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STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

IN RE: PAUL KULIG
PRB FILE NO: 2020-066

The deposition of MATTHEW D. GETTY, taken before Kristy Eller VanDenBrand, Certified Shorthand Reporter (CSR2056 - MI Firm #0008806) and Notary Public, via Zoom, commencing at 10:11 a.m., on the 21st day of December, 2020, pursuant to notice.



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

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1 (Deposition Exhibits 1 - 4 were marked by the reporter)

2 MATTHEW D. GETTY,

3 having duly sworn or affirmed to tell the truth, the whole
4 truth, and nothing but the truth, was examined and
5 testified as follows:

6 EXAMINATION BY MR. TAYLOR

7 Q Please identify yourself for the record.

8 A My name is Matthew Getty, I am an attorney in Vermont, and
9 I represent Michaline Broza.

10 Q And what is your business address, Mr. Getty?

11 A 36 Merchants Row, Rutland, Vermont.

12 Q And I assume all your credentials on your web site are
13 accurate or close to accurate?

14 A Yes.

15 Q And I will spare you the deposition basics, I assume you
16 have either been at or taken depositions before?

17 A Actually, not in the line of business of litigation at all,
18 so it is an unusual event for me.

19 Q All right. Well, basically, the background is, if I ask
20 you a question that you find confusing, which is almost
21 certain to occur, then if you would let me know and I can
22 rephrase the question. If you do answer a question, I will
23 have to assume that you understood it and take your answer
24 in that fashion. If you ever need to take a break,
25 although I don't think this is going to be a very long

1 deposition, please tell me that you need to take a break,
2 and I will certainly afford you that opportunity. If you
3 hear an objection from Ms. Lednický, just let her finish
4 her objection and go ahead and answer the question, and
5 those are the basics. Fair enough?

6 A Yes.

7 Q Oh, the other thing is, you have to make sure you answer
8 audibly and not with shakes of the head, because in most
9 cases we can't hear shakes of the head, although some of us
10 may be an exception to that rule. And you have to answer
11 yes and no as opposed to uh-huh or huh-huh, because those
12 are harder to discern in a deposition transcript. Good?

13 A Yes.

14 Q What, if anything, have you done in preparation for this
15 deposition?

16 A I reviewed my file, the notes that I provided to you, and
17 the correspondence.

18 Q And for my benefit, because I am getting old, and hearing
19 is plus and minus for me, you just have to make sure you
20 speak up, okay?

21 A Okay, and I am hoping that this microphone will help.

22 Q I can hear you, I want to make sure you don't fade, because
23 you are right at that level. Now, so you reviewed your
24 file. Other than your documents that would fit within
25 attorney-client privilege, is there anything in your file

1 other than what you provided to us?

2 A No, but I think there is one other email that I sent to
3 Paul, simply asking him for the deed.

4 Q Fair enough. Nothing with substance in it, per se?

5 A No.

6 Q Okay. Now, at some point, you got involved with Michaline
7 Broza in the Louise Zygo estate, is that correct?

8 A Correct.

9 Q Did you know Ms. Broza before this?

10 A No.

11 Q Did you know any of her family members, to your knowledge?

12 A Of Ms. Broza's family members?

13 Q Right.

14 A No.

15 Q Do you know how it was that she came to contact you?

16 A She obtained my name through the lawyer referral service
17 from the Vermont Bar Association.

18 Q Okay. Did you ever know Louise Zygo?

19 A No.

20 Q Did you know, to your knowledge, any of her family members?

21 A Not to my knowledge.

22 Q Have you ever had any contact with anybody else in the
23 Broza family, to your knowledge, Daniel Broza, David Broza,
24 Michael Broza, anybody?

25 A Not that I recall.

1 Q So your only -- and they are not your clients, only
2 Michaline Broza is your client?

3 A Correct.

4 Q Are you the person who made the complaint to the Vermont
5 Professional Responsibility Board regarding Paul Kulig, or
6 was that Ms. Broza?

7 A Ms. Broza.

8 Q And did you assist her, and I am not asking for substance,
9 but I am asking if you assisted her in formulating the
10 complaint.

11 A I provided her with the rules and background information
12 from the board. I did not assist her in compiling the
13 actual complaint, nor did I review it, nor have I ever seen
14 it, as I recall, before it was submitted or afterwards.

15 Q Have you done any legal research regarding this matter?
16 And I am talking about since the matter arose, I am not
17 talking about your general knowledge of wills and trusts
18 and so forth. I am talking about specifically related to
19 this matter, have you done anything recent?

20 A Not that I recall.

21 Q So any advice that you were given or any communications you
22 had with Mr. Kulig would have been based upon your general
23 knowledge of the field of law?

24 A I am not sure if I understand the question.

25 Q Sure. For instance, you mention in one of your letters

1 that this was, you know, you were interpreting it as a
 2 trust, and you were talking about per stirpes, and there
 3 were obviously some legal concepts discussed or mentioned.
 4 And so I am trying to figure out if you specifically
 5 conducted any research for any of these communications, or
 6 whether this was simply something you know as, A, a lawyer,
 7 and B, this being within your field of expertise.

8 **A** Within my field, yes.

9 **Q** Okay. I think you have already told me the two letters,
 10 the handwritten notes, the email, and then one other email,
 11 was basically the contents of your file, other than your
 12 discussions with Ms. Broza?

13 **A** Yes.

14 **Q** All right. And you had one telephone call with Paul Kulig,
 15 or did you have more?

16 **A** I only recall one telephone call.

17 **Q** And that is the one with, I believe it is October 30, 2019
 18 notes?

19 **A** Correct.

20 **Q** Other than to your client, did you have any written
 21 communications with anybody regarding this situation? By
 22 "written," of course, I mean correspondence, I mean emails,
 23 I mean message boards, whatever.

24 **A** Not that I recall.

25 **Q** Same question as it relates to oral communications. Did

1 you have any oral communications other than to your client
 2 and other than to Paul Kulig regarding this whole
 3 situation?

4 **A** I spoke with one of Ms. Zygo's neighbors, who lives across
 5 the street.

6 **Q** Okay, and how did that come about?

7 **A** I initially overheard a conversation between this neighbor
 8 and other individuals regarding the, regarding his neighbor
 9 having passed away and something having to do with the
 10 maintenance of the house across the street. So I
 11 subsequently contacted this individual to ask what, if
 12 anything, he knew about what was taking place with the
 13 disposition of that property.

14 **Q** We will come back to that in a second. When you say you
 15 overheard a conversation, I guess I don't understand the
 16 context in which that would have occurred. Were you at the
 17 house, was it a different client?

18 **A** It was in a social setting, at a dinner.

19 **Q** Gotcha. And that person happened to know Ms. Zygo, and
 20 that led you down the trail to talk to the neighbor?

21 **A** Correct. This was the neighbor that I overheard in the
 22 conversation.

23 **Q** Oh, I see, okay. And did you have the conversation at the
 24 social gathering, or did you go out to the person's house
 25 or call them on the phone, how did it happen?

1 **A** I called them on the phone, subsequently.

2 **Q** How did you know how to contact them? Phone book, you got
 3 their number at the party, what was the situation?

4 **A** He is an individual that I know, and he is a professional
 5 in the city of Rutland, so I looked up his office phone
 6 number.

7 **Q** I'm sorry, I didn't hear the last part of what you said.

8 **A** So I looked up his office phone number.

9 **Q** And who is this, and what kind of professional is he?

10 **A** His name is Arlan Towle, and he is an accountant, and his
 11 last name is spelled T-o-w-l-e.

12 **Q** And you talked to Mr. Towle the one time after you saw him
 13 at the social setting about this?

14 **A** Once or twice, I don't recall.

15 **Q** And what was the -- give me, if you will, a thumbnail
 16 sketch of the substance of the conversation or
 17 conversations you had with Mr. Towle?

18 **A** Well, Mr. Towle related how, you know, his neighbor had
 19 passed away, that he -- I am trying to recall, I haven't
 20 reviewed my notes on this. But he had spoken, Mr. Towle
 21 had spoken to Mr. Kulig at some point, and I don't recall
 22 how it was that he got in contact with Mr. Kulig, but he
 23 had inquired about the availability of the home for sale
 24 because he thought he knew people who might be interested
 25 in purchasing it, and Mr. Kulig had indicated to him that

1 if the sale of the home was delayed by the pending probate
 2 process, that there was something having to do with the
 3 estate not being yet open or not getting a license to sell,
 4 so it wasn't yet available for sale.

5 **Q** And what was the timeframe in this relative to the
 6 communications that you had with Mr. Kulig between October
 7 and December of 2019? Was it during that time, before,
 8 after?

9 **A** Was what during that time?

10 **Q** Your communications with Mr. Towle.

11 **A** This would have been, I think, sometime in the month of
 12 November.

13 **Q** And you think you have some handwritten notes regarding
 14 those conversations or that conversation?

15 **A** I think I might. I don't recall.

16 **Q** All I am going to ask you to do is look for them, and if
 17 you find them, if you would email them to both Ms. Lednický
 18 and me.

19 MR. TAYLOR: Is that okay, Sam?

20 MS. LEDNICKY: Yes, that works for me, thank you.

21 **Q** (By Mr. Taylor, continuing) Anything else you can remember
 22 of substance regarding your conversation with Mr. Towle? I
 23 mean, for instance, did you guys talk about what the
 24 condition of the house was, whether the house needed to be
 25 repaired, did you talk about whether Mr. Kulig had

1 indicated to him what was going to happen to the proceeds?
2 Did you talk about whether Mr. Kulig had talked to him at
3 all about it? So anything in those veins or any other
4 veins that you recall regarding the conversation with
5 Mr. Towle?

6 **A** I don't recall that Mr. Towle got very much information
7 from Mr. Kulig about his plans for the disposition of the
8 property. However, at some point, there was another
9 individual who moved into the house and reported to
10 Mr. Towle that she had purchased it, and I don't recall
11 offhand the name of that individual.

12 The only other aspect of the conversation didn't
13 have to do with Mr. Kulig, but had to do with Ms. Zygo
14 maintaining the house while she was living and her ability
15 to keep the lawn mowed or not and so forth, and she was out
16 working a lot in the yard, in the hot sun, at an old age,
17 and I believe Mr. Towle had offered to help and had a
18 conversation with her. He thought that, it was his
19 impression that she might be slipping in competence; this
20 would have been sometime before she moved out of the house
21 and, of course, she died in a nursing home, and I don't
22 recall the timeline of when that was.

23 **Q** All right. Anybody other than Mr. Towle and anybody else
24 that we have talked about that you have had communication,
25 written or oral with, about this matter?

1 **A** No one outside of my office, no.

2 **Q** Sure. And when you say you had conversation, so you had
3 conversations in your office; what was the nature of those
4 conversations, and with whom?

5 **A** Oh, I have discussed the matter with other lawyers and with
6 my assistant here in my office.

7 **Q** To get their thoughts about it?

8 **A** Yes.

9 **Q** Okay, and would you feel like these conversations would
10 have been within the confines of the attorney-client
11 relationship, or do you not think that, because if they
12 are, then I am going to go elsewhere. If they wouldn't be
13 in the attorney-client relationship, then I want to know
14 what was said.

15 **A** I would just, I guess I would just characterize them as
16 conversations about what had occurred and their
17 impressions. I mean, we are all estate planners in this
18 office, so, you know, we just were simply discussing the,
19 what was done in this case as it relates to what one would
20 normally see in estate planning and what our ethical
21 obligations are as lawyers to deal with it.

22 **Q** All right. And when you say the "ethical obligations," are
23 you talking about reporting, are you talking about, "Gee, I
24 wouldn't do this because I think it comes close to or goes
25 over the line," or what were the nature of the

1 conversations regarding ethical obligations?

2 **A** The application and exceptions to the rules regarding
3 attorneys naming themselves as beneficiaries, whether it
4 needs to be reported, that sort of thing. I also did,
5 without identifying anybody involved, I did call Michael
6 Kennedy, who is bar counsel in the State of Vermont, and
7 discussed the matter with him.

8 **Q** All right, and what was the substance of your conversation
9 with Mr. Kennedy?

10 **A** I related the facts of the case, again, without identifying
11 people involved, and I discussed with him the scope of the
12 rule, and, you know, he, of course, can't give legal
13 advice, but gave his impressions of how the rule would
14 apply, and as I recall he indicated it was a gray area as
15 far as whether I would be required to report, but I think
16 he was definitely leaning towards thinking that I would be
17 required to do so.

18 **Q** But you are not the one that reported him in this case?

19 **A** Correct.

20 **Q** And did he indicate that in fact, based upon your
21 representations, which I assume you gave accurately, that
22 he thought that there was a violation? Did he indicate
23 that it should be investigated? How did he express himself
24 regarding the fact pattern that you presented to him?

25 **A** My recollection is, he thought this was something that

1 certainly would be investigated, I don't think he would
2 say, give an opinion as to whether something is clearly a
3 violation without doing, without that investigation being
4 done. But he indicated in all his years of reviewing
5 professional complaints, that he had never seen a case
6 where an attorney had designated themselves as a
7 beneficiary in an estate plan.

8 **Q** Which may or may not mean that it is ethical, right? That
9 would take further inquiry, would you agree with me?

10 **A** Well, I would agree that that statement in itself is not an
11 opinion as to whether it is ethical.

12 **Q** All right. Now, Deposition Exhibit Number 1 is the note
13 that you prepared from your October 30, 2019 telephone
14 conference with Paul Kulig. Do you have that available to
15 you?

16 **A** I do.

17 **Q** And I assume that is your handwriting?

18 **A** It is.

19 **Q** Are these notes you take while you are having the phone
20 conversation, or do you write them immediately after the
21 phone conversation, what is your practice?

22 **A** During the phone conversation.

23 **Q** All right. And you have, oh, maybe eight or ten bullet
24 points. How did you, in your conversation with Paul -- I
25 assume you called him out of the blue? In other words, he

- 1 didn't know you were going to call him about this?
- 2 **A** I believe I had called and left him a voicemail previous to
- 3 this conversation, and then I think he actually called me
- 4 back.
- 5 **Q** Okay, and assuming that the voicemail is the accurate
- 6 scenario, would you have said, "Paul, this is Matt Getty, I
- 7 am calling about the Louise Zygo estate"? Would you have
- 8 said, "Hey, Paul, I have something I need to discuss with
- 9 you, give me a call"? I am trying to figure out if Paul
- 10 would have known in advance what the subject matter was.
- 11 **A** Yes, I believe I identified the estate and that I was
- 12 seeking information on its status.
- 13 **Q** And I will go through a few of these, I will read them;
- 14 your handwriting, while certainly not in textbooks, is very
- 15 readable, similar to mine, or more readable than mine. You
- 16 talk about a few thousand being in the account; I assume
- 17 that is the bank account, right?
- 18 **A** A bank account, yes. I don't know whether that was her
- 19 personal account, whether he had set up an estate account
- 20 somehow, or if he had set up a lawyer trust account.
- 21 **Q** So a bank account. And then it says, "Money owed to
- 22 nursing home and state for Medicaid"; that wouldn't be
- 23 uncommon, correct?
- 24 **A** Correct.
- 25 **Q** The Medicaid capture rules are such that if they paid money

- 1 for Medicaid for somebody staying in a nursing home, or
- 2 other extended living facilities, they basically need to
- 3 recapture that from the estate, true?
- 4 **A** True.
- 5 **Q** And "Trying to bring house up to code to sell," and then
- 6 the next bullet is, "LBJ deed to Paul"; I assume that is a
- 7 Lady Bird Johnson deed to Paul?
- 8 **A** Yes.
- 9 **Q** And a Lady Bird Johnson deed, as I understand it, has
- 10 become permissible in Vermont in the last ten years or so,
- 11 which basically is a manner of conveying it to somebody
- 12 else, keeping a life estate of some sort; in that way the
- 13 house is no longer subject to Medicaid recapture?
- 14 **A** Correct.
- 15 **Q** There may be other uses, but that is a common use, true?
- 16 **A** Correct, and I believe these have been common for longer
- 17 than ten years.
- 18 **Q** Okay. And have you, in your practice of estate planning,
- 19 used Lady Bird Johnson deeds?
- 20 **A** Yes.
- 21 **Q** And for the very purpose of -- and when I say "evading," I
- 22 am not suggesting there is anything untoward about it, I
- 23 understand it is perfectly permissible -- but evading
- 24 Medicaid recapture?
- 25 **A** I have used them for Medicaid planning purposes and just,

- 1 as well as for general estate planning purposes.
- 2 **Q** Right. When you say "Medicaid planning purposes," we are
- 3 talking about so Medicaid doesn't call back that money
- 4 after death, correct?
- 5 **A** Right.
- 6 **Q** So that is a perfectly permissible use of a Lady Bird
- 7 Johnson?
- 8 **A** Yes.
- 9 **Q** And it is sanctioned by the State of Vermont in its
- 10 statutory law, true?
- 11 **A** True.
- 12 **Q** All right.
- 13 **A** Well, I'm sorry, clarify. That is, pursuant to Vermont's
- 14 Medicaid rules, that Vermont doesn't seek to recapture
- 15 against real estate conveyed, or primary homes, in that
- 16 conveyed by a Lady Bird Johnson deed.
- 17 **Q** When you say "Medicaid rules," so it is an administrative
- 18 regulation or something of that sort?
- 19 **A** Yes.
- 20 **Q** Okay. And it says, "Heirs are sister and nieces and
- 21 nephews," right?
- 22 **A** Yes.
- 23 **Q** And you are talking about heirs presumably because you are
- 24 talking about where the money is going to go, right?
- 25 **A** I believe that is the context of that note, yes.

- 1 **Q** And, "Someone is fronting money for repairs"; did you know
- 2 who that was or did he say it was him, or did he say it was
- 3 someone else, or it wasn't clear?
- 4 **A** He did not identify the person. My recollection is he
- 5 stated that he had identified a prospective buyer of the
- 6 property, and that person was fronting the cost of repairs
- 7 prior to closing, which he anticipated would be sometime in
- 8 the fall and spring.
- 9 **Q** Okay. "Vehicle left to Paul, sold for \$1,000," right?
- 10 **A** Yes.
- 11 **Q** "Sale of house by spring? Has prospective buyer," right?
- 12 **A** Yes.
- 13 **Q** And, obviously, the pandemic interceded and I don't know
- 14 about your practice of law, it pretty much pushed
- 15 everything back in my practice of law, how about you? It
- 16 made things move more slowly, would be a more accurate way
- 17 of saying it. Has that been your experience?
- 18 **A** Not so much in my area of practice, I wouldn't say. There
- 19 was sort of an acceleration of completing estate plans in
- 20 the beginning of this ordeal.
- 21 **Q** Fair enough.
- 22 **A** I think some things got shelved for a while and then by
- 23 midsummer, I would say, they were back to normal. But
- 24 also, the real estate market in Vermont, as I understand
- 25 it, has been very active during this time.

- 1 Q All right. But you don't know how much work had to be done
2 to bring it up to code or make it suitable for sale, I
3 assume, you weren't in the house?
- 4 A Correct. Paul did indicate, I think, there were issues
5 with the septic system and some other potentially big-
6 ticket items.
- 7 Q Gotcha. Then it says, "Will divide per stirpes by
8 siblings," and all of us here know what per stirpes is, but
9 why don't you explain what that means for the record.
- 10 A So, generally speaking, that is interpreted to mean that if
11 an individual were to receive a bequest, but had
12 predeceased the person making the request, their interest
13 would pass down to their children.
- 14 Q Right, and it means if they had another sibling, and the
15 other sibling only had one child, that sibling had died,
16 your scenario, there are three people -- per stirpes would
17 mean that the one sibling from the one parent would get 50
18 percent and the other two siblings by the other parent
19 would get 25 percent, right? It is by right of
20 representation based upon the level.
- 21 A By right of representation, so the children of the
22 predeceased parent take the same interest that their parent
23 would have received.
- 24 Q Right, we are talking about the same thing, I just wanted
25 to make sure; that is what your frame of mind was when you

- 1 wrote "per stirpes"?
- 2 A Right.
- 3 Q And the only reason you would have per stirpes would be if
4 Paul was planning on in fact distributing the money?
- 5 A Yes, and I don't recall for sure whether he used the word
6 "per stirpes," but there was some discussion about a plan
7 to distribute money, and the individuals that he thought
8 were the beneficiaries were not identified in the
9 conversation.
- 10 Q I understand that. I understand that. But to your
11 knowledge, he had identified the persons to himself and was
12 intending to distribute the money, true?
- 13 A It was not clear to me at the time whether he knew who all
14 those individuals would be, and I don't know if that is
15 because he hadn't reviewed the file prior to speaking to me
16 or what the reason was, but there was, I felt there was
17 ambiguity or uncertainty at the end of the conversation,
18 which is in part why I sent the follow-up letter to him,
19 follow-up email asking for clarification.
- 20 Q There was an ambiguity as to who was going to get the
21 money, right?
- 22 A Correct.
- 23 Q Not ambiguity that Paul was going to pay out the money,
24 correct?
- 25 A Well, at the time of my, this phone conversation on October

- 1 30th, it was my understanding that he was going to pay out
2 the money. That was the impression I came away with.
- 3 Q Okay. Then let's go to Exhibit 2, which is your letter of
4 November 20. I am just going to, a lot of it is
5 self-explanatory and discusses stuff we have already
6 discussed, so I am just going to pick out a couple of
7 components of it. In the first paragraph, that starts
8 "Ms. Broza and other relatives, do you see that?"
- 9 A Yes.
- 10 Q It says, "Ms. Broza and other relatives have been trying
11 for some time to determine the status of Ms. Zygo's estate
12 since she passed away in the spring of 2018," and what is
13 your -- is your knowledge of that solely based upon what
14 Ms. Broza told you?
- 15 A Yes.
- 16 Q So, basically, what Ms. Broza told you would be what is
17 contained in that sentence, right?
- 18 A Yes.
- 19 Q Do you have any understanding as to what contact they had,
20 how many occasions, what Mr. Kulig said, anything like
21 that, or is this basically the substance of your knowledge,
22 this one sentence I just read?
- 23 A I don't recall the details on that. I believe that
24 Ms. Broza had tried to call Paul on a number of occasions,
25 I don't recall whether they ever connected in any way, and

- 1 this would be best put to Ms. Broza. But I think maybe one
2 of her sons also spoke to Mr. Kulig, and possibly also a
3 child of the surviving, then-surviving sister.
- 4 Q All right. Now I am going to address your attention to the
5 second page, if we could, and there is a sentence there
6 that starts with the word "being," do you see that at the
7 very, very top of the second page?
- 8 A Yes.
- 9 Q It says, "Being cognizant of the limitations of Medicaid
10 recovery rules, and in light of the conversation
11 memorialized above, it is my interpretation that the LBJ
12 deed was drafted to carry out Ms. Zygo's plan, as set forth
13 in her will, by way of a trust arrangement for the sole
14 benefit of my client." That is what that says, correct?
- 15 A Correct.
- 16 Q And so in your frame of mind, Ms. Zygo was intending
17 Mr. Kulig to act as a conduit for the moneys according to
18 her wishes, fair?
- 19 A Not entirely. I don't know what Ms. Zygo was thinking. I,
20 writing this sentence, was trying to offer up a potential
21 explanation for the discrepancy between the 2011 will that
22 I had reviewed and that deed.
- 23 Q All right. And you characterized it, your interpretation,
24 as "by way of a trust arrangement," true?
- 25 A True, in the sense of, this is the best possible

1 interpretation I could put on this that would explain it.
 2 But it was --
 3 Q And the -- I'm sorry, wait, I'm sorry, I messed up the
 4 record there, I thought you were done with the sentence.
 5 Start your answer again, with "This was the best
 6 interpretation" you could put on it. I apologize for
 7 interrupting.
 8 A So I was attempting to offer up an explanation of why there
 9 was a discrepancy between the deed and the 2011 will, so I
 10 was proposing this as a possible interpretation, but of
 11 course I was looking to Mr. Kulig to confirm or otherwise
 12 state what the, what he believed the interpretation should
 13 be.
 14 Q Fair enough, and you chose the word "trust," true?
 15 A Correct.
 16 Q And you are familiar with the fact that oral trusts are
 17 permitted in Vermont, right?
 18 A Yes.
 19 Q And from the first time you talked to Mr. Kulig, your
 20 interpretation of that was that Mr. Kulig was going to be
 21 paying money to what he understood to be Ms. Zygo's
 22 intended beneficiaries, true?
 23 A True.
 24 Q And he never said anything to contradict that that was his
 25 intention, true?

1 A True.
 2 Q Let's move on to Exhibit 3, which is Mr. Kulig's responsive
 3 letter to you dated December 16, 2019. Do you have that in
 4 front of you?
 5 A Yes.
 6 Q So Mr. Kulig corrected one thing, because you asked, "If
 7 anything is incorrect, let me know," in Exhibit 2, and so
 8 in Exhibit 3 he indicated that, again indicates that the
 9 various, the assets are going to go to her sister and other
 10 relatives, true?
 11 A Well, he states in the, he stated two things. So in the
 12 first paragraph, he indicates that there were financial
 13 assets that were to go to her sister and other relatives,
 14 and I don't know what precisely was meant by "financial
 15 assets." The second paragraph, he states that "Once the
 16 house is sold, the moneys will be disbursed to those she
 17 had intended to benefit," but he did not indicated who
 18 those were.
 19 Q Well, you knew that Ms. Broza was one of the people, right?
 20 A I know that Ms. Broza was a beneficiary of the 2011 will,
 21 which had been, Mr. Kulig now informed me had been replaced
 22 by the 2014 will. So Mr. Kulig has not told me whether
 23 Ms. Broza was an intended beneficiary as of 2014, or as of
 24 the time of Ms. Zygo's death.
 25 Q And your communication with him ended as of December 19,

1 2019, when you sent the email --
 2 A Correct.
 3 Q -- which is Exhibit 4. But again, in the December 16
 4 letter, Exhibit 3, Mr. Kulig makes clear that the money is
 5 going to be disbursed to those that Ms. Zygo had intended
 6 to benefit, right?
 7 A Correct.
 8 Q And in Exhibit 4, you asked the question, essentially, how
 9 is it to be determined who the beneficiaries are, and, I
 10 mean, that is the gist of the letter, right?
 11 A How are they to be determined and whether Mr. Kulig was
 12 intended to be a beneficiary.
 13 Q But in your prior conversations and his prior letter, he
 14 never indicated that he was intended to be a beneficiary,
 15 true?
 16 A True. He did not state that he was. He did follow up by
 17 sending me this copy of the will that states that he is a
 18 beneficiary.
 19 Q Right, but that was all in the context, was it not, that he
 20 was going to be distributing it, I think you say some were
 21 nieces and nephews and so forth, right?
 22 A I would refer back to Mr. Kulig's statement in his letter
 23 of December 16, where he says that after the house is sold,
 24 the moneys will be disbursed to those she had intended to
 25 benefit.

1 Q Right, and in your -- I'm sorry, go ahead.
 2 A I'm sorry. He did not indicate what would be happening
 3 with items like personal property, household contents,
 4 items of family interest, like photographs and those types
 5 of items.
 6 Q Right. In your initial conversation with him, however, he
 7 indicated to you that the heirs are a sister and nieces and
 8 nephews, right?
 9 A I don't believe he told me who he thought the heirs were.
 10 Q If you look at Exhibit 1, that would belie your notes.
 11 A Oh, I see, yes. I agree.
 12 Q And I don't expect you to remember, it was a year ago, I
 13 get it. That is what, if you ever wonder about eyewitness
 14 testimony, read the work of Elizabeth Loftis in terms of
 15 why we don't remember things so well. So the only thing
 16 you heard from him about heirs and who they were was in
 17 your original conversation, when he told you heirs are
 18 sisters and nieces and nephews, right?
 19 A From Mr. Kulig, yes, and I had taken the same information
 20 from Ms. Broza.
 21 Q Okay. Now, if you assume for me that it was indeed
 22 Mr. Kulig's intention, and is Mr. Kulig's intention, to
 23 distribute the assets to the nieces and nephews and sister
 24 according to Ms. Zygo's wishes, the manner in which it was
 25 structured would in fact have accomplished the purpose of

1 avoiding the Medicaid recapture, true?

2 **A** True, at least with, yes, with respect to the proceeds of

3 the house.

4 **Q** Right. Have you had situations which, in your practice, in

5 which elderly people that didn't have any children were

6 concerned about friends and relatives contacting them

7 purely because they thought they wanted money from them?

8 **A** That is possible, I don't recall any specific circumstance

9 off the top of my mind.

10 **Q** What has been your experience in terms of your contact with

11 Paul Kulig? When did you start practicing, 2009?

12 **A** 2007.

13 **Q** 2007. How much contact have you had with Paul Kulig since

14 2007?

15 **A** Very little.

16 **Q** Okay. And then finally, if you look at Exhibit 2, on the

17 signature page, you cc Jack Facey. Why would you cc Jack

18 Facey?

19 **A** It was my understanding that Mr. Facey at that time was

20 still the managing partner of that firm, and I wanted to

21 alert him to this potential problem.

22 **Q** What business of it is yours whether Mr. Facey became

23 alerted to this or not?

24 **A** I mean, I guess, doesn't really matter. That is what I

25 wanted to do.

1 **Q** Well, what was your intention in alerting Mr. Facey? This

2 had nothing to do with his firm, right?

3 **A** Well, Mr. Kulig was practicing in that firm.

4 **Q** But these events had predated him becoming of counsel to

5 Jack Facey's firm, right?

6 **A** True.

7 **Q** Okay.

8 MR. TAYLOR: All right, that is all I have.

9 Ms. Lednický may have some questions.

10 MS. LEDNICKY: I do, just a few follow-up

11 questions, and I don't know if Ms. Broza is trying to call

12 in, I think we said 10:45. Hopefully you will see

13 notification on your Zoom.

14 REPORTER: She is in the waiting room.

15 MS. LEDNICKY: Okay.

16 EXAMINATION BY MS. LEDNICKY

17 **Q** So just a few follow-up questions, and I am just going to

18 look through my notes here. So you testified earlier in

19 response to a question that there was ambiguity in your

20 conversation with Mr. Kulig as to who was going to get the

21 money, and you testified that that was your impression

22 after the October 30th, 2019 phone call. Is that accurate

23 of your testimony earlier?

24 **A** Yes.

25 **Q** And did that change for you, was there any clarification

1 for you since October 30th as to who specifically would,

2 you know, obtain any proceeds of either the home or other

3 financial assets?

4 **A** No, I think the subsequent correspondence indicates my

5 attempt to really pin him down as to who those individuals

6 were. I felt that when he responded to me in his December

7 16 letter with the 2014 will, that that just further called

8 into question what the plan was, so I wanted him to tell me

9 definitively whether he was intended to benefit and, if

10 not, who was intended to benefit.

11 **Q** Since your December 19, 2019 email to Mr. Kulig, did you

12 ever receive any clarification or response from Mr. Kulig

13 directly?

14 **A** I did not.

15 **Q** Okay. Have you had any communications with Mr. Kulig

16 regarding this case or regarding the plan for Ms. Zygo's

17 estate after the December 19 correspondence?

18 **A** No.

19 **Q** Okay, have you had any conversations with anyone else from

20 Mr. Kulig's office?

21 **A** No.

22 **Q** Have you had any other communications with anyone other

23 than your client, Ms. Broza, since December 19, other than

24 myself or Mr. Taylor?

25 **A** Nothing that is substantive to my representation. I think

1 I have discussed, once the matter became public, I think I

2 discussed the circumstances with some people, but not in

3 relation to my representation or with Mr. Kulig or anybody

4 at his firm.

5 **Q** Okay. You testified in response to a question earlier that

6 it is your understanding that Mr. Kulig never said anything

7 to contradict that his intent is or was, as of the last

8 time you corresponded with him, to disburse these funds

9 from the sale of the home, at least, to the attendant

10 beneficiaries. Has he done or acted in any way that would

11 contradict that stated intent by Mr. Kulig?

12 **A** Well, I don't know what has transpired. I mean, I think

13 maybe the property has been sold, I don't know that

14 definitively. I am trying to recall if we, we may have

15 found a record of the property being sold. I don't know

16 what has happened with the proceeds, certainly I haven't

17 been notified, Ms. Broza hasn't been notified with what is

18 happening with the proceeds of sale, if any, where those

19 proceeds are, if they are in a firm account, if they are in

20 an estate account of some kind, or some kind of trust

21 account. I mean, just the fact that, you know, if

22 something were to happen to Mr. Kulig and all this is in

23 his name, that would clearly serve to defeat the stated

24 purpose of the plan.

25 **Q** And so to clarify, or to summarize, you have not been

1 provided any accounting of the estate?

2 **A** No.

3 **Q** And I use the word "estate" a little bit loosely there.

4 You have never been provided an accounting of the oral

5 trust?

6 **A** Correct.

7 **Q** Okay, and you used the term "trust" in your correspondence

8 to Mr. Kulig. Did Mr. Kulig ever confirm to you that in

9 fact the intent was to create an oral trust, or would it be

10 fair to say that that was your language?

11 **A** That was my language in an attempt to construe what I was

12 seeing in the documentation.

13 **Q** And would it be fair to say that Mr. Kulig never confirmed

14 to you that in fact there was an oral trust?

15 **A** Correct.

16 **Q** And I just wanted to clarify another point. So you have

17 notes here, your call notes from October 30, 2019, and we

18 have been talking about this statement, you have a bullet

19 point that says, "Heirs are sister and nieces and nephews,"

20 is that accurate, that those are "and" signs?

21 **A** Yes.

22 **Q** I just wanted to be clear, it is not an "or," okay. So as

23 you sit here today and think back to that conversation,

24 refreshing your recollection on these notes in front of

25 you, can you say definitively that that was Paul's

1 statement to you, that the heirs are sister and nieces and

2 nephews?

3 **A** I think that was likely his statement to me, yes. Now, of

4 course, if I may just add, any heirs at law are the

5 individuals that would take in the absence of a will or

6 other estate plan, so those are the individuals who would

7 be her heirs at law. Whether they were the intended

8 beneficiaries of the plan that was enacted, I think, was

9 not clarified.

10 **Q** Okay. And so at least at the time of this October 30th,

11 2019 telephone call, there was no clarification as to the

12 intended beneficiaries, but there was some discussion or

13 comment about the heirs at law?

14 **A** Correct.

15 **Q** Okay. And then in his December 16 letter to you, he goes

16 on to say that the -- I just want to pull up the language.

17 "Various financial assets of hers to go to her sister and

18 her other relatives." Do you have any understanding on who

19 those other relatives are?

20 **A** Well, I can only speculate based on who the, in fact, who

21 the other relatives are, which would include Ms. Broza by

22 marriage and her children, the children of the surviving

23 sister. I am not sure, there may have been another

24 predeceased sibling, but I don't recall for sure.

25 **Q** Okay. But other than that comment, "her other relatives,"

1 there wasn't any other information provided by Mr. Kulig

2 about who those relatives would be?

3 **A** No.

4 **Q** And you make a point to make a distinction between various

5 financial assets and the real estate, the real property.

6 At the time that you received this December 16, 2019

7 letter, were you aware of what other financial assets

8 existed?

9 **A** It was my understanding from Mr. Kulig that all but a few

10 thousand dollars had been spent on her care, and that those

11 last few thousand would likely also be spent, if they

12 weren't used for final expenses of burial or something of

13 that nature, then they would be paid over to Medicaid to

14 reimburse for her care, so my interpretation of the first

15 paragraph of his December 16 letter is that there is

16 essentially no money, that the primary asset remaining was

17 the house.

18 **Q** All right. I am just going to look at my notes, but I

19 think I am almost done.

20 Now, we talked a little bit about your comment in

21 your notes about per stirpes. Can you clarify for the

22 record whether a per stirpes distribution is different than

23 a pro rata basis?

24 **A** Well, you can have a situation, take this for an example.

25 Ms. Zygo was survived by a sister, who has since deceased,

1 and she had other siblings who had, at least one other, if

2 not more, siblings who had predeceased her. So you could

3 have done a plan whereby, say, her surviving sister would

4 receive a share, and other heirs, nieces and nephews or

5 what have you, could have received shares, and you could

6 have done that equally, and that would be more, I think,

7 what you are suggesting would be pro rata versus per

8 stirpes, where you share, the named beneficiaries would

9 share equally regardless of which generation they were.

10 **Q** And to your knowledge, based on your recollection as you

11 sit here today, was there any discussion that or

12 implication of any kind that the intended beneficiaries

13 were to be the same as the 2011 will?

14 **A** Well, that was, you know, part of the reason of my

15 follow-up inquiry to Mr. Kulig, was to determine whether or

16 not that was the case or whether Ms. Zygo had changed her

17 mind and intended to benefit other people. The fact that

18 there was a Medicaid concern here could have been met by,

19 if she knew who her intended beneficiaries were, she could

20 have named them as the beneficiaries on the deed. I have

21 never seen a plan do anything other than that. So the fact

22 that Mr. Kulig was named as the beneficiary in both the

23 will and the deed caused me to question whether Mr. Kulig

24 actually was the intended beneficiary, you know. So that

25 is why I kept asking him to name who the beneficiaries

1 were. The construction in his letter that the moneys will
2 be disbursed to those she intended to benefit doesn't tell
3 me anything; that could have been him, it could have been a
4 sister, it could have been any number of people other than
5 my client.

6 MS. LEDNICKY: Okay, thank you, Matt, that is all
7 I have for you.

8 EXAMINATION BY MR. TAYLOR

9 Q A few follow-up questions, Mr. Getty. When you were
10 talking about heirs with Mr. Kulig in your telephone
11 conversation on October 30, 2019, you weren't talking in
12 the abstract, right? You were talking about Ms. Zygo's
13 heirs, right?

14 A Correct.

15 Q There was no reason to be discussing what the intestacy law
16 of the State of Vermont was, right?

17 A Well, it would be relevant to the opening of an estate, if
18 an estate had to be opened.

19 Q But one didn't have to be opened in this case, right?

20 A Well, I don't -- I am not sure that is true. There was a
21 variety of assets that, you know, it is unclear whether
22 they should have been included in an estate or not.

23 Q So just to be clear, the line "will divide per stirpes by
24 siblings" is directly tied to the line "heirs are sister
25 and nieces and nephews," true?

1 A Yes, I believe those are related. The second item came
2 later in the conversation.

3 Q I understand. But those two things are in lockstep. The
4 heirs are the sister and nieces and nephews, and the stuff
5 is going to be divided per stirpes by siblings, right?

6 A Right.

7 Q And the fact that something is per stirpes doesn't
8 necessarily mean it can't also be pro rata. Those aren't
9 necessarily inconsistent, it depends on the facts of any
10 particular estate, true?

11 A I struggle to answer that with a yes or no.

12 Q Okay.

13 A There are different versions of per stirpes. The most
14 commonly used interpretation is the one that I described
15 earlier, so --

16 Q Right, but if I said to you, the stuff was going to be
17 distributed per stirpes and per capita, we know that can't
18 be, because those are totally different concepts, right?

19 A Right.

20 Q When I say to you the stuff was going to be distributed per
21 stirpes in a pro rata fashion, those aren't necessarily
22 inconsistent, true? It just depends on the facts of the
23 case.

24 A Yes, not necessarily, you have to read the document and try
25 to construe it.

1 Q Correct. It is not like saying, "The sun rises in the east
2 and the sun rises in the west." They are not necessarily
3 contradictory, per stirpes and pro rata, that is all I am
4 trying to suggest, and I think you agree with me.

5 A I think I do.

6 Q Now, with respect to the statement of financial assets,
7 now, the 2011 will basically had everything going to your
8 client and her husband, true?

9 A Yes.

10 Q But that wouldn't necessarily apply to financial assets,
11 right? Typically, the financial assets context, either a
12 bank account or a trust -- excuse me, or a financial
13 account or an IRA or 401(k), they will have specifically
14 designated beneficiaries, right?

15 A That may be it, either a beneficiary designation or a joint
16 ownership or --

17 Q And in those case, the will would have nothing to do with
18 the disposition of those assets, right?

19 A Right.

20 Q So if you are looking at my estate, for instance,
21 colloquially we will speak about it as the mutual funds I
22 have and all that sort of thing, but technically my estate
23 wouldn't include those because those have separate
24 beneficiary designations, right?

25 A Wouldn't be included in a probate estate, right.

1 Q But colloquially we would say that was Taylor's estate even
2 though it wouldn't be a formal probate estate like you were
3 just talking about?

4 A Correct.

5 MR. TAYLOR: That is all I have, thank you so
6 much.

7 MS. LEDNICKY: Thanks, Matt.
8 (Deposition concluded)

9 -o0o-

1 STATE OF MICHIGAN)

) ss

2 COUNTY OF KENT)

3 I, Kristy K. VanDenBrand, Notary Public, in and
4 for the County of Kent, State of Michigan, do hereby
5 certify that the foregoing deposition of MATTHEW GETTY was
6 taken before me at the time and place hereinbefore set
7 forth, and that said witness was duly sworn by me; that the
8 testimony herein was reduced to writing stenographically in
9 the presence of the witness, afterwards transcribed, and
10 that it is a true and correct transcript of the testimony
11 given by the witness.

12 I certify that I am not connected by blood or
13 marriage to any of the parties, their attorneys, or agents;
14 that I am not an employee of any of them; nor am I
15 interested directly or indirectly in the matter in
16 controversy either as counsel, agent, attorney or
17 otherwise.

18 IN WITNESS WHEREOF, I have set my hand this the
19 29th day of December, 2020.

20

21 Kristy K. VanDenBrand (CSR2056)
Notary Public, Kent County, Michigan
My Commission Expires: 12/09/22

22

23

24

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