. They had
25 objections to putting those particular exhibits in, but

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1 they did not object to the numbers, and so, in my closing,
2 I have the numbers, and if I need to reopen the proofs to
3 -- to just say here's the numbers that they agreed that we
4 could put in, then let's do that.
5 MR. FIEGER: Well --
6 THE COURT: That's not how the game is played,
7 Mr. Janks. You had every opportunity for three days to
8 put your case in. You've rested. I'm not reopening
9 proofs. You made your bed. You didn't introduce those
10 exhibits. That's your problem at this point. Well, so
11 I'll say, this case your verdict will be for the Plaintiff
12 if you find, by a preponderance of the evidence, that
13 Sherbow legally offered to refer to the Fieger firm the
14 cases of Rice --
15 MR. FIEGER: No -- no, see, this -- what he's
16 wrong about. Judge, he has a three -- if there's no
17 offer, if there's no consideration, if there's no
18 acceptance, any one of those Defendant wins. He has to
19 prove all three of 'em. Consider the fact that somebody -
20 - if there's an offer, that's fine. That's why it's only
21 the Defendant, Judge, because if he didn't prove offer,
22 he's -- he's done. However, he has to prove offer,
23 acceptance, and consideration. It's a three-pronged thing
24 for him, not for the Defendant. Do 'ya -- does the Court
25 understand? He doesn't win just if he proves an offer.

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1 But if -- if he doesn't prove the offer, he loses.
2 MR. JANKS: However, the way we structure the
3 instructions is if the Plaintiff has proven the elements
4 stated above, then you find for the Plaintiff. Then you
5 say, if the Plaintiff has not proven the elements, then
6 you find for the Defendant. So he only has a you find for
7 the Defendant. He doesn't have a you find for the
8 Plaintiff in there.
9 MR. FIEGER: As to offer, that's right.
10 THE COURT: Okay, what I'm gonna' -- the
11 instruction I'm going to give is in this case your verdict
12 will be for the Plaintiff if you find, by a preponderance
13 of the evidence, that Jeffrey Sherbow legally offered to
14 refer to the Fieger firm the cases, that he had the legal
15 authority to make such an offer, the Fieger firm accepted
16 the offer, and there was consideration. If any of these
17 are missing, you will find for the Defendant.
18 MR. JANKS: I think the other thing that I would
19 have to say on that is you -- you previously ruled in
20 summary disposition that there was consideration when
21 cases were referred, if they were referred.
22 MR. FIEGER: What?
23 THE COURT: I don't know that I said that, but
24 it's up to the jury at this point. Okay. And tonight,
25 you guys are gonna' have to make these changes. What else

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1 do we have?
2 MR. FIEGER: I have some -- a lot of special
3 instructions (indiscernible) they don't know what their --
4 THE COURT: Yeah, I haven't even gotten to those
5 yet.
6 MR. FIEGER: Right.
7 THE COURT: I'm just tryin' to get through the -
8 - the -- The acceptance, 1-42-13.
9 MR. FIEGER: Yes, sir. But, here, the
10 acceptance is not just by us, it's by the clients or you
11 can't satisfy 1.5.
12 MR. JANKS: Well, again, 1.5 doesn't require
13 acceptance. It requires advice and lack of objection.
14 MR. FIEGER: Judge, this verbiage game, may I
15 please ask the Court to stop it now. The courts have
16 held, he's -- what he's tellin' the Court is that nobody
17 has to say anything. In a crowded room, if you just say
18 that nobody said anything, you could win this case. In
19 fact, the courts say that the client must knowingly
20 approve of a division of fees, and understand it.
21 Kasinski v Mason, Judge. They granted summary judgment on
22 a case where the Plain -- the -- the -- the facts were --
23 were much stronger for the Plaintiff, arguably, then they
24 are here, and they said this shouldn't even ever go to
25 court because the Plaintiff has to establish that the

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1 client -- Do you have the Mason case, Judge. I attached
2 it.
3 THE COURT: Yeah.
4 MR. FIEGER: It's on the second page of the
5 Mason case. It says, "We do not agree that this minimal
6 evidence and the contemporaneous argument regarding the
7 circumstances." And the -- the argument was the -- the
8 Plaintiff's attorney said --
9 THE COURT: Is there a published case on this?
10 MR. FIEGER: No.
11 THE COURT: Okay.
12 MR. FIEGER: But this is a case written by a
13 Supreme Court Justice. It certainly could be persuasive
14 in light of what's been argued here. In this case, "We do
15 not agree that the minimal evidence and contemporaneous
16 argument regarding the circumstances," and that was that
17 the Plaintiff's attorney said he was sending a client
18 across the hall, and that he was gonna' get his fee from
19 the other attorney. And the client said, I didn't
20 understand anything. Says, "equates to a showing of
21 Camilari's (ph)," that's the client's, "understanding of
22 and agreement to an otherwise unspoken division of fees
23 arrangement because no material fact exists regarding
24 compliance with the requirement of rule 1.5(E); "that the
25 client knowingly approve of a division of fees

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1 arrangement, Plaintiff's claim is unenforceable."
2 He's saying that the client doesn't have to
3 knowingly approve of it. He's saying -- he's making some
4 ludicrous argument that silence wins.
5 MR. JANKS: Judge --
6 MR. FIEGER: It's ludicrous. I mean, you've
7 said it.
8 THE COURT: Okay, all right -- all right, you
9 made your point.
10 MR. JANKS: Judge, we've -- we've argued this
11 already, and you ruled that the --
12 THE COURT: Tell you what, the jury's gonna' make
13 that decision, gentlemen, it's the jury. I'm not gonna'
14 say anything about it. The jury can decide what
15 acceptance -- what it means. I'm not gonna' give 'em an
16 instruction on it. So, now, that's an issue for you guys
17 to take up.
18 "Acceptance is a statement or conduct by the
19 person receiving an offer that would reasonably lead the
20 person who made the offer to believe the material terms of
21 the offer has been agreed to." That's all I'm gonna' say
22 there, 1-42-13.
23 1-42-16, Consideration. "Consideration of
24 something of value given in exchange for the promise. An
25 act done in the past cannot be consideration for a later

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1 contract doing or promising to do what one is obligated is
2 not consideration. Consideration does not need to be
3 expressed in writing." That's where we're gonna' go on
4 that.
5 MR. JANKS: Judge.
6 THE COURT: What?
7 MR. JANKS: You had previously ruled in your
8 prior summary disposition order of 8/17/16 on page four
9 that there was consideration here, so --
10 MR. FIEGER: How could there -- how could you
11 have made that ru -- you didn't ma --
12 THE COURT: I don't know, let me see what I
13 said. Where did I say it? (Indiscernible)
14 MR. JANKS: Page four, Judge.
15 THE COURT: I'm sorry. You guys, you know, you
16 take stuff I say, and you -- you're -- you're -- you're --
17 you're like Trump and what's her name. You leave stuff
18 out. In this case, "If Plaintiff establishes its version
19 of events, it performs the service of bringing the clients
20 to Defendant or receive the benefit of representing four
21 valuable tort cases, this is adequate consideration."
22 "If," not I ruled. "If."
23 MR. FIEGER: Well, that's what's been
24 (indiscernible) I don't -- this entire trial.
25 THE COURT: I -- I mean, you -- you know, guys, I

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1 understand this case. I mean, I understand you both got
2 issues, and it's a lot of money to both of you, but let's
3 just follow the law. So where was I on --
4 MR. FIEGER: You were on consider --
5 THE COURT: Yeah, I'm not saying I said. I -- I
6 haven't found there was consideration, Mr. Janks.
7 MR. JANKS: All right, thank you, Judge.
8 THE COURT: "An agent is a person who is
9 authorized by another to act in its behalf. A person is
10 given the authority and has a right to control the agent
11 is called the principal." Why am I givin' that one?
12 MR. JANKS: You're -- that's 38-0-1. You
13 already -- we were previously there, and said --
14 THE COURT: 38-0-1, I've already said I'm giving
15 that.
16 MR. JANKS: -- you were giving it.
17 THE COURT: I'm goin' back over. Did I give 38-
18 10?
19 MR. JANKS: You did.
20 THE COURT: Yep, okay. 8-0-1, I've given. All
21 right, now, we got into some specials. Have you seen Mr.
22 Fieger's specials?
23 MR. JANKS: I have, and I filed objections to
24 all of them, Judge.
25 THE COURT: Let's go back. 1-42-30; 1-42-31.

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1 MR. FIEGER: What are those, your Honor.
2 THE COURT: Introduction to Damages is 1-42-30.
3 If you find -- well, let me see this. Yeah, it's the one
4 if Fieger & Fieger's liable to Sherbow, you must -- you
5 must determine the amount of damages.
6 MR. FIEGER: And how are they doing that, Judge,
7 I'm sorry?
8 THE COURT: Well, it's -- I mean, I can say
9 Plaintiff is not required to prove the damages with
10 mathematical precision. Yeah, I'll give that whole one.
11 "Therefore, it's necessary that Plaintiff prove its
12 damages to a reasonable certainty or reasonable
13 probability. However, you may not award damages on the
14 basis of guess, speculation or conjecture."
15 MR. FIEGER: No, but I mean what did we -- what
16 we're we talking about damages 'cuz we know what the --
17 the amount is.
18 THE COURT: Well, what I said was that Mr. Janks
19 put in the total amount of the damages. He didn't put it
20 in, one for Dorothy Dixon, one for Mr. Hill, the other,
21 you know, the other two -- three.
22 MR. FIEGER: Right, so how --
23 THE COURT: So they've got -- they've gotta'
24 determine whether or not all four will be referred to you,
25 and if not, then they got a -- they got a problem.

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1 MR. FIEGER: But that's my point. What if they
2 -- just for the sake of argument, although I don't think
3 he's proved any of his case, and I'm just arguing this. I
4 don't want you to think I don't. I think otherwise. That
5 the jury believes that he referred one and not the other
6 three --
7 THE COURT: Well, if you want, we can put in
8 these four exhibits to have the specific numbers on 'em.
9 I think that will make the jury's job a lot easier.
10 MR. FIEGER: Then why don't we not do either. I
11 stipulate. We know what the figure is. It's 20 percent.
12 THE COURT: But they don't know what the -- they
13 don't know what the total of the settlements were on each
14 particular case.
15 MR. FIEGER: I understand that. No, I'm saying
16 Mr. Janks made reference to the fact that we did say we --
17 we would stipulate to the amount. We don't have the jury
18 deci -- if they find for the --
19 THE COURT: Okay, then --
20 MR. FIEGER: -- for the client, we know what the
21 number is.
22 THE COURT: Then give me an instruction that --
23 that has the specific numbers.
24 MR. FIEGER: They wouldn't make that
25 determination. In other words, that's what I'm saying.

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1 If they find in favor of the Plaintiff as to Mervie Rice --
2
3 THE COURT: Right.
4 MR. FIEGER: -- we stipulate to the number. Does
5 that --
6 THE COURT: Oh -- oh -- oh, I see what you're
7 saying.
8 MR. FIEGER: We stipulate to that number. If
9 they find for that -- that's what I think Mr. Janks was
10 referring to.
11 THE COURT: Is that where you're going to, Mr.
12 Janks?
13 MR. FIEGER: 'Cuz otherwise -- 'cuz they can't
14 find greater or less than because the proofs won't show
15 it.
16 MR. JANKS: Right, it is a contract case, and it
17 is for 20 percent of the fee.
18 MR. FIEGER: So we just stipulate to it. We know
19 what the damages are. I stipulate as the Plaintiff, er,
20 Defendant as to what the damages are at the end.
21 THE COURT: Well, then, so the only question is
22 then we don't need all the damage calculations.
23 MR. FIEGER: That's right, the jury will not
24 determine damages.
25 THE COURT: Mr. Janks?

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1 MR. JANKS: That's fine.
2 THE COURT: Okay, so we don't need to do any of
3 the damage ones. The record should reflect the
4 stipulation that the damages will be 20 percent of
5 whatever the number was.
6 MR. JANKS: Right, and -- and we're talking each
7 Plaintiff --
8 MR. FIEGER: That's correct.
9 THE COURT: Each Plaintiff.
10 MR. JANKS: -- is what he just said. Right.
11 THE COURT: 'Cuz I thought I saw in the proposed
12 jury verdict that you -- you got it set out for each of
13 the four, is that right?
14 MR. JANKS: Right, so we can take that out.
15 THE COURT: Okay. No, we need that in. We need
16 to find out was there a con -- was there a referral of
17 Mervie Rice.
18 MR. FIEGER: Right, as to each of the four,
19 right.
20 THE COURT: Was there a referral of --
21 MR. JANKS: Yeah, right.
22 MR. FIEGER: Right -- right.
23 THE COURT: Right. Okay, now, let us look at --
24 I'm gonna' start with the Plaintiff, special request to
25 damages, special instructions.

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1 MR. FIEGER: I'm sorry, your Honor, what?
2 THE COURT: The Plaintiff's special requested
3 specials. First one is, "Plaintiff was not required to
4 know any of the underlying Plaintiffs nor make personal
5 contact with any particular one of them."
6 MR. FIEGER: Where -- what law is that?
7 THE COURT: Yeah, what's that --
8 MR. FIEGER: That's just --
9 THE COURT: What's the basis of that, Mr. Janks?
10 MR. JANKS: Well, the basis of that is the
11 testimony of Mr. Sherbow and the testimony of Mr. Danzig.
12 It also would have been the testimony that I proposed to
13 offer Mr. Christenson that the Court struck, that the
14 custom and practice in Michigan is that --
15 THE COURT: No -- no -- no, what's the legal
16 basis of this? These are instructions now, not what the
17 testimony was. Is there a case that says that the
18 Plaintiff was not required to know any of these people?
19 MR. JANKS: There's no case that says that they
20 are or they aren't. The -- the -- the cases -- they're --
21 it's MRPC 1.5 that says if there's gonna' be fee sharing -
22 -
23 THE COURT: Well, I'll tell you what I'd just as
24 soon do.
25 MR. FIEGER: Judge, I'm --

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1 THE COURT: Why don't I just read 1.5 as an
2 instruction.
3 MR. FIEGER: Yes, but, first of all, that --
4 that's okay except, one, they don't know what a referral
5 is. Two, the instruction has been, er, excuse me, 1.5 has
6 been clarified completely by case law that says --
7 THE COURT: By an unpublished case from 2001
8 that no one's ever talked about or done anything since.
9 MR. FIEGER: Because nobody's ever brought such
10 a suit, Judge. But to prevent the argument here, he's
11 making an argument to the Court and to the jury, and he
12 stood -- May I do it sitting down or should I stand up?
13 THE COURT: Relax, you guys can both stay
14 seated, now.
15 MR. FIEGER: Okay. He's told the jury, at least
16 -- through objections -- at least ten, 20 times that the
17 client doesn't have to agree or even understand. All they
18 have to do is not object. In other words, they have to be
19 silent. That is -- is -- position is preposterous. And
20 the courts, when they dealt with 1.5, said that. They
21 said 1.5 requires that the client knowingly understand and
22 approve of the division of fees. He's trying to turn that
23 language into an absurdity. I've also given the Court the
24 -- the ethical rules on that. Prior to the division of --
25 it's 2-34. "Prior to the division of a fee between

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1 lawyers who are not in the same firm, the client must be
2 advised of the identify of the lawyers who will divide the
3 fee, which lawyer the client should contract for informa -
4 - contact for information on the case, what services each
5 lawyer will be providing on the case, and which lawyer or
6 lawyers will be responsible for the matter. Both the
7 referring lawyer and the receiving lawyer are responsible
8 to see that the client is properly advised, and does not
9 object to the participation of the lawyers."
10 Judge, and he's got it so they don't have to
11 prove anything. He actually got a special instruction
12 that says it's my burden of proof. These aren't even his
13 clients, Judge. Just take a look at the rule. If you
14 wanna' give this, they were never his clients. It says,
15 "the client." How do you refer a case where a lawyer
16 isn't your client; where the client isn't your client;
17 that you read 'em in the phone book. They called Jeff
18 Danzig, your friend.
19 THE COURT: Well, but I think that Mr. Dion
20 Rice's testimony obviates a lot of that, at least as it
21 relaters to Ms. Dixon and Mr. -- Mr. Rice's cases.
22 MR. FIEGER: It just -- with all -- it only
23 shows that they talked, that he talked to one of 'em.
24 THE COURT: I understand.
25 MR. FIEGER: But Dion Rice isn't anybody's

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1 client either, your Honor. How did we get around that?
2 THE COURT: We get around that because Dion
3 Rice, at the time, at least for argument's sake, was the
4 son of the deceased who was a client, so --
5 MR. FIEGER: No, he was never a client. He's
6 not --
7 THE COURT: You know what, Geoff, you can argue
8 with me all you want, but right now, I'm makin' the
9 decisions, and these are decisions that eventually will
10 probably be made by three men and women much wiser than
11 me.
12 Okay, I'll tell you what I'm gonna' give. I'm
13 gonna' give the following instruction: In order for a
14 referral fee to be proper, both the referring lawyer and
15 the receiving lawyer are responsible to see that the
16 client is properly advised, and does not object to the
17 participation of the lawyers. The lawyers may each advise
18 the client as to the arrangement, jointly advise the
19 client or agree that one or the other lawyers shall be
20 responsible for advising the client, as long as both
21 insure that the client is properly advised, and given an
22 opportunity to object.
23 Do we have -- is there something in your
24 proposed jury verdict form that has a finding that these
25 people were actually clients of Mr. Sherbow's?

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1 MR. JANKS: Not in mine, Judge. Mine ask --
2 THE COURT: Don't we think we -- shouldn't we
3 have a -- a -- a form that says, number one, do you find
4 that any of these people were clients of Mr. Sherbow's?
5 MR. FIEGER: Yes.
6 MR. JANKS: I don't think so because, again,
7 there -- there's no legal requirement that they be a
8 client or that they -- that Mr. Sherbow has signed them
9 up.
10 THE COURT: Well, wait a minute. Don't they
11 have to -- I mean, you gotta' have somethin' more than go
12 to the phone book and seeing that they're -- I mean, and
13 doin' what Paul Newman did in the -- in the Verdict, don't
14 'ya?
15 MR. FIEGER: Yeah.
16 MR. JANKS: Well, sure -- sure you do.
17 THE COURT: Okay.
18 MR. JANKS: And -- and what we have here is we
19 have a prior client of Mr. Sherbow.
20 THE COURT: Who?
21 MR. JANKS: Hatchett. Calls Mr. Sherbow and
22 says this accident happened, and that I've gotten a call
23 from Dion Rice --
24 THE COURT: But Hatchett isn't a client in this
25 case. She knows somebody.

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1 MR. JANKS: Right, and she gets a call from Dion
2 Rice, and Dion Rice says I need to know the name of your
3 and my dad's lawyer so that I can contact that lawyer.
4 So, then, Dion Rice and Mr. Sherbow, under the testimony
5 of both of them --
6 THE COURT: And then before he talks to a
7 client, he calls -- I mean, this is what the testimony is.
8 Before he talked to Dion Rice, he calls Danzig, so he
9 doesn't have a client at that point, does he?
10 MR. JANKS: No, at that point he has the --
11 THE COURT: Damn, I'm gettin' towards a directed
12 verdict decision here.
13 MR. JANKS: At that point, he has the fact that
14 he is going to, perhaps, be able to refer four personal
15 injury cases to the Fieger firm. Now, just on his call --
16 on the call from Hatchett, that's not enough. So, now, he
17 needs the contact with Dion Rice which occurs. He gets
18 the contact with Dion Rice, and he tells Dion Rice, in
19 front of Dorothy Lawrence, I'm gonna' refer you and your
20 family to the Fieger law firm. Dion Rice says okay
21 according to Mr. Sherbow. According to Dion Rice, he
22 says, no, that's not what happened. I independently
23 called the Fieger firm. Classic question of fact there,
24 but I, like Mr. Fieger, have been doin' PI for 40 years,
25 people call my office and say, hey, I need a lawyer for

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1 whatever, probate, tax, wills, trusts, product liability.
2 I say I don't do those things. I give 'em the name and
3 number of a lawyer that does, and if they go to that
4 lawyer, that's a referral. That -- that's all --
5 THE COURT: If you give somebody -- somebody
6 calls you out of the phone book, and --
7 MR. JANKS: Yes.
8 THE COURT: -- and says my name's Jim, and I've
9 got a patent case, can you help me. And you say, no, but
10 I'm gonna' refer you to Brooks and Cushman.
11 MR. JANKS: Yes.
12 THE COURT: And you don't call Brooks and
13 Cushman, they call Brooks and Cushman, you get a referral
14 fee?
15 MR. JANKS: Yes, happens all the time, that's
16 why I asked for Mr. Christenson to be a witness to come in
17 --
18 MR. FIEGER: If this --
19 MR. JANKS: -- and testify --
20 THE COURT: Wow.
21 MR. JANKS: -- and testify that that's what
22 happened.
23 MR. FIEGER: If this was true then somebody
24 could go to him, tell him the whole story, just say, and
25 he says I don't do this, but I'll send you that -- and

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1 it's not privileged -- in other words, they're not his
2 clients -- his position is right now that I can refer you,
3 and I -- you don't have to be my client. Well, if that's
4 true, that if somebody comes along and says give me all
5 the information that you have on Mr. X 'cuz he's not your
6 client, he'd ha -- it would be unethical 'cuz he either
7 has to be his client or he doesn't have to be his client.
8 MR. JANKS: If there's a consultation. Mr.
9 Fieger --
10 THE COURT: Well, if there's a consultation,
11 that's one thing. But if he calls you on the phone --
12 MR. JANKS: Well, but somebody --
13 THE COURT: -- and says I got a, you know, I've
14 got a patent, and you say go see Brooks and Cushman, and
15 you don't do anything else with the client, that's -- you
16 think that's referable?
17 MR. JANKS: Yes, I do, as a matter of fact, but
18 --
19 THE COURT: Wow.
20 MR. JANKS: -- typically, what happens is you
21 take some information from the clients, my identifying
22 information, some basic case information, then you call
23 the lawyer that you're going to potentially refer it to,
24 and tell him about it or send -- or -- or send --
25 MR. FIEGER: The rule says the clients.

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1 MR. JANKS: -- them an email. You -- you don't
2 have to sign up the case first, you just don't. Mr.
3 Fieger has a whole department of intake that decides that
4 cases aren't (indiscernible).
5 THE COURT: Do you guys know -- do you guys know
6 what the Black's definition of client is, which I'm gonna'
7 give to the jury? An individual that employs a
8 professional to advise or assist in the professional's
9 line of work.
10 MR. FIEGER: Right.
11 THE COURT: That's what we're gonna' give the
12 jury, and the jury can make a decision. I'll be right
13 back.
14 MR. FIEGER: You need four -- then questions on
15 clients.
16 MR. JANKS: Can we have two minutes ourselves,
17 Judge?
18 THE CLERK: All rise.
19 (Court in recess at 4:08 p.m.)
20 (Court in session at 4:15 p.m.)
21 THE CLERK: All rise. The Oakland County
22 Circuit Court is now in session, the Honorable James M.
23 Alexander, presiding.
24 THE COURT: Okay, tell you what. Oh, you gotta'
25 recall it, don't 'ya.

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1 THE CLERK: Now calling Sherbow v Fieger &
2 Fieger, 2015-147488-CB.
3 MR. JANKS: Janks.
4 MR. FIEGER: Fieger, present.
5 THE COURT: Sounds like a hell of a law firm.
6 All right, tell you what I'm gonna' do. There are really
7 only two questions that need to be answered by the jury, I
8 think. The first one is whether or not any -- any one of
9 these four were clients of Mr. Sherbow, and if so, was
10 there a referral fee agreement between Mr. Sherbow and Mr.
11 Fieger's firm. And they answer yes to any of those, we
12 move forward. They answer no, we're where we are. If
13 they answer yes to was there a referral fee, the referral
14 agreement, then you guys should stipulate as to what the
15 damages are. You can make it real easy on the jury.
16 MR. FIEGER: So I understand, were -- were they
17 clients, I understand that. But then was there a -- what
18 was the second one, your Honor?
19 THE COURT: Was there a referral agreement
20 between the Fieger firm and the --
21 MR. FIEGER: According to the law -- what the
22 law requires.
23 THE COURT: Yeah, what the law is, yeah.
24 MR. FIEGER: Right, according to what the law
25 requires.

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1 MR. JANKS: And how are you defining clients?
2 THE COURT: I'm defining client under the
3 Black's dictionary definition which is an individual that
4 employs a professional to advise or assist him or her in
5 the professional's line of work. And then I'm going to
6 give that section of the -- of 1.5 that I read from the --
7 that says, "For division of the fee to be proper, both the
8 referring lawyer and the receiving lawyer are responsible
9 to see the client is properly advised, and does not object
10 to the participation of the lawyers." I think that's
11 where we'll stop.
12 I'm not gonna' give the Howard Linden
13 instruction because I think these cases -- I mean, if they
14 were brought in by -- by the individuals, and the
15 individuals is the ones -- are the ones that we're --
16 we're concerned about. While Mr. Linden, technically, is
17 the client, in this case, for the purposes of this case,
18 he's not the client.
19 MR. JANKS: Is that -- is that one of their
20 specials, Judge?
21 THE COURT: I think so, yep. Mr. Fieger
22 requested a special that says, "Under Michigan law, the
23 client in a wrongful death case is a personal rep." I'm
24 not gonna' give that.
25 Well (indiscernible). Mr. Fieger's asked for a

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1 special that allegations of apparent authority can only be
2 proven on the basis of the acts and words of the claim
3 principal, in this case the Fieger firm. Statements made
4 by Mr. Danzig, the agent, cannot establish apparent
5 authority unless you find by evidence other than the
6 testimony of Mr. Danzig that the Fieger firm held Danzig
7 out to Sherbow, as authorized promise of part of the
8 Fieger firm's earnings to Plaintiff Sherbow, you must
9 return a verdict for Defendant."
10 I think if I give 38-0-1, "Agent is a person who
11 is authorized by a law firm to act as -- on its behalf,
12 the law firm who was given the authority to act has the
13 right to control the agent who's called the principal, the
14 authority -- the agent's authority may be expressed or
15 implied." And then 38-10, 38-10, as provided by the
16 Plaintiff, "The Plaintiff claims that Danzig and Giroux
17 were acting as the Defendant's agents. The Defendant is
18 bound by the acts of Danzig and/or Giroux. I think that's
19 why I'm gonna' have to ask about an agency, too.
20 MR. FIEGER: Well, first of all, that's been
21 added, that (indiscernible). That's not in any --
22 THE COURT: Yeah, I understand. All right, 38--
23 10, "The Plaintiff claims that Danzig or Giroux acting as
24 the agent, Defendant's bound by the acts of the agent if
25 Defendant put Danzig or Giroux in such a situation that

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1 such an ordinary person familiar with the particular type
2 -- Actually, this is just the standard jury instruction.
3 They're -- I think they're -- they're entitled to use it.
4 MR. FIEGER: Not Giroux, where's Giroux? He can
5 walk around my office and ask people whether you -- do you
6 think I'm gonna' get paid? That was what Giroux said. It
7 wasn't -- he didn't have any knowledge of this event at
8 all. He just said Sherbow came up to him afterwards, and
9 am I gonna' get paid?
10 THE COURT: Okay, I understand. You said yeah.
11 The question is did --
12 MR. FIEGER: Well, you could go around my office
13 and ask people?
14 THE COURT: Yeah, if he was an agent of your
15 office, and he told him he was gonna' get paid, he may be
16 -- he may be entitled to rely on that.
17 MR. FIEGER: He didn't make the agreement. That
18 was subsequent to the agreement. It's one thing --
19 THE COURT: I understand.
20 MR. FIEGER: -- to have the authority -- We're
21 talking about two separate things. This -- one was never
22 pled. One was the agreement by Danzig in writing which
23 we've been litigating for two and a half years,
24 notwithstanding the client. Next, subsequent to the
25 agreement, he claims it was ratified by Giroux. That's

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1 not an apparent authority. That's just ratification. He
2 doesn't claim Giroux entered into any agreement or that he
3 relied on that authority to enter into an agreement. He
4 claims Giroux subsequently ratified the agreement.
5 THE COURT: Mr. Janks.
6 MR. FIEGER: That's not been pled, and that's
7 not an issue in this case.
8 THE COURT: Okay.
9 MR. JANKS: Well, I'm happy to add an
10 instruction that says if Giroux ratified the agreement,
11 then the agreement is binding, and take it out of the
12 apparent agency. I think it's cleaner in the apparent
13 agency either/or, but --
14 MR. FIEGER: That hasn't been pled.
15 THE COURT: Well, what did Giroux -- how did
16 Giroux have the authority to enter in the agreement?
17 Isn't that what we're talking about?
18 MR. FIEGER: Right, he wasn't there.
19 THE COURT: What agreement -- just a second.
20 What agreement did Giroux enter into?
21 MR. JANKS: Giroux agreed that the agreement was
22 going to be honored is what Giroux did.
23 THE COURT: I'll use Danzig. We're talking
24 about Danzig there. All right, I'll (indiscernible) So
25 I'll take out Giroux.

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1 All right, let's see, what else do we have? I'm
2 gonna' use the standard jury instructions. Now, Mr.
3 Fieger's special two, "Apparent authority cannot arise
4 from an agent's conduct while serving the interest of
5 someone other than the employer. If you believe Danzig
6 was serving the interest of himself or Sherbow rather than
7 the Fieger firm, you cannot consider this evidence of
8 apparent authority." Mr. Janks, any objection to that?
9 MR. JANKS: Well, sure, I object to it, Judge.
10 THE COURT: Why?
11 MR. JANKS: Because Mr. Danzig testified that he
12 was not serving anyone's interest other than the Fieger
13 firm's interest. Those were the only interests he had at
14 heart. He had no special side deal. There's no evidence
15 that there was fraud or collusion here. There's argument
16 by Mr. Fieger that we had previously filed a motion in
17 limine on, and -- and he shouldn't have been arguing fraud
18 and collusion without any evidence. He's not provided any
19 evidence of fraud or collusion.
20 MR. FIEGER: I don't know what courtroom he's
21 been in. This is a scam.
22 THE COURT: I'm gonna' give it. I think that's
23 -- I think that's a credibility issue the jury has to
24 make. You think this is funny, Mr. Sherbow?
25 MR. SHERBOW: No, sir -- no, sir.

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1 MR. JANKS: Did -- did we strike his special
2 instruction one, but we're giving two?
3 THE COURT: Yes.
4 MR. JANKS: -- we're giving two?
5 THE COURT: Special three, "There can be no
6 apparent authority unless the Fieger firm cause Sherbow to
7 honestly and reasonably rely on a belief that Defendant
8 had authorized Danzig to promise Sherbow a portion of the
9 Fieger firm's earnings in the cases. If Plaintiff did not
10 have this belief or if such belief was not reasonable or
11 Sherbow did not rely on that belief, you must return a
12 verdict for Defendant." I think we've -- I think we've
13 got that in the 38-10 where it says, "The Plaintiff was
14 justified in assuming --
15 MR. FIEGER: I agree -- I agree.
16 THE COURT: -- that Danzig had the authority."
17 Okay, so that's out. There's a special instruction Mr.
18 Fieger's asked on referral. I think we covered that when
19 we read the section of 1.5. That's out.
20 MR. JANKS: Missed that one. As long as it's
21 out, that's all right.
22 THE COURT: It's a special that says, "Ladies
23 and gentlemen of the jury --
24 MR. JANKS: I only see his special one, two,
25 three, Judge, and then there was some other special one

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1 just filed about attorney-client relationship.
2 THE COURT: I haven't gotten to that yet. Are
3 these yours? "You're instructed that in this case the
4 word, referral, means after the sending or directing one
5 person to another for the purpose of providing legal
6 services"?
7 MR. FIEGER: That -- that was mine, your Honor.
8 THE COURT: And I think that's -- that's covered
9 by 1.5.
10 MR. FIEGER: Right.
11 THE COURT: Referral fee means compensation, I
12 think we've covered that. Special instruction on burden
13 of proof on referral. I think we've already done that,
14 too. "You're instructed as a matter of law Plaintiff must
15 prove by a preponderance he referred the people to the
16 firm. If he fails to provide, the verdict must be for the
17 Defendant (indiscernible). You know what, I'd like to
18 give this, I like this. "Ladies and gentlemen, you're
19 instructed as a matter of law, Plaintiff, Jeffrey Sherbow,
20 must prove to you by a preponderance of the evidence that
21 he referred Mervie Rice, Dorothy Dixon, Phillip Hill, and
22 Howard Linden," not Howard Linden, "and the estate of
23 Charles Rice to the Fieger firm. If he fails to prove by
24 a preponderance of the evidence he referred these cases,
25 your verdict must be for the Defendant as any case not so

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1 referred." So that gives them the opportunity to
2 understand --
3 MR. JANKS: Well, shouldn't it say and/or
4 throughout that because at the beginning it almost makes
5 it look like it's --
6 MR. FIEGER: The second paragraph --
7 MR. JANKS: -- (indiscernible).
8 MR. FIEGER: -- says that, Mr. Janks.
9 MR. JANKS: Well --
10 THE COURT: If Plaintiff fails to prove by a
11 preponderance of the evidence he referred these cases to
12 the Fieger firm, your verdict must be for the Defendant as
13 to any case not so referred.
14 MR. FIEGER: Right.
15 THE COURT: So if they find that he referred
16 Mervie and Charles, and didn't refer Dorothy and Phillip,
17 then you've got that there.
18 MR. JANKS: Should we day Dion instead of estate
19 of Charles or Dion, slash, estate of Charles?
20 THE COURT: No, 'cuz Dion --
21 MR. JANKS: So Dion's name is (indiscernible).
22 THE COURT: Yeah, I -- I don't mind that. And
23 Dion Hill on behalf of.
24 MR. JANKS: Dion Rice.
25 THE COURT: Okay, I need to tell 'ya I'm gonna'

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1 read about 1.5. Now, we get to Plaintiff's specials.
2 MR. JANKS: Did that last Defendant's special
3 have a number assigned to it, Judge?
4 THE COURT: No.
5 MR. FIEGER: Just said, "referral."
6 MR. JANKS: Is that it? I don't find that in my
7 package.
8 MR. FIEGER: You -- you have it in your packet.
9 It's -- it's all a part.
10 MR. JANKS: I'm just sayin', I don't have it in
11 here.
12 MR. FIEGER: I have another copy if you need it.
13 MR. JANKS: That'd be great.
14 MR. FIEGER: Could you --
15 THE COURT: I'm not gonna' give the Plaintiff's
16 first special request that Plaintiff was not required to
17 know any of the underlying Plaintiffs 'cuz I've covered
18 that in what I'm reading from 1.5.
19 Two, Plaintiff was not legally required to
20 perform any legal work on behalf of any of the claims
21 undertaken by Defendant for any of the four underlying
22 injury claims. (Indiscernible) was different but it's
23 typical that referral lawyers don't actually work on
24 cases. That's argument. I'm not gonna' give that as an
25 instruction.

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1 Three, the Michigan Rules of Professional
2 Conduct, I'm giving that in the instruction I'm giving on
3 1.5. I'm not -- I'm not shifting the burden. Defendant
4 has asserted affirmative defense clients are not advised
5 of the existence of the fee sharing agreement. Defendant
6 has the burden of proving clients were not advised. I
7 think that the Plaintiff has the burden of proving that
8 they did not object. That's the way the law reads.
9 MR. JANKS: Other than, I would just say, Judge,
10 you did, in one of your SD orders, indicate that the
11 Defendant had the burden of the proof -- burden of proof,
12 and it was a special affirmative defense.
13 THE COURT: Okay. I think the way the evidence
14 came in. Form of Verdict. So the first question is going
15 to be --
16 MR. JANKS: (Indiscernible).
17 MR. FIEGER: The first four questions.
18 THE COURT: Be one A, B, C, D, and E.
19 MR. FIEGER: Right.
20 THE COURT: Were any of the following -- clients
21 -- Sherbow, Mervie, Dion on behalf of the State, Hill, and
22 Dorothy. If you answer yes to any of the questions, go to
23 question two. Did Plaintiff refer one, some or all of the
24 following personal injury cases to Defendant? That would
25 be Dion Rice, on behalf of the estate, Dorothy, Mervie,

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1 Phillip. I think those are the only two questions we need
2 answer. Or do we need to ask whether or not they
3 objected?
4 MR. FIEGER: No, that would be part of the
5 referral agreement, but I think there is a third question,
6 whether Danzig has the authority. If they get to those
7 two, whether he had the authority to make an agreement
8 like that.
9 THE COURT: Mr. Janks.
10 MR. JANKS: Sure, there's no question that
11 that's part of the case.
12 MR. FIEGER: That would be af -- only assuming
13 they answer yes to the first two sets of questions.
14 THE COURT: So yes to any parts of one and two,
15 did Danzig have actual or apparent authority to bind the
16 Fieger firm.
17 MR. FIEGER: Now, I'm assuming in your -- the
18 second lines of questions as to what a referral agreement,
19 you're defining 1.5(E), is that it, your Honor, so --
20 THE COURT: In that one -- yeah, what I'm --
21 what I'm -- this is what I'm gonna' give.
22 MR. FIEGER: Right.
23 THE COURT: For division of fee to be proper,
24 both the receiving lawyer and the referring -- referring
25 lawyer and receiving lawyer are responsible to see the

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1 client is properly advised, and does not object to the
2 participation of the lawyers.
3 MR. FIEGER: Right. So you wouldn't have to
4 give the next -- you wouldn't have to ask that next
5 question 'cuz it's already in that one.
6 THE COURT: Right, it's already there.
7 MR. JANKS: Are we gonna' be able to get a Xerox
8 copy of these, Judge, by any chance?
9 MR. FIEGER: Can we get 'em in the morning so --
10 THE COURT: You're gonna' get them in the
11 morning because --
12 MR. FIEGER: Thank you.
13 THE COURT: -- my staff's gonna' take some time
14 tonight, and put these together so that we have --
15 MR. FIEGER: Can we have an opportunity, maybe,
16 to discuss it --
17 THE COURT: You'll have the opportunity. I have
18 a couple of matters. That's why I told the jury not to
19 come back until nine.
20 MR. FIEGER: Right.
21 THE COURT: I'd like you both to keep your
22 closings to an hour --
23 MR. FIEGER: Yes, sir.
24 THE COURT: -- so that we can get this to the
25 jury sometime, hopefully, before lunch.

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1 UNIDENTIFIED VOICE: Can we still leave our
2 stuff in the courtroom tonight?
3 THE COURT: Yeah.
4 UNIDENTIFIED VOICE: Thank you.
5 THE COURT: See you guys in the morning. Have a
6 good evening.
7 UNIDENTIFIED VOICE: Thank you, your Honor.
8 That's (indiscernible) Judge.
9 THE CLERK: All rise.
10 (Court in recess at 4:38 p.m.)
11 * * * * * *

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STATE OF MICHIGAN)
COUNTY OF OAKLAND)ss.

I certify that this transcript is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable James M. Alexander, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: June 14, 2017

/S/ Brenda LaVanway

Brenda LaVanway, CER 4515

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In The Matter Of:

Law Offices of Jeffrey Sherbow, P.C. vs.
Fieger & Fieger, P.C.

Howard T. Linden
February 17, 2017

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STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

LAW OFFICES OF JEFFREY SHERBOW, P.C.,
Plaintiff,
vs. Case No. 15-147488-CB
Hon. James M. Alexander
FIEGER & FIEGER, P.C., d/b/a
FIEGER, FIEGER, KENNEY & JOHNSON, P.C.,
Defendant.

The Videotaped Deposition of HOWARD T. LINDEN,
Taken at 19390 West Ten Mile Road,
Southfield, Michigan,
Commencing at 10:42 a.m.,
Friday, February 17, 2017,
Before Helen F. Benhart, CSR-2614.

APPEARANCES:

GREGORY M. JANKS
Gregory M. Janks, P.C.
2211 South Telegraph Road
Suite 7927
Bloomfield Hills, Michigan 48302
248.877.4499
greg@jankslaw.com
Appearing on behalf of the Plaintiff.

GEOFFREY N. FIEGER
Fieger, Fieger, Kenney & Harrington, P.C.
19390 West Ten Mile Road
Southfield, Michigan 48075
248.355.5555
g.fieger@fiegerlaw.com
Appearing on behalf of the Defendant.

ALSO PRESENT:
John Schmitzer - Video Technician
Jeffrey Sherbow

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EXHIBIT PAGE
(Exhibit attached to transcript.)

DEPOSITION EXHIBIT 1 45

Southfield, Michigan
Friday, February 17, 2017
10:42 a.m.

VIDEO TECHNICIAN: We are now on the record. This is the videotaped deposition of Howard Linden being taken on Friday, February 17, 2017. The time is now 10:42 a.m. We are located at 19390 West Ten Mile Road, Southfield, Michigan. We are here in the matter of Law Office of Jeffrey Sherbow, P.C., versus Fieger and Fieger, P.C. This is Case Number 15-147488-CB in the State of Michigan in the Circuit Court for the County of Oakland.

My name is John Schmitzer, video technician. Will the court reporter swear in the witness and the attorneys briefly identify themselves for the record, please.

HOWARD T. LINDEN,
Was thereupon called as a witness herein, and after having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

MR. FIEGER: Let the record reflect that this is the de bene esse trial deposition of Howard Linden taken pursuant to Notice and to be used for all

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1 purposes provided by the Michigan Rules of Evidence
2 and court rules. My name is Geoffrey Fieger. I'm
3 appearing on behalf of the -- my law firm, in pro per.
4 **THE WITNESS:** Gregory Janks on behalf of
5 the plaintiff.
6 **MR. FIEGER:** Counsel, before we begin, I
7 would agree to preserve for the interest of having a
8 clean record so that at the time of trial we can play
9 this deposition after all the problems are ironed out
10 in a rather smooth fashion, I'd be -- agree to
11 preserve all objections, both form and substance, that
12 you could make at any time prior to the showing of
13 this deposition so that we might have a clean record.
14 Would that be acceptable?
15 **MR. JANKS:** I'll do what I can depending on
16 the direction of the deposition and the questioning,
17 sure.
18 **MR. FIEGER:** Okay. Well, I'm offering --
19 as long as you agree, I'm offering to preserve all
20 your objections, form and substance. Nothing's
21 waived.
22 **EXAMINATION**
23 **BY MR. FIEGER:**
24 Q. Mr. Linden, could you state your name, please, for the
25 court and jury?

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1 **A. Yes. Howard Linden.**
2 Q. And, Mr. Linden, we are taking your deposition here in
3 my office prior to the trial which is scheduled on
4 February 27, 2017. According to my understanding, you
5 will be out of the country on that date. Is that
6 correct?
7 **A. That is correct.**
8 Q. All right. And, therefore, under our rules, you're
9 unavailable, so you've agreed to take your deposition
10 in lieu of coming to trial, is that correct?
11 **A. That's absolutely correct.**
12 Q. All right. Mr. Linden, let's start by telling the
13 court and jury what you do for a living.
14 **A. I'm an attorney.**
15 Q. And do you practice a particular type of law? Do you
16 specialize in a particular type of law?
17 **A. Yes, I do.**
18 Q. And what would that be?
19 **A. I only do probate practice and procedure.**
20 Q. And what does that mean, Mr. Linden?
21 **A. That means I handle all aspects of decedents' estates**
22 **when people pass away. I open estates, I administer**
23 **those estates, and I close those estates. I also**
24 **handle conservatorships, guardianships for disabled**
25 **adults, minor children, same thing. I open the**

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1 **estates, I administer the estates, and ultimately if**
2 **necessary close them. I also do trusts when it deals**
3 **with lawsuits, and they're called special needs**
4 **trusts. I work with attorneys to prepare them. I**
5 **administer them for years, and ultimately if there's a**
6 **closure, I participate in the closing.**
7 Q. And how long have you been doing that work, sir?
8 **A. Forty-one years.**
9 Q. We'll go into a little bit of your background, but
10 we're going to be sitting with the court and jury, if
11 we get this far, with Judge Alexander, and we're in
12 the Circuit Court. Explain to us, is the Probate
13 Court in this building but slightly different?
14 **A. Yes. Probate has its own judges exclusively that deal**
15 **with juvenile matters, probate estates, and trusts.**
16 Q. Also, in addition to your practice, for many years
17 have you also been a judge magistrate in the 48th
18 District Court?
19 **A. Yes. I've been a magistrate judge in the 48th**
20 **District Court by appointment for over 15 and a half**
21 **years.**
22 Q. What are your duties as the magistrate judge in the
23 48th District Court, which is in Bloomfield Township
24 and Bloomfield Hills?
25 **A. I handle all small claims matters. I arraign people**

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1 **on felonies and misdemeanors. I accept pleas on**
2 **tickets, and I sentence people to jail and/or other**
3 **remedies should that be appropriate for their**
4 **particular crime or offense.**
5 Q. Who appoints you to that position?
6 **A. The chief judge, Kimberly Small, appointed me a very**
7 **long time ago.**
8 Q. And you've continued for the last 15 years in that
9 position?
10 **A. Without exception and without break, yes.**
11 Q. How do you divide your time? How much time is spent
12 as a magistrate versus as a practicing attorney?
13 **A. I spend -- I share the time with two other**
14 **magistrates, and we split up a three-day week, and**
15 **usually I'm there one to two half days a week doing**
16 **the job that I just mentioned.**
17 Q. Where did you get your law degree?
18 **A. Detroit College of Law, which is now Michigan State**
19 **University.**
20 Q. Do you have your own law practice or do you practice
21 with a law firm other than your own?
22 **A. No. I've been on my own for the entire time**
23 **basically, and I have four full-time employees.**
24 Q. And where are your offices located?
25 **A. In Southfield on Evergreen Road between Ten Mile and**

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1 **Eleven Mile.**
2 Q. I have not asked you to bring your curriculum vitae,
3 which is your resume, but other than your law degree
4 itself, the fact you've practiced continuously for 41
5 years and the fact that you've been a magistrate judge
6 in the 48th District Court for the last 15 years, what
7 other highlights might I have found on your curriculum
8 vitae had you brought it with you?
9 **A. I am also a Special Assistant Attorney General**
10 **appointed by Frank Kelley, which is still active, for**
11 **approximately 30 years. I am currently, as appointed**
12 **by Governor Blanchard, an Oakland County public**
13 **administrator, which is a very nice position to be in**
14 **and be recognized as being capable of being in that**
15 **position, which means I handle matters for the judges**
16 **in Oakland County that need -- that don't have**
17 **families that need an independent person.**
18 **I've been an Oakland County public**
19 **administrator for over 25 years, and for me, one of**
20 **the greatest highlights is being published in January**
21 **of 2006, I think is the year and date, in the Michigan**
22 **State Bar Journal. I was the only attorney ever asked**
23 **to do an article on wrongful death settlements and**
24 **distributions for the Michigan State Bar Journal after**
25 **lecturing about the topic at a conference, and I was**

1 **asked to put my lecture into writing for the bar**
2 **journal which was published, and, frankly, used, I**
3 **understand. No one else has changed it over the**
4 **years. So those are some of the things that I do.**
5 Q. Well, that kind of dovetails into some peripheral
6 issues in this case, that is wrongful death
7 settlements and distributions. Have you been involved
8 with those as --
9 **A. A thousand.**
10 Q. -- an attorney?
11 **A. A thousand. Thousands. Yes.**
12 Q. Continuously over your years?
13 **A. Yes. And I've also been involved with basically,**
14 **because it was such a new process many years ago, I**
15 **believe I set the standard of some of the distribution**
16 **percentages with families, and many judges have used**
17 **the unofficial criteria that I have used myself over**
18 **the many, many years of practice.**
19 Q. As a public administrator, and I want you to assume as
20 a personal representative of an estate, if you should
21 serve as the personal representative on behalf of an
22 estate, are you involved in a position of what we in
23 the law know as trust or a fiduciary relationship?
24 **A. High fiduciary.**
25 Q. Explain that, please.

1 **A. Well, when you're in any position that's deemed a**
2 **fiduciary relationship, which is handling other**
3 **people's money and assets, you have a high -- that**
4 **isn't a family member and you're a third-party person**
5 **that comes in as an independent fiduciary, I**
6 **personally and everyone I know who does this takes**
7 **very -- takes it very strongly that you have a high**
8 **degree of responsibility for the assets for the family**
9 **and making sure the money is handled properly and**
10 **deposited properly should there be a settlement of any**
11 **kind in the lawsuit.**
12 Q. So that we can get some context here, because you have
13 a direct involvement in this case, did you act as
14 what's called the personal representative for the
15 estate of Charles Rice?
16 **A. Yes, I was.**
17 Q. Would you tell the court and the jury what it means to
18 be the personal -- let me ask you, first of all,
19 assuming I was the attorney for the estate of Charles
20 Rice, as the personal representative, would you be my
21 client?
22 **A. Yes.**
23 Q. Okay. Explain to the court and jury what it means to
24 be the personal representative of an estate.
25 **A. Well, that's the new word. Most of the jury would**

1 **probably know the word executor and -- of a will or**
2 **trust. The new code changed that to something called**
3 **a personal representative. He is in charge of the**
4 **estate. He or she makes all decisions about the**
5 **estate. He or she handles all of the money and assets**
6 **and property of the estate, and he and she make sure**
7 **it's dispersed and safeguarded properly.**
8 Q. To your knowledge, in the State of Michigan, if a
9 person dies and then a suit is brought under the
10 Michigan Wrongful Death Act, can such a suit be
11 brought without the appointment of a personal
12 representative?
13 **A. Absolutely not.**
14 Q. How are you appointed and how were you appointed as
15 the personal representative of the estate of Charles
16 Rice? Who appointed you and how does that go about?
17 **A. Well, my recollection is is that the son of the**
18 **deceased signed the petition and asked me to be the**
19 **personal representative for his family and basically**
20 **for the estate of the decedent.**
21 Q. And then how do you go about getting appointed as
22 such?
23 **A. I go to -- so we file the petition and the appropriate**
24 **documents attached thereto that accompany that**
25 **petition. We go to court. We file the paperwork.**

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1 **There is a hearing sometimes required and sometimes**
2 **not. At the end of the day, I sign a document**
3 **entitled an Acceptance of Appointment, which is a**
4 **signature document that says that I am accepting full,**
5 **complete, total responsibility for the proper**
6 **management of the estate. I get another document,**
7 **which is what you need or an attorney needs to file a**
8 **lawsuit, which is called a Letter of Authority, which**
9 **is an official Supreme Court form that says I have the**
10 **full undivided authority to make all decisions about**
11 **the estate, sign all documents for the estate and**
12 **approve any and all subsequent matters big and small**
13 **for the estate.**
14 Q. In this particular -- were you appointed the personal
15 representative?
16 **A. Yes, I was.**
17 Q. In this case as to the estate of Charles Rice, the
18 technical heading or the real name of the case in
19 court was Howard Linden as personal representative of
20 the estate of Charles Rice. What does that mean?
21 **A. That means I stand in the shoes -- as required under**
22 **Michigan law, I stand in the shoes of the deceased**
23 **because a deceased person cannot file a lawsuit**
24 **because he's not here and he has no standing. So I'm**
25 **named as the plaintiff correctly and under the statute**

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1 **as the actual plaintiff in the lawsuit.**
2 Q. And I asked you earlier if you were my client, and you
3 answered yes. Tell us what that means -- it's fallen
4 off your tie so if you want to put that back on.
5 **A. Yeah. Let me go up here. I'm sorry. Is this --**
6 **VIDEO TECHNICIAN:** That's fine.
7 **THE WITNESS:** I'm sorry.
8 **BY MR. FIEGER:**
9 Q. I asked you earlier, Mr. Linden, if you were my
10 client. You answered affirmatively yes. What does
11 that mean in terms of you acting as -- since you're my
12 client, what decisions do you make? What's your role
13 as my client?
14 **A. Well, I follow your guide. I mean, I only -- I only**
15 **respond to you. I only deal with you.**
16 Q. Must I inform you under the rules of the progress of
17 the lawsuit and get your permission to either settle a
18 lawsuit or make decisions? Do I have to inform you?
19 **A. You do, and if I recall, I had to sign a lot of things**
20 **as the lawsuit proceeded because we had to get, as**
21 **usual, records and medical records and documents and**
22 **they require -- they require only my signature to be**
23 **effective.**
24 Q. Okay. So as the personal representative of the estate
25 and as the client, do you make all the decisions

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1 relative to that estate?
2 **A. 100 percent.**
3 Q. All right. When the matter -- and if the matter and
4 under the Michigan Wrongful Death Act gets resolved
5 either by a jury verdict or a payment of money by
6 defendants in a lawsuit, what is your role then in --
7 first of all, we'll start with settling. Must I get
8 your permission to settle a case?
9 **A. Yes.**
10 Q. Explain that, please.
11 **A. Well, I'm the one that has to sign the final papers.**
12 **I'm responsible for making sure it's fair, reasonable,**
13 **and appropriate, and, yes, without my signature, you**
14 **can't proceed to settle a case.**
15 Q. Because you're my client?
16 **A. You're my only -- I'm your client and --**
17 Q. Excuse me. Yes, because -- is that because -- let me
18 state it another way. Is that because you are the
19 client?
20 **A. I am the client, period.**
21 Q. Now, in order -- in addition under the Michigan
22 Wrongful Death Act, even if you approve the
23 settlement, must you also get court approval for
24 settlements?
25 **A. Yes.**

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1 Q. Explain that.
2 **A. Well, you have to go -- if there's a lawsuit**
3 **started -- even if there isn't a lawsuit started, but**
4 **in this case I recall there was a lawsuit started, I**
5 **have to go to court with you or someone from your**
6 **office representing you and put the entire settlement**
7 **on the record, as they say, put it before the court**
8 **and get the judge to approve it. So I am the face of**
9 **the case.**
10 Q. In this case, although the case was tried in Ohio and
11 ultimately resolved in Ohio, there was an order in
12 this case which required you to obtain -- to approve
13 the lawsuit as the client, personal representative,
14 and to obtain the Probate Court's permission to enter
15 into the settlement. Did you do that?
16 **A. Yes. I did that here because it was my understanding**
17 **that the Ohio court system does not do that, so I went**
18 **to Probate Court before the judge, did the same thing**
19 **that we would have done in the Circuit Court, yes, so**
20 **the answer is yes.**
21 Q. Even though this was an Ohio case, because you were a
22 Michigan estate, is it your understanding that you
23 were required to bring that to a Michigan Probate
24 Court to close the estate?
25 **A. Yes. The estate was opened here to clarify because**

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1 **Mr. -- the decedent lived here, resided here, and**
2 **under the law, the estate, regardless of where the**
3 **lawsuit is brought, has to be opened where his**
4 **residence was, and it was in Oakland County.**
5 Q. Okay. You made mention earlier the method by which
6 you are chosen as the client, personal representative,
7 of the estate, is -- in this case you mentioned the
8 family selected you and signed a petition to have you
9 act as the client, the personal representative. I
10 want you to assume in this case that that person was
11 Mr. Rice's son, Dion Rice. Is that consistent with
12 your memory?
13 **A. That's my recollection, yes, sir.**
14 Q. Tell the court and the jury, assuming that to be
15 correct and according to your testimony, why Mr. Rice
16 had to sign papers -- Dion Rice had to sign a paper to
17 have a court appoint you as the client.
18 **A. Sure. Probate has a pecking order of criteria and**
19 **priority of who can petition the court for what. It's**
20 **embedded in the court rule, and in this case, the**
21 **highest priority for a decedent without a spouse was**
22 **the son. So Mr. Rice had the unique and clear**
23 **responsibility to sign that petition and other**
24 **documents and appoint whomever he wished, which he**
25 **felt was me, and it would be in the best -- as he put**

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1 **it, in the best interest of the estate, of the**
2 **lawsuit, of the recovery, if someone like me would be**
3 **in charge of those decisions.**
4 Q. Okay. These are public documents, but is it
5 consistent with your memory and your review of this
6 file that that petition was signed by Mr. Rice on July
7 the 26th --
8 **A. That is --**
9 Q. -- 2012?
10 **A. Yes, sir. That is absolutely my recollection.**
11 Q. Okay. I'm going to ask you to assume for the purposes
12 of this question, but at the time your testimony is
13 played there will be evidence in this court and there
14 will be testimony in this court that there was a
15 meeting that occurred in this office on July the 26th,
16 2012, and that at least for a period of time you were
17 present in this office. Do you have any particular
18 memory of being present at a meeting in this office on
19 July the 26th?
20 **A. I have a clear memory of being in this building. I**
21 **have no memory of being in a meeting.**
22 Q. Okay.
23 **A. So that's the best I can do.**
24 Q. Okay. And, nevertheless, is it also correct that the
25 papers were signed by Dion Rice on July the 26th,

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1 2012?
2 **A. Absolutely.**
3 Q. So unless Mr. Rice went someplace else, do you know
4 whether or not he signed those papers in this office?
5 **A. He had to.**
6 Q. Okay.
7 **A. There's no -- I mean, I -- no, he didn't. He signed**
8 **them here I'm sure.**
9 Q. Going back to your testimony a moment ago, was the
10 purpose of the signing of those papers to appoint you
11 as the client and the personal representative of the
12 estate?
13 **A. Yes, it was.**
14 Q. So although technically you wouldn't have been at that
15 moment appointed by the court, was the purpose of you
16 being here and having those papers signed to set in
17 motion the process by which you become the official
18 personal representative and the client?
19 **A. It absolutely was.**
20 Q. Okay. I want you to assume for the purpose of this
21 question by the time that you give -- your testimony
22 is played, there will be evidence in this court that
23 Mervie Rice, another one of my clients, was present in
24 the building on July the 26th and that Dion Rice, the
25 son of Charles Rice, was also present in the building

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1 on July the 26th. Also I want you to assume for the
2 purposes of this question that I was present in the
3 building, that there will be testimony that I was
4 present in the building, and there will be testimony
5 that Mr. Danzig, who was an employee of my office, I
6 want you to assume was present in the building and
7 that the plaintiff, Mr. Jeffrey Sherbow, who is
8 bringing this claim was also present in the building
9 at that time. I want you -- and I want you to make
10 that assumption. Do you have an actual memory of any
11 of those people?
12 **A. No.**
13 Q. Okay. Including myself?
14 **A. No.**
15 Q. Okay. My question to you now is relative to your
16 representation and your acting as a client for the
17 estate of Charles Rice, did you ever -- do you recall
18 ever being informed by anyone, and I'm going to
19 include myself, Mervie Rice, Dion Rice, Jeffrey
20 Sherbow with Jeffrey Danzig, and I want to include one
21 additional person, an attorney Jody Lipton. I want
22 you to assume she was in the building also. My
23 question is specifically do you recall being informed
24 by anyone at that -- on that day or any day thereafter
25 that the estate of Charles Rice -- the case of the

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1 estate of Charles Rice was actually referred by
2 Mr. Sherbow?
3 A. **Absolutely positively not.**
4 Q. Did Mr. Danzig at any time from that day until
5 today -- by the way -- strike that.
6 Would you have occasion, by the way, to be
7 in my office on a regular basis?
8 A. **Sure.**
9 Q. Do you handle -- in addition to this case, have you
10 handled for my office many cases in which you have
11 acted as the personal representative?
12 A. **Many, many cases.**
13 Q. Are there also cases in which you've acted not just --
14 not as the personal representative but as the probate
15 attorney who appoints a personal representative?
16 A. **Yes, sir.**
17 Q. Do you also do that work for other attorneys?
18 A. **Yes. Occasionally, yes.**
19 Q. And have you for -- over the years?
20 A. **Yes.**
21 Q. Okay.
22 A. **It's my specialty.**
23 Q. And you are familiar with Mr. Danzig, correct?
24 A. **Oh, yes, yes.**
25 Q. At any time, at any time from July the 26th on, are

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1 you aware of any time in which Mr. Danzig informed you
2 that the estate of Charles Rice case was referred by
3 Jeffrey Sherbow?
4 A. **Not once.**
5 Q. Did Mr. Dion Rice ever inform you that his -- that the
6 case involving his father was being referred by
7 Mr. Sherbow?
8 A. **Not a single time.**
9 Q. Okay. I asked you and my question was had anybody
10 ever told you. Now my question is has anyone other
11 than the allegations that you're aware of in this case
12 in your role as personal representative, did anyone
13 ever inform you that Mr. Sherbow claimed to have
14 referred this case?
15 A. **They certainly did not.**
16 Q. Okay. These questions directly ask you whether you'd
17 being been informed. Now it's a slightly different
18 question, but it's a different question. During the
19 entire period of time from July the 26th, 2012, until
20 the case was closed and the Probate Court approved the
21 settlement in this case, did you ever have an
22 understanding as the client, as the personal
23 representative of the estate of Charles Rice, that
24 Mr. Sherbow had referred this case?
25 A. **Not only did I not have any understanding, but a**

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1 **review of my entire file when I was deposed by**
2 **Mr. Janks in May of 2016 found not a scintilla, not a**
3 **piece of paper, not a handwritten note, not a phone**
4 **call, absolutely no evidence that anyone other than**
5 **you and I were involved in this case.**
6 **MR. JANKS:** This is the file you refused to
7 produce in the case, correct?
8 **MR. FIEGER:** Whatever.
9 **BY MR. FIEGER:**
10 Q. The -- now, have you ever from that day until today
11 ever given consent or do you ever agree -- have you
12 ever agreed or do you agree to the payment of a
13 referral fee to Mr. Sherbow?
14 **MR. JANKS:** Look, I do have to object to
15 this. The judge has already ruled that the only
16 proper time for a client to give consent or withhold
17 consent for the payment of a referral fee pursuant to
18 the Michigan Rules of Professional Conduct 1.5E is at
19 the time that the case is originally signed up, so
20 it's completely irrelevant.
21 **MR. FIEGER:** Signed up by who?
22 **MR. JANKS:** So it's complete --
23 **MR. FIEGER:** Signed up by who?
24 Mr. Sherbow? No, he never made such a ruling. Your
25 fantasies about the law, we'll deal with this with

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1 Judge Alexander. You've got a fantasy about the law,
2 and I hear your objection, but notwithstanding your
3 objection --
4 **MR. JANKS:** Except I didn't finish my
5 objection so I'll finish it and --
6 **MR. FIEGER:** I offered to preserve you any
7 objection. You can tell Judge Alexander anything you
8 want, any scam you want, okay? But if nobody ever
9 knew about a referral fee, how can they give consent
10 to one? So your statement is utter and complete
11 nonsense. So go ahead.
12 **MR. JANKS:** The August 17th, 2016, ruling
13 of Judge Alexander in this case has indicated that the
14 date of concern as it relates to any client giving any
15 consent for any fee sharing is on the date that the
16 case is originally signed up and the lawyers are
17 originally retained, so my objection is Mr. Linden's
18 testimony about any date other than July 26, 2012, is
19 irrelevant. Further, the judge --
20 **MR. FIEGER:** Please. I offered to -- I
21 don't want you to tell me what Judge Alexander -- you
22 claim he said. You're just living in a fantasy, and
23 if you can get him to say that, you don't have to tell
24 Judge Alexander. He'll remember what he said. Okay?
25 **MR. JANKS:** Further, he issued an order

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1 yesterday limiting the testimony of Mr. Linden
2 specifically as follows, quote: Mr. Linden may only
3 offer testimony limited to facts within his personal
4 knowledge relating to any meeting he attended with any
5 of the underlying clients and Mr. Sherbow, end quote.
6 So you've gone way beyond that, and your question here
7 is beyond that, and, therefore, it's objectionable.
8 **MR. FIEGER:** No. That's absurd.
9 **BY MR. FIEGER:**
10 Q. Next, has -- from July the 26th, 2012, up to and
11 including today at any time including that date and
12 every single day thereafter, has anyone -- have you
13 ever given the approval for a referral fee to be paid
14 to Mr. Sherbow?
15 **A. No.**
16 Q. If Mr. Danzig, for instance, wanted to speak to you
17 and make -- inform you that his friend, Mr. Sherbow,
18 had referred a case, would you listen to it?
19 **A. I would listen to him. It wouldn't matter to me.**
20 Q. Right. If Mr. Sherbow wanted to tell you, for
21 instance, when you were in the building on July the
22 26th that he had referred the case, would you have
23 listened?
24 **A. It wouldn't have mattered if I listened. I always**
25 **listen. It doesn't matter until it matters.**

1 Q. Okay. Notwithstanding that, at any time on July
2 the 26th, 2012, did Mr. Sherbow tell you he referred
3 the case?
4 **A. Absolutely not.**
5 Q. Did Mr. Danzig tell you he claimed to refer --
6 Mr. Sherbow claimed to refer the case?
7 **A. No.**
8 Q. Okay. And now my question is did you give them
9 permission on July the 26th to pay -- to have a
10 referral fee? Did you give him permission?
11 **A. I never on that date or any other date approved a**
12 **referral fee in this case.**
13 **MR. JANKS:** And, again, that's not what the
14 law requires, an approval of a referral.
15 **MR. FIEGER:** You're nuts, okay? And we're
16 going to go to trial, and you're nonsense, okay? You
17 find some law like that, okay? We're going to go to
18 trial now. You're never going to get beyond a
19 directed verdict, so this is not even going to be
20 played. You've got no proof. You're just wasting
21 your time, and you're going to end up having him pay
22 me a million dollars in attorney's fees, okay? And
23 you can laugh all you want, Mr. Sherbow, okay? But I
24 offered to preserve your objections in this case.
25 **BY MR. FIEGER:**

1 Q. Let me ask you again. As the client in this case,
2 from July 26, 2012, on have you ever approved of a
3 referral fee in this case?
4 **A. No.**
5 Q. Other -- I want you to assume that Mr. Danzig will
6 testify in this case, admit that he never told you
7 that there was a referral fee in this case. Is that
8 consistent with your memory?
9 **A. Sure. That's true.**
10 Q. I want you to assume for the purpose of this question
11 that Mr. Sherbow will admit that he's never spoken to
12 you or told you that there was a referral fee. Is
13 that consistent with your memory?
14 **A. Yeah. Sure.**
15 Q. Okay.
16 **A. Yes, sir.**
17 **MR. FIEGER:** At this time I've got no
18 further questions.
19 **EXAMINATION**
20 **BY MR. JANKS:**
21 Q. Mr. Linden, as you know, I'm Greg Janks. I represent
22 Jeff Sherbow. You and I met at your prior deposition,
23 and at your prior deposition, you did admit that you
24 had no memory at all of any meeting here at the Fieger
25 office on July 26, 2012, at which Dion Rice was

1 present or Mervie Rice was present, correct?
2 **A. I don't think you posed the question quite that way.**
3 **I don't think you asked me that question that way.**
4 Q. Well, in any event, today you're admitting that you
5 don't remember anything about any July 26, 2012,
6 meeting here that you were part of, true?
7 **A. True. I was in the building, though, that day because**
8 **I have paperwork indicating I was in the building, and**
9 **I recall I was in the building.**
10 Q. And I did ask you to share your paperwork with us as
11 it relates to your file, and you refused to do that,
12 correct?
13 **A. It was a public record, sir. These are papers that I**
14 **believe I informed you were a public record that were**
15 **filed. The papers I'm referencing were the petition**
16 **to open the estate, the testimony of interested**
17 **parties that were dated and notarized and all the**
18 **other accompanying documents I require to file for**
19 **opening a probate estate.**
20 Q. And so you're referring to the paper that you told
21 Mr. Fieger that Dion Rice signed on July 26, 2012,
22 that you presume was signed here at the Fieger law
23 offices, right?
24 **A. I'm speaking of that paper. I'm not presuming**
25 **anything. I'm referring to the paper I reviewed.**

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1 Q. You didn't have to be here in the building for
2 Mr. Rice to be presented that paper or sign that
3 paper, did you?
4 **A. I didn't have to, but it was a rather large case, and**
5 **I'm always here for that. I didn't have to be at any**
6 **meeting. It's not my job to be at a meeting.**
7 Q. Dion Rice did not select you, Howard Linden, to be the
8 personal representative in this case, did he?
9 **A. Sure, he did.**
10 Q. Dion Rice didn't know you at all as of July 26, 2012,
11 did he, Mr. Linden?
12 **A. No.**
13 Q. And you didn't know him?
14 **A. I didn't know him, no.**
15 Q. And you didn't even meet him that day, correct?
16 **A. I don't remember if I met him or not, but I believe I**
17 **did because he signed the paperwork.**
18 Q. The reason you became the personal representative of
19 the estate of Charles Rice was because someone at the
20 Fieger law firm asked you to act in that capacity,
21 true?
22 **A. Sure.**
23 Q. And as you told Mr. Fieger, you act in that capacity
24 for Mr. Fieger's law firm and have acted in that
25 capacity for decades, true?

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1 **A. Well, that's one of the things I do.**
2 Q. Well, you told us other things you do, but one of the
3 things you do is you become the personal
4 representative for decedents' estates when people at
5 the Fieger law firm handle decedents' estates cases,
6 right?
7 **A. Yes.**
8 Q. And you make a fair amount of money doing that every
9 year, correct?
10 **A. I don't know.**
11 Q. And when you were deposed in this case, I gave you a
12 subpoena so that we could find out how much money you
13 made on a yearly basis doing this, and you have never
14 responded to that subpoena, correct?
15 **A. You bet I didn't.**
16 Q. You haven't filed a motion in the court to have the
17 subpoena quashed, have you?
18 **A. No.**
19 Q. And --
20 **A. No. It's none of your business. I don't think it's**
21 **relevant to this lawsuit.**
22 Q. Are you the judge in this case, Mr. Linden?
23 **A. No, but it's my money and it's me. It's my**
24 **reputation.**
25 Q. As a lawyer in Michigan, when you're served with a

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1 subpoena, is it not your duty to either comply with
2 the subpoena, Mr. Linden, or to seek relief of the
3 court if you believe that the subpoena is somehow
4 invasive or improper or irrelevant?
5 **A. I have no idea. You didn't pursue it. You obviously**
6 **thought it was irrelevant and not important, and I**
7 **wasn't interested in doing the work that entailed to**
8 **do what you're asking.**
9 Q. You have -- so you just ignored the subpoena is the
10 bottom line, correct?
11 **A. I didn't respond to the subpoena, never ignored it. I**
12 **got it, reviewed it, waited for you.**
13 Q. Not responding to it is ignoring it, isn't it,
14 Mr. Linden?
15 **A. No. I read it with great interest.**
16 Q. Let me show you what is Plaintiff's Trial Exhibit 15.
17 Trial Exhibit 15 is an August 15th, 2012, letter
18 authored by Jeffrey Danzig on the letterhead of
19 Fieger, Fieger, Kenney, Giroux, and Danzig to
20 Mr. Sherbow regarding, among other things, the estate
21 of Charles Rice, correct?
22 **MR. FIEGER:** Why don't you ask him if he's
23 ever seen the letter before.
24 **MR. JANKS:** How about I'll get to that.
25 First I'm asking what it is, if he can --

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1 **MR. FIEGER:** How can he -- why don't you
2 ask him if he's ever seen it before? That's the way a
3 normal attorney does it. If you're showing something
4 that somebody's never seen before, you ask them have
5 you seen this before.
6 **MR. JANKS:** I'll ask my questions the way I
7 would like to ask my questions, Mr. Fieger.
8 **MR. FIEGER:** I'm not going to let you
9 harass a witness. If he's never seen this before and
10 it has nothing -- and he didn't receive it, okay? If
11 you're planning to start asking questions about a
12 letter that he's never received, never reviewed --
13 **MR. JANKS:** Are you now testifying?
14 **MR. FIEGER:** No. I'm just not going to let
15 you harass him just like you did for the last five
16 minutes about his money that you know Judge Alexander
17 would never let you do. I'm not going to let you
18 harass the witness. I'll let you ask him legitimate
19 questions. I won't let you engage in the type of
20 harassment that you've been engaging in.
21 **MR. JANKS:** This is not harassment.
22 **MR. FIEGER:** Well, then ask him if he's
23 ever seen the letter.
24 **BY MR. JANKS:**
25 Q. Mr. Linden, is Exhibit 15 that I just handed you a

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1 copy of an August 15th letter to Jeffrey Sherbow from
2 Jeffrey Danzig on the Fieger firm letterhead?
3 **A. It's a letter. I've never seen it in my life.**
4 Q. All right. So this letter was never presented to
5 you --
6 **A. Never.**
7 Q. -- by Mr. Danzig?
8 **A. Never.**
9 Q. Not by Mr. Fieger?
10 **A. Never.**
11 Q. Not by Mr. Sherbow?
12 **A. Not once.**
13 Q. If I ask you to assume that this letter says that
14 Mr. Sherbow referred, among other cases, the estate of
15 Charles Rice case to the law firm of Fieger, Fieger,
16 Kenney, Giroux, and Danzig, do you believe that that
17 is something as the personal representative of that
18 estate of Charles Rice that you should have been given
19 by the law firm of Fieger, Fieger, Kenney, Giroux, and
20 Danzig?
21 **MR. FIEGER:** Excuse me. Ask you to assume
22 who? That it says -- who wrote it? Mr. Danzig wrote
23 it.
24 **MR. JANKS:** I thought we were preserving
25 all objections.

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1 **MR. FIEGER:** We are, but ask him who wrote
2 it.
3 **MR. JANKS:** Don't tell me what to ask,
4 Mr. Fieger. I'm asking my questions. If you want to
5 ask other questions, go ahead and ask them.
6 **THE WITNESS:** I don't remember the
7 question.
8 **MR. JANKS:** All right. We'll have the
9 reporter read it back for us then so that we have it
10 straight.
11 (The requested portion of the record was
12 read by the reporter at 11:23 a.m.)
13 **THE WITNESS:** Not necessarily. I don't get
14 every correspondence. And, by the way, just for the
15 record, I've never seen a referral letter from this
16 law firm ever signed by anyone other than Geoff
17 Fieger. It's my understanding that he's the one --
18 it's his law firm, and over the years, I've never even
19 known anyone giving approval of a referral fee other
20 than Mr. Geoff Fieger.
21 **MR. JANKS:** Move to strike as nonresponsive
22 and also beyond the testimony as limited by the judge.
23 **MR. FIEGER:** Do you honestly think that
24 somebody's going to go along with your nonsense that
25 Judge Alexander's in a conspiracy with you to limit

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1 testimony and proofs?
2 **MR. JANKS:** I read you, Mr. Fieger, what
3 the judge ruled as of yesterday.
4 **MR. FIEGER:** He didn't rule that.
5 **MR. JANKS:** Mr. Linden may only offer
6 testimony limited to facts within his personal
7 knowledge relating to any meeting he attended with any
8 of the underlying clients and Mr. Sherbow.
9 **THE WITNESS:** So why are we asking me about
10 letters?
11 **MR. FIEGER:** Then why are you asking him
12 about this stuff?
13 **MR. JANKS:** Because you asked him about
14 things other than what the judge's limitation was, so
15 I'm going to make the record of other things. The
16 judge may limit it or not limit it as the judge
17 decides to do.
18 **BY MR. JANKS:**
19 Q. So I've now shown you Exhibit 16, Plaintiff's Trial
20 Exhibit 16, which is the January 2, 2014, letter of
21 Mr. Danzig on Fieger, Fieger, Kenny, Giroux, Danzig,
22 and Harrington letterhead addressed to Mr. Sherbow and
23 Mr. Intili. Have you ever seen this letter before?
24 **A. Not till this moment.**
25 Q. Okay. Do you see on there that Mr. Sherbow is

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1 supposed to get 20 percent of the net fees generated
2 in these cases?
3 **MR. FIEGER:** It doesn't say that.
4 **MR. JANKS:** Yes, it does.
5 **MR. FIEGER:** It says Jeffrey Danzig wrote
6 that. Your characterization is wrong.
7 **BY MR. JANKS:**
8 Q. Do you see that, Mr. Linden? It says Sherbow referral
9 20 percent of net fees generated?
10 **A. That's the line item, but it's signed by Mr. Danzig.**
11 **Is that what you mean?**
12 Q. Fine. Do you see that Intili and Groves is to get 20
13 percent of the net fees generated?
14 **A. I see that's what it says, yes.**
15 Q. Do you understand that Intili and Groves was paid 20
16 percent of the net fees generated in this case?
17 **A. I have no idea.**
18 Q. It says the Fieger law firm is to get 60 percent of
19 the net fees generated. Do you see that on there,
20 sir?
21 **A. I see that line item.**
22 Q. Do you understand that the Fieger firm was paid 60
23 percent of the net fees generated?
24 **A. I have -- I have no idea.**
25 Q. Fair enough. Mr. Linden, as the personal

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1 representative of the estate of Charles Rice,
2 deceased, you do not have a signed Michigan fee
3 agreement with the Fieger law firm, do you?
4 **A. No.**
5 Q. The only fee agreement that you have signed is what's
6 termed an Ohio fee agreement that was signed on
7 March 31st, 2015, correct?
8 **A. I don't remember what I signed, sir, and that's the**
9 **truth. I don't know -- if you want to show me my**
10 **signature, I'll be happy to look at it.**
11 Q. And you told us you have fiduciary duties as it
12 relates to the estate of Charles Rice, correct?
13 **A. Of course.**
14 Q. And that means putting Charles Rice's estate and the
15 beneficiaries of that estate above anything else as it
16 relates to yourself or Mr. Fieger or the Fieger law
17 firm, correct?
18 **A. You want to put that in some context? I don't know**
19 **what that means, actually. I mean, that's a**
20 **broad-brush statement. There's a lot I could say**
21 **about that that does not mean that, but I would need**
22 **more specifics.**
23 Q. I think you already told us in answering Mr. Fieger's
24 questions that as the personal representative you have
25 a, quote, high fiduciary, end quote, duty, correct?

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1 **A. Yes.**
2 Q. And you have to be independent, correct?
3 **A. To some degree, sure.**
4 Q. And your job as the personal representative of an
5 estate is not to look out for Mr. Fieger and
6 Mr. Fieger's law firm. Your job is to look out for
7 the estate and beneficiaries of the estate, correct?
8 **A. Of course.**
9 Q. In fact, there's Michigan statutes on it like --
10 **A. Well, that's why I answered yes.**
11 Q. -- MCL 700.1212 --
12 **A. But that's why I answered --**
13 Q. -- requires that of you.
14 **A. That's why I answered yes.**
15 Q. Are you familiar with what Michigan Court Rule 8.121
16 requires of lawyers in contingent fee agreements, sir?
17 **A. No.**
18 Q. All right. Do you understand that contingent fee
19 agreements are to be entered into with a contingent
20 fee client at the time the representation starts or as
21 near as is reasonably practicable to the beginning of
22 the representation?
23 **A. Are you asking me or telling me?**
24 Q. I'm asking you if you know that.
25 **A. Sure, I know that.**

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1 Q. So Plaintiff's Exhibit 24, Trial Exhibit 24, is the
2 March 31, 2015, fee agreement that I just mentioned to
3 you that you said you wanted to see so I'm showing it
4 to you.
5 **A. I recognize that being my signature, yes.**
6 Q. Okay. So as of March 31st, 2015, you signed that
7 document which is our Exhibit 24, correct?
8 **A. That's my signature, yes.**
9 Q. Now, if the Michigan law requires you as the client
10 acting as a personal representative in a wrongful
11 death case to sign a contingent fee agreement close in
12 time to when the representation began, and we know
13 that representation began on July 26th of 2012, why
14 are you signing a fee agreement on March 31st, 2015,
15 almost three years later?
16 **A. Because I was asked to by this lawyer.**
17 Q. You were asked to by Mr. Fieger, correct?
18 **A. I was asked to by -- I remember talking to Thomas**
19 **Intili, and he said for his purpose he needed this**
20 **agreement signed, and I said fine. Mr. Fieger didn't**
21 **ask me to sign -- this lawyer asked me to sign this**
22 **document.**
23 Q. Are you familiar with in law how documents are created
24 and how attribution of documents is made?
25 **A. I have no idea what you just said.**

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1 Q. Okay. If you send a letter to a client and you're the
2 person that authored the letter or dictated the
3 letter, do your initials appear on that letter?
4 **A. Yeah.**
5 Q. And after a slash does your secretary or typist
6 initials appear on that letter?
7 **A. Yes. I see Mr. Fieger's initials at the bottom of**
8 **this letter, yes.**
9 Q. Yes. And the letter that I've just shown you,
10 Exhibit 24, has the initials GNF, which stands for
11 Geoffrey Nels Fieger, as the creator of this document,
12 true?
13 **A. I don't know.**
14 Q. And it has the initials VJK, which is Vanessa
15 Kouloumberis, which is Mr. Fieger's assistant and
16 secretary as the typist of this letter, true?
17 **A. You know, you're asking me to answer things I don't**
18 **know if it's true.**
19 Q. All right. Fair enough.
20 **A. I know I talked to a man named Thomas Intili a few**
21 **times, very nice man in Ohio, and this is what he**
22 **asked me to sign. I don't know anything more than**
23 **that.**
24 Q. All right, sir. And the first line it says, quote:
25 Thank you for retaining us to pursue your medical

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1 malpractice claim, end quote, does it not?
2 **A. Yeah.**
3 Q. And there was no medical malpractice claim involved in
4 which you were the personal representative for the
5 estate of Charles Rice, was there, sir?
6 **A. I don't think so.**
7 Q. It was a wrongful death claim because of an auto crash
8 that happened in Ohio, is that right?
9 **MR. FIEGER:** Listen. You know, I've
10 listened. I'm going to tell him not to answer anymore
11 questions unless you can enunciate what this has to do
12 with this case. Are you claiming he wasn't the
13 personal representative of the estate? What are you
14 litigating? What case are you litigating? Okay?
15 Just enunciate -- I'll let you continue or I'll
16 instruct him not to answer unless you can enunciate
17 what issue you are litigating by asking him in this
18 case whether or not it's a malpractice case or not.
19 Please tell us the issue. Tell Judge Alexander the
20 issue that you're litigating. He already told you
21 you're not going to be litigating Ohio law versus
22 Michigan law. He already told you he's not going to
23 let you litigate advanced costs. What are you
24 litigating?
25 **BY MR. JANKS:**

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1 Q. Was this a medical malpractice case that you acted as
2 the personal representative on, Mr. Linden?
3 **A. No.**
4 Q. When you signed this letter, because you had a
5 fiduciary duty to the estate and the beneficiaries of
6 the estate, did you tell them that this letter was
7 going to then allow a completely different charging of
8 fees to the estate?
9 **MR. FIEGER:** You don't have to answer that
10 question. That requires attorney-client. It's your
11 business, but that requires you to violate the
12 attorney-client privilege and you don't -- it's
13 irrelevant, but it's up to you, Mr. Linden. He's
14 asking you questions that have -- one, nothing to do
15 with this case, and, two, asks you to violate your
16 client's privilege, but go ahead.
17 **THE WITNESS:** As long as Michigan statutes
18 were going to be followed for an attorney fee of
19 one-third, and that was my understanding, regardless
20 of anything, that was what I was basing my signature
21 on.
22 **BY MR. JANKS:**
23 Q. Do you understand that what actually happened in this
24 case is because you signed this Exhibit 24, that the
25 Fieger law firm took their 33 and a third percent off

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1 the gross recovery as opposed to off the net recovery?
2 **A. I'm not aware of anything of that kind.**
3 Q. And you as the personal representative, though, asked
4 the court to approve the settlement and approve the
5 attorney's fees, correct?
6 **A. I did. It was fully disclosed. There was no**
7 **hocus-pocus. Whatever the numbers were were the**
8 **numbers. Whatever the questions were, they were**
9 **answered.**
10 Q. Did you check the numbers to see if the attorney fee
11 was being taken off the net or off the gross,
12 Mr. Linden?
13 **A. I don't recall that.**
14 Q. It was your job to do so as the fiduciary, was it not?
15 **MR. FIEGER:** Don't -- you don't need to
16 answer these. The judge has already ruled. You must
17 be in some other world now. Now we're talking
18 about -- you don't represent any of my clients. What
19 case are you litigating?
20 **BY MR. JANKS:**
21 Q. Can you answer the question, Mr. Linden?
22 **A. I don't -- what was -- did I have -- what was the**
23 **question again?**
24 Q. We'll ask the reporter to read it back.
25 (The requested portion of the record was

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1 read by the reporter at 11:36 a.m.)
2 **THE WITNESS:** I did not do the math, but I
3 can tell you for sure that the judge who saw these
4 numbers went over them with a fine tooth comb. He
5 asked all the appropriate questions. He knew it was
6 an Ohio lawsuit, and he approved it without hesitation
7 and signed an order reflecting that, so I don't know
8 what we're doing with this and why you're on this to
9 death, but that's what happened. That's what
10 happened.
11 **BY MR. JANKS:**
12 Q. As the fiduciary to the estate of Charles Rice --
13 **A. My job as the fiduciary to the estate of Charles Rice**
14 **was to present to the court the true numbers no matter**
15 **how they fell, and it was up to the judge to make a**
16 **decision on that fact.**
17 Q. Did you advise --
18 **A. Period.**
19 Q. Did you advise the judge that there were competing
20 laws as it relates to whether the fee --
21 **A. I don't --**
22 Q. -- should be charged on the net or the gross?
23 **A. I have no -- did I advise the judge?**
24 Q. Sure.
25 **A. I don't recall advising the judge. I presented the**

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1 **judge with the document requiring his signature, which**
2 **this judge was very thorough about, and he then**
3 **ultimately signed it to the best of my recollection.**
4 Q. All right. Let me show you this exhibit which we're
5 going to mark as Exhibit 1 from this deposition.
6 **MARKED FOR IDENTIFICATION:**
7 DEPOSITION EXHIBIT 1
8 11:38 a.m.
9 **BY MR. JANKS:**
10 Q. This is entitled fee calculations, re: Estate of
11 Charles Rice. Number one says as taken by Fieger and
12 Fieger, which is Plaintiff's Trial Exhibit --
13 **A. Is this your -- is this what you did or is this some**
14 **other document?**
15 Q. This is something I did.
16 **A. Okay.**
17 Q. Yes.
18 **A. Okay. I didn't know what I was looking at.**
19 Q. So one says as taken by Fieger and Fieger, Plaintiff's
20 Trial Exhibit 41, and I'll hand you Exhibit 41 so that
21 you have that. This is the second page to that. The
22 settlement was 1.4 million. The fee taken was
23 one-third of the 1.4 million, or $466,666.67.
24 Paragraph two says as allowed by MCR 8.121(C), which
25 is Plaintiff's Trial Exhibit 77, what should have

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1 happened is the settlement of 1.4 should have had the
2 cost deducted of 125,000.
3 **MR. FIEGER:** Who said that? Just stop
4 this. Okay. Just stop. The judge told you to stop
5 it. The first thing in trial, and you can -- I'm
6 going to show this to the judge. He told you not to
7 do this. This has nothing to do with referral fees
8 whatsoever. Whatever you think you're doing, you must
9 be -- I don't know what you think you're doing, but I
10 do know that Judge Alexander told you not to do it and
11 you're doing it anyways and you're harassing and
12 badgering Mr. Linden. Now, the first thing I'm going
13 to do when we walk into court on the 27th is show the
14 judge what you've been doing, that we had a deposition
15 of one of the clients, and I want to explain to the
16 court how despite his ruling you have been harassing
17 an attorney.
18 **MR. JANKS:** I believe I'm showing that
19 Mr. Linden did not fulfill his fiduciary duty --
20 **MR. FIEGER:** That is --
21 **MR. JANKS:** -- as personal repetitive of
22 the estate.
23 **MR. FIEGER:** That may -- if you represent
24 somebody other than Mr. Sherbow, then maybe you could
25 make that claim, which you don't, and you're wrong

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1 about that, and maybe you should go to Ohio and learn
2 the law.
3 **MR. JANKS:** And I am showing that --
4 **MR. FIEGER:** But you can't accuse
5 Mr. Linden of acting unethically or illegally.
6 **MR. JANKS:** And I am showing that
7 Mr. Linden is beholden to you and your figures --
8 **MR. FIEGER:** No, you're not.
9 **MR. JANKS:** -- and does what you tell him
10 to do.
11 **MR. FIEGER:** No, you're not. You're
12 trying -- you're trying to accuse him of unethical
13 and/or illegal behavior, which is nonsense, and I'm
14 going to show this to the judge.
15 **MR. JANKS:** I would bet you would show it
16 to the judge.
17 **BY MR. JANKS:**
18 Q. So, anyway, Mr. Linden, I'm going to finish up my
19 examination, and the judge will make whatever ruling
20 he makes.
21 **MR. FIEGER:** He's already fined you once.
22 You've already attacked me. Now you're attacking
23 Mr. Linden. He's fined you once. I'm asking you to
24 stop this.
25 **MR. JANKS:** I'm going to make the record,

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1 Mr. Fieger. This is case is going on appeal, and
2 there will need to be a record, so I'm entitled to
3 make my record.
4 **BY MR. JANKS:**
5 Q. So, Mr. Linden, in our Deposition Exhibit Number 1,
6 number two says as allowed by MCR 8.21(C), which is
7 Plaintiff's Trial Exhibit 77, a settlement of 1.4
8 million should have the cost of 125,000 deducted.
9 Then there would be a net amount of 1.275, then the
10 one-third fee would kick in on the net as opposed to
11 the gross under Michigan law as we've agreed, and that
12 fee would be $425,000. Do you see that, sir?
13 **A. I see what you wrote.**
14 Q. Okay. Do you know if those figures make additive
15 sense or percentage sense?
16 **A. Well, your math is right. Your facts are wrong.**
17 Q. Number three, difference in Fieger attorney fees,
18 $41,666.67. Did you ever discuss with Dion Rice as
19 part of him settling this case that you signing the
20 Ohio fee agreement two years nine months after the
21 case was started allowed the Fieger firm to get
22 $41,666.67 in attorney's fees that they would not have
23 gotten under a Michigan agreement had you even signed
24 a Michigan agreement?
25 **A. I don't recall.**

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1 Q. Okay.
2 **A. But I do recall this case was under the laws of the**
3 **State of Ohio, which I know for a fact, since I've**
4 **done dozens, the way they calculate attorney fees,**
5 **which, by the way, are always -- I just had a case**
6 **last week where the probate Court in a pre-suit**
7 **settlement approved the identical relationship. As a**
8 **matter of fact, Ohio I believe has a 40 percent**
9 **contingency fee. If this figure is correct and**
10 **Mr. Fieger charged a third, he reduced his fee, and,**
11 **yes, Ohio has a very unique attorney fee arrangement**
12 **where they are allowed to charge gross at 40 percent.**
13 **MR. FIEGER:** Actually most states. It's
14 not unique. Most states allow it.
15 **THE WITNESS:** Okay. So I -- if you're
16 playing with math numbers for the sake of showing
17 this, the fact is what you're not factoring in is the
18 value of Mr. Fieger being the attorney of record in
19 these cases because my experience globally with other
20 lawyers in his firm, his recovery rate is so much more
21 superior in terms of dollars recovered, there's no
22 debate.
23 **BY MR. JANKS:**
24 Q. Doesn't allow him to charge fees that the law doesn't
25 allow him to charge, however, does it?

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1 **A. It allows him to charge fees under the state in which**
2 **the case is brought.**
3 Q. If that state's rules are followed and contingent fee
4 agreements are signed at the time that the case is
5 begun, correct, sir?
6 **A. No.**
7 Q. Do you know what --
8 **A. I don't know anything about that. I'm giving you my**
9 **understanding of what I've personally experienced in**
10 **each and every situation, whether it's Colorado, Ohio**
11 **or Timbuktu.**
12 Q. Okay. I'll show you Trial Exhibit 45, Plaintiff's
13 Trial Exhibit 45, which is the Ohio Rule of
14 Professional Conduct 1.5, since you are referring to
15 Ohio law. 1.5(B) says the nature and scope of the
16 representation and the basis or rate of the fee and
17 expenses for which the client will be responsible
18 shall be communicated to the client, preferably in
19 writing, writing's in italics, before or within a
20 reasonable time after commencing the representation
21 unless the lawyer will charge a client whom the lawyer
22 has regularly represented on the same basis as
23 previously charged. And you know that Mr. Fieger
24 didn't previously represent the estate of Charles
25 Rice, true?

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1 **A. I don't know what he did.**
2 Q. And, actually, do you know that Mr. Sherbow was the
3 lawyer for Charles Rice before he died --
4 **MR. FIEGER:** That's not true.
5 **BY MR. JANKS:**
6 Q. -- for Charles Rice's business interests?
7 **MR. FIEGER:** That's not true. Show me one
8 letter to Mr. Rice, one fee agreement, one bill.
9 That's a total falsehood, too. You're asking him to
10 assume something not in evidence. That statement is
11 false.
12 **THE WITNESS:** I don't know any of that.
13 **BY MR. JANKS:**
14 Q. Okay. And do you see where I read Ohio 1.5(B)
15 requires that fee agreement be in writing within a
16 reasonable time after commencing the action and
17 representation?
18 **A. I can read.**
19 Q. So you see where it says that, right, sir?
20 **A. I read that.**
21 Q. All right. And if the representation started on
22 July 26, 2012, a fee agreement signed on March 31st,
23 2015, is not at the incept of representation or --
24 **MR. FIEGER:** I'm asking you again --
25 **BY MR. JANKS:**

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1 Q. Or within a --
2 **MR. FIEGER:** What are you doing?
3 **BY MR. JANKS:**
4 Q. Or within a reasonable time thereafter, true?
5 **MR. FIEGER:** What are you doing?
6 **BY MR. JANKS:**
7 Q. True, sir?
8 **MR. FIEGER:** What case are you litigating?
9 **BY MR. JANKS:**
10 Q. Am I correct in that, Mr. Linden?
11 **A. You're not correct in anything. The word reasonable**
12 **is reasonable. I'm not an interpretive person. I**
13 **don't know what that means.**
14 Q. You do agree that you have no idea of whether the
15 Charles Rice case was or was not referred to the
16 Fieger law firm by Mr. Sherbow, true?
17 **A. I'm absolutely certain it wasn't. Absolutely certain**
18 **it wasn't.**
19 Q. All right. Let's review your deposition. You were
20 deposed in this case before, correct, sir?
21 **A. Yes.**
22 Q. Okay. And you were sworn to tell the truth at the
23 time you were deposed before, right, sir?
24 **A. Yes.**
25 Q. That was on May 9th, 2016, correct, Mr. Linden?

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1 **A. Yes.**
2 Q. You want to look at Page 19?
3 **MR. FIEGER:** Ask him a question.
4 **BY MR. JANKS:**
5 Q. Okay. You told us in that deposition, Page 19,
6 Line 11, that you don't have any information to give
7 to us or the judge or the jury as to whether or not
8 this was or was not a Sherbow referral, is that true?
9 And your answer was yes, correct?
10 **A. That was my answer then.**
11 Q. And do you have any factual information to suggest
12 that Mr. Sherbow did not refer the case to Mr. Fieger,
13 and your answer was I don't have any, correct?
14 **A. Yes, but that was because I reviewed my file, and**
15 **there wasn't a scintilla of information to support**
16 **that conclusion anywhere.**
17 Q. This is the file that you have not produced for us,
18 true?
19 **A. Yeah, my file.**
20 Q. Yeah. And that's the file you've not produced for us
21 despite being requested to produce it, right?
22 **A. It's my file.**
23 Q. And you've not produced it for us despite a request to
24 produce it, true?
25 **MR. FIEGER:** Quit harassing him. You've

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1 asked him that 20 times.
2 **MR. JANKS:** He's hasn't answered the
3 question.
4 **MR. FIEGER:** Yes, he did.
5 **MR. JANKS:** He's evading the question.
6 **MR. FIEGER:** No, he didn't. He told you he
7 didn't.
8 **BY MR. JANKS:**
9 Q. Do we stipulate that you did not produce your file
10 despite a request to produce it?
11 **A. I'm not stipulating to anything.**
12 Q. Okay. And if -- and we agree that your file didn't
13 contain the letters that we've already gone over from
14 Mr. Danzig that said that this was a Sherbow referral,
15 true?
16 **A. You mean the self-serving letters that were written**
17 **God knows when and God knows how for what God knows**
18 **reasons? Yes. Those letters, correct.**
19 Q. And you've told us today, Mr. Linden, that on July 26,
20 2012, when you were here at the Fieger law firm that
21 you never had any discussion with Mr. Danzig that this
22 case, the Charles Rice case, was a referral by Jeffrey
23 Sherbow, true?
24 **A. Look at me in the eyes, okay? That is absolutely true**
25 **then and it's absolutely true now.**

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1 Q. Fair enough. Thank -- Page 9 of your deposition, I
2 think you agreed that you had never met the son of
3 Charles Rice, Dion Rice, until the time of
4 distribution of the monies in the case in 2015,
5 correct?
6 **A. I may have been overstating it then. I don't**
7 **remember.**
8 Q. The question on Line 12 was did you ever meet the son
9 of Charles Rice. The answer was I did. I recall
10 meeting him, yes, one time. Question on Line 14 was
11 do you recall anything about the meeting, when, where.
12 The answer was normally at the end of a case when
13 there are multiple interest family members I am asked
14 to come over to Mr. Fieger's office and sit in with
15 Geoff and others to discuss the distribution. Geoff
16 is -- pretty much controls at that kind of situation.
17 Question Line 21: Do you recall doing that in this
18 case? Answer: I recall that. Question Line 23: And
19 that was at the end of the case you are saying?
20 Answer: Yes. Question Line 25: At the time of the
21 distribution? Answer: That's the only time.
22 So do you agree you testified in your
23 deposition that the only time you met Dion Rice was at
24 the end of the case at the time of the distribution?
25 **MR. FIEGER:** No. Excuse me. He said

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1 that's the only time he remembered. He didn't say
2 that. For the next three or four pages you go on and
3 ask him about the meeting that happened on July 26,
4 and he said he just didn't remember.
5 **THE WITNESS:** I didn't -- yes. I don't
6 remember the prior meetings. I remember the one you
7 referenced because I'm always here at the end, but I
8 certainly probably was here on the -- at the beginning
9 because he signed the paperwork.
10 **BY MR. JANKS:**
11 Q. But you didn't meet him at that time.
12 **A. I probably did.**
13 Q. You met him at the end.
14 **A. That was a lot of years ago, Mr. Janks. You're making**
15 **something happen that I can't remember.**
16 Q. All right. Thank you.
17 **MR. FIEGER:** Thank you very much.
18 **VIDEO TECHNICIAN:** This will --
19 **MR. FIEGER:** The record is closed.
20 **VIDEO TECHNICIAN:** This will conclude
21 today's deposition. The time is 11:53 a.m. We are
22 now off the record.
23 (The deposition was concluded at 11:53 a.m.
24 Signature of the witness was not requested by
25 counsel for the respective parties hereto.)

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1 CERTIFICATE OF NOTARY
2 STATE OF MICHIGAN)
3) SS
4 COUNTY OF WAYNE)
5
6 I, HELEN F. BENHART, certify that this
7 deposition was taken before me on the date
8 hereinbefore set forth; that the foregoing questions
9 and answers were recorded by me stenographically and
10 reduced to computer transcription; that this is a
11 true, full and correct transcript of my stenographic
12 notes so taken; and that I am not related to, nor of
13 counsel to, either party nor interested in the event
14 of this cause.
15
16
17
18
19
20
21
22 HELEN F. BENHART, CSR-2614
23 Notary Public,
24 Wayne County, Michigan.
25 My Commission expires: 7/7/2020

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LAW OFFICES OF JEFFREY SHERBOW, P.C.,

Plaintiff,

v Case No. 15-147488-CB

FIEGER & FIEGER, P.C., d/b/a FIEGER,
FIEGER, KENNEY & HARRINGTON, P.C.,

Defendant. /

JURY TRIAL - VOLUME IV of IV

BEFORE THE HONORABLE JAMES M. ALEXANDER, CIRCUIT JUDGE

Pontiac, Michigan - Friday, March 3, 2017

APPEARANCES:

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1 Pontiac, Michigan
2 Friday, March 3, 2017 - 9:36 a.m.
3 * * * * * *
4 THE CLERK: All rise. The Oakland County
5 Circuit Court is now in session, the Honorable James M.
6 Alexander, presiding.
7 Now calling Sherbow v Fieger & Fieger, 2015-
8 147488-CB.
9 THE COURT: You all can be seated. Appearances,
10 please.
11 MR. JANKS: Greg Janks, on behalf of the
12 Plaintiff.
13 MR. FIEGER: Geoffrey Fieger, on behalf of
14 Defendant.
15 THE COURT: Ready for the jury?
16 MR. JANKS: Yes, your Honor.
17 THE COURT: Okay.
18 THE CLERK: All rise for the jury.
19 (Jury in at 9:37 a.m.)
20 THE COURT: All right, ladies and gentlemen,
21 before I sit with you, join me in a reflection honoring
22 the men and women who served our country. Thank you.
23 Okay, a couple of things. As I indicated, the
24 evidence in the case is completed, and we'll now have
25 closing arguments. Again, these are the arguments of

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1 counsel. They're not evidence. Also, counsel and I have
2 agreed that rather than dismiss two of you, since you've
3 all been so attentive, and so prompt in being here, that
4 all eight of you will be allowed to consider the case, and
5 discuss it to a verdict. When six of you agree on your
6 verdict, that will be your verdict, okay?
7 With that, Mr. Janks, floor is yours, sir.
8 MR. JANKS: Thanks, Judge.
9 THE COURT: If you wanna' move the podium a
10 little bit, feel free.
11 CLOSING ARGUMENT
12 MR. JANKS: Okay, thank you, sir. Good morning,
13 ladies and gentlemen, how are you today? So you've been
14 here for a couple of days, and this isn't the most
15 complicated case. This is a case, as you know, where my
16 client, Jeffrey Sherbow, claims that he referred cases of
17 personal injury nature to Mr. Fieger's law firm through
18 Mr. Danzig who was, admittedly, a friend of his. to
19 Mr. Fieger has claimed that because Mr. Danzig
20 was a friend or a golf buddy of Mr. Sherbow's, that
21 something nefarious went on here, when, in fact, my client
22 had a pre-existing relationship with the Gratiot-McDougall
23 folks who are Jennifer Hatchett and Charles Rice. Could
24 we have the time line, please, Kelly.
25 So back on August 30, 2011, we have exhibit one,

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1 from our case, and you'll get a copy of the exhibits. And
2 could we also call up exhibit one. And that is Mr.
3 Sherbow's letter of August 30, 2011 to Ms. Hatchett after
4 having had a meeting with Mr. Charles Rice and Ms.
5 Hatchett which established an attorney-client relationship
6 between Mr. Sherbow and Charles Rice, who as we know died
7 in the car crash.
8 Additionally, we know from -- Going back to the
9 time line, please, next page. We know that on the date of
10 the crash, being July 13, 2012, that there were two calls
11 from Mr. Sherbow and Ms. Hatchett, two and from Mr.
12 Sherbow and Ms. Hatchett who was the pre-existing client
13 along with Charles Rice as it relates to the Gratiot-
14 McDougall situation. So on the very date of the crash,
15 Mr. Sherbow is in the loop, and being sought out to be an
16 attorney to give advice to Dion Rice who is the survivor
17 of Charles Rice, and the survivor of -- well, not
18 survivor, but of Dorothy Dixon, the son of Dorothy Dixon.
19 On that same day, there were three calls between
20 -- and I guess I hope you know my shorthand, J-S-S stands
21 for Jeffrey Scott Sherbow, the Plaintiff in this case, and
22 J-A-D stands for Jeffrey A. Danzig, who, as you know, is a
23 partner and the manager of the intake department at Fieger
24 law.
25 So, on the very date of the crash, Mr. Sherbow

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1 is involved by his client, Ms. Hatchett, on behalf of his
2 client, Charles Rice, to give advice to Dion Rice. Now,
3 the advice doesn't happen until the next day, and on July
4 14, 2012, there's two calls to and from Dion Rice, and the
5 son of Dorothy Rice and son of Charles Rice, to Mr.
6 Sherbow. And you'll remember that Dion Rice came in and
7 testified, and he said no question he sought out Mr.
8 Sherbow. You'll recall that Dorothy Hatchett (sic) was
9 here to testify, and say that Dion asked for Mr. Sherbow's
10 name and Mr. Sherbow's phone number; that she gave it to
11 him, and that she believed that they had gotten in touch
12 with each other which they did.
13 Dion Rice confirmed the getting in touch,
14 confirmed that he asked Mr. Sherbow for advice. Mr.
15 Sherbow and Dion both have testified that there was a
16 meeting between Mr. Sherbow and Dion Rice at -- at the
17 house on Virginia Park, and if we could have our exhibit
18 five.
19 We -- we have the extensive notes, six pages of
20 notes of Mr. Sherbow talking to Dion Rice, and collecting
21 information as it relates to the unfortunate crash that
22 involved the four family members. And, again, all these
23 exhibits, they've been admitted and -- and you'll get hard
24 copies of them so that you can take a look at them.
25 If we could go back to the time line, please,

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1 Kelly. And that meeting where -- where those notes were
2 taken and the advice was sought and given is somewhere in
3 this time frame, July 16 through July 21. We have various
4 testimony about that. Mr. Sherbow said he knew it was the
5 week after the crash. Dorothy Lawrence said that she
6 thought it was mid-week because they had been coming back
7 from Ohio. Dion said he thought it was one day, the 16th,
8 right after the crash, so there is not a definite date.
9 And -- and I think you can appreciate that when you have a
10 horrendous crash like this, where somebody's dead,
11 somebody's in a coma, two people have serious injuries,
12 and they're in the hospital for a couple of days,
13 everybody's not worried about documenting dates and times
14 of contact. Everybody's worried about what do I do for my
15 family, and how do I get proper legal advice. And so
16 that's what Dion was doing on behalf of his family.
17 That's what Ms. Hatchett gave him entrée to, and that was
18 to talk to Mr. Sherbow multiple times on the phone, as we
19 can see.
20 On 7/17, there's another call from Jeffrey
21 Sherbow to Dion Rice, two more calls from Jeffrey Sherbow
22 to Jeff Danzig, and that's the day that Mr. Danzig authors
23 the first case intake form at the Fieger firm. And then
24 on July 18, there's finally phone contact between Mr.
25 Danzig and Ms. Rice to gather case information, and that's

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1 the form that Mr. Danzig indicates that this is a referral
2 case by Jeffrey Sherbow who was the lawyer for Big
3 Charles.
4 So that's exhibit eight, if we could call that
5 up, please. If we could get to the second page. I
6 forget, how do I do this -- this deal?
7 UNIDENTIFIED VOICE: It's hard.
8 MR. JANKS: All right, never mind, it doesn't
9 matter.
10 It says, "Charles' son, and Dion, and he is
11 being assisted by Dorothy Lawrence. Of course, we
12 remember Dorothy Lawrence came here to testify. She
13 testified that she was at the meeting with Mr. Sherbow and
14 Dion Rice at the house on Virginia Park at -- at that
15 window of the week or so after the accident that we don't
16 quite know the date. Charles Rice is known as Big
17 Charles, and is a former client and a friend of Jeffrey
18 Sherbow, the referring attorney. So from the outset of
19 the case, Mr. Sherbow and Mr. Danzig, and Dion Rice know
20 that this is a case that's referred by Mr. Sherbow. And
21 Dion Rice is acting on behalf of his father, who's
22 deceased. Dion Rice is acting on behalf of his mother,
23 who is in a coma in the hospital in Ohio, Mervie Rice is
24 certainly acting on her own, and Charles Hill, er, I'm
25 sorry, Phillip Hill is certainly acting on his own, but

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1 the entire family was in the same crash, and it made sense
2 to have everybody represented by the same lawyer or law
3 firm instead of all different lawyers and law firms
4 competing.
5 So the stage was set, table was set by Mr.
6 Sherbow through his association with Charles Rice, his
7 client, through his association with Jennifer Hatchett,
8 his client, to Dion Rice, the son, and it's a logical
9 connection that was made and came through.
10 You'll recall that Dion was on the stand, and he
11 said he did look to Mr. Sherbow for guidance, and he'd
12 asked for Mr. Sherbow's name and number. He knew that Mr.
13 Sherbow had represented his father, and that his father
14 had believed that Mr. Sherbow was a good lawyer, and if
15 had legal problems you should seek out Mr. Sherbow. There
16 was no indication that Mr. Fieger was the lawyer that
17 should be sought out or Mr. Danzig. It was Mr. Sherbow at
18 the beginning of his relationship with Charles Rice.
19 The value that Mr. Sherbow brought to the Fieger
20 law firm in this case was that he had this relationship
21 with Dion after the crash happened. He had the prior
22 relationship with Charles and Jennifer Hatchett before the
23 crash happened, and he was able to round up, as it were,
24 or talk to the family, and bring the family in as a unit.
25 Now, they could have split off. They didn't all

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1 have to hire the Fieger firm, but in fact they did all
2 hire the Fieger firm. And you'll recall -- can we go back
3 to the time line -- on 7/26/12, that was the meeting at
4 the Fieger law firm, 13 days after the crash. Mr. Sherbow
5 met with Dion and Mervie. Mervie's there. She -- Mervie
6 Rice is at that meeting. Mr. Danzig's there. Ms.
7 Lipton's there, and Dion Rice and Mervie Rice signed
8 contracts for legal representation. You'll recall Mr.
9 Danzig indicated that he told them what his role, Mr.
10 Danzig's role was. He was gonna' be the primary lawyer
11 responsible for handling the tort cases. He -- he, Mr.
12 Danzig, told them what Ms. Lipton's role was. She was
13 gonna' handle the no-fault benefit aspects of the cases.
14 Mr. Danzig told them what Mr. Sherbow's role was, and that
15 he was the referring lawyer, the prior lawyer of the
16 business of Charles Rice and Ms. Hatchett, and indicated
17 that referral fees were going to be paid to Mr. Sherbow as
18 a result of him bringing those cases in.
19 Can we call up number 40. Can we go down to E,
20 please. So, the Michigan Rule of Professional Conduct,
21 and the Judge will give you the instructions, and one of
22 his instructions incorporates this part of the rule. And
23 it says, "A division of fee between lawyers who are not in
24 the same firm may be paid but only if, one, the client is
25 advised of and does not object to the participation of all

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1 the lawyers involved, and the total fee is reasonable."
2 In this case, there's not a question about the
3 reasonableness of fees. The question that Mr. Fieger has
4 posed is whether the clients were advised and did not
5 object, and we're talkin' at the time. We're talkin' July
6 26, 2012 for Mervie Rice and Dion Rice on behalf of the
7 estate of his father.
8 Testimony from Mr. Sherbow and Mr. Danzig was
9 that the clients were advised that there was this referral
10 arrangement and fee sharing. The testimony was that there
11 were no objections raised by the clients at that time.
12 Now, that's important because July 26, 2012 is the time
13 under the law to raise objections. The time under the law
14 to raise objections is not two years, nine months later or
15 three years later once the litigation has been completed,
16 a recovery secured, and a lawyer such as Mr. Fieger that
17 secured the recovery wishes to keep the referral fee in
18 his pocket instead of paying it pursuant to the promise
19 that his office made to pay the referral fee.
20 We call up exhibit nine. So, this is the hand-
21 written Fieger, Fieger, Kenney, and Johnson intake auto
22 (indiscernible) sheet dated 7/25/12, so that's the day
23 before the meeting for the sign-up of the clients. And
24 the way it was set up was that Dion Rice was, perhaps,
25 depending on Dorothy Dixon's mental status and ability to

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1 function, and whether that was a short-term coma or long-
2 term coma was going to be the guardian and conservator, so
3 Dion Rice was then at the meeting the next day, as we
4 said, on behalf of his mother, Dorothy Dixon, as well as
5 his deceased father, Charles Rice.
6 And so then when he signed fee agreements that
7 day, he was signing fee agreements and agreeing that both
8 of his parents were being represented by the Fieger law
9 firm. He understood that it was a referral by Mr. Sherbow
10 because as he testified to here in court, he knew that Mr.
11 Danzig and Mr. Sherbow had an agreement that Mr. Sherbow
12 was going to get his on the, quote, "back end," end quote.
13 And what the back end means is when the case is over when
14 the money comes in.
15 So, back to the ethics requirements that require
16 the client be advised, there's evidence that Dion Rice was
17 advised, on behalf of his mother, Dorothy Dixon, on behalf
18 of his father, Charles Rice, that there was going -- there
19 was a referral, there was going to be fee sharing, and he
20 did not object to it, and more than not object to it, he
21 acknowledged that he knew that it was occurring. He knew
22 that Mr. Sherbow was going to get his on the back end.
23 Now, what's important is Mervie Rice was at that
24 same meeting, heard all the same things that were told
25 because it wasn't like two different meetings. It was

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1 July 26, one meeting. And so Mervie Rice, although she
2 said she didn't remember that, would have heard the same
3 thing, and did not file objections at that time.
4 You'll also remember that both Dion -- Dion Rice
5 and Mervie Rice, nice people. I'm -- I'm not saying
6 they're liars. Mr. Fieger told you at the beginning of
7 this case I'm coming in here saying all those people are
8 liars. I'm not saying that at all. I'm saying that what
9 occurred back in 2012 is quite a few years ago, and as I
10 think Dion said, "I don't remember what I did last year
11 let alone back then." And what Dion also told you was he
12 was under stress and duress at the time. His father had
13 just died, his mother was in a coma, his family members
14 were injured, and that he didn't remember each and every
15 thing that occurred back then or what each and every thing
16 that was discussed with him or with Mr. Sherbow. And
17 that's logical. That just makes sense. When you go hire
18 lawyers, the lawyers say, hey, we're gonna' represent
19 you, we're gonna' get you money, we hope, if we get you
20 money, we're gonna' take our fee. People that sent us the
21 case are gonna' get a piece of our fee. They're not
22 gonna' get any extra money from you because recall 1.5(E)
23 indicates the fee must be reasonable which means you can't
24 charge two or three different fees for two or three
25 different lawyers. That's what that means. So, it --

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1 it's certainly entirely logical and reasonable that they
2 don't remember every little thing that was discussed, and
3 they admitted that they wouldn't.
4 Dorothy Dixon, who was signed up later,
5 September 11 -- maybe we can go back to our time line,
6 next page, please. Oh, and Charles Rice funeral, 7/28/12.
7 That's another thing. Mr. Fieger said to you in opening
8 statement that my client, Mr. Sherbow, comes up to Dion
9 Rice at the funeral, taps him on the shoulder and says,
10 hey, I wanna' be your lawyer. And we know Mr. Fieger's a
11 theater major, and we know --
12 MR. FIEGER: Judge, excuse me -- excuse me.
13 Does he have to make personal attacks on me?
14 MR. JANKS: That's not a personal attack.
15 MR. FIEGER: Of course it is, and --
16 THE COURT: No, let's -- let's -- all right --
17 all right, gentleman, let's not make -- talk about Mr.
18 Fieger's personality.
19 MR. JANKS: That was his background, but I'll --
20 I'll move on. And -- and we know that it was discussed
21 from the witness stand that there was a Paul Newman movie
22 called, "The Verdict," where Paul Newman goes out and
23 tries to shag a death case at a funeral home, and we know
24 that Mr. Fieger's claimed that that's what happened here.
25 But the funeral was July 28, 2012. Let's go back a slide.

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1 July 26, 2012, two days before the funeral even
2 happens, Dion Rice, Jeffrey Sherbow, Mervie Rice are
3 sitting in a conference room at Fieger Law together
4 agreeing to be represented. So somethin's off on Mr.
5 Fieger's time line.
6 Additionally, we have to remember that on 7/14,
7 the day after the accident, Mr. Sherbow is having two
8 telephone conversations with Dion Rice. So the first time
9 Mr. Sherbow met and talked to Dion Rice isn't at his
10 father's funeral, and even Dion Rice told you they had a
11 meeting together on Virginia Park, he thought, on Monday,
12 July 16 where all the notes were taken that are in
13 exhibit, so I'm a little confused by the defense in this
14 case.
15 Mervie Rice did say, as to her case, that she
16 called the Fieger law firm directly. We can do exhibit
17 seven, please. She's the same lady that, like all the
18 rest of the people admitted, their memory wasn't perfect,
19 and I didn't -- I -- I don't think any of us have a
20 perfect memory, so I'm not faulting anybody for not having
21 a perfect memory. Mr. Fieger has indicated through, I
22 think, Mr. Harrington, that the call from Mervie Rice came
23 into Fieger Law on 7/17/12 at 1:55 p.m. The problem with
24 that is that a person that authored this sheet, you'll
25 recall testified, is J-A-D, Jeffrey A. Danzig. He was the

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1 intake manager for the Fieger firm, a partner and a
2 shareholder at the Fieger firm, and Mr. Danzig testified
3 that he's the one that authored that sheet; that that
4 didn't mean that Mervie Rice called in on that date. It
5 meant that he was trying to get a hold of her. And -- and
6 in fact you'll recall that the phone number there was not
7 a good phone number. And you'll recall Defendant's
8 exhibit L -- can we call that up. The supposed message
9 from Mervie Rice of 7/17 had the same bad phone number on
10 it. Also, didn't have the initials of Jenine, the
11 receptionist, or the time of the call. You'll recall Mr.
12 Danzig said that that message is unlikely to have
13 occurred, and it appears that what has happened is there's
14 been a message given to us by the Defendant trying to
15 justify the fact that they want to say that Mervie Rice
16 called in on 7/17 before Mr. Sherbow actually referred her
17 in, although he had referred everybody in before then
18 anyway, and I think that's suspicious, and I think when
19 suspicious documents show up in a case, as a defense of
20 the case, that's something that you should consider, and
21 consider for what it means.
22 In any event, Mr. Danzig says that it was he
23 that got a hold of Mervie Rice -- can we go back to
24 exhibit seven -- on her correct cell phone number which he
25 said he hand wrote into the form, 3-1-3-8-2-8, I think

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1 that says, 1-1-6-3 or whatever that number is, it's
2 different than this number which is the same as the number
3 on the phone message. So, you gotta' ask yourself why did
4 Mervie Rice call in, and give the wrong number to get a
5 call back. Somebody made a mistake when they made up the
6 phone message to bring to you.
7 So we have a situation here where all the
8 clients -- all the clients came in through Mr. Sherbow.
9 Now, you're gonna' be given a verdict form in -- in this
10 case to answer just a couple of simple questions. And
11 you're gonna' be asked whether any of the following were
12 clients of Mr. Sherbow, and whether any of the following
13 were referred to the Fieger firm by Mr. Sherbow, and
14 whether Mr. Danzig had actual or apparent authority to
15 confirm that Mr. Sherbow referred the cases in, and to
16 agree to bind the Defendant to pay a referral fee. And,
17 of course, the four people in the form of verdict are --
18 are gonna' be the four people you've heard we've been
19 talking about: Mervie Rice, Dion Rice on behalf of the
20 estate of Charles Rice, Phillip Hill, and Dorothy Dixon.
21 And you have the ability, and you have the requirement
22 under the form to look at each case individually because
23 they do have individual cases. Even if Dion shows up for
24 his mother and his father, they still are all individual
25 cases, so you're going to decide, as part of helping us

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1 resolve this case, which cases did Mr. Sherbow consult on,
2 and which cases did he refer to the Fieger firm, and as to
3 any of those cases, and we say it's all of 'em, what did
4 Mr. Danzig promise as to each and any one of those cases.
5 Then we know, and we've agreed amongst ourselves
6 here that you don't have to put dollars down or anything
7 because we know the agreement, which was exhibit 16, if we
8 could call that up, we know the agreement was that the
9 Fieger law firm would take 60 percent of the fees
10 generated, Antilly & Groves would take 20 percent, and
11 Sherbow would take 20 percent, so we know what the numbers
12 were as to the resolutions of the cases, we know what the
13 percentages are, and the Judge will just apply those to --
14 to your verdict.
15 And, remember, this is kind of an important
16 exhibit. There were two prior letters, and -- and, again,
17 all these exhibits are yours to -- to see and look at in
18 the jury room, two prior letters back in 2012, shortly
19 after the cases came in, by Mr. Danzig to Mr. Sherbow
20 confirming the referral of all four cases, first
21 confirming Mervie Rice, then confirming the other three.
22 And at that point, the arrangement was 33 1/3
23 percent to Mr. Sherbow. And you'll recall, you heard
24 testimony, that Mr. Antilly down in Ohio said, well, I'm
25 doin' more work on this, so I want more money, and so Mr.

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1 Sherbow agreed to accommodate him, and slash his fee.
2 You'll also recall that the underlying clients said that
3 the reason that they belatedly and almost three years
4 later didn't consent or belatedly didn't consent to Mr.
5 Sherbow getting a fee is because Mr. Sherbow didn't work
6 on the case. But you'll also recall the testimony from
7 Mr. Sherbow and Mr. Giroux, and Mr. Danzig that it's not
8 typical that a referral lawyer actually worked on a case.
9 A referral lawyer sends the case to the specialists, as it
10 were, and that's it. The job is sending the case along,
11 not working on it, unless somebody requested that he or
12 she work on it, which there was no testimony there was
13 such a request here.
14 And in any event, the -- the more telling thing
15 about exhibit 16 here is Geoff Fieger approved on
16 11/11/13, and as such, "I am formally notifying you both
17 of our mutual understanding and agreement." You'll recall
18 that Mr. Fieger has claimed here he didn't know anything
19 about this, he's got this procedure, his exhibit TT, that
20 says nobody can take in a referral at my office unless I
21 approve it, unless I write notes on it. You'll recall Mr.
22 Danzig said, well, that really wasn't the practice. It
23 might -- there might have been a written policy, but
24 nobody followed it. You'll recall Mr. Giroux said, sure,
25 there's a written policy. Lots of written policies come

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1 from Mr. Fieger. People don't follow 'em. And you'll
2 recall, I went over the policy on Mr. Fieger's blow up.
3 Do we have his exhibit TT, by the way? And -- and you see
4 what he's -- he's worried about is bring the case to me to
5 determine if we wanna' take the case, and invest money in
6 it. Well, this is a case they always wanted to take.
7 This is a case they always wanted to invest money in. It
8 was a $10 million case. There's just no question they
9 were gonna' take this case in whether Mr. Fieger wrote his
10 initials or didn't.
11 So the policy, the purpose behind the policy was
12 fulfilled. You'll also remember Mr. Danzig said, on July
13 26, 2012, the day that I -- Mervie Rice signed the
14 agreement, Dion Rice signed the agreement on behalf of his
15 father, and was there talking on behalf of his mother, I
16 marched up to Mr. Fieger's office, and I said to Mr.
17 Fieger, I got these great cases in, and they came in
18 because Mr. Sherbow brought them in, and Mr. Sherbow was
19 in the building.
20 You'll recall Mr. Harring -- bless you Judge.
21 THE COURT: Excuse me.
22 MR. JANKS: You'll recall Mr. Harrington, Mr.
23 Fieger's partner and shareholder that testified here,
24 said, well, you know what, the best way to make sure that
25 that policy is effectuated is for the referral lawyer to

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1 come on in to the office with the clients, and then we're
2 sure there's no hanky-panky goin' on. What happened on
3 July 26, 2012? Mr. Sherbow was in the office with
4 clients, with Mr. Danzig, bringing them to the Fieger
5 firm.
6 And by the way, the Judge will give you a
7 definition of a client, and that definition will be the
8 definition of a client is a person or entity that employs
9 a professional for advice or help in that professional's
10 line of work, especially one in whose interest the lawyer
11 acts as by giving advice, appearing in court or handling a
12 matter. And there's no question that Mr. Sherbow gave
13 advice, gave counsel to Dion Rice on what to do legally,
14 and how to get his family's best interests taken care of.
15 So they were Mr. Sherbow's clients, and as we said,
16 Charles Rice was Mr. Sherbow's client without a doubt
17 before he unfortunately died.
18 Mr. Fieger also had -- had said that Dion called
19 him directly, and asked for him directly. Search your
20 brains. Is there any evidence that Dion Rice called the
21 Fieger firm? Is there any document, any phone message,
22 any testimony that Dion Rice called the Fieger firm on his
23 own? I submit to you there's not.
24 You'll also recall that there's a claim here
25 that I'm -- I'm troubled by. I -- I'm non-plussed by it.

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1 The claim is that Mr. Sherbow, a licensed lawyer in
2 Michigan for 40 years, Mr. Danzig, a licensed lawyer in
3 Michigan for almost 40 years, because they're golf
4 buddies, are engaged in fraud, a scam, thievery to steal
5 money from the Fieger law firm. That's the defense.
6 That's what Mr. Fieger told you in opening. Where's the
7 evidence of that? Has there been any evidence that
8 suggests that that's true or that's what happened? And,
9 additionally, where's the logic of it? Why are Mr. Sherbow
10 and Mr. Danzig gonna' risk their careers, risk their
11 reputations, risk their law licenses that they need to
12 practice law in this state to make a living, why are they
13 gonna' do it? What -- what's the benefit? Certainly, Mr.
14 Sherbow would get money on a referral fee, so I -- I guess
15 that's the argument, that's the benefit to him. What's
16 the benefit to Mr. Danzig? How could this possibly, if
17 it's a scam or a scheme, have benefitted Mr. Danzig? The
18 only thing it could do to Mr. Danzig was make him lose his
19 job if he was found out to be embezzling money from the
20 law firm. Yet, there's just no evidence that that's what
21 happened. So we have allegations without proof. And I
22 submit to you there's a reason for those allegations.
23 It's so that you'll think less of, you'll think badly of,
24 you'll not wanna' issue a verdict for Mr. Sherbow because
25 he's somehow a bad guy, he's a thief, and that he's in

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1 collusion with his buddy, Danzig, who he golfs with. I
2 golf with a lot of people. People aren't doin' things for
3 me just because I golf with 'em. I mean, I -- I don't
4 know. Boggles my mind. I don't know if it boggles your
5 mind.
6 In any event, we've got the second intake sheet
7 that says this is a Sherbow referral. We've got three
8 confirming letters on Fieger letterhead confirming this is
9 a referral. One of the letters that was up there a minute
10 ago says Geoff Fieger agreed with the distribution, and he
11 wouldn't have agreed with the distribution if this wasn't
12 known to him to be a valid referral. Can we call up
13 exhibit 17, please.
14 It says the exit agreement, I guess we can call
15 it. It says agreement, but this is the separation
16 agreement between Mr. Danzig and the Fieger law firm. I
17 believe scroll down a little more. It says that Danzig
18 has a proprietary interest in four file groups referred to
19 him during his employment. One of those file groups is
20 the Linden-Rice file group that has the four cases that
21 we're here talking about. Can we scroll down. Who agreed
22 to, and signed this form that said, I acknowledge that
23 these cases were referred to my law firm, and that they
24 were your cases, Mr. Danzig, Geoffrey N. Fieger, in his
25 own handwriting agrees that these were referral cases.

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1 Yet he comes before you, says I don't agree these were
2 referral cases. My policies weren't followed. This is a
3 fraud. This is a scheme. This is a scam. This is about
4 money. This is about somebody that wants to keep the
5 money in their pocket, and not pay what they agreed to
6 pay. This shouldn't stand, ladies and gentlemen.
7 So I think you also have to ask yourself,
8 speaking for the money issue, and speaking what I just
9 said, who -- who's really the only one sitting in this
10 courtroom that has already gained financially, and stands
11 to keep gaining financially by the positions taken by the
12 defense in this matter? And I think that tells you,
13 really, all you need to know about what this case is
14 about, and I think you know, as we sit here, that Mr.
15 Sherbow was involved with the family before the accident
16 ever happened.
17 Mr. Sherbow was immediately involved with the
18 family on the day of the accident, and the day after the
19 accident happened. Can we go back to our time line.
20 The day of the accident, the day after the
21 accident, week after the accident, day by day by day
22 talking to the family, gathering information, knowing that
23 his office didn't have the wherewithal to handle the case
24 in the best interest of the family, so he took it to the
25 people that he knew, being Jeffrey Danzig was the person

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1 he knew, but, ultimately, I'm sure he knew that Mr. Fieger
2 would get involved in the trial, and there's no denying
3 that Mr. Fieger adds value to a case if he's the trial
4 lawyer. No denying it. He has a fabulous reputation in
5 that regard. He gets clients big money. But that doesn't
6 entitle him to make promises, to make agreements, to take
7 in big cases that he wants, say to the referral lawyer in
8 writing I'm gonna' pay you for sending these cases to me,
9 and then throw up all kinds of defenses and bars to the
10 cases.
11 In fact, to this -- tie this -- uh, I'd like to
12 look at exhibits 20, 21, 22, and 23, one at a time,
13 obviously (indiscernible). You'll recall that there's
14 another exhibit there, and I -- I won't show it to you now
15 'cuz you'll have it. Mr. Sherbow hears that the cases are
16 getting resolved, so he sends a letter February of 2015,
17 so three years after the cases start, to Mr. Fieger
18 saying, hi, remember me, anything you need from me. I
19 used to be the family's lawyer, what's going on, I hear
20 you're doin' a good job. So Mr. Fieger authors this
21 letter. It's signed by Dion Rice, but Dion said it wasn't
22 authored by him, saying I don't know anything about
23 Sherbow.
24 Go to 21. The same date, same letter, same
25 identical language signed by Mervie Rice. Let's look at

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1 22. Same date, same identical language. This one is
2 signed by Phil Hill down here somewhere, okay. 23? Same
3 date, same language, signed by Dorothy Dixon, but these
4 are letters authored by Mr. Fieger, authored for one
5 purpose, authored for one purpose, authored for the
6 purpose of saying the rule that requires a client consent
7 to the payment of a referral fee has not been followed
8 because, see, the clients don't consent.
9 Mr. Fieger's right. There is a scam, there is a
10 scheme going on here. The problem is with the scam and
11 the scheme are from the Defendant, not from the Plaintiff.
12 Thank you.
13 THE COURT: Thank you, Mr. Janks. Mr. Fieger.
14 CLOSING ARGUMENT
15 MR. FIEGER: Good morning, everybody. This is
16 the closing argument. I was sick, not feeling really good
17 during the week. I had the flu, but I explained to you
18 what the facts were in this case, and it's pretty sad.
19 It's pretty said. I mean, you've heard and seen what's
20 gone on here. You can see. I mean, the Judge is going to
21 give you an instruction that not only -- by the way, and -
22 - and counsel didn't read to you the law, what the Judge
23 is gonna' instruct you on, and you'll be able to decide
24 this case in about five minutes. He's gonna' read you --
25 I'll -- I'll read you the law. The Judge has given us the

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1 law that he will instruct you on, and then you'll have a
2 verdict form.
3 But it's your -- one of the instructions is
4 you're allowed to use your common sense, too, I mean, to
5 see what's going on here. This is pretty sad. It doesn't
6 -- this is not typical what is going on here, and -- and
7 what the Plaintiff and Mr. Danzig did. It's not
8 representative of lawyers, and it's -- it's really a real
9 shame in our profession, and don't take it against lawyers
10 to think that this goes on all the time because it
11 doesn't, and it shouldn't.
12 My mother said to me once, oh, what a tangled
13 web we weave when, first, we practice to deceive. Counsel
14 makes so many statements to you just now, in this short
15 time that he spoke with you.
16 Ma'am, could you do me a favor? Put up the
17 letter from Jennifer Hatchett, please, that counsel
18 referenced. Go to the top, please. Okay, you can stop
19 right there. This is the sole evidence. Mr. Janks has
20 told you with a straight face that somehow that he was
21 Charles Rice's attorney because he has a letter from
22 Jennifer Hatchett. If that makes him Charles Rice's
23 attorney, then I'm everybody's attorney in the world. You
24 won't find one letter, you won't find one retainer
25 agreement, and we sign retainer agreements with our

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1 clients. You won't find one thing that the Plaintiff
2 represented Charles Rice. I'm -- I'm not denying they
3 were friends, but to say he was his lawyer is just -- they
4 start out with an incredible falsehood. He's not Charles
5 Rice's lawyer, and he doesn't have one iota of proof of
6 that because it wasn't true. He was a friend of his. And
7 so when he heard, or at least I -- my friend was killed,
8 maybe I can get some money out of my friends or his
9 family. That's what he thought.
10 Could you put up the phone records that counsel
11 just spoke to. Mr. Janks just absolutely misled you.
12 Let's take a look at these records. Ms. Hatchett, who
13 knows Mr. Sherbow, and they are friends, calls him in the
14 afternoon when Charles and the family were killed, and
15 says there's been a horrible tragedy. Mr. Sherbow doesn't
16 know anyone. He doesn't know Mervie Rice. He doesn't
17 know Dorothy Dixon. He doesn't know Phillip Hill. He
18 never has. He's never even met him to this day except
19 when he sued, and took their deposition twice, and made
20 'em go through this for the last 2 1/2 years. Doesn't
21 know anybody. Doesn't know Dorothy Dixon. Actually, he
22 does, he met her before. She said I don't want you to be
23 my lawyer. He was tryin' to get in on that one when she
24 hurt her back in a car accident.
25 And what does he do? He calls Jeff Danzig. He

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1 has no client. He knows no one. Here's what you do. I'm
2 a big law firm, so I'm a big target. When people get hurt
3 or injured, more often than not, ladies and gentlemen,
4 people think of me. If you want to run a scam in my
5 office, and you're Jeff Danzig, you know that if you hear
6 about a very serious injury or serious case in Michigan,
7 there is a very -- very good chance that the clients, the
8 people who've been injured or their family will call me,
9 and Mr. Danzig knew that.
10 And the way you run the scam, and I will never
11 know unless you follow the procedures, is, in this case,
12 you say my friend referred the case. My friend referred
13 the case. And if you don't come to me, and you show me
14 everything, if you just keep it from me, and if Mr. Danzig
15 had continued to be employed at my firm, and I had never
16 seen that case, and at the very end of the case he settled
17 the case, I would never know because I would trust him. I
18 would trust him that his friend actually referred the
19 case. It only happened when Mr. Danzig left we started to
20 look at what really happened in this case, and understood
21 that Mr. Danzig and Mr. Sherbow had been engaged in not
22 one, but two scams --
23 MR. JANKS: Well, where is the evidence of this,
24 Judge.
25 MR. FIEGER: -- at the very same time.

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1 MR. JANKS: There was no evidence of this in the
2 case. Mr. Harrington was the only one that testified. He
3 didn't testify about any of this.
4 THE COURT: Well, I thought the argument was
5 made and the questions were asked whether or not -- or
6 there was an issue made, rather, a -- about that other
7 case, so I'll -- I'll allow it -- I'll allow it.
8 MR. FIEGER: Of course -- thank you. It was not
9 one, but two --
10 THE COURT: They heard the evidence.
11 MR. FIEGER: -- on the same day -- on the same
12 day, July 18. And if I don't know about it, if nobody
13 follows the rules, the money goes out of my office, and I
14 never know the difference, and Danzig knew that. He knew
15 that, and that's why things are being run off the books,
16 and that's why things are -- procedures are not being
17 followed. And until I found out, then he -- when he --
18 when he (indiscernible) up, oh, no, this didn't happen.
19 Look at this. Mr. Janks, he calls Danzig. It
20 was -- what's he gonna' tell Danzig? He's gonna' say, you
21 know, if anybody calls the Fieger firm from this, why
22 don't you say it's a referral from me. He doesn't know
23 any of 'em. What is he telling Danzig? Then he
24 specifically, falsely, tells you somethin', look at this.
25 He says Dion called him. This is a day and a half later.

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1 He called Dion. He called Dion, and left a message
2 soliciting him, and Dion, incoming to Mr. Sherbow's phone,
3 called him back. Dion never called Mr. Sherbow. Sherbow
4 called Dion. And then he says he met him at the wake. I
5 had said the funeral. He met him at the wake. He didn't
6 get any information from Dion, and Dion didn't give him
7 information that his mother's name was Dorothy Dickerson.
8 And Dion told him, I'm goin' to the Fieger office. And
9 Sherbow said, well, you know, I got a buddy over there --
10 I got a buddy over there. You know, I'll just make sure.
11 I'm your dad's friend. I'll make sure everything's okay.
12 They also said Danzig didn't stand to make any
13 money -- are the only ones who have nothing to do with
14 this case. I protect my firm's money, my clients' money,
15 my employees' money. I do, I do that. He -- he's looking
16 for $600,000, and Danzig was lookin' for a cut.
17 Will you put up Danzig's departure before we
18 found out. Danzig's departure. Could you put that up?
19 UNIDENTIFIED VOICE: (Indiscernible).
20 MR. FIEGER: Oh, I'm sorry, Mr. Janks, what --
21 THE COURT: It's exhi -- exhibit 17.
22 MR. FIEGER: Seventeen. Danzig has a
23 proprietary interest. He would get a cut of a referral if
24 it was from Sherbow. He said I get a cut of that. If a
25 case comes into our office, and it's referred by a friend,

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1 you get, the attorney, gets a percentage of it. This is -
2 - this -- he told you Danzig doesn't have any interest in
3 the case. He most certainly does. He wants this to be a
4 referral so he gets money out of it, too.
5 And then if you could put up exhibit nine that
6 he showed you, please.
7 MR. JANKS: Sure, we're happy to be Mr. Fieger's
8 A-V. (Indiscernible.)
9 MR. FIEGER: Exhibit nine. Let's scroll down.
10 Judge asked this question yesterday. Scroll up. Keep
11 going, please. Now -- yeah, exhibit nine. Just go
12 slowly, please. Stop, there you go. Cases are referred
13 by somebody, this is where you put it in. I've got rules
14 and procedures, not just that you gotta' report it to me,
15 that I've gotta' see it. This is where you put it in,
16 cases are being referred to us. Thank you,
17 (indiscernible), you can put that back. You can turn that
18 off.
19 In fact, evidence went in on this case, we have
20 an extensive referral department in our office, and we
21 have, in every case where we refer a case out to other
22 attorneys, and we do that hundreds of times a week,
23 hundreds of times. We have a three-page referral
24 agreement that we make the attorneys sign to acknowledge
25 that we've referred a case to them, and that they

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1 acknowledge that we referred the case. Mr. Danzig knows
2 it. He talked about it. Where's that here -- where's
3 that here?
4 The Judge will instruct you -- the first
5 question that you'll be asked and then the case will be
6 over -- on the verdict form is were any of the following
7 clients of Jeffrey Sherbow: Mervie Rice, was she a client
8 of his? Dion Rice, on behalf of Charles Rice, was he a
9 client? He said I called Mr. Fieger. I've retained Mr.
10 Fieger. Phillip Hill, was he a client? They've never
11 even met. And Dorothy Dixon, was she a client? Those are
12 the first four questions. If you answer no, the case is
13 over.
14 Here's the definition of a client. The Judge
15 will instruct you on the law. The definition of a client
16 is a person or entity that employs a professional for
17 advice or help in that professional's line of work. Not
18 one person employed Mr. Sherbow. And it -- by the way,
19 it's not even his line of work. That's it -- that's it,
20 that's the definition of a client, and that's --
21 And then if you ever got farther than that, and
22 somehow tell the people who have testified now five times,
23 who have no interest in this case, that they have nothing
24 to do with this, and this claim that's being made in court
25 is a fraud, and they testified to it whether or not Mr.

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1 Janks heard it or not.
2 In order to make a referral under the law, the
3 referring lawyer -- that's the person who has a client.
4 For instance, if a client comes to me, and I wanna' refer
5 it to another attorney -- and the receiving lawyer are
6 responsible, both of them, to see that the client is
7 properly advised. There was no advice here because there
8 was every -- They couldn't tell anybody what was going on
9 -- and does not object, agrees to a participation of the
10 lawyers. That's another way of saying we -- I agree to
11 it. Where's that? That will be a second question. The
12 answer, if you got past the first question, would be no.
13 And then, finally, the third question is if you
14 answered yes to those, which is beyond any of the proofs,
15 and the Judge told you the proofs come from the witness
16 stand and the exhibits, not from Mr. Janks or even myself.
17 Did Danzig have authority to do any of this. And I've
18 shown you the policy. And his answer to that is, well, I
19 don't follow your policies. I don't follow it. I don't
20 go along with it. And so, you know, that's really what
21 happened. Until -- unless I find out, the money goes.
22 And it went two ti -- he tried to do it two times on the
23 same day.
24 Now, if these people can say with a straight
25 face -- Mervie Rice called my office, 7/17. These dates,

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1 they're all attached, and if you think that we somehow --
2 that I came into court here, and -- and produced
3 fraudulent records here, okay, and that I committed
4 perjury by submitting to the Court fraudulent records.
5 Mervie Rice called our office, and that's a good number.
6 She has a cell number, too. That's her home number, and
7 she called, and it was transferred immediately.
8 Mr. Danzig doesn't call clients, doesn't call --
9 Unless a client calls us, we are not permitted by law, it
10 is a crime, a felony, to solicit people. We can't pick up
11 a phone, and never have, and nobody in my office will
12 testify, and if -- that's the claim here, that Mr. Danzig
13 somehow picked up a phone, and unsolicitidly, without a
14 client first calling, starts calling people and soliciting
15 them for a case, that's a crime, and it never happened.
16 Mervie Rice called my office, and then it was
17 transferred. That call was transferred. It was
18 transferred 'cuz Jenine recognizes it's a big case. Now,
19 I'm not sure Danzig remembers that this is the case that
20 he was supposed to give to Sherbow; that he was supposed
21 to say was Sherbow's referral. Because Mervie Rice didn't
22 say I'm being referred by a person I don't even know. Of
23 course she didn't. She said I want help from Geoffrey
24 Fieger.
25 And an intake form is produced, and it's

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1 automatically, as Mr. Harrington pointed out to you, date,
2 timed on our computer. And Mr. Danzig took all this
3 information. She called in on that number. She got
4 another cell number, and he put in her information.
5 That's it. Now, at some point between then and
6 the next day, because they talk a lot, and they're pretty
7 close friends, Mr. Danzig pulled up Mervie's Rice's intake
8 summary again the next day, and he changed it, and he
9 added Charles Rice, known as Big Charles, is a former
10 client. Nonsense. And friend of Jeff Sherbow, the
11 referring attorney. Referring how? Mervie Rice had never
12 talked to Jeff Sherbow, doesn't know Jeff Sherbow.
13 That's on the 18th. Somethin' else happened on
14 the 18th, too. Exhibit G, same day. Mr. Danzig called
15 Jim Harrington into his office, and said, remember that
16 case that you signed up a couple of months ago, Tierra --
17 Shawntay (ph) Dawkins, Tierra (ph) Frazier (ph) is her
18 daughter, do you remember it, 'cuz it was a couple of
19 months before. You'll see that. That's our exhibit C.
20 Jim -- the call first came in in May from Tiera -- from
21 Shawntay Dawkins, Exhibit D, and anyone can hire another
22 attorney, and it happens every day in my office that
23 people decide why would they go to Mr. Sherbow. He says
24 he doesn't even handle these cases. And people call me
25 every day and say I wanna' change my attorney, and that

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1 happens every day, and there's nothing wrong with it, and
2 he signed her up the beginning of June.
3 He called her in two months later on July 18,
4 and said, hey, do you remember that case that you signed
5 up? Well, I want you to give a third of it to Mr.
6 Sherbow. And he wrote a letter, and he sent it, a carbon,
7 'cuz he followed directions 'cuz Danzig, at that point,
8 was his superior, and he sent it to Danzig because Danzig
9 had told him. That's exhibit D. And so in this case, a
10 third of this case went out the window without me knowing
11 about it. It went to him with no referral 'cuz Danzig,
12 two months after the case was signed up, and he says his
13 justification for that yesterday was that was a warm
14 transfer. I never heard of such a thing. I've been
15 practicin' 40 years. I said, Mr. Danzig, well, what's a
16 warm transfer? A third of my fee for our client, a third
17 of -- for my employees, how I pay the lights, the --
18 everything in -- in our office, a third went out the
19 window. No one told me. What's a warm transfer? I don't
20 know what a warm transfer is. What's goin' on here --
21 what's goin' on here? And he says there's no proof.
22 What? There's no proof?
23 For -- our -- my entire career as shown by this
24 exhibit, I have told lawyers because I understood that
25 this scam could take place, that a lawyer could claim,

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1 because I don't see every case. Every case doesn't go my
2 desk. If Mr. Danzig had handled this case alone, if he
3 had settled, and at the end said Mr. Sherbow's entitled to
4 a referral fee, I would have believed him because I
5 wouldn't have looked in the file to see that he didn't
6 know Mervie Rice; that he tried to solicit Dion Rice who
7 told him he'd already called our office; that he doesn't
8 know Phillip Hill; that Dorothy Dixon didn't want anything
9 to do with him. I would have known that. (Indiscernible)
10 if you don't tell me. How am I gonna' know? You keep me
11 in the dark. I trust. So I've -- I've told, repeatedly,
12 I've said it. I said this -- this is not something that
13 just popped up in 2001. This said I have repeatedly, over
14 the years, and I put it in writing. It's a rule. Over
15 the years, told all attorneys, no one. Mr. Harrington
16 said it. He's still working for me. Mr. Danzig says,
17 well, I didn't follow the rules. Mr. Giroux said, well, I
18 didn't follow the rules, so it's -- that's nice. He won't
19 be working for me if you don't follow the rules. That's
20 just the way it is. It's my way or the highway, so that
21 this sort of thing does not happen.
22 I have repeated no one may accept a referral
23 from another attorney, a friend, because I understand what
24 could be going on. You could say a friend or an attorney
25 referred a case that never got referred; that you had no

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1 connection with. And unless I do an investigation,
2 without bringing the case to me, determine if I wanna'
3 take the case, and invest money in it 'cuz every case
4 costs money. In this particular case, the record shows I
5 had to invest almost half a million dollars to litigate
6 the case in Ohio. That was what it cost to litigate, not
7 my fees or anything, just the actual out-of-pocket costs
8 for us. And this is our business.
9 Apparently, this is continually being ignored,
10 and it was. They just said -- and -- and I -- he -- It's
11 not like this had never happened. It's not like I didn't
12 understand what the scam could be. As a result, I'm
13 handling it another way. If you don't have a signed
14 document by me agreeing to accept the referral, the firm
15 will not pay you or the referring attorney. You have
16 rules for a reason. The reason is to prevent exactly this
17 type of scam.
18 Phillip Hill calls our office August 1. Call is
19 taken by the intake staff. Mr. Dan -- er, Mr. Harrington
20 told you who that was, and she wrote those whole message
21 about what Phillip Hill said. Mr. Danig (sic) said I
22 don't know what he was saying; that somehow this is a
23 fraud, too, that I submitted another fraudulent document
24 to Court.
25 Mr. Danzig falsely claimed to you that he had

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1 been talking to Phillip Hill before. Phillip Hill was in
2 the hospital in Ohio. He wasn't talking to him. And so I
3 confronted him. I have an email from Danzig to Sherbow
4 sayin' I'm still waitin' to hear from Phillip Hill who was
5 -- understand is back in town. That's the day before.
6 Danzig hadn't been talkin' to him. Danzig said he had been
7 talkin' to him, and he was gonna' come to that meeting,
8 remember? Danzig had never talked to Phillip Hill.
9 Here was the scam. The family had decided --
10 Mervie decided first. Dion had decided to call me.
11 Dorothy was going to retain me. As far as she was
12 concerned, and she got better. And Phil Hill said I'm
13 gonna' go with everybody else, having nothing to do with
14 Mr. Sherbow.
15 But the deal was that if any of these people,
16 from the moment that that phone call was made from
17 Jennifer Hatchett to Sherbow, and then Sherbow calls
18 Danzig, if any of these people called the Fieger office,
19 say it's a referral from me because I was a friend of
20 Charles, that no more makes you a referring attorney than
21 the man in the moon. Every friend in the world could say
22 that they're the referring attorney of any client who
23 calls my office.
24 And, of course, just several days before, they
25 had done it not only with Mervie Rice, made the change,

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1 but they had done it with Shontay (ph) Dawkins case. They
2 had backtracked on that case, too. And I didn't know any
3 of this, none of it. We sign our clients to fee
4 agreements. They're all in evidence. Our fee agreements
5 say they retain my firm. They say nothing about Mr.
6 Sherbow.
7 I went to trial on the case, as you heard, in
8 Ohio in late 2014, and won the case. Tried the case for
9 about a month in Dayton, Ohio. And in 2015, because this
10 case in Ohio are bifurcated. First you try the liability.
11 You prove that the highway department was negligent in
12 causing the injury, and then you have to try the damages.
13 And in March of 2015, we started trial again on the
14 damages, and on that day, the Defendant settled the case.
15 Apparently, Mr. Sherbow had heard about Mr. --
16 my victory in Ohio, and he showed up at Dorothy's door,
17 and as you heard, pushed his way into her door for what
18 reason, God knows what reason. As -- after we settled the
19 case, he wrote a letter saying -- in February, saying
20 where's my money. And, of course, at that time, my first
21 duty is to say to my clients, as we're going to settle
22 this case, I have to divide up the fees. Let's -- I have
23 to -- I've received a letter from Mr. Sherbow, and I've
24 looked back in the file now, and I see two letters from
25 Mr. Danzig saying Mr. Sherbow referred the case. And they

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1 go, what, who's Mr. Sherbow -- who's Mr. Sherbow? Well,
2 of course, he's the man who referred your case. He was --
3 he -- you're his client. They go, what? He's not my
4 attorney. I never hired him. Mervie Rice said I don't
5 know the man. I never hired him. Dion said he said he
6 was a friend of my father's. I told him. He showed up at
7 the wake. I told him that I was going to your firm with
8 Mervie. He showed up there. He didn't explain he was a
9 referring attorney. Dorothy Dixon said I don't know him.
10 Phillip Hill said I don't know him.
11 So I said, well, you know what, he's placed a
12 lien down in Ohio on your money. So they had to write
13 letters. Says confirm I retained your office directly.
14 This is evidence. Remember the Judge said you're supposed
15 to listen, not me, evidence. This is what they testified
16 to. I never retained an attorney by the name of Jeff
17 Sherbow. I have no relation whatsoever with Sherbow. He
18 did not refer my case to you. Dion Rice, same thing. I
19 did not refer you. Mervie Rice, same thing. Dorothy
20 Dixon, same thing, 'cuz he had filed a lien on their money
21 in Ohio even though he's not an Ohio lawyer. On that same
22 day, I wrote him a letter, "Dear Mr. Sherbow: A very
23 troubling problem has arisen in the cases I've been
24 handling in Dayton. I was originally informed by Danzig
25 that you referred the cases to us," because I was. "I

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1 have now confirmed," because the case was at an end, and I
2 looked into it -- "that you did not, and that any
3 representations are -- contrary are untrue." Indeed, my
4 office was initially directly contacted by Ms. Rice within
5 four days of the accident, but maybe I was falsifying the
6 phone records then. You understand, according to Mr.
7 Janks, I was already falsifying my receptionist's phone
8 records, and I was falsifying our -- our intake sheet.
9 Okay, that was a good one. I mean, I was already thinking
10 years in advance how I would falsify records for the
11 Court. You obviously didn't refer a case. She doesn't
12 even know you. Neither does Mr. Hill, nor Ms. Dixon.
13 Indeed, even Dion Rice told you at his father's funeral --
14 I got that wrong, it was the wake -- that he had contacted
15 our offices which Dion told him. What prompted you and
16 Mr. Danzig to think that you could claim a referral fee?
17 He did nothin'. He didn't respond. He must
18 have been burnin' up the lines with Mr. Danzig because,
19 remember, he was calling Danzig with about one minute of
20 hearing from Jennifer Hatchett. He was callin' her, but I
21 didn't hear anything, so I wrote back again two weeks
22 later. "Mr. Sherbow, several weeks ago, I wrote to you
23 asking that you contact me. Explain to me how you made an
24 apparent claim that you had referred the four Rice cases
25 to my office, and you never contacted me." Can you

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1 imagine what he and Danzig were doin' during that period
2 of time. Instead, today I learned that you had improperly
3 filed a false lien in the Ohio court. I've been informed
4 that your actions may be contrary to the rules of
5 professional responsibility. They may also be contrary to
6 the rules in Michigan. I possess overwhelming evidence you
7 never referred any of the Rice cases. In fact, the only
8 client you ever met was Dion Rice. However, he is not a
9 party, and he contacted our offices before you met him at
10 his father's funeral." And, again, I apologize, it was
11 the wake. "You have never been admitted in Ohio. You're
12 not an attorney of record. In short, you have no claim
13 against the proceeds of this state -- estate. If you do
14 not take steps to withdraw your false, scandalous,
15 improper pleadings in Ohio, both Mr. Antilly and myself,
16 and my clients will take action against you."
17 Sure enough, he withdrew the lien 'cuz he would
18 have had to go down to Ohio. Instead, he just filed a
19 case, came up here, filed a case. Go to Mr. Danzig. Mr.
20 Danzig said, well, let me try to get in Mr. Sherbow's
21 money. "I received your message. I don't know what your
22 proposal is. However, absent something I don't already
23 know, I'm not inclined to resolve anything with you and
24 Mr. Sherbow. I put you in a position of trust with my
25 firm. The trust involved giving you responsibility for

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1 intake and referrals. In that position, your loyalty was
2 expected to be unfettered to the firm, and not to your
3 friends or your own self-interest. I possess clear
4 evidence that you played fast and loose with that trust.
5 I relied on you to protect the firm. Instead, you
6 purported to acknowledge referral fees to friends of yours
7 who you knew or should have known didn't refer files.
8 Mervie Rice contacted this firm by phone, and expressed
9 her desire to retain us. So did Phil Hill. So did Dion
10 Rice. The only connection Mr. Sherbow had with anyone was
11 with Charles Rice prior to his death. However, Dion
12 didn't know Mr. Sherbow until he came up to him at his
13 funeral. At that time, Dion informed Mr. Sherbow that he,
14 along with others, had contacted our firm. Mr. Sherbow
15 then told Dion that he had a good friend, you, at my firm.
16 The contact apparently resulted in you purporting to give
17 your friend a referral fee from this firm's money. It is
18 precisely this type of duplicitous conduct that you were
19 employed to prevent," and there is more.
20 I've said it all. I must have been planning
21 this fraud for a long time 'cuz this is two years ago,
22 three years ago where he brought suit. Clients were
23 required to execute affidavits. They're all in evidence,
24 all in evidence. At no time -- "I decided to retain the
25 Fieger firm." This is Phil Hill. "I never heard of

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1 Jeffrey Sherbow. I never met Jeffrey Sherbow. I was not
2 guided by Mr. Sherbow to the Fieger Law firm. No one ever
3 discussed any legal division of fees before I signed a
4 retainer agreement with Mr. Fieger's firm or at any other
5 time. I was unaware that Jeffrey Sherbow was alleging he
6 was to receive fees. Had I been aware that Sherbow was to
7 receive fees in my case, I would have objected." It's
8 like Mervie Rice said, nobody said anything.
9 Dorothy said the same thing; Dion. At my
10 father's funeral, grieving over his death," and this was
11 at the wake, "when Jeffrey Sherbow first became known to
12 me At that time, Mr. Sherbow came to the funeral, I had
13 already made contact with the Fieger firm," which is
14 exactly what he said. "Prior to contacting the Fieger
15 firm, I had never heard of Mr. Sherbow. I had never met
16 Mr. Sherbow. I was not guided by Mr. Sherbow to the law
17 firm because I'd already contacted the Fieger firm."
18 And then he says -- Mr. Sherbow claims that he
19 was at the Virginia Park home, and he was getting
20 information from Dion about a lady by the name of Dorothy
21 Dickerson. Now, he was getting that from Jennifer
22 Hatchett. I don't think Jennifer really knew Dorothy
23 Dixon.
24 The definition of a client is a person or
25 entity, Mervie Rice, Dorothy Dixon, Phillip Hill, Dion

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1 Rice, who employs -- they never employed him at all -- a
2 professional for advice or help in that professional's
3 line of work, and that's -- he says I don't even do this.
4 Nobody retained him, nobody employed him, nobody did
5 anything with this man. He called Danzig, and they
6 started to put his name on the clients' paperwork to make
7 it work like he had referred the case.
8 So the first question, was Mervie Rice a client
9 of Jeffrey Sherbow? No. Was Phillip Hill a client of
10 Jeffrey Sherbow? No. Dorothy Dixon, no. Dion Rice, no.
11 Next question, you don't have to go any further,
12 that's it. The -- the thing will say sign your name, and
13 the case is over.
14 I instruct you that a division of fees, to be
15 proffered, the Judge will say both the referring attorney
16 -- but the wasn't the referring attorney; they don't even
17 know who he was -- and the receiving attorney are
18 responsible to make sure that the client is properly
19 advised. What -- he's never even met. They didn't advise
20 anybody of anything, both Danzig and him. It was true,
21 and that the client does not object. The client consents,
22 which is also not true.
23 Did Sherbow refer the cases? The answer is no.
24 If you got that or if you found they were his clients.
25 The second question would be no. He didn't refer anyone.

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1 You have all their testimony, all their
2 affidavits, all their statements, everything, the clients.
3 And they have nothing in this case, nothing. They don't -
4 - they don't -- it's not their money. Next, did Mr.
5 Danzig have the authority to give away our firm's money?
6 No.
7 Now, Dorothy Dixon, Phil Hill, Dion Rice, Mervie
8 Rice, they've been brought here to court just to tell the
9 truth. They had -- not because they wanted to be. It's
10 not their case. They were brought by this gentleman, not
11 once, twice, to depositions trying to make them out like
12 that somehow that up is down, black is white, right is
13 wrong, that this is all made up, actually, by me. I -- I
14 started making it up. I made up the phone records, I made
15 up the intake sheets, I made up their testimony, I made up
16 their affidavits. I made up Shontay Dawkins. I made up
17 all that stuff. Because for the last two and a half
18 years, we've had to litigate, and that's his right. This
19 courtroom -- courthouse is filled with people saying they
20 didn't do something. And, generally, justice prevail --
21 generally, justice prevails. It's been my experience in,
22 merely, these 40 years, that justice prevails; that right
23 prevails; that truth prevails; that you don't get to come
24 into court, and make -- and to do this. It's -- and get
25 away with it. Generally, it's been my experience.

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1 I have confidence in the system. That's why I
2 belong to the system. That's why I participated in the
3 system, and I felt so strongly about it I thought I needed
4 to come here, and defend my own law firm, and the
5 practices that we've engaged in, and we try to do a good
6 job for our clients. And when we make -- we -- since we
7 engage in thousands of referrals that we pay, but if I
8 find this kind of fraud, this cannot stand, so I thought
9 it was important to come here.
10 There's a great play. It was in the 1950's. It
11 was based on the Scopes' trial. The Scopes' trial is when
12 they were trying a young biology teacher, John Scopes, for
13 the alleged crime in Tennessee of this case of teaching
14 evolution, and they made it a crime in Tennessee to teach
15 evolution, and they tried this 7th grade biology teacher
16 for that crime, teaching evolution. And it was a very
17 famous case because they brought in Clarence Darrow for
18 the defense, the most famous trial lawyer in America at
19 the time. And the Plaintiff's lawyer was a gentleman by
20 the name of William Jennings Bryan. He had been a three-
21 time presidential candidate. He was -- he is perhaps the
22 most famous orator in the United States.
23 And years later they -- they did a play, and
24 changed the words sli -- or the names slightly, and they
25 made William Jennings Bryan, Brady, and they made Clar --

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1 er, Clarence Darrow, Brady, and Bryan, Drummond or
2 something to that effect. But in the play, William
3 Jennings Bryan, after the verdict finding him guilty,
4 drops dead. They ask Clarence Darrow or Brady what should
5 be inscribed on this tomb stone, and he said this, it's in
6 the play, poetic license, but it's from the bible, and it
7 applies here. "He who troubleth his own house," he who
8 would cause trouble to his own kind, to his own
9 profession, and that's what's been going on here. What
10 they've done to our own profession here, and the disgrace
11 that's gone on here. "He who troubleth his own house
12 shall inherit the wind," shall inherit nothing at all.
13 "He who troubleth his own house shall inherit the wind,"
14 nothing at all. "And the fool shall eventually be the
15 servant to the wise at heart -- and the fool shall
16 eventually be the servant to the wise at heart." It is
17 our job to be the wise at heart.
18 I'll end by telling you this one story 'cuz it
19 applies directly to this case. There was a smart aleck
20 young kid, and there was a wise old man. I appreciate
21 this more as the older I get. And he -- the -- the wise,
22 smart aleck, whipper snapper kid couldn't stand the wise
23 old man, and he was intent on showing that he was a fool,
24 and that he could fool him. And so this smart aleck kid
25 tried to devise a plan to make the old man look like a

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1 fool. And so he came up with what he thought was an
2 infallible plan. He'd take a bird, a little bird, and he
3 put it behind his back, and he'd go up to the wise old
4 man, he said, old man, I've got a bird behind my back.
5 He'd say this. Tell me, old man, is it alive or is it
6 dead. And if the old man said the bird's alive, the
7 young, wise, smart aleck kid would crush the bird to
8 death, and say look at you, fool, the bird is dead. And
9 if the old man said, well, the bird's alive -- or dead,
10 the young man would say, look, you fool, the bird's alive,
11 and let him fly away, a fool-proof plan he thought, so
12 he'd make the old man look like a fool. So he goes to the
13 old man, and he says, old man, I've got a bird behind my
14 back. Is it alive or is it dead. And the old man looks
15 at him, and he ponders it, and he thinks for a long --
16 long time. And he says, young man, the bird is in your
17 hands.
18 This case, the case of my firm, is in your hands
19 now, ladies and gentlemen. I'm finished. Thank you.
20 THE COURT: Thank you, Mr. Fieger. Mr. Janks,
21 any rebuttal?
22 MR. JANKS: Yes, please, Judge.
23 THE COURT: Okay, you have about 18 minutes if
24 you need it.
25 MR. JANKS: Thank you, I don't think I need that

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1 long, but who knows, lawyers talk.
2 REBUTTAL
3 MR. JANKS: One thing I'd like to be clear on is
4 the other case that has nothing to do with this case, but
5 since it was talked about, we'll talk about it. Exhibit
6 62 -- and we don't -- we don't -- you can get ready for
7 somethin'. We don't have to call this one up. Exhibit
8 62, this is the fee agreement that my client, Mr. Sherbow,
9 had with Shontay Dawkins about that other car crash that
10 really isn't this car crash, but they're saying somehow
11 this is part of some pattern or whatever.
12 The date of my client's contract, 5/24/12, it's
13 an exhibit. You'll have it, you can see it. The Fieger
14 firm gets involved, and takes over the case. They have a
15 contract as well, their exhibit C, 6/19/12. So my client
16 had the contract first. He had the case first. They got
17 the case later. That's why Mr. Harrington sent a letter
18 agreeing to pay a referral fee on the case because my
19 client agreed to let the case transfer to the Fieger firm.
20 It's not some fraud or scam going on there as Mr. Fieger
21 would have you believe.
22 Exhibit 31, let's do -- put that up, please.
23 UNIDENTIFIED VOICE: Could you turn on the thing
24 for me, please.
25 MR. JANKS: Thank you.

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1 UNIDENTIFIED VOICE: Whatta' you want?
2 MR. JANKS: Thirty-one. Okay, so this is the
3 affidavit of Dion Rice that Mr. Fieger just had upon his
4 easel there. It says he's the son of Charles Rice. They
5 retained Fieger's law firm, "and that I was at my father's
6 funeral grieving over his death when Jeffrey Sherbow first
7 became known to me." That's -- that's always been Mr.
8 Fieger's theory. It was in his letter that he wrote to
9 Mr. Danzig saying why this wasn't the referral. We know
10 that this isn't true; that Dion Rice said I talked to Mr.
11 Sherbow the day after the accident. I met with him on
12 Virginia Park two days after the accident. It wasn't at
13 his father's funeral. Mr. Fieger now says, oh, I was
14 mistaken, it wasn't the funeral, it was the wake. The
15 wake was the day before the funeral on 7/27, so this is
16 fantasy. This is alternative facts is what we have going
17 on here.
18 "At the time Sherbow came to the funeral, I had
19 already made contact with Fieger's firm." What Dion said
20 yesterday is I met Mr. Sherbow. Ms. Lawrence was there
21 with us at the meeting. We talked about. We decided to
22 talk to the family, and rock with it." That's what he
23 said. And, "rock with it," was going to the Fieger firm
24 because that, as you heard from Mr. Sherbow and Dion, and
25 Ms. Lawrence, was Mr. Sherbow directing them to the Fieger

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1 firm.

2 Five, "Prior to contacting the Fieger firm, I

3 had never heard of Jeffrey Sherbow, not guided by

4 Sherbow," etcetera. Again, it's pure fantasy. Dion,

5 himself, came here and said I called Ms. Hatchett, my

6 father's business partner, and asked for Mr. Sherbow, and

7 asked for his name, and asked for his number. So do I

8 think that this is made up stuff? I do. I don't think

9 Dion made it up. I don't think Dorothy Dixon made it up.

10 I don't think Phillip Hill made it up. I don't think --

11 who am I missing here?

12 UNIDENTIFIED VOICE: Mervie.

13 MR. JANKS: Mervie -- Mervie Rice made it up. I

14 don't think any of them made this stuff up. I know they

15 didn't. I know the letters that you have from March 15, 2

16 -- March 31, 2015, the affidavits from June 2015 that they

17 have, were all made up by Mr. Fieger. The clients said we

18 signed all those. We didn't type 'em, we didn't dictate

19 'em, we didn't draft 'em. All of that came about after

20 Mr. Sherbow wrote the letter saying remember me, I'm the

21 referral lawyer. This is an orchestration, and I agree

22 with Mr. Fieger. Sad as it is for the profession, this is

23 an orchestration to have clients that are loyal to you,

24 and look up to you, and think that you're the greatest

25 lawyer in the world who got 'em a lot of money. It's an

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1 orchestration to not live up to your promises. It's an
2 orchestration to keep money for yourself that you promised
3 to someone else, and that is sad -- that is sad.
4 And if you think it's different, if -- if you
5 think that my client, Mr. Sherbow, and if you think that
6 Mr. Danzig engaged in this nefarious scheme, scam, fraud,
7 thievery, that Mr. Fieger is claiming they did, well,
8 then, please, embrace Mr. Fieger. Embrace him, take his
9 position. I'm not here to say to you that I want you to
10 pay somebody for a scam or a fraud or for thievery.
11 That's not what we're about. We're here asking for
12 justice. We're asking that promises be fulfilled. You
13 got written promises in this case, their exhibits, and
14 that's the way to go on this.
15 About the issue of the client, the Judge, again,
16 will instruct you on the law. Mr. Fieger read to you half
17 of the instruction on who's a client, and that's important
18 because the form of verdict says, are these people
19 clients? If they're clients, were they referred, and did
20 Danzig have authority. So he wants you to believe that
21 these folks aren't clients of Mr. Sherbow.
22 Client, the definition of a client is a person
23 or entity that employs a professional for advice or help
24 in that professional's line of work, line of work being
25 law. Especially, one in whose interest a lawyer acts as

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1 by giving advice, appearing in court or handling a matter.
2 We agree Mr. Sherbow didn't appear in court for 'em, he
3 didn't handle the matter, but he did give 'em advice, and
4 the advice was get Mr. Danzig, get Fieger -- Fieger's law
5 firm involved in this.
6 And I guess my last couple of thoughts on this
7 are if Charles Rice hadn't died, unfortunately he did, for
8 him, for his family, but if he hadn't died, would we be
9 here in court today; would this case be going on; would
10 this referral fee not have been paid? Charles Rice was
11 Jeff Sherbow's friend. Jeff Sherbow was Charles Rice's
12 friend. Jeff Sherbow was Charles Rice's lawyer through
13 Gratiot-McDougall. Charles Rice, for one dollar, retained
14 Mr. Sherbow, and got advice. Mr. Sherbow would meet him
15 down at Henry Ford, across from Henry Ford Hospital at the
16 restaurant, and talked to him. If Charles Rice had not
17 died in this accident, Mr. Sherbow would be the lawyer for
18 every one of those family members or if Mr. Sherbow said
19 this is a big case, it's a lot more money than I can
20 afford to front to get the case goin', and get the experts
21 and things like that. Go to my friend, Jeffrey Danzig, go
22 to Mike Morris or go to Sam Bernstein or go to whoever,
23 that's what would have happened.
24 So I think what we need to do here is honor
25 Charles Rice, and honor Charles Rice's wishes. To do

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1 that, you need to return a verdict for Mr. Sherbow, not
2 for Mr. Fieger.
3 And the last analogy I'd have for you is that
4 Mr. Fieger's a great lawyer. He gets great results. But
5 what I see in this case is he's nothing more than a
6 school-yard bully. He makes agreements, they're in
7 writing, they're authorized by people that are his
8 partners, that are his shareholders, that are counter-
9 signed by him. Yet when it comes time to pay, he says
10 forget it, I'm bigger than you. I got more time, I got
11 more money, I'm above all this. I don't need to honor my
12 commitment, especially a little store-front lawyer like
13 you, Mr. Sherbow. Who are you? You're not gonna' send me
14 any more cases. I'm not gonna' send you this money. And
15 if you want the money, you come here and fight for it.
16 Well, we're here, we're fighting for it. This is an
17 important case to Mr. Sherbow. All we're asking is that
18 Mr. Fieger live up to the agreements that you have as
19 evidence. Thank you.
20 THE COURT: Thank you. I'm gonna' take ten
21 minutes. We'll bring you back, and I'll instruct you.
22 THE CLERK: All rise for the jury.
23 (Court in recess at 11:23 a.m.)
24 (Court in session at 11:29 a.m.)
25 THE CLERK: All rise. The Oakland County

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1 Circuit Court is now in session, the Honorable James M.
2 Alexander, presiding.
3 THE COURT: Good job, guys.
4 MR. FIEGER: Thank you.
5 MR. JANKS: Thanks, Judge.
6 THE CLERK: Now calling Sherbow v Fieger &
7 Fieger, 2015-147488-CB.
8 MR. JANKS: Janks, for Sherbow.
9 MR. FIEGER: Geoffrey Fieger, for Defendant.
10 THE COURT: I love, "Inherit the Wind," it's my
11 favorite all time.
12 MR. FIEGER: Thanks.
13 THE COURT: Ready for the jury?
14 MR. JANKS: Yes, sir.
15 THE COURT: Okay, let's bring 'em back.
16 THE CLERK: All rise for the jury.
17 THE COURT: Oh, guys, get your exhibits ready.
18 MR. FIEGER: Right.
19 (Jury in at 11:31 a.m.)
20 THE COURT: Please be seated. Ladies and
21 gentlemen of the jury, first of all, on behalf of the
22 attorneys, and all of us I wanna' thank you for your
23 attention in this matter. You guys have been great. We
24 all deeply appreciate it. As both attorneys said, this
25 case is very -- very important to both -- both parties.

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1 The evidence and arguments in this case have
2 been completed, and I'll now instruct you on the law, that
3 is I will explain the law that applies to this case.
4 Faithful performance by you of your duties is vital to the
5 administration of justice. The law you're to apply to
6 this case is contained in these instructions, and it's
7 your duty to follow them. In other words, you must take
8 the law as I give it to you. You must consider them as a
9 whole, and not pick out one or more instructions, and
10 disregard the others. Following my instructions, you'll
11 go to the jury room to deliberate and decide on your
12 verdict. It's your duty to determine the facts from the
13 evidence received in open court. You're to apply the law
14 to the facts, and in this way decide the case. Sympathy
15 must not influence your decision, nor should your decision
16 be influenced by prejudice regarding race, sex, religion,
17 national origin, age, handicap or any other factor
18 relevant to the rights of the parties.
19 The evidence you are to consider consists of the
20 testimony of witnesses, and the exhibits offered and
21 received. The admission of evidence in court is governed
22 by rules of law. From time to time, it's been my duty as
23 the Judge to rule on the admissibility of evidence. You
24 must not concern yourselves with the reasons for these
25 rulings, and you must not consider any exhibit to which an

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1 objection was sustained or any testimony or exhibit that
2 was ordered struck.
3 The corporation Defendant in this case, the
4 P.C., is entitled to the same fair and unprejudiced
5 treatment as an individual would be under like
6 circumstances, and it's your duty to decide the case with
7 the same impartiality you would use I deciding a case
8 between individuals.
9 In determining whether any fact has been proved,
10 you should consider all the evidence bearing on that fact
11 without regard for which party produced the evidence.
12 Facts can be proved by direct evidence from a
13 witness or an exhibit. Direct evidence is evidence about
14 what we actually see or hear. For example, look outside
15 and see rain falling, that's direct evidence that it's
16 raining.
17 Facts can also be proved by indirect or
18 circumstantial evidence. Circumstantial evidence is
19 evidence that normally or reasonably leads to other facts.
20 So, for example, if you see a person come in from outside
21 wearing a raincoat covered with drops of water, that's
22 circumstantial evidence that it's raining. Circumstantial
23 evidence by itself or a combination of circumstantial
24 evidence and direct evidence can be used to prove or
25 disprove a proposition. You must consider all the

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1 evidence, both direct and circumstantial.
2 You have a right to consider all the evidence in
3 the light of your own general knowledge and experience in
4 the affairs of life. You have to take into account
5 whether any particular evidence seems reasonable and
6 probable. However, if you have personal knowledge of any
7 particular fact in this case, that knowledge may not be
8 used as evidence.
9 If you decide that a witness said something
10 earlier that is not consistent with what the witness said
11 at this trial, you may consider the earlier statement in
12 deciding whether to believe the witness, but you may not
13 consider it as proof of the facts in this case.
14 However, there are exceptions. You may consider
15 an earlier statement as proof of the facts in this case
16 if, A, the statement was made by the Plaintiff, the
17 Defendant or an agent or employee of either party or, B,
18 the statement was given under oath subject to the penalty
19 of perjury at a trial, hearing or in a deposition or, C,
20 the witness testified during the trial that the earlier
21 statement was true.
22 You are the judges of the facts in this case,
23 and you must determine which witnesses to believe, and
24 what weight to give to their testimony. In doing so, you
25 may consider each witness's ability and opportunity to

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1 observe his or her memory, manner while testifying, any
2 interest, bias or prejudice, and the reasonableness of the
3 testimony considered in light of all the evidence.
4 It's been brought out that a lawyer or
5 representative of a lawyer has talked to a witness.
6 There's nothing wrong with a lawyer or representative of a
7 lawyer talking with a witness for the purpose of learning
8 what the witness knows about the case, and what testimony
9 the witness will give.
10 Although you may consider the number of
11 witnesses testifying on one side or the other, when you
12 weigh the evidence as to a particular fact, the number of
13 witnesses alone should not persuade you if the testimony
14 of the lessor number of witnesses is more convincing.
15 During the trial, you heard testimony from a
16 deposition. A deposition is the sworn testimony of a
17 party or witness taken before a trial. All parties and
18 their lawyers have the right to be present, and to ask
19 questions. You're to give the tes -- the evidence -- this
20 evidence the same consideration as you would have given it
21 if the witness had testified here in open court.
22 I've just listed for you the propositions on
23 which the Plaintiff and Defendant have the burden of
24 proof. For the Plaintiff or Defendant to satisfy their
25 burdens, the evidence must persuade you it is more likely

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1 than not that the proposition is true. You must consider
2 all the evidence regardless of which party produced it.
3 You're instructed that as a matter of law, the
4 Plaintiff, Jeffrey Sherbow, must prove to you by a
5 preponderance of the evidence that Mervie Rice, and/or
6 Dorothy Dixon, and/or Phillip Hill, and/or Dion Rice on
7 behalf of the estate of Charles Rice were his clients as I
8 will instruct you, and that he referred Mervie Rice,
9 and/or Dorothy Dixon, and/or Phillip Hill, and/or Dion
10 Rice on behalf of the estate of Charles Rice, to the
11 Defendant, Fieger Law. If Plaintiff fails to prove by a
12 preponderance of the evidence that the people whose names
13 I gave you were his clients or that he fails to prove that
14 he -- by a preponderance of the evidence that he referred
15 those to Fieger Law, then your verdict must be for the
16 Defendant as to any cases not so referred.
17 The definition of a client is a person or entity
18 that employs a professional for advice or help in that
19 professional's line of work, especially one in whose
20 interest a lawyer acts as by giving advice, appearing in
21 court or handling the matter.
22 An agent is a person who's authorized by a law
23 firm to act on its behalf. A law firm who has given the
24 authority and has the right to control the agent is called
25 the principal. The agent's -- the agent's authority may

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1 be expressed or implied.
2 The Plaintiff claims that Jeffrey Danzig was
3 acting as the Defendant's agent. The Defendant is bound
4 by the acts of Jeffrey Danzig as its agent if, A, the
5 Defendant put Jeffrey Danzig in such a situation that an
6 ordinary person, familiar with the particular type of
7 business involved in this matter, would be justified in
8 assuming that Jeffrey Danzig had the authority to act on
9 behalf of the Defendant; B, the Plaintiff assumed that
10 Jeffrey Danzig had the authority to act on behalf of the
11 Defendant; and, C, the Plaintiff is justified in assuming
12 that Jeffrey Danzig had the authority to act on behalf of
13 the Defendant.
14 Apparent authority cannot arise from an agent's
15 conduct while serving the interest of someone other than
16 the employer. If you believe that Danzig was serving the
17 interest of himself or Sherbow rather than the Fieger
18 firm, then you cannot consider this evidence of apparent
19 authority.
20 This case involves a claim by the law offices of
21 Jeffrey Sherbow, P.C., that Fieger & Fieger, P.C. breached
22 the contract. A contract is a legally enforceable
23 agreement to do or not to do something. The law offices
24 of Jeffrey Sherbow, P.C. had the burden of proving -- of
25 proof on the following: A, that there was a contract

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1 between it and Fieger & Fieger, P.C.; B, that Fieger &
2 Fieger, P.C. breached the contract; and, C, that the law
3 offices of Jeffrey Sherbow, P.C. suffered damages as a
4 result of the breach. If you find after considering all
5 the evidence that the law office of Jeffrey Sherbow has
6 proved these elements, then your verdict will be for the
7 Plaintiff. However, if Plaintiff fails to prove any of
8 these elements, your verdict will be for the Defendant.
9 In order for there to be a contract, there must
10 be an offer by one party and acceptance of the offer by
11 the other party, and consideration for the offer and
12 acceptance. Mere discussions and negotiations are not a
13 substitute for the formal requirements of a contract.
14 I'll now define these terms for you: An offer
15 to make a contract is a proposal to enter into a bargain
16 communicated by words or conduct that would reasonably
17 lead the person to whom the proposal is made to believe
18 that the proposal is intended to create a contract. No
19 particular form of an offer is required, although the
20 essential terms of the contract must be reasonable clear,
21 definite, and certain.
22 In this case, your verdict must be for the
23 Plaintiff if you find by a preponderance of the evidence
24 that Jeffrey Sherbow legally offered to refer to the
25 Fieger firm the cases of Mervie Rice, Dion -- and/or Dion

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1 Rice on behalf of the estate of Charles Rice, and/or
2 Phillip Hill, and/or Dorothy Dixon; that he had the legal
3 authority to make such an offer, and the Fieger firm
4 accepted the offer, and that there was consideration. If
5 any of these are missing, your verdict will be for the
6 Defendant.
7 Acceptance is a statement of conduct by a person
8 receiving an offer that would reasonably lead the person
9 who made the offer to believe that the material terms of
10 the offer have been agreed to.
11 A contract must be supported by consideration.
12 Consideration is something of value given in exchange for
13 the promise. However, an act done in the past cannot be
14 consideration for a later contract. Doing or promising to
15 do what one is already obligated to do is not
16 consideration. A consideration does not need to be
17 expressed in writing.
18 I instruct you that for a division of fee --
19 fees to be proper both the referring lawyer and the
20 receiving lawyer are responsible to see that the client is
21 properly advised, and does not object to the participation
22 of the lawyers.
23 You'll be given a written copy of my final jury
24 instructions for your use in the jury room during your
25 deliberations. When you go to the jury room, your

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1 deliberations should be conducted in a business-like
2 manner. You should first select a foreperson. She or he
3 should see to it that the discussion goes forward in an
4 orderly fashion, and that each juror has the full
5 opportunity to discuss the issues. When at least six of
6 you agree upon a verdict, since all eight of you are going
7 to deliberate, it will be received as your verdict. In
8 your deliberations, you should weigh the evidence with an
9 open mind in consideration for each other's opinions. If
10 differences of opinion arise, you should discuss them in a
11 spirit of fairness and frankness. You should express not
12 only your own opinion, but also the facts and reasons upon
13 which you base it. In the course of your deliberations,
14 please don't hesitate to re-examine your own views, and
15 change your opinion if you're convinced that it is wrong.
16 However, none of you should surrender your honest
17 conviction as to the weight and the factor of the evidence
18 or lack of evidence solely because the opinion of your
19 fellow -- because of the opinion of your fellow jurors or
20 for the sole purpose of a jury verdict.
21 During your deliberations, and before you reach
22 a verdict, you must not disclose anything about your
23 discussions to others outside the jury room, not even how
24 your voting stands. Therefore, until you reach a verdict,
25 don't disclose that information to anyone, even to my

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1 staff, me or in the courtroom.
2 During your deliberations, you may not
3 communicate with persons outside the jury room other than
4 to our court clerks or seek information by any means,
5 including cellular telephones or other electronic devices.
6 In other words, you can't talk to anyone on the phone,
7 correspond with anyone or electronically communicate with
8 anyone about the case. You can only discuss the case in
9 the jury room with your fellow jurors during
10 deliberations. You may not use these electronic means to
11 investigate or communicate about the case because it's
12 important that you decide the case based solely on the
13 evidence presented in the courtroom and my instructions on
14 the law. Information from the internet or available
15 through social media might be wrong, incomplete or
16 inaccurate. If you discover a juror has violated any of
17 my instructions, you need to report that to me
18 immediately.
19 This concludes my instruction on the law. If
20 you have any questions about them, please write them down,
21 and give 'em to our clerks. The note then given to me.
22 If you wish to communicate with me or examine the exhibits
23 while you're deliberating, please have your foreperson
24 write a note, and give it to our clerks. If you have any
25 questions about my instructions, again, please put them in

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1 a sealed envelope. Any questions or communications with
2 me must be given to the clerks who will then pass them on
3 to me, and I'll address the questions, communications with
4 counsel, and respond as appropriate.
5 We are going to be giving you a verdict form.
6 The verdict form says, "Were any of the following clients
7 of Jeffrey Sherbow -
8 MR. FIEGER: Your Honor, may we approach for one
9 second with that?
10 THE COURT: Yeah.
11 (Bench conference off record at 11:44 a.m.)
12 (Bench conference ends at 11:44 a.m.)
13 THE COURT: All right, you have a verdict form,
14 "Were any of the following clients of Jeffrey Sherbow, and
15 then we list Mervie Rice, Dion Rice, on behalf of the
16 estate of Charles Rice, Phillip Hill, or Dorothy Dixon.
17 You answer each of those, individually, yes or no. If you
18 answer any of them yes, you go on to the next question.
19 If you answer all of them no, you're done.
20 If -- in question two, if yes to any part of
21 one, did Plaintiff refer one, some or all of the following
22 personal injury cases to Defendant: Mervie Rice, Dion
23 Rice, on behalf of Charles Rice, Phillip Hill or Dorothy
24 Dixon. If the answers are no, you're done, and if your
25 answer is yes, then you go to question three. And if any

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1 parts of one or two, if you answered yes, did Jeffrey
2 Danzig have actual or apparent authority to bind the
3 Fieger firm, and you answer that yes or no.
4 With that, I'm going to swear my clerks. Give
5 the -- do you have the oath? Raise your right hand. Do
6 you swear or affirm that to the utmost of your ability,
7 you will keep the persons sworn in as jurors in some
8 private and convenient place, and that you will not,
9 before they have been discharged, communicate to anyone
10 the state of their deliberations or the verdict they have
11 agreed upon, so help you God?
12 THE CLERKS: I do -- I do.
13 THE COURT: Okay. Ladies and gentlemen, this
14 case is now in your hands.
15 THE CLERK: All rise for the jury.
16 (Jury out at 11:46 a.m.)
17 THE COURT: Okay, now, I have the following
18 exhibits having been admitted. Plaintiff -- Yeah, I'm
19 just gonna' -- do we have an order of admittance. 49; 78;
20 7; 8; 9; 10; 11; 12; 15; 14; 16; 17; 19; 18; 1; 48; 6; 5;
21 28; 29; 68; 80; 21; 32; 62.
22 For Defendant, we have: TT; LL; DD; L; KK; YY;
23 MM; D; CC; and C.
24 Anything else?
25 MR. FIEGER: Can we compare notes, and get back

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1 to you to make sure --
2 THE COURT: Yeah.
3 MR. FIEGER: -- on that.
4 THE COURT: I even have a copy for each of you
5 of these.
6 MR. FIEGER: Thank you.
7 THE COURT: Take a look. I need these back 'cuz
8 it's the only one I have.
9 MR. JANKS: And, Judge, do we need to make a
10 record on the jury verdict?
11 THE COURT: Yeah, you want to?
12 MR. JANKS: I do.
13 THE COURT: Yep.
14 MR. JANKS: Please.
15 THE COURT: -- on the -- yep.
16 MR. JANKS: Er, not verdict, on the -- on the
17 instructions.
18 THE COURT: On the instructions, sure.
19 MR. JANKS: Right. Greg Janks, on behalf of
20 Plaintiff. Right after standard jury instruction 8-0-1,
21 you read an instruction entitled, "Referral/Burden of
22 Proof," and our position is, Judge, that that was not a
23 proper instruction to the extent that it required Mr.
24 Sherbow to prove that any or all of the underlying people
25 were, quote, "clients," end quote, of his because our

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1 position is MRPC 1.5(E) simply requires that clients,
2 which don't necessarily mean his, it can mean the Fieger
3 firm clients, which they were once they signed up, need to
4 be advised of the referral arrangement, and -- and not
5 object. So I don't think there's a pre-condition, in
6 other words, that Mr. Sherbow actually represent those
7 clients in some fashion, although we acknowledge that he
8 did represent Charles Rice, and to the extent that Dion
9 Rice sought advice from him, he represented Dion Rice on
10 behalf of Charles Rice, and/or Dorothy Dixon. But -- but
11 I think we just added something that's not required; that
12 there be a pre-existing client relationship.
13 THE COURT: Mr. Fieger, you wanna' respond
14 before I do?
15 MR. FIEGER: No, 'cuz he was -- you -- you
16 stated this yesterday. I think it's very clear, and I -- I
17 thought --
18 THE COURT: As I read 1.5, it says, "client,"
19 so, I mean, if it says, "client," then -- then the rule
20 speaks for itself, and that's why I used the term, and
21 then I defined client.
22 MR. JANKS: I understand your ruling, Judge.
23 THE COURT: It's in the record. I defined
24 client as the latest -- the definition of client from
25 Black's law dictionary.

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1 MR. JANKS: And -- and we would simply extend
2 the objection to defining the client because we don't
3 think it's necessary, but we understand your ruling,
4 Judge.
5 THE COURT: No, that's fine.
6 MR. JANKS: And -- and the other thing that --
7 the other two situations that we object to is right after
8 you read 142.16, Consideration, there was one that's un --
9 unnumbered and untitled that says, quote, "I instruct you
10 that for a division of a fee to be proper, both the
11 referring lawyer and the receiving lawyer are responsible
12 to see that the client is properly advised, and does not
13 object to the participation of the lawyers," end quote, and
14 again, I -- I don't see that in 1.5 that both lawyers, the
15 referral and the receiving lawyer, required to do this, so we --
16 we object to the extent that this imposes an extra burden or
17 duty.
18 THE COURT: I thought that was in 1.5.
19 MR. FIEGER: It's also in the ethical opinion.
20 THE COURT: Oh, it was -- it was in -- yeah,
21 that came out of the ethics --
22 MR. FIEGER: Right.
23 THE COURT: Yeah, that's where that came from.
24 That came out from the -- the ethics opinion that was
25 attached to the Kasinski case or that was -- I think.

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1 MR. JANKS: And -- and then the last point is --
2 is the same as the first two points as to as it relates to
3 the verdict form. The first question on the verdict form
4 is were any of the following clients of Jeffrey Sherbow?
5 And so there is the danger that the jury will say that one
6 or all of these people were not his clients, and -- and I
7 do not think that's a burden that he had in this case to
8 prove that they were his clients. I think he did have to
9 prove that he followed 1.5(E), and/or Mr. Danzig followed
10 1.5(E), so that's just consistent with the other
11 objection.
12 THE COURT: That could be an issue someplace
13 else. My opinion is that in order for the -- you to refer
14 somebody, you've gotta' have a client rel -- attorney
15 relationship or how do you get the referral. I don't
16 know. Maybe three people wise than me will make that
17 decision down the road.
18 MR. FIEGER: I rely on what the Court indicated
19 yesterday it would or would not do relative to my proposed
20 jury instructions. The Court made a record yesterday.
21 I'd like to highlight only one, that the Court ruled that
22 it would make a di -- it would rule that Dion Rice would
23 be considered the client as to the estate of Charles Rice
24 rather than Howard Linden, the man who was appointed as
25 personal representative, and I had submitted an

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1 obstruction -- an instruction as to that, and the Court
2 declined to give that, so --
3 THE COURT: Yeah, the Court -- the Court did
4 make a specific finding that for purposes of this case,
5 and whether How -- there's no -- I mean, Howard Linden
6 serves the statutory role as the PR of the estate.
7 However, for purposes of referral, Dion Rice was the
8 individual who may or may not have been referred.
9 MR. FIEGER: Right. The only other --
10 THE COURT: As the son of the deceased.
11 MR. FIEGER: -- the other thing that occurs to
12 me is as follows: We are instruction, and we have allowed
13 the jury to consider the apparent authority of Mr. Danzig
14 as to the issue of whether there was a contract or he had
15 the authority to enter into a contract, and I believe the
16 Court properly instructed on the issues of whether a
17 contract exists as to offer, consideration, and
18 acceptance.
19 However, there's no finding on the verdict form
20 as to whether there was a contract. There is a -- so I'm
21 a little concerned about that. In other words, the jury
22 is not -- if -- if the jury -- the jury was instructed as
23 to the burden of proof on contracting, yet they're not
24 asked whether a valid --
25 THE COURT: Good point.

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1 MR. FIEGER: -- contract exists, yes or no, and
2 I just occurred to me, your Honor.
3 THE COURT: Well, I mean, we've instructed.
4 Let's see where the jury goes. If they have a question,
5 we'll deal with it.
6 MR. FIEGER: Yes.
7 MR. JANKS: Judge, and -- and the last one I
8 forgot to mention is when we had the agency one, I had
9 asked for one that included Mr. Giroux as well as Mr.
10 Danzig, and you took out Mr. Giroux, and we'd just
11 respectfully say that Mr. Giroux should have stayed in
12 there, but we understand your ruling.
13 THE COURT: Actually, if Mr. Giroux, however,
14 came in late after the contract had been -- if there was a
15 contract -- had been negotiated, and at that point, it was
16 -- I don't -- I don't think he had anything to do with it,
17 so that's my feeling.
18 MR. JANKS: Thanks, Judge.
19 THE COURT: Okay, gentlemen. Hang close, and
20 lady -- ladies.
21 THE CLERK: All rise.
22 (Court in recess at 11:54 a.m.)
23 (Court in session at 12:18 p.m.)
24 THE CLERK: All rise. Oakland County Circuit
25 Court is now in session, the Honorable James M. Alexander,

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1 presiding. Now calling Sherbow v Fieger, 147488-CB.
2 MR. JANKS: Greg Janks, for the Plaintiff.
3 MR. FIEGER: Geoffrey Fieger, for Defense.
4 THE COURT: Okay, as I indicated, we did receive
5 a note from the jurors asking for the exhibits. You
6 gentlemen have indicated to me that on my list of
7 Plaintiff's exhibits, I've missed the following: 20; 22;
8 23; 31; 33; and 34. You have no objections to those.
9 MR. FIEGER: That's correct, your Honor.
10 THE COURT: And for the Defendant, I had M,
11 exhibit M listed as MM. That's properly exhibit M, is
12 that correct?
13 MR. FIEGER: That's correct -- that's correct.
14 MR. JANKS: Yes, your Honor, that's right.
15 THE COURT: Okay.
16 MR. FIEGER: Thank you.
17 THE COURT: We will make sure the jurors get the
18 exhibits.
19 MR. FIEGER: Thank you, your Honor.
20 MR. JANKS: Thanks so much.
21 THE COURT: Thank you, counsel, appreciate it.
22 THE CLERK: All rise.
23 (Court in recess at 12:19 p.m.)
24 (Court in session at 2:26 p.m.)
25 THE CLERK: All rise. Oakland County Circuit

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1 Court is now in session, the Honorable James M. Alexander,
2 presiding. Now calling Sherbow v Fieger, 2015-147488-CB.
3 THE COURT: Appearances, please.
4 MR. JANKS: Gregory Janks, for the Plaintiff.
5 MR. FIEGER: Geoffrey Fieger, your Honor, for
6 the Defense.
7 THE COURT: Okay, we got a verdict. You ready?
8 MR. FIEGER: Yes, sir.
9 THE COURT: Okay. I don't believe that Geoffrey
10 Fieger still carries a flip phone.
11 MR. FIEGER: Well, that's why I do it, so
12 everybody who sees me says I don't believe Geoff Fieger
13 has a flip phone. Every single person.
14 THE COURT: I can't believe that.
15 MR. FIEGER: I can't believe it, I swear to 'ya.
16 Every single person says that. And I'm doin' it for spite
17 value now. Even my kids, my kid said, dad, I'm
18 embarrassed.
19 THE COURT: You know, (indiscernible) and
20 McGiver (ph) were like the last guys to get cell phones,
21 and we ended up, it was, like in '91, and the bag --
22 remember the bag phones?
23 MR. FIEGER: I do -- I do, I had one.
24 THE CLERK: All rise for the jury.
25 (Jury in at 2:27 p.m.)

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1 THE COURT: Please be seated. You got a
2 verdict?
3 FOREPERSON: We do, your Honor.
4 THE COURT: Give the -- give the form to my
5 clerk, she'll give it to me, I'll give it back to you to
6 read. Okay. Mr. Foreman, if you'd please stand, and read
7 the question, and then the jury's answers to those
8 questions.
9 FOREPERSON: Question number one, were any of
10 the following clients of Jeffrey Sherbow: for Mervie
11 Rice, we the jury said no; Dion Rice, on behalf of the
12 estate of Charles Rice, we the jury said yes; Phillip
13 Hill, we the jury said no; Dorothy Dixon, we the jury said
14 no.
15 For question number two, if yes to any part of
16 one, did the Plaintiff refer one, some or all of the
17 following personal injury cases to the Defendant: For
18 Mervie Rice we said no; for Dion Rice on behalf of the
19 estate of Charles Rice, we said yes; for Phillip Hill, we
20 said no; for Dorothy Dixon we said no.
21 And for question number three, if yes to any
22 parts of one and two, did Jeffrey Danzig have actual or
23 apparent authority to bind the Fieger firm, we the jury
24 said yes.
25 THE COURT: Okay, anybody want the jury polled?

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1 MR. JANKS: May as well, Judge.
2 THE COURT: Okay.
3 THE CLERK: Juror number one, was that and is
4 that your verdict?
5 JUROR ONE: Yes.
6 THE CLERK: Juror number two, was that and is
7 that your verdict?
8 JUROR TWO: Yes.
9 THE CLERK: Juror number three, was that and is
10 that your verdict?
11 JUROR THREE: Yes.
12 THE CLERK: Juror number four, was that and is
13 that your verdict?
14 JUROR FOUR: Yes.
15 THE CLERK: Juror number five, was that and is
16 that your verdict?
17 JUROR FIVE: Yes.
18 THE CLERK; Juror number six, was that and is
19 that your verdict?
20 JUROR SIX: Yes.
21 THE CLERK: Juror number seven, was that and is
22 that your verdict?
23 JUROR SEVEN: Yes.
24 THE CLERK: Juror number eight, was that and is
25 that your verdict?

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JUROR EIGHT: Yes.

THE COURT: Okay. Ladies and gentlemen, thank you very much for your service. We deeply appreciate it. If you go back to the jury room, I'll be with you in just a moment.

(Jury out at 2:30 p.m.)

THE COURT: Okay, anybody wanna' talk to the jurors?

MR. JANKS: I guess it can't hurt.

MR. FIEGER: No, I -- I never talk to jury.

THE COURT: Okay. All right. Somebody will need to prepare a judgment.

MR. FIEGER: I'll do that.

THE COURT: Okay.

MR. FIEGER: Thank you, your Honor.

THE COURT: Thank you, gentlemen.

MR. JANKS: Thanks, Judge.

(Court in recess at 2:30 p.m.)

* * * * * *

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STATE OF MICHIGAN)
COUNTY OF OAKLAND)ss.

I certify that this transcript is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable James M. Alexander, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: June 14, 2017

/S/ Brenda LaVanway

Brenda LaVanway, CER 4515

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RI-158

March 15, 1993

SYLLABUS

A lawyer may request a referral fee prior to the referral of the client's legal affairs to another lawyer, but may not refuse to provide an appropriate referral where the client objects to the payment of a referral fee or where the receiving lawyer refuses to enter into an agreement to pay the referral fee.

References: MRPC 1.1, 1.2(a), 1.5(d) and (e), 2.1, 8.4(c); MCPR DR 2-1O7(A); RI-116, RI-124.

TEXT

An inquiry has been made with reference to the propriety of the payment of referral fees pursuant to MRPC 1.5(e) under various factual circumstances. For purposes of this discussion, the following facts are assumed:

After providing legal representation relating to various business affairs, the lawyer is requested by the client to provide advice in a domestic relations dispute (divorce). The lawyer does not regularly practice in the domestic relations field but is prepared to refer the client to another lawyer competent to provide such representation.

The following questions are posed:

1. May the lawyer condition referral on the client's advance promise to agree to the payment of an appropriate referral fee?
2. May the lawyer "condition" the referral on the receiving lawyer's agreement to pay a referral fee?
3. If either the client or the receiving lawyer objects to the payment of a referral fee, may the lawyer refuse to provide the client with a referral?

Presumably this is an instance in which no conflict exists. If the lawyer is disqualified from providing the representation because of a conflict, *i.e.*, having provided representation to both parties in their business, financial and personal affairs, then the lawyer would be prohibited from undertaking representation and further prohibited from receiving any referral fee. See RI-116. The lawyer would not be prohibited, however, from recommending/referring competent counsel to both parties. MRPC 1.5(e) states:

> "(e) A division of a fee between lawyers who are not in the same firm may be made only if:
>
> "(1) the client is advised of and does not object to the participation of all the lawyers involved; and
>
> "(2) the total fee is reasonable."

Thus, the Michigan Rules of Professional Conduct specifically permit the division of *reasonable* attorney fees (fee splitting) as long as the client does not object to the participation of all the lawyers involved.

There are various forms of division of fees, including but not limited to dollars per hour, percentage of total fees, etc. MRPC 1.5(d) prohibits any arrangement for, charge, or collection of a contingent fee in domestic relations and criminal matters.

In RI-124 the Committee opined that a lawyer may pay a referring lawyer a referral fee consisting of a percentage of legal fees billed to the client as long as the client is advised of and does not object to the participation of all the lawyers involved, the client's bill is not increased because of the referral fee, and the total fee is reasonable.

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The Michigan Rules of Professional Conduct, as adopted in 1988, provided a major modification in the provisions governing division of fees. Prior to that modification, the Michigan Code of Professional Responsibility provided in DR 2-107(A)(2) that fee divisions could only be accomplished where "the division is made in proportion to the services performed and responsibility assumed by each." The present rule deleted the requirement of "proportionality" and shared responsibility, and infers that the lawyer's understanding of the nature of the client's case well enough to pick appropriate counsel is a legal service of some real value. See *The Law of Lawyering*, Hazard & Hodes, (Prentice Hall, Supp 1992, p123).

There is currently considerable concern with reference to the payment of referral fees in tort cases, particularly where a law firm engages in heavy "marketing" (advertising, etc.), with the intent to do nothing on the new matters except to refer them to various tort practitioners. This opinion does not address the question of whether or not such activities qualify for a referral fee.

Since advice to the client of the participation of other counsel, as well as the client's nonobjection to such participation, is essential to effectuate a referral, may the lawyer condition the act of referral upon the client's promise "in advance" not to object to the payment of a referral fee? Certainly in any instance where a lawyer contemplates a referral, that issue should be fully discussed with the client. If the client offers objection to the participation, then the lawyer may not request or receive a referral fee. Such an understanding by the client and the reaching of an agreement in the early stages will both facilitate the client's objectives, as well as save the time of the referring and receiving lawyers.

Next, inquiry is made as to whether or not the lawyer may condition the referral on the receiving lawyer's agreement to pay a referral fee as part of a reasonable fee. Since a division of fees between lawyers is permissible if the client is advised, does not object to the participation, and the fee is reasonable, nothing prohibits the lawyer from reasonably attempting to effectuate a referral fee arrangement and a lawyer is not required to refer a case to a lawyer who refuses to engage in an appropriate fee division agreement. In this regard, in making referrals and fee agreements, the lawyer should be cognizant of MRPC 1.1 governing lawyer competence and make every reasonable effort to assure that the receiving lawyer has the competence and skills necessary to meet the client's objectives. Neither lawyer should allow the referral relationship to affect either lawyer's professional judgment regarding the best interests of the client. See MRPC 5.4(c), 1.8(f). The referring lawyer should also be cognizant of the mandates of MRPC 2.1 which states:

> "In representing a client, a lawyer shall exercise independent professional judgment and shall render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation."

Finally, the question is posed as to whether, in instances in which either the client or the receiving lawyer objects to the payment of a referral fee, the lawyer may refuse to provide a referral. In addressing this issue, a review of the preamble to the Michigan Rules of Professional Conduct entitled "A Lawyer's Responsibilities" is instructive. As is emphasized there, a lawyer is a representative of clients as well as an officer of the legal system, and a public citizen having a special responsibility for the quality of justice. As noted in MRPC 2.1, a lawyer performs various legal as well as other nonlegal functions on behalf of the lawyer's client. As an advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and also performs responsibilities as a negotiator, intermediary and evaluator in addition to the responsibilities as a diligent advocate.

The lawyer plays a unique role in the administration of justice, and owes a duty to ensure public understanding and acceptance of that system. The lawyer has a duty to exemplify the legal profession's ideals of public service and has a difficult and challenging task of addressing conflicting responsibilities, particularly between the lawyer's own economic aspirations and in ensuring full and fair legal services to the public. In order to maintain an independent legal profession, it is important to preserve, maintain and enhance the profession and that lawyers

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work to assist their clients in obtaining their lawful objectives. When an individual lawyer is not able to meet the needs of the lawyer's clients for legal services, the lawyer has every right to assist that client in finding a proper provider of legal services. Although nothing prevents the lawyer from attempting to obtain an appropriate referral fee for this activity, when and if that objective cannot be reached, it would appear not to be in the interests of the legal profession or the public for the lawyer to refuse to provide a recommendation or referral to appropriate services.

MRPC 1.2(a) provides that a lawyer shall seek the lawful objectives of a client through reasonably available means permitted by law under these rules. Although this rule does not specifically mandate that a lawyer must make a referral even if the lawyer will receive no compensation therefor, it would be the antithesis of the concept of enhancing the legal profession if the lawyer willfully refused to provide such a referral solely because the client and/or the receiving lawyer declined to pay a referral fee for such assistance. Certainly, if a lawyer is not familiar with an area of law or the lawyers who are competent in that area of practice, the lawyer should decline to make a referral; however, the lawyer has a professional obligation to advise the client on how the client might obtain the necessary information, *i.e.*, by contacting other lawyers or by contacting an appropriate lawyer referral agency. To indicate to a client that the lawyer will not make a referral because the client or the proposed receiving lawyer objects to the referral fee is inappropriate, demeans the profession and is unethical. Basic concepts of loyalty to the client, as well as placing the client's interests as primary, prohibit the lawyer from using the lawyer's position of trust and confidence to extract agreement from the client to pay a referral fee. See Comment to Rule 1.7, Conflict of Interest.

It is essential to our system of justice that lawyers do everything possible to ensure adequate, appropriate and proper representations of persons in need of legal services. To withhold useful, helpful and readily available information from a client because of the unwillingness of the client or another lawyer to ensure a stream of future compensation not associated directly with services, negatively impacts upon the profession and interferes with the professional responsibilities to guaranty the availability of legal services. MRPC 8.4(c) provides that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice."

If the lawyer in providing services to the lawyer's client knows of another lawyer competent to provide the services needed by the client, and no other ethical consideration prevents that referral, then the lawyer has the duty to make the referral even if the client or the other lawyer decline to agree to pay a "referral" fee. The lawyer preserves professional independence in picking the lawyer to whom the referral is made and is not required to refer to any specific lawyer as long the referring lawyer is satisfied that the referred lawyer is competent to handle the client's matter. The lawyer may not, however, decline to refer solely to preserve or protect the lawyer's own pecuniary interests.

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RI-234

May 10, 1995

SYLLABUS

Prior to the division of a fee between lawyers who are not in the same law firm, the client must be advised of the identity of the lawyers who will divide the fee, which lawyer the client should contact for information on the case, what services each lawyer will be providing on the case, and which lawyer or lawyers will be responsible for the matter.

Both the referring lawyer and the receiving lawyer are responsible to see that the client is properly advised and does not object to the participation of the lawyers.

The total fee charged to the client must be reasonable in light of each factor set forth in MRPC 1.5(a).

A referral fee between lawyers may be calculated in a variety of ways, including on a percentage basis. The fee arrangement between the lawyers who divide a fee is a matter of contract between the lawyers.

References: MRPC 1.2(b), 1.4(a) and (b), 1.5(a) and (e); RI-32, RI-114, RI-124, RI-150, RI-158, RI-162.

TEXT

A lawyer ("referring lawyer") refers a case to another lawyer ("receiving lawyer"). The referring lawyer stands to receive a substantial referral fee, in excess of $150,000, calculated as a percentage of the receiving lawyer's fee, *i.e.*, one-third of one-third. The referring lawyer neither worked on the case nor participated in its handling. The client was advised of the division of the fee and did not object. Although the client does not object to the division of the fee, the referring lawyer ask whether accepting the full referral fee would violate the ethics rules since the referral fee calculation does not appear to comply with MRPC 1.5(a). The referring lawyer also asks whether the duty described in RI-150, to determine the reasonableness of fees and to adjust, applies only to the contingent fee and not to the referral fee agreement. Neither a referral nor a contingent fee agreement has been provided.

Under the referral arrangement, the lawyers propose a division of fee. They, therefore, appropriately sought to follow MRPC 1.5(e) which states:

> "(e) A division of a fee between lawyers who are not in the same firm may be made only if:
>
> > "(1) the client is advised of and does not object to the participation of all lawyers involved; and
> >
> > "(2) the total fee is reasonable."

Here, the client did not object to the division of fee. MRPC 1.5(e)(1) requires the client to be advised as to the "participation" of all of the lawyers. The rule does not detail the kind of "participation" advice that must be given to the client. Nevertheless, the clear wording of MRPC 1.5(e) does not limit the advice to merely the facts of referral and fee splitting. The Comment to MRPC 1.5(e) states in part:

> "A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee on agreement between the participating lawyers if the client is advised and does not object. It does not require disclosure to the client of the share that each lawyer is to receive."

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The Comment does not detail the "participation" advice. Other ethics rules suggest that the client should be told more than those two facts, including what lawyer will be or will not be working on the case, and to whom the client should look for information. For example, MRPC 1.2(b) allows the lawyer and client to limit the scope of the representation. MRPC 1.4(a) requires a lawyer to promptly comply with client requests for information. MRPC 1.4(b) requires the lawyer to give the client information sufficient enough to make informed decisions about the representation. To make any such agreement, request, or informed decision, the client must know who will be working on the case, what services each lawyer will render to the client, and who is responsible for the matter, *i.e.*, more than the facts of referral and fee splitting.

Advising the client of more than the facts of referral and fee splitting does not mean that the referring lawyer has to assume responsibility for the case. That is not required under the Michigan Rules of Professional Conduct.

Since both the referring lawyer and the receiving lawyer are required to comply with MRPC 1.5(e) in order for the division of fee to be proper, both the referring lawyer and the receiving lawyer are responsible to see that the client is properly advised and does not object to the participation of the lawyers. The lawyers may each advise the client as to the arrangement, jointly advise the client, or agree that one or the other lawyer shall be responsible for advising the client, as long as both ensure that the client is properly advised and given an opportunity to object.

The inquirer asks whether the referral fee calculation based upon one-third of one-third, violates the ethics rule. "[T]here are various forms of divisions of fees . . . ." RI-158. "[R]eferral fees most often consist of a percentage of contingent fees," which the lawyers agreed to. RI-124. As result, and so long as the requirements of MRPC 1.5(e) are met, the subject calculation does not violate the division of fee rule. A referral fee may also be computed "based upon a percentage of hourly billing receipts." See RI-32, RI-124, RI-158.

MRPC 1.5(e) requires that "the total fee is reasonable." In the context of the rule, the "fee" so mentioned is the fee charged to the client, not the division of fee between lawyers. Fee arrangements between lawyers do not have the same policy concerns as fees between client and lawyer. For instance, lawyers deal from equal knowledge and bargaining positions, they are equally able to craft a suitable fee arrangement, they are equally bound by ethics rules in the formulation of fee arrangements, the same ethics rules govern their conduct with clients and the same court rules govern their conduct toward the courts and opposing parties. A public interest is also served by allowing a lawyer to obtain for the client the assistance of another colleague who is positioned to be of assistance on the representation matter. For all these reasons, we conclude that the "reasonableness" criteria in MRPC 1.5(a) were not intended to apply to the fee arrangement permitted between lawyers under MRPC 1.5(e).

Therefore, the Committee's prior opinions and MRPC 1.5(e) require the client to be advised as to the "participation" of the lawyers. The client must not object to that "participation." The total fee charged to the client must be reasonable in light of each factor set forth in MRPC 1.5(a). The fee arrangement between the lawyers who divide a fee under MRPC 1.5(e), is a matter of contract between the lawyers.

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2005 WL 50110
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

John J. MORAD, Plaintiff/Counterdefendant-Appellee,
v.
Steven M. CABADAS, Defendant/Counterplaintiff-Appellant.

No. 245976. | Jan. 11, 2005.

Before: CAVANAGH, P.J., and JANSEN and FORT HOOD, JJ.

[UNPUBLISHED]

CAVANAGH, JANSEN and FORT HOOD, JJ.

MEMORANDUM.

***1** Defendant appeals as of right from a judgment for plaintiff. We reverse.

This litigation arises from an agreement between the parties to share attorney fees earned by defendant in exchange for plaintiff paying some or all costs incurred in a multiparty case involving employment discrimination claims against Rockwell International Corp. Plaintiff learned of the potential litigation through a human resources employee and referred the matter to defendant, who represented that he was proficient in that area of law. Plaintiff advanced $53,382.39 for some, but not all of the costs, of the litigation. Ultimately, only four employees recovered monetary compensation through settlement. The parties disputed the entitlement to and amount of any referral fee, particularly in light of the fact that plaintiff did not pay all costs. The trial court concluded that the parties' agreement violated public policy, but granted judgment for plaintiff based on the theory of unjust enrichment.

We review a trial court's decision addressing equitable issues de novo, although the trial court's findings of fact are reviewed for clear error. *Eller v Metro Industrial Contracting, Inc*, 261 Mich.App 569, 571; 683 NW2d 242 (2004). In the present case, the trial court did not err in determining that the parties' fee-sharing agreement was unenforceable and void as against public policy. The agreement violated MRPC 1.5(e), which provides that a division of a fee between lawyers who are not in the same firm may be made only if the client is advised and does not object and the total fee is reasonable. [1] Our Legislature has delegated the determination of "public policy" with regard to the activities of the State Bar to the judiciary. *Morris & Doherty, PC v. Lockwood*, 259 Mich.App 38, 58; 672 NW2d 884 (2003), citing MCL 600.904. Contracts containing performance requirements that would violate the MRPC are not enforceable because such contracts contradict Michigan's public policy. *Id.; Evans & Luptak, PLC v. Lizza*, 251 Mich.App 187, 194-197; 650 NW2d 364 (2002). The equitable claim of unjust enrichment cannot be imposed where there is an express, albeit unenforceable, contract covering the same subject matter. See *Belle Isle Grill Corp v. Detroit*, 256 Mich.App 463, 478; 666 NW2d 271 (2003). A contract, contrary to public policy, will not be enforced, and the parties are left in the position in which they have placed themselves. *Cook v. Wolverine Stockyards Co*, 344 Mich. 207, 209; 73 NW2d 902 (1955). [2]

1 Although the first contingent fee agreement set forth the names of both parties, it did not disclose the relationship and the nature of any fee sharing.

2 In light of our disposition of this issue, we need not address the remaining issues raised on appeal.

Reversed.

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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Margarette KOSINSKI, Personal Representative of the Estate of Raymond A. Kosinski, Deceased, Plaintiff-Appellant,
v.
John W. MASON, et al, Defendants-Appellees.

No. 224658.
|
Nov. 27, 2001.

Before: ZAHRA, P.J., and HOOD and MURPHY, JJ.

Opinion

PER CURIAM.

***1** Plaintiff appeals as of right an order granting summary disposition in favor of defendant in this matter concerning a dispute over an alleged owing referral fee between attorneys who operated out of neighboring office space. [1] We affirm.

1 For the sake of simplicity references to the opposing parties are limited to the principals, Raymond Kosinski (plaintiff) and John Mason (defendant).

At the heart of this controversy is Nancy Camilleri, who lost her father, Alfred Vezina, in a 1992 bus accident. Camilleri arrived in plaintiff's office the week after her father's death and sought his assistance in probating the estate. Plaintiff claims that he recognized a potential wrongful death claim, offered to refer Camilleri to defendant, called defendant to apprise him of the situation, and subsequently walked Camilleri across the hall and introduced her to defendant. Camilleri, meanwhile, states that she became aware of both plaintiff and defendant, and the type of work they performed, during discussions with coworkers. She claims that she went to their office space intending to see both men, and that after she mentioned to plaintiff that she was next going to speak with defendant, she merely agreed to plaintiff's offer of an introduction.

The wrongful death claim defendant litigated on behalf of Camilleri settled for $500,000. Plaintiff and defendant subsequently disputed plaintiff's entitlement to a share of defendant's one-third contingency fee as a referral fee. Pursuant to MCR 2.116(C)(10), the trial court granted defendant's motion for summary disposition on plaintiff's claims of breach of implied contract, quantum meruit and unjust enrichment.

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v. Dep't of Transportation,* 456 Mich. 331, 337; 572 NW2d 201 (1998). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v. City of Berkley,* 461 Mich. 73, 76; 597 NW2d 517 (1999). A motion for summary disposition based on the lack of a material factual dispute must be supported by documentary evidence. MCR 2.116(G)(3)(b), *Meyer v. City of Center Line,* 242 Mich.App 560, 574; 619 NW2d 182 (2000). The moving party has the initial burden of supporting his position by affidavits, depositions, admissions, or other documentary evidence. *Smith v. Globe Life Ins Co,* 460 Mich. 446, 455; 597 NW2d 28 (1999). The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. *Id.* We review de novo the grant or denial of summary disposition. *Spiek, supra.*

Regardless of the potential questions of fact that remained with respect either to the parties' course of dealing regarding referrals and plaintiff's entitlement to a share in this case, or to who first directed Camilleri to defendant-whether it was personal friends who identified and recommended defendant or plaintiff who "referred" her and walked her across the hall to defendant's office-there is no question of material fact on the issue of Camilleri's lack of awareness of or agreement to the alleged division of fees arrangement. Thus, summary disposition was appropriate.

***2** MRPC 1.5(e) directs that a:
division of a fee between lawyers who are not in the same firm may be made only if:

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(1) the client is advised of and does not object to the participation of all the lawyers involved; and

(2) the total fee is reasonable.

The comment to Rule 1.5 explains simply that "[p]aragraph (e) permits the lawyers to divide a fee on agreement between the participating lawyers if the client is advised and does not object." Camilleri, however, both by affidavit and during her deposition outright denied awareness of or agreement to a referral and fee-splitting arrangement. This satisfied defendant's initial burden of supporting his position, and the burden then shifted to plaintiff to show by evidentiary materials that a genuine issue of disputed fact existed. *Smith, supra.*

Plaintiff admitted that he never discussed an hourly rate with Camilleri nor had her sign a writing establishing a fee arrangement. His only evidence countering Camilleri's position, therefore, was the following testimonial excerpt of his deposition:
Q. What did you tell Mrs. Camilleri would be the fee involved in your probate work?

A. As we were discussing a possible wrongful death, I told her that if there was going to be some kind of payment for the wrongful death, that I will get paid my fees out of the referral fee.

Plaintiff contended that because he only charged Camilleri for the costs associated with probating the estate, and because she never questioned the fact that she was not otherwise billed for his services, this question and answer proved that she was sufficiently apprised of and in agreement with the attorneys' unspoken referral and fee-splitting arrangement.

We do not agree that this minimal evidence, and the contemporaneous argument regarding the circumstances, equates to a showing of Camilleri's understanding of and agreement to an otherwise unspoken division of fees arrangement. When the burden of proof at trial would rest on the nonmoving party, the nonmovant may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v. Cross & Peters Co,* 451 Mich. 358, 362; 547 NW2d 314 (1996); *Karbel v. Comerica Bank,* ____ Mich.App ____; ___ NW2d ___ (# 216324, rel'd 7/31/01) slip op p 4. Speculation and conjecture are insufficient. *Detroit v. GMC,* 233 Mich.App 132, 139; 592 NW2d 732 (1998). Here, plaintiff has presented no more than his conjecture that Camilleri understood the arrangement he claims to have proposed. This is simply not sufficient to survive a summary disposition motion. [2]

2 See RI-234. This informal advisory ethics opinion of the Michigan State Bar provides attorneys with guidance as to how to comply with MRPC 1.5(e). In relevant part, the opinion provides:
Prior to the division of a fee between lawyers who are not in the same law firm, the client must be advised of the identity of the lawyers who will divide the fee, which lawyer the client should contact for information on the case, what services each lawyer will be providing on the case, and which lawyer or lawyers will be responsible for the matter.
Both the referring lawyer and the receiving lawyer are responsible to see that the client is properly advised and does not object to the participation of the lawyers.
[Emphasis added.]
Even viewing the proffered evidence in the light most favorable to plaintiff, the nonmoving party, it is readily apparent that Camilleri did not receive advice of sufficient clarity to justify even the conclusion that there may have remained a question of fact as to her understanding of the alleged arrangement.

Because no material question of fact exists regarding compliance with the requirement of Rule 1.5(e) that the client knowingly approve of a division of fees arrangement, plaintiff's claim is unenforceable and summary disposition was appropriate. Given this resolution, we need not reach the remaining issues.

***3** Affirmed.

All Citations

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August 2, 2012

Mr. Jeffrey S. Sherbow
Attorney at Law
24446 Orchard Lake Road
Sylvan Lake, Michigan 48320

Re: Mervie Rice v ODOT
Our File No. 12847

Dear Mr. Sherbow:

Kindly be advised that we accepted the above-captioned matter on referral from you and your office, and are hereby acknowledging your one-third (1/3) referral fee in this matter. Separate letters acknowledging your referral fee on all other cases will be forthcoming as soon as those files are opened. Rest assured you are entitled to a referral fee on all four cases that we will be handling, and I will send you separate letters to that effect for each case as they are opened.

Should you have any questions or concerns, please feel free to contact me.

Very truly yours,
Fieger, Fieger, Kenney, Giroux & Danzig, P.C.

Jeffrey A. Danzig

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RI-270

June 14, 1996

SYLLABUS

Where a valid referral fee agreement exists between two lawyers and the referring lawyer is subsequently suspended from the practice of law prior to the conclusion of the referred case, the receiving lawyer may pay the suspended lawyer only *quantum meruit* for the proportion of work performed by the suspended lawyer prior to suspension.

References: MRPC 1.5(e); RI-19, RI-30; MCR 9.119(F); MCPR DR 2-107(A).

TEXT

Two lawyers made a valid referral fee arrangement in 1986. The referring lawyer has been continuously suspended or disbarred from the practice of law since March 10, 1988. The referred case has now concluded, and the receiving lawyer asks how to calculate the referral fee, if any.

Since the referral arrangement was made prior to October 1, 1988, the arrangement was subject to the former Michigan Code of Professional Responsibility, which states at MCPR DR 2-107(A):

> "A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of his law firm or law office, unless:
>
> > "(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.
> >
> > "(2) The division is made in proportion to the services performed and responsibility assumed by each.
> >
> > "(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client." Emphasis added.

We assume that the referral arrangement was properly made, and that the client consented. MCPR DR 2-107(A)(2) clarifies how the fee must be split. Since the referring lawyer was suspended as of March 10, 1988, and could not have "performed services" or "assumed responsibility" beyond that date, only the period of time prior to the date of discipline is in issue.

The issue of paying referral fees to disciplined lawyers has been twice explored by this Committee in RI-19 and RI-30. The Committee concluded pursuant to MCR 9.119(F) that a suspended lawyer may be compensated on a *quantum meruit* basis for legal services rendered prior to the effective date of the suspension. MCR 9.119(F), adopted in June 1, 1987, precludes the payment of any portion of the referral fee earned during the period of suspension. This result is consistent under these facts with MCPR DR 2-107(A), since during the period of discipline the referring lawyer could have performed no work for which proportionate payment would be due. A *quantum meruit* calculation for legal services rendered prior to discipline would be equal to a proportionate share of work performed prior to discipline.

MRPC 1.5(e) effective October 1, 1988, eliminated the requirement of continuing participation by the referring lawyer and proportionate payment. It does require that the client be advised of and not object to the division and that the total fee be reasonable. MRPC 1.5(e) states:

> "(e) A division of a fee between lawyers who are not in the same firm may be made only if:

"(1) the client is advised of and does not object to the participation of all lawyers involved; and

"(2) the total fee is reasonable."

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