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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between Counsel as follows:

1. That the requirements of notice of the taking of the deposition have been complied with;
2. That the proof of the qualifications of the Notary Public be waived;
3. That all objections except as to the form of the question shall be reserved to the time of trial.

1 C. ROBERT MANBY, JR.,

2 Having been duly sworn, testified

3 as follows:

4 EXAMINATION

5 BY MR. HUGHES:

6 Q. Good morning.

7 A. Good morning.

8 Q. And your name is C. Robert Manby; is that
9 right?

10 A. That's correct.

11 Q. And how do you prefer to be called?

12 A. Rob is fine.

13 Q. Is Rob okay?

14 A. Yes.

15 Q. All right, and you're in a general private law
16 practice; is that right?

17 A. That's correct.

18 Q. And what's the nature of your practice?

19 A. What it has devolved to is representation of
20 municipalities; town attorney for Hartford and Hartland, I
21 have a private real estate practice, I do some wills and
22 probate work, and I represent banks in commercial
23 transactions. Just the general universe.

24 Q. Okay, and how long has that been a general
25 description of your practice?

1 A. I began as a public defender with Peter Welch
2 and Donald Graham in, oh, I think came to work for them in
3 September of '79, admitted in March of '80, and now
4 Peter's been elected, Donald's retired, and I'm last man
5 standing. So 38 years and I would say that, you know, for
6 the past 25 or 30 that captures the description.

7 Q. Okay, and during the course of this practice
8 you met John J. McDonald; is that correct?

9 A. That's correct.

10 Q. And when did you first meet John?

11 A. Precise date not known. He was an associate
12 broker -- I don't really know whether he was a broker or
13 just a salesman, I'm not sure what his licensing status
14 was, and that was probably 30 years or so ago. He was
15 affiliated with Montshire Properties at the time, and I
16 would occasionally be involved with them to assist in real
17 estate transactions and that was my first encounter.

18 Q. Okay, and were you in touch with him regularly
19 over the last 30 years?

20 A. No.

21 Q. All right.

22 A. There came a time -- not sure exactly when --
23 when he moved from the area. I gather he used to live in
24 Stratford, Vermont. I might have handled a transaction
25 when he sold that, no idea exactly when that was, and then

1 I don't know 15 years, 20 years went by with little or no
2 contact. I don't believe I saw him.

3 Q. All right. Did you have any contact with any
4 other members of John J. McDonald's family or was it just
5 John?

6 A. No. I believe never. None.

7 Q. Okay. So no other contact other than with
8 John J?

9 A. And except for his mother Eleanor, that's
10 correct.

11 Q. Right. So when did John J. McDonald contact
12 you about issues related to his mother?

13 A. Early in 2015. I think there is a telephone
14 call in February or so.

15 Q. And do you recall what he wanted when he first
16 called?

17 A. He was trying to arrange his mother's affairs.
18 He specifically wanted to arrange for a deed that
19 transferred title to the house. There were some bank
20 accounts. He was looking to avoid probate and explained
21 he wanted to discuss with me what the options and
22 possibilities might be to do that.

23 Q. Okay. Now earlier this year -- or actually I
24 guess it was late last year you sent us a copy of your
25 file pursuant to the Probate Court's order.

1 A. I think it was June or so of '16.

2 Q. And I have marked notes -- what I believe are
3 your office notes as exhibit 1 with some highly
4 sophisticated subnumbering in the lower right-hand column
5 there. I thought it would be helpful if we could go
6 through these notes. Some of them I didn't see dates on
7 them.

8 A. No not necessarily.

9 Q. So on the first page, for example, it says
10 John McDonald will call. Wants to talk on couple things.
11 Looks like maybe the time there 4:20?

12 A. Yes. That's the time of day not a date and my
13 assistant didn't happen to date that well usually because
14 there are just the two of us in the office now.

15 Q. Okay.

16 A. And so there isn't the opportunity for any
17 more confusion than I can create and this very possibly
18 was February or so.

19 Q. So whose handwriting is that?

20 A. That's the handwriting of my assistant.

21 Q. And what is her name?

22 A. Jill Chase.

23 Q. Okay. Thanks, and then on the next page 1-2

24 --

25 A. That was part of what I delivered to you

1 because it was in my file.

2 Q. Okay.

3 A. What 8 p.m. some day next week might have
4 referred to I don't know except I know I did not do that.
5 There was no nighttime or evening meeting.

6 Q. Perhaps retrieved from a voice mail. Is that
7 possible without speculating?

8 A. I don't recall.

9 Q. Okay. Is that Jill's handwriting also?

10 A. Yes it is.

11 Q. Okay. The next page is 1-3 and whose writing
12 is that?

13 A. This is my writing.

14 Q. Okay, and what's the purpose of the content of
15 these notes?

16 A. As I recall this is at some time after John
17 and I had our initial conference a deed had been drafted
18 and sent to him, and these were instructions for where I
19 might meet him up here for a face-to-face meeting with
20 John and his mother.

21 Q. Do you have any idea when those notes might
22 have been taken?

23 A. When these notes would have been taken?

24 Q. Yes.

25 A. I guess I know only that, you know, I met with

1 them in late June or so of 2015 and I'm presuming this is
2 just a couple of days before that meeting occurred as he
3 was giving me instructions.

4 Q. Okay. Where was he giving you instructions
5 to?

6 A. I was going to meet him in this Shaw's
7 supermarket parking lot because I'm not intimately
8 familiar with every address hereabout. I know his
9 intention was not to go to his home but to go to a nearby
10 church that was their family church.

11 Q. Okay, and then the next page is 1-4. Looks
12 like this is actually dated February 13, '15?

13 A. I think that's a note probably from a voice
14 mail.

15 Q. Okay.

16 A. That is my writing.

17 Q. Okay. The next page is 1-5. Looks like it's
18 dated February 17, 2015?

19 A. It is.

20 Q. And what would these be the notes of?

21 A. These are notes from my initial interview with
22 John.

23 Q. Where did that take place?

24 A. At my office I believe.

25 Q. Okay, and in reviewing these notes do you

1 recall the substance of your conversation with John J.
2 McDonald that day?

3 A. It was a general conversation about what is it
4 you want me to do; is it you wish me to represent.
5 Represent my mom. She wasn't there with him at the time.
6 I had my usual inquiry about okay mom's not here, how is
7 she doing, and as you see well she's 91. She's old,
8 feeble, but doing okay, and I am sure as I always do
9 inquired well does she do okay enough to know who she is,
10 know who you are, know what's up, understand what's going
11 on; and yes. He explained that he had a power of attorney
12 from 2011 that empowered him. I hadn't seen it at the
13 time. I asked for a copy to be sent to me, and then we
14 discussed, as you see, notes about generally what was
15 there and what is -- what the options might be for a deed
16 which was the principal focus of the meeting.

17 Q. Did I hear you say he wanted you to represent
18 Eleanor?

19 A. Yes. I considered Eleanor to be my client. I
20 didn't think it was my job to achieve John's objective
21 rather her objective, though they seemed to be aligned.

22 Q. Okay, but she did not accompany John to this
23 meeting?

24 A. Not to that meeting. No, sir.

25 Q. Okay. There's a line that says mother -- is

1 that EFM -- now sole record owner?

2 A. Where are you looking?

3 Q. I'm sorry. Right here.

4 A. McDonald who is now the sole owner of the
5 property at 4 Vine Street. Notice up above it said that
6 his father, Eleanor's husband, had passed not all that
7 long ago. October of 2014.

8 Q. Okay.

9 A. He did not have a deed with him at the time so
10 I asked him to get me some info.

11 Q. Okay, and looks like he may have gone through
12 some of the assets that his mother had?

13 A. Yes and that's as much as I knew; checking
14 account with this, what is there, what's to be dealt with,
15 car, real estate, checking account, and what he described
16 as a life insurance policy.

17 Q. Okay, and then at the bottom you've written
18 John's objectives?

19 A. Uh-huh.

20 Q. And just for the transcript it's important to
21 say yes or no.

22 A. Yes.

23 Q. Okay, and so John's objective were for all to
24 go to him and avoid probate; is that right?

25 A. Correct.

1 Q. Okay, and then you've got a note below that if
2 you could help me translate under John's objectives mom's
3 bank accounts?

4 A. To be joint and survivor.

5 Q. Personal property. Living trust.

6 A. And I never saw that. I was told that it
7 existed. Don't worry about that, that's all taken care
8 of. There are estate docs out there.

9 Q. So that's why it says not for CRM to do?

10 A. And that is I, CRM, and no task for me.

11 Q. Okay, and then real estate either present deed
12 outright, joint tenants with right of survivorship deed,
13 or lady bird deed?

14 A. Correct.

15 Q. And did you describe those different options
16 to John?

17 A. Yes I did.

18 Q. And what's the purpose of a lady bird deed?

19 A. Much debated, isn't it? It's really a
20 Medicaid avoidance device, but it's to create a contingent
21 remainder in grantee, usually children, that would vest
22 upon the death of the grantor but have a revocability
23 feature to it so that the grantor, commonly the elder
24 parent, retains control.

25 Q. Primarily to avoid Medicaid possible

1 penalties?

2 A. Yes in order -- though I don't pretend deep
3 expertise at Medicaid planning, know enough to know to
4 call someone who does if I need something deep, but to
5 avoid the look back period. It's a gift that does not
6 trigger transfer -- that does not trigger a look back for
7 ineligibility.

8 Q. So at the end of this meeting looks like John
9 J. McDonald will get back to you with his -- with the deed
10 choice -- is that what that says -- or deed chore?

11 A. He would discuss it with his mom and he didn't
12 have any copy and had explained to me that his dad had
13 passed and I said well I haven't seen the deed. I haven't
14 done the title. We probably had a discussion about
15 whether there were mortgage encumbrances on it or not, and
16 you need to get me a copy of it for me to be able to
17 draft. You need to get me information, addresses, Social
18 Security numbers, and let me know what you want to do, and
19 then I'll try and help you out.

20 Q. Okay. The next page is 1-6. Looks like it's
21 dated maybe April 17, 2015?

22 A. Yes. Correct.

23 Q. And is this your handwriting?

24 A. Yes it is, and they appear to be telephone
25 conversation notes and this was, I take it, John's

1 expression of his election to please prepare a joint
2 tenancy with right of survivorship deed from mom to mom
3 and me, John, and I'm sure the conversation went on okay
4 I'm going to do a recording letter for you. Also if we're
5 going to do this deed, I want to know whether the job got
6 finished. So I'm going to send something up so that if
7 you execute this deed, take this letter to the city clerk
8 when you record it because that letter will instruct the
9 clerk to send the deed back to me. I'll know the loop is
10 closed. I'll send it back to you.

11 Q. Did he explain to you why he chose the joint
12 tenants with right of survivorship option?

13 A. I don't recall precisely. I can imagine, but
14 I don't know.

15 Q. Okay.

16 A. I will volunteer that I think it was less
17 intrusive for him. He was very attentive. He seemed, you
18 know, very concerned about his mother's health and welfare
19 and there's something less of a confrontation with
20 mortality to do a deed to me and my son than to just give
21 it up.

22 Q. Okay. Is that something that John expressed
23 to you or is this just --

24 A. I can't say with precision. I believe so.

25 Q. Okay.

1 A. I am not certain.

2 Q. Okay, and then why choose that option over the
3 lady bird deed?

4 A. I think he thought that there was no
5 likelihood that she was going to receive extended care in
6 a facility because he was dedicated to providing her care
7 for however long it might take. He had been caring for
8 her in the home. Described himself as her caregiver and
9 intended to continue.

10 Q. All right. The next page is 1-7. It looks
11 like it's dated June 15 maybe?

12 A. Yes.

13 Q. And what do these -- are these in your
14 handwriting?

15 A. This is my handwriting.

16 Q. And what do these notes indicate?

17 A. An intention to set up an appointment.

18 Q. Okay, and I recall a part of the conversation
19 because John is looking to arrange an appointment at the
20 time. I don't think it was clear whether he and his mom
21 would come to my office or just what or whether I might go
22 up to Burlington, and I am sure, because I recall clearly,
23 that I explained to him that that seems a bit wasteful to
24 have me come to Burlington and to have you incur that
25 expense. The city is full of lawyers. There must be

1 someone who can attend to this, and he was insistent no he
2 wanted to stick with doing work with me.

3 Q. Okay, and it wouldn't even require a lawyer,
4 would it, just someone to notarize the document?

5 A. True enough.

6 Q. Okay, but he was insistent that you come to
7 Burlington to execute that?

8 A. Well I don't want to put too hard a line under
9 insistent. That was his choice.

10 Q. Okay. There's a notation to avoid Mondays I
11 think?

12 A. No idea why. That is correct it does say
13 that. Just a note made at the time two years ago. I have
14 no memory of what it was about Mondays.

15 Q. And do you know what the 545 reference is to?

16 A. No.

17 Q. And then a notation maybe Thursday and want to
18 get done. Does that refresh your recollection?

19 A. John wants to get the job done. Thursday is a
20 day of the week that is possible and I don't recall
21 whether we set up a date at this time.

22 Q. Okay. All right. The next page is 1-8.
23 Whose handwriting is this?

24 A. This is mine.

25 Q. And it looks like it's dated January 22nd of

1 2016?

2 A. That's correct.

3 Q. And was this a phone conference with John J.
4 McDonald?

5 A. Yes.

6 Q. Okay, and what did you talk about?

7 A. At this point, if my memory serves correctly
8 and the deed would speak, this joint tenancy with right of
9 survivorship deed had been executed some months back. I
10 was surprised it hadn't been recorded or anything, but
11 nothing deep had happened to trip my memory about it, but
12 he says he's ready to record it and I apparently inquired,
13 as my item two there, are you certain that there's
14 evidence of your father's death in the office of the
15 Burlington City Clerk because anybody looking at title
16 will want to see how it is that your mother is the sole
17 owner, and he apparently checked that out.

18 Q. Okay.

19 A. He wants to get this done and record.

20 Q. Did he tell you why the deed hadn't been
21 recorded as of January of 2016?

22 A. No. My memory is that there was a time -- you
23 know this is nearly a year after the first encounter in
24 this particular file, and I think there was a point at
25 which he said no do another deed now to just get it

1 outright to me, and all right I'll do a deed from you and
2 your mom because we did one already that put it into your
3 joint names to you and sent it to you, though I don't
4 believe anything was ever done with that instrument and
5 the election was to record the joint tenancy with right of
6 survivorship deed.

7 Q. Okay.

8 A. At this point I met Eleanor McDonald, oh, I
9 would say at least a couple of times.

10 Q. Prior to January of 2016?

11 A. Yes.

12 Q. Okay.

13 A. I mean I think you know that. There's
14 evidence in the file.

15 Q. Well you met her in June of 2015?

16 A. Yes.

17 Q. Right. Other than that occasion had you seen
18 her again prior to this January 22nd, 2016 note?

19 A. I believe so. I think my records and billing
20 records might refresh my recollection. I brought nothing
21 with me, but there was certainly our meeting up here and
22 then there were at least two or three other meetings with
23 Eleanor at my office, and seems to me one of them may have
24 been in the fall.

25 Q. Okay.

1 A. And then there was another one probably
2 subsequent to this.

3 Q. And that would be reflected in your billing
4 records?

5 A. Yes, although I wasn't interested in trying to
6 advance my retirement off of this particular arrangement.
7 She was a delightful elderly lady. Obviously enfeebled.
8 Not long for this world. So I wasn't looking to churn it
9 too much and whether I made out a time slip for everything
10 I did or not I don't recall.

11 Q. Okay. Do you know what the notation is about
12 April on page 1-8?

13 A. Probably my note that something to the effect
14 of we prepared that deed in April. This is the April deed
15 that you're talking about, John. This is just my idle
16 scratching while I'm talking on the phone.

17 Q. All right.

18 A. But this was a reference to, I would say, a
19 past April of 2015. Not to a future date.

20 Q. Okay, and then a notation about the home
21 equity loan?

22 A. I have no recollection whatsoever.

23 Q. Did John tell you why he wanted to have the
24 deed outright to him at this point as opposed to leaving
25 it as joint tenants?

1 A. On more than one occasion he described to me
2 the need to try to control the environment at home. There
3 was some tension. I guess his sisters, whom I believe
4 were named Patty and Gail, would come and visit mom and it
5 was upsetting to her, John described, and he described
6 that after they would leave she would complain, and it
7 would -- I don't know how long were these stays, but I've
8 never been to the house, but he wanted to be able to tell
9 them to leave, but without being the owner he didn't feel
10 he had the right to do that. He knew he didn't have the
11 right to do that, and his mother, he told me, would make
12 comments to him after these visits; you know that's the
13 problem here there's no man around here, and she wanted
14 John to stand up and control it and tell them to leave and
15 I'm done now and that wasn't happening. So I think that
16 was what he was wrestling with.

17 Q. All right, and this is all as related by John,
18 correct?

19 A. That's correct.

20 Q. Okay, because you didn't have any
21 conversations like that with Eleanor, did you?

22 A. I did not.

23 Q. And on page 1-9, the next page, these -- is
24 this your handwriting?

25 A. It is.

1 Q. Okay. It appears to be dated April 22nd of
2 2016?

3 A. Correct.

4 Q. And this has reference to a -- do you know if
5 this is in reference to a phone call or an office visit?

6 A. This is a phone call.

7 Q. Okay, and what -- was John calling you?

8 A. Yes.

9 Q. And what was he calling about?

10 A. Well from the text of my notes it appears to
11 be another recitation of the circumstance I just
12 described --

13 Q. Okay.

14 A. -- that mom was feeling overwhelmed by visits
15 and she wants to see them one at a time, and there's some
16 history camped up in here, but I think this is after there
17 had been a visit around Easter time. His sisters or
18 sister, I don't know whom, which one of them had called
19 the police and so on.

20 Q. There's a reference about there's -- sis got
21 revocation of POA in mail?

22 A. Yes.

23 Q. Do you know what that refers to?

24 A. I mentioned too that John had a power of
25 attorney dated 2011 and he had, oh, I think a year before

1 this faxed me a copy of it. He was -- and we had since
2 executed a new power of attorney because some bank wanted
3 to see an original and the attorney who had prepared the
4 original, O'Brien somebody, was no longer in business up
5 here so he wasn't able to facilitate that. We did a new
6 power of attorney.

7 I'm guessing only that he had taken it to the
8 bank and then at least was the first time that I
9 discovered there was another power of attorney and he
10 asked what needs to be done to revoke that. Mom doesn't
11 want that. This is his recitation to me. I need a
12 writing, something clear and unequivocal, that revokes it
13 and I think I recall at a meeting with Eleanor signing and
14 notarizing the revocation letter which was short and
15 sweet. John drafted, I did not, but it was -- I told him
16 it doesn't need to run on in length. Say what you want to
17 do and make it clear, and then you need to deliver notice
18 of that to the agent that was empowered. I guess he sent
19 it out in the mail and that tipped over some anxieties
20 with his sisters.

21 Q. Okay. The notes indicate that John was a
22 little unclear about why he is calling me today?

23 A. That's an unusual editorial note of mine. It
24 just seemed like he was anxious, but there wasn't any
25 particular objective to it other than to call and seek

1 counsel, and at some point I told him well I'm not really
2 your attorney. I'm not in a position to tell you what you
3 need to do to protect your circumstance here. That's
4 awkward. I'm sorry, but what happened when the police
5 came. I don't recall anything about the substance of that
6 conversation given the passage of time.

7 Q. Okay, but you were clear with John that you
8 were not his attorney?

9 A. Yes I think I was.

10 Q. Okay.

11 A. Yeah. It's always been an opening salvo of
12 mine. Yeah. Multiple clients all around this table
13 because there will come a time, even if I don't see it
14 now, when that will become awkward. So --

15 Q. Okay. The next page is 1-10. This looks like
16 it's referencing your visit with Walter Decker from Adult
17 Protective Services?

18 A. Correct.

19 Q. The last page was 1-11 and it doesn't appear
20 to be dated, but I don't know if that note means anything
21 to you. Is that from your assistant?

22 A. Well I think it is dated and given what I
23 recall about its place in the file --

24 Q. Okay.

25 A. -- John McDonald had called. I called back

1 May 5, 2016, May 9, 2016, and he didn't have any e-mail or
2 anything and it said, as the note says, his mailbox was
3 full. So I can't leave any message to let him know that I
4 called back, and I have no idea if that's a landline or a
5 cell.

6 Q. Okay. So those are all the notes that I have
7 from your file. Do I appear to be missing anything major
8 that you know of?

9 A. No. This was to my assistant here copy this
10 thing.

11 Q. Okay.

12 A. It doesn't have to be pretty. It just is what
13 it is.

14 Q. Okay. I do have your invoices that I have
15 marked as exhibit 2. I'm looking at the first page which
16 I have marked as 2-1 and the date is -- the entry date is
17 February 17th of 2015; meet here with John to discuss
18 legal and tax issues for plan of succession with property
19 of Eleanor F. McDonald, and we reviewed the notes from
20 that meeting I believe?

21 A. I believe we did.

22 Q. Okay, and that was at your office again?

23 A. Yes it is.

24 Q. Okay, and the bill was sent to John McDonald
25 at his po box?

1 A. That was the address for both of them. That
2 was, I think, his mother's address as well.

3 Q. Is that what he told you?

4 A. Yes he did.

5 Q. Okay.

6 A. It was also the address that was used for both
7 parties on the property transfer tax return as I recall.

8 Q. Okay. Do you know whether Eleanor McDonald
9 was receiving mail directly at the house at 4 Vine Street?

10 A. I have no way of knowing that.

11 Q. The next page is 2-2. Looks like an invoice
12 statement dated March 26th of 2015. Again mailed to John
13 McDonald at PO Box 162.

14 A. That's what it says.

15 Q. Okay. The next page 2-3 looks like a payment
16 history form and payment received April 13, 2015 in the
17 amount of \$286; is that right?

18 A. Appears to be what it says. I think the
19 document speaks.

20 Q. Do you know who paid that and what form it was
21 received?

22 A. I don't, but believe that from time to time I
23 recall seeing checks that were signed by John, but I don't
24 open the checks, I don't put the checks in the bank. I
25 occasionally see them, but I don't inspect every payment.

1

[REDACTED]

7

[REDACTED]

1

[REDACTED]

8

[REDACTED]

16

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 Q. Okay, and then the last invoice that I have is
2 2-10. Looks like it reflects a telephone conference with
3 John on March 30th and a meeting with John and Eleanor to
4 notarize the letter revoking the power of attorney for
5 Patricia?

6 A. That's right.

7 Q. And that would have been on March 30th,
8 correct?

9 A. That's what it says.

10 Q. Okay.

11 A. No that's not what it says.

12 Q. Okay.

13 A. Perhaps it is. Telephone conferences 28th and
14 29th and the date of my time slip was apparently March 30,
15 2016.

16 Q. Okay. So do you know if you had telephone
17 conferences with John on both the 28th and the 29th?

18 A. That's what it says.

19 Q. Okay, and do you know when the meeting was
20 with John and Eleanor to notarize the letter?

21 A. Apparently on or about the 30th. I guess if
22 there's a letter notarized, the date of my signature would
23 then speak for itself.

24 Q. Okay. The next entry on 2-10 is March 31,
25 2016 about the long telephone conference with John

1 regarding issues with his sisters' visits. Is that
2 something that we discussed when we were going through
3 your office notes?

4 A. I don't recall that being among the dates --

5 Q. Right.

6 A. -- that we discussed there and that's entirely
7 possible. These conversations would happen. It seems to
8 me they were more frequent around this time and it was
9 listen and it would go on at some length. There may have
10 been no reason to make notes because there was no new
11 news.

12 Q. Okay because my recollection is that the notes
13 discussing that were dated in April; April 22nd?

14 A. Then certainly that must have been a different
15 conversation because that's not March 31st.

16 Q. Okay. I didn't receive any billing invoices
17 subsequent to this March 3rd, 2016 -- or, I'm sorry, May
18 3rd, 2016 invoice on 2-10. Do you know if there would be
19 subsequent bills after that?

20 A. Not that I know of.

21 Q. Okay.

22 A. I haven't tried to be prepared for a quiz that
23 I would get a grade on here. It is just what my memory
24 serves me here. So this is what Jill retrieved and this
25 is what was sent.

1 Q. All right. Fair enough. I just wanted to go
2 through some of the correspondence that you sent as well.
3 Exhibit 4 could you identify that? What is that?

4 A. Appears to be a letter signed by John saying
5 we received it April 21, 2015.

6 Q. Okay, and he's enclosing a copy of the
7 warranty deed by which his parents --

8 A. It appears so.

9 Q. -- got title, and the purpose of that was to
10 draw up a deed for John J. McDonald and Eleanor F.
11 McDonald as joint tenants with rights of survivorship?

12 A. Right. This would supply property description
13 to me.

14 Q. Okay. So that you could prepare that deed,
15 correct?

16 A. Yes.

17 Q. Okay, and this is from John, right?

18 A. It says it is.

19 Q. Okay. I'm going to show you exhibit 3 and
20 exhibit 5. They are not in order. If I'm not mistaken,
21 it looks like exhibit 5 is the final version of exhibit 3
22 maybe because there are some things that you added. I
23 don't want to put words in your mouth, but does that --
24 just because on the second page of exhibit 5 it looked
25 like there were instructions for the property transfer tax

1 return if he decided to do this on his own?

2 A. It looks that way that there was the
3 possibility this was going to be done remotely. So I was
4 expanding on the instructions in the original draft.

5 Q. All right.

6 A. I doubt both were sent --

7 Q. Okay.

8 A. -- but I don't know.

9 Q. So I mean exhibit 3 was dated April 21, 2015
10 and exhibit 5 is dated April 27, 2015. So it's possible
11 they were just both sent?

12 A. It's my habit to prepare some correspondence
13 at the time I'm preparing a deed and then to speak with
14 the client after the job is done and what are we going to
15 do now, and maybe after I learned more about what he
16 planned to do I expanded my letter.

17 Q. Okay, and this was directed to John -- both of
18 these letters, correct?

19 A. That's what they say.

20 Q. Okay. Exhibit 6 is that something that your
21 office received from John McDonald?

22 A. It appears so.

23 Q. Is the date --

24 A. That is my fax number.

25 Q. -- September 22nd of 2015 and do you know the

1 purpose of this correspondence?

2 A. This appears to be among the openers to his
3 request to prepare a new power of attorney.

4 Q. Okay. Showing what the Bank of America needed
5 to process the documents?

6 A. It's -- Bank of America wrote the letter. I'm
7 not going to tell you why they were writing it or what
8 they needed. I know John had a power of attorney, but
9 have no idea because I never saw the original. So I don't
10 know where it is or what they had or what they -- what or
11 why they needed it.

12 Q. Okay, and did he explain to you why they
13 needed it? Did John explain to you?

14 A. This was consistent with his desire to avoid
15 the probate, at least get his name jointly on some bank
16 accounts, but I never oversaw any of that, but I presume
17 he was down there trying to do some banking with his
18 mother's account, but that's presumption only.

19 Q. Okay. Exhibit 7 is this another fax from John
20 McDonald to you?

21 A. It appears to be.

22 Q. And what is he sending you with this fax?

23 A. Apparently what's attached to it which is a
24 copy of a power of attorney.

25 Q. The power of attorney that was executed back

1 in 2011?

2 A. It says that. I wasn't present. I didn't
3 draw it. I don't know.

4 Q. Right, but do you remember getting this from
5 John?

6 A. Yes.

7 Q. Okay, and do you know why he would be sending
8 you this?

9 A. Probably because I asked him to.

10 Q. Okay.

11 A. Why are you being questioned about this power
12 of attorney. You told me you had a power of attorney.
13 You mentioned that in our first encounter and I probably
14 asked, don't remember, but send me that. I want to see
15 it.

16 Q. Okay.

17 A. So he was finally doing that because what
18 problem do we have to solve here? Is there something
19 wrong with the power that you have? So he sent me this.

20 Q. Okay, and I mean did he tell you what was
21 wrong with it as far as --

22 A. I can't necessarily see that there's anything
23 wrong with it, but it didn't matter what I thought or he
24 thought. I think at the time it mattered what Bank of
25 America thought.

1 Q. Okay, and so is he asking you to prepare a new
2 power of attorney?

3 A. I don't recall whether he asked me to do that
4 or, you know, I said well we can prepare a new one if what
5 they need is original ink and original stamp and you've
6 got one that appears to be perfectly valid here, and it's
7 common in Vermont to record a copy of a power of attorney
8 in a real estate transaction, for example, so it was a --
9 you have the power. Let's try and feed Bank of America
10 the food it has ordered.

11 Q. Okay. I'm going to show you what I have
12 marked as exhibit 8. This appears to be a letter to --
13 that you wrote to John September 29th of 2015?

14 A. It is that.

15 Q. And what's the purpose of this letter to John?

16 A. I'm reading it.

17 Q. Okay. I think this is a -- it's advice to
18 him, but it is somewhat self serving. I'd become
19 concerned, we have gone two days, I can't see you have
20 recorded anything, we have done a power of attorney here.
21 This seems to be wandering a bit. I want it -- I want to
22 make some record that I have told you that you ought to
23 record this, and I'm sure I had advised him in our first
24 conversation that if he had any doubts about what the tax
25 consequences, the implications for the attribution of

1 basis in this real property might be, he should seek the
2 advice of an accountant. So I'm making the record that
3 was advice that I had given.

4 Q. Okay. That you could not forecast with
5 precision the tax or Medicaid eligibility results, for
6 example, that may occur as a result of the transfers?

7 A. Yes.

8 Q. You were also advising him to record the deed
9 that was executed on June 25, 2015, is that right, in the
10 last paragraph?

11 A. I have told him what the risks were if he did
12 not. I think the letter speaks for itself.

13 Q. So that -- and you said it should be recorded
14 so that they would have priority over claims of third
15 parties, correct?

16 A. Garden variety advice. If a deed has been
17 given to property and the grantee fails to record it and
18 the third party doesn't know about it and somebody comes
19 in and records something, then you've lost your place in
20 line.

21 Q. Okay. So you didn't have any particular third
22 parties in mind?

23 A. I certainly did not.

24 Q. Okay. Did you ever discuss the tax or
25 Medicaid eligibility issues with Eleanor at any time?

1 A. Not in any detail, no. There were cursory
2 conversations that we had when I met with her to try to
3 give me sufficient confidence that she was making eye
4 contact, knew why she was here, knew who John was, knew
5 what she was signing. They were brief visits, but she
6 was, as I say, feeble but with it enough to, you know, get
7 in the car and have John take her down here or leave the
8 house and do that and was -- he didn't have to stick her
9 with anything. She's awake and appears to me to be alert,
10 not on the snooze or the nod, but we didn't have any deep
11 discussion about tax consequences. Frankly, the tax
12 consequences of the transaction are likely of more concern
13 to John and Medicaid eligibility perhaps of interest to
14 her, but that falls on the generation below ordinarily
15 with no surviving spouse.

16 Q. So did you discuss the Medicaid eligibility
17 issues with Eleanor at any time?

18 A. No I did not. Only with John.

19 Q. Okay.

20 A. And then in the briefest way having told him
21 that I am not expert in those matters.

22 Q. Exhibit --

23 A. I will expand on that.

24 Q. Okay.

25 A. The notes in those opening conversations about

1 what the extent of her assets were, were probably a poke
2 in the direction of trying to be sure that there wasn't an
3 obvious problem with eligibility or what kind of and the
4 amount of assets she had on hand, and then once the
5 amounts proved to be modest enough to not really light it
6 up for me, stop, we got to do something different here, I
7 just proceeded.

8 Q. Okay. Exhibit 9 appears to be a letter from
9 you to John dated January 22nd of 2016?

10 A. Yes.

11 Q. And enclosing a cover letter to the city
12 clerk; is that right?

13 A. That's correct, and that's because the deed
14 done back in April had not been recorded and I had given
15 him a recording letter at the time. It hadn't been used
16 and I didn't want to my letter to be of stale date. Okay
17 here's a new letter.

18 Q. So there were -- as I understand it there were
19 two deeds. One was executed in June, but you had prepared
20 that in April; is that right?

21 A. Yes. That's correct.

22 Q. So when you refer to the April deed you're
23 referring to the deed that was actually executed at the
24 end of June in 2015?

25 A. That's correct I believe.

1 Q. Okay, and you were providing this cover letter
2 to John so that he could record the deed himself?

3 A. Yes. He was capable of recording the deed. I
4 was giving him the letter so that I would -- because the
5 letter directs the clerk to send the record deed back to
6 me. So that's one attempt of mine at being sure that I
7 would know if it were done.

8 Q. So exhibit 10 is dated -- also dated January
9 22nd of 2016 and this copy is signed and this is recording
10 the deed that was executed on June 25th of 2015; is that
11 correct?

12 A. Yes it is.

13 Q. Okay. Now is this letter -- I'm trying to
14 understand the sequence here. Is this a letter that you
15 sent with the original deed or did you give John the
16 letter and then he filed the deed?

17 A. I gave it to John.

18 Q. Okay.

19 A. I see January 22nd. Maybe it's more accurate
20 to say I don't recall.

21 Q. Okay.

22 A. I don't.

23 Q. Okay. Fair enough. In any event it does
24 appear the deed was actually recorded on January 29th of
25 2016 according to the notation --

1 A. From the endorsement on the deed.

2 Q. Okay, and then exhibit 11 looks like a letter
3 that you sent to John actually enclosing the original
4 warranty deed?

5 A. It had come back -- the deed had come back to
6 the clerk and I wrote, as is my habit, to return the
7 original recorded instrument.

8 Q. All right. Thank you. Exhibit 14 is the
9 actual quit claim deed that was executed on June 25, 2015,
10 and is this the one that you drove to Burlington?

11 A. As I recall, yes it is.

12 Q. Okay. So how did you and John decide on the
13 location where the deed would be executed?

14 A. I did not decide. John did.

15 Q. Okay. What did he -- what did he -- where did
16 he tell you that you would meet?

17 A. As we noted from my notes we were to meet in
18 the parking lot and then from there I got in John's car,
19 Eleanor's car, whoever owned the car, and we drove to a
20 nearby church. I don't recall the name of the church, but
21 it was the Catholic church that had apparently been the
22 family church chosen because of I think their comfort with
23 that location.

24 Q. Okay. So you met John and Eleanor at the --
25 at a Shaw's parking lot?

1 A. That's correct.

2 Q. And then you got in their car?

3 A. That's correct.

4 Q. Okay, and do you remember where everybody was
5 sitting?

6 A. For the ride over to the church?

7 Q. Yes.

8 A. John was driving, Eleanor was in the passenger
9 seat, and I was in the back seat.

10 Q. All right, and then you drove from there to
11 their church; is that right?

12 A. A nearby Catholic church.

13 Q. Okay, and what happened when you got to the
14 church?

15 A. Well that was to be the venue for the signing
16 of this deed and I began to -- and I think this may have
17 been my first meeting with Eleanor and I began speaking to
18 her from the back seat. This was a little irregular and I
19 found that wasn't working. It was a nice day so I got out
20 of the car and went around to the passenger side and
21 opened the door and said we ought to do something a little
22 more direct here; had a brief conversation with her, the
23 precise content of which I don't recall, but introduced
24 myself, try to make her feel comfortable, ask a question
25 about whether she -- do you understand this is a deed that

1 will transfer the title to your property to the joint
2 names of you and John, and do you understand that, and a
3 nod, and you need to speak please ma'am, and a feeble yes
4 comes out, and she was smiling as I recall. I have a
5 pleasant memory of that.

6 Q. Where was John when this conversation --

7 A. He's sitting in the driver's seat.

8 Q. All right.

9 A. And not really participating.

10 Q. Okay, and so what conversation did you have
11 with her to make sure that she understood the nature of
12 what she was signing?

13 A. Only a brief and direct conversation. This
14 deed will create an estate where the property will be in
15 the joint names and I'm not repeating verbatim and nobody
16 was recording it, but explaining that this is a transfer
17 of property and I understand that's what you wish to
18 happen that the property be in joint names of you and John
19 so that when time comes the property may be his alone, and
20 I recall John interjecting. Apparently both were quite
21 religious. They seemed very attentive and at ease --
22 attentive to her and desirous there be -- we be at this
23 church venue where she would feel comfortable, and mom
24 this means that when you go to heaven I can stay and keep
25 living in the house or words to that effect, and there was

1 some indication of clear assent from her. So --

2 Q. What was the indication of clear assent from
3 her?

4 A. The formation of the word yes in answer to my
5 questions. It wasn't just a nod and a wink. I like to
6 get some verbal response, some indication that this isn't
7 some fast shuffle here, but rather that the person however
8 feeble knows what they are doing, and it appeared to me
9 that she did.

10 Q. Okay. Did John tell you that she had been
11 diagnosed with Alzheimer's related dementia in 2009?

12 A. Never.

13 Q. Were you aware that his -- that her general
14 physician was of the opinion that as of 2014 she would not
15 have the capacity to execute documents of this kind?

16 A. Never.

17 Q. Okay.

18 A. In fact, that appears to be a bit against the
19 grain of what was represented to me.

20 Q. By John?

21 A. Yes.

22 Q. Okay. Did you have a specific discussion with
23 John about his mother's capacity to enter -- to execute
24 these documents?

25 A. In our opening interview, yes. It's always a

1 point of concern, you know, is she under any guardianship
2 now, under any legal disability that you know of, and it
3 was no she has good days and bad days, but she's okay.
4 She knows who I am, she knows where she is, she knows
5 where home is, she knows what she's doing. On any given
6 day she might seem to be a little more tired or out of it
7 than another, but -- and that was it. That's the brief
8 test conversation, the capacity to know who you are, where
9 you are, and what you're doing.

10 Q. Okay.

11 A. And who other people are.

12 Q. And -- I'm sorry?

13 A. And who other people are. She knows you,
14 John, right, and she isn't going to think I'm like her
15 brother when we meet.

16 Q. Okay. I mean Detective Decker in his
17 interview with you indicated that the only word that
18 Eleanor said to you at this meeting was yes according to
19 you. Is that consistent -- seems to be consistent with
20 what you're saying now in terms of her ability to
21 understand the documents?

22 A. You know I recall more than that. I certainly
23 couldn't repeat verbatim what she said, but there was more
24 than just a yes, and Detective Decker -- and I recall
25 reviewing his notes at the time -- this is a year and a

1 half ago when you I think sent me or somebody sent me a
2 copy of his write-up and it seemed a little adversarial as
3 if he were upset; no I'm not giving you anything without a
4 court order, and you have to, no sir I don't, and so his
5 saying that I told him that the only word she said was yes
6 I have no recollection of a specific question like that
7 though it might have occurred. The tenor of that first
8 meeting might be more that did she say yes to which I
9 responded yes.

10 Q. Okay. This meeting at the parking lot at
11 Shaw's and then in the church that's the first time that
12 you ever met Eleanor in person; is that correct?

13 A. That I recall. That's correct.

14 Q. Did you ever meet with her alone without John
15 present?

16 A. No I didn't.

17 Q. Do you know why the meeting was in the parking
18 lot of the church as opposed to at her home?

19 A. No I don't. Mom likes to get out, something
20 like that, get her out of the house at least to give her a
21 drive, get her out because she's, you know, I guess in her
22 early 90's at this time, and having had such experiences
23 with my mother that seemed consistent; want to get out,
24 fine.

25 Q. In your probate practice dealing with elderly

1 clients do you have a practice or routine of meeting with
2 them alone without anybody else present?

3 A. Sometimes depending on circumstances. I
4 wouldn't say that -- my probate practice is not a daily
5 event. These things come and go, but if I have two
6 children in the room and I'm being told how this person
7 wants to divide their property, then it's excuse me you
8 folks may need to leave. I would like to hear this, but
9 that's just based on my sense at the time.

10 Q. Okay. Do you recall today any words that
11 Eleanor may have said about the execution of the documents
12 at the church other than the word yes?

13 A. I don't recall. I know there was some
14 conversation however brief. There was more than just yes.

15 Q. What was the conversation?

16 A. It was, you know, around this event and John's
17 attempt to explain when you go to heaven, mom, and my --
18 it was just more than a yes. I recall that there was some
19 brief exchange both between Eleanor and I and between John
20 and his mother, but no way I could swear to what its
21 precise content was.

22 Q. And so she was seated in the front seat of the
23 vehicle when she signed the deed?

24 A. That's correct.

25 Q. And you were standing next to the car outside

1 the vehicle?

2 A. I was kneeling a little bit. If you're
3 standing, you can't even see. I was down to the point
4 where I was face-to-face with her and she could have some
5 idea to whom she was speaking and what was going on and I
6 could collect the -- whatever assurance I felt were
7 appropriate that she knew what she was doing. Whether she
8 did or not --

9 Q. Okay. There were other documents in addition
10 to the deed that you executed with her that day, correct?

11 A. There were though I was -- I don't think I was
12 told that that was going to occur and I probably asked --
13 makes me nervous to put my signature on something and not
14 have a copy of it for myself and asked that I be sent
15 copies and I don't believe that ever happened, but so be
16 that. I recall that one of them was I think for a
17 transfer of an IRA account and I recall a conversation
18 about that.

19 Q. All right. So exhibit 15 appears to be a form
20 from Key Bank for the liquidation of an IRA?

21 A. Yes it does.

22 Q. And this is also a form that you executed in
23 the church parking lot, correct?

24 A. Yes. That's correct.

25 Q. And when did you learn that you would be

1 notarizing this form?

2 A. At that time. At the time of the meeting.

3 Q. So what was explained to you about the reason
4 for this?

5 A. That this was a rollover IRA. That is -- I
6 think it had resulted -- it existed because of the
7 father's -- late John L. McDonald's contributions to some
8 account and then it had passed to Eleanor.

9 Q. And who is telling you this?

10 A. John recited it and said, you know, this is
11 dad's IRA that you own, mom, or something like that, and
12 this was consistent with the conversation that had
13 happened when we met about trying to avoid the probate
14 circumstance for this, and it sounded like there were
15 really like only two or three items that were out there
16 for -- to enable and avoid probate; the house, bank
17 account in sole name, and this, and there were other items
18 that were jointly titled. I did not inquire deeply about
19 what they might have been. So this was -- though I had no
20 idea I would be asked to notarize this, it had been
21 mentioned before. So in that respect it was not a
22 complete surprise.

23 Q. Was it explained to you why it was being
24 cashed out as opposed to -- let me ask this question
25 first. Do you know whether Eleanor was already listed as

1 a beneficiary on this IRA?

2 A. No I don't, but I guess I thought that she was
3 the owner of it.

4 Q. She was already the owner of it, right?

5 A. That's what I think I understood, yes, but
6 nobody at Key Bank had told me that.

7 Q. All right. So this form was so it could be
8 cashed out; is that correct?

9 A. That's correct. It was to enable liquidation.

10 Q. Okay, and what conversation did you have with
11 Eleanor about this liquidation?

12 A. Another brief conversation as I looked it over
13 and said if you sign this, this is going to give your son
14 John the right to cash this account out. Do you
15 understand that, and I got a yes. I had to get something
16 or sorry game is over we're not going to be able to
17 proceed. Yes I understand that, and it's your wish that
18 he be able to do that? You're doing this voluntarily?
19 Yes. And that conversation probably was just that brief.

20 Q. Okay.

21 A. But there was a prompt response not -- she
22 wasn't lolling her head around and saying yes to the roof
23 of the car. She was looking at me.

24 Q. Did you talk about the taxes that would be
25 withheld or anything like that?

1 A. No, but John seemed to be aware that there was
2 going to be a tax implication. I explained to John at
3 some point that this money has never been taxed. This is
4 everybody's surprise if they don't know what's going on
5 when your parent's retirement account comes to them or
6 comes to the survivor. Well good. Not exactly. It's
7 only partly good.

8 Q. Right. Did you ever tell Eleanor that she
9 would be taxed on the amount of the payout? Did you
10 consider that to be your role?

11 A. I guess it was clear to me that John knew that
12 that was going to happen and it also seemed clear enough
13 that Eleanor was not -- whatever else she was concerned
14 about she's not deeply worried with her tax circumstance
15 at this particular stage in her life. This would have a
16 tax consequence. I did not have a direct conversation
17 with her about the tax consequences of cashing it out.

18 Q. And there was a third document that you
19 executed at the car as I understand it. Show you what I
20 have had marked as exhibit 17.

21 MR. LANGROCK: Is there a 16?

22 MR. HUGHES: These are out of order
23 because I'm my own paralegal.

24 BY MR. HUGHES:

25 Q. So exhibit 17 appears to be a living trust

1 document. Yes?

2 A. Uh-huh. Yes it does.

3 Q. Okay. Is this the trust document that in your
4 notes early on that indicated that it wasn't your
5 responsibility to prepare?

6 A. I don't know.

7 Q. Did you prepare this document?

8 A. No I didn't.

9 Q. All right. Was this document presented to you
10 in the church parking lot?

11 A. It must have been because it is the same date,
12 but as I say no copies. Just by request of what else I
13 signed were there and it was a nice car, but it didn't
14 have a copying machine in it.

15 Q. Do you know when that document was presented
16 to you to be executed by Eleanor?

17 A. Do I know when?

18 Q. When it was?

19 A. Would you repeat the question?

20 Q. Sure. When was this document given to you so
21 that Eleanor could execute it in your presence?

22 A. Presumably at the church parking lot on the
23 25th day of June since it's dated the same day as the deed
24 and the IRA liquidation and authorization.

25 Q. Do you remember any conversation that day

1 either with John or with Eleanor about this living trust
2 document?

3 A. I have no specific recollection. I'm sure it
4 was more than sign this too. I'm seeing it for the first
5 time. I read through it and say all right this is a trust
6 document. The sole beneficiary appears to be John J. and
7 so you understand what this does and the effect and this
8 all seemed -- and yes I do were the responses again, and
9 none of this appeared inconsistent with the way the whole
10 circumstance had been described to me beginning with her
11 telephone conversations in February and our meeting in
12 April that we want to avoid probate and I'm to be the
13 beneficiary and so on.

14 Q. Your phone conversations with John?

15 A. Yes with John. That's correct.

16 Q. But you don't remember specifically what you
17 told Eleanor about this living trust document?

18 A. Specifically no. I'm sure that I explained to
19 her what my cursory understanding of the document was
20 after looking at it. I certainly did not ask her to sign
21 it without having some awareness of what it was.

22 Q. And what words did she say to you to indicate
23 that she understood what the document was?

24 A. Either yes or I do.

25 Q. Did you ever ask her to explain, for example,

1 what she thought that the quit claim deed meant or what
2 this living trust document meant?

3 A. Not that I recall.

4 Q. Okay. How long did the meeting at the church
5 parking lot last?

6 A. Perhaps 15 minutes or so. Maybe 20. It might
7 not have been that long, but I was presented with some new
8 stuff to sign and took time enough to believe I understood
9 what they were.

10 Q. Okay, and after the documents were executed
11 what did you do?

12 A. After they were executed then I got back in
13 the back seat and, you know, passed a kind greeting. I
14 know that Eleanor handed me a little bag with some Lake
15 Champlain chocolates in it, and I remember that because I
16 like them and thank you very much and there was a goodbye
17 and held her hand and I got in the back seat, John drove
18 me back to where my vehicle was, and I proceeded back to
19 my office.

20 Q. Why did you meet at Shaw's instead of directly
21 at the church?

22 A. Because I told John you need to give me an
23 easy place to find you because -- we'll meet at the
24 church. Well I -- and is there some place nearby that
25 I'll be able to find easily when I get off the interstate

1 or something because I'm sorry I'm just not completely
2 fluent with the addresses. I come up here from time to
3 time for transactions, but then it's turn around and go.
4 So that was just a place that would be convenient for me
5 to be able to find him.

6 Q. Do you remember any other conversations that
7 you had with Eleanor that we haven't already talked about
8 on June 25, 2015?

9 A. I have no specific memory. No.

10 Q. All right. I would like to take a short
11 break.

12 (Recess.)

13 BY MR. HUGHES:

14 Q. After June 25, 2015 when is the next time that
15 you saw Eleanor McDonald?

16 A. I don't recall exactly. Sometime in the fall.

17 Q. I'm going to show you what I have marked as
18 exhibit 14A and is this the quit claim deed from Eleanor
19 and John to John solely?

20 A. Yes it is.

21 Q. All right, and did John indicate to you why he
22 wanted this document executed?

23 A. I think, as I described, he had not yet
24 recorded the other one. I'm sure I told him that the way
25 this is drafted usually going to have to record them both

1 because you're both named as grantors here. So this is as
2 if that joint tenancy had been created, but as I explained
3 earlier he was -- told me that he was responding to his
4 mother's desire to have him be more assertive with his
5 sisters --

6 Q. Okay.

7 A. -- and thought this might advance that cause.

8 Q. All right, and it appears this was executed on
9 September 29th of 2015?

10 A. It does appear so.

11 Q. Is that consistent with your recollection of
12 when it happened?

13 A. It really doesn't matter what I recall.

14 Q. Okay.

15 A. That's the date on the document.

16 Q. Is that when you executed the document?

17 A. I have never executed a document and put
18 anything other than the date on it ever.

19 Q. Okay. Between June 25th of 2015 and when this
20 deed was executed what conversations did you have with
21 Eleanor McDonald?

22 A. I think none.

23 Q. And where was this document executed?

24 A. This was done in White River Junction I recall
25 and I presume that's what it says. Yes. At Hartford. So

1 this was done at my office. John drove to my office.

2 Q. All right, and who made the appointment?

3 A. John did.

4 Q. And did Eleanor come into your office to
5 execute documents?

6 A. No. I never saw Eleanor leave the car.

7 Q. Okay.

8 A. And that happens if not frequently, you know,
9 from time to time. She didn't appear to be in a condition
10 to -- she didn't look like she was going to get out and
11 hop around any, but she also appeared to remember me.

12 Q. Okay.

13 A. I have no idea whether she did or not.

14 Q. What did she say that indicated that she --

15 A. Oh hello. Some greeting of some sort. Some
16 smile. Some look of recognition or what I took to be so.

17 Q. Was this the same car that you met her in --

18 A. Yes it was.

19 Q. -- in the church parking lot? Yes?

20 A. I didn't meet her in the church parking lot.
21 I drove to the lot.

22 Q. I understand that, but was this the same car
23 that she was sitting in when the deeds were executed in
24 June?

25 A. Yes it was.

1 Q. So how did you know to come out to the parking
2 lot to execute this deed with Eleanor?

3 A. Well John had told me he was coming, I
4 presume, and then they came and the parking lot is a space
5 that's right in front of my office.

6 Q. Okay, and was John -- where was John when this
7 deed was executed?

8 A. I think back in the driver's seat by then. I
9 mean I didn't -- I don't stand there at the window waiting
10 for reasons to come out and greet who may drive in. So he
11 would have come in and said we're here, good, and I
12 presume I knew why they were there and we're going to go
13 out and do this second deed --

14 Q. Okay.

15 A. -- and so we did.

16 Q. So what conversation did you have with Eleanor
17 before she signed this deed?

18 A. Without precision Eleanor this is another deed
19 like the one we signed a couple of months back, but this
20 one puts the property into John's name alone so that he
21 will control the property when you sign this. Do you
22 understand that? I remember an answer and she gave one
23 yes or I do. I don't recall what.

24 Q. Okay.

25 A. As with the court reporter, a grunt or a noise

1 is not what I take as a murmur of assent. I want a word.

2 Q. Right. Did you have any other conversation
3 with her about the deed before she signed it on September?

4 A. Not that I recall, sir.

5 Q. Okay. I'm showing you what I have marked as
6 exhibit 17A. Can you identify that document?

7 A. Power of attorney document prepared by me
8 signed September 29, 2015.

9 Q. And was --

10 A. Notarized by me with my assistant Jill Chase
11 as the witness.

12 Q. All right, and was this document signed by
13 Eleanor in the front seat of the car as well?

14 A. Yes.

15 Q. At the same time?

16 A. As I said Eleanor never left the front seat of
17 the car.

18 Q. Okay. Did she appear to you to be physically
19 incapable of leaving the car?

20 A. I don't know that. I don't know that she was
21 incapable. I mean if it had caught on fire I wouldn't be
22 surprised to have seen her find a way out, but I guess I
23 have no opinion about whether she was incapable. She was
24 certainly more comfortable where she was.

25 Q. How would you describe her physical appearance

1 on that day?

2 A. Frail would be the best I could say.

3 Q. Did you have any discussions with Eleanor
4 about the potential Medicaid implications of this quit
5 claim deed in September?

6 A. No.

7 Q. And how long did the meeting last in front of
8 your office on September 29, 2015?

9 A. Oh quite brief. I expect maybe 10, 15 minutes
10 tops.

11 Q. Do you know when the next time you saw Eleanor
12 McDonald was after that September 29th meeting?

13 A. Some time I think after the calendar turned.
14 Seems to me there was a Catholic Diocese Advance Directive
15 of some sort that was tended to and I don't think that
16 happened on this date in September.

17 Q. Exhibit 16 is that the advance directive that
18 you're talking about?

19 A. Yup.

20 Q. Appears to be dated February 4th of 2016?

21 A. It does.

22 Q. Where was this signed?

23 A. Same place, at my office in White River
24 Junction; by again automobile --

25 Q. Okay.

1 A. -- was the setting. She did not leave the
2 car.

3 Q. And what discussions did you have with Eleanor
4 about the advance directive before she signed it?

5 A. You know what. I seldom have much discussion
6 about these things. Other attorneys have different
7 practices. I'll expand by saying that when a client comes
8 in for a plain vanilla will appointment, then will,
9 general power of attorney, advance directive, those are
10 the three principal points, if there's nothing complicated
11 going on, I'll give you the name of a web site. I am not
12 going to help you fill out your advance directive. I'm
13 not a doctor. You make your choices. You speak with your
14 primary caregiver. You speak with your -- whatever your
15 religious affiliation may be, if any, and then I'll
16 witness your signature if you want, but I'm not telling
17 you whether you should or could or might or ought. No
18 part of it. So we were there to witness her signature.

19 Q. And that's it? And that's it?

20 A. That was pretty much it. Yes, sir.

21 Q. So you didn't go over the specific
22 instructions contained within the document with her?

23 A. No I did not.

24 Q. Okay.

25 A. I witnessed her signature. It does not ask me

1 to pass any judgment about anything.

2 Q. Okay. Did you talk with her about who was
3 being appointed under the advance directive?

4 A. I don't recall. Very possibly not.

5 Q. Or who the backup was?

6 A. No. I think I happen to recall it was Andrew
7 whom I do not know, but no I did not. I witnessed her
8 signature.

9 Q. And do you recall what her physical condition
10 was in February when this document was executed?

11 A. I don't think I noticed any real significant
12 difference among these meetings. She was -- no I don't
13 recall any difference. Frail, but friendly and present
14 and accounted for was what I thought. She knew she was
15 there. She knew she was signing something. In this case
16 it didn't mean do you know what this is. There's no
17 particular duty on me at this point. I think I asked John
18 so why are you here to do this and I don't recall the
19 answer except to the effect well she knows you and she's
20 comfortable with you and there's nothing frightening or
21 threatening about it. So --

22 Q. So John drove her to your office for the sole
23 purpose of executing this advance directive?

24 A. I think perhaps -- I don't recall if there was
25 any other reason, but unless you have another document

1 that I signed on that date I think that is possible.

2 Q. I should be more specific because you
3 obviously don't know what else John was planning for that
4 day, but as far as your involvement goes this was the only
5 thing that he asked you to do? Yes?

6 A. Yes. By this point the deed deal was done
7 because that was January of 2016. So that's been taken
8 care of and I guess it hadn't been returned to him yet
9 because that didn't happen until March or so when I sent
10 it back and the clerk sent it back. I don't think there
11 was much else on the plate at this point.

12 Q. Are you aware or did you follow up with John
13 at all about the recording of the September 29th deed?

14 A. I'm sure we had conversations because you saw
15 my letter wondering so how many deeds are we going to do
16 here, which way is it going to tumble, but it was all
17 against the backdrop of this -- as it was recited to me
18 the upset that was being caused by sisters' visits and the
19 criticism John was getting from his mother about their
20 interventions and his struggle with whether he was going
21 to have to be more firm than I suspect he cared to be with
22 his sisters about what were described to me as intrusions.

23 Q. But as I understand it you did not have any
24 discussions with Eleanor McDonald before, during, or after
25 the signing of the advance directive on February 4, 2016?

1 A. Gee I can't imagine that we did not speak at
2 all. This was the third time or so that I had seen the
3 woman and she seemed like a kind soul. So I'm sure there
4 was a greeting of some sort, but we didn't have any
5 discussion about the document. I imagine that this is an
6 advance directive for health care. It's a Catholic church
7 form, but I'm not required to go through a drill with her
8 about do you understand the choices you have made here
9 about whether or not medication will be withheld or
10 anything like that. I'm just not going there.

11 Q. Okay. Do you know the next time that you saw
12 Eleanor after the advance directive was signed?

13 A. Not offhand.

14 Q. Okay. You saw her at least one other time
15 that I'm aware of?

16 A. I believe I may have, but I don't remember the
17 date.

18 Q. Okay. I'm going to show you document that I
19 have marked as exhibit 13.

20 A. Oh yes.

21 Q. This appears to be the document that you
22 referred to earlier revoking Patricia Sundberg's power of
23 attorney; is that correct?

24 A. Yes. This refreshes my recollection.

25 Q. All right, and you said that I believe John

1 McDonald prepared this document?

2 A. Yes after a discussion that he had with me
3 about, you know, what do I need to do here, and I guess it
4 was -- I don't know if it was the bank that had -- when
5 John presented. I don't know so I won't say anything
6 further, but I did meet with Eleanor on 30 March.

7 Q. And where did you meet with her?

8 A. As with the previous two meetings this was at
9 my office in White River Junction.

10 Q. Okay, and was this also in the parking lot?

11 A. It was. He would park the car immediately out
12 front of my office. There's no distance, so came out the
13 door and greeted her there.

14 Q. Had you spoken with Eleanor McDonald since the
15 advance directive was signed and before the revocation of
16 the power of attorney was signed?

17 A. No, sir.

18 Q. All right.

19 A. I had not.

20 Q. And what discussion did you have with Eleanor
21 about the revocation of the power of attorney?

22 A. Only the brief discussion of do you understand
23 that by signing this you are revoking any power of
24 attorney that was given to your daughter Patricia --
25 Patty. Yes I do, and that didn't seem remarkable to me

1 since I had seen what appeared to be a properly executed
2 2011 -- 2011 power of attorney to John as agent from his
3 mother as principal. So I think until very near in time
4 to this March 30th date when I notarized this I wasn't
5 aware that there was any other power of attorney out
6 there.

7 Q. Other than the one that you had executed
8 giving to John --

9 A. Right which seemed to me just a duplication of
10 what was already in existence essentially.

11 Q. So she signed this in your presence then in
12 Hartford, Vermont?

13 A. That's correct.

14 Q. Okay.

15 A. White River Junction is a village within the
16 Town of Hartford. So this too was signed at my office on
17 30 March.

18 Q. Okay. I would like to show you what I have
19 marked as exhibit 12 which appears to me to be the same
20 document except without your notary seal on it; is that
21 correct? Had you ever seen that document?

22 A. Uh-huh. I will give you my guess.

23 Q. Okay.

24 A. And that is that this notariture on the bottom
25 appears to be something that ran through the old fashioned

1 thing called a typewriter in our office, and we probably
2 put that notariture on there and this was what it is that
3 we did. I haven't compared these two. They appear to be
4 quite identical absent the notariture on one of them.

5 Q. Is it something she had signed before you
6 notarized it or did you go in and type the notary line
7 after she had signed it?

8 A. I don't recall.

9 Q. All right. Did you have any conversations
10 with Eleanor McDonald after March 30, 2016?

11 A. I think I can confidently say no now.

12 Q. Okay.

13 MR. LANGROCK: Is this a good time to
14 take a break?

15 MR. HUGHES: Sure.

16 (Recess.)

17 BY MR. HUGHES:

18 Q. After the power of attorney revocation was
19 done do you remember any further conversations with John
20 McDonald?

21 A. Yes. I think as my note showed and you
22 refreshed me then around I think it said April 22nd or
23 something, but there was a conversation or two after that,
24 maybe just the one, about some events around Easter and
25 his sister having called the police and things apparently

1 coming to a head, and then as we also recall it was the
2 9th day of May or something when Walter Decker contacted
3 me and visited me at the office.

4 Q. Have you spoken to John at all since the
5 guardianship was entered?

6 A. No. I think that note of the conversation of
7 late April was the last time and then my note showed, if I
8 recall, that I had tried to return a call to him on May
9 5th and May 9th, 2016, but neither time did I contact him
10 and I have had no contact of any description since then.

11 Q. Have you talked to Mr. Langrock at all since
12 then?

13 A. I don't believe so.

14 Q. Or anyone from that office?

15 A. No. I think you are the only person to whom
16 I've spoken other than, again, to Decker I guess to follow
17 up with him after you got the court order or he did,
18 whomever did, that made me feel comfortable about it after
19 my chat with bar counsel. So --

20 Q. So is it your position that Eleanor was your
21 client throughout this process?

22 A. I think so. Yes.

23 Q. And did you ever have any correspondence from
24 Eleanor?

25 A. No I never did. She didn't -- as you can see

1 her signature is pretty wobbly. I doubt Eleanor -- this
2 is a gratuitous comment, but I don't see she's likely to
3 be corresponding with anybody. Her handwriting seemed to
4 be too enfeebled. She had the look of having some
5 rheumatoid arthritis going on. Her hands were not
6 comfortable.

7 Q. Other than some of the invoices did you send
8 her any correspondence directly?

9 A. No.

10 Q. And you never met alone with her, correct?

11 A. That's correct.

12 MR. HUGHES: All right. That's all that
13 I have. Thank you.

14 MR. LANGROCK: Just a few questions to
15 follow up.

16 EXAMINATION

17 BY MR. LANGROCK:

18 Q. You and I have had no discussions concerning
19 this case at all, have we?

20 A. No, sir. I don't believe we have.

21 Q. And -- go ahead.

22 A. You represent John McDonald and you represent
23 both sisters; is that correct? I know I'm not the
24 interrogator here. Mr. Hughes.

25 MR. HUGHES: That's correct. Yes.

1 BY MR. LANGROCK:

2 Q. Fair.

3 A. Thanks.

4 Q. Let me ask you when you talked to Mr. Decker
5 did you have a feeling he was rather antagonistic towards
6 my client?

7 A. Yes it seemed so, but that would be just tone
8 the voice. He wasn't making overt criticisms, but he was
9 bird dogging it.

10 Q. When you were in the church parking lot and
11 Eleanor signed the documents how physically did she sign
12 them, on the dashboard or her lap?

13 A. In her lap and I had a file with me so I put
14 that underneath the document to provide it some stability.

15 Q. If I understand correctly from your notes,
16 when you first met with him there were three main assets;
17 one was the house, one was the -- a small IRA that had
18 been the father's, and then there was another fairly
19 substantial bank account?

20 A. I think my notes that I saw that I noticed did
21 mention those three; bank account I think I had \$96,000
22 written next to that, and then for some reason I recall
23 the note said about \$12,000 and I think it said life
24 insurance next to my note, and whether that's the same
25 thing as the IRA or not I don't know or whether I made a

1 mistake in notation.

2 Q. In all your conversations with John did he
3 ever suggest at any time that the \$96,000 account should
4 be transferred to his name?

5 A. Should be transferred?

6 Q. To his name?

7 A. No.

8 Q. Did he explain to you the background of the
9 Bank of America IRA of his father in terms of his name
10 being on it?

11 A. No I don't believe he did. I don't recall
12 that he did.

13 Q. Leaving that aside the only thing that he ever
14 suggested his mother wanted was the house and to the trust
15 the contents of the house would go to him when she died?

16 A. That was the principle objective of his coming
17 to me I think. Yes.

18 Q. And in your conversations with Eleanor and
19 with him do you feel confident that that was her desire?
20 That was what she wanted?

21 A. It seemed to be so. Yes.

22 Q. If you had any doubt in that, would you have
23 completed the transaction?

24 A. No.

25 Q. The second deed from both of them to John that

1 was I think you said prepared as a result of the conflict
2 he was having with his sisters?

3 A. I inferred so from John's comments to me. He
4 was struggling with how he was going to be able to control
5 the environment at the house and described it as something
6 his mother wished. Clearly he was not looking forward to
7 any set-to with his sisters whether his mother wished it
8 or not.

9 MR. LANGROCK: That's all I have.

10 MR. HUGHES: Great. Nothing further.

11 Thank you.

12 (Whereupon, the proceeding was
13 adjourned at 11 a.m.)

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S I G N A T U R E

This deposition has been read by me and the answers contained therein are true and accurate.

C. Robert Manby, Jr.

Subscribed to before me, this _____ day of _____, 2017.

Notary Public

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C E R T I F I C A T E

STATE OF VERMONT,)
CHITTENDEN COUNTY, SS.)

I, JoAnn Q. Carson, a Notary Public, within and for the State of Vermont, do hereby certify that I recorded by stenographic means the deposition of C. ROBERT MANBY, JR., a witness appearing at the request of the Plaintiffs, at the Law Offices of Murdoch Hughes & Twarog, 131 Main Street, Burlington, Vermont, on November 28, 2017, beginning at 9 a.m.

I further certify that said witness was sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting, and the foregoing 74 pages are a full, true, and correct transcription of the testimony of said witness to the best of my ability.

I further certify that I am not related to any of the parties thereto or their Counsel, and that I am in no way interested in the outcome of said cause.

Dated at Burlington, Vermont, this 30th day of November, 2017.

JoAnn Q. Carson, RMR, CRR

My Commission Expires February 10, 2019