



### Chronological Index

Doc No.	Description	Vol.	Bates Nos.
1	Ex Parte Petition for Appointment of Special Administrator; filed 10/02/2014	I	AA000001-000005
2	Ex Parte Order Appointing Special Administrator; filed 10/06/2014	I	AA000006
3	Letters of Special Administration; filed 10/13/2014	I	AA000007
4	Notice of Entry of Ex Parte Order Appointing Special Administrator; filed 01/12/2015	I	AA000008-000010
5	Petition for Appointment of Administrator of Intestate Estate Under Full Administration; filed 01/29/2015	I	AA000011-000030
6	Notice of Hearing for Appointment of Administrator with Will Annexed Under Full Administration; filed 01/29/2015	I	AA000031
7	Certificate of Mailing - Notice of Hearing for Appointment of Administrator with Will Annexed Under Full Administration; filed 01/29/2015	I	AA000032
8	Petition for Instructions; filed 05/06/2015	I	AA000033-000055
9	Notice of Hearing on Petition for Instructions; filed 05/06/2015	I	AA000056
10	Certificate of Mailing - Notice of Hearing on Petition for Instructions; filed 05/06/2015	I	AA000057

11	Court Minutes; issued 05/22/2015	I	AA000058-000059
12	Order on Petition for Instructions; filed 05/26/2015	I	AA000060-000061
13	Notice to Creditors; filed 05/27/2015	I	AA000062
14	Statement of Name and Permanent Address of Administrator; filed 05/27/2015	I	AA000063
15	Letters of Administration; filed 05/28/2015	I	AA000064
16	Affidavit of Publication; filed 06/11/2015	I	AA000065
17	Inventory, Appraisal and Record of Value; filed 03/28/2016	I	AA000066-000069
18	First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 05/18/2016	I	AA000070-000075
19	Notice of Hearing on First and Final Report and Accounting and Petition for Final Distribution and Approval of Costs and Fees; filed 05/18/2016	I	AA000076
20	Certificate of Mailing - Inventory, Appraisal and Record of Value and Notice of Hearing on the First and Final Account, Report of Administration, and Petition for Final Distribution and Approval of Costs and Fees; filed 05/18/2016	I	AA000077
21	Certificate of Mailing - Notice to Creditors; filed 05/18/2016	I	AA000078
22	Notice of Appearance - Hutchinson & Steffen; filed 05/20/2016	I	AA000079-000081

23	Petition for Proof of Will and for Issuance of Letters Testamentary Under Full Administration, Petition to Appoint Person Representative, and Petition to Distribute and Close Estate; filed 05/25/2016	I	AA000082-000104
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25	Amended First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 05/25/2016	I	AA000106-000111
26	Last Will and Testament of Theodore E. Scheide; filed 05/31/2016	I	AA000112-000128
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29	Re-Notice of Hearing - First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 08/29/2016	I	AA000131-000138

30	Response to Theodore E. Scheide III's Re-Notice of Hearing on the First and Final Account, Report of Administration and Petition for Final Distribution and Approval of Costs and Fees; filed 09/12/2016	I	AA000139-000140
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41	Opposition to Motion to Reconsider/Clarify, Etc., filed 03/04/2017	II	AA000399-000424
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46	Notice of Motion and Motion for Judgment on the Pleadings (NRC12 (c)); filed 04/21/2017	III	AA000490-000659
47	St. Jude Children's Research Hospital's Motion for Partial Summary Judgment on Non-Revocation of Will Prior to the Decedent's Guardianship and on Decedent's Testamentary Capacity After the Establishment of a Guardianship; filed 04/25/2017	IV	AA000660-000713

48	St. Jude Children's Research Hospital's Opposition to Motion for Judgment on the Pleadings (NRCP 12(c)); filed 05/08/2017	IV	AA000713-000795
49	Respondent's Opposition to Motion for Partial Summary Judgment; filed 05/12/2017	IV	AA000796-000839
50	Reply to St. Jude's Opposition to Motion for Judgment on the Pleadings (NRCP 12(c)), Etc.; filed 05/22/2017	IV	AA000840-000872
51	St. Jude Children's Research Hospital's Reply in Support of Motion for Partial Summary Judgment on Non-Revocation of Will Prior to the Decedent's Guardianship and on Decedent's Testamentary Capacity After the Establishment of a Guardianship; filed 05/23/2017	V	AA000873-000917
52	Respondent's Supplement Regarding Kristin Tyler's Testimony, Etc.; filed 06/01/2017	V	AA000918-000964
53	St. Jude Children's Research Hospital's Reply to Respondent's Supplement Regarding Kristin Tyler's Testimony, Etc.; filed 06/02/2017	V	AA000965-000970
54	Minute Order; served 06/06/2017	V	AA000971-000973
55	Respondent's Trial Brief; filed 06/12/2017	V	AA000974-001067
56	St. Jude Children's Research Hospital's Trial Brief; filed 06/13/2017	V	AA001068-001078
57	Petition for Instructions; filed 06/14/2017	V	AA001079-001081
58	Recorder's Transcript of Proceedings Non-Jury Trial - Day 1; 06/15/2017	VI, VII	AA001082-001363

59	Recorder's Transcript of Proceedings Non-Jury Trial - Day 2; 06/16/2017	VII	AA001364-001407
60	Order Sealing Trial Exhibits; filed 06/26/2017	VII	AA001408
61	Petition for Approval of Accounting and Report of Administration; Petition for Approval of Fees and Costs; filed 01/18/2018	VII	AA001409-001470
62	Decision and Order; filed 08/06/2018	VII	AA001471-001482
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54	Minute Order; served 06/06/2017	V	AA000971-000973
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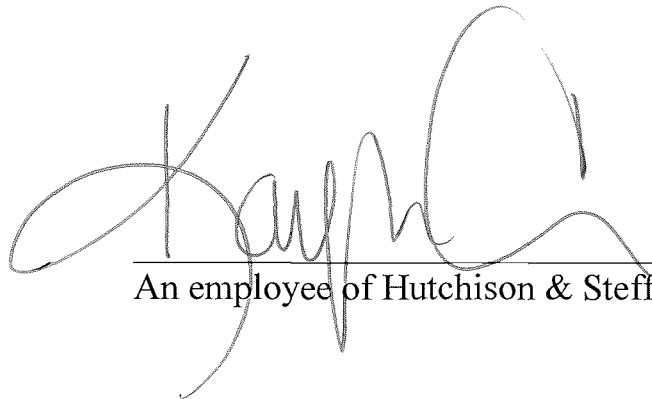
48	St. Jude Children's Research Hospital's Opposition to Motion for Judgment on the Pleadings (NRCP 12(c)); filed 05/08/2017	IV	AA000713-000795
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**CERTIFICATE OF SERVICE**

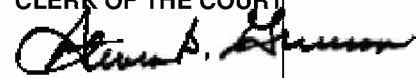
I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date **APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME VI of IX** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Cary Colt Payne, Esq.  
700 S. 8<sup>th</sup> Street  
Las Vegas, NV 89101  
*Attorney for Theodore "Chip" E. Scheide, III*

DATED this 7<sup>th</sup> day of June, 2018.

  
\_\_\_\_\_  
An employee of Hutchison & Steffen, PLLC





1 **RTRAN**

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3  
4  
5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7  
8 In the Matter of:

9 **THEODORE SCHEIDE JR., deceased.**

CASE#: P-14-082619-E

DEPT. XXVI

10  
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12  
13 **BEFORE THE HONORABLE GLORIA STURMAN,**  
14 **DISTRICT COURT JUDGE**

15 **THURSDAY, JUNE 15, 2017**

16 ***RECORDER'S TRANSCRIPT OF PROCEEDINGS***  
17 ***NON-JURY TRIAL - DAY 1***

18 **APPEARANCES:**

19 For St. Jude Children's Research  
20 Hospital:

RUSSEL J. GEIST, ESQ.  
TODD L. MOODY, ESQ.

21 For Theodore E. Scheide:

CARY C. PAYNE, ESQ.

22 For Susan Hoy:

KIM BOYER, ESQ.

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24  
25 **RECORDED BY: KERRY ESPARZA, COURT RECORDER**

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1 Las Vegas, Nevada, Thursday, June 15, 2017

2  
3 [Case called at 9:08 a.m.]

4 THE COURT: ... and who's with you in court because we  
5 have to discuss do they stay or are they excluded.

6 MR. GEIST: Okay. Russel Geist and Todd Moody from  
7 Hutchison & Steffen on behalf of St. Jude Children's Research Hospital.  
8 Risa Beck from our office is also here, and Jennifer Maffeo from St.  
9 Jude is present as well.

10 THE COURT: Okay.

11 MR. PAYNE: Cary Payne on behalf of Theodore E. Scheide.  
12 Mr. Scheide is to my left. I have Marge Arenas (phonetic) from my office  
13 and Mr. Ian Christopherson.

14 THE COURT: Okay. All right.

15 MS. BOYER: Kim Boyer on behalf of Susan Hoy, the  
16 administrator.

17 THE COURT: Thanks.

18 Okay. Thank you all. You can have a seat.

19 All right. So just to discuss procedurally how you want to  
20 move forward with this, are you -- anybody wishing to make opening  
21 statements or --

22 MR. GEIST: Your Honor, I would like to.

23 THE COURT: Okay. So then if we're going to have opening  
24 statements, Mr. Payne, I believe it's your -- are you in agreement with  
25 that?

1 MR. PAYNE: Sure, he can do an opening.

2 THE COURT: Okay.

3 All right. So Mr. Geist, it's your petition so --

4 MR. GEIST: Thank you, Your Honor.

5 Good morning, Your Honor. St. Jude Children's Research  
6 Hospital is a national nonprofit organization founded to advance  
7 research into curing childhood illnesses and provide cost-free care for  
8 sick children and support their families.

9 MR. PAYNE: Your Honor, I'll stipulate that St. Jude's is a  
10 charity.

11 THE COURT: Okay, thank you.

12 MR. GEIST: Thank you.

13 St. Jude Children's Research Hospital is also named as the  
14 contingent beneficiary under the last will and testament of Theodore E.  
15 Scheide, Jr. and is an interested person permitted to petition to have the  
16 will of the decedent proved whether the will is lost or destroyed pursuant  
17 to NRS 136.070 which states that any other interested person may at  
18 any time after the death of the testator petition the court having  
19 jurisdiction to have the will proved whether the will is in the possession  
20 of that person or not or is lost or destroyed.

21 St. Jude Children's Research Hospital filed its petition to admit  
22 the last will and testament of Theodore Scheide, Jr. as a lost will  
23 pursuant to NRS 136.230 and NRS 136.240. As the proponent of the  
24 lost will of the decedent, St. Jude is required, number one, to prove that  
25 the lost will was in existence at the death of the person whose will it is

1 claimed to be or shown to have been fraudulently destroyed in the  
2 lifetime of that person, and number two, to clearly and distinctly prove  
3 the provisions of the lost will by at least two credible witnesses and  
4 that's from --

5 THE COURT: Okay, thanks. Why -- were we going to do this  
6 on any of the TVs?

7 THE COURT RECORDER: No, no Judge, because we --  
8 since we didn't have a jury we left the TVs off and just were going to use  
9 the monitors, but if you want them on --

10 THE COURT: Okay.

11 THE COURT RECORDER: -- I can put them on, Judge.

12 THE COURT: Fine.

13 Sorry.

14 MR. GEIST: That's okay. And that's from NRS 136.240  
15 Subsection 3.

16 In existence, the term in existence has been defined by the  
17 Nevada Supreme Court to mean, quote, legal existence, unquote. From  
18 the case *Irvine v. Doyle* in the -- in regarding the matter of the *Estate of*  
19 *Irvine versus Doyle*, and that's at 101 Nevada 698 from 1985, the court  
20 said a will is said to be in legal existence if it has been validly executed  
21 and has not been revoked by the testator. Thus, a will lost or destroyed  
22 without the testator's knowledge could be probated because it was in  
23 legal existence at the testator's death. And then the court cited a  
24 Colorado case, Minnesota case and a Utah case in support.

25 In *Irvine*, the proponent of a lost will was prohibited by the

1 district court from putting on evidence, quote, to establish that the  
2 deceased did in fact execute a valid will leaving the property to her and  
3 that the document presented for probate was an accurate copy of that  
4 will, unquote. The district court in that case, quote, refused to allow any  
5 of this testimony to be admitted on the ground that it was irrelevant to  
6 the issue of whether the original will had been in actual physical  
7 existence at the time of Irvine's death, unquote.

8 The Nevada Supreme Court declared that, quote, the decision  
9 of the district court in this case was based on an invalid construction of  
10 NRS 136.240 Subsection --

11 THE COURT: Is this a closing?

12 MR. GEIST: I'm sorry?

13 THE COURT: Is this a closing or an opening? I'm --

14 MR. GEIST: This is an opening. I'm just --

15 THE COURT: Okay.

16 MR. GEIST: Must be reversed.

17 In this case, Your Honor, the opponent of a lost will has  
18 repeatedly claimed that St. Jude must present proof. St. Jude will show  
19 that the will was in legal existence through the evidence that will be  
20 presented, and that as in *Irvine* we're permitted to present such  
21 evidence not only showing the legal existence of the will but also the  
22 provisions of the will.

23 As a proponent of a lost will, St. Jude bears the burden of  
24 overcoming the presumption that the lost will was revoked by destruction  
25 by the testator. However the presumption is rebuttable.

1 To overcome the presumption, St. Jude has the burden of  
2 proving that the testator's will was more likely than not left unrevoked at  
3 his death. The burden that is established on St. Jude is not a conclusive  
4 or irrebuttable presumption.

5 The evidence will show that the decedent carefully put his  
6 affairs in order, solemnly committing his testimony -- testamentary  
7 wishes to writing by hiring Kristin Tyler, a well-respected and --

8 THE COURT: Yeah, I'm sorry if -- if you're going to -- I can't  
9 see this.

10 THE COURT RECORDER: Oh okay, Judge.

11 THE COURT: If I'm supposed to be looking at something, I  
12 cannot see it.

13 THE COURT RECORDER: We'll put it on. You know what,  
14 we're going to have to probably put the TV on too, Judge, so you know,  
15 facing you from that angle maybe.

16 THE COURT: Yeah, I can't see it.

17 THE COURT RECORDER: Because those TVs are so far  
18 away to you.

19 THE COURT: Uh-huh.

20 THE COURT RECORDER: Yeah. Okay. Well, do you want  
21 to call a recess and we can set up the TV, Judge, and put it in front of  
22 you so you --

23 THE COURT: Okay. Well, we'll let Mr. Geist finish, but I'm  
24 not going to be able to see anything.

25 THE COURT RECORDER: Okay. Well we'll set up --



1 THE COURT: Just I can't see anything on the -- my vision is  
2 not good enough to see on that tiny screen. I can't --

3 THE COURT RECORDER: Okay. We'll set it up -- when you  
4 call a recess, Judge, we'll set it up.

5 THE COURT: Okay.

6 MR. GEIST: Judge, the evidence will show that the decedent  
7 carefully put his affairs in order, solemnly committing his testamentary  
8 wishes to writing by hiring Kristin Tyler, a well-respected and  
9 experienced estate planning attorney, to prepare his last will and  
10 testament.

11 The decedent's October 2nd, 2012 will was signed by the  
12 decedent in the presence of two witnesses, Kristin Tyler and Diane  
13 Dewalt, both of whom signed a self-proving affidavit of the execution in  
14 the presence of the decedent and are expected to testify as such.

15 The witnesses are expected to testify that the decedent also  
16 reaffirmed his testamentary wishes during this period before his death,  
17 beginning with a call on August 27th, 2013 to Ms. Tyler stating that he  
18 wanted everything to go to St. Jude Children's Research Hospital when  
19 he dies.

20 In a meeting with his stepdaughter, Kathy Longo, telling her in  
21 about December 10th, 2013 that --

22 THE COURT: This is a closing.

23 MR. GEIST: I'm --

24 THE COURT: I'm sorry.

25 MR. GEIST: I apologize, I'm just letting you know what we

1 anticipate the --

2 THE COURT: I won't tell you how to practice law, but I -- I'm  
3 not seeing that this is an opening, just sorry.

4 MR. GEIST: -- what the evidence is showing.

5 The evidence will further show that a copy of the will was  
6 maintained by the drafting attorney, and that the will was maintained by  
7 the decedent himself, who continually reached out to the decedent prior  
8 to his guardianship.

9 The evidence will also show that the decedent's health  
10 declined during 2013, so much that he transitioned from an independent  
11 living situation to finding more full-time care.

12 The evidence will show that the decedent ultimately was  
13 subject to a guardianship and a guardian was appointed over his person  
14 and estate after a hospitalization in February 2014.

15 During the guardianship, the decedent's health continued to  
16 decline as he was transitioned from group home to facility to hospital to  
17 rehabilitation center and to a group home again numerous times.

18 The evidence will show that at some point during the  
19 pendency of the guardianship the decedent had dementia, from which  
20 he never recovered until his death on August 17th, 2014, which makes  
21 intentional revocation less likely under the standard set.

22 There's also a question of presumption of testamentary  
23 capacity. The evidence will show that in the case of the decedent, it  
24 became less and less likely during the pendency of this guardianship  
25 that the decedent had testamentary capacity to make any changes to his

1 estate planning documents, particularly his will, such that when he was  
2 subject to a guardianship the presumption that he revoked intentionally  
3 his will was less likely especially as time went on and his health  
4 declined.

5 The evidence will show that regardless of any of these other  
6 factors, the decedent himself had a copy of his will which is significant  
7 and will show again that he was less likely to have revoked his will.

8 The evidence will establish that the absence of the original will  
9 is more likely attributed to an accidental loss rather than an intentional  
10 revocation by destruction by the decedent.

11 Further the evidence will show that the provisions of the  
12 decedent's October 2012 will are clearly and distinctly proven by the  
13 copy of the will that was found among the personal possessions of the  
14 decedent which is identical to the copy of the will that his attorney  
15 retained in her files.

16 Both witnesses to the execution of the October 2012 will are  
17 expected to testify that the copies of each will are identical, and  
18 ultimately we believe at the conclusion of the evidentiary hearing, St.  
19 Jude Children's Research Hospital will have met its burden in  
20 establishing that based on the evidence it's more likely than not that the  
21 decedent left his last will and testament unrevoked and that the  
22 provisions of the last will and testament dated October 2nd are clearly  
23 and distinctly proved by at least two credible witnesses, the two  
24 requirements under NRS 136.240 Subsection 3.

25 Thank you, Your Honor.

1 THE COURT: Thanks.

2 Okay. Mr. Payne, do you wish to make an opening?

3 MR. PAYNE: Yes, Your Honor, and it's also a motion to  
4 renew the earlier motion. Your Honor, as Your Honor was aware, we  
5 were in front of you last week. At that point there were some pending  
6 motions; there was originally my 12(b)(5) motion which I'll address just  
7 briefly, then a motion for judgment on the pleadings. After the hearing  
8 took place, you indicated that you needed to look at the testimony of  
9 Kirstin Tyler and that you would make a decision.

10 When we got your minute order, it -- because the way the  
11 minute order was drafted, I wasn't sure if serious question of facts were  
12 still pending and so therefore we did a demand for jury trial and I know  
13 Your Honor has stricken it, but just for purposes of the record, I wanted  
14 to explain why that happened.

15 If you recall, Your Honor, during one of the pretrial matters on  
16 this matter, Mr. Geist -- and Your Honor said you've got a difficult road to  
17 hoe. This is a lost will. Under the lost will statutes, he did discovery,  
18 came back and nothing is changed, and let me tell you why his petition  
19 is going to be denied today. It's going to be denied because it's deficient  
20 as a matter of law.

21 Your Honor, recall there's already an order entered in this  
22 case, there was an order entered back in May 26th that said he died  
23 intestate, it was -- in fact there were two petitions that were brought in  
24 this matter. There was the original petition that said he died intestate.  
25 Commissioner Yamashita gave him -- gave Susie Hoy three months to

1 go out and find a will. Based upon what she had discovered, there was  
2 no original document. She brings a petition on for instruction. St. Jude's  
3 was on notice. They didn't object. That order went in. One of the  
4 arguments obviously was is that this order is now res judicata collateral  
5 estoppel.

6 Now in their argument counter to that they looked at several  
7 statutes and I don't think those statutes apply. Excuse me, I think that  
8 there is a statute that applies that's right on point that Your Honor could  
9 hang her hat.

10 Your Honor, under the probate statutes, there are contest of  
11 wills under Chapter 137 and there's before probate and after probate.  
12 And before probate is the initial petition that is filed and there's a  
13 process that you can go through that you come in and you -- under  
14 137.010 and you can object, any interested person can object, and then  
15 you go into the citation process so Your Honor ordered issue citations  
16 and that -- the interested parties are served. They have then time to  
17 either file a motion or respond in accordance with Nevada Rules of Civil  
18 Procedure and then there's a chance for the proponent or opponent to  
19 come back and modify their pleadings.

20 Under that process it's called a pre-probate will contest. The  
21 initial petition filed in this thing was St. Jude's opportunity to come in and  
22 say hey, this is a will contest, it is or is not, and we want to bring our own  
23 petition on. They didn't do that. And if you follow down through the line  
24 of progression as to what the consequences of that are, it ends up going  
25 to 137.120, period of limitation, if no person contests the validity of the

1 will of the probate thereof within the time prescribed in 137.08 (sic  
2 throughout), the probate is conclusive.

3 Now, that word probate is a technical word that is actually  
4 defined by the statute. 137.275 (sic) defines what a probate is.  
5 Probate, used as a noun, means a legal proceeding in which the court  
6 has jurisdiction to administer, pay out and distribute the assets of the  
7 decedent's estate entitled to them, including devisees, heirs, creditors or  
8 others.

9 So probate is defined by the process of getting somebody  
10 appointed. So Ms. Boyer presents a petition, they give the notice to St.  
11 Jude, St. Jude's doesn't do anything, that petition is then granted.

12 The second statute that they could have come after -- come in  
13 after is the after probate provisions which starts at 137.080, and those  
14 provisions only apply if they didn't get first notice of the original petition.  
15 If they hadn't gotten original notice of Ms. Boyer's original petition for  
16 probate, they could have come in within three months. Okay? Within  
17 three months.

18 137.08 says within three months after the order is entered  
19 admitting the will to probate, contest the admission validity the will, the  
20 contestant must file with the court blah blah blah petition allegation  
21 sufficient -- they have to then issue citations. Service of citations,  
22 revocation -- then it goes to trial. It's the same process again, but again,  
23 137.120 says if no person contests the validity of the will the probate  
24 thereof within the time prescribed, the probate will is conclusive. Again  
25 it's the word probate that you're focusing on.

1           The order was entered May 26. They filed the petition  
2 January 29th. They filed their petition -- Ms. Boyer's client filed the  
3 petition May 6th. The order was entered on 5/26/2'15 and six months  
4 after that would have been 11/26/15 so they have no new evidence to  
5 bring in to assert that this order was fraudulent. If they would have had  
6 some evidence that the order was fraudulent, they would have had to  
7 move within six months which would have been November 26, 2015.  
8 Instead, they wait until September 13th of 2016, 10 months later, to  
9 bring this petition.

10           Let me tell you why this petition is going to be denied today.  
11 Your Honor, I argued before you last week that the petition on its face  
12 fails to meet several standards. One of the first standards that the  
13 petition fails as a matter of law is the issue of verification. The petition is  
14 signed by a Fred E. Jones. I asked counsel is Mr. Jones going to be  
15 present. No, Mr. Jones is not coming to the hearing.

16           Mr. Jones as Your Honor may -- do you have a copy of that  
17 verification? Can I approach?

18           THE COURT: I think it's in here.

19           MR. PAYNE: Yeah. But here's a fresh copy.

20           THE COURT: Thank you.

21           MR. PAYNE: Verification and -- and it wasn't in fact until 1999  
22 that the actual word verification was added in the statutes under 132.260  
23 (sic). NRS 132 says -- 260 -- verification defined means a declaration  
24 that a statement is true, made under oath affirmation under penalties of  
25 perjury for a false statement.

1           Okay. It doesn't say -- and if you look at Mr. Fred's (sic)  
2 affidavit, excuse me, verification which by the way, Your Honor, is a  
3 verification out of the State of Tennessee. It doesn't comply with NRS  
4 53.045.

5           NRS 53.045 talks about affidavits out of state. It says that,  
6 number 2, except as otherwise provided under 53.250 or 53.390  
7 inclusive, if executed outside this state, it must state I declare under  
8 penalties of jury under the laws of the State of Nevada and the foregoing  
9 is true and correct.

10           As a matter of law, this petition doesn't state that. It's not  
11 under penalties of perjury. And I see that Mr. Jones is not sitting here  
12 today. It doesn't comply with the statute.

13           Furthermore, Your Honor, if you'll look at the last sentence, it  
14 says except for those matters stated on information and belief. Okay?  
15 Is that proper? I don't think so. You can't have it both ways, you can't --  
16 it can't be under penalties of perjury but yet based upon information and  
17 belief in certain matters.

18           Now, that verification is void. Does not comply with the  
19 statutes.

20           Now, let's look at their petition, Your Honor, and this is where I  
21 struggled with this case. And if you recall -- Your Honor, you know this,  
22 this -- probate is a court of jurisdiction. You don't get jurisdiction unless  
23 you meet the test.

24           Their petition is pursuant to 136.230. Okay? And their  
25 petition outlines that. It says it's pursuant to 136.230. Jurisdiction of the



1 court. That's the first requirement. And under that jurisdiction they have  
2 to allege if a will is lost by accident or destroyed by fraud without  
3 knowledge of the testator, the court then may take proof of the execution  
4 and go on to the next part. But that requires notice be given to all  
5 parties and persons prescribed in this document. I'm going to get to  
6 that. I'm going to tell you that their notice is deficient and the petition is  
7 going to be denied because of that.

8 THE COURT: Okay. Well again, I'm struggling with how this  
9 is an opening, but --

10 MR. PAYNE: But Your Honor -- then I'll go quickly here.

11 THE COURT: This is more what I would expect to hear at the  
12 close of evidence.

13 MR. PAYNE: But Your Honor, their petition is deficient. Let  
14 me tell you why.

15 THE COURT: Well haven't we already argued all this and I  
16 said I'm going to --

17 MR. PAYNE: No, you took it under advisement but --

18 THE COURT: -- I'm going to give them a hearing.

19 MR. PAYNE: -- but just -- I'll go brief --

20 THE COURT: Okay.

21 MR. PAYNE: -- I'll go quickly then. Okay. They filed the  
22 petition and in their petition they allege only that the original will has  
23 been found by the -- number 13, the original will has not been found but  
24 petitioner alleges that the October 2012 will is merely lost by accident.  
25 Okay. That's what they say in their petition, but that's not what the

1 affidavits say of Kristin Tyler or Diane Dewalt. None of these affidavits  
2 meet the requirement that says it's lost by accident or it was destroyed  
3 by fraud.

4 Diane Dewalt's affidavit only says I further attest to the  
5 decedent's will in the presence of Theodore. It's the typical subscription  
6 paragraph. Okay. The next paragraph says I further attest that to my  
7 knowledge the decedent did not intentionally destroy or revoke the last  
8 will -- dated October 2nd. That doesn't meet the requirement of NRS  
9 136.230 that says it was lost by accident or destroyed by fraud. That's  
10 their initial -- that's the burden they have to get over. Okay.

11 And Kristin Tyler's affidavit is the exact opposite. It says it's in  
12 legal existence. She doesn't even say whether it's lost by accident or  
13 destroyed by fraud without the knowledge of the testator, she says it's in  
14 existence. And then that's when we took her deposition on it and she  
15 had no evidence that this thing was in existence other than the fact that  
16 she handed it to Mr. Scheide on October 2nd and Mr. Scheide walked  
17 out and never saw her again.

18 So the -- they haven't complied with the statute, and Your  
19 Honor, here's the biggest problem why their petition fails today. Their  
20 petition has to state also what the assets are of Mr. Scheide. Okay, this  
21 is all laid out under NRS -- remember Your Honor, they brought -- they  
22 had two petitions. They had a petition to try and admit a lost will and  
23 then they had an alternative on argument to bring in the June will that  
24 Kristin Tyler lodged. Okay? After the fact two years later, Kristin Tyler  
25 lodges this will.

1 In order for that -- these -- this petition to be granted, Your  
2 Honor, as a matter of law, 136.090 has the requirements, petition for  
3 probate requirements, a petition for the will must state the following:

4 Number 1, jurisdictional facts. This document doesn't do that.  
5 In fact it references the wrong jurisdictional statute. It references the  
6 nondecendent -- nonresident decedent.

7 Number 2, whether the named personal representatives  
8 consents to acts or renounces to letters. Now that's the key one, Your  
9 Honor. That's why this petition is deficient. They never gave notice to  
10 Patricia Bolen (phonetic) or Karen Holmstead (phonetic), the executors  
11 of the other wills, the executors of the will they're trying to admit to  
12 probate, Your Honor.

13 136.120, service of a petition when a petition presented by a  
14 person other than a named personal representative, St. Jude's, or by  
15 fewer than all the named personal representatives. If a petition for  
16 probate is presented by any person other than the personal  
17 representative named in the will or it's presented by fewer than all the  
18 personal representatives named in the will, the petition must be served  
19 upon the personal representatives not joining in the petition.

20 They have to serve Karen Hogestead (phonetic) who is the  
21 executor under the June will and they have to serve Patricia Bolen under  
22 the October will. They didn't do that.

23 You don't have jurisdiction to go forward because let's face it,  
24 Your Honor, Mr. Scheide was a grumpy old man. He already -- Karen  
25 already quit, he goes to -- quit, got fired, whatever. He goes to Kristin

1 Tyler three months later, does a new will. Three months -- sometime  
2 after that Patricia Bolen says I'm out of this thing, I'm not going to serve  
3 as an executor.

4 Okay, and do you remember, Your Honor, when I showed you  
5 couple -- last week or week or two ago the -- that there was a note from  
6 Patricia Bolen says she wanted nothing to do with this that she resigned  
7 as the POA? But she didn't resign as the executor. Okay. She didn't  
8 resign. As a matter of law, this petition is deficient.

9 Your Honor, the successor fiduciary under both wills is  
10 Nevada State Bank. They never gave Nevada State Bank any notice of  
11 this hearing. And it has to be served upon personal representatives.  
12 Has to be served. It's got to be served on Nevada State Bank, it's got to  
13 be served on Karen, it's got to be served on Patricia. This petition fails  
14 on multiple levels.

15 Your Honor, if you think about it, and I know to the degree that  
16 this is argument, but if you think about what this lost will statute is  
17 designed to do --

18 MR. MOODY: Then we object, Your Honor --

19 THE COURT: Yeah. Yeah, I'm --

20 MR. MOODY: -- because it is argument. It's gone so far  
21 beyond an opening statement.

22 THE COURT: Yeah. That's --

23 MR. PAYNE: But Your Honor, you have pending motions, you  
24 have pending --

25 MR. MOODY: This is a renewed motion for judgment on the

1 pleadings.

2 THE COURT: Yeah, and --

3 MR. MOODY: That's all it is.

4 THE COURT: -- really should be heard at the end of the  
5 evidence so -- if you've got something to say about an opening, happy to  
6 hear --

7 MR. PAYNE: But Your Honor, if the petition doesn't meet the  
8 jurisdictional requirement, as a matter of law, they don't get to go down  
9 these steps. If you think about it, Your Honor, it makes sense. If --  
10 people would be showing up with copies of wills all the time, but they  
11 have to prove first, okay, that it was, as the statute says --

12 THE COURT: Okay. We've talked about --

13 MR. PAYNE: -- lost by --

14 THE COURT: We've talked about what they have to prove.  
15 What are -- what's your defense to what they're --

16 MR. PAYNE: Well, Your Honor, the petition -- you -- if you --  
17 here's the problem. If you go forward with this hearing and you didn't  
18 give notice to Nevada State Bank and you didn't give notice to Karen,  
19 you didn't give notice to Patricia Bolen, we have effectively a case that  
20 no matter what the decision is is going to be reversed.

21 THE COURT: Okay.

22 MR. PAYNE: The petition needs to be denied. It has to be  
23 denied.

24 THE COURT: All right, thanks. All right.

25 MR. PAYNE: And the order that you had already ordered --

1 THE COURT: Then we'll start with our witnesses. Thank you.  
2 Want to call your first witness?  
3 MR. GEIST: Thank you. Kristin Tyler will be our first witness,  
4 Your Honor.  
5 THE COURT: Okay.  
6 MR. PAYNE: Your Honor --  
7 THE COURT: Are we going to need this screen for any  
8 reason because I can't see this little one.  
9 MR. PAYNE: Your Honor, can I just make an objection --  
10 THE COURT: Yeah.  
11 MR. PAYNE: -- as a preliminary matter?  
12 THE COURT: Yeah.  
13 MR. PAYNE: Kristin Tyler is not a competent witness. She  
14 has no personal knowledge. Okay. Her testimony is going to include  
15 that she met with Mr. Scheide and -- and Your Honor, let me just lay a  
16 little bit of a foundation here. This is actually a two or three step process  
17 that we're undertaking and I don't want us to skip a step. The first step  
18 is they need to submit a petition that meets the statutory requirements  
19 and get court's jurisdiction. They didn't do that.  
20 The second step just so Your Honor is aware, then they have  
21 to prove up the will; that it was attested, that Mr. Scheide was there, that  
22 they saw him, that they sat in the room, the technicalities of a  
23 declaration, okay? And including all of those little minutia.  
24 I'm going to ask the Court that Ms. Tyler's testimony only be  
25 as it relates to what she says in this affidavit for purposes of today's

1 hearing, because I don't think she's a competent witness to testify these  
2 other things because the contents are not in -- contents are in dispute.  
3 Okay.

4 Remember what we have. We have a copy of a will and in my  
5 trial brief I attached three different versions of this potential copy, okay?  
6 Kristin Tyler can only testify to what happened in October 2012. Okay.  
7 She can't testify what happened with respect to this copy. She can't  
8 testify with respect to what he did or didn't do. It's all speculation. This  
9 whole line of questioning about well he told me he was going to -- he still  
10 wanted it to go to St. Jude's is pure speculation.

11 Your Honor, I don't think that -- and then lastly, I think she's  
12 incompetent because of the issue of the conflicts of interest that we  
13 addressed in our trial brief.

14 THE COURT: Okay.

15 MR. GEIST: Your Honor, may I respond?

16 THE COURT: Sure.

17 MR. GEIST: There's been no motion in limine to exclude her  
18 as a witness or to limit her testimony. The first of these issues have  
19 been raised in his trial brief and here in court today. She has, as Mr.  
20 Payne is aware, testified in deposition of her personal knowledge of the  
21 interactions with the decedent up until the point of his guardianship and  
22 her interactions with the decedent's guardian after that point. She has  
23 personal knowledge of those and she's entitled to and we have a right to  
24 put on that evidence, according to *Irvine versus Doyle*, of her  
25 interactions with the decedent and how that makes the nonrevocation

1 more likely than not. So I would ask that the Court overrule his  
2 objection.

3 THE COURT: Okay. Well, you can raise your objections to  
4 particular questions if you think they exceed the scope of her  
5 knowledge.

6 MR. PAYNE: I will, Your Honor, but let me just correct for the  
7 record he keeps talking about this more likely than not. That's in  
8 paragraph 5(b) that he picks that language up on and that has to do with  
9 a trust agreement that they can't find a pour-over will and it has nothing  
10 to do with this proceedings and he keeps referring to that and I think it's  
11 improper. That statute -- and it's only applies if there's not an objection  
12 so that is not the standard. You know -- we know what the standard is,  
13 it's presumed it's been revoked. Okay. They have to have presentable,  
14 credible evidence to overcome that presumption and they can't do it with  
15 any of these witnesses, Your Honor.

16 THE COURT: Okay.

17 MR. GEIST: Your Honor, may I respond briefly?

18 THE COURT: Sure.

19 MR. GEIST: Okay. And I'll keep it very brief. Your Honor, the  
20 presumption is set by the statute and by *Irvine versus Doyle* and  
21 whenever there is a presumption and the standard is not set, under NRS  
22 47.180, a presumption other than a presumption against the accused in  
23 a criminal action imposes on the party against whom it is directed, which  
24 would be St. Jude, the burden of proving that the nonexistence of the  
25 presumed fact is more probable than its existence. It's a preponderance



1 of evidence standard. It's statutory. He has presented nothing in the  
2 law in the statute or case law that would counter that. That's the statute  
3 that defines our burden.

4 THE COURT: Okay. Call your first witness.

5 MR. GEIST: We would ask that the visual be connected to  
6 that TV and we would ask --

7 THE COURT: Okay.

8 MR. GEIST: -- if we can move it over here so the witness --

9 THE COURT: Yeah, that's the better place for it --

10 MR. GEIST: Okay.

11 THE COURT: -- is sort of angled over there. All right.

12 MR. GEIST: Thank you, Your Honor.

13 THE COURT: So we'll take a brief recess. Kerry, do you --

14 THE COURT RECORDER: Yeah.

15 THE COURT: Here he is. He's here.

16 THE COURT RECORDER: I'll call now, Judge.

17 THE COURT: He's right here.

18 THE COURT RECORDER: Oh.

19 THE COURT: Right on time.

20 THE MARSHAL: All rise.

21 [Recess taken at 9:39 a.m.]

22 [Proceedings resumed at 9:54 a.m.]

23 THE COURT: Mr. Geist, your first witness.

24 MR. GEIST: I was going to call Kristin Tyler, Your Honor.

25 THE COURT: Okay.

1 MS. BOYER: Your Honor, before she comes in I'd like to just  
2 put something on the record.

3 THE COURT: Sure.

4 MS. BOYER: Attorney Phil Van Alstyne was assisting me in  
5 the litigation matters in general, and on this particular case he did write a  
6 letter just stating that he could not advise Ms. Hoy to waive any  
7 attorney-client privilege but that he was deferring to them to determine  
8 whether that NRS 49.115 protects the affidavit so I just wanted to --

9 THE COURT: Okay.

10 MS. BOYER: -- reassert --

11 THE COURT: Understood that --

12 MS. BOYER: Okay.

13 THE COURT: -- the attorney-client privilege is not waived and  
14 so we'll so advise Ms. Tyler that if she feels at some point she's being  
15 asked a question that invokes the attorney-client privilege, it's not been  
16 waived.

17 MR. GEIST: Okay. May I respond briefly?

18 THE COURT: Sure.

19 MR. GEIST: Your Honor, NRS one -- 49.115 is an -- a  
20 specific exception to the privileges. Under Subsection 2, it says there is  
21 no privilege as to communication relevant to an issue between parties  
22 who claim through the same deceased client, regardless of whether the  
23 claims are by testate or intestate succession or by inter vivos  
24 transaction.

25 THE COURT: Okay.

1 MR. GEIST: So from our perspective --  
2 THE COURT: Well, if she has a question, you know --  
3 MR. GEIST: Right.  
4 THE COURT: -- it's not been waived so if she feels it falls  
5 within that, great.  
6 MR. GEIST: Thank you.  
7 THE COURT: Then we can rule on it, but we'll make sure she  
8 understands that on the record, as Ms. Boyer points out, they haven't  
9 determined what does and does not waive the privilege, so --  
10 MR. GEIST: Understand, Your Honor.  
11 THE COURT: -- as things come up, we'll deal with them one  
12 at a time. That's just weird. Okay.  
13 All right. Bring in our first witness. Thanks, Tom.  
14 [Pause]  
15 KRISTIN TYLER  
16 [having been called as a witness and being first duly sworn, testified as  
17 follows:]  
18 THE CLERK: Please be seated. And if you'll state and spell  
19 your name for the record, please?  
20 THE WITNESS: Kristin Tyler, K-r-i-s-t-i-n T-y-l-e-r.  
21 THE CLERK: Thank you.  
22 THE COURT: Thank you.  
23 Mr. Geist.  
24 DIRECT EXAMINATION OF KRISTIN TYLER  
25 BY MR. GEIST:

1 Q Good morning, Ms. Tyler.

2 THE COURT: Okay. Now for the record we need Ms. Boyer  
3 to make her objection and --

4 MR. GEIST: Okay.

5 THE COURT: -- so that Ms. Tyler is aware of it.

6 So Ms. Boyer, did you want to restate your reference to Mr.  
7 Van Alstyne's position?

8 MS. BOYER: Yes. Mr. Phil Van Alstyne, who is the litigator in  
9 our office and I certainly wish he were here, wrote a letter to Ms. Tyler  
10 on August 2nd, 2016, saying that he was not advising Ms. Hoy to waive  
11 the privilege, attorney-client privilege, was leaving you in a position to  
12 determine whether NRS 49.115 would protect the testimony.

13 THE COURT: Thank you.

14 And you want to -- Mr. Geist, you had a --

15 MR. GEIST: Yes. Thank you, Your Honor.

16 THE COURT: -- a provision you believe applies so Ms. -- Mr.  
17 (sic) Tyler knows what she's --

18 MR. GEIST: Yes. Thank you, Your Honor.

19 THE COURT: -- dealing with here.

20 MR. GEIST: Our position, just so you're aware, is that NRS  
21 49.115 under Subsection 2 gives a specific exception to that --

22 MR. PAYNE: Your Honor, I'm going to object. Is Mr. Geist  
23 giving Ms. Tyler legal advice?

24 THE COURT: No. He's not giving her legal advice. He is  
25 simply telling her so she knows this because she's going to have to

1 make this determination as she goes along if she's concerned about  
2 violating her attorney-client privilege, as has been raised by Ms. Boyer,  
3 that she can evaluate -- we can raise the objection each time or we can  
4 do it once at the beginning and get it over with. It's your choice. Kind of  
5 think it's better to get it over with at the beginning. Saves going over this  
6 every time a question's asked.

7 MR. GEIST: Thank you, Your Honor.

8 THE COURT: Speed it up.

9 MR. GEIST: And our position --

10 MR. PAYNE: So it's a standing objection for the record?

11 THE COURT: Correct. I'm not going to ask Ms. Boyer to  
12 stand up and make an objection every time she thinks there might be a  
13 violation of the attorney-client privilege. She's just generally stating they  
14 haven't waived it. It's my understanding what they --

15 MR. GEIST: Thank you --

16 THE COURT: -- their intention was.

17 MR. PAYNE: Well, let -- Your Honor, for purposes of voir dire,  
18 what's Ms. Tyler's position on this?

19 MR. GEIST: Can I respond to Ms. Boyer's --

20 MR. PAYNE: No, the witness can respond.

21 MR. GEIST: Can I respond to Ms. Boyer's objection before  
22 we get to that point, Your Honor?

23 THE COURT: Yeah. Absolutely. And we'll get to each  
24 question she can make her evaluation once everybody's made it clear  
25 on the record what they feel about it so we aren't doing this every

1 question.

2 MR. GEIST: Thank you. Again, our position is NRS 49.115  
3 states a clear exception: There is no privilege under NRS 49.095 or  
4 49.105; Subsection 2, as to a communication relevant to an issue  
5 between parties who claim through the same deceased client,  
6 regardless of whether the claims are by testate or intestate succession  
7 or by inter vivos transaction. Our position is there is no privilege in this  
8 case.

9 THE COURT: Understood.

10 MR. PAYNE: Your Honor, that is a very limited waiver and if  
11 the attorney in this matter who is testifying on behalf of St. Jude's takes  
12 that position, so be it, but I haven't heard a word from Ms. Tyler at this  
13 point. Think Ms. Tyler needs to tell us while she's sitting up there what  
14 her position is.

15 MR. GEIST: First of all, I'm not testifying on behalf of St.  
16 Jude. I'm representing St. Jude in this matter.

17 MR. PAYNE: Ms. Tyler is testifying. She is a witness --

18 THE COURT: Right.

19 MR. PAYNE: -- to this matter --

20 THE COURT: That's what I understood Mr. Payne's point to  
21 be. So just want to make clear on the record we have a standing  
22 objection and we have a standing I guess assertion that this testimony  
23 falls within a waiver. Ms. Tyler's going to -- she's a witness. She can  
24 make her own determinations as to what she thinks one way or the  
25 other.

1 MR. PAYNE: So why don't we ask her right now?

2 THE COURT: Well if she has an overall belief that she isn't  
3 violating the privilege, she maybe feel that she is as to some things and  
4 not others. That's why I said I just thought she needed to know there's  
5 an objection --

6 MR. PAYNE: So why don't we do this now and get this over  
7 with?

8 THE COURT: Okay. Well --

9 MR. GEIST: Mr. --

10 THE COURT: Well, Ms. Tyler, do you have a blanket belief as  
11 to whether all of your testimony is safe or not with respect to the  
12 privilege or would you rather hear each question and make your  
13 evaluation as you hear the question?

14 THE WITNESS: To some extent I will need to hear each  
15 question --

16 THE COURT: Thank you. Okay, well then we'll go on.

17 THE WITNESS: -- and evaluate it because my understanding  
18 is I can -- the privilege does not exist for any communications that are  
19 relevant to the issue of the two parties contesting taking from Mr.  
20 Scheide.

21 THE COURT: Okay.

22 MR. PAYNE: And Your Honor, just --

23 THE WITNESS: So if they're not relevant to that, then I'm  
24 going to maintain my client's privilege.

25 MR. PAYNE: Your Honor, just so I'm clear, so what does she

1 think is the relevant issue then?

2 THE COURT: I think she said she has to hear each question  
3 because she has an overall belief that if the issue is with respect to the  
4 two parties and Mr. Scheide's will, that she can testify about those  
5 things, but she otherwise has to hear questions to know if she -- she has  
6 -- she stated what her belief is, if you want to state it one more time, Ms.  
7 Tyler, because that's my point is we all know what the issues are and  
8 we're not going to have to make this objection and have this whole  
9 argument each time. So we're doing it at the beginning. Ms. Boyer  
10 stated the objection. Mr. Geist says he thinks there's an -- there is an  
11 exception. Ms. Tyler has said I understand that exception, however I  
12 need to hear questions. That's what I understood where we were. Does  
13 anybody understand it any differently?

14 MR. GEIST: That's my understanding.

15 THE COURT: Okay, and if anybody wants to raise a specific  
16 objection, fine, or if Ms. Tyler wants to raise an -- state she can't answer,  
17 fine, but generally we've got it laid out so we don't have to do it every  
18 question hopefully.

19 So Ms. Tyler, one more time so everybody's clear what you  
20 believe the scope of the waiver applies to.

21 THE WITNESS: You would like me to say it one more time?  
22 Yes.

23 THE COURT: Yeah, because I don't -- we were all talking at  
24 one time I think.

25 THE WITNESS: There is no -- may I refer to my notes?



1 THE COURT: Uh-huh.

2 THE WITNESS: There's no exception -- no privilege as to a  
3 communication relevant to an issue between parties who claim through  
4 the same deceased client. So --

5 THE COURT: Okay.

6 MR. PAYNE: And Your Honor, as long as she's explaining --  
7 she's testifying not to content, okay, that's the key here. What is she  
8 testifying to? If it's content, it's going to be covered under the privilege.

9 MR. GEIST: I don't understand that question --

10 THE COURT: Yeah.

11 MR. GEIST: -- if there is one.

12 THE COURT: Yeah. I'm not sure what content --

13 MR. PAYNE: There's multiple levels of content in here.

14 THE COURT: Okay.

15 MR. PAYNE: Okay? There's content in the documents.

16 There's content in the evidence. All right? And she's going to have to  
17 make a -- stake a position each time with respect to what she's  
18 disclosing as to the contents of it.

19 THE COURT: Okay.

20 MR. PAYNE: So if that's the ground rules, then --

21 THE COURT: Well I understand your view of it. I think we all  
22 -- it's up to her. So if she agrees with you on -- as to something, fine. If  
23 she doesn't, I understand what your response is that you -- so if you  
24 believe she's -- it's a question that's going to call in -- question content,  
25 she can make her evaluation as to a specific question. I was hoping to

1 get this all laid out in the beginning so we knew what we're talking about,  
2 but it sounds like we're just going to have to do it question by question  
3 so start.

4 MR. GEIST: Okay.

5 BY MR. GEIST:

6 Q Good morning, Ms. Tyler.

7 A Good morning.

8 Q Do you have an understanding of why you're here today?

9 A Yes.

10 Q What is your understanding?

11 A That there is a dispute between --

12 MR. PAYNE: Objection, Your Honor.

13 THE COURT: What's your objection?

14 MR. PAYNE: Who -- she going to lay a foundation who -- how  
15 does she know about this dispute? Who told her? Who told her what?  
16 What did they tell her?

17 THE COURT: You do get a question -- an opportunity to  
18 question her.

19 MR. PAYNE: I understand that.

20 THE COURT: Okay. Overruled.

21 BY MR. GEIST:

22 Q What is your understanding?

23 A I'm on a service list for the case and so I receive copies of all  
24 the pleadings and I don't review all of them, however I have a general  
25 understanding that there is a dispute between the charity and the son as

1 to the resolution of Mr. Scheide's estate.

2 MR. PAYNE: Your Honor, there -- I'm going to object.

3 There's also another sub-issue here that is circling, and this is this issue  
4 of St. Jude's. As we know, Ms. Tyler represents St. Jude's. We know  
5 that -- yes, Your Honor, that you know that --

6 THE COURT: Okay. Well you can ask her. That's certainly --  
7 you can certainly ask if you believe that's going to impeach her  
8 credibility, but how is that an objection?

9 MR. PAYNE: Well, she needs -- when we're talking about  
10 client, I want to make sure she identifies who she's talking about. Okay,  
11 she needs to be very careful about if she's talking about her client Mr.  
12 Scheide versus her client St. Jude's, and obviously St. Jude's is here,  
13 they've got their own lawyers. If they're going to waive that privilege,  
14 that's the risk they take, but she's got to be very specific as to who she's  
15 identifying as clients.

16 THE COURT: Okay. Thank you.

17 MR. GEIST: Thank you, Your Honor.

18 BY MR. GEIST:

19 Q Were you deposed previously in this matter?

20 A Yes.

21 Q Okay. And did you receive a subpoena to be deposed in this  
22 matter?

23 A Yes.

24 Q Did you receive a subpoena to appear today to give testimony  
25 in this matter?

1           A     Yes.

2           Q     Okay. And that's what you are here on is to respond to that

3 subpoena and give testimony?

4           A     Correct.

5           Q     Ms. Tyler, may I ask what your educational background is

6 starting with any college that you attended?

7           A     I attended college at the University of Nebraska in Lincoln --

8           Q     What was your degree in, if you --

9           A     Degree in business --

10          Q     And --

11          A     -- and graduated and went to law school at the University of

12 Nebraska and received a dual degree, a JD/MBA.

13          Q     When did you graduate from law school?

14          A     December 2005.

15          Q     After graduation what did you do?

16          A     I moved to Las Vegas, clerked, took the Bar exam --

17          Q     Where did you --

18          A     -- began working.

19          Q     I'm sorry. Where did you clerk?

20          A     I clerked for a law firm called Cooksey Toolen Gage Duffy &

21 Woog.

22          Q     And how long did you clerk for them?

23          A     Approximately a year and a half.

24          Q     After that what did you do?

25          A     I then accepted a job doing estate planning work with a law

1 firm called Oshins & Associates.

2 Q And when did you start working for Oshins & Associates?

3 A I don't recall the month and year. I know that I worked for  
4 them for approximately three and a half, almost four years.

5 Q What was your position there?

6 A Was an associate attorney.

7 Q What were your duties with Oshins & Associates as an  
8 associate?

9 A They -- because I was a associate attorney, they were training  
10 me and I would sit second chair in client meetings to take notes and  
11 then prepare drafts of documents for the partner overseeing the work on  
12 the matter and then also sit in on signing meetings so it was all estate  
13 planning work.

14 Q Okay. All estate planning work, but you had client  
15 communication there?

16 A Correct. Yes.

17 Q And you had drafting responsibilities?

18 A Correct.

19 Q Any other responsibilities?

20 A When they had the occasional probate court matter that  
21 someone needed to appear at, I would -- I was the designated attorney  
22 to attend probate court for the firm.

23 Q Thank you. You said you were with Oshins & Associates for  
24 approximately three and a half to four years?

25 A Three and a half, almost four years. I believe I left there in

1 July of 2011.

2 Q Where did you go after that?

3 A I then joined the law firm Gordon Silver.

4 Q And what was your position there?

5 A They hired me to help build up the firm's estate planning  
6 practice and develop clients in estate planning. In addition, I also  
7 worked on probate and guardianship cases.

8 Q What were your responsibilities at Gordon Silver in that  
9 capacity?

10 A I was the primary attorney working on estate planning matters  
11 with clients, meeting with clients, drafting documents, working on those,  
12 and then also working with a partner on the probate and guardianship  
13 cases.

14 Q Were you -- what was your position there?

15 A I was an associate and then I made partner in January of  
16 2015.

17 Q And how long were you at Gordon Silver?

18 A I left there in May of 2015.

19 Q When you left Gordon Silver where did you go?

20 A I opened my own firm called Garman Turner Gordon along  
21 with eight partners.

22 Q And is that where you're presently employed?

23 A Yes.

24 Q And what is your position there?

25 A I am the partner that oversees our estate planning, probate

1 and guardianship work for the firm.

2 Q What are your duties and responsibilities as partner  
3 overseeing that area?

4 A Sure, I am responsible for overseeing the estate planning  
5 work, meeting with clients, drafting of documents or if an associate or  
6 paralegal ever drafts something, reviewing it before it goes to the client.  
7 But I do the vast majority of estate planning work myself.

8 Q And do you have client contact in that position?

9 A Yes.

10 Q And you have drafting responsibilities in that position?

11 A Yes.

12 Q And I'm sorry, going back to when you were at Gordon Silver,  
13 did you have client contact in the area of estate planning?

14 MR. PAYNE: Objection, Your Honor, which client? Just in  
15 general?

16 BY MR. GEIST:

17 Q Did you have any client contact --

18 THE COURT: I think he's just asking just general client  
19 contact, it wasn't specific? Okay.

20 MR. GEIST: Correct.

21 THE WITNESS: Yes.

22 BY MR. GEIST:

23 Q And did you have responsibility for drafting of estate planning  
24 documents --

25 A Yes.

1 Q -- as well at Gordon Silver? Okay. Would it be fair to  
2 characterize your practice as estate planning?

3 A Estate planning focused, yes.

4 Q And when you say estate planning focused --

5 A Because it leads into the areas of probate and guardianship  
6 too, but my primary focus is on the estate planning work.

7 Q If it's primarily, can you give a percentage roughly of how  
8 much is estate planning?

9 A Sure. I would say 40 percent estate planning, 30 percent  
10 probate, 30 percent guardianship.

11 Q If you had to characterize your level of experience in estate  
12 planning, how would you characterize it?

13 A It's been my primary area of focus since the second year of  
14 my law career. I've been licensed for 12 years now so 10 years. It's  
15 been my primary area of focus for 10 years. I do all of my continuing  
16 education work in that area. I'm a member of the trust and probate  
17 section of the Bar. I'm active with the WealthCounsel group that is a  
18 network of estate planning attorneys.

19 Q Do you have experience in incapacity planning for clients?

20 MR. PAYNE: Objection. There's absolutely no evidence this  
21 witness is qualified to testify to that, Your Honor.

22 THE COURT: Well she can testify as to whether she believes  
23 that. I mean you can certainly contest whether she is, but I think she  
24 can testify as to what she believes her training is.

25 MR. GEIST: Thank you.



1 THE COURT: I thought that was what the nature of the  
2 question was just -- I mean --

3 MR. GEIST: That's all I'm asking is does she have experience  
4 in incapacity planning.

5 MR. PAYNE: Well, lay a foundation then. Tell me how she's  
6 becoming this competent person.

7 MR. GEIST: Your Honor, I am not saying anything about the  
8 witness's competency, nor is she saying anything. I am simply asking if  
9 she has experience in --

10 THE COURT: Yeah, I don't -- I think that it's a premature  
11 question because all he's asking is if she has training. I mean unless  
12 you want him to ask do you understand this term?

13 MR. PAYNE: Sure.

14 THE COURT: That's about the only other thing I could think  
15 that would affect the question. I mean is she familiar with that term?  
16 Then she can tell us about her training.

17 BY MR. GEIST:

18 Q Are you familiar with the term incapacity planning?

19 A Yes.

20 Q And what is your understanding of that term?

21 A Of incapacity planning?

22 Q Yes.

23 A It means developing estate planning documents that would  
24 protect a person and their estate in the event that they were to become  
25 mentally incapacitated at a later date, and those documents would

1 include documents such as powers of attorney, sometimes a trust.

2 Q So would it be accurate to say that your understanding of  
3 incapacity planning is connected to estate planning?

4 MR. PAYNE: Objection; leading.

5 BY MR. GEIST:

6 Q How would you characterize estate planning's connection to  
7 incapacity planning?

8 A Estate planning and incapacity planning go hand in hand.  
9 Most people traditionally think of estate planning as only dealing with  
10 who gets a person's assets when they die, but truly, comprehensive  
11 estate planning, which is what I practice, incorporates incapacity  
12 planning as well.

13 Q What would you say your level of experience in incapacity  
14 planning is?

15 MR. PAYNE: Objection; lack of foundation.

16 THE COURT: It's her personal belief, so if -- to the extent that  
17 we're just discussing what she believes, I think it's allowable.

18 THE WITNESS: I'm not sure how you want me to quantify  
19 that, like compared to other attorneys or compared to other attorneys in  
20 the estate planning field?

21 BY MR. GEIST:

22 Q In the percentage of areas that you practice in, how would you  
23 characterize your experience in incapacity planning? You said estate  
24 planning was roughly 40 percent. Is -- does incapacity planning have a  
25 separate percentage?

1           A     No, incapacity planning is involved in every single estate  
2 planning case.

3           Q     Okay. Thank you. Do you -- have you had any experience in  
4 guardianship?

5           A     Yes.

6           Q     What is your experience in guardianship?

7                 MR. PAYNE: Objection, Your Honor; foundation. When?  
8 This year, last year, 10 years ago? This week?

9                 THE COURT: Yep. So you're asking just generally --  
10 BY MR. GEIST:

11          Q     Over the span of your career --

12                 THE COURT: The 10 years? Okay.

13          Q     -- your legal career, what is your experience in guardianship?

14          A     I --

15                 MR. PAYNE: Experience to do what, Your Honor?

16                 MR. GEIST: To practice in guardianship.

17                 THE COURT: Yeah. Thank you.

18                 THE WITNESS: I've practiced in guardianship for  
19 approximately -- I'm going to say six years in routine guardianships that I  
20 would call vanilla cases where people get along and just want to take  
21 care of the person and there's no fighting. I've handled guardianships  
22 for children. I've handled guardianships for elderly people. I've also  
23 handled a number of contested guardianship matters that did then go to  
24 trial.

25 BY MR. GEIST:

1           Q     What do you mean when you say you've handled  
2 guardianships for children?

3           A     So I've handled cases where a child has maybe lost one or  
4 both parents and there are assets involved that need to pass to the  
5 minor, and in order to do so they need to set up a legal guardianship to  
6 oversee and manage those assets for the benefit of the child. That  
7 would be the most typical case.

8           Q     Okay. What do you mean when you say you've handled  
9 guardianships for elderly people?

10          A     I've handled guardianships when a person becomes -- often  
11 later in life maybe they lose some of their mental capacity and are no  
12 longer make -- able to make decisions for themselves regarding their  
13 health or their finances and if they have not created documents such as  
14 powers of attorney --

15               MR. PAYNE: Your Honor, I -- I'm going to object. Mental  
16 capacity -- the definition of capacity is a legal conclusion. I don't think  
17 she can make a legal conclusion.

18               MR. GEIST: She's not making a statement as to anybody's --

19               THE COURT: Yeah.

20               MR. GEIST: -- mental capacity. She's just saying what she's  
21 done.

22               THE COURT: Okay. Yeah. So far I haven't heard anything  
23 attempting to qualify her as an expert in any area which is what I think  
24 your questions are getting at. So if at an appropriate time there is an  
25 attempt to do that, then you can ask it. Otherwise, just stop. We're

1 going to be here all day and all day tomorrow just to get through Ms.  
2 Tyler's resume.

3 MR. GEIST: Thank you, Your Honor.

4 BY MR. GEIST:

5 Q In handling a guardianship for a child or for an adult as you've  
6 said, in what capacity do you serve as an attorney?

7 A Typically I'm contacted by the family once they have concerns  
8 about the loved one. The first step is always to determine if a  
9 determination has been made by a medical doctor in the State of  
10 Nevada if the person needs a guardian.

11 MR. PAYNE: Your Honor, I got to object. She's not  
12 designated as a legal or medical expert, yet she's going down this  
13 testimony as to what she's got all this expertise in. If she's going to try  
14 and lay a foundation for ultimately some opinion, I object. She's a lay  
15 witness. Percipient witness to these proceedings.

16 THE COURT: She is a percipient witness and so, Mr. Geist,  
17 are we trying --

18 MR. GEIST: I'm not going to offer her as an expert witness,  
19 Your Honor.

20 THE COURT: You're just laying what the -- the scope of --

21 MR. GEIST: The scope of --

22 THE COURT: -- her personal experience and how she  
23 brought that to bear in her interactions specifically with Mr. Scheide?

24 MR. GEIST: With the decedent, yes.

25 THE COURT: Okay. So we're still just talking about her

1 resume and her background. Then we're going to get into how any of  
2 that applies to this case.

3 MR. GEIST: Correct.

4 THE COURT: Okay. I've got it. Thanks.

5 MR. GEIST: Thank you. And I only have a few more  
6 questions on this and then we'll move on.

7 THE COURT: Okay.

8 MR. GEIST: Hopefully we can get things rolling.

9 BY MR. GEIST:

10 Q And I'm sorry you were interrupted. You were telling me how  
11 you serve as an attorney in these guardianships for a minor child or for  
12 an adult and what capacity. You said you were contacted by a loved  
13 one. What role would you play as an attorney?

14 A I would assist the -- typically it's a family member with  
15 petitioning the court once they have the necessary documentation from  
16 a doctor to be appointed the legal guardian so that they could make  
17 medical and/or financial decisions for their loved one.

18 Q Okay. Thank you. Are you familiar with the decedent,  
19 Theodore E. Scheide, Jr.?

20 A Yes.

21 Q How are you familiar with him?

22 A He was my client.

23 Q When you say he was your client, at what point was he your  
24 client?

25 A He became my client in June of 2012, and from my

1 perspective, remained my client until the time he was appointed a legal  
2 guardian --

3 MR. PAYNE: Objection, Your Honor. Move to strike. There's  
4 no question pending about in her opinion as to when he did or did not  
5 cease.

6 THE COURT: Okay. Overruled.

7 BY MR. GEIST:

8 Q So how -- he became your client in June 2012. Was he a  
9 client of yours prior to that that you know of?

10 A No.

11 Q Was he a client of -- you were at Gordon & (sic throughout)  
12 Silver at the time of June 2012, correct?

13 A Correct.

14 Q Do you know if he was a client of Gordon & Silver prior to  
15 June 2012?

16 A I don't believe so, no.

17 Q Okay. You're not sure though?

18 A I would have to go run -- I'd have to ask them to run a conflict  
19 check to be sure, but I don't believe so, no.

20 Q When was the first time that you spoke with Mr. Scheide?

21 A He would have called me on the phone in June of 2012. I  
22 don't know the exact date.

23 Q So it was a telephone call?

24 A Yes.

25 Q Do you recall what he called about?

1 MR. PAYNE: Objection; hearsay.

2 MR. GEIST: Your Honor --

3 THE COURT: So I think that to the extent she -- you're asking  
4 generally the topic that the -- the topic of the, I don't know, I guess  
5 consultation, is that --

6 MR. GEIST: That's correct.

7 THE COURT: -- the --

8 MR. GEIST: And Your Honor, I think this --

9 THE COURT: I guess that's a term.

10 MR. GEIST: -- this might be a good time to raise there is a  
11 specific exception to hearsay. It's NRS 51.105. A statement of memory  
12 or belief to the -- to prove the fact remembered or believed is  
13 inadmissible under the hearsay rule unless it relates to the execution,  
14 revocation, identification or terms of declarant's will. We're -- and --

15 THE COURT: I don't think we're there yet. I mean you're just  
16 asking Mr. Tyler if she has a general recollection of topics.

17 MR. GEIST: Sure. Sure. Yes.

18 THE COURT: The intended I would like to come and see you  
19 about --

20 MR. GEIST: Right. I'm not asking for a specific statement.

21 THE COURT: -- some things. You're not asking her to quote  
22 him and say what he said.

23 MR. GEIST: Correct, Your Honor.

24 THE COURT: Just generally her understanding of what they  
25 were meeting about. That's her understanding. That's not hearsay.



1 MR. GEIST: Correct.

2 THE COURT: Okay.

3 BY MR. GEIST:

4 Q Okay, do you recall?

5 A He called the office because he wanted a new estate --

6 MR. PAYNE: Objection. How does she know what he called  
7 about? He could have been calling for -- unless she lays a foundation --

8 MR. GEIST: She just --

9 MR. PAYNE: -- he could have been calling --

10 MR. MOODY: It's a --

11 MR. PAYNE: -- for personal injury claim.

12 MR. MOODY: It's a speaking objection.

13 THE COURT: Sustained. Okay. Overruled.

14 MR. GEIST: Okay.

15 THE WITNESS: So do I answer, Your Honor?

16 THE COURT: Yeah.

17 THE WITNESS: He called to inquire about hiring an attorney  
18 from the firm to prepare new estate planning documents for him.

19 BY MR. GEIST:

20 Q And you spoke with him at the time that he called?

21 A I don't know if I spoke with him or if a message was taken and  
22 I called him back, but at some point in June 2012, I did speak with him  
23 by phone to set up a meeting.

24 Q And why were you speaking with him by phone?

25 MR. PAYNE: Objection; calls for speculation.

1 THE COURT: I think she knows why she's talked to him on  
2 the phone so I'll let her answer that.

3 MR. PAYNE: But does she know why he's calling?

4 THE COURT: She said that she at some point called him and  
5 I -- that was what, Mr. Geist, your question was about she -- when she  
6 called him?

7 MR. GEIST: Correct.

8 THE COURT: So she knows why she called him?

9 MR. GEIST: Yes.

10 THE COURT: Got it. Okay. Overruled.

11 BY MR. GEIST:

12 Q Why did you call him?

13 A Why did I call him?

14 Q Yeah, why were you speaking with him on the phone is the  
15 question.

16 A I was speaking with him because he contacted our firm -- he  
17 contacted us to hire someone to help him with estate planning.

18 Q Okay, so and you, as the estate planning attorney, contacted  
19 him to discuss estate planning matters with him; is that correct?

20 MR. PAYNE: Objection; asked and answered, Your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: Yes.

23 BY MR. GEIST:

24 Q In this conversation, what was the course of action that you  
25 took afterwards based on what you spoke with him?

1           A     I scheduled a meeting to meet with him in person because I  
2 don't do estate planning for someone just by their verbal instructions  
3 over the phone.

4           Q     Okay. When you scheduled this meeting to meet with him,  
5 where was this meeting scheduled for?

6           A     It was scheduled -- he was at the time in a rehab facility near  
7 MountainView Hospital because he had had a injury to his leg and he  
8 was at the facility recovering from that, and that's where I met him.

9           Q     And so the first in-person meeting that you had with Mr.  
10 Scheide was in the rehab facility, correct?

11          A     Correct.

12          Q     Okay. What was your impression of Mr. Scheide at the time  
13 that you met him?

14          A     My impression was that he was a very sharp man. He was  
15 very interesting. He had everything he wanted to talk to me about  
16 extremely organized. He -- I had no concerns about his competency. In  
17 addition, he presented me a doctor's --

18               MR. PAYNE: Your Honor, I got to object and move to strike.  
19 Now she's going into competency. Did she give him a competency test  
20 at that point? Did she put him under --

21               THE COURT: You know, you're going to have an opportunity  
22 to cross-examine. So stop with the speaking objections and let's move  
23 on.

24               THE WITNESS: You were asking my impressions of him?

25               MR. GEIST: Your impressions of him.

1 THE WITNESS: He was --

2 MR. PAYNE: What time period, Your Honor?

3 MR. GEIST: It was at the time --

4 THE COURT: When she met with him in the -- in  
5 MountainView Hospital.

6 MR. PAYNE: At what time?

7 THE COURT: Her first meeting with him in MountainView  
8 Hospital. That's my understanding we're talking --

9 MR. PAYNE: What year?

10 THE WITNESS: At a rehab facility near there.

11 THE COURT: She already told us it was June 2012. Please,  
12 Mr. Payne, I'm going to ask you to please remember that you have an  
13 opportunity to cross-examine if you feel there is anything in which you  
14 wish to cast doubt on her credibility. It's not -- that doesn't necessarily  
15 make it an objection. Thank you. All right.

16 Mr. Geist.

17 MR. GEIST: Thank you.

18 BY MR. GEIST:

19 Q So you were -- you met with him in the rehab facility the first  
20 time you met with him in June 2012, just to get all of that out of the way.  
21 Your impressions of him were again -- I'm sorry, I'd like to get a full  
22 answer from you.

23 A That he was very smart. He was very organized. He was in  
24 full control of everything going on with his -- in his realm right now other  
25 than the use of his leg which was recovering.

1 Q Physically how did he appear to you?

2 A He -- I don't remember -- he was in the hospital bed the whole  
3 time because of the leg issue. He looked just about like any other  
4 person that is at a rehab facility under those types of circumstances.  
5 There was nothing unusual that stuck out about his physical  
6 appearance.

7 Q Okay. And what was it you discussed with him at the time you  
8 met with him?

9 A I will preface this answer by saying there were certainly third  
10 parties in and out of the room during the entirety of that meeting, which I  
11 did discuss with him to make sure he was aware that would affect the  
12 privileged nature of that conversation. He was not concerned about  
13 that. He did not ask to refrain from conversations --

14 MR. PAYNE: Your Honor, I got to object. You got the estate  
15 over here saying that she's invoking attorney-client privilege. Now she's  
16 suddenly telling everybody that he waived it --

17 THE COURT: I would not --

18 MR. PAYNE: -- in this conversation.

19 THE COURT: I think that Ms. Boyer's concern is a different  
20 one. With respect to this particular conversation which is what Ms. Tyler  
21 said with respect to any particular question, she would have to consider  
22 whether -- and I'm assuming as a professional she's doing so -- whether  
23 the issue raised by Ms. Boyer was implicated, and she specifically said  
24 for that conversation, when third parties came into the room, he advised  
25 her he was not concerned about the privilege. So for that conversation,

1 which she said she was going to do this as questions came up, I'm  
2 trusting her as a professional to do that. That was my understanding  
3 was why she felt she could talk about it. This particular one, her  
4 recollection is he said he wasn't concerned about third parties causing  
5 waiver of the privilege. Okay, fine. So for that conversation we now  
6 understand why she feels she can talk about it. Ms. Boyer has an issue  
7 she can certainly raise it.

8 MR. GEIST: Thank you, Your Honor.

9 THE COURT: Okay.

10 BY MR. GEIST:

11 Q What did you discuss?

12 A In general, just to make sure I'm clear on what I was trying to  
13 express there is the fact that during that first meeting, it was not in a 100  
14 percent sterile privileged environment because of the nature of where  
15 the meeting was and people were in and out of the room. We -- I  
16 discussed that fact with him. He didn't care about it. There was nothing  
17 that we discussed during that meeting that was in any way secretive or  
18 needed to be attorney-client confidential because there was nothing that  
19 interesting, for lack of a better word, to try to protect under a privilege. It  
20 was a very routine estate planning meeting that I -- Mr. Scheide would  
21 have probably had in front of a complete stranger with no reservations  
22 because there were nurses in and out.

23 Q Okay. When you say it was a routine estate planning  
24 meeting, is this the kind of meeting that you would have with any other  
25 client any other time that you meet with them for the first time?

1           A     I don't --

2                   MR. PAYNE: Object to the form of the question.

3                   THE COURT: Overruled.

4                   THE WITNESS: Could you maybe clarify the question?

5 BY MR. GEIST:

6           Q     Yeah. You said this was a routine estate planning meeting.  
7 The meeting that you had with Mr. Scheide, did it conform with the other  
8 meetings that you've had with other -- was there anything different about  
9 this meeting that you -- than you've had with --

10          A     The only thing different was that it was in the hospital. I don't  
11 do a lot of meetings in the hospital.

12          Q     Okay.

13          A     It's not my normal practice. I do occasionally take those if I  
14 feel like the person, just based on the phone conversation, is going to  
15 prove -- is going to be mentally competent when I showed up and I -- he  
16 had -- he initiated the call himself and he was very articulate so I felt fine  
17 going to the rehab place for this meeting.

18          Q     Thank you. Okay. So in this initial estate planning meeting  
19 that you had with him, what did you discuss with him?

20          A     In general, we discussed his -- the people in his life, his  
21 friends, his family, his estate in general, and then reviewed his current  
22 estate planning documents and he gave me instructions on the updates  
23 he wanted to make.

24          Q     When you say he gave you updates on the changes he  
25 wanted to make or that he gave you instructions on updates he wanted

1 to make, what did he want to change? What did he want to update?

2 A He wanted to update the powers of attorney and his will.

3 Q And when you say powers of attorney, what specifically are  
4 you referring to?

5 A He had a power of attorney for financial decisions and he had  
6 a power of attorney for medical decisions.

7 Q Okay. And he wanted to change those how?

8 A To name new fiduciary roles.

9 Q Okay. And then on the will, he wanted to change his will how?

10 A He again wanted to update the fiduciary roles. The  
11 beneficiary was to remain the same as it was listed in his prior will which  
12 was made by Jasen Cassady.

13 Q Did you take notes during this meeting?

14 A Yes.

15 Q Okay. Is it your common practice to take notes when you're  
16 meeting with a client?

17 A Yes.

18 Q All right. Did Mr. Scheide hire you as an attorney after this --

19 A He did.

20 Q -- meeting? Is that representation of Mr. Scheide  
21 memorialized in any kind of an agreement with him?

22 A Yes.

23 Q Okay. So you -- he hired you to prepare changes to his estate  
24 planning documents. Did you open up a file at your office?

25 A Yes.



1 Q Do you normally keep a file on estate planning clients?

2 A Yes.

3 Q And what sort of things do you put in that file?

4 A The engagement agreement goes in the file. Correspondence  
5 goes in the file. Attorney notes, attorney research. There's an envelope  
6 for any original documents, and then there's a place to keep like a  
7 tabbed pile of executed documents, copies of those in the tabbed area.

8 Q Okay. In the file for Mr. Scheide, did you gather documents  
9 relating to the representation of him in this estate planning  
10 representation?

11 A Yes.

12 Q Did you receive a subpoena from our office for a copy of your  
13 file on Mr. Scheide?

14 A Yes.

15 Q And did you produce a copy of your file on Mr. Scheide in  
16 response to that subpoena?

17 A Yes.

18 Q All right. And if I could show you what's been marked as  
19 Proposed Exhibit 5 -- do we have the witness binder there?

20 [Colloquy between the Court and the Clerk]

21 MR. GEIST: I apologize, Your Honor.

22 THE COURT: No problem.

23 [Colloquy between the Court and the Clerk]

24 THE WITNESS: Says witness here?

25 THE CLERK: Yeah.

1 MR. GEIST: I think that's respondent's.  
2 THE COURT: Okay.  
3 THE CLERK: Oh, wrong one. Hold on. Okay.  
4 THE COURT: Okay, we've got --  
5 THE CLERK: Which exhibit are you referring to?  
6 MR. GEIST: Exhibit 5.  
7 THE COURT: Five.  
8 THE CLERK: Five.  
9 [Colloquy between the Court and the Clerk]  
10 BY MR. GEIST:  
11 Q Ms. Tyler, I'm going to ask you to take a look at Proposed  
12 Exhibit 5.  
13 THE COURT: It's the very back.  
14 Is it the very back, Mr. Geist, because it's -- this is one through  
15 five I believe so would it be in the very back or --  
16 MR. GEIST: Yeah, it would be under tab five. I'm sorry, Your  
17 Honor.  
18 THE WITNESS: Yeah.  
19 THE COURT: So it's in the back. Thank you. Okay, I'm in  
20 the same place now I think.  
21 BY MR. GEIST:  
22 Q So taking -- if you can take a look at this Proposed Exhibit 5, I  
23 know it's very lengthy.  
24 A Yes.  
25 Q Does it look familiar to you?

1           A     Yes.

2           Q     How does it look familiar to you?

3           A     It appears to be a copy of the file materials that I produced in  
4 response to the subpoena.

5           Q     The file materials for the decedent, Mr. Scheide?

6           A     Correct.

7           Q     Does that appear to be a true and accurate copy of those  
8 documents that you produced in response to the subpoena?

9           A     Yes, it appears so.

10          Q     Okay. How -- do you recall how did you provide the  
11 documents to us?

12          A     Part of the documents were produced by the paper file and  
13 then because Gordon Silver had a practice of keeping the vast majority  
14 of correspondence just on an electronic file, we produced a CD as well  
15 with all those electronic so there was some duplication between the CD  
16 and the paper file which is probably why this is so large.

17          Q     Thank you. And in taking a look at that, does it appear that all  
18 portions of that file, both electronically produced and paper produced,  
19 are present?

20          A     I see emails so that leads me to believe that yes, it was.

21          Q     Okay.

22                 MR. GEIST: Your Honor, I would move to admit Exhibit 5 --  
23 Proposed Exhibit 5 into evidence as Exhibit 5, the file that was kept on  
24 Mr. Scheide --

25                 THE COURT: Okay, starts at page 10? Is that --

1 THE WITNESS: I have one.

2 THE COURT: Okay, so there is more -- oh, there's more.

3 THE WITNESS: That's --

4 THE COURT: It goes all the way back so it's P dash KT dash  
5 lots of zeros 1 through and is -- is the entire thing in just this one binder  
6 through 621?

7 MR. GEIST: I believe so.

8 THE COURT: Or six -- 622.

9 MR. GEIST: Let me take a look, Your Honor.

10 THE COURT: I -- that's just want to make sure that it's just  
11 this one --

12 MR. GEIST: Yes.

13 THE COURT: It's all in this one volume, 1 through 622?  
14 Okay, got it.

15 Okay. So Mr. Payne?

16 MR. PAYNE: I object, Your Honor.

17 THE COURT: Okay.

18 MR. PAYNE: First of all, the one that I have is -- if -- file  
19 stamped zero -- just zero one and then it looks like it stops at 349 which  
20 is their Bate stamp 350, so this entire file -- she's got to lay a foundation  
21 as to each exhibit, Your Honor. They're trying to admit this thing in bulk.  
22 If there's a particular exhibit that they want to pull out and ask her  
23 questions about and she can lay a foundation, fine, but this is not her  
24 entire file. Her file consisted of estate planning documents, estate's  
25 notes, attorney billing records, all kinds of other things and I -- and she

1 hasn't testified to that -- those issues. But primarily, Your Honor, this  
2 exhibit -- my Exhibit 5 -- and she's saying the entire exhibit has got  
3 different file numbers in it.

4 THE COURT: So Mr. Geist, what he's pointing out is that  
5 there is a Bate stamping down on the bottom FILE000349. There's also  
6 additional P dash KT dash 350 through -- and that -- the first -- the file  
7 reference doesn't show up from page 350 through page six whatever  
8 number that was that we talked about.

9 MR. GEIST: Your Honor, the FILE000349, we did not append  
10 that to these documents. That was on the documents --

11 THE COURT: Okay.

12 MR. GEIST: -- as we received them. I'm -- my assumption  
13 and -- and rather than assuming let me just ask.

14 BY MR. GEIST:

15 Q Ms. Tyler, did you -- before you produced those documents,  
16 did you Bates number any of those documents that were produced?

17 A Yes.

18 Q And do you recall which documents you Bates numbered or  
19 what convention you used to Bates number them?

20 MR. GEIST: While she's looking, Your Honor, I'll clarify the P  
21 dash KT dash lots of zeros and then numbers following, that was our  
22 Bates numbering convention that we used for our proposed exhibits. So  
23 any document that shows that number is our addition to the proposed  
24 exhibit.

25 THE COURT: Okay. So maybe Ms. Tyler can explain a little

1 bit more, since it is a 600-plus page exhibit, how her firm traditionally  
2 organized their files as reflected in what we've got here?

3 BY MR. GEIST:

4 Q Well, and let me ask you this --

5 THE COURT: Because that's --

6 Q -- Ms. Tyler. On --

7 THE COURT: I understand that part of it was hard copy and  
8 part of it was electronic.

9 THE WITNESS: Yes.

10 MR. GEIST: Correct.

11 THE COURT: So -- but I think maybe that might be part of our  
12 problem here.

13 THE WITNESS: Yes.

14 THE COURT: I don't know.

15 MR. GEIST: Right.

16 BY MR. GEIST:

17 Q On documents that you produced electronically to us -- and  
18 what documents would those be?

19 A The documents -- from what I'm looking at here, the  
20 documents produced electronically would be the ones that do not have  
21 the Bate stamp file and a number.

22 Q And why would that be? Why would you have not appended a  
23 Bates stamp number on that? Do you know?

24 A I don't know.

25 Q Okay.

1           A     The ones that have the file and a number include actual paper  
2 correspondence that I received, has my notes which makes me -- and  
3 some other things that make me realize it's our -- the paper file that has  
4 the file and the number.

5           Q     On the electronically transmitted documents, the ones on a  
6 CD --

7           A     Yes.

8           Q     -- do you know did you put any kind of Bates numbering on  
9 those documents?

10          A     No.

11          Q     So those that were transmitted by CD would not have a Bates  
12 number from your office on them?

13          A     Correct.

14          Q     But those that were transmitted by paper, did you put Bates  
15 numbers on those?

16          A     Yes.

17          Q     Okay. So taking a look at this where we end with -- and I'll  
18 refer to -- or Petitioner's Bates numbers. I apologize. P dash KT dash  
19 000350, so 350. There is a file number 000349. If you turn the page,  
20 there are no more of that file Bates numbering? Do you recognize those  
21 documents that don't have that file --

22          A     They're mostly duplicates of what's in the paper file, but these  
23 would be the ones that came from the electronic copy on the CD from  
24 Gordon Silver's server.

25          Q     That you produced in response to our subpoena?

1           A     Yes.

2           Q     And so based on your observation looking at this, review of  
3 these documents, does this represent a true and accurate copy of Mr.  
4 Scheide's estate planning file that you had on him?

5                   MR. PAYNE: Your Honor, I got to object. The -- first of all,  
6 these are Gordon & Silver's records. If she's trying to get these admitted  
7 as some kind of -- or counsel trying to get admitted as some kind of a  
8 business record, he's got to lay the foundation for Gordon & Silver. She  
9 doesn't have knowledge to have this -- these documents admitted and if  
10 it's going to content, I've got strong objections --

11                   THE COURT: Okay.

12                   MR. PAYNE: -- to every single one of these exhibits.

13                   THE COURT: All right. These were produced by a custodian  
14 apparently from the successor firm, Garman Turner. So maybe, Mr.  
15 Geist, you could lay --

16                   MR. GEIST: Yeah.

17                   THE COURT: -- a foundation of how --

18                   MR. GEIST: Absolutely.

19                   THE COURT: -- when the firm split, how did she happen to  
20 keep this.

21 BY MR. GEIST:

22           Q     So if you could turn to page 1 --

23                   MR. GEIST: Thank you, Your Honor.

24 BY MR. GEIST:

25           Q     If you could turn to page 1. Do you recognize this document?



1           A     Yes.

2           Q     And it says it's an affidavit of records custodian. How do you  
3 recognize it?

4           A     It was the affidavit that you sent me along with the subpoena  
5 for the records.

6           Q     Okay. And what did you do with this affidavit?

7           A     The subpoena was directed just to me as my name, Kristin  
8 Tyler, and I wanted to respond as thoroughly as I could and so when the  
9 firm split up -- Gordon Silver split up, the attorney who remained with  
10 Gordon Silver to essentially do the wind down and be custodian of  
11 records, he asked me to go ahead and take the vast majority of estate  
12 planning records and we had an agreement that the State Bar was  
13 aware of where I -- myself and my new firm was custodian of the paper  
14 files.

15          Q     Okay. So Gordon & Silver initially created -- when you were  
16 at Gordon & Silver, this file was initially created.

17          A     Correct.

18          Q     Gordon & Silver kept this. Gordon & Silver when -- in a  
19 winding down phase, transferred documents is what you're saying --

20          A     Correct.

21          Q     -- to you? And what documents were those?

22          A     They -- he asked me to take virtually all of the estate planning  
23 files except for ones that we knew, for whatever reason, we probably  
24 wouldn't ever need again.

25          Q     Okay.

1           A     Because they didn't want to be responsible for storing them  
2 and keeping them indefinitely.

3           Q     Was the file for Mr. Scheide one of those files that was  
4 transferred from Gordon & Silver to Garman Turner Gordon?

5           A     Yes.

6           Q     So at the time you had -- you received the subpoena from us,  
7 did you have possession or access to this file for Mr. Scheide?

8           A     I had access to the paper file which was taken over by me in  
9 my room, and because I wanted to be thorough in responding to your  
10 subpoena, I don't have access to the electronic files on the Gordon  
11 Silver server any longer so I asked them to produce a CD to those which  
12 was then relayed to you and to Mr. Payne.

13          Q     Okay. So you had the paper file. The electronic files were  
14 kept still at Gordon & Silver. But with agreement, those files were all  
15 transferred -- custody of them were transferred to you?

16          A     Correct.

17          Q     Okay. So as the custodian of these, you responded to the  
18 subpoena producing this file?

19          A     Correct.

20               MR. GEIST: I, you know, again renew my motion that this be  
21 admitted into evidence.

22               THE COURT: Okay. Yeah.

23               MR. PAYNE: Your Honor, she needs a certificate from  
24 Gordon & Silver. Apparently these were Gordon & Silver's records and I  
25 don't think Ms. Tyler can testify to lay the foundation without Gordon &

1 Silver saying this is what our file is or consists of. It's the successor firm.  
2 She's not -- she hasn't laid any kind of a foundation as to whether she  
3 reviewed every single one of these documents --

4 THE COURT: Well I think clearly with respect to the first 350  
5 pages, Ms. Tyler is certainly competent to lay a foundation for the first  
6 350 pages. She was a partner in the predecessor firm. She's a partner  
7 in a firm that was -- I don't know, I guess a successor, but in spinning off  
8 from Gordon Silver as she testified. She's a partner in Garman Turner,  
9 kept custody of her work product, and that's the first 350 pages clearly  
10 her work product because she, as she said, took the paper file. So I've  
11 got no problem with the first 350 pages.

12 If there's an issue with respect to the succeeding 600 page- --  
13 300 pages up to six whatever it was, I mean to me if she can lay a  
14 foundation for a document that she kept in her personal capacity, she  
15 was a partner in Gordon & Silver.

16 And so if there is something in particular, Mr. Geist, that you  
17 want to pull out from that last 300 pages approximately, I think that Ms.  
18 Tyler certainly would recognize her own work product and as a partner  
19 in that firm could, you know, lay a foundation for it there, but there may  
20 be a point with respect to the complete 300 pages that she -- she said  
21 she was a partner but didn't say she was an officer so I don't know if that  
22 makes a difference. I mean she's a partner in the firm so she's got  
23 some knowledge, but as to whether this was her entire electronic file, I  
24 guess that's where we're running into a problem. But she can certainly  
25 tell us if she recognizes work product because that's a different issue.

1           So the first 350 pages got no problem with. If there's  
2 something in particular in the balance of it, we'll just lay a foundation  
3 separately for those pages as her work product. She would be familiar  
4 with her own work product.

5           MR. PAYNE: Your Honor, just for the record, I don't think  
6 there's been an adequate explanation as to what Gordon & Silver may  
7 have kept, didn't keep. In other words, was the file purged, was there  
8 things that were missing --

9           THE COURT: Oh no, I totally understand what she said. She  
10 took a paper file when she left and as the firm was winding down in  
11 accordance with the rules that the State Bar imposes on firms as they're  
12 winding down, they advise the State Bar here's what attorneys are  
13 taking from the predecessor firm so that anybody goes to the State Bar  
14 about my law firm's disappeared, they have a record, oh, your work  
15 product -- your work is over there with this particular attorney. I mean I  
16 -- you know, I know how it works. So sorry if I'm just --

17          MR. PAYNE: Right. But wouldn't --

18          THE COURT: -- I'm just starting from an assumption --

19          MR. PAYNE: -- wouldn't she be --

20          THE COURT: -- but I understood her to say she took the  
21 paper file as it existed.

22          MR. PAYNE: Understand, but wouldn't she be --

23          THE COURT: The entire paper file?

24          THE WITNESS: Yes.

25          THE COURT: Yeah. Okay.

1 MR. PAYNE: Your Honor, wouldn't she be required to go  
2 review the file at Gordon & Silver to see what was in her file to see if it  
3 was --

4 THE COURT: You took it with you as I understood?

5 THE WITNESS: I took the paper file to the new firm.

6 THE COURT: She took it with her.

7 MR. PAYNE: When she left the firm.

8 THE COURT: Yeah. That was what I understood her  
9 testimony to be.

10 MR. PAYNE: Did she review the file when she was at the  
11 firm, all of these pages, to see if the same pages that were in there that  
12 when she left it and when she came back to get the file?

13 THE COURT: No, you took it with you when you left?

14 THE WITNESS: Yes.

15 THE COURT: Yeah. That's what I understood her testimony  
16 to be that she took her file -- her paper file with her as she left. And  
17 there's an attorney who stayed behind to wind up the affairs and that  
18 person had custody of the server?

19 THE WITNESS: Yes.

20 THE COURT: For the electronic documents?

21 THE WITNESS: Yes.

22 THE COURT: Yeah. Okay.

23 MR. PAYNE: And so she then then compared everything that  
24 she picked up till today and it's still the same?

25 THE COURT: No. The first 350 pages are the pages she

1 took with her when she walked out the door. That's her paper file.

2 Am I -- I understood your testimony?

3 THE WITNESS: Correct.

4 THE COURT: Yeah. So the first -- that's why I said with  
5 respect to this -- the rest of it, as you pointed out, the person who wound  
6 up the firm produced the electronic copy and so that's why I said if you --  
7 with -- if there are specific documents in there, she can identify those as  
8 her work product, she would recognize those.

9 But I agree with you she can't really vouch that the person  
10 who produced the electronic -- I mean I don't even know if she looked at  
11 the electronic file before producing it, so that part I think Mr. Payne's  
12 raised a valid objection to the second -- but I totally understood why she  
13 had the first 350 pages; that's her paper file, she walked out the door  
14 with it. Yeah.

15 MR. GEIST: And just to be clear, Your Honor, it goes to our  
16 numbering page 350, but the first page is actually her affidavit of record  
17 so it's actually 349.

18 THE COURT: Right. Yeah.

19 MR. GEIST: Minor issue.

20 THE COURT: Right.

21 MR. GEIST: So renewal of my motion to admit the first 350  
22 pages --

23 THE COURT: Exactly, yes they are.

24 MR. GEIST: -- of Exhibit --

25 THE COURT: Granted.

1 MR. GEIST: -- Proposed Exhibit 5.

2 THE COURT: Yeah.

3 MR. PAYNE: Same objection, Your Honor.

4 THE COURT: Okay. Well with respect to that portion,

5 objection's overruled, those are admitted.

6 [Petitioner's Exhibit 5, pages 1 through 350 admitted]

7 MR. GEIST: Thank you, Your Honor.

8 MR. PAYNE: Just Your Honor, for -- and the purpose is for

9 what? It's not to prove the matter asserted in these documents. In other

10 words, these are still hearsay.

11 THE COURT: It's business record.

12 MR. PAYNE: I'm sorry?

13 THE COURT: It's a business record.

14 MR. PAYNE: She didn't establish is a business record. We

15 just went through that. But it's full of hearsay so each document has

16 hearsay. She's still got to overcome that issue. She's not issue -- she's

17 not -- these are not being admitted for the truth.

18 THE COURT: No. They're being admitted as a business

19 record.

20 MR. MOODY: Which is an exception to hearsay.

21 THE COURT: Yeah.

22 MR. GEIST: Correct.

23 MR. PAYNE: Right. But the contents are still in dispute, Your

24 Honor.

25 THE COURT: Okay. But it's a business record and it's

1 admitted.

2 MR. GEIST: Okay. Thank you, Your Honor.

3 BY MR. GEIST:

4 Q If we could pull up and take a look at pages -- and this is the P  
5 dash KT numbering convention -- pages 2 through 9 from Exhibit 5.

6 A Okay.

7 Q Does that look familiar to you?

8 A Yes.

9 Q How does it look familiar to you?

10 A It's the legal representation between Mr. Scheide and Gordon  
11 Silver.

12 Q Okay, and taking a look at this document, have you seen it  
13 before --

14 MR. PAYNE: Your Honor, I have to object. It misstates -- the  
15 agreement is between Bradley Richardson.

16 THE COURT: Okay.

17 MR. GEIST: On the -- may I reply, Your Honor?

18 THE COURT: Sure.

19 MR. GEIST: On the first page, this agreement is made on  
20 June 6th between Theodore Scheide and Gordon Silver whose address  
21 is 3960 Howard Hughes Parkway --

22 THE COURT: And so at the time Mr. Richardson being a  
23 partner --

24 MR. GEIST: Correct.

25 THE COURT: -- who's authorized -- I -- so I guess if we can



1 just establish that he would have been authorized on behalf of the firm.

2 MR. GEIST: And if we could take a look at --

3 MR. PAYNE: That -- I'm sorry, that Ms. Tyler is authorized  
4 to --

5 THE COURT: No. If --

6 MR. PAYNE: She -- he's saying this is her fee agreement, but  
7 the fee agreement runs between Mr. Scheide and Bradley Richardson.

8 THE COURT: No. It's --

9 MR. GEIST: No.

10 THE COURT: It specifically states it's between Gordon &  
11 Silver. Mr. Richardson's an authorized signer for Gordon & Silver at the  
12 time.

13 MR. PAYNE: Is Mr. Gordon -- is Mr. Richardson going to  
14 come and testify to that?

15 THE COURT: Certainly Ms. Tyler can testify to that.

16 MR. PAYNE: She hasn't.

17 THE COURT: Okay. Well --

18 MR. PAYNE: How do we know who Mr. Richardson is? I  
19 mean are you taking judicial knowledge?

20 THE COURT: No. No. I'm simply saying I -- we don't -- it  
21 does -- it's irrelevant. I mean Gordon & Silver --

22 MR. PAYNE: Then why are we introducing it?

23 THE COURT: -- Gordon & Silver -- this is a retainer  
24 agreement Gordon & Silver signed by a person authorized to sign.

25 MR. PAYNE: How do we know that? Is Mr. Richardson now

1 going to come in and say I --

2 THE COURT: Okay, Mr. Payne, you can just sit down.

3 Continue.

4 THE WITNESS: Was there a question pending about the  
5 agreement?

6 MR. GEIST: I don't recall.

7 THE COURT: Okay.

8 MR. GEIST: I'll move on.

9 BY MR. GEIST:

10 Q Do you recognize taking --

11 [Colloquy between counsel]

12 BY MR. GEIST:

13 Q So I believe --

14 MR. PAYNE: Your Honor, I --

15 Q -- the question pending was, was this the agreement  
16 between --

17 THE COURT: You've been talking to Mr. Christiansen (sic),  
18 so we're just going to skip over that, Mr. Payne, okay? Thanks.

19 All right. Keep going, Mr. Geist.

20 BY MR. GEIST:

21 Q You recognize this. Was this the agreement that Mr. Scheide  
22 signed with your firm at the time, Gordon & Silver?

23 A Yes, I recognize it. I prepared the document.

24 Q Who signed this document?

25 A Mr. Richardson, who was a partner at the time. I was not a

1 partner at the time. I witnessed Mr. Richardson sign it. I witnessed Mr.  
2 Scheide sign it.

3 Q You saw them both sign this?

4 A Yes.

5 Q Okay. And so based on this you believe -- do you believe that  
6 Mr. Scheide was a client of Gordon & Silver?

7 A Yes.

8 Q Okay.

9 MR. GEIST: Court's indulgence.

10 THE COURT: Uh-huh.

11 BY MR. GEIST:

12 Q Okay. If we can turn to pages 148 in there, from Exhibit 5?  
13 Do you recognize this document?

14 A Yes.

15 Q How do you recognize this?

16 A These are my attorney notes in the file.

17 Q When you say they're your attorney notes, you took these as  
18 notes from what?

19 A From a conversation with Mr. Scheide.

20 Q Okay. Why were they taken?

21 A To memorialize what was discussed and his instructions for  
22 updating his estate plan.

23 Q What were the circumstances under which these notes were  
24 taken?

25 A I believe these are from my first meeting with Mr. Scheide at

1 the rehab facility.

2 Q Okay. Is there a date on those?

3 A The date is June 6, 2012.

4 Q Is there more than one page to these notes?

5 A Yes. Believe it's four pages.

6 Q Okay. So it goes from page 148 through 151?

7 A Yes.

8 Q And all of these notes, to the best of your recollection, were  
9 taken on that June 6th?

10 A Yes.

11 Q Okay. If you could turn to page 150 for me, please? At about  
12 halfway down -- well let's start up at the top. There's a mention of Velma  
13 diagnosed Alzheimer's, correct?

14 A Correct.

15 MR. PAYNE: Objection. There's been no foundation related  
16 to Velma; who she is, how she knows her.

17 THE COURT: Overruled.

18 BY MR. GEIST:

19 Q Why did you write down Velma diagnosed Alzheimer's and  
20 then a date afterwards?

21 A I wrote that down because at the time Velma was the most  
22 important person in Theo's life and he recognized she was getting sicker  
23 and he needed to update his estate planning documents.

24 Q So he told you this --

25 A Yes.

1 Q -- Velma was diagnosed with Alzheimer's and you made a  
2 note --

3 MR. PAYNE: Objection; hearsay.

4 Q -- and you made a note of that?

5 THE COURT: Overruled. As I understood this -- these were  
6 notes taken during the conversation with folks coming in and out?

7 THE WITNESS: Correct.

8 THE COURT: Okay. With respect to that meeting, I believe  
9 that Mr. Scheide personally waived the -- any privilege at that time.

10 MR. GEIST: And I would also point out that these were  
11 discussions about the creation of a will and that has a specific exception  
12 as well.

13 THE COURT: Okay. Accept that as well.

14 BY MR. GEIST:

15 Q Moving down about halfway, it talks about Velma dash  
16 checking joint, Theo dash checking joint, and just to reiterate, who was  
17 Velma?

18 A Velma was Mr. Scheide's longtime companion. They never  
19 married. They were boyfriend/girlfriend for lack of a better term.

20 Q And who is Theo?

21 A Theo was my client.

22 Q Okay. And he told you these things why?

23 A Because I --

24 MR. PAYNE: Objection; hearsay.

25 THE COURT: Overruled.

1 THE WITNESS: I -- it's my standard course in an estate  
2 planning meeting to talk to a client about the important people in their  
3 lives, their family, and if there's others, and to review their assets.

4 BY MR. GEIST:

5 Q Okay. And so you took notes on what assets he had?

6 A Correct.

7 Q And what other assets did he tell you that he had at the time?

8 A At the time they leased a house so there was no real property.  
9 The other assets were joint between them and he was fine with that.

10 Q Okay. Moving to the next line down, there's a note that says  
11 not married. Can you tell me why you wrote that?

12 A I wanted to confirm his marital status to make sure I was  
13 properly advise (sic) him in creating his estate plan so I confirmed he  
14 was not married to Velma. And then I asked if he had any children and  
15 he said that he had a son.

16 Q Okay. Next line down there is a note that says Theo dash has  
17 a son, comma, but they are estranged --

18 A That is what he told me during the meeting.

19 Q Did he -- what else did he say about his son that made you  
20 write that note?

21 A He also said that the estrangement had been for 20 or more  
22 years. I didn't write it down at the time. I wrote it in my notes towards  
23 the end of the meeting. But he said that the estrangement was for quite  
24 a long time.

25 Q So in going through these notes, what were you going to do

1 with all of these notes as you were taking them? What was your intent?

2 A My intent was to document the file in case my client's wishes  
3 were ever challenged, and here we are today, and also to make sure  
4 that I properly followed his instructions on how he wanted to revise his  
5 estate planning documents.

6 Q Okay. Did Theo at the time tell you he wanted his son to be a  
7 beneficiary of his will?

8 A At the time he did not want his son to be a beneficiary.

9 Q At this time this June 6th meeting?

10 A Correct.

11 Q Did he ask you to get in touch with his son?

12 A No.

13 Q When you met with him, did he tell you who he wanted to be  
14 the beneficiary of his will?

15 A Yes.

16 Q Who did he tell you?

17 A He wanted the same beneficiaries as the prior will which was  
18 made by Jasen Cassady and that was first Velma if she was alive and if  
19 not, then he wanted everything to go to the charity St. Jude's Hospital.

20 Q Let's see and further -- so further down the page on 150 about  
21 three-quarters of the way down you have writing -- written there will, and  
22 then on the next line down --

23 MR. PAYNE: I'm sorry, counsel, what page number?

24 MR. GEIST: Page 150. I apologize.

25 MR. PAYNE: One five one?

1 MR. GEIST: One five zero.

2 BY MR. GEIST:

3 Q So you have will bennies (phonetic) dash Velma, comma, St.  
4 Jude, correct?

5 A Correct.

6 Q And so why did you write that down there again?

7 A Will is first just establishing the document that we're  
8 discussing and the instructions he's giving me. Bennies is my shorthand  
9 instead of writing out beneficiaries. The dash to delineate that then I'm  
10 going to list them Velma's name first because he indicated he wanted  
11 Velma to be the first beneficiary if she was alive. The comma to indicate  
12 if she's not, then to St. Jude.

13 Q Okay. Did Mr. Scheide tell you why he wanted to leave his  
14 estate that way?

15 MR. PAYNE: Objection; calls for speculation.

16 MR. GEIST: I'm asking if she had --

17 THE COURT: Overruled.

18 MR. GEIST: -- personal knowledge.

19 BY MR. GEIST:

20 Q Did he tell you?

21 A He did. I don't remember if it was at that meeting, but he did.

22 Q So he may have told you later possibly?

23 A It may have been later. I don't remember if it was at that  
24 meeting or at a later meeting where he talked again about St. Jude.

25 Q Okay. So if you recall him telling you at some point why he



1 wanted you to leave his -- why he wanted to draft his will to leave it that  
2 way, what did he tell you?

3 A And again I'm going to answer this question on the basis that I  
4 believe it is a relevant communication to the nature of this dispute. He --

5 MR. PAYNE: Your Honor, I got to -- you're the one that's  
6 determine relevance, not counsel here sitting up on the stand.

7 Objection; relevant.

8 MR. GEIST: I believe she was offering that relevance --

9 THE COURT: Correct.

10 MR. GEIST: -- because of the privilege.

11 THE COURT: That was what I understood is that she was  
12 explaining the basis on which she felt that she was not violating the  
13 privilege because one or the other of the exceptions applied. That's  
14 what I understood her to be saying. So I'll overrule the objection and I --  
15 as I understand it, and certainly, if you believe she's wrong in her  
16 understanding, you can move to strike, but I'll let her answer based on  
17 the fact this is her belief that she can answer because a exception  
18 applies.

19 MR. GEIST: Thank you, Your Honor.

20 THE WITNESS: In addition to the exception, I am all but  
21 certain that the communication would have taken place either in the  
22 facility or in a later housing situation where our communications were  
23 never 100 percent private and Mr. Scheide was fine with that. He cared  
24 very deeply about Velma. She -- he visited her every day in her  
25 Alzheimer's care facility where she lived. He had dinner with her. He

1 sang to her. He loved her very much. He cried when she died. And so  
2 Velma was his most important person at that point in time, and on top of  
3 that, my --

4 MR. PAYNE: Your Honor, I got to object. I mean she's just --  
5 she's telling a story now.

6 THE COURT: Sure. Okay.

7 MR. PAYNE: Not answering the question.

8 THE COURT: All right. So thank you. Probably well taken,  
9 so --

10 MR. GEIST: Okay.

11 BY MR. GEIST:

12 Q So if there was a -- did he explain a specific reason why he  
13 wanted the estate to be left to Velma first, if not, then to St. Jude that  
14 you can recall?

15 A My recollection is that he -- I believe Velma had a child that  
16 died of cancer and they felt they wanted the money to go to benefit  
17 children fighting cancer --

18 Q This is what he told you?

19 A Yes.

20 MR. PAYNE: Objection; hearsay.

21 THE WITNESS: My -- I recall him saying that.

22 THE COURT: Overruled.

23 BY MR. GEIST:

24 Q Did you suggest that he order these beneficiaries in any way?

25 A No.

1 Q Did you suggest a specific name for someone to be put in  
2 there as a beneficiary?

3 A No, he told me.

4 Q Next line down you have executor. There's a circle that's --  
5 with a one in it says Karen, circle with a two in it says Nevada State  
6 Bank. I'm assuming -- well I'm not going to assume, I'm going to ask  
7 why did you write that down?

8 A This is the portion of the meeting where he instructed me who  
9 to name as executor to oversee his wishes and the first -- his first choice  
10 was the one Karen, and if she was unable or unwilling to serve, then he  
11 wanted Nevada State Bank to do it.

12 Q Okay, and he told you in that order that's how he wanted them  
13 to serve?

14 A Correct.

15 Q Okay. If we could take a look at page 153 -- well first let me  
16 go to 152. No. Yeah, 152 of Exhibit 5. Taking a look at this, does this  
17 look familiar to you?

18 A Yes.

19 Q How does this look familiar to you?

20 A This is the physician certificate that Mr. Scheide gave me at  
21 my first meeting with him to prove that he had recently been evaluated  
22 and could make estate planning documents.

23 Q Why did he give you this document?

24 A Because I asked for it. I said I wouldn't do estate planning for  
25 him otherwise if I didn't have a doctor's letter or something from a doctor

1 saying he could do estate planning.

2 Q And he provided that for you to satisfy that requirement that  
3 he --

4 A Yes.

5 Q Thank you. Do you know who prepared that certificate?

6 A Only by reading it. It says Dr. Francis Allen (phonetic). I don't  
7 know that person.

8 Q Again, you have no personal knowledge on --

9 A No.

10 Q Okay. So taking a look at page 153 and 154, do those look  
11 familiar to you?

12 A Yes.

13 Q How do they look familiar to you?

14 A This was another document that Theo gave me during this  
15 same meeting.

16 Q Okay. So he handed these to you at that meeting?

17 A Yes. It's actually one document. It's the front page and the  
18 back page. He kind of used -- the back page of this 154, he used -- he  
19 scribbled it out and he used the back page as like scratch paper that he  
20 wrote --

21 Q Okay.

22 A -- his handwriting on.

23 Q Was this -- and looking at 154, it appears to be --

24 MR. PAYNE: Your Honor, I just object. She laid a foundation  
25 now that she's a handwriting expert?

1 THE COURT: Sorry. Not understanding.

2 MR. GEIST: Yeah, I don't recall --

3 THE COURT: I mean --

4 THE WITNESS: I'm not -- I don't believe myself to be a  
5 handwriting expert. I just -- I recognize what I believe to be my client's  
6 handwriting. You'd have to verify it through an expert if there was a  
7 dispute about that.

8 THE COURT: Yeah. So -- okay. Overruled, just clarifying it's  
9 -- it's her recollection of what the document is but --

10 BY MR. GEIST:

11 Q Just to go back to page 154 if we could. When you saw this  
12 document, do you have a recollection of whether this was a copy of this  
13 document or an original?

14 A I don't know.

15 Q Okay. But it appears that there are signatures of individuals?

16 A Correct.

17 Q And it appears that there is a scribble out portion on what  
18 appears to be a verification signature below?

19 A Correct.

20 Q Do you recall him making that scribble? Do you know if he did  
21 that?

22 A I don't recall him doing it in my presence, no.

23 Q Okay. So you don't know who did that?

24 A No.

25 Q Okay. Back to 153. Why did he provide this to you?

1 MR. PAYNE: Well, if she knows.

2 THE COURT: Yeah, correct.

3 MR. GEIST: Sure.

4 BY MR. GEIST:

5 Q Do you know if -- do you know why he provided this to you?

6 A He had handwritten this out in advance of our meeting and  
7 gave it to me as a list of my -- again my instructions just once again that  
8 he had also verbally told me to prepare the updated estate planning  
9 documents.

10 Q Did you discuss this with him at the meeting?

11 A Yes.

12 Q Okay. Thank you. After this meeting with Mr. Scheide on the  
13 6th I believe it was, if I recall correctly?

14 A Yes.

15 Q What did you do for him?

16 A I went back to my office and prepared the documents.

17 Q And what documents did you prepare for him?

18 A A will, a power of attorney for medical, power of attorney for  
19 financial decisions.

20 Q Okay. What did you do with the prepared will after you  
21 created it?

22 A Because he was in the hospital and doesn't do email, I went  
23 back to visit him to review the documents with him, and I believe he  
24 chose to sign them the same day.

25 Q Did he review it before he signed it?

1 A Yes. I reviewed it with him.

2 Q Were you there when he reviewed it?

3 A Yes.

4 Q Okay. Were you there when he signed it?

5 A Yes.

6 Q Was there anybody else present when he reviewed and  
7 signed it?

8 A I believe my assistant, Diane Dewalt, also went to that  
9 meeting in anticipation that he was likely to sign it that day. I never  
10 pressure a client to sign. It's his decision. If he decided that he didn't  
11 want to, I wasn't going to force him, but Diane also went to the meeting  
12 because she's a notary and she could serve as a witness in case he  
13 chose to sign it that day.

14 Q Okay. Did you witness him signing the will --

15 A Yes.

16 Q -- that day? And Diane Dewalt you said was there also?

17 A Yes.

18 Q Did she witness him signing that will?

19 A Yes.

20 MR. PAYNE: Objection. I don't think she can testify to what  
21 Diane witnessed.

22 BY MR. GEIST:

23 Q Was she present when --

24 THE COURT: Okay.

25 Q -- you saw him sign it?

1           A     Diane and I were both present in the same room when I saw  
2 Theo sign the will.

3           Q     Okay, and did you personally witness him signing the will?

4           A     I did.

5           Q     Did you personally witness Diane Dewalt signing the will?

6           A     I did. Yes.

7           Q     Did Mr. Scheide -- that you know of, did Mr. Scheide and  
8 Diane Dewalt personally witness you signing the will as a witness?

9           A     They were in the room when I signed the document.

10          Q     Okay. At this signing meeting, how did Mr. Scheide appear to  
11 you?

12          A     He again was in the hospital bed because of the leg situation,  
13 was again that same day sharp, understood what he was doing. I had  
14 no concerns about him understanding what he was doing.

15          Q     Did you believe him to be of sound mind after meeting with  
16 him?

17          A     Yes.

18          Q     Did you have any reservations to allow him to sign that will?

19          A     No. If I did, I would have not let him sign it that day.

20          Q     Okay.

21               MR. GEIST: Your Honor, if we could turn to Proposed Exhibit  
22 2.

23               THE COURT: Okay.

24               MR. GEIST: And the page numbering on this is P dash EP  
25 dash 000017 on our Bates numbering through P dash EP dash 00032.



1 THE WITNESS: I'm sorry, was there a question?

2 BY MR. GEIST:

3 Q I just wanted you to take a look at that. Have you had the  
4 chance to look at it?

5 A Yes.

6 Q Okay. Do you recognize this document?

7 A Yes.

8 Q How do you recognize it?

9 A It's the last will and testament of Theodore E. Scheide that I  
10 witnessed him sign on June 8th, 2012.

11 Q Okay. So turning to page 32 of this document, do you  
12 recognize your signature on that page?

13 A I do.

14 Q Okay. Do you believe -- does it appear that this is a true and  
15 accurate copy of that will that you witnessed for Mr. Scheide on June 8  
16 that you prepared for him prior to that signature?

17 A It does.

18 MR. GEIST: I would move to admit Exhibit 2 into evidence.

19 THE COURT: Okay.

20 MR. PAYNE: For what purpose?

21 MR. GEIST: For the purpose of establishing that she met with  
22 him, created an estate planning document --

23 THE COURT: And this is the work product that resulted from  
24 those meetings?

25 MR. GEIST: Correct.

1 THE COURT: Understood, okay. Okay, I'll admit it.

2 [Petitioner's Exhibit 2 admitted]

3 BY MR. GEIST:

4 Q If we could turn back to the first page which would be page 17  
5 in this will, under article one, who is listed --

6 MR. PAYNE: Just for the record, Your Honor, we're admitting  
7 a copy, correct?

8 THE COURT: Yes, this is just a copy -- this is her work  
9 product -- demonstrates her work product that resulted from those  
10 meetings she discussed?

11 MR. GEIST: Well, let's focus on that then. Thank you, Your  
12 Honor.

13 THE COURT: Uh-huh.

14 BY MR. GEIST:

15 Q Up at the top there appears to be a stamp that says  
16 electronically filed and a date of May 20th, 2016, correct?

17 A Correct.

18 Q And then there is a number above where it says last will and  
19 testament that says W dash 16 dash 010344?

20 A Correct.

21 Q Okay. Do you know why this was filed?

22 A Yes.

23 Q Why that stamp is there. Can you tell us why that was filed?

24 A Because in approximately this timeframe I became aware that  
25 Mr. Scheide's estate in the probate court was set for a hearing to be

1 passed as if he had died intestate and --

2 Q When you say this timeframe, do you mean May 20th, 2016?

3 A Yes.

4 Q Okay. And were you in possession of the original of this  
5 document at that time?

6 A I was.

7 Q What did you do with the original?

8 A I lodged it with the court. Lodged it with court.

9 Q Okay. Thank you. So the original of this document is lodged  
10 with the court, correct?

11 A Correct.

12 Q Okay. So does this document appear to be identical -- the  
13 copy of this document appear to be identical to the one that you lodged  
14 -- the original that you lodged with the court?

15 MR. PAYNE: Your Honor, I think she'd have to see the  
16 original before she could testify to that.

17 BY MR. GEIST:

18 Q From your personal knowledge --

19 THE COURT: Yeah, I'm going to overrule that.

20 THE WITNESS: It appears to match the same key terms so  
21 yes, I believe it is accurate.

22 BY MR. GEIST:

23 Q Okay. Turning back to page 17, thank you for looking at that.  
24 Under article one, who does it say is Mr. Scheide's family under family  
25 information?

1           A     It states that he was unmarried at the time and that he had  
2 one child, Theodore E. Scheide, III --

3           MR. PAYNE: Your Honor, I object. The document --

4           MR. GEIST: Thank you.

5           MR. PAYNE: -- speaks for itself.

6           MR. GEIST: Okay.

7           THE COURT: Sustained.

8 BY MR. GEIST:

9           Q     Does it say anything about Mr. Scheide, III?

10          MR. PAYNE: Same objection.

11          THE COURT: Overruled.

12          THE WITNESS: Yes, it says that the testator was specifically  
13 disinheriting Theodore E. Scheide, III and his descendants.

14 BY MR. GEIST:

15          Q     Why did you put -- draft that in the document?

16          A     This is what my client, Theodore E. Scheide, instructed me to  
17 draft.

18          Q     Okay. And again, when you drafted that you presented this to  
19 Mr. Scheide to review, did he specifically look at this page?

20          A     Oh yes. Yes.

21          Q     And you sound certain. Why are you certain?

22          A     I -- whenever I review a will with a client, we always review  
23 article one, family information. We always review the executor  
24 nomination. We always review the beneficiary designations.

25          Q     Thank you.

1           A     Those are the core terms of the law.

2           Q     Okay. Turning to page 19, article three, it says my residuary  
3 estate. What does residuary estate mean?

4           MR. PAYNE: Objection; calls for legal conclusion.

5           THE COURT: Well, again, to the extent that you are asking  
6 her how she uses it when she drafts a document? Okay. Then I'll allow  
7 that.

8           MR. GEIST: Correct.

9           THE WITNESS: You're allowing it? Sorry.

10          THE COURT: Yes, yes.

11          THE WITNESS: Okay. The residuary estate is the balance of  
12 the estate after any specific bequest that a person might make.

13 BY MR. GEIST:

14          Q     Okay. So this is where -- in a will such as this one that you  
15 drafted, is this where you would put who the beneficiaries of a will are?

16          A     Correct.

17          Q     Okay. And this document that you drafted for Mr. Scheide,  
18 who did you put as the beneficiaries of his residuary estate?

19          A     The primary beneficiary was Velma G. Shay if she was living  
20 after my client's death, and if she was not living, she predeceased him,  
21 then the residuary estate was to go to St. Jude Children's Hospital  
22 located in Memphis, Tennessee.

23          Q     Okay. So -- and after you and Ms. Dewalt and Mr. Scheide  
24 signed this document, what did you do with it?

25          A     Because he was in the facility, we needed to process the

1 document for our file so we took it with us back to the office.

2 Q Okay. And what did you do with it when you went back to the  
3 office?

4 A Then the standard course is that it's scanned electronically  
5 into the electronic file and a paper copy is -- a copy on white paper is put  
6 in the file and the original -- in this case he instructed us to hold it  
7 because he was in rehab facility at the time. So we held that original in  
8 the envelope portion of our file where we put original documents.

9 Q Thank you. So this copy that has been admitted has the  
10 stamped copy -- I'm sorry, the file stamp on it from when you lodged the  
11 will. Based on what you're testifying to, would there be another copy of  
12 this will in your file without that file stamp copy?

13 A Most likely, yes.

14 Q Okay. After this June 8th meeting where you signed this will,  
15 did you meet with Mr. Scheide again?

16 A Yes, over the course of the next years.

17 Q Okay. If -- do you recall when you met with him again?

18 A I know that we met again for sure in October of that year.

19 Q October?

20 A October of 2012.

21 Q Okay. Do you recall what the purpose of that conversation  
22 was?

23 A Yes.

24 Q And what was the purpose of that conversation?

25 A I believe at that point in time the woman that he had named to

1 several fiduciary roles, Karen, she didn't want to be in that role anymore,  
2 I think she had resigned, and so he needed to -- he wanted -- he  
3 contacted me. He wanted to update those fiduciary roles once again in  
4 the documents.

5 Q Okay. Did you meet with him in person?

6 A Yes.

7 Q Where did you meet with him in person?

8 A I believe it was at my office, but I'd need to confirm my notes  
9 to check that.

10 Q Okay. Let's see if we can find those. Take a look at KT145,  
11 that would be Exhibit 5.

12 A Okay.

13 Q Does that refresh your recollection?

14 A Yes.

15 Q Okay. Take a look at 146 if you would please?

16 A Okay.

17 Q Are those your notes as well?

18 A Yes.

19 Q Does that refresh your recollection on when you met with him  
20 anytime prior?

21 A Yes, it looks like we had some phone calls in --

22 Q Okay, that -- yeah. So you did meet with him prior to that  
23 October date?

24 A Yeah. I don't know if I met with him in person, but I spoke with  
25 him at least by phone.

1 Q And what was the purpose of that conversation?

2 A It appears from my October 1, 2012 note in the file that he  
3 called and instructed me to replace Karen with Patricia Bolen, gave me  
4 Patricia Bolen's phone number.

5 Q Who was Karen?

6 A Karen was the woman that was named as the executor and  
7 the financial power of attorney and the healthcare power of attorney, and  
8 she had indicated she didn't want to do that anymore.

9 Q Okay. And did you suggest Patricia Bolen to him?

10 A No.

11 Q Okay. So he wanted to make that change. What did you do  
12 next?

13 A I drafted the documents and then he scheduled a meeting for  
14 the next day because he wanted to get that signed right away, and so  
15 then he came in on October 2nd, 2012 for an in-person meeting. I  
16 believe it was at the Gordon Silver office.

17 Q Okay. So you prepared --

18 MR. GEIST: Court's indulgence.

19 BY MR. GEIST:

20 Q So you prepared a will for him based on those instructions  
21 from that meeting, correct?

22 A Yes.

23 Q And you took that or you met with Mr. Scheide and had him  
24 review that will?

25 A Correct.



1 Q Did Mr. Scheide sign that will?

2 MR. PAYNE: Objection; lacks foundation.

3 THE COURT: Overruled.

4 THE WITNESS: Yes, I believe he did that day.

5 BY MR. GEIST:

6 Q Okay. Who else signed that will?

7 A I would need to look at it to verify who the witness was.

8 Q We can take a look at 247 in that same Exhibit 5. And it goes  
9 through 262. So the signature page is 262. Does that refresh your  
10 recollection?

11 A Yes. The witness again was the same person, Diane Dewalt.

12 Q Okay, so both you and Diane Dewalt, were you present at that  
13 meeting?

14 A Yes.

15 Q Did you see Mr. Scheide sign the will?

16 A I did.

17 Q Okay. How did he appear when you met with him and he  
18 signed the will?

19 A Healthy. He reviewed everything, didn't request any changes.  
20 Again, it was his decision to sign that day. He was in full control of that  
21 meeting.

22 Q What was your impression of his mental faculties at that time?

23 A I had no concern about him.

24 Q Okay. So did you believe him to be of sound mind when he  
25 signed the will?

1           A     Yes.

2                     MR. PAYNE: Objection; lack of foundation.

3                     THE COURT: Yeah, I would agree. If she can expand on  
4 that --

5                     MR. GEIST: Okay.

6 BY MR. GEIST:

7           Q     Did you talk to him during the course of that meeting?

8           A     Yes, I asked him some more questions about who exactly is  
9 Patricia Bolen because it's a new person and I wanted to make sure he's  
10 not getting taken advantage of by someone even though she wasn't --

11          Q     What was his response?

12          A     He had -- according to my notes, he had -- it was his  
13 housekeeper and she had helped him when he was in the hospital  
14 months earlier, but then I think she was out of town a few days when he  
15 wanted to up things and so he decided to name his -- what he perceived  
16 to be his CPA, Karen from H&R Block who did his taxes. So he thought  
17 she'd be better for the job, but then she didn't want the job so then the  
18 housekeeper was another person in his life that he'd known for a while  
19 and he trusted her. And I remember discussing with him that he would  
20 have to understand that this would mean she'd have access to his bank  
21 accounts if he got sick and he was fine with that.

22          Q     Did you talk to him about any other changes to the will prior to  
23 this?

24          A     He indicated there were no changes to the beneficiary, just  
25 changing the executor.

1 Q Okay. And during this conversation did he appear different  
2 than when you met with him before?

3 A He was definitely physically stronger and his --

4 Q Mentally was there --

5 A Mentally he was --

6 Q -- any change?

7 A No, he was the same if not stronger just as a result of the  
8 physical boost and being out of the hospital.

9 Q Okay. Did he ask you to witness that signature of that will?

10 A Yes, in my standard line of a signing signature or a signing  
11 ceremony I ask if the client wants myself and the other person to be the  
12 witnesses --

13 Q So --

14 A -- and he said yes.

15 Q I'm sorry to interrupt. Do you -- so you have a standard  
16 signing ceremony that you do?

17 A I have the same five questions that I ask at every signing.

18 Q And what are those five questions?

19 A I ask the client do you declare this to be your last will and  
20 testament. He answered --

21 Q And do you wait for a response?

22 A Yes, a verbal answer. I don't let them shake their head. They  
23 have to verbally respond.

24 Q Did you ask this question of Mr. Scheide?

25 A Yes.

1 Q Did he respond?

2 A He did.

3 Q What did he say?

4 A He said that yes he declared it to be his last will and  
5 testament.

6 Q What's your next question?

7 A Have you had an opportunity to review this document?

8 Q And did you ask that of Mr. Scheide?

9 A Yes.

10 Q And what was his response?

11 A That he did. He had reviewed it earlier that same day.

12 Q What is your next question? I apologize for putting you on the  
13 spot.

14 A I do them so fast I have -- do you understand its key  
15 provisions about executor and beneficiaries?

16 Q Did you ask Mr. Scheide this question?

17 A Yes.

18 Q What was his response?

19 A That yes he did understand what he was doing by signing the  
20 document.

21 Q Okay. Did you ask another question?

22 A Yes. The fourth question is, is anyone forcing you to sign this  
23 document.

24 Q Did you ask Mr. Scheide that question?

25 A Yes.

1 Q And what was his response?

2 A His response was no that no one was forcing him to sign it.

3 Q Okay. Did you -- and there's another question?

4 A The last question is would you like myself and in this case

5 Diane to be the witnesses and he --

6 Q Did you ask Mr. Scheide that question?

7 A I did.

8 Q And what was his response?

9 A He said yes he would like us to be the witnesses on his will.

10 Q Based on those questions and those responses, did you form

11 an impression of his mental -- of the soundness of his mental ability --

12 A I had no concerns --

13 Q -- to sign the will?

14 A -- that day about him having enough mental soundness to sign

15 this document.

16 Q Okay. Did Mr. Scheide appear to be of sound mind when he

17 signed the will?

18 A Yes.

19 Q Did you personally witness him signing the will?

20 A I did.

21 Q Did you personally witness Diane Dewalt witnessing the will

22 with her signature?

23 A She was in the room the entire time and I also saw her sign

24 the document.

25 Q Do you know were Mr. Scheide and Ms. Dewalt in the room

1 when you signed the will?

2 A They were in the room, yes.

3 Q Okay. So turning to page 1 of this will, which is 247, under  
4 article one, who is listed under family information?

5 A Under the family information it's the exact same as the prior  
6 will. It states that he was still at that point in time unmarried, having still  
7 had one child.

8 Q Okay. Do you recall was Velma Shay still alive at this time?

9 A At this point in time, yes.

10 Q Okay. Below where it says I have one child, Theodore E.  
11 Scheide, III, what does that say about the disposition of Mr. Scheide's  
12 estate? The paragraph that starts however.

13 A It said that his wish was -- remained the same that he still  
14 wanted to specifically disinherit Theodore E. Scheide, III and his  
15 descendants.

16 Q And why did you put that in there?

17 A To reconfirm that was his -- his wish was unchanged from  
18 prior wills in that he did not want to provide for his son.

19 Q Did Mr. Scheide have a chance to review that article one?

20 A He did.

21 Q And to the best of your recollection, did he say anything about  
22 that?

23 A He -- it's one of the standard articles I always review in a will  
24 and he did not request any revisions to that section.

25 Q When you say you review it with him, how do you review it

1 with him?

2 A I sit down next to the client and say okay, we're going to look  
3 at the core terms of your document. The first section we need to look at  
4 is your name, that you're a resident of Clark County, you're of sound  
5 mind and all this good stuff. Then let's review the information. Are you  
6 still unmarried? Yes. Do you still only have one child? Yes. Do you  
7 still wish to not provide for him under this document? He said yes. So  
8 we go -- and that means article one we go paragraph by paragraph with  
9 the client.

10 Q So you reviewed all of that with Mr. Scheide --

11 A Yes.

12 Q -- that day before he signed it?

13 A Yes.

14 Q Okay. Turning to page 249, same exhibit, Exhibit 5, article  
15 three. Under section 3.02, again there's another reference to residuary  
16 estate which you've already testified what your use of that term is. Why  
17 did you draft the document this way?

18 A These were my instructions from Mr. Scheide about who he  
19 wanted as his beneficiaries.

20 Q And who did he want as beneficiaries?

21 A He wanted them the same as the prior will and the will before  
22 that, that that was Velma G. Shay if she was alive, and if she wasn't  
23 alive, then St. Jude Children's Hospital in Memphis, Tennessee.

24 Q Okay, article four, there is a reference to a remote contingent  
25 distribution. What is your understanding of why that's -- what that

1 means?

2 MR. PAYNE: Objection; calls for legal conclusion.

3 THE COURT: I believe that question was specifically limited  
4 to her understanding?

5 MR. GEIST: Correct.

6 THE COURT: Okay. I'll allow that.

7 THE WITNESS: This is the provision of the will that I explain  
8 to the client is the worst case scenario provision, so that if his prior  
9 beneficiaries were not around for some reason, if Velma was deceased,  
10 if St. Jude's wasn't in existence anymore, who would be the beneficiary  
11 in that worst case scenario, and I --

12 BY MR. GEIST:

13 Q Did you discuss this with him prior to drafting this?

14 A Yes.

15 Q And what did he say he wanted to put in this provision?

16 A He didn't have an alternate charity and he was fine with heirs  
17 at law --

18 Q What are heirs at law --

19 A Heirs at law --

20 Q -- based on your understanding?

21 A Sure. Heirs at law would mean to look at Mr. Scheide's  
22 parents if they were living, if not siblings -- excuse me, heirs -- yes, heirs  
23 at law would be parents if they're not living, if not siblings, if not nieces  
24 and nephews or then all the way into cousins, to find someone in the  
25 bloodline. But before that, I revisited well would you want your son to



1 take in that scenario and he said no.

2 Q Okay, so the last line of that paragraph, in parentheses it says  
3 other than Theodore E. Scheide, III and his descendants?

4 A Correct. That is what he instructed me to provide there that  
5 he was fine with heirs at law but not his son.

6 Q Okay. And you discussed that with him prior to him signing --

7 A Yes.

8 Q -- this document? Okay. Do you recall when you next spoke  
9 with Mr. Scheide?

10 A Off the top of my head, no.

11 Q Okay. If we turn to page 144 of Exhibit 5, do you recognize  
12 that?

13 A Excuse me, 144?

14 Q Yeah.

15 A Okay. Yeah, these are my handwritten notes.

16 Q Does that refresh your recollection of when you next met with  
17 Mr. Scheide?

18 A It does recall -- I don't believe I met with him based on these  
19 notes, but it recalls -- helps me recall what was going on in his life --

20 Q Okay.

21 A -- when he --

22 Q So this might not --

23 A -- he called me.

24 Q -- have been an in-person meeting --

25 A This was a phone call.

1 Q Okay. So you spoke with him on what date?

2 A I spoke with him on June 12, 2013.

3 Q Do you recall the circumstances of that phone call? Did he  
4 call you?

5 A He called me.

6 Q And what was the purpose of that phone call?

7 A He was back in a medical facility of some point. Says he was  
8 getting released on Friday. He said in his words he wanted to kill Patty's  
9 POA, Patty's -- Patricia Bolen's power of attorney. He asked me to mail  
10 the form to him to sign to do that.

11 Q To mail what form?

12 A The revocation of the power of attorney.

13 Q Okay.

14 A He specifically didn't want to pay my time for me to go out to  
15 the hospital to meet with him. He just said I could mail the form to him.

16 Q Okay. What did you do after this phone call with him?

17 A Well I prepared the revocation and I mailed it to him. He  
18 signed it. He sent it back. I believe he faxed it back. But also during  
19 this conversation I said if you're going to take her off, you know, you  
20 better think about who you're going to name as a replacement because I  
21 don't really think Nevada State Bank's going to do it. And I had told him  
22 that before too.

23 Q Okay. When did -- do you know when you next spoke with  
24 Mr. Scheide? Do you recall?

25 A I know somewhere in this timeframe I spoke with him when

1 Velma died. He called to tell me that Velma died.

2 Q Okay. And do you recall the circumstances he called you?

3 A He called me, he was very upset, and he was very sad, yeah.

4 Q And was there any discussions about his will or anything else?

5 A I don't specifically remember.

6 Q Okay. Turning to page 143, did you have a contact with him  
7 after the meeting where you -- where he asked you to revoke Patty's  
8 POA?

9 A Yes.

10 Q Does this refresh your recollection of that next meeting?

11 A Yes, and it would have been a phone meeting based on the  
12 notes.

13 Q Okay. And what were the circumstances of this phone call?

14 A Was phone call on August 27th of 2013. It says call to Theo  
15 so I must have called him. Maybe I was -- my guess is that I was  
16 responding to a phone message asking me to call him because I don't  
17 typically call clients out of the blue like that.

18 Q And what did you discuss with Theo at that time?

19 A He was -- he gave me an update on his physical health at the  
20 time, quite a bit of detail as to names and where he was at and what  
21 was going on. He was not doing good physically.

22 Q Did you discuss anything about his will at the time?

23 A He stated to me at that time that he wants all to go to St. Jude  
24 when he dies, because at that point in time Velma had died.

25 Q So this was after Velma's death. Did he discuss anything else

1 with you about his estate plan?

2 A Based on the notes, no. We may have talked again about do  
3 you want to update the powers of attorney, but he hadn't made any  
4 decisions so it's not in the notes as for my marching orders of what to  
5 prepare.

6 Q Do you recall did he ask you to get in touch with his son?

7 A If he had asked me that, I would have certainly put it in the  
8 notes so I don't believe he asked me that, no.

9 Q Okay. You don't recall?

10 A No.

11 Q Okay. Do you know when you next had contact with Mr.  
12 Scheide? Was it by phone or by --

13 A Was probably later that year, 2013.

14 Q Okay. So same year. If you can flip to page 137, does this  
15 look familiar to you?

16 A Yes.

17 Q How does it look familiar?

18 A It looks familiar because the document that Theo mailed to  
19 me.

20 Q Okay, so does this refresh your recollection about the next  
21 contact you had with him?

22 A Yes.

23 Q Okay. And so Theo mailed this document to you?

24 A I -- either he dropped it off in the office and I wasn't there or he  
25 mailed it, but I don't recall a meeting.

1 Q Did you know why he dropped this off?

2 A I believe he had called and said I got this document, I don't  
3 understand what it is, can you look at it, and then --

4 Q Did you respond to him?

5 A I said yes, please get me a copy and we'll look at it. It  
6 sounded like it was a bankruptcy related document which didn't make  
7 much sense.

8 Q Okay. And after you received this document did you talk to  
9 him about this document?

10 A I did.

11 Q Okay. And did he mention at that time anything about his will  
12 or his estate plan?

13 A Not that I recall.

14 Q Okay. Turning to page 136 -- and I apologize, did you -- do  
15 you know when you met with him next or talked to him next?

16 A Based on 136, it looks like another person in his life contacted  
17 me about him because she was concerned about him.

18 Q When you say another person in his life, do you know who  
19 that person is?

20 A According to my notes, it was a woman named Kathy Longo.

21 Q Do you know who Kathy Longo is?

22 A I believe that she is his stepdaughter.

23 Q Okay. Have you spoken to Kathy Longo before this?

24 A I don't believe -- I think this was the first time I talked to her.

25 Q Okay. So she called you?

1           A     She called me.

2           Q     All right. And your recollection of this conversation was it was  
3 about what?

4           A     She was very concerned about Theo and she'd been helping  
5 him out a lot and she was kind of getting burned out about it and was  
6 reaching out to me to see if I might be able to help him.

7           Q     Did you do something to help him after that phone call?

8           A     I know that this was -- this sparked a series of conversations  
9 with Theo and a couple of in-person meetings to talk about the fact that  
10 he was at that point getting -- his physical decline was really picking up  
11 pace. He was physically getting sick.

12               MR. PAYNE: Your Honor, I object. It's a lot of speculation.

13               THE COURT: I don't know that --

14               MR. PAYNE: No foundation.

15               THE COURT: -- we're testifying as to speculation, but this  
16 was my understanding what Kathy Longo, not a client, just called up and  
17 offered to her --

18               MR. PAYNE: Well --

19               THE COURT: -- in the context then that Kathy expected Ms.  
20 Tyler to do something?

21               MR. GEIST: I believe that's what she's testifying to.

22               THE COURT: Okay.

23               MR. PAYNE: And it's hearsay.

24               THE COURT: That's my understanding. Okay. So granted  
25 it's not but it's not being -- for the proof of the matter asserted. It's just --

1 MR. GEIST: No.

2 THE COURT: -- reporting what a conversation somebody had  
3 with Ms. Tyler upon like some sort of an expectation Ms. Tyler was  
4 going to do something with that information.

5 MR. GEIST: Right.

6 THE COURT: So that -- so in the context that it's just about  
7 what information this unknown third party provided with the expectation  
8 of something, okay, I'll admit it. Just not for the proof of the matter, but  
9 just that this is --

10 MR. GEIST: Okay.

11 THE COURT: -- the background for whatever Ms. Tyler did  
12 next.

13 BY MR. GEIST:

14 Q So after -- after you spoke with her, what did you do for Mr.  
15 Scheide? If you turn to 133, it looks like you're having a hard time  
16 recalling.

17 A It appears that I met with him a few days after that for an  
18 in-person meeting.

19 Q Do you recall where you met with him?

20 A I believe at this point in time he was at the Sunshine Home.  
21 It's a group home up in kind of the North Las Vegas area.

22 Q Okay. Was he a resident there --

23 A Yes.

24 Q -- that you recall?

25 A Yes.

1 Q And who -- was there anybody else present at that meeting?

2 A It was -- Kathy Longo was there at his request and there were  
3 employees of the home. We met in the dining room area. There were  
4 residents certainly within earshot. He was fine with that.

5 Q Okay. What was the purpose of this conversation?

6 A Purpose of this conversation was to figure out who's going to  
7 help take care of Theo on a day-to-day basis because he needed more  
8 help to get to appointments and run errands and do things like that and  
9 he needed someone to help him with those types of activities.

10 Q Did you discuss that with him?

11 A Yes.

12 Q Were there discussions about individuals who could possibly  
13 fill that role?

14 A Yes. He wanted Kathy to do it, but she had been helping him  
15 for a while, was getting a little burned out and had some travel coming  
16 up and her preference was that it be someone else.

17 Q Okay. Did you come -- did he ask you to do anything at that  
18 meeting?

19 A He asked me to set up some interviews for him to basically  
20 interview some different people to work as like an assistant for him to  
21 help get him to appointments, drive him around kind of like a caregiver  
22 role -- a paid caregiver role.

23 Q Okay. Did he say anything about his will at that time?

24 A Not that I recall.

25 Q Down at the bottom of the page, the very last two lines, there's



1 a handwritten note that says all of his final papers, arrow, in box?

2 A Yes.

3 Q And says Theo final document in the storage unit. Do you  
4 recall why you wrote that?

5 A He told me that. I didn't have a full grasp of what final papers  
6 meant, but he just -- he said make sure you know and write this down  
7 that my final papers are in my -- this box in my storage unit.

8 Q Okay, so you had no personal knowledge of that --

9 A No.

10 Q -- final document box --

11 A No.

12 Q -- or whatever he was referring to? Okay. Did you discuss  
13 anything else related to his finances?

14 A Related to his final wishes?

15 Q Yeah. And if you don't, that's fine.

16 A I don't see anything in the notes from that meeting about  
17 changes that day.

18 Q Do you recall when you had contact with Mr. Scheide next?

19 A I believe it was later that month or early January.

20 Q Okay. If you turn to page 129, does this refresh your  
21 recollection?

22 A Yes.

23 Q Okay, so when did you next have contact with Mr. Scheide?

24 A I spoke with him by phone on December 27, 2013.

25 Q What were the circumstances of this phone call?

1           A     I believe I was returning a phone call to him. He was -- I wrote  
2 that he's mad that Kathy gave keys to the home, so he was going to fire  
3 her even though she wasn't really like an official role of any sort but he  
4 liked to say he was firing people.

5           Q     So -- and let me just make sure I understand this. He was  
6 saying he's firing her, but she -- was she a fiduciary under any of his  
7 documents?

8           A     No. She was not a fiduciary, she just was helping him as a --  
9 based on their I guess family relationship, she was his stepdaughter.

10          Q     Okay. And what else did you discuss? Did you discuss  
11 anything about his estate plan?

12          A     We explained that bankruptcy paper.

13          Q     The bankruptcy paper from --

14          A     A few months before.

15          Q     -- I believe it was September?

16          A     Yes.

17          Q     Okay.

18          A     He told me to hold off on interviews for a little while till after he  
19 fired Kathy.

20          Q     And what are -- what interviews was he referring to?

21          A     He had in the prior meeting asked me to find people in town  
22 that would be candidates to be like his assistant and to arrange for them  
23 to come to the Sunshine Home for interviews so that he could meet  
24 them and see if he liked any of them.

25          Q     Did he say anything else in this meeting about his wishes?

1           A     Not about his wishes. He had some other comments, but not  
2 about his wishes.

3           Q     Okay. Did he ask you to get in touch with his son?

4           A     He did not.

5           Q     Did he tell you that he wanted to change his estate plan in any  
6 way?

7           A     No.

8           MR. PAYNE: Objection; calls for speculation, Your Honor.

9           THE COURT: Overruled.

10          MR. GEIST: Okay.

11          THE WITNESS: No.

12 BY MR. GEIST:

13          Q     Do you recall when you next spoke with Mr. Scheide?

14          A     I believe it would have been early January.

15          Q     Okay. If you turn to page 128, does this refresh your  
16 recollection?

17          A     Yes.

18          Q     And when was the next time that you spoke with Mr. Scheide?

19          A     I met with him it looks like in person on January 2nd, 2014.

20          Q     Do you recall where you met with him?

21          A     Would have been at the Sunshine Group Home.

22          Q     Okay. When you met with him, how did he appear to you?

23          A     He physically was slowing down. I --

24          Q     What do you mean he was slowing down?

25          A     His body was failing him. He had a hard time walking.

1 Q Did you --

2 A He wasn't in a wheelchair -- he was --

3 Q Did you -- I'm sorry, did you observe him walking?

4 A Yes.

5 Q Okay.

6 A I believe he was using a walker, not a wheelchair, and moving

7 pretty slowly with the walker.

8 Q Okay.

9 A Whereas, a year before he was walking on his own.

10 Q Okay. Did you talk with him at this meeting?

11 A Yes.

12 Q And what was the circumstances of this conversation with

13 him?

14 A Again trying to figure out who could come in to work as like an

15 assistant for him to help take care of him and get him to appointments

16 and where he needed to go, run errands for him --

17 Q Okay.

18 A -- and some other issues it looks like.

19 Q When you spoke with him, how did -- how was his speech?

20 How did that appear to you?

21 A I don't recall anything unusual. His -- I -- hi speech was the

22 same as it had been before.

23 Q Okay. No concerns is what --

24 A No concerns from my standpoint.

25 Q Okay. If you look down the page about two-thirds of the way,

1 there is a reference to a Ricky?

2 A Yes.

3 Q Theo gave Ricky a check to hold next vacancy?

4 A Yes.

5 Q Who is Ricky?

6 A Ricky is a man that owned a different group home where his  
7 friend Velma had lived for a while and he liked that place better and he  
8 wanted to move there.

9 Q Okay. Do you know was he in the process of moving there?

10 A I don't recall as I sit here today.

11 Q Okay. All right. Did -- in this meeting did you discuss  
12 anything about his estate plan?

13 A No.

14 Q Did he ask you to make any changes to his will?

15 A No.

16 Q Did he ask you to get in touch with his son at this time?

17 A No.

18 Q All right. Do you know if you spoke with Mr. Scheide at any  
19 time after this meeting?

20 A Yes. I believe there was interaction later that month.

21 Q Do you recall when it was?

22 A I know we had a meeting where I brought out I believe two  
23 different women who work as fiduciaries that would -- that did interviews  
24 with him and I sat in on those interviews.

25 Q Do you recall where those interviews took place?

1           A     In -- at the Sunshine Home in the dining room again.

2           Q     Okay. Do you remember who the individuals that came and  
3 interviewed with him were?

4           A     I know that one was Judy Coulter (phonetic) of Nevada  
5 Guardian Services, and the other one I would have to go back through  
6 my contacts to try and remember. Another woman that had just started  
7 working as a guardian. She had a background as a nurse. I don't recall  
8 her name, unless it's in my notes somewhere.

9           Q     Okay. And did -- and you were present during those  
10 meetings?

11          A     Yes.

12          Q     Did he ask you or give you direction to do anything after those  
13 meetings?

14          A     No.

15          Q     Okay, did he say anything about his will in those meetings?

16               MR. PAYNE: Objection; leading, Your Honor.

17               THE COURT: Overruled.

18               THE WITNESS: Did he ask about his will in those meetings?

19 BY MR. GEIST:

20          Q     Yeah, did he say anything to you about his will?

21          A     Not that I recall.

22          Q     And did he ask you to get in touch with his son at any of those  
23 meetings?

24          A     No, and he asked the opposite that I not.

25          Q     He asked you not to get in touch with his son?

1           A     Yes.

2           Q     Okay.

3                 MR. PAYNE: Your Honor, do we have a date of this?

4                 MR. GEIST: Yeah, I was just going to ask that.

5                 THE COURT: Thank you.

6     BY MR. GEIST:

7           Q     Do you recall roughly when this was --

8           A     I believe it was --

9           Q     -- or specifically?

10          A     It was in -- during one of the January or maybe February 2014  
11 meetings. I think January 2014.

12          Q     Was it middle of January, end of January, beginning of  
13 January?

14          A     If you could direct me to some notes that would refresh my  
15 memory, I could answer that question for you, but I can't off the top of  
16 my head.

17          Q     Yeah, I don't believe there are any notes on those meetings.

18          A     On the interviews?

19                 MR. GEIST: Court's indulgence.

20                 MR. PAYNE: Your Honor, just for purposes -- we haven't had  
21 a break. I don't know -- and are we going to go through --

22                 THE COURT: Yeah. So I guess that is a question since Ms.  
23 Tyler is here. Is it better to take a break or -- and then allow Ms. Tyler to  
24 continue or would she like to have lunch herself? I mean --

25                 MR. GEIST: I'll leave it up to her.

1 THE WITNESS: I could eat a little something. I don't need  
2 like a --

3 THE COURT: Okay.

4 THE WITNESS: -- leisurely hour and a half long lunch.

5 MR. GEIST: I don't have much more, but we can take a break  
6 and --

7 THE COURT: Okay. Then we'll take a break at this time.  
8 This is just for our lunch break. Want to return at one? Is one  
9 agreeable?

10 MR. PAYNE: Sure.

11 THE COURT: It's -- is that going to give everybody enough  
12 time to get in and out of the building if you need to?

13 MR. GEIST: Oh yeah. I think so.

14 THE WITNESS: Yep.

15 THE COURT: It's an hour and 10 minutes.

16 MR. GEIST: Yeah.

17 THE COURT: Thank you, Ms. Tyler, really appreciate that.

18 MR. PAYNE: And then Your Honor instruction that the  
19 witnesses shouldn't be talking.

20 THE COURT: Pardon?

21 MR. PAYNE: Have her -- the instruction that the witnesses  
22 shouldn't be discussing this matters (sic).

23 THE COURT: Yes. And Ms. Tyler, you understand that, yes.  
24 So yeah. All right. Understood. Thank you.

25 [Recess taken at 11:50 a.m.]



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[Proceedings resumed at 1:05 p.m.]

THE COURT: Thanks very much. We're going to go back on the record.

And Mr. Geist, record should reflect Ms. Tyler's back on the stand and we'll proceed with her questioning.

MR. GEIST: Thank you, Your Honor.

BY MR. GEIST:

Q Ms. Tyler, after the creation of the October 2012 will, did Mr. Scheide ever discuss revoking that will with you?

MR. PAYNE: Objection; lack of foundation.

THE COURT: Okay. Now here is where Ms. Tyler has -- I don't think it's a lack of foundation, but perhaps inquire -- or has an opportunity to tell us if -- as she's been doing all along, if she believes either one of the exceptions or both apply. So it's not -- to me it's not a foundation issue, it's just a question of if she feels she can answer it.

MR. PAYNE: Your Honor, just -- it's also a legal question. The issue of revocation is for Your Honor to decide.

THE COURT: Overruled.

THE WITNESS: It is my understanding that revocation of the October 2012 would be an issue -- a communication relevant to the issues between the parties in this matter, so there -- any privilege would be inapplicable and the answer is no, he did not contact me to revoke the October 2012 will.

BY MR. GEIST:

Q After the creation of the October 2012 will, did Mr. Scheide

1 ever discuss changing his beneficiary designations on his will?

2 A Same disclaimer to begin with and the answer is no, he did  
3 not discuss changing beneficiaries.

4 Q And if I can have -- since we had a break, if I could just  
5 recount, I believe you testified that some -- your last contact with Mr.  
6 Scheide was sometime in January 2014; is that correct?

7 A Yes, I may have sent him a letter in February of that year. I  
8 don't remember the date of that last letter I sent to him.

9 Q Did --

10 A That would have been the last communication to him.

11 Q Did you have any contact with him after that point?

12 A After the letter?

13 Q Yeah.

14 A No.

15 Q Do you -- you're aware that Mr. Scheide died?

16 A Yes.

17 Q Do you know when he died?

18 A Believe it was the summer of 2014.

19 Q Okay. Do you know who Theodore E. Scheide, III is?

20 A Yes.

21 Q Who is Theodore E. Scheide, III?

22 A Would be the son of my client also named Theodore Scheide.

23 Q Have you ever met him?

24 A No.

25 Q Have you ever talked to him?

1 A He did call my office once.

2 Q When did he call your office?

3 A It would have been shortly after his father died.

4 Q Okay. If I could have you turn to Exhibit 5, page 123. Do you  
5 recognize this document?

6 A Yes.

7 Q And what is this document?

8 A My notes from my file from the date October -- excuse me,  
9 August 20th, 2014.

10 Q Okay. Are these notes representative of that phone call that  
11 you just referred to with Theodore E. Scheide, III?

12 A Yes.

13 Q And what was the purpose of that phone call?

14 A He called my office because he had learned his father died  
15 and somehow he learned that I was the estate planning attorney and he  
16 had questions about his father's estate plan.

17 Q And what were the circumstances -- well, let me go back. Did  
18 -- has he ever -- had he ever contacted you prior to that date?

19 A No, I don't believe so.

20 Q Had he ever reached out to you by letter prior to that date?

21 A Not that I recall. If there's something in the file, you can point  
22 me to it, but I don't think so.

23 Q Okay. Have you ever spoken with Theodore E. Scheide, III  
24 after that date?

25 A No, not to the best of my recollection.

1 Q Okay. Did Nevada Guardian Services -- well let me back up.  
2 Are you aware that Mr. Scheide was subject to a guardianship?

3 A Yes.

4 Q How are you aware of that?

5 A I became aware of that when I received a call from a social  
6 worker at a hospital saying that his physical condition had significantly  
7 declined and they were recommending that he -- well they inquired if  
8 there was power of attorney and at that point he had, in Theo's own  
9 words, fired the person named as power of attorney and so the social  
10 worker at the hospital indicated that they believed guardianship would  
11 be necessary.

12 Q Were you involved in Mr. Scheide's guardianship in any way?

13 A The social worker had a list of potential guardians and one of  
14 the people on the list was Nevada Guardian Services who Mr. Scheide  
15 had interviewed for an assistant job and he liked them, and so I  
16 suggested to them but I didn't mandate, I suggested that maybe they  
17 contact them first because they were already familiar with Mr. Scheide.

18 Q Okay. Did you have any involvement in the guardianship after  
19 that point?

20 A The attorney for the guardian asked that I send the estate  
21 planning documents, which is pretty customary if a person has estate  
22 planning documents to submit those to the court, so I did that, and I filed  
23 a request for special notice.

24 Q In the guardianship matter?

25 A Yes.

1 Q Okay. Did anybody from -- and do you know who was  
2 appointed the guardian?

3 A Nevada Guardian Services was.

4 Q Okay. Did anybody from Nevada Guardian Services ever  
5 reach out to you about his estate planning documents; Mr. Scheide's  
6 estate planning documents?

7 A Either someone from Nevada Guardian Services or their  
8 attorney asked me to provide those to the attorney which I did.

9 Q Do you know when that was?

10 A It would have been in the spring of 2014.

11 Q Did anybody from Nevada Guardian Services ever contact  
12 you after that point about his estate planning documents?

13 A Only after he -- after Mr. Scheide had died to inquire about  
14 what I knew about where the original of the will was.

15 Q Okay. Have you ever spoken to any from St. Jude Children's  
16 Research Hospital about Mr. Scheide or his estate?

17 A Yes.

18 Q Who did you speak with?

19 A I spoke with a man named Fred Jones who's in their legal  
20 department.

21 Q When did you speak with Fred Jones?

22 A It would have been sometime in May of 2016.

23 Q And what were the circumstances of that conversation with  
24 Fred Jones?

25 A That I had recently learned that Mr. Scheide's estate was on --

1 pending petition for I believe the next week to be distributed as if he had  
2 died intestate and I wanted to contact them to find out if they were aware  
3 that they were named in a will to make sure that they were aware of the  
4 case in case they wanted to assert something under that will.

5 Q Did you have any contact with St. Jude after that point?

6 A About this case, no.

7 Q About this case. Have you ever represented St. Jude as an  
8 attorney?

9 A I have.

10 Q Do you know when you've represented St. Jude as an  
11 attorney?

12 A I have represented St. Jude as an attorney on only a couple  
13 matters. One involving a trust, another involving a probate estate. Two,  
14 and then I was just this week reminded of a third case from a few years  
15 back that I had completely forgotten about. And which I honestly don't  
16 remember if they were the client or not, but they were the beneficiary of  
17 that woman's estate.

18 Q And do you have any recollection when that was?

19 A It would have been when I was still at Gordon Silver. I don't  
20 remember the year.

21 Q Okay. Have you ever represented St. Jude in any other  
22 capacity other than as an attorney?

23 A No.

24 Q Okay. Were you representing St. Jude at the time of the  
25 creation of the decedent's October 2nd, 2012 will?

1           A     I would have to go back to look at that other case that I had  
2 forgotten about to see if there was overlap there. I don't recall.

3           Q     Okay. When you met with the decedent at that time in --  
4 about the creation of that October 2nd, 2012 will and the execution of it,  
5 did you find it necessary to disclose to him prior representation of St.  
6 Jude?

7           A     No.

8           Q     Is that something that you would normally discuss with a  
9 client?

10          A     Only if for some reason their interests were -- I believe the rule  
11 says material adverse.

12          Q     Okay.

13          A     And I didn't see anything material adverse to warrant such a  
14 discussion.

15          Q     Did you treat Mr. Scheide any differently during that  
16 discussion because he had expressed to you his desire to name St.  
17 Jude as a beneficiary under his will?

18          A     Differently how?

19          Q     I'm just asking.

20          A     Oh.

21          Q     Differently than you normally would?

22          A     No.

23          Q     Did you suggest anything differently to him than you normally  
24 would if he hadn't have named St. Jude as a beneficiary under his will?

25          A     Maybe only that he should think about a backup charity to St.

1 Jude if he wanted to name them in case St. Jude wasn't around then he  
2 -- I don't remember but that would have been only thing maybe that I  
3 suggested.

4 Q Okay. And I believe I asked you about the June will but I don't  
5 believe I asked you about the October will. Did you suggest when you  
6 met with him about the October 2nd, 2012 will that he name St. Jude as  
7 the beneficiary in his will?

8 A No, that was his direction.

9 Q Okay. Since you were a witness to the October 2nd, 2012  
10 will, were you asked to prepare an affidavit for the probate of the  
11 decedent regarding that will?

12 A Yes I was.

13 Q By whom were you asked?

14 A By you.

15 Q And who prepared that affidavit?

16 A You prepared a draft of it and then I requested to have it in a  
17 Word document format so that I could edit and revise it myself to more  
18 accurately reflect my memory of the contents of the affidavit.

19 Q Did you edit and revise that document?

20 A I did.

21 Q And did you sign that document ultimately?

22 A I did.

23 Q The version of that affidavit that you signed, was that the  
24 version that you had edited and made the changes to yourself?

25 A It was.



1 Q Had you reviewed any documents regarding Mr. Scheide's  
2 estate prior to reviewing that affidavit?

3 A I believe I looked at both of the wills, the June will and the  
4 October will to get the dates.

5 Q Okay.

6 A I may have reviewed my notes to see when he died. I don't  
7 know. I'd have to look at the affidavit to tell you for sure.

8 MR. GEIST: Bear with me. Court's indulgence.

9 BY MR. GEIST:

10 Q Two fifty -- I'm sorry, 247 in Exhibit 5 if you would please take  
11 a look at that document. And it goes through pages -- page 262.

12 A You 247 or --

13 Q Two forty seven. Yeah.

14 A And it's the will?

15 Q Yes.

16 A Okay.

17 Q To 262.

18 A Okay.

19 Q That's the copy of the October 2nd, 2012 will that you had in  
20 your file. Is that copy that you had in your file substantially the same as  
21 the copy that you reviewed for the affidavit?

22 A Yes.

23 Q And you -- you already testified that you signed that.

24 MR. GEIST: Your Honor, we have -- we got Exhibit 3 --  
25 Proposed Exhibit 3 in the binder I'd like to turn your attention to.

1 BY MR. GEIST:

2 Q Is -- do you recognize this document?

3 A Yes.

4 Q How do you recognize this?

5 A This is the affidavit that I edited and signed.

6 Q Okay. And is this the affidavit that you had reviewed and  
7 revised yourself prior to signing?

8 A Yes.

9 Q And how do you know that?

10 A I believe the original was maybe a page longer and I cut some  
11 things out.

12 Q Okay. Is this copy substantially the same as the original  
13 affidavit that you signed? And I have the original if you --

14 A I'm just scanning it real quick.

15 Yes, it does appear that way.

16 MR. GEIST: Your Honor, I would move to admit Exhibit 3 into  
17 evidence.

18 THE COURT: Okay, thanks.

19 With respect to the affidavit, Exhibit 3, Mr. Payne, any  
20 objection?

21 I think it's filed in the court record, isn't it, Mr. Geist?

22 MR. PAYNE: Yeah, Your Honor, no objection.

23 THE COURT: Yeah. Okay. So it'll be admitted.

24 [Petitioner's Exhibit 3 admitted]

25 MR. GEIST: Thank you, Your Honor.

1 Thank you. Your Honor, I'll tender the witness.

2 THE COURT: Okay. Thanks very much.

3 MR. PAYNE: Your Honor, at this point I think I'll pass the

4 witness subject to a presumption that they've met their burden and to

5 recall her at a later point.

6 THE COURT: Okay. Great. Good enough.

7 Then Ms. Tyler, have you -- are you under subpoena to --

8 THE WITNESS: I am under subpoena from Mr. Geist's office.

9 THE COURT: Okay. All right. So -- all right.

10 THE WITNESS: That means I'm -- I'm free to go?

11 THE COURT: Free to go. Uh-huh.

12 THE WITNESS: Does that mean I'm subject to being called

13 back later?

14 THE COURT: Well --

15 THE WITNESS: Keep tomorrow open or what?

16 THE COURT: -- that's -- I guess that's the question.

17 MR. PAYNE: Yes. So subject to recall.

18 THE COURT: Well okay. You didn't subpoena her. So I just

19 want to clarify if she's willing to return --

20 THE WITNESS: No, I'm not willing to return. If you have

21 questions, I'd prefer to answer those today. I'm losing billable time.

22 THE COURT: -- because -- yeah. I mean she's not --

23 MR. PAYNE: Your Honor, but she was --

24 THE COURT: She's only under subpoena by Mr. Geist, so if

25 you want to recall her in your case in chief, she's not under subpoena by

1 you. That's --

2 MR. GEIST: Your Honor, we're releasing the witness at this  
3 point.

4 THE COURT: That's the point. Yeah. I mean it's entirely up  
5 to you.

6 MR. PAYNE: Well if they can prove their case by prima facie  
7 evidence, I reserve the right to recall her and if --

8 THE COURT: Okay. I'm going to say it one more time.

9 MR. PAYNE: Okay.

10 THE COURT: If you wish to call her in your case in chief, she  
11 is not under subpoena and is not willing to return.

12 MR. PAYNE: She's refusing?

13 THE COURT: Yeah. She's under subpoena by Mr. Geist.  
14 They have released her. She is not willing to return voluntarily.

15 MR. PAYNE: Then we need to, if need be, continue the trial.  
16 I'll get a subpoena out and have her come back.

17 THE COURT: No, we're not going to continue the trial. The  
18 witness is here. She's prepared to go forward today, but she is not  
19 willing to come back subject to recall when she's not been subpoenaed.

20 MR. PAYNE: Fine, Your Honor.

21 THE COURT: Do you need any questions for Ms. Tyler or are  
22 we free to let her go?

23 MR. PAYNE: Done.

24 THE COURT: Okay. So Ms. Tyler, you may step down. You  
25 are free to go. All right.

1 MS. BOYER: Your Honor?  
2 THE COURT: Yeah. Oh I'm sorry, Ms. Boyer, we didn't --  
3 MS. BOYER: Is it appropriate for me to ask questions?  
4 THE COURT: Oh absolutely.  
5 MS. BOYER: Okay.  
6 THE COURT: You are a party so give us a minute, Ms. Tyler.

7 CROSS-EXAMINATION

8 BY MS. BOYER:

9 Q In September of 2014, you were searching for the original will.  
10 We contacted your office and I asked you if you knew where the original  
11 will was located. You said to check the white bag, and then you also  
12 said I wouldn't be surprised if he destroyed it.

13 A I don't recall saying that last part that I wouldn't be surprised if  
14 he destroyed it. I think I may recall a slightly different discussion.

15 THE COURT: Anything further?

16 MS. BOYER: No, Your Honor.

17 THE COURT: Okay, thanks.

18 Anybody have anything further? Okay.

19 Thank you, Ms. Tyler.

20 THE MARSHAL: Watch your step, Ms. Tyler.

21 THE COURT: And your next witness then, Mr. Geist?

22 MR. GEIST: Diane Dewalt, Your Honor.

23 THE COURT: All right.

24 [Pause]

25 THE CLERK: Raise your right hand, please.

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DIANE DEWALT

[having been called as a witness and being first duly sworn, testified as follows:]

THE CLERK: Please be seated. And if you'll state and spell your name for the record, please?

THE WITNESS: Diane Dewalt, D-i-a-n-e D-e-w-a-l-t.

THE CLERK: Thank you.

THE COURT: Thank you.

DIRECT EXAMINATION OF DIANE DEWALT

BY MR. GEIST:

Q Good afternoon, Ms. Dewalt.

A Hi.

Q Do you prefer that I call you Diane? Is that okay?

A That's fine.

Q Thank you.

A That's fine.

Q Thank you. Diane, do you have an understanding of why you're here today?

A Yes.

Q And what is that understanding?

A That I'm here to be a witness based on the fact that I witnessed a will.

Q Okay. Did you receive a subpoena to appear and give testimony today?

A Yes.

1 Q And was it our office that issued that subpoena to you?

2 A Yes it was.

3 Q And you are here today to respond to that subpoena and give  
4 testimony?

5 A That's correct.

6 Q Okay. Are you familiar with the decedent, Theodore E.  
7 Scheide, Jr.?

8 A I remember the name.

9 Q What do you remember about the name?

10 A I don't want to specifically say that I remember the gentleman  
11 himself, because I have him mixed with one other gentleman that I can't  
12 tell you whether it was him or that particular gentleman, but I -- what I do  
13 remember is when the day we witnessed his will --

14 MR. PAYNE: Your Honor, objection. There's not a question  
15 pending.

16 THE COURT: Okay. That's enough. Thank you. Sustained.

17 THE WITNESS: Okay.

18 BY MR. GEIST:

19 Q Where were you employed during the month of October  
20 2012?

21 A Gordon Silver.

22 Q Okay. And what was your position there?

23 A Legal assistant.

24 Q Who were you a legal assistant to? To whom?

25 A Brad Richardson and Kristin Tyler.

1 Q What were your duties as a legal assistant?

2 A Preparing documents, notarizing documents, filing documents.

3 Q And did part of your duties include witnesses last wills --

4 execution of last wills for clients?

5 A Yes.

6 Q Okay. Do you recall witnessing a last will and testament for a

7 Theodore E. Scheide, Jr.?

8 A I do.

9 Q Do you recall where that will was signed?

10 MR. PAYNE: Objection, Your Honor. I think we need to lay a

11 foundation. We've got multiple wills at play here.

12 THE COURT: Okay. So I'm not sure I understand the nature

13 of your objection, so --

14 MR. PAYNE: When he says will, what will?

15 THE COURT: -- you want and -- oh, so you need a

16 foundation as to --

17 MR. GEIST: Well, let me --

18 THE COURT: -- what will or wills she may have witnessed.

19 Asking about the first one, yeah.

20 MR. GEIST: Yeah.

21 THE COURT: Okay.

22 MR. GEIST: I'll ask.

23 BY MR. GEIST:

24 Q Do you recall signing or witnessing more than one last will and

25 testament for Mr. Scheide?



1 A No, I only remember one.

2 Q Okay. Do you recall the date that that will was signed?

3 A No. I do not.

4 Q Okay. Do you recall where that will was signed?

5 A If he's the gentleman I believe he is, it may have been in a --

6 MR. PAYNE: Your Honor, object, move to strike,

7 nonresponsive.

8 THE COURT: Overruled.

9 MR. GEIST: Court's indulgence. Let me grab something that  
10 may help.

11 BY MR. GEIST:

12 Q I believe you have an exhibit --

13 THE COURT: Oh, which exhibit book do you need?

14 MR. GEIST: Exhibit 5.

15 THE CLERK: Sorry.

16 THE COURT: Just a minute here, Ms. Dewalt.

17 THE WITNESS: Thank you.

18 BY MR. GEIST:

19 Q It's a fairly thick book. I apologize, Diane.

20 A That's okay.

21 Q Under there, there are down in the corner Bates numbers and  
22 if you could turn to page P dash KT dash 000247.

23 A Okay.

24 Q Okay. And this document I submit to you goes to page P  
25 dash KT dash 000 --

1 MR. PAYNE: Your Honor, he's leading this witness. If she  
2 doesn't recall, how is -- is he going to use this to refresh her  
3 recollection? Is that where we're going with this?

4 MR. GEIST: That's where we're going.

5 THE COURT: Okay.

6 MR. GEIST: Two six two.

7 THE COURT: So she needs to look at pages 247 to 262.

8 MR. GEIST: Correct.

9 THE COURT: Okay.

10 THE WITNESS: Okay.

11 BY MR. GEIST:

12 Q Okay, taking a look at that, does that refresh your recollection  
13 as to when this -- when that will that you recall was signed?

14 MR. PAYNE: She already said she doesn't recall the date.

15 THE WITNESS: No.

16 THE COURT: Well we're asking her to -- if she -- if it  
17 refreshes her recollection.

18 And I think your answer was no?

19 THE WITNESS: As to? You --

20 BY MR. GEIST:

21 Q Does that --

22 THE WITNESS: Ask me the question again, I'm sorry.

23 BY MR. GEIST:

24 Q You bet. Does that refresh your recollection as to when this --  
25 when the will that you recall signing -- witnessing the signature was --

1 MR. PAYNE: Your Honor, she's already testified she doesn't  
2 remember -- only remembers one will. He's got to lay a foundation to  
3 what he's talking about.

4 THE COURT: Well he asked her if this refreshes her  
5 recollection if this is the will she recalls. That's all he asked her.

6 MR. PAYNE: She doesn't remember the date.

7 MR. GEIST: Can we let her testify?

8 THE COURT: Yeah. Certainly. So that's a perfectly  
9 legitimate question.

10 So Ms. Dewalt?

11 THE WITNESS: No, I don't specifically remember the date --

12 MR. GEIST: Okay.

13 THE WITNESS: -- that it occurred.

14 BY MR. GEIST:

15 Q Okay. Do you recall, again looking at that last page, 262 --

16 A Two sixty two?

17 Q Yeah, page 262. Do you recognize your signature on that  
18 page?

19 A Yes I do.

20 Q Okay. How do you recognize your signature?

21 A I know my signature when I see it.

22 Q Okay. Do you recall the circumstances under which you  
23 signed that document?

24 A Well if -- the only thing I can honestly say is I know we went to  
25 him to witness his --

1 MR. PAYNE: Your Honor, instruct the witness there's not a  
2 question pending. She wants to tell a story.

3 THE COURT: Okay.

4 MR. PAYNE: Form of the question.

5 THE COURT: All right. You have to just wait for the question,  
6 Ms. Dewalt. Thank you.

7 THE WITNESS: Sure.

8 BY MR. GEIST:

9 Q Okay. Do you recall witnesses the signatures of other  
10 individuals on this document when you signed your name on it?

11 A Yes.

12 Q And do you recall who those individuals were?

13 A Mr. Snidey (sic) as far as I recall.

14 Q Okay. Anybody else?

15 A No.

16 Q Okay.

17 A Other than Kristin but I didn't witness her signature.

18 Q When you say you didn't witness her signature --

19 A I watched her sign, but I mean --

20 Q Okay.

21 A Yeah.

22 Q So do you recall watching Mr. Scheide sign?

23 A Yes.

24 Q Do you recall watching Kirstin Tyler --

25 A Yes.

1 Q -- sign? Okay. And were they in the room when you signed --

2 A Yes.

3 Q -- as well? Okay. Have you ever spoken with Mr. Scheide  
4 after that?

5 A No.

6 Q Okay. Did Mr. Scheide ever contact you about this will?

7 A No.

8 Q Did Mr. Scheide ever contact you about any of the contents of  
9 that will?

10 A No.

11 Q Do you recall any other time that you witnessed Mr. Scheide  
12 sign a will?

13 A No.

14 Q Okay. Are you aware that -- let me scratch that. Do you know  
15 if Mr. Scheide ever revoked that will?

16 MR. PAYNE: Objection; calls for legal conclusion.

17 THE COURT: Okay. To the extent that it is a term of art, if  
18 Ms. Dewalt understands that term, then it's just her understanding of  
19 that term. She is not making a legal determination, so that's probably  
20 the foundation we need to lay is if she -- does she know that term.  
21 Okay.

22 BY MR. GEIST:

23 Q Again, do you recall --

24 MR. PAYNE: Your Honor, he's got to lay a foundation here. I  
25 mean just out of the blue -- first of all she says she has had no contact

1 with him already since -- never called, knows nothing about the contents  
2 and now he wants to ask her other questions about it.

3 THE COURT: Yeah. Yeah. She can answer no. It's just a  
4 question.

5 All right. I think the first thing we were going to say is does  
6 she understand what revoked is and then we'll ask her the actual  
7 question.

8 BY MR. GEIST:

9 Q Do you --

10 MR. GEIST: Yeah. Thank you.

11 BY MR. GEIST:

12 Q Do you understand what revoking a will means?

13 A Yes.

14 Q What is your understanding of what revoking a will means?

15 A It means that this will is no longer in effect and there's a  
16 possibility I'm put another one in -- a new one.

17 Q That's your understanding --

18 A Yes.

19 Q -- of revoking? Do you have any reason to believe -- do you  
20 know of any reason that would lead you to believe that Mr. Scheide  
21 revoked that will?

22 MR. PAYNE: Objection; calls for speculation.

23 THE COURT: Overruled.

24 THE WITNESS: I can answer?

25 MR. GEIST: You can.

1 THE WITNESS: No.

2 BY MR. GEIST:

3 Q Okay. Were you asked to sign an affidavit regarding your  
4 witnessing that will?

5 A Yes.

6 Q And by whom were you asked to sign that affidavit?

7 A You.

8 Q And who prepared that affidavit for you to sign?

9 A I believe your office.

10 Q Okay. Did you have a chance to review that affidavit before  
11 you signed it?

12 A Yes I did.

13 Q Was there anything in that affidavit that you disagreed with?

14 A No.

15 Q Was there anything in that affidavit that you wanted to  
16 change?

17 A No.

18 Q Did you sign that affidavit?

19 A I did.

20 Q Okay. Did you -- I'm sorry, did you review anything prior to  
21 signing that affidavit?

22 A The will.

23 Q When you --

24 A The signature page of the will.

25 Q So when you say the will, that will that you are looking at --

1           A     This particular will, yes.

2           Q     Okay. So if you can turn to Exhibit 4 in that binder.

3                   MR. GEIST: And it's under the tab marked 4, Your Honor. I'm  
4 going to be referring to that exhibit, Proposed Exhibit 4, I apologize.

5                   THE COURT: Uh-huh.

6                   THE WITNESS: Uh-huh.

7 BY MR. GEIST:

8           Q     Do you recognize that document? Go ahead and take a look  
9 at --

10          A     Yes I do.

11          Q     -- all of the pages. How do you recognize it?

12          A     It has my signature on.

13          Q     So you recognize your signature on page 2 of that document?

14          A     I do.

15          Q     Okay. Looking at that, that's a copy of -- is that a copy of the  
16 original document that you signed?

17          A     I believe it is.

18          Q     Okay, and is this copy substantially the same as the original  
19 affidavit that you signed?

20          A     Yes.

21                   MR. GEIST: Okay. I would move to admit Exhibit 4 into  
22 evidence, Your Honor.

23                   MR. PAYNE: No objection.

24                   THE COURT: It's admitted.

25                               [Petitioner's Exhibit 4 admitted]



1 MR. GEIST: Okay. Thank you. I have no further questions.

2 THE COURT: Very well. Thank you.

3 Mr. Payne, any questions for --

4 MR. PAYNE: Yes.

5 THE COURT: -- Ms. Dewalt?

6 CROSS-EXAMINATION

7 BY MR. PAYNE:

8 Q Ms. Dewalt, I think if I understand your testimony correctly,  
9 you had no contact with Mr. Scheide after the October will was signed,  
10 correct?

11 A That's correct.

12 Q So you weren't around him 24 hours a day?

13 A That's correct.

14 Q You never saw him after that point --

15 A No I didn't.

16 Q -- never talked to him?

17 A No I didn't.

18 Q He never contacted you after that point?

19 A No.

20 Q Okay.

21 A He did not.

22 Q And do you know when he died?

23 A No I do not.

24 Q If I told you he died two years later, would it be safe to say that  
25 your testimony is that you never talked to him until after or ever again

1 upon his death?

2 A That is correct.

3 MR. PAYNE: Nothing further, Your Honor.

4 THE COURT: Okay. Thank you.

5 MR. GEIST: Just one follow-up question --

6 THE COURT: Sure.

7 MR. GEIST: -- if I may, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. GEIST:

10 Q Diane, you had testified that to the best of your knowledge you  
11 don't know if the decedent revoked that will.

12 A I do not.

13 MR. PAYNE: Objection, Your Honor; calls for legal  
14 conclusion.

15 THE COURT: Again, to the extent that we're talking about her  
16 understanding of the term, she is not making a legal conclusion. Her  
17 understanding of how that term is defined, that's what she's basing her  
18 response on. Just want to make clear to that extent I think the  
19 question's fine.

20 BY MR. GEIST:

21 Q Okay. Page 2 of that affidavit, page 2 of Exhibit 4. That first  
22 paragraph, would you read that out loud, please?

23 A I further attest that to my knowledge the decedent did not  
24 intentionally destroy or revoke the last will, dated October 2nd, 2012,  
25 and that to the best of my knowledge this was the decedent's last will

1 and testament.

2 Q Thank you, and so to the best of your knowledge, do you  
3 know if the decedent, Mr. Scheide, ever intentionally destroyed his will?

4 A I do not.

5 MR. PAYNE: Objection; lack of foundation.

6 THE COURT: Overruled.

7 MR. GEIST: Okay. Thank you. No further questions, Your  
8 Honor.

9 RECROSS EXAMINATION

10 BY MR. PAYNE:

11 Q Ms. Dewalt, if Mr. Scheide did a will the very next day,  
12 October 3rd, you would have no idea, correct?

13 A That's correct.

14 Q And if he did a new will on October 4th you wouldn't know?

15 A I would not.

16 Q October 5th, October 6th until the time he died, correct?

17 A Until the time of his death.

18 MR. PAYNE: Thank you, Your Honor. Nothing further.

19 THE COURT: Okay. Thanks very much.

20 Is Ms. Dewalt excused?

21 MR. GEIST: Yes. She is, Your Honor.

22 THE COURT: Thank you, Ms. Dewalt. We appreciate you  
23 being here.

24 THE WITNESS: Thank you.

25 THE COURT: All right. Okay. Your next witness then, Mr.

1 Geist.

2 MR. GEIST: Kathy Longo.

3 THE COURT: Ms. Longo. It's Kathy Longo is the next  
4 witness.

5 THE MARSHAL: Yes, Your Honor.

6 [Pause]

7 THE CLERK: Raise your right hand, please.

8 KATHY LONGO

9 [having been called as a witness and being first duly sworn, testified as  
10 follows:]

11 THE CLERK: Please be seated. And if you'll state and spell  
12 your name for the record, please?

13 THE WITNESS: I didn't hear you.

14 THE CLERK: If you'll state and spell your name for the  
15 record, please?

16 THE WITNESS: Kathy Joan Nichols Longo. It's K-a-t-h-y  
17 J-o-a-n N-i-c-h-o-l-s L-o-n-g-o.

18 THE CLERK: Thank you.

19 THE COURT: Thank you. Okay. Thanks.

20 DIRECT EXAMINATION OF KATHY LONGO

21 BY MR. GEIST:

22 Q Good afternoon, Ms. Longo.

23 A Afternoon.

24 Q May I call you Kathy?

25 A Absolutely.

1 Q Thank you. Do you have an understanding of why you're here  
2 today?

3 A Yes.

4 Q What is your understanding of why you're here today?

5 A I guess it would be to follow up on the deposition that was  
6 taken by you a few weeks ago.

7 Q Okay. Did you receive a subpoena to appear today and give  
8 testimony?

9 A Yes I did.

10 Q And was that subpoena issued by our office?

11 A Yes.

12 Q And you're here to respond to that subpoena and give  
13 testimony?

14 A Correct.

15 Q Okay. Can you please tell me where you currently live?  
16 What's your current address?

17 A 3956 Pembridge Court, Las Vegas, Nevada 89121.

18 Q How long have you lived there?

19 A I've owned the home since December of 2003.

20 Q Okay. Where did you live before that?

21 A Prior to -- I've lived in Las Vegas since 1972 at various  
22 addresses, however I have moved out of state three different times.

23 Q Okay. And when did you move back to stay so to speak?

24 A April 1st, 2013.

25 Q Okay. Did you -- what is your educational background? Did

1 you attend a college?

2 A No, I went to Robert Morris Business School in Pittsburgh and  
3 completed an eight month secretarial course.

4 Q You received a certificate for that?

5 A Yes.

6 Q Okay.

7 A I did.

8 Q Are you currently employed?

9 A No, I'm retired.

10 Q Okay. Are you familiar with the decedent, Theodore E.  
11 Scheide, Jr.?

12 A Yes.

13 Q How are you familiar with him?

14 A I was his stepdaughter.

15 Q So he's not your biological father?

16 A Correct. No, he was not.

17 Q Okay. Does that mean that he was married to your mother?

18 A Yes.

19 Q When did he marry your mother?

20 A December 21st, 1973.

21 Q And how long -- for how long was he married to your mother?

22 A Over 25 years.

23 Q How did that marriage terminate?

24 A My -- at the death of my mother on July 16th, 1999.

25 Q Okay. Did you remain in contact with Mr. Scheide after the

1 death of your mother?

2 A Yes.

3 Q Okay. Would you be able to describe your relationship with  
4 Mr. Scheide after the death of your mother?

5 A We always had a very good relationship. I would send him  
6 cards, call and check on him --

7 Q Okay.

8 A -- and --

9 Q In -- you said you moved back to stay in Las Vegas in 2013,  
10 correct?

11 A Yes.

12 Q Were you in contact with Mr. Scheide in 2013?

13 A Yes.

14 Q How were you in contact with him?

15 A I had moved back from Vero Beach, Florida, to Las Vegas to  
16 live in -- reside in my home and I called to let him know that I was back  
17 in town and at that time I had a very good relationship with him. You  
18 know, he would call me periodically and ask how I was. He wasn't in the  
19 best of health and I was concerned for him.

20 Q Do you recall what month it was that you moved back in  
21 2013?

22 A When I moved back?

23 Q Yeah.

24 A Yes. April 1st. It was on Easter Sunday --

25 Q Okay.

1           A     -- that I drove back into town.

2           Q     Were you in contact with Mr. Scheide before April 1st, 2013?

3           A     Yes.

4           Q     Do you remember when the most recent contact you would  
5 have had with him prior to that would have been?

6           A     It would have been on a holiday or on his birthday while I was  
7 residing in Florida.

8           Q     Okay. So you contacted him maybe a holiday or his birthday  
9 the year before?

10          A     Yes.

11          Q     Did you have any contact with him before that?

12          A     Yes, we always kept in touch, you know, through the years.  
13 After my mother passed away, I would call to see how he was doing.

14          Q     Okay. So when you reached out to Mr. Scheide in 2013 when  
15 you moved back, did you have frequent conversations with him?

16          A     I mean it wasn't on a day-to-day basis. It would be every so  
17 often I would call him.

18          Q     Okay. Did you ever see him personally after you moved  
19 back?

20          A     Yes. He had been in various hospitals. He was in -- he was  
21 sent by his cardiologist to -- for a procedure down in Phoenix, Arizona,  
22 and I believe he was down there about six weeks. When he came back,  
23 he was in various rehabs here in Las Vegas, as well as in MountainView  
24 Hospital, and I would go to see him and at one point he said, you know,  
25 would you go by my house and pick up my mail because he had bills to



1 pay and I would help him in every way I could. I felt sorry for him. He  
2 didn't have anybody.

3 Q When you first saw him, could you describe his appearance?  
4 How did he look physically?

5 A Frail. He refused to have his hair cut. He wouldn't -- in the  
6 hospital he wouldn't let them give him a shower or shave him, and it was  
7 just not the same Ted that I had known.

8 Q When you first saw him after you moved back, would you --  
9 how would you describe his mental condition?

10 MR. PAYNE: Your Honor, I just -- foundation here. Time,  
11 year.

12 THE COURT: Yeah. So just based on in comparison to when  
13 she had other contacts with him? I mean is that --

14 MR. GEIST: Well I'm just asking her to describe his --

15 THE COURT: Her observations?

16 MR. GEIST: -- mental condition. I'm not asking her to  
17 compare it with anything.

18 THE COURT: Okay. Just her observations on that --

19 MR. GEIST: Just when she first saw him.

20 THE COURT: -- on that time. Okay.

21 MR. GEIST: Yeah.

22 THE COURT: Okay.

23 BY MR. GEIST:

24 Q When you first saw him when you moved back.

25 A I really don't remember exactly.

1 Q Okay.

2 A I knew he -- he was forgetful. He didn't know if he took his  
3 medications or not.

4 Q You said that he had asked you to pick up his mail. How  
5 frequently would he ask you to do that?

6 A I was doing that probably four days a week.

7 Q Four --

8 A Picking the mail up at his home, taking it to him to either the  
9 hospital or the rehab center where he was. He would go through his  
10 mail and he -- at one point he gave me the checkbook and said I want  
11 you to write the checks for me to pay my bills. He gave me stamps and I  
12 would write the checks, he would sign them and I would take them to the  
13 post office or mail them from my home. And this went on probably from  
14 June of 2013 until December.

15 Q Okay. Did he have anybody else helping him during that  
16 time?

17 A No. Excuse me. He had nurses aides when he was back in  
18 his house on 2500 Sunup. There would be visiting nurses come, you  
19 know, take care of him.

20 Q How long was he living in that home, 2500 Sunup?

21 A I don't recall the number of years. I know he moved there  
22 after my mother passed away.

23 Q Okay. Did he remain there the entire time that you knew him  
24 after you moved back?

25 A No.

1 Q When did he move?

2 A He was supposed to have been out of his rental home on  
3 Sunup the end of November and he had me write a letter to his realtor  
4 and say that he would be out of the house, the leased home by the end  
5 of November. However, November 30th came, he refused to leave the  
6 house. He --

7 Q So why did he have -- do you know, if you know, why did he  
8 have to be out of the house that you said?

9 A He was moving into a group home --

10 Q Okay.

11 A -- Golden Sunshine Home, and he had given a deposit to the  
12 owner of the home and we had made arrangements to move all of his  
13 clothing and his boxes, everything in his house that he, you know, did  
14 not sell into the house. He had had people come in to sell -- they had a  
15 sale at his home and everything was gone except a few things that he  
16 was having donated, and at that point there was no place for him to  
17 sleep. He had a bed at the Sunshine Home and he refused to go out  
18 there.

19 Q Do you know why he refused to go there?

20 A He didn't want to give up his independence. He wanted to  
21 keep driving. The doctor would not sign his form to renew his drivers  
22 license, and I said, Ted, I said how did you get your license and he said  
23 oh I fooled them, I signed the doctor's name and took it to DMV. I said  
24 you shouldn't do that, you know, he doesn't want you to drive. He had  
25 an aneurism that could have burst at any time. He was just -- he had

1 many health problems and he should not have been driving and he  
2 shouldn't be by himself.

3 Q Do you know when he had an aneurism?

4 A He had had it I would say -- I would be guessing. At least five  
5 years prior to his death.

6 Q Okay. So you testified that you wrote checks for him, you  
7 would mail his bills for him, get his mail for him. Was there anything else  
8 you would do to help him during that time?

9 A If he wanted to go shopping, I would take him to Kmart or go  
10 to Walmart for his prescriptions. He wanted to get a cell phone. I took  
11 him to Walmart for that. He wanted to go to lunch then every time we  
12 would go out.

13 Q And you would take him to lunch?

14 A I took him to lunch. He wanted to either go to the Marriott up  
15 on Rampart or he would want to go to the Omelet House on West  
16 Charleston. And so I would take him and take him then back to the  
17 group home.

18 Q Would you say that he relied on your for these things that you  
19 were doing for him?

20 MR. PAYNE: Objection; calls for speculation.

21 THE COURT: Overruled.

22 THE WITNESS: He had no one else to take him unless the  
23 owner of the group home took him.

24 MR. GEIST: Okay.

25 THE WITNESS: But he wanted me to take him.

1 BY MR. GEIST:

2 Q Were you charging him for these services?

3 A I was. He was taking too much of my time and I did this for  
4 probably -- probably the first three or four weeks and I said, Ted, I said  
5 you're taking too much of my time, I live on the other side of town, gas is  
6 expensive, I'm retired and you're going to have to pay me. And he said  
7 that's fine. He said just tell me what you want, and I said I think \$300 a  
8 week is reasonable for my time, effort, spending from like 10 till 4 each  
9 day that I would take him out shopping or wherever he wanted to go to  
10 lunch and he had no problem with that.

11 Q Okay. And so he paid you that \$300 a week every week from  
12 that point till --

13 A Until --

14 Q Until when?

15 A Until probably the first or second week in December of 2013,  
16 and I told Kristin Tyler, his attorney at the time, and Ted -- we had a  
17 meeting at the Golden Sunshine Home -- group home. I said I'm going  
18 to Boston for Christmas with my boyfriend and you're going to have to  
19 find someone else to do what I'm doing, I can't do this anymore.

20 Q And --

21 A It's just --

22 Q I'm sorry to interrupt but just to be clear, Ted is Mr. Scheide,  
23 right?

24 A Correct.

25 Q Okay.

1           A     Yes.

2           Q     Continue.

3           A     And we had a meeting at the group home and I said, Kristin,  
4     you're going to have to find somebody, you know, guardian or  
5     something and she said that she would take care of it. And that was the  
6     last time I ever saw him alive.

7           Q     Was at that meeting with Kristin?

8           A     At that meeting, yes.

9           Q     Okay. Describe the circumstances of going to lunch or going  
10    to Kmart or going out in public with Mr. Scheide. How was that?

11          A     It was very embarrassing for me.

12          Q     Why was it embarrassing for you?

13          A     He looked like a homeless person.

14          Q     What do you mean --

15          A     It was very sad.

16          Q     What do you mean he looked like a homeless person?

17          A     He would wear pajamas.

18          Q     Okay.

19          A     He would wear some kind of a slip-on shoe because he  
20    couldn't put socks on.

21          Q     Do you know why he couldn't put socks on?

22          A     His legs were ulcerated from his diabetes.

23          Q     Okay.

24          A     He had wounds that wouldn't heal, so he would not put socks  
25    on. Well he never wore -- ever wore socks, period. And this was in the

1 really cold winter. That was -- wind was blowing at that group home and  
2 he would wear a t-shirt and an old golf sweater. And I'd say, Ted, put a  
3 jacket on. No, I'm not putting a jacket on, we're going like this.

4 He wouldn't let them, as I said, shave him, wash his hair. He  
5 was just -- it was embarrassing to go out with him, and on at least one  
6 occasion we were in the parking lot of the Walmart on Cheyenne and  
7 Rainbow and he got out of my car -- I was driving a Toyota Highlander at  
8 the time. He got out of the Highlander in the passenger side and he  
9 stood at the side of the car and urinated. I said, Ted, you can't do that,  
10 you're in a public parking lot, you cannot do things like that. He goes  
11 well I can do it if I want, or whatever the remark was I don't remember,  
12 but he thought nothing of that.

13 Q Did he disrobe to urinate or did he just --

14 A No.

15 Q -- urinate in his pants?

16 A No, he just pulled his pants down and went.

17 Q Okay. You said that this was embarrassing behavior. Did he  
18 act this way prior to -- that you were aware of prior to when you moved  
19 back?

20 A No.

21 Q What you remember of him.

22 A No, he was always very particular about his appearance.

23 Q So wearing pajamas in public was unusual for him?

24 A Yes.

25 Q Okay. Was there anything else unusual about being with him

1 in public or being with him in private?

2 A Well in my car I would have to have a shower curtain and a  
3 towel on the passenger seat because he had no control of his bowels.  
4 He wore adult diapers. And on one occasion when I was dropping him  
5 off at the group home, he stood right outside the car and just -- he had  
6 diarrhea and he went everywhere. They had to bring buckets of water  
7 out and the attendants had to help him into the house and get him into  
8 the shower and change his clothes. And I mean it was -- it was so sad  
9 to see him like that.

10 Q Do you recall about when that was?

11 A That was in probably November of 2013.

12 Q Okay. Did you ever talk to anybody about these experiences  
13 with Mr. Scheide?

14 A I talked to the people at -- well at the group home.

15 Q Okay.

16 A You know, they were aware of what was going on with him  
17 and it was just -- it was embarrassing, it was pitiful. I felt sorry for him,  
18 but --

19 Q Did you talk to anybody else besides the people at --

20 A No.

21 Q -- the group home about it?

22 A No.

23 Q Okay. Were you ever concerned about Mr. Scheide's physical  
24 safety?

25 A Yes.



1 Q And when were you concerned about Mr. Scheide's physical  
2 safety?

3 A He wanted to continue driving. At the group home they told  
4 him no he could not have his car. When we took him there, he followed  
5 me from his home on Sunup to the group home the initial move in. They  
6 told him he couldn't leave his car there. He insisted it stay right in that  
7 parking -- in the driveway. And they took the keys away from him and  
8 had them locked up in a closet. And I took --

9 Q His car keys?

10 A The car keys, yes. And I took the extra key from the glove  
11 compartment out because I knew he would go out and get in that car  
12 and drive and he should not have been driving.

13 Q Yeah. Did he ever lose his keys?

14 A Yes he did.

15 Q Did he ever ask you for help finding any keys?

16 A Yes. On one occasion while he was still in the house on  
17 Sunup, I drove out there that morning to do whatever he -- we were  
18 doing that day. He said I cannot find my keys. I looked everywhere in  
19 the house; in the refrigerator, on his kitchen counter which was packed  
20 to the hilt with medications, everything, in the bedroom, in the -- in his  
21 office which was one of the bedrooms. Couldn't find the keys anywhere.  
22 Finally I opened the front door and he had left the key -- he had been out  
23 for dinner the night before, opened the door and left the keys right in the  
24 front door and closed the door. I said here are your keys. So yes.

25 Q Did you ever talk to anybody about that issue of leaving his

1 keys in the door?

2 A No, I had no one to talk to because he was still living in his  
3 home.

4 Q You testified that you met with Kristin Tyler and a meeting at  
5 the group home.

6 A Yes.

7 Q And what was the substance of that conversation?

8 A Again I told her that I could not continue to be his personal  
9 assistant, that she needed to find someone, and Ted asked me, he said,  
10 Kathy, do you want to be my guardian and I said no, I don't want that  
11 responsibility, I don't want to have to be -- you know, make sure your  
12 income -- federal income taxes are paid for, you know, filed every year.  
13 And I said I'm not going to be in Las Vegas to help you, I'm going to be  
14 out of town, it's time to find a guardian or someone to take over my  
15 responsibilities, I just can't do it anymore.

16 Q Were --

17 A And --

18 Q I'm sorry.

19 A And at that time Ted said to me --

20 MR. PAYNE: Your Honor, I'm going to object to her saying  
21 what Ted said if it has anything to do with --

22 THE COURT: It's not being introduced to -- for the proof of  
23 the matter --

24 MR. PAYNE: I don't know where she's going --

25 THE COURT: Mr. Geist, is it --

1 MR. GEIST: I'll move this along.

2 THE COURT: Okay.

3 BY MR. GEIST:

4 Q Did you ever -- you testified that you met with Kristin Tyler.  
5 Did you ever turn anything over to Kristin Tyler that you were holding?

6 A Yes.

7 Q What did you turn over?

8 A I had a 30 -- I think it was -- I don't have my notes with me, my  
9 -- he had a pistol at his home that I took to my house prior to his -- the  
10 sale of the house. I said, Ted, you can't leave that pistol here, someone  
11 is going to be coming through the house, find things and they're going to  
12 take it. It was in one of his drawers in the nightstand --

13 Q So you were holding that for him?

14 A I was.

15 Q And --

16 A With the ammunition, there was a box of bullets --

17 Q Do you recall when you turned that over to -- or who you  
18 turned that over to?

19 A I composed a letter of transmittal to Kristin and I listed all the  
20 items that I dropped off, the other set of -- the extra set of car keys, the  
21 pistol, the ammunition and I think -- I don't -- the insurance papers  
22 perhaps. I don't know exactly.

23 Q Okay. Do you know if Mr. Scheide had a will?

24 A Yes.

25 Q How do you know that he had a will?

1 A When we packed up --

2 MR. PAYNE: Objection; foundation.

3 THE COURT: Overruled.

4 BY MR. GEIST:

5 Q Go ahead.

6 A I saw the will.

7 Q Where did you --

8 A I don't know if it was a copy or if it was the original --

9 Q Where did you see the will?

10 A It was in his office on a shelf behind his desk.

11 Q In an office in what building? Where --

12 A In his home.

13 Q This is the Sunup home?

14 A It was in one of -- no, it was in the -- he created an office in the  
15 guest bedroom in that home. He had a desk, a chair. He had made  
16 shelves behind the desk and there were stacks of his personal items  
17 there and when I started to box up things to -- for him to move, the will  
18 was among some of his paperwork.

19 Q Okay. Did he ever discuss that will with you?

20 A Yes he did.

21 Q Or a will with you?

22 A Yes he did.

23 Q When did he discuss a will with you?

24 A At the meeting at the Golden Sunshine Home in early  
25 December, the last time I met with he and Kristin Tyler.

1 Q And what did he --

2 MR. MOODY: What year?

3 A He said to me --

4 MR. MOODY: What year?

5 MR. PAYNE: Objection.

6 BY MR. GEIST:

7 Q What year --

8 THE COURT: What's the basis of the objection?

9 MR. PAYNE: I'm sorry?

10 THE COURT: What's the basis of the objection?

11 MR. PAYNE: Foundation.

12 THE COURT: Overruled.

13 BY MR. GEIST:

14 Q What year was this meeting again?

15 A December of 2013.

16 Q Okay. What did Mr. Scheide tell you about his will?

17 MR. PAYNE: Objection.

18 THE COURT: Overruled.

19 MR. PAYNE: Hearsay.

20 THE COURT: Mr. Geist.

21 MR. GEIST: There's a specific exception about testamentary  
22 creation of, revocation of, terms of that are specifically excepted from  
23 hearsay.

24 THE COURT: Overruled.

25 MR. PAYNE: But Your Honor, it's during the time or about the

1 time the will is executed.

2 MR. GEIST: That's not what the exception --

3 THE COURT: That's not the exception but -- so overruled.

4 MR. GEIST: If we're talking about revocation at any time that  
5 can be at any time.

6 BY MR. GEIST:

7 Q What did Mr. Scheide tell you about his will?

8 A He told me personally in this meeting with Kristin Tyler that I'm  
9 leaving everything to St. Jude's Hospital in Memphis. That was his wish.  
10 I heard him with my own ears so --

11 Q Okay.

12 A -- I know what he said.

13 Q Did Mr. Scheide ever tell you that he wanted to change that  
14 will from something other than that?

15 A No.

16 MR. PAYNE: Objection; calls for speculation.

17 THE COURT: Overruled. It was specifically did he ever tell  
18 you? And I think your answer's no? Just to be clear, I think that's the  
19 way I heard it.

20 MR. GEIST: That's what I heard.

21 THE COURT: Okay.

22 BY MR. GEIST:

23 Q Turning to Theodore E. Scheide, III, do you know who that is?

24 A Yes.

25 Q Who is Theodore E. Scheide, III?

1           A     Chip Scheide.

2           Q     And who -- how do you know him?

3           A     Back in the late '60s prior to my mother marrying Ted, Ted  
4     invited my mother, myself and a friend and Chip out on his boat on the  
5     Allegheny River in Pittsburgh, Pennsylvania. We spent an afternoon on  
6     the boat. That's the first time I ever saw him. I never seen him since.

7           Q     Okay. And who is he in relation to you?

8           A     He would be my stepbrother.

9           Q     Okay. Who is -- who are his parents; do you know?

10          A     Betty Scheide and Ted Scheide.

11          Q     Okay. And how -- you've never spoken with Theodore E.  
12     Scheide, III after that time in seventy --

13          A     No.

14          Q     Okay. Do you know what Theodore E. Scheide, III's  
15     relationship with Mr. Scheide was? Like how you would characterize it?

16                 MR. PAYNE: Objection; foundation. Time period? Before  
17     he's born --

18                 THE COURT: Yeah.

19                 MR. PAYNE: -- after he's born?

20                 THE COURT: So I mean she only met him one time so I  
21     guess we do need some foundation for when --

22                 MR. GEIST: Okay.

23     BY MR. GEIST:

24           Q     Around the time of 2013 when you moved back to Las Vegas,  
25     do you know the relationship that Ted had with Theodore E. Scheide,

1 III?

2 A No, I do not.

3 Q Okay. Did he ever talk about Theodore --

4 A No.

5 Q -- E. Scheide, III? Did Theodore E. Scheide, III ever contact  
6 you while Ted was alive?

7 A No.

8 Q Did he ever contact you ever Mr. Scheide's death?

9 A No.

10 Q Okay. Prior to 2013, did Mr. Scheide ever say anything about  
11 his son to you?

12 A No.

13 Q Did Mr. Scheide ever ask you to contact Theodore E. Scheide,  
14 III after 2013?

15 A No.

16 Q Okay. Did you -- have you ever spoken with anyone from St.  
17 Jude regarding Mr. Scheide or his estate?

18 A No.

19 Q Did Mr. Scheide ever speak with you about St. Jude Children's  
20 Research Hospital?

21 A Yes.

22 Q When did he speak with you about St. Jude?

23 A It was approximately October of 2013.

24 Q What did he say?

25 A He said, Kath, we need to write a check for St. Jude's, I send



1     them an annual contribution and it's time to do it, I've got to get that  
2     done before the end of the year.

3           Q     Okay. What did you do after he told you that?

4           A     We found the correspondence from the prior year. I found  
5     that in his files and I typed a letter for him and --

6           Q     Okay. And --

7           A     -- wrote a check. I can't tell you the exact amount. I don't  
8     remember. It was over \$10,000.

9           Q     You wrote a check for Mr. Scheide --

10          A     Yes.

11          Q     -- to send? Okay.

12          A     Ted signed the check. We mailed the check.

13          Q     And you said you prepared a cover letter --

14          A     Yes.

15          Q     -- to send with the check? And that cover letter was based  
16     on?

17          A     It was sent to whoever had acknowledged the receipt of the  
18     prior year's annual contribution. So apparently he had done this for  
19     many years but I can't say how many years.

20          Q     Okay. Do you know did Mr. Scheide ever tell you about his  
21     relationship with his son?

22          A     No.

23          Q     Okay.

24                 MR. GEIST: Okay. No further questions.

25                 THE COURT: Thank you very much.

1 Mr. Payne.

2 CROSS-EXAMINATION

3 BY MR. PAYNE:

4 Q Ms. Longo, do you remember appearing for the deposition in  
5 Mr. Geist's office?

6 A Yes.

7 Q You remember being put --

8 A Excuse me, it was not in Mr. Geist's office.

9 Q Oh that's right. You're right. I do stand corrected. But you  
10 remember appearing for that deposition?

11 A Yes.

12 Q And you were put under oath?

13 A Yes.

14 Q Recall that? You told that you tell the truth nothing but the  
15 truth?

16 A Yes.

17 Q You were also advised that you had a chance to review your  
18 testimony after you had given it and make changes. Do you recall that?

19 A Yes.

20 Q And were you contacted by the court reporter and asked to  
21 make any changes or did you make any changes?

22 A I was not contacted by anyone. I received the deposition.  
23 The only change that I would make --

24 Q No. No. I'm just asking if you made any changes.

25 A Oh. No, I did not.

1 Q Okay. Now, in that deposition if I recall, I think you referred to  
2 Mr. Scheide as being mean, correct?

3 A He wanted his own way.

4 Q But didn't you call him mean?

5 A Yes.

6 Q Okay.

7 A He was mean.

8 Q And in fact I think you called him a cruel person?

9 A I don't recall that.

10 Q Okay. Do you recall testifying that he called the police on  
11 you?

12 A Yes.

13 Q And that in fact it was because you had his gun?

14 A Yes.

15 Q And you didn't like that?

16 A No. It scared me that he would think that -- to me I didn't want  
17 the police coming to my front door demanding -- you know, saying that I  
18 was a thief. I was not. He was a very demanding person who wanted  
19 things his way and as he got older he was worse and worse and worse.  
20 He could be very nice. He was a perfect gentleman when I went to see  
21 them years ago in Florida, but as he aged things changed. His  
22 demeanor was totally different.

23 Q So if I understand your testimony was the last time you ever  
24 saw him was when you were in this meeting with Kristin Tyler, correct?

25 A Yes.

1 Q And do you know when he died?

2 A Do I know when he died?

3 Q Yes.

4 A It was August -- I don't know the exact date, August of 2014.

5 The guardian called to tell me he had passed away.

6 Q So you had no other contact with him from December 2013  
7 until he passed away in August 2014?

8 A No, that's not true. He called me after the incident with the --

9 Q The gun?

10 A -- revolver and he said I want my gun back and I want my  
11 keys back and I said you're not going to get either one back, I don't have  
12 them. And he did call Metro. The Metro officer called me. It was a nice  
13 woman and she said I spoke with him myself. I said, please, I said this  
14 scares me to death and she said don't worry, she said I understand after  
15 speaking with him that he is never going to have a gun again, is not  
16 going to drive and all that. She knew from just speaking with him that he  
17 was not capable of owning a gun. I was afraid he was going to go into  
18 the group home and kill somebody if they didn't give him his keys back,  
19 and that could have possibly happened.

20 Q I think you also testified that he tricked the doctors -- I think  
21 that was your words -- into being able to drive. Do you recall that?

22 MR. GEIST: Objection; misstates prior testimony.

23 THE COURT: Tricked DMV.

24 BY MR. PAYNE:

25 Q He -- when you were testifying about the drivers license, didn't

1 you say that he tricked his doctors so that he could keep his driver  
2 license?

3 A No.

4 THE COURT: No, tricked DMV.

5 A I didn't say that.

6 Q You didn't say that. Okay. Isn't it true that you don't know that  
7 the will that you referenced was either original or a copy?

8 A Correct.

9 Q Isn't it true that you have no idea whether he changed his will?

10 A I have no idea if he changed it or not.

11 Q Correct.

12 A Correct.

13 Q The answer is yes. You're not a lawyer, correct?

14 A No.

15 Q You don't have any special training --

16 A No.

17 Q -- legal scholars?

18 A No.

19 MR. PAYNE: Nothing further, Your Honor.

20 THE COURT: Okay. Thanks.

21 Any follow up then, Mr. Geist?

22 MR. GEIST: Nothing further, Your Honor.

23 THE COURT: Ms. Longo, thank you very much for coming in.

24 THE WITNESS: Thank you.

25 THE COURT: Okay. Any more witnesses, Mr. Geist?

1 MR. GEIST: Yes. Next we'd like to call Susan Hoy.  
2 THE COURT: Okay. So we'll let Ms. Longo leave and then  
3 we'll get Ms. Hoy.  
4 MR. PAYNE: Your Honor, could we take a personal break 10  
5 minutes?  
6 THE COURT: Sure.  
7 [Recess taken at 2:16 p.m.]  
8 [Proceedings resumed at 2:32 p.m.]  
9 THE COURT: On the record and I think Ms. Hoy is your next  
10 witness?  
11 MR. GEIST: That's correct, Your Honor.  
12 THE COURT: Got it.  
13 [Pause]  
14 THE CLERK: Raise your right hand, please.  
15 SUSAN HOY  
16 [having been called as a witness and being first duly sworn, testified as  
17 follows:]  
18 THE CLERK: Please be seated and if you'll state your name  
19 for the record?  
20 THE WITNESS: Susan Hoy.  
21 THE COURT: Thank you.  
22 DIRECT EXAMINATION OF SUSAN HOY  
23 BY MR. GEIST:  
24 Q Good afternoon. How would you prefer that I call -- refer to  
25 you, call you?

1           A     Susie's fine.

2           Q     Susie? Okay, thank you. Susie, where are you currently  
3 employed?

4           A     Nevada Guardian Services.

5           Q     And how long have you been with Nevada Guardian  
6 Services?

7           A     Ten years now.

8           Q     What is the business address of Nevada Guardian Services?

9           A     6625 South Valley View, Suite 216, Las Vegas, Nevada  
10 89118.

11          Q     How long have you been there?

12          A     Six to seven years.

13          Q     Okay. What is your position there?

14          A     I'm the owner manager.

15          Q     And what are your responsibilities as the owner manager?

16          A     I manage the day-to-day operations of the business. I also act  
17 as lead guardian in cases.

18          Q     Okay. Any other responsibilities?

19          A     There are lots of responsibilities. I, you know, pay the  
20 business bills, anything to do with the operation of the day-to-day  
21 business.

22          Q     Do you have any professional certifications?

23          A     The guardianship certification, the national guardianship  
24 certification.

25          Q     And when did you first receive that --

1           A     2007.

2           Q     How often is that renewed?

3           A     Every two years.

4           Q     Okay. So it's been 10 years?

5           A     It's been 10 years.

6           Q     Okay. How many staff members does Nevada Guardian  
7 Services have currently?

8           A     Currently seven.

9           Q     Okay. And how many of those staff members are guardians?

10          A     Three, including myself.

11          Q     Okay. You mentioned that you're a lead guardian? What are  
12 your duties as a lead guardian?

13          A     My duties include reviewing all of the protected person visits,  
14 reviewing any of the financial statements, preparing the budgets or  
15 reviewing the budgets that are prepared, reviewing and preparing the  
16 inventories and reviewing and preparing the accountings.

17          Q     So all of those that are prepared, do you review everything  
18 that Nevada Guardian Services does?

19          A     I do.

20          Q     Okay. What are your duties as case manager?

21          A     Depends on the individual case. It could be assisting in a  
22 discharge plan, assisting in securing appropriate placement for  
23 someone. It just depends on the individual care plan.

24          Q     Are there any other case managers at Nevada Guardian  
25 Services?



1           A     Well the guardians act as the case managers as well and  
2 there are or there is a social worker --

3           Q     Okay.

4           A     -- on staff.

5           Q     How long have you been serving as a guardian?

6           A     For 10 years.

7           Q     Ten years. Is a guardianship case handled by just one  
8 guardian within -- in Nevada Guardian Services?

9           A     No. We have a team approach at Nevada Guardian Services.

10          Q     When you say a team approach, what is a team approach?

11          A     So the cases aren't assigned to one specific individual. So if a  
12 case comes in, it just depends on who has the time and can, you know,  
13 efficiently provide the services that that individual needs.

14          Q     Who -- and help me out with this. Who would be assigned to  
15 a case in that team approach?

16          A     Well we have a case management meeting every -- once a  
17 week every -- typically every Friday morning we review all the new  
18 cases and any cases that have kind of a -- have some type of concern  
19 or issue or need, and then we determine from there who has the time to  
20 address those concerns and needs through the week. So we address  
21 all that every -- on a weekly basis.

22          Q     Is -- are all of your staff members involved in those case  
23 management meetings?

24          A     Just the guardians and the social worker.

25          Q     Okay. Are you involved in all of those case management

1 meetings?

2 A Yes.

3 Q Do you ever get a vacation?

4 A Yes.

5 Q Good. Good. Do you have an understanding why you're here

6 today?

7 A I do.

8 Q Okay. And why are you here?

9 A I'm here to testify in the probate matter.

10 Q Okay. The probate matter of --

11 A Oh.

12 Q -- Theodore E. Scheide, Jr.?

13 A Yes.

14 Q Okay. Are you familiar with Theodore E. Scheide, Jr.?

15 A I am familiar with him.

16 Q How are you familiar with him?

17 A My agency acted as his guardian prior to his passing.

18 Q Okay. Do you have any other relationship or connection to

19 Theodore E. Scheide, Jr.?

20 A No, I do not.

21 Q Do you have any connection to the current probate case?

22 A I do. I'm currently the administrator.

23 Q Okay. So you are serving as the administrator --

24 A Yes.

25 Q -- of his estate? Okay. When did -- and if I could just refer to

1 Nevada Guardian Services as NGS for brevity?

2 MR. GEIST: I know Your Honor would like me to keep it  
3 quick.

4 THE COURT: No. That's fine.

5 BY MR. GEIST:

6 Q NGS. When did NGS first become involved with Mr. Scheide?

7 A I believe it was the beginning of 2014 or towards the end of  
8 2013.

9 Q How did they become involved with Mr. Scheide?

10 A We received a telephone call from his attorney, Kristin Tyler.  
11 She was seeking assistance for him.

12 Q Okay. Did you receive that phone call?

13 A I did.

14 Q So you spoke with Ms. Tyler?

15 A I did.

16 Q Do you recall that conversation with her?

17 A I would not be able to recall it verbatim, but --

18 Q Do you recall the characteristics of it?

19 A Yes.

20 Q Did she say anything specific about what help he needed?

21 A She just indicated that his power of attorney -- his agent under  
22 his power of attorney would no longer be acting -- was no longer willing  
23 to act for him and he needed assistance in coordinating medical  
24 appointments and care and just someone to generally assist him.

25 Q And did she tell you who that agent was?

1           A     I'm not able to recall who that agent was at the time.

2           Q     Do you recall who the first person at NGS was to meet with  
3 Mr. Scheide after that phone call?

4           A     I do. It would have been our social worker, Judy Coulter.

5           Q     Let me back up. After you received that phone call, what did  
6 NGS do, if anything, for Mr. Scheide?

7           A     Well, Ms. Tyler arranged for us to -- for someone from my  
8 office to meet with him and -- because is my understanding there were  
9 several agencies meeting with him, so that would have been the next  
10 step --

11          Q     And it was Judy Coulter that met with him?

12          A     Yes.

13          Q     Judy Coulter is a social worker?

14          A     Yes, she is.

15          Q     Does she have to have any specific training to be a social  
16 worker?

17          A     She's a license associate of social work.

18          Q     Okay. Are there any certifications that go along with that?

19          A     She holds a certification through the Nevada State Board of  
20 Social Workers.

21          Q     Okay. Do you know where she met Mr. Scheide?

22          A     I believe it was at the group home where he was residing.

23          Q     Do you know when this meeting was arranged to take place?

24          A     Not without having the file in front of me I would not be able to  
25 give you an exact date.

1 Q Okay. When you say a file, do you normally keep a file for  
2 individuals that you do services for?

3 A Well and -- yes.

4 Q Okay, and what is typically in his file that you would keep on  
5 an individual?

6 A Well, all of the documents that are filed in the court case or an  
7 -- if it's not a guardianship, then anything that pertains to, you know, like  
8 if there's a power of attorney, if -- whoever's referring the case. We  
9 would keep any correspondences that come to our office. We would  
10 maintain any bills -- you know, if we're paying the bills, we maintain all of  
11 the invoices, the receipts, the bank statements.

12 Q How are those records that you just described collected by  
13 NGS?

14 A They're collected in a number of ways. Some come through  
15 the mail, some we collect on visits, you know, like medical records,  
16 doctor visits. Some are forms that we use in house to document care  
17 that's been done.

18 Q Okay. Would it be fair to characterize that kind of collection as  
19 some of it is passive meaning it comes to you and some of it is active  
20 meaning you actually go out and obtain certain records?

21 A Yes.

22 Q Okay. And did you keep a file on Mr. Scheide?

23 A Yes we did.

24 Q Okay. Did you receive a request from my office to produce  
25 that file for Mr. Scheide?

1           A     Yes.

2           Q     And did you produce the file that you were keeping for Mr.  
3 Scheide to our office?

4           A     Yes, I produced it to my attorney.

5           Q     Okay, in response to that request. Did you produce  
6 everything in your file that we had requested to us that you kept on Mr.  
7 Scheide?

8           A     I copy the entire file.

9           Q     Okay. If you could take a look at the binder, the witness  
10 binder --

11           THE COURT: So that'd be binder two --

12           MR. GEIST: Two.

13           THE COURT: -- because is it Exhibit -- the medical records  
14 provided by Ms. Hoy --

15           MR. GEIST: We're actually --

16           THE COURT: -- or is it the documents from the file?

17           MR. GEIST: We're actually going to look at three, volume  
18 three and the Exhibit 7A.

19           THE COURT: So it's Exhibit 7. Okay, there were two. I didn't  
20 know which one you wanted. Okay.

21           THE WITNESS: Can I just get my glasses?

22           MR. GEIST: Yeah. Absolutely.

23                               [Pause]

24           BY MR. GEIST:

25           Q     And I believe -- I apologize, but this was a very large file as

1 you remember. I think there are two volumes, 7A and a 7B.

2 THE COURT: Oh, okay.

3 MR. GEIST: I should have mentioned that before.

4 THE COURT: Okay, so we're going to also need four. So it's  
5 volumes three and four because it's A and B? Is all --

6 MR. GEIST: Three and four, yes.

7 THE COURT: All of A is in three --

8 MR. GEIST: Three.

9 THE COURT: -- all of B is in four.

10 MR. GEIST: Correct.

11 THE COURT: Got it. Okay. I'm not bringing them both over  
12 here. Too big.

13 THE WITNESS: Thank you.

14 BY MR. GEIST:

15 Q Okay. Taking a look at those two volumes, do you recognize  
16 the first page in 7A which is in volume three? And the subsequent  
17 pages 2 and 3 and 4. Does that look familiar to you?

18 A The response to St. Jude Children's Research Hospital's first  
19 set of request for production of documents, yes.

20 Q Okay, and how does that look familiar to you?

21 A Believe this was provided -- I signed this, I completed this with  
22 Ms. Boyer.

23 Q Okay. And then following page 5 which is a certificate of  
24 service, there is a Bates stamp which is the marking that says  
25 SCHEIDE0001. Do you recognize that marking?

1 A Do I recognize the marking SCHEIDE0001?

2 Q Yeah.

3 A I --

4 Q Was that on the documents that you provided us?

5 A No.

6 Q It was not? It was provided to us with that?

7 A Unless Ms. Boyer's office put that on there, this would not --  
8 this was not on my documents.

9 Q Okay. If I submitted to you that we received the documents  
10 with that stamp on there, you would accept that?

11 A Yes, I'm assuming this came from Ms. Boyer's office.

12 Q Okay. Thank you. So looking at this file, this 7A and 7B, does  
13 that look like the documents that you had in Mr. Scheide's file that you  
14 had produced subject to our request for production of documents?

15 A Yes.

16 Q Is there anything in there that you can tell is missing or  
17 unusual?

18 A Well I'd have to go through this page by page --

19 Q And we wouldn't want that.

20 A -- Mr. Geist, but I mean this generally resembles what our file  
21 is.

22 Q Okay. Does it appear that that is a true and accurate copy of  
23 the file that you kept on Mr. Scheide at NGS?

24 A This volume as well, right?

25 Q That volume as well. Yes.



1           A     Yes, I can -- yes, and without going page by page, this  
2 appears to be the -- our file.

3           Q     It appears to be a true and accurate copy of the records  
4 gathered and collected for the guardianship --

5           A     Yes.

6           Q     -- of Mr. Scheide by NGS?

7           MR. GEIST: Your Honor, we would move to admit Exhibit 7  
8 into evidence as the business record for NGS on --

9           THE COURT: Thank you.

10          MR. GEIST: -- the file of Mr. --

11          THE COURT: Okay, thank you.

12          MR. GEIST: -- Scheide.

13          THE COURT: Mr. Payne?

14          MR. PAYNE: Well, Your Honor, I -- I'm a little confused. I'm  
15 not sure what it is -- are you moving to admit B too which are the  
16 medical records?

17          MR. GEIST: B is -- oh are B the medical records? I  
18 apologize. No. The medical records are separate.

19          MR. PAYNE: Okay.

20          MR. GEIST: Yeah. This was just what was produced in  
21 response to our request for records --

22          MR. PAYNE: So then it's 7A.

23          MR. GEIST: 7A and 7B I believe.

24          MR. PAYNE: Well that's the problem is that they're -- the B  
25 consists of medical records and there is no --

1 MR. GEIST: Yeah, see volume -- I'm sorry, Exhibit 6 are the  
2 medical records that were produced. There were documents in this  
3 record that were produced that are in 7A and 7B that was their file that  
4 they produced to us.

5 THE COURT: Okay. So just to clarify, 7A and 7B are Ms.  
6 Hoy's file.

7 MR. GEIST: Right.

8 THE COURT: Included in her file are certain medical records.

9 MR. GEIST: Correct.

10 THE COURT: There are also other medical records, some of  
11 which are duplicates in Exhibit 6.

12 MR. GEIST: Potentially.

13 THE COURT: Got it. Okay.

14 So based on that, Mr. Payne, was your objection to production  
15 of Mr. Scheide's medical records?

16 MR. PAYNE: Yes.

17 THE COURT: Okay.

18 MR. PAYNE: There's been no foundation laid, there's no  
19 custodian of record, there's no affidavit from the custodian of records.

20 THE COURT: Well, I understand that his guardian, Ms. Hoy  
21 had -- became the HIPAA -- I -- HIPAA designee I forget what the right  
22 term is for -- can I ask Ms. Hoy a question?

23 What's the -- what is it called where as a guardian you have  
24 the HIPAA -- you control the HIPAA access?

25 THE WITNESS: The -- it was the HIPAA designee.

1 THE COURT: HIPAA designee. I was right. Okay.

2 So she was the HIPAA designee. So given that, she has the  
3 authority to collect his records and I would assume produce them if  
4 asked. I mean as -- they're in her business -- her file as a business  
5 record. She was the HIPAA designee.

6 MR. PAYNE: Well she --

7 THE COURT: So she has -- so they're -- they -- these are her  
8 business records. That's all it would be admitted for is her business  
9 records because she was authorized to hold these medical records.  
10 She had HIPAA right. So --

11 MR. PAYNE: Yeah, but how does she lay the foundation for  
12 these documents to be admitted in her file without going through the  
13 requisite requirements?

14 THE COURT: I mean so with respect to how as a HIPAA  
15 designee she came into possession of medical records, I -- okay. I  
16 would allow that. Think that's probably perfectly reasonable to ask.

17 MR. GEIST: Okay.

18 BY MR. GEIST:

19 Q In the course of your duties as guardian for Mr. Scheide, did  
20 you have the ability to request medical records on his behalf?

21 A Yes, we did.

22 Q And did you request medical records on Mr. Scheide's behalf?

23 A We did.

24 Q Did you receive medical records for Mr. Scheide in the course  
25 of his guardianship?

1           A     Yes.

2           Q     And were those medical records incorporate into the file of  
3 records that you kept for Mr. Scheide's guardianship?

4           A     Yes.

5           Q     The records that may be in -- the medical records that may be  
6 in the file that was produced, would they include some of those medical  
7 records that you had requested on his behalf?

8           A     Yes.

9           Q     Okay, and would they possibly be medical records that were  
10 received on his behalf?

11          A     Yes.

12          Q     Okay.

13               MR. GEIST: So Your Honor, I think the foundation is  
14 established that as the designee, NGS requested and received medical  
15 records on his behalf, incorporated those into their file which is their  
16 business record. I move that we admit Exhibit 7, 7A and 7B into  
17 evidence.

18               THE COURT: Okay. Thanks.

19               MR. PAYNE: Your Honor, I mean I've got to laugh. I'm  
20 looking at 7B and 7B 609 through 615 is his Allstate records. These  
21 aren't medical records. This is correspondence from Mr. Scheide to Tim  
22 Hacker his Allstate agent. Thank you for Allstate Indemnity Company  
23 customer, we're delighted to have -- here's your -- regarding your  
24 personal umbrella. I mean so this file is not just medical records, Your  
25 Honor.

1 THE COURT: She did not claim it was.

2 MR. PAYNE: Mr. Scheide or Mr. Geist is saying that these  
3 are the medical records.

4 THE COURT: No, that the -- to the extent there are medical  
5 records in this file, she was authorized to collect those and they're in  
6 her --

7 MR. PAYNE: But there are things other than medical records  
8 in here.

9 THE COURT: Absolutely. Oh absolutely, I understand that.  
10 It's her business file.

11 MR. PAYNE: No. This is in the part of it that is supposed the  
12 medical records. So -- that's what said, if you look at volume B, Judge,  
13 volume B, the first page of that, Bate stamp 529, appears to be a  
14 Physicians Mutual correspondence to Mr. Scheide. So it starts off with  
15 what appears to be some medical records and then there's copies of  
16 checks and other things; Allstate records. So which medical records is  
17 she going to -- he's identify and then she's going to lay a foundation that  
18 she kept those, she received them the normal course, the chain of  
19 command that she's going to need to establish to get these in.

20 THE COURT: Overruled.

21 MR. PAYNE: So this whole thing is coming in?

22 THE COURT: Yeah. As a business record.

23 [Petitioner's Exhibits 7A and 7B admitted]

24 MS. BOYER: Your Honor?

25 THE COURT: Yes.

1 MS. BOYER: In the guardianship proceedings, the court's  
2 really cautious about us maintaining confidentiality of records. I know  
3 he's deceased but not to hinder any of the issues before this --

4 THE COURT: Right.

5 MS. BOYER: -- Court, I would like this to be --

6 THE COURT: So if you wish to --

7 MS. BOYER: -- maintained confidentially.

8 THE COURT: Yeah, if you wish to seal any portions, we can  
9 certainly seal those portions of the exhibits --

10 MR. GEIST: We would stipulate to that.

11 THE COURT: -- that contain --

12 MS. BOYER: Okay.

13 THE COURT: -- HIPAA privileged materials, but she has the  
14 right to have collected them and keep them in her file.

15 I understand Ms. Boyer's point, and if you can identify me --  
16 for me sections of medical records that you say to protect Mr. Scheide's  
17 HIPAA rights should be sealed. And we --

18 MR. GEIST: So you'd like us just to make sure I understand --

19 THE COURT: And we can go -- as long as we have an order  
20 that says in Exhibit 7, A and B, pages whatever to whatever are medical  
21 records and should be sealed, and then the next batch of pages that  
22 need to be sealed.

23 Or in the alternative you can seal the entire file. I don't think it  
24 needs to be done. I mean it's -- I mean -- I don't know, I haven't read it,  
25 seen it before so if there are -- if Ms. Boyer is concerned that in addition

1 to HIPAA material that's confidential there's anything else that's  
2 confidential like -- well at this point in time it seems unlikely that there's  
3 any personally identifying information that somebody could use to get -- I  
4 mean they might be able to get -- you know, I don't know if there's any  
5 social security numbers or things like that that might be found on the  
6 internet because this is all going to be on the internet.

7 So -- I mean so if that one needs to be sealed, we'll do it. I'm  
8 just -- I'm talking about admissibility. Ms. Boyer's raised a different  
9 question which is how much if any of this should be sealed to protect  
10 confidentiality. That's something we'll have to address at a later time. I  
11 don't think it -- and she can certainly at the conclusion of this make a  
12 statement as to what she thinks -- she may decide she wants the whole  
13 thing sealed. And that's her right --

14 MR. GEIST: Right.

15 THE COURT: -- on behalf of Mr. Scheide's estate to assert  
16 that. I don't have any problem with it, but it's admissible. So you can  
17 ask her questions about it --

18 MR. GEIST: Okay.

19 THE COURT: -- but thanks.

20 MR. GEIST: Thank you, Your Honor.

21 BY MR. GEIST:

22 Q Going -- and going back to the meeting that you -- that Judy  
23 Coulter had with Mr. Scheide, what did NGS do for Mr. Scheide after  
24 that?

25 A Well I think -- after that meeting we did become involved with

1 him and it was at the next meeting I believe that he was admitted into  
2 Centennial Hills Hospital.

3 Q Okay, do you recall when he was admitted to Centennial Hills  
4 Hospital?

5 A I wouldn't have the exact date -- well I -- did you want me to  
6 go through the file and --

7 Q Well I -- I mean I can get that if you'd like, but let's get to that  
8 later. So was that -- was the admission to Centennial Hills before or  
9 after his -- the establishment of the guardianship?

10 A That was before the establishment of the guardianship.

11 Q Okay. And did you initiate the process of a guardianship --

12 A We did initiate the process of the guardianship.

13 Q And why did you initiate that guardianship?

14 A When he had -- when he was admitted into the hospital, there  
15 was no one -- there was no power of attorney, no agent that could assist  
16 in coordinating care or making medical decisions and that's why we  
17 initiated the guardianship.

18 Q Okay. Do you recall what his condition was at the time?

19 A Well I'm not a medical person but he was -- you know, he was  
20 hospitalized, he was compromised, he was receiving treatment for --

21 Q Treatment --

22 A -- for his diabetes and other medical issues.

23 Q Okay, do you recall what those other medical issues were?

24 A I don't recall.

25 Q All right. If you can turn to -- this is 7A, the first volume there.



1 The page is number 116. Well we'll start with 114. Do you recognize  
2 that document?

3 A I do.

4 Q What is that?

5 A This is the petition for appointment of temporary guardian,  
6 petition for appointment of general guardian.

7 Q How do you recognize it?

8 A This is a document that I sign to file with the court to initiate  
9 the proceedings.

10 Q Okay. Turning to page 118. There are two signature at the  
11 bottom. The top signature on there, do you recognize that?

12 A That is my signature.

13 Q Okay. So you recognize your signature on that. And is that  
14 your signature on that petition that was submitted for the guardianship?

15 A Yes.

16 Q Okay, turning the page, 119. Do you recognize that  
17 document?

18 A Yes.

19 Q Do you recognize your signature on that?

20 A Yes I do.

21 Q Okay. And what is that document?

22 A This is the verification page.

23 Q What is a verification page?

24 A This is just stating that all of the information in the petition is  
25 true and to the best of my knowledge.

1 Q Okay. Thank you. Going back to page 116, in the petition  
2 would be page 3. I don't want to confuse you, it's 116. The very top  
3 paragraph, paragraph 11, could you read that for me?

4 A The proposed ward is suffering from bifrontal strokes and  
5 dementia. Due to his condition, the proposed ward is unable to care for  
6 his person and estate.

7 Q Okay. That was in the petition that you signed to submit for  
8 guardianship, correct?

9 A Correct.

10 Q And that was in the petition that you signed a verification on,  
11 correct?

12 A Correct.

13 Q So at the time that you submitted this petition for  
14 guardianship, Mr. Scheide was suffering from bifrontal strokes and  
15 dementia, correct?

16 MR. PAYNE: Your Honor, I'm just going to object to the  
17 extent that this witness --

18 THE COURT: Right, and she did say -- she did qualify and  
19 say she is not a -- I think did you say you had no medical training or  
20 you're --

21 THE WITNESS: Yeah, I'm not -- no medical training.

22 THE COURT: So --

23 MR. GEIST: I --

24 THE COURT: -- to that extent then --

25 MR. GEIST: I understand --

1 THE COURT: -- if it were phrased as that's the -- she's relying  
2 on a medical person --

3 BY MR. GEIST:

4 Q Did you rely on anything to put this in the petition? Was there  
5 a reason that you put that in the petition?

6 A I believe that this would correspond to the physician statement  
7 that we --

8 Q Was is a physician statement?

9 A The physician statement is submitted in support of the  
10 guardianship.

11 Q Does every petition then you submit have a physician  
12 statement?

13 A Yes.

14 Q Did this petition that you submitted have a physician  
15 statement?

16 A I believe so, yes.

17 Q Okay. If you could turn to page 98? Does that -- I'll wait till  
18 you get there, sorry.

19 A I'm getting there.

20 Q Does this document look familiar to you?

21 A Yes.

22 Q At the top there's a code AFFT and then there's the name of  
23 Kim Boyer. Is -- was Kim Boyer your attorney at the time of this  
24 guardianship?

25 A Yes.

1 Q Did -- do you know if she prepared this document?

2 A Well, the document is prepared but it's completed by the

3 physician.

4 Q So it's prepared by Kim Boyer and completed by the

5 physician?

6 A (No audible response.)

7 Q Have you seen this physician statement before today?

8 A Yes.

9 Q When did you --

10 THE COURT: I'm sorry, we didn't get a verbal response on

11 that -

12 THE WITNESS: Oh.

13 THE COURT: -- previous question about --

14 THE WITNESS: What?

15 BY MR. GEIST:

16 Q So this document was prepared by Kim Boyer and completed

17 by the physician?

18 A Yes.

19 Q Okay. Have you seen this document before today?

20 A Yes.

21 Q When did you see this document before today?

22 A The most recent would be during the deposition.

23 Q Okay. The deposition where you came in and offered

24 testimony under oath?

25 A At your office, yes.

1 Q At our office. Have you seen this document before then?

2 A Yes, I seen it when we filed, and I probably seen it on several  
3 occasions through, you know, as revising the file or going through the  
4 file.

5 Q Okay. And who -- okay, who completed this document?

6 A Dr. Mandip Arora.

7 Q And do you know who Mandip Arora is?

8 A I do not know of her personally but she was most likely the  
9 hospitalist at Centennial Hills that was treating Mr. Scheide.

10 Q Do you know did Dr. Arora have any contact with Mr.  
11 Scheide?

12 A During his hospitalization, I'm -- I mean I would not know that  
13 without reviewing his medical record; I would assume.

14 Q Okay. But Dr. Arora prepared this and you received it?

15 A She completed it and yes, my office received it.

16 Q I'm sorry, she completed it, then you received it and you used  
17 this to prepare the petition for guardianship?

18 A Provided it to my attorney's office to prepare the petition for  
19 guardianship.

20 Q Okay, so inasmuch as this was completed, you relied on it for  
21 the petition, correct?

22 A Correct.

23 Q Okay. On page 99, under paragraph 8, it says describe any  
24 limitations of capacity of the propose ward that affect the ability of the  
25 proposed ward to be able to maintain his slash her safety and basic

1 needs. Is that your handwriting that filled that in?

2 A No it is not.

3 Q Do you know who filled that in?

4 A I do not know who filled it in. I would assume that Dr. Arora  
5 completed the form.

6 Q Okay, and do you know what that says that was filled in on  
7 those lines?

8 A Yes.

9 Q Can you read that for me?

10 A Altered level of consciousness, dementia, chronic bifrontal  
11 strokes.

12 Q So Susie, is it true that then you relied on this document, the  
13 physician's statement, to prepare the petition and include that paragraph  
14 in the petition for guardianship?

15 MR. PAYNE: Object, Your Honor. The document speaks for  
16 itself.

17 THE COURT: Sustained.

18 THE WITNESS: Yes.

19 BY MR. GEIST:

20 Q Did --

21 THE COURT: No.

22 THE WITNESS: Oh.

23 THE COURT: You don't answer that one. Sustained it.

24 BY MR. GEIST:

25 Q Did you rely on this document in preparation of the petition for

1 guardianship?

2 MR. PAYNE: Asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: Yes.

5 BY MR. GEIST:

6 Q Did you rely on any of these statements in this physician  
7 statement to prepare the text or the content of that petition for  
8 guardianship?

9 A Yes.

10 Q Is there anything specific on the physician statement that you  
11 relied on to prepare that petition for guardianship?

12 A Well, number 8 that we just discussed.

13 Q Number 8 -- you relied on number 8?

14 A For the diagnoses (sic), yes.

15 Q Okay. Thank you. So based on your knowledge at the time  
16 and the petition that you verified, was Mr. Scheide suffering from  
17 bifrontal strokes?

18 A Well I'm not a medical person so I would have to rely on the  
19 information provided by the physician.

20 Q You signed a verification on that petition, correct?

21 A Right.

22 MR. PAYNE: Asked and answered, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: True to the best of my knowledge I'm --

25 MR. GEIST: Okay.

1 THE WITNESS: -- relying on the information from the  
2 physician.

3 BY MR. GEIST:

4 Q Thank you, ma'am. And based on your knowledge at the  
5 time, was Mr. Scheide suffering from dementia at the time?

6 A Based on the information provided to me from the physician.

7 Q You stated that he also had diabetes?

8 A Yes.

9 Q Were there any other conditions that you were aware of?

10 A Not that I'm able to just recall.

11 Q Okay. Were there any other conditions that he told you  
12 about?

13 A Not -- he would not have told me but -- no, not that I'm able to  
14 recall.

15 Q Okay. Was a temporary guardianship granted over Mr.  
16 Scheide?

17 A Yes.

18 Q Do you know when that was?

19 A Can I look at the order?

20 Q Sure.

21 A February 19th, 2014.

22 Q And that was a temporary guardianship, correct?

23 A Correct.

24 Q What is a temporary guardianship? Do you know?

25 A I do know.



1 Q Okay.

2 A A temporary guardianship is just for a very limited time and for  
3 an emergent -- usually a specific purpose.

4 Q Okay. Is there a reason that a temporary guardianship would  
5 be extended?

6 A If the reason for the temporary -- if the emergent situation  
7 continues, then it would be extended.

8 Q Okay. Do you know was the temporary guardianship over the  
9 decedent extended?

10 A It was extended.

11 Q Do you know how long it was extended for? You can -- yes,  
12 you can --

13 A Can I look? Okay. It was extended through February 26th,  
14 2014.

15 Q And which page are you looking at?

16 A I'm looking at page -- I just lost it. One zero eight.

17 Q Okay. And was the guardianship extended beyond that, that  
18 you're aware of?

19 A Not that I'm aware -- was the --

20 Q Okay, I'll direct you to page 92.

21 A Okay. Yes, the order extending temporary guardianship.

22 Q Okay. And when was that extended until?

23 A Until March 26th, 2014.

24 Q Okay. Do you know if the guardianship was extended -- the  
25 temporary guardianship was extended beyond that?

1           A     The order appointing guardian was entered so when you say  
2 temporary guardianship extended, the temporary would not have been  
3 extended past that because an order was actually entered.

4           Q     Okay, and an order entering -- an order was entered granting  
5 what?

6           A     General guardian of the person and estate.

7           Q     And what's the difference between general guardianship and  
8 temporary guardianship?

9           A     Well temporary -- a temporary is a -- is for a limited time. The  
10 -- and the powers are limited to what the emergent situation is. A  
11 general guardianship is more broad.

12          Q     Okay. Who was appointed the general guardian over the  
13 decedent?

14          A     Nevada Guardian Services.

15          Q     And was that over his person and estate or person or estate?

16          A     Person and estate.

17          Q     Okay. Was that guardianship ever terminated?

18          A     It was terminated upon his death.

19          Q     Okay.

20          A     Well after his death.

21          Q     And do you know when Mr. Scheide died?

22          A     August of 2014.

23          Q     Okay. If I said August 17th, 2014, does that sound right?

24          A     Yes.

25          Q     Okay. So would you agree that from February 28th, 2014 to

1 his death, August 17th, 2014, Mr. Scheide was subject to a guardianship  
2 that entire time?

3 A Yes.

4 Q Okay. And Nevada Guardian Services was the guardian over  
5 Mr. Scheide that entire time as well?

6 A Yes.

7 Q Okay. Do you know if Mr. Scheide had any estate planning  
8 documents? Well let me go back. Do you know what -- if I say estate  
9 planning documents, do you know what I'm referring to?

10 A I'm -- when you say estate planning documents, I'm thinking  
11 you're referring to broadly advance directives, powers of attorneys, will  
12 and testament, trust.

13 Q Okay. Do you know did Mr. Scheide have estate planning  
14 documents?

15 A Yes.

16 Q Do you know what estate planning documents he had?

17 A I -- well I know he had a power of attorney. He had an  
18 advance directive and he had a will and testament.

19 Q Okay. How do you know that he had those documents?

20 A That was part of what was relayed to use by his attorney,  
21 Kristin Tyler.

22 Q Okay. So you had knowledge that he had those?

23 A Yes.

24 Q Did you ever see any of those documents?

25 A I believe I did see the power of attorney and I did see a copy

1 of the will and testament.

2 Q And when you say you saw a copy of the will and you saw the  
3 power of attorney, were those documents that -- where did you see  
4 those?

5 A A copy of the will and testament was in his belongings and I --  
6 the advance directive was part of the power of attorney for healthcare.

7 Q And the power of attorney for healthcare was in his  
8 documents also?

9 A It was provided to us by Kristin Tyler, the power of attorney for  
10 healthcare, because it had the advance directive --

11 Q Got it.

12 A -- inside and so we would want that for our --

13 Q So the only thing you saw --

14 A -- purposes.

15 Q -- in his possession was a copy of his --

16 MR. PAYNE: Your Honor, I -- I'm going to object. I don't think  
17 there's been any foundation as to whether it's a copy, it's an original. I  
18 mean --

19 THE COURT: Yeah, so I -- she saw a copy so I don't know  
20 that it's a lack of foundation, but I do think we need to know how she  
21 determined it was a copy. I think that's entirely correct.

22 BY MR. GEIST:

23 Q Okay. Do you know if it was a copy or an original?

24 A It was a copy.

25 Q How do you know it was a copy?

1 A It appeared to be a copy. It wasn't an original signature.

2 Q Okay.

3 A I don't -- I guess maybe I don't know, but it appeared to be a  
4 copy.

5 Q To you it appeared to be a copy?

6 A To me it appeared to be a copy.

7 Q Okay. Do you know when it was that you saw these  
8 documents, the copy of his will in his possessions?

9 A It would have been sometime during the guardianship, most  
10 likely when his items were in transit between moves because we would  
11 put them in our warehouse.

12 Q And when you put them in your warehouse, you hold them  
13 there for the rest of the time?

14 A We would hold -- we hold them until he relocated, you know,  
15 to another facility.

16 Q Okay, and then what would you do with those documents?

17 A If it was a permanent placement, then we would -- we returned  
18 everything to him.

19 Q Okay. Did you take possession of his documents at that time?

20 A By possession, what do --

21 Q Did you take them from where he was living and put them in  
22 your warehouse?

23 A We did. And then when he would go -- when he was placed  
24 at senior residential, we returned everything to him.

25 Q Okay. Did you make an inventory of those items that you

1 received?

2 A We didn't make a specific detailed inventory, but we had a  
3 basic these are the items that belong to Mr. Scheide. And then they're  
4 marked on the warehouse and so that we know to get them back to him.

5 Q And when you make that inventory is it your typical practice to  
6 not make a specific detailed inventory?

7 A It just depends on what is within the items, you know, so it just  
8 really depends.

9 Q Okay. So how long were those documents in your  
10 warehouse? Do you remember?

11 A I'm not able to recall. I'd have to look at his dates of stay at  
12 the different facilities.

13 Q Did you create an inventory at that time of those documents?

14 A There was an inventory created but I don't know that it was  
15 specific as to what documents were there.

16 Q Was there one inventory created?

17 A I know there was one inventory created and -- yes.

18 Q Was there more than one?

19 A By my office there was the one inventory.

20 Q Okay. After Mr. Scheide passed away, did you ever find an  
21 original will?

22 A I did not.

23 Q Okay, after Mr. Scheide passed away did you ever find a copy  
24 of Mr. Scheide's will?

25 A The -- yes.

1 Q Okay. How do you know it was a copy?

2 A It appeared to be a copy to me. I turned it over to my  
3 attorney.

4 Q Okay. When did you find that?

5 A When the items were brought into the warehouse. So not --  
6 probably August of 2014, most likely.

7 Q Okay. Where did you find that?

8 A Just among the things that were brought in. We would not  
9 have boxed the items, the items would have been boxed up by the  
10 facility. So we just send a runner to pick the items up and bring them to  
11 our warehouse.

12 Q Okay. Do you recall seeing that copy before?

13 A I --

14 Q Or something similar to that copy?

15 A Something similar -- it was -- this is how I know it was that  
16 copy, because he had written on the top and the writing on the top was  
17 original ink because it was blue.

18 Q Okay. So the writing on the top of that was blue ink on the  
19 copy?

20 A Yes, it was -- yeah, blue -- it was a different colored ink.

21 Q Okay.

22 A Yes.

23 Q And do you recall what the handwriting on that was?

24 A Updated.

25 Q It said updated?

1 A It said updated.

2 Q Did it say anything else that you recall --

3 A There was a date.

4 Q Do you recall the --

5 A I believe --

6 Q Do you recall the date?

7 A October 2nd or October 12th, 2012.

8 Q Okay. Was there anything else that was --

9 A On the --

10 Q -- in blue ink?

11 A On the side he had written that he was an organ donor.

12 Q Okay. If you could take a look at Proposed Exhibit 1?

13 MR. GEIST: Your Honor, I --

14 THE COURT: Okay.

15 MR. GEIST: -- know that you got that.

16 THE COURT: So that'll be in --

17 MR. GEIST: The very first volume.

18 THE COURT: Volume.

19 MR. GEIST: Yeah, volume one.

20 THE COURT: Got it.

21 MR. GEIST: Sorry to bounce around.

22 THE COURT: No problem.

23 THE WITNESS: Not these binders?

24 THE COURT: No.

25 MR. GEIST: Not those.



1 THE COURT: It's not going to be in either of those.

2 [Pause]

3 BY MR. GEIST:

4 Q Go ahead. If you could take a look at Proposed Exhibit 1.  
5 And I believe there are 16 pages to it. Does that look familiar to you?

6 A Yes.

7 Q How does it look familiar to you?

8 A This looks familiar because it has the writing on the top or a --  
9 has the right copy of the writing on the top and the writing on the side.

10 Q Okay, when you say the writing, you're referring to the writing -  
11 -- the blue ink writing that you --

12 A Right.

13 Q -- remembered on the copy --

14 A Yes.

15 Q -- that you found after his passing?

16 A Yes.

17 Q Okay. Does this copy that you're looking at appear to be a  
18 true and correct copy of that document that you retrieved after his  
19 passing?

20 MR. PAYNE: Your Honor, my objection is, is that unless --  
21 strike that. Unless she's been laid a foundation that she is a handwriting  
22 expert, I don't think she can testify to the writing organ donor recorded et  
23 cetera and the updated. To the extent that this -- and which copy are  
24 you talking about? As Your Honor's aware, there's -- we're of the  
25 opinion there's three copies in play. There's a copy that has hole

1 punches in it, there's a copy that doesn't have hole punches in it, and  
2 then there's a copy obviously of Ms. Tyler's will. So I think she has to  
3 make sure that we know we're talking about which copy and the  
4 foundation has to be as to which one of these that she's talking about.

5 THE COURT: Okay, so you're not asking her to authenticate  
6 handwriting.

7 MR. GEIST: I'm not.

8 THE COURT: It simply is does she recognize Exhibit 1 as a  
9 will that she's previously seen and then more detail could be elaborated  
10 as to --

11 MR. GEIST: That's correct, Your Honor.

12 THE COURT: Okay. So yeah, I'll allow her to identify if this is  
13 something she's seen previously.

14 BY MR. GEIST:

15 Q Okay. After you received this copy of the will, did you do  
16 anything with it?

17 A I turned it over to my attorney.

18 [Colloquy between counsel]

19 BY MR. GEIST:

20 Q I'm sorry, there was a question pending, does it appear to be a  
21 true and accurate copy of the copy of the last will that you found among  
22 Mr. Scheide's personal items after his passing?

23 A Yes it does.

24 Q Okay.

25 MR. GEIST: Your Honor, based on that, we would ask that

1 Exhibit 1 be admitted to evidence.

2 THE COURT: Okay.

3 MR. PAYNE: For purposes of a copy to compare it to --

4 THE COURT: No, for purposes of this is what she found in  
5 what was -- she didn't do it, but somebody boxed them up and delivered  
6 them as Mr. Scheide's --

7 MR. PAYNE: Let me --

8 THE COURT: -- room contents.

9 MR. PAYNE: If I --

10 THE COURT: So --

11 MR. PAYNE: If I may --

12 THE COURT: -- that's all she's saying is that --

13 MR. PAYNE: Your Honor, but --

14 THE COURT: No, I get to talk.

15 MR. PAYNE: I'm sorry.

16 THE COURT: As I understand Ms. Hoy's testimony, this is the  
17 copy -- it's a copy of the copy that she found in a box that was delivered  
18 from whatever that place was where he was staying. So that's all it is.  
19 It's the copy that she found after Mr. Scheide's death in what was  
20 purported to be his personal belongings I -- kind of was a long time  
21 getting there but that's where I understand this for that she -- this is  
22 where this is -- has showed up from.

23 MR. PAYNE: Your Honor, the -- I'm sorry.

24 THE COURT: Yeah. Okay.

25 MR. PAYNE: The originals are the key to this case. The

1 original documents need to be produced if they're going to be marked  
2 and admitted into evidence, not copies of copies of copies. So if he's  
3 got the original, they have the original, he needs to show her the  
4 original, she needs to mark that and then ask the questions, not a copy  
5 of a copy of a copy.

6 THE COURT: No. This is simply admitted as she has  
7 testified about a document found in Mr. Scheide's possessions that as  
8 delivered after is death. This is the copy that she found in his  
9 possessions after his death. That's all it is.

10 MR. PAYNE: Your Honor, but it's a copy of a copy. It's --

11 THE COURT: Correct.

12 MR. PAYNE: Where's the original?

13 UNIDENTIFIED SPEAKER: That's all it is.

14 MR. GEIST: Your Honor, she's testified that she turned that  
15 copy over to her attorney.

16 THE COURT: Right.

17 MR. GEIST: This copy that we're using --

18 THE COURT: Yeah.

19 MR. GEIST: -- if you'll see the Exhibit --

20 THE COURT: Yeah.

21 MR. GEIST: -- 2, that -- we pulled this from the petition in the  
22 probate case. It was used by the administrator --

23 THE COURT: It's just -- yeah.

24 MR. GEIST: -- as a copy of --

25 THE COURT: So if what you're wanting, Mr. Payne, is the

1 actual document she provided to Ms. Boyer, why do we need that? All  
2 we're getting from Ms. Hoy is that she found a document in Mr.  
3 Scheide's possessions as delivered to her upon his death and this is a  
4 copy --

5 MR. PAYNE: Copy of a copy.

6 THE COURT: -- of what she found in that --

7 MR. PAYNE: Copy of a copy.

8 THE COURT: Yeah. That's all we're saying.

9 MR. PAYNE: Nothing --

10 THE COURT: Okay.

11 MR. GEIST: Your Honor, and this is the best evidence that  
12 we have of that copy.

13 THE COURT: Right. Okay.

14 MR. GEIST: So again we move for this to be admitted.

15 THE COURT: It's admitted.

16 MR. PAYNE: As a copy.

17 THE COURT: I think we've established that.

18 MR. GEIST: Okay.

19 [Petitioner's Exhibit 1 admitted]

20 BY MR. GEIST:

21 Q Sorry Ms. Hoy, is Exhibit 1 the copy of Mr. Scheide's will that  
22 you included in your petition for appointment as administrator of his  
23 estate?

24 A Yes.

25 Q Was there a different copy of Mr. Scheide's will that you used

1 for that petition?

2 A Not -- to my knowledge, it would be whatever I turned over to  
3 my attorney.

4 Q Okay, so this -- from your knowledge, this is the only copy of  
5 this document that's there? I mean and I'm not referring to every  
6 specific copy but what you're looking at, that's the only version of this  
7 document that you've seen that you used in your petition?

8 A Yes.

9 Q Okay. Did you ever find any other different copy of Mr.  
10 Scheide's will among his personal possessions?

11 A No, I did not.

12 Q Okay. I think you testified that you prepared an inventory of  
13 personal items for Mr. Scheide; is that correct?

14 A Yes.

15 Q Taking a look at pages 121 through 122, and that would be in  
16 that volume three. Does that look familiar to you?

17 A No.

18 Q You've never seen that before?

19 A No.

20 Q Okay. Does it say Nevada Guardian Services at the top?

21 A Am I on the wrong page?

22 Q Perhaps.

23 A Okay. Oh, are we back to this?

24 Q Yeah, I'm sorry, volume three.

25 A Oh. Oh, I'm sorry, okay.

1 Q No, my fault if I didn't say it, I'm sorry.

2 A I just got a lot of binders here.

3 Q We do.

4 A Okay, 121. Yes, this -- yes, this looks familiar.

5 Q Okay. And how does it look familiar to you?

6 A This is our warehouse inventory form.

7 Q And what do you use that for?

8 A When something comes into the warehouse that's going to be

9 stored for an extended time, possibly extended time.

10 Q Can you tell me what the date of this particular form is?

11 A The date is 8/25/14.

12 Q Okay. And then flipping the page, there's handwriting on this.

13 Do you know who wrote that?

14 A I wouldn't know. I could name who possibly may have written

15 it --

16 Q We don't need to --

17 A Okay.

18 Q We don't need to speculate, but this -- was this part of that

19 warehouse inventory form?

20 A Yeah, this is the back side.

21 Q The back side of --

22 A Yes.

23 Q Okay. And what is that that's written on there?

24 A You want me to read that?

25 Q Well, no --

1           A     Oh.

2           Q     -- just in general.

3           A     Oh, in general this is what is being held in the warehouse.

4           Q     Okay. On behalf of --

5           A     On behalf of --

6           Q     -- the protected person?

7           A     Yes.

8           Q     Okay. Halfway down the list of things that are there, there's a

9 line that says University of PA diploma and other personal documents.

10 Do you see that?

11          A     I do see that.

12          Q     Okay. Did you list the will on this document other than those

13 personal documents?

14          A     No.

15          Q     Okay.

16                 MR. PAYNE: Talking about the copy, right?

17                 MR. GEIST: The copy that was found. Yeah. Exhibit 1. I'll

18 refer to it as Exhibit 1.

19 BY MR. GEIST:

20          Q     And then down about five more pages (sic) there's another

21 line that says miscellaneous papers. Do you know that -- what either of

22 those refer to?

23          A     I wouldn't know without going through --

24          Q     Okay.

25          A     -- through.



1           Q     But it's your testimony that among his personal items was  
2 found that Exhibit 1?

3           A     Yes, and it would have been removed from the box and  
4 placed into our file.

5           Q     Okay, so it might not have even made it on this inventory at  
6 that time is what you're saying?

7           A     Right, because we would have removed estate planning  
8 documents from the warehouse.

9           Q     Okay. I see other personal items on there. Is there an  
10 espresso maker on there anywhere?

11          A     No.

12          Q     Okay. Do you know if he had an espresso maker?

13          A     I don't recall.

14          Q     Okay. We'll move on. Did Mr. Scheide ever discuss his  
15 estate planning with Nevada Guardian Services?

16          A     No.

17          Q     He never brought up the documents that he had?

18          A     No.

19          Q     Okay. Did he ever say to anybody at Nevada Guardian  
20 Services that he wanted to change his estate plan?

21          A     Not to my knowledge, no.

22          Q     Okay. We've got -- you also produce in addition to the  
23 documents that were in the file a stack of medical records in response to  
24 our request for production. How were those records gathered?

25          A     They could have been gathered a number of ways or for a

1 number of reasons. We had filed a long-term care claim through his  
2 policy and so typically they want medical records. We typically will  
3 request medical records from previous providers to ensure continuity of  
4 care. So they would have been gathered for a number of different  
5 reasons.

6 Q Okay, so the group of medical records that were separate  
7 from your file were gathered and collected in the course of the  
8 guardianship with Mr. Scheide?

9 A Yes.

10 Q And you had requested those on behalf of Mr. Scheide as the  
11 guardian and received those on behalf of Mr. Scheide as the guardian  
12 as well?

13 A My agency, yes.

14 Q Okay. Yeah, Nevada Guardian Services.

15 A Uh-huh.

16 Q If you could take a look at Proposed Exhibit 6?

17 A Which binder?

18 Q And that's -- I'm sorry, that is volume two. This will be --

19 A I don't know --

20 Q -- smaller hopefully.

21 A I don't have volume two.

22 THE COURT: Oh.

23 THE CLERK: You have them all now.

24 THE WITNESS: Do I have them all now? Okay.

25 MR. GEIST: You have a complete set.

1 THE WITNESS: I have a complete set. About right.

2 BY MR. GEIST:

3 Q Okay, taking a look at this Proposed Exhibit 6, does this look  
4 familiar to you?

5 A Yes.

6 Q How does it look familiar to you?

7 A Well this is a MountainView Hospital face sheet.

8 Q And that's the first page on this Proposed Exhibit 6. The  
9 whole exhibit, those pages, do those look familiar?

10 A Well these are his medical records that --

11 Q Okay.

12 A -- we had.

13 Q And are those the medical records that you collected in  
14 conjunction with his guardianship?

15 A They would appear to be. Yes.

16 Q Okay.

17 MR. GEIST: Your Honor, we would move to admit Exhibit 6  
18 for the same purposes that any records previously were used that would  
19 be Exhibit 7.

20 THE COURT: Okay. And so, again, as raised by Ms. Boyer,  
21 there are certain concerns that while it might be relevant here and used  
22 here that as an exhibit, it should not be made public and is -- are we just  
23 talking about -- and again, we would need to identify if it's just a certain  
24 page or multiple pages.

25 MR. GEIST: On this I would stipulate to the entire exhibit

1 because I believe it is all medical records --

2 THE COURT: Okay.

3 MR. GEIST: -- for Mr. Scheide.

4 THE COURT: So with the understanding that as the HIPAA  
5 authorized recipient, she obtained these records, she kept them in the  
6 ordinary course of her business, but with the understanding that due to  
7 the confidential nature they'll be sealed after the fact?

8 MR. GEIST: Uh-huh.

9 THE COURT: Okay, so that's -- is that -- that's all of --

10 MR. GEIST: That's my understanding.

11 THE COURT: Which exhibit?

12 THE WITNESS: Six.

13 MR. GEIST: All of 6.

14 THE COURT: All of -- so all of 6, okay. So admitted with that  
15 limitation that it's to be sealed at a later -- afterwards. Because it can  
16 still be looked at for anybody who has access to the file, it's just it  
17 doesn't go out on -- in the public domain on the internet, et cetera.

18 [Petitioner's Exhibit 6 admitted]

19 MR. GEIST: We're fine with that.

20 THE COURT: Okay.

21 BY MR. GEIST:

22 Q Taking a look at page 79 in that Exhibit 6, do you know what  
23 this document is?

24 MR. PAYNE: Your Honor, I'm just going to lay a standing  
25 objection here because I think we're now going into the content of these.

1 THE COURT: Yeah, so --

2 MR. PAYNE: Well --

3 THE COURT: -- your objection is?

4 MR. PAYNE: It's hearsay.

5 THE COURT: Right. But as we -- as we've discussed, to the  
6 extent that this is a business record and she's not opining on anything in  
7 this, she's always stated she's not --

8 MR. PAYNE: So --

9 THE COURT: -- competent to do so, but that this is  
10 something that she saw or used in her business as Mr. Scheide's  
11 guardian, seems to me that that's --

12 MR. PAYNE: I don't know what they're offering these for.

13 THE COURT: Yeah. Well let's let them do that.

14 That's the question, Mr. Geist -- two things. Ms. Hoy has  
15 already stated I'm not a medical professional so I can't I guess interpret  
16 any medical records, but it is a business record. She was authorized to  
17 have it. And so is the issue was she using this in her --

18 MR. GEIST: Did she rely on this in any regard in the --

19 THE COURT: Okay.

20 MR. GEIST: -- services that she provided to Mr. Scheide.

21 THE COURT: Okay. I think for business purposes that's all  
22 it's being offered for that she relied on it for her business purposes, not  
23 for the truth of the matter asserted. Okay. I mean it's contained in  
24 there.

25 BY MR. GEIST:

1 Q Okay. Susie, on this page do you know what this is? Does it  
2 look familiar to you?

3 A So look familiar. It's a history and physical.

4 Q Okay.

5 A So I mean I see them frequently.

6 Q And I'll point out the date. The date is November 7th, 2013.  
7 This would have been before the guardianship was established, correct?

8 A Correct.

9 Q Okay. And so how did you come to be in possession of this  
10 document?

11 A We would have -- I'm assuming that we would have sent a  
12 request to MountainView Hospital for their records because it looks like  
13 he had been admitted there at one time. So that's how we would have  
14 come into possession.

15 Q And why would you have done that?

16 A We do that when we're developing our care plans. We look at  
17 previous histories, previous care providers, previous hospitalizations,  
18 medications, those -- we look at all of those and we determine our  
19 current and ongoing care plan.

20 Q Okay, so you request these types of documents from a  
21 hospital to create a care plan?

22 A Yes.

23 Q How do you use this to create a care plan? What do you look  
24 at?

25 A So what we would look at is why he was admitted into the

1 hospital, what were some of the medications that he was on at the time,  
2 what medications is he on like now, compare the two, what -- with the  
3 history and physical that's -- that indicates to us when he first went into  
4 the hospital so what caused the hospitalization is what we're looking at.  
5 So when we're requesting the records we ask for all of those records,  
6 you know, the history and physical, the discharge summary, any tests  
7 that we -- that he may have had while in the hospital so that if he's  
8 hospitalized again, you know, we're not putting him -- not putting any  
9 protected person through multiple testing that he -- that may have  
10 already been done.

11 Q Okay, and this particular document that you used for  
12 MountainView, did you look at why he was admitted?

13 A Yes, we would have looked at why he was admitted.

14 Q Did you look at the medications and the care --

15 A Yes.

16 Q -- and the tests --

17 A Uh-huh.

18 Q Okay. And do you know why he was admitted at this time?

19 A I would have to read it again but --

20 Q No. Let's not take that time. Do you look at -- so you look at  
21 past history of an individual when you're determining the care plan is  
22 what you're saying?

23 A Yes.

24 Q Okay.

25 A Yes.

1 Q Taking a look at page 63 of this same volume, does that look  
2 familiar to you?

3 A This would also be a history and physical.

4 Q Okay. And is this something that you would review in the  
5 process of creating or maintaining a care plan for an individual?

6 A Yes.

7 Q Did you look at this document in maintaining care plan for Mr.  
8 Scheide?

9 A I'm certainly that we did.

10 Q Okay. Taking a look at the -- do you know what hospital this  
11 was by the way?

12 A This was Centennial Hills Hospital.

13 Q Okay. Do you know why he was hospitalized at Centennial  
14 Hills at this time?

15 A The date indicates this would have been when we actually  
16 facilitated that transfer to the hospital.

17 Q And why did you facilitate that transfer?

18 A When Judy went to do the visit with him and follow-up, he was  
19 in distress so she called -- Judy Coulter, the social worker, so she called  
20 911.

21 Q What does that mean he was in distress?

22 A I mean I was not there but she was very concerned for his  
23 wellbeing.

24 Q Okay. In the history of present illness, is that something that  
25 would refer to why he's in the hospital?



1           A     Typically yes.

2           Q     Okay. Taking a look at the fourth line down, most of the way  
3 to end it says the patient. Can you read that? Do you see where I'm  
4 referring to?

5           A     Fourth line down?

6           Q     Yeah, there's an and on the third line that's on its own so --  
7 the patient apparently has been.

8           A     Okay. Fourth line, one, two, three, four. The patient  
9 apparently has been having some slurred speech and altered mental  
10 status.

11          Q     Okay. And next sentence?

12          A     The patient is fairly confused.

13          Q     Okay. Was that what the distress was? Do you know?

14          A     I wasn't there --

15          Q     Okay.

16          A     -- Mr. Geist, but --

17          Q     Yeah.

18          A     -- I recall that Judy was very -- Ms. Coulter was very  
19 concerned about him that day.

20          Q     Okay. Was Mr. Scheide hospitalized after that?

21          A     I'm certain that he was hospitalized after that, but I'd have to  
22 review the file to be exact.

23          Q     Okay. If you turn to page 99? Again same file. Can you tell  
24 me what hospital that's from?

25          A     MountainView Hospital.

1 Q Is this a document you would have received on Mr. Scheide's  
2 behalf --

3 A Yes.

4 Q -- when creating a care plan or maintaining a care plan?  
5 There's an admission date up in the upper left corner. Says May 21st,  
6 2014; is that correct?

7 A Yes, that's what it says.

8 Q Was he in the hospital at MountainView at that time?

9 A He would have been, yes.

10 Q Okay. And do you know the reason that he came into the  
11 hospital?

12 A Again I would have to read --

13 Q Okay, chief complaint is I think the first paragraph.

14 A So --

15 Q If you would just read that.

16 A The patient is an 86-year-old gentleman poor historian who  
17 was sent from the assisted living facility due to worsening pain, swelling  
18 and redness of both lower extremities.

19 Q So he was having problems -- pain problems?

20 A Yes, and so the caregivers most likely called 911.

21 Q Okay. Next paragraph, history of present illness, talking about  
22 what -- do you know why they put that in there?

23 A Well --

24 Q If you don't, that's fine.

25 A -- again I'm not a medical person, but --

1 Q Yeah.

2 A -- I mean he's --

3 Q If you don't, that's fine.

4 A Okay.

5 Q About halfway through that paragraph at the end of the far  
6 right side it starts his metabolic?

7 A Yes.

8 Q Can you read that sentence for me?

9 A His metabolic encephalopathy somehow resolved, but patient  
10 has had progressively worsening dementia.

11 Q Okay. Were there other tests or other things that were done  
12 on Mr. Scheide during this time when he was in the hospital?

13 A I would have to review the -- that particular hospitalization.

14 Q Okay, but you would have rely -- you would have -- you would  
15 -- relied on this information to continue care plan once he was  
16 discharged from the hospital?

17 A Yes.

18 Q Okay. Moving on to page 207.

19 MR. MOODY: Your Honor, I apologize. I touched the screen  
20 and caused that black line.

21 THE COURT: Okay. Is that right there -- so the bottom right.

22 MR. MOODY: Thank you.

23 THE COURT: There we go.

24 [Colloquy between counsel]

25 MR. GEIST: Well we'll wrap that up.

1 BY MR. GEIST:

2 Q Can you identify the hospital that he was admitted to on this  
3 document?

4 A MountainView Hospital.

5 Q Okay. And can you identify the date that he was admitted?

6 A The -- I don't know that I see the admission date, just the date  
7 that the progress note was entered.

8 Q Okay. So on the left side there's patient, Theodore E.  
9 Scheide, do you see that? And then account number?

10 A Yes.

11 Q Okay, and then if you go down maybe four lines or two -- I'm  
12 sorry, two lines?

13 A Uh-huh.

14 Q ADM date. Could that have been an admission date?

15 A 207 right?

16 Q Yeah --

17 A Oh. Yes, two -- yes, 6/6.

18 Q Okay. So June --

19 A June 6th, 2014.

20 Q June 6th, 2014. Okay. So he was admitted to MountainView  
21 Hospital on June 6th, 2014. Did Mr. Scheide's physicians at any of  
22 these hospitalizations or any other meetings, did they ever recommend  
23 that he no longer needed a guardian?

24 A Not to my knowledge, no.

25 Q Okay. When was the first time you spoke with Theodore E.

1 Scheide, III? Well first let me start off, do you know who Theodore E.  
2 Scheide, III is?

3 A Yes.

4 Q And who is he?

5 A The son of Theodore Scheide, Jr.

6 Q Okay. When was the first time you spoke with him?

7 A I spoke with him during the probate administration.

8 Q Okay. Did he contact you?

9 A I believe that we had contacted him.

10 Q You reached out to him, and why did you contact him?

11 A I contacted him to advise him of the probate administration,  
12 the proceedings.

13 Q And were you aware of Ms. Scheide, III before that contact?

14 A I was aware of him, yes.

15 Q Okay. But you hadn't contacted him before then?

16 A No I had not.

17 Q Okay. Did Mr. Scheide ever talked to anybody -- well did Mr.  
18 Scheide ever talk to you about his son?

19 A Not about his son, no.

20 Q Do you know if Mr. Scheide talked to anybody at NGS about  
21 his son?

22 A He did at one time mention him at a doctor's appointment --

23 Q Okay.

24 A -- to one of the case managers.

25 Q When you say he mentioned him, what did he say?

1           A     He -- I was not there so I don't know exactly the context of the  
2 conversation, but he gave --

3           Q     Well then I would ask that you not mention --

4           A     Okay.

5           Q     -- because it's hearsay. Did -- do you know if Mr. Scheide  
6 ever reached out to contact his son?

7           A     I would not know that.

8           Q     Okay. Do you know if Mr. Scheide ever told anybody at NGS  
9 to contact his son?

10          A     Again I was not there during the conversation.

11          Q     Okay.

12               MR. GEIST: I will tender the witness, Your Honor.

13               THE COURT: Okay. Thanks very much.

14               Mr. Payne, do you want to start now or would you like a brief  
15 break? We don't need take very much time, like --

16               MR. PAYNE: Whatever Your Honor would like --

17               THE COURT: -- just until 10 till maybe?

18               MR. PAYNE: Sure.

19               THE COURT: One last break and then we'll be ready to go.  
20 Wrap it up. Thanks.

21                               [Recess taken at 3:42 p.m.]

22                               [Proceedings resumed at 3:53 p.m.]

23               THE COURT: Okay.

24               MR. PAYNE: So you're done?

25               THE COURT: So --

1 MR. GEIST: Yeah.

2 THE COURT: -- Mr. Payne --

3 MR. GEIST: Tender the witness.

4 THE COURT: -- did you want to wait for Ms. Boyer or are you

5 going to go --

6 MR. PAYNE: I think I'll let Ms. Boyer go.

7 THE COURT: Okay.

8 MR. PAYNE: Do you want to -- are you going to ask her any

9 questions?

10 THE COURT: You have any questions for your client?

11 MS. BOYER: No.

12 THE COURT: Okay. Great. Okay. Just wanted to offer that

13 opportunity because I did forget the last time, thanks.

14 CROSS-EXAMINATION

15 BY MR. PAYNE:

16 Q So Ms. Hoy, counsel was asking you about the volume three,

17 the Exhibit Number 117 (sic) which was the inventory. Do you recall

18 that?

19 A Yes.

20 Q Okay. And he walked you through some of the items that

21 were on there. Do you agree that one of the items is a shredder?

22 A I can refer, right?

23 Q Sure.

24 A I'm on the right --

25 Q I think it's volume three.

1           A     It's volume three? Must be in the other volume three. Page  
2 117?

3           Q     One one seven Scheide or one two two.

4           A     One two two. One two two.

5           Q     Do you recall testifying to this?

6           A     Yes I do.

7           Q     Okay. And you would agree that one of the items that Mr.  
8 Scheide had in his possession was a shredder?

9           A     Yes.

10          Q     And in fact I think if I understood your testimony at some point  
11 you gave him back his shredder?

12          A     I actually think that he purchased that during the guardianship.

13          Q     Let's talk a little bit about the guardianship. You had  
14 submitted a bill in the guardianship with very detailed records of your  
15 accounting. Do you recall that?

16          A     Yes.

17          Q     And for purposes of the guardianship, these records were  
18 used to document the time and the events that you were dealing with  
19 Mr. Scheide?

20          A     Yes.

21          Q     During this -- the guardianship period?

22          A     Yes.

23          Q     Okay. And so those records would be pretty accurate  
24 representations as to the things that you did with respect to Mr.  
25 Scheide?



1           A     Yes.

2           Q     All right.

3                   MR. PAYNE: Your Honor, I think just because mine is Exhibit  
4 A, I'll have the --

5                   THE COURT: So use yours as you've got to lay -- okay.

6                   MR. PAYNE: Yeah --

7                   THE COURT: It's going to --

8                   THE WITNESS: So am I --

9                   THE COURT: It's going to be organized a little bit differently.

10                  MR. PAYNE: Yeah, exactly --

11                  THE WITNESS: Okay, so I'm --

12                  THE COURT: So --

13                  MR. PAYNE: -- but it's the same --

14                  THE WITNESS: -- switching binders?

15                  THE COURT: So yeah.

16                  MR. PAYNE: Yeah. And we'll have you turn --

17                  THE COURT: Well why don't you leave those just because  
18 we don't want to be dragging them back and forth --

19                  MR. PAYNE: Oh yeah.

20                  THE COURT: -- if we don't need to, because there's so many  
21 of them. Okay.

22 BY MR. PAYNE:

23           Q     If you would turn to Respondent's Exhibit A, ask you if you'd  
24 ever seen that?

25           A     Yes. The summary of account.

1 Q All right. And it's the accounting that was filed in the  
2 guardianship matter?

3 A Yes.

4 Q Okay. And if you review through that, there is a detailed  
5 breakout of your time starting at Bate stamp number 18; do you agree?

6 A Yes.

7 Q Okay. And so for the record this reflects the date that you did  
8 a service?

9 A Yes.

10 Q The service that was rendered, the amount of time, and then  
11 your billing for that, correct?

12 A That is correct.

13 Q And you've been doing guardianships now for how long?

14 A Ten years.

15 Q Okay. And this is a pretty standard billing for purposes of  
16 guardianship court with the detail, et cetera?

17 A This was our standard.

18 Q Correct.

19 A Yes.

20 Q And if this information for example if we look at the -- let's just  
21 look at the first date. The first entry is on 2/13/2014. Do you see that?

22 A Yes.

23 Q Okay. And you put down .5 for review petition for appointment  
24 temporary guardian, petition to appoint general guardian, sign and return  
25 to Kim Boyer's office. Do you see that?