

In The Matter Of:
Before the Commission on Practice
In the Matter of Tina L. Morin

Transcript of Proceedings
December 3, 2018

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BEFORE THE COMMISSION ON PRACTICE OF THE
SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF) ODC File No. 16-154
)
TINA L. MORIN,) Supreme Court
) Cause No. PR 17-0448
Attorney at Law)
)

TRANSCRIPT OF FORMAL HEARING

On the 3rd and 4th of December, 2018, beginning at
9:00 a.m., a hearing was heard in the chambers of the
Montana Supreme Court, 215 North Sanders Street, Helena,
Montana, before Holly E. Fox, Court Reporter and Notary
Public.

A P P E A R A N C E S

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1 The following proceedings were had and testimony
2 taken:

3 * * * * *

4
5 CHAIRMAN TALEFF: Come to order. This is well
6 past the time set pursuant to the notice for the formal
7 hearing in the matter of Tina L. Morin, Supreme Court
8 Number PR 17-0448, ODC File Number 16-154.

9 I note that deputy disciplinary counsel Jon Moog
10 is present. I note that the respondent is present with her
11 counsel, Michael Sherwood.

12 Are the parties ready to proceed?

13 MR. MOOG: Yes, Mr. Chairman.

14 CHAIRMAN TALEFF: Mr. Sherwood?

15 MR. SHERWOOD: Your Honor, we've been outside
16 thinking that there was still deliberation. May -- may I
17 have, like, two minutes to get set up again?

18 CHAIRMAN TALEFF: Sure.

19 MR. SHERWOOD: Mr. Chairman, I'm not accustomed
20 to this venue, and I believe I might have just called you
21 your Honor. Sorry.

22 CHAIRMAN TALEFF: There are times, as I've said
23 in the past, where I may egotistically want to be elevated
24 to that title, but I'm not. I'm just Mr. Chair. Thank
25 you.

1 MR. SHERWOOD: Well, I'll try to confine my
2 references to that.

3 CHAIRMAN TALEFF: Not an issue.

4 And thank you for the time. I think we're ready
5 to proceed. Okay. Mr. Moog?

6 MR. MOOG: Mr. Chairman, I'd note there's some
7 pending objections to ODC's exhibits.

8 CHAIRMAN TALEFF: There are.

9 MR. MOOG: I guess I'd move for admission on
10 those exhibits that haven't been objected to.

11 CHAIRMAN TALEFF: The exhibits that haven't been
12 objected to will be admitted, and I will wait on the other
13 exhibits that are proposed until they are offered. They
14 are subject to, usually, foundation or hearsay objections.

15 So, for the record, I will indicate that the
16 following exhibits are admitted without objection: ODC's
17 exhibits 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18
18 through 28, 30 through 35, 38 through 47, 51 through 60,
19 62, 63, 65 through 69, 71 through 77, 79 through 85.

20 And if I have misunderstood any of the
21 objections, I would expect counsel to correct me. But
22 those are what I noted from my review of the materials and
23 responses.

24 MR. MOOG: Thank you, Mr. Chair.

25 ODC calls Roberta Zenker.

1 MR. SHERWOOD: Mr. Chairman?

2 CHAIRMAN TALEFF: Yes.

3 MR. SHERWOOD: If I might, I would respectfully
4 move, pursuant to Rule 615, that witnesses be excluded
5 until they've finished their testimony.

6 CHAIRMAN TALEFF: All right.

7 All witnesses except the witness who's just been
8 called should please exit the courtroom, make yourselves
9 available outside.

10 Under the rule, for those of you who aren't
11 attorneys, it's mandatory that the proceedings be closed to
12 witnesses who are not testifying once the request is made.

13 MR. SHERWOOD: A couple more housekeeping
14 matters, if I may.

15 I anticipated that Ms. Morin might be on the
16 stand for a while. The -- the podium isn't all that ideal.
17 I asked the tech folks to bring a stool, which is over
18 here, and intended to ask that she be allowed to sit if she
19 wishes. I wanted to make sure that all the other witnesses
20 knew that that was available if they anticipate to be very
21 long.

22 Secondly, I -- as I was preparing for this, I
23 realized -- I'm not sure, as I sit here, how the law gets
24 communicated to the rest of the commission, and I think
25 it's critical here. So I drafted a brief over the weekend,

1 sent it to Ms. Smith. I provided 10 copies to her this
2 morning because apparently she doesn't go to the office
3 today. And I also provided 10 copies of some relevant
4 statutes that will come up in examination. I would
5 respectfully request that the committee -- commission --
6 can have those available, but that's, of course, up to you.

7 CHAIRMAN TALEFF: They have been distributed,
8 Mr. Sherwood. They were filed -- or at least they were
9 submitted for filing. Because Ms. Smith hasn't been in the
10 office this morning, they won't be technically filed. I
11 double-checked the scheduling order; there was no
12 requirement in terms of time limits for hearing briefs, so
13 your hearing brief will be filed.

14 The statutes, to me, are an attempt by the
15 respondent to instruct the commission what the law is, and
16 I think I've made it clear in my pretrial rulings -- if I
17 haven't, the commission will decide what the law is and the
18 relevance of that. Whether those statutes can be inquired
19 into the during examination of any witness, we'll wait and
20 see. But I will telegraph that I will be very reluctant to
21 allow that type of testimony.

22 But they have been distributed, so you know that.

23 With respect to a witness sitting, if you are
24 uncomfortable, Ms. -- is it Zenker?

25 THE WITNESS: Zenker. Yes.

1 CHAIRMAN TALEFF: Thank you. If you feel tired
2 or want to sit down while you're at the podium, that's
3 fine. Usually lawyers are made to stand so that they can
4 be grilled and be uncomfortable. We don't intend that for
5 witnesses.

6 Any other housekeeping matters?

7 MR. SHERWOOD: Nothing, Mr. Chairman.

8 CHAIRMAN TALEFF: Okay.

9 MR. SHERWOOD: Thank you.

10 CHAIRMAN TALEFF: Ms. Zenker, would you raise
11 your right hand, please, and I'll swear you in.

12 THE WITNESS: (Complies.)

13 (Witness sworn.)

14 CHAIRMAN TALEFF: Would you, for the record,
15 state your name and your mailing address?

16 THE WITNESS: Roberta Zenker, Z-e-n-k-e-r. 2665
17 Mikota Place -- that's M-i-k-o-t-a -- Place. Helena.

18 CHAIRMAN TALEFF: Thank you. Okay.

19 Your witness, Mr. Moog.

20 MR. MOOG: Thank you, Mr. Chairman.

21

22 DIRECT EXAMINATION OF ROBERTA ZENKER

23 BY MR. MOOG:

24 Q Good morning, Roberta.

25 A Good morning.

1 Q Is it okay I call you Roberta?

2 A Yes.

3 Q Okay. And you can call me Jon; okay?

4 We've met before, obviously?

5 A Yes.

6 Q In the context of this case?

7 A Yes.

8 Q Okay. And what is your occupation?

9 A I'm an attorney with Disability Rights Montana.

10 Q And that was formerly known as Montana Advocacy
11 Program; is that correct?

12 A That's correct.

13 Q When did you guys change your name?

14 A I think that happened a couple of years before I
15 began in 2009, so I'm going to say 2007, 2006.

16 Q Okay. And what do you do for DRM?

17 A I'm the supervising attorney for our core
18 services unit, which does our intake, and we also do
19 outreach and training.

20 Q Okay. Concerning disabled persons?

21 A Yes.

22 Q And their rights?

23 A Yes.

24 Q Okay. And how long have you been practicing law?

25 A Let's see. 26 years.

1 Q And prior to associating with DRM, what did you
2 do?

3 A I was an appellate defender --

4 Q Okay.

5 A -- with the Office of the Public Defender.

6 Q Okay. I also think you were a county attorney?

7 A I was a county attorney for 16 years-ish.

8 Q Where?

9 A Madison County.

10 Q Okay. Do you know Tina Morin?

11 A I do know Tina.

12 Q And how do you know Ms. Morin?

13 A Tina and I were classmates.

14 Q Okay. Have you had contact with Ms. Morin with
15 respect to your employment with DRM?

16 A I have.

17 Q And how is that?

18 A Tina contacted our agency about representing a
19 client, Mr. Ron Lowney, with respect to Ron's wife, Judy.

20 Q Okay. And do you know where Ms. Lowney resides?

21 A Renaissance assisted living center on Saddle.

22 Q Here in town?

23 A Here in Helena.

24 Q And do you know where Mr. Lowney lives?

25 A He lives in Butte.

1 CHAIRMAN TALEFF: Ms. Zenker, could I ask you to
2 please pull the mic a little bit forward towards yourself
3 so we --

4 THE WITNESS: Yes. I was just paying attention
5 to this sign in front of me that says don't touch the
6 microphone.

7 CHAIRMAN TALEFF: Well, that's just from the
8 chief justice. I'm telling you to adjust it.

9 Thank you.

10 THE WITNESS: Is that better?

11 CHAIRMAN TALEFF: That is better. Thank you.

12 Q (By Mr. Moog) And do you recall when about
13 Ms. Morin contacted your agency about Ron Lowney?

14 A I think it was January 2016.

15 Q Okay. And do you folks have some kind of intake
16 hotline or something like that?

17 A We do. We do have a 1-800 number, as well as our
18 regular phone number, and people can call. They can send a
19 query in on our web page or a number of ways to do an
20 intake.

21 Q Do you recall how Ms. Morin reached out to your
22 agency?

23 A I believe she called.

24 Q Okay. And what was her report?

25 A She was concerned that Judy was not getting some

1 of her rights, like being able to vote or being able to go
2 to church when she wanted to, and that there was sort of an
3 adversant [sic] relationship with the guardians, and they
4 weren't allowing her to see her husband.

5 Q Okay. So a visitation issue?

6 A Yes.

7 Q Is that fair to say?

8 Okay. There's an exhibit book in front of you.
9 Could you turn to Exhibit 31, please.

10 A Yes.

11 Q Do you have that before you, Ms. Zenker?

12 A I do.

13 Q Okay. And this is an email between Ms. Morin and
14 Janice. Who's Janice?

15 A Janice Sanderson was the intake specialist who
16 took the call from Ms. Morin.

17 Q Okay. And the email from Ms. Morin, that's dated
18 February 10, 2016. So is this near in the time of
19 Ms. Morin's first contact with your agency?

20 A Hang on a sec. I see an email that's dated
21 February 11th, 2016.

22 Q And then one down, starting: Hi, Janice, on
23 Page 1 of the exhibit.

24 A Okay. Thank you.

25 Q It's a string; correct?

1 A Yes, it is. That's correct.

2 Q I'm sorry. I'm on Page 2 of the exhibit.

3 A Okay. On Page 2.

4 Q Well, no --

5 A It does say February 10th -- Hi, Janice.

6 Q Okay. I'm sorry. On Page 2. So is this near in
7 time to when Ms. Morin initially contacted your office?

8 A Within a month.

9 Q Okay. And what did the agency, your agency, DRM,
10 do with this information? Did you staff it?

11 A We did.

12 Q Okay. And what was the result of your staffing;
13 if you recall?

14 A If I recall, we just wanted to go and visit Judy
15 at Renaissance to make sure that she wasn't being abused or
16 neglected.

17 Q By --

18 A So a monitoring visit that would be within our
19 mandate.

20 Q Abused and neglected by whom?

21 A Her caregivers at Renaissance.

22 Q Okay. And did you understand that Judy was under
23 the protection of a guardianship proceeding?

24 A Yes. Under -- I'm not sure what you're asking.
25 Whether she had -- are you inquiring about the proceeding

1 or whether or not she had guardians?

2 Q Whether or not you or your agency knew she had
3 guardians.

4 A Yes. The initial call from Tina indicated she
5 had guardians.

6 Q Okay. And did you or someone in your office
7 reach out to the guardians?

8 A I don't recall.

9 Q Okay.

10 A Janice may have done that. That would be
11 typical.

12 Q Okay. But you, yourself, didn't have contact
13 with --

14 A I did not.

15 Q And who are the guardians, to your knowledge?

16 A The Bugnis. I can't recall their first names.

17 Q Debbie and Bob?

18 A Yes. That sounds right.

19 Q Okay. Did you know whether or not the guardians
20 in the case had counsel?

21 A I believe they did, yes.

22 Q Okay. And who was that.

23 A Mr. Shapiro from Montana City.

24 Q Okay. And at any time during this time frame --
25 January, February 2016 -- did Ms. Morin identify whether or

1 not Judy had counsel in the case?

2 A No.

3 Q Okay. And I'll represent to you that Judy's
4 appointed counsel was Debbie Churchill. Did Ms. Morin
5 provide that name to you during this intake period?

6 A No.

7 Q Have you ever heard of Debbie Churchill?

8 A I have now.

9 Q Okay. When did you first hear of Debbie
10 Churchill?

11 A At some point during these proceedings.

12 Q I told you about her?

13 A Yes.

14 Q And did you understand that the guardianship
15 hearings had occurred in Butte?

16 A Yes.

17 Q Did you have an understanding who the presiding
18 judge was?

19 A Yes.

20 Q Who was that?

21 A Judge Krueger.

22 Q And what did Ms. Morin tell you about the case in
23 general; if you recall?

24 A My recollection generally is that there seemed to
25 be some animosity between the husband, Ron, and the

1 guardians, and the guardians were not allowing Ron to visit
2 with Judy at Renaissance. And there had been some concern
3 about whether or not Judy was truly incompetent, so they
4 wanted to have initial testing and those kind of things
5 that seemed to me in the order of challenging the
6 guardianship.

7 Q Okay. Through the use of your agency?

8 A They were -- they were seeking representation
9 through our agency, yes.

10 Q Okay. During this initial intake time period of
11 January, February 2016, did Ms. Morin advise you that the
12 visitation issue had been court ordered?

13 A Yes.

14 Q She did tell you there was a court order in
15 place?

16 A I believe so, yes.

17 Q Okay. Restricting visitation?

18 A I don't know how precise it was about restricting
19 visitation, but I was under the impression that the
20 guardians had the ability to make those decisions.

21 Q By a court order?

22 A Yes.

23 Q Okay. At some point did you review any pleadings
24 in the file, the underlying guardianship file?

25 A I did. I -- well, I looked at the supreme court

1 decisions, because I had understood that it did go to the
2 supreme court.

3 Q And what did you determine from the supreme court
4 decision?

5 A Well, it sounded like the Court had already
6 determined -- the supreme court had already determined the
7 competency issues, and therefore the guardianship issue was
8 a settled issue, as far as I could tell.

9 Q Including the visitation restriction?

10 A I would presume.

11 Q Okay. And what about Mr. Lowney's capacity to be
12 a guardian? Did you have any knowledge of the court
13 proceedings concerning that issue?

14 A Yeah. The Court seemed to be saying that they
15 had some sympathy for the circumstances, but that they felt
16 that Mr. Lowney was not capable of providing the care that
17 Judy needed.

18 Q Okay. The care that Bob and Debbie Bugni were
19 providing?

20 A Evidently.

21 Q And do you know the relationship between the
22 Bugnis and Ms. Lowney?

23 A Not precisely. I understand they are related,
24 but I'm not sure how.

25 Q Okay. So was there a time where you met with

1 Judy at the Renaissance?

2 A Yes.

3 Q Do you recall when that occurred?

4 A Not the exact date, but it would have been those
5 initial time frames.

6 Q Okay. And, again, that was at Ms. Morin's
7 request?

8 A Yes. And I should say, in general, that that
9 would be typical. If we had a call that somebody who
10 experiences a disability may be abused or neglected in a
11 facility, it would be our mandate to go and see, to
12 monitor, to investigate. So we wanted to do that.

13 Q And did that meeting occur sometime in the late
14 winter, early fall of 2016?

15 A I think it would have been more late winter.

16 Q Let's take a look at Exhibit 61, Roberta.

17 A (Complies.)

18 Q Do you have that in front of you?

19 A I do.

20 Q And that looks to be on your letterhead, your
21 agency's letterhead?

22 A It is.

23 Q Have you seen this letter before?

24 A I have.

25 Q Do you know who drafted this letter?

1 A I do.

2 Q Who did?

3 A I did.

4 Q Is that your boss's signature?

5 A Yes.

6 Q And who is your boss?

7 A Bernadette Franks-Angoy.

8 Q And she is the executive director of your agency?

9 A Yes.

10 Q Now, this letter sets out some time frames. Are
11 those time frames within this letter true and accurate?

12 A Yes.

13 Q Okay. We'll go back to that, but I wanted to let
14 you know it's in here just in case you need to refresh your
15 recollection about anything.

16 A Okay.

17 Q Looks like the time frame of your initial meeting
18 isn't in here, but you think that was within a few weeks of
19 Ms. Morin's contacting your agency?

20 A Yes.

21 Q And advise the commission, please, how you have
22 authority to go visit people in the assisted living
23 centers?

24 A I can't give you exact statute numbers under the
25 federal code, but we refer to them by their -- their -- an

1 acronym, which is the PADD statute, protection and advocacy
2 for persons who experience developmental disability, and
3 PAMI statute, which would be protection and advocacy for
4 individuals who experience mental illness. And those are
5 federal statutes that were created in the 1970s that
6 created a protection and advocacy system across the United
7 States so that each state and territory in the country has
8 a protection and advocacy agency for people who experience
9 disabilities.

10 And our role is sort of as a watchdog agency on
11 state agencies and on facilities and principally began to
12 watch institutions because that was coming out of a period
13 of time where there was some nationwide exposure to some
14 pretty severe abuses in institutions. So that's how we
15 began. We were given broad powers to obtain access to
16 people who lived in these facilities, as well as their
17 records and the employees in these facilities.

18 Q Did you have any trouble getting into
19 Renaissance?

20 A Not really. I'm kind of used to this. So I
21 usually prepare a little memorandum or letter that I can
22 take with me that outlines all of our federal authority.
23 And there are actually some dates for facilities to respond
24 to records requests and things like that. So I usually go
25 prepared with that letter on our letterhead, and we have

1 badges that we wear, so we have an air of officialdom, if
2 you will.

3 So at first they kind of look at us like who are
4 you, and I don't blame them because we're strangers showing
5 up on their doorstep, and they feel a protective role
6 towards their clients, as well as they should. So it's a
7 little awkward in those first few moments, and I give them
8 the letter. We have a polite discussion, then we get our
9 access.

10 Q They call the manager probably?

11 A That's what happens.

12 Q Okay.

13 Can you folks hear me okay? I'm sorry to have my
14 back towards you.

15 Did you go alone?

16 A No. Janice and I went together.

17 Q Okay. And once you were granted access to Judy,
18 what did you find out?

19 A Judy speaks very softly, so it was very hard to
20 understand her. You have to sit very close and listen very
21 intently. So we visited with Judy. The first thing I
22 asked Janice to inquire about is person, place, and time,
23 just to see how lucid Judy was. And she was able to
24 identify that she was at Renaissance, and she knew the
25 date. I don't recall exactly what it was. And she knew

1 that Obama was President. So she seemed to be oriented to
2 person, place, and time. That was sort of important to us
3 because that would enable us to gauge generally -- we're
4 not experts -- but how lucid she was throughout the
5 remainder of the time we spent with her.

6 So we asked her general -- general questions like
7 how do you like it here, are they taking good care of you.
8 And she was generally pretty happy there. Had some
9 complaints about the menu that day, and that was about it.
10 She did miss her husband. She wanted to be with her
11 husband. She made that very plain, very clear. They have
12 a very important relationship, so that was a concern in the
13 uppermost part of her mind.

14 Q Well, and certainly it's a sad situation that
15 she's separated from her husband; correct?

16 A Correct.

17 Q Okay. But you understood from the supreme court
18 orders that she was -- basically the guardians were in
19 charge of where she was going to reside?

20 MR. SHERWOOD: Objection; leading.

21 CHAIRMAN TALEFF: Sustained.

22 THE WITNESS: Our principal concern in the visit
23 was whether she was experiencing any abuse and neglect at
24 the hands of the facility, and we did not find that she
25 was.

1 Q (By Mr. Moog) Okay. What happened next?

2 A Well, we left. There was correspondence, I
3 suppose, over the intervening few months, and then we
4 closed the case, I think, in June of 2016.

5 Q Did it stay closed?

6 A No.

7 Q What happened?

8 A We had some contact later on in the fall -- and I
9 think that would have been around November -- anticipating
10 holiday visits and those kind of things.

11 Q Was there -- let me ask you this: Did Ms. Morin
12 report to you that there were some issues with her right to
13 vote?

14 A Yes.

15 Q And what did your agency do with that
16 information?

17 A Well, voting access for people who experience
18 disabilities is one of our priorities. We get a specific
19 grant from the federal government to assist people with
20 disabilities to vote.

21 Q Okay.

22 A So I think in this circumstance we actually
23 delivered a ballot to Judy, which she filled out. Janice
24 brought it back to the office. I happened to be going to
25 Butte, so I dropped it off, as I recall.

1 Q An absentee ballot?

2 A An absentee ballot.

3 Q Did it concern you she was voting in Butte but
4 she was a resident of Lewis and Clark County?

5 A Not with an absentee ballot, no.

6 Q Okay. Did you later come to find out that she
7 had actually voted in Helena?

8 A That's what I was told.

9 Q Okay. So did she vote twice?

10 A She may have. I did not independently confirm
11 that.

12 Q Okay. Do you have an understanding of what
13 Judy's disabilities are?

14 A What I understand them to be is some form of
15 dementia --

16 Q Okay.

17 A -- some memory issues and things of that nature.

18 Q Were there any other issues that Ms. Morin
19 brought to your attention?

20 A I'm not recalling off the top of my head.

21 Q Did she complain to your agency about Judy's
22 right to take communion?

23 A Yes. Those are the religious issues I mentioned,
24 to attend church.

25 Q Did the investigation undertaken by your agency

1 reveal what happened with her communion?

2 A My understanding was she just wasn't getting to
3 go.

4 Q Did you have an understanding that the guardians
5 had arranged for communion to be given at DRM? I mean at
6 Renaissance?

7 A I don't recall.

8 Q Did Ms. Morin report any concerns about Judy's
9 money to your agency?

10 A That I don't recall either.

11 Q Okay. Did there come a time when Ms. Morin
12 accused you of having a conflict of interest?

13 A She did.

14 Q Do you recall when that was?

15 MR. SHERWOOD: Objection; relevance.

16 CHAIRMAN TALEFF: Let's find out what the time
17 frame was first, and then I'll decide.

18 THE WITNESS: This was later in the fall.

19 Q (By Mr. Moog) Of 20 --

20 A -- 2016, I believe.

21 Q If you could turn your attention to Exhibit 54.

22 A Okay.

23 CHAIRMAN TALEFF: Say the exhibit number again,
24 please, Counsel.

25 MR. MOOG: 54.

1 CHAIRMAN TALEFF: Counsel, I'm sorry, but did you
2 intend to offer 61? The witness referred to it. There was
3 an objection.

4 MR. MOOG: I'm sorry. Mr. Chairman, thank you
5 for pointing that out. I would offer 61.

6 CHAIRMAN TALEFF: Okay. I find that the
7 testimony of the witness satisfies the objection, and I'm
8 going to admit Exhibit 61.

9 MR. MOOG: I had intended on going back there,
10 but thank you, Mr. Chair.

11 Q (By Mr. Moog) So 54, this is an email to
12 Ms. Franks-Angoy from Tina. Do you see that?

13 A Yes.

14 Q And in the body of this email Ms. Morin is
15 alleging that you have a relationship with the Bugnis; is
16 that correct?

17 A That's correct.

18 Q And do you have a relationship with the Bugnis?

19 A I do not.

20 Q Do you know where Ms. Morin thought that you may
21 have -- do you know why?

22 A I do not.

23 Q Is it true that Ms. Morin is asking for someone
24 else to be assigned to the case here?

25 A Yes.

1 Q And did that happen?

2 A It did not.

3 Q Okay, Roberta, directing your attention to
4 Exhibit 38.

5 Do you have that in front of you?

6 A I do.

7 Q It looks like you were copied on this email; is
8 that correct?

9 A Yes.

10 Q From October 18th?

11 A Yes.

12 Q And is this email reflecting that Ms. Morin has
13 found a lawyer to assist your agency?

14 A Yes.

15 Q And who is that?

16 A Genet McCann.

17 Q And what were they asking DRM to facilitate
18 through this email?

19 A It is my understanding initially they just wanted
20 to meet with us and discuss some kind of representation
21 agreement that would allow Ms. McCann access authority to
22 Judy Lowney.

23 Q Access authority through your agency; correct?

24 A Through our agency.

25 Q And did that happen?

1 A It did.

2 Q You guys had a meeting with Tina and Genet?

3 A We did.

4 Q When did that occur? Do you know?

5 A It was shortly there -- this letter came in on --
6 or this email came in on October 18th, so I think the
7 meeting was shortly after that, within a week or so. I
8 don't recall the exact date.

9 Q Do you want to refresh your memory with
10 Exhibit 61?

11 A Yes. It looks like October 20th.

12 Q And do you recall that meeting?

13 A I do.

14 Q Who attended?

15 A Myself; Bernadette Franks-Angoy is my boss; Tina;
16 and Ms. McCann.

17 Q And I think you said the purpose of the meeting
18 was just to discuss the representation?

19 A Yes.

20 Q Of Ms. Lowney?

21 A Yes.

22 Q And it's true that Ms. Morin brought McCann to
23 you; correct?

24 A Yes. That's correct.

25 Q Directing your attention to Exhibit 46, Roberta,

1 and this is an email to you and your boss; correct?

2 A Correct.

3 Q And to Ms. Morin?

4 A Yes.

5 Q And it refers to an attachment as an engagement
6 letter. Do you recall your agency entering into an
7 engagement letter with Ms. McCann?

8 A Yes, this did happen.

9 Q Do you recall when it was finalized?

10 A I actually think the date would have been
11 November 23rd.

12 Q In that interim time period between the
13 October 20th meeting and the engagement letter being
14 entered into later in November, I believe you were on a
15 hunting trip at that time?

16 A Yes.

17 Q Okay. Did you have an occasion to bring
18 Ms. McCann to Renaissance to meet Judy?

19 A I did.

20 Q Do you recall when that occurred?

21 A I don't know the exact date. Is it in 61?

22 Q Sure. You can refresh your recollection, though
23 perhaps it's not in there.

24 A It might have been on the date of that meeting,
25 since she was here.

1 Q Okay.

2 A On that November -- or October 20th date.

3 Q And who do you recall going to Renaissance?

4 A Genet and myself.

5 Q Just the two of you?

6 A Yes.

7 Q Okay. And happened at Renaissance on that day?

8 A We met -- Genet and I met with Judy. Actually, I
9 didn't really do anything. I just sort of got us in the
10 door, and then Genet met with Judy, and asked her how she
11 was doing and what did she want and did she want
12 representation, and she produced a -- sort of a retainer
13 agreement, if you will. It was handwritten on a napkin
14 that Judy signed.

15 Q Was it your understanding that Judy had any
16 contracting authority at that point?

17 A You know, I did not know.

18 Q Okay. Okay.

19 A One of the things that, you know, I was concerned
20 about was if a person wanted to challenge a guardianship,
21 and yet the guardians retained all of the power to allow
22 the -- we call her a person under a guardianship now
23 instead or a ward -- but the person under the guardianship
24 to obtain representation to challenge that guardianship,
25 there seems to be a conflict of law there and a question

1 about how that person can best get representation.

2 So that was a concern in the back of my head.

3 And my thought was that surely the person under
4 guardianship would be entitled to representation.

5 Q Well, was this a matter of Judy picking up the
6 phone and calling you personally?

7 A No, Judy did not call me.

8 Q To your knowledge, did Judy pick up the phone and
9 call Genet personally?

10 A I have no idea.

11 Q Speaking of this association agreement that was
12 entered in on -- near November 23rd, what was the scope of
13 the representation or the association?

14 A Between Ms. McCann and Disability Rights Montana?

15 Q Correct.

16 A As I understood it, she was going to challenge
17 the guardianship in district court, and she was going to
18 represent her for those purposes.

19 She also had some ideas about a separate civil
20 rights action under Section 1983. I had some concerns
21 about who would a state actor be that you need in a
22 Section 1983 action under that scenario, so I asked
23 Ms. McCann about that, and she seemed to think that -- you
24 know, that you could establish the guardians as the state
25 actor because they were appointed by a state institution,

1 that being the Court.

2 I had never seen that or heard of that theory.
3 It seemed novel to me, but she felt like she had some case
4 law that supported that, so she was going to do some
5 research on that.

6 Q And I missed what you said. It seemed what to
7 you?

8 A It seemed novel.

9 Q Novel?

10 A Yes. I had never heard of that theory.

11 So she was going to pursue that, do some
12 research. I had understood that I was going to be sort of
13 a supervising attorney. She was going to confer with me
14 about, you know, what -- what she was going to be doing,
15 and I would, you know, sort of approve anything that she
16 would do in DRM's name.

17 Q Okay. And I think you said challenge the
18 guardianship. Do you mean to seek to remove the
19 guardianship or guardianships? What was the idea at that
20 time?

21 A Yes, and I -- now it's coming back to me too. I
22 think they also wanted an accounting.

23 Q Okay. So where was the anticipation -- the
24 anticipated filing going to be? Was it going to be before
25 Judge Krueger in Butte? Or was it going to be in Lewis and

1 Clark County where she now resides?

2 A Well, we were talking about, you know, what forum
3 to file, and while Judge Krueger retained jurisdiction, as
4 I understood it, over the guardianship, there was some
5 question about whether it could be filed as a new
6 proceeding. So that was one of the things that Ms. McCann
7 would have to research and determine. But we had some
8 discussion. No decision had been made.

9 Q Okay. And what did you think about filing in
10 Lewis and Clark County?

11 A I thought that if that could be done, it should
12 be done.

13 Q Did you think it was dubious?

14 A Probably, since Judge Krueger had maintained
15 jurisdiction. But I thought if it could be done with a
16 straight-faced legal argument, it should be.

17 Q Okay. Did you ever go down to Butte and look at
18 the district court file?

19 A I did not.

20 Q And when you entered into that association
21 agreement -- or you and your boss did, DRM -- did you know
22 that Ron had been judicially determined to be unfit to be
23 her guardian?

24 A Yes.

25 Q Okay. Directing your attention to Exhibit 43,

1 Roberta.

2 Have you seen this before?

3 A Yes.

4 Q This is an email from Genet to you; correct?

5 A Yes.

6 Q And what were you advised by Genet?

7 A In this email was expression from Genet that Judy
8 wanted visitation with her husband over the Thanksgiving
9 holiday that was approaching -- although the word in the
10 email is holidays, so I presume the whole holiday season by
11 that -- and they wanted to do a video statement.

12 Q Who's they?

13 A I may have misspoke. It does say, We want to get
14 a video statement from Judy. And it says, Thanks, Genet
15 McCann. And then -- but the email is -- Tina Morin's name
16 shows up on this email as well.

17 Q Ms. Morin was copied?

18 A Yes. And her name and address is at the bottom
19 of the email.

20 Q Okay. And it's true, isn't it, that Ms. McCann
21 says Tina is wanting to file a motion; correct?

22 A Yes.

23 Q Is that consistent with your understanding of
24 Ms. Morin's position about visitation?

25 A Yes.

1 Q Did you respond to this email?

2 A I suspect I did. I don't recall right off the
3 top of my head. But if I did, I'm thinking you're going to
4 show me.

5 Q Turning your attention to Exhibit 44.

6 I'm not sure if this is a response or maybe an
7 email that went back and forth at the same time this --

8 A I think it is a response.

9 Q Okay.

10 A And actually this is -- it's a thread. So my
11 original email is kind of the second email down on this
12 thread.

13 Q Okay.

14 A It says that it was from me to Genet. And she
15 had mentioned a case to me that -- that she thought about
16 as to her 1983 claim. That was the Redies case, which I
17 read and did not agree to her reading of that particular
18 case.

19 The second issue was this video statement, and I
20 told her that both the filing of the petition -- that I
21 understood the purpose of the association agreement was to
22 file the petition to challenge the guardianship, and that
23 the video statement regarding visitation was outside the
24 scope of our association agreement, so we weren't
25 supporting that.

1 Q And you conclude that she has the signed
2 representation agreement, and go ahead and see Judy if you
3 want to.

4 A Right.

5 I should mention that, you know, there was not
6 any particular angst for not, you know, jumping to assist
7 Genet in these endeavors. But our agency usually doesn't
8 involve itself in guardianship proceedings. We have a
9 large mandate with limited resources, so we usually
10 don't -- you know, we're a nonprofit. We usually don't
11 involve ourselves in those things which are outside of our
12 priorities, as a guardianship would be.

13 Q Is that why Ms. Morin brought Ms. McCann to you?

14 A Yes.

15 Q Okay. So what happened after this association
16 agreement with Ms. McCann was entered into?

17 A Well, shortly thereafter -- I think it was about
18 the time I returned from my hunting trip, which would have,
19 I think, been about the Monday after Thanksgiving -- there
20 was this pleading that showed up filed in Judge Krueger's
21 court for -- asking for a visitation. But the pleading was
22 filed in DRM's name, which, of course, alarmed me and
23 concerned me because I had not been consulted on it. We
24 had not seen it. It was just filed.

25 Q Okay. Directing your attention to Exhibit 51.

1 A Okay.

2 Q Is this the petition that you just referred to?

3 A Yes. Petition for writ of mandate.

4 Q And DRM is listed at the top above Ms. McCann's
5 name?

6 A Yes. It's styled: Comes now Judy Lowney by and
7 through her attorney Disability Rights Montana, Genet
8 McCann, of counsel.

9 Q Okay. And had DRM entered an appearance in the
10 matter?

11 A No, nor did we intend to.

12 Q Okay. And turning your attention to Page 5 of
13 that exhibit, is this the certificate of service?

14 A It is.

15 Q Is your name listed there?

16 A Yes.

17 Q As supervising attorney?

18 A Yes.

19 Q But you had not seen this prior to it being
20 filed?

21 A I had not.

22 Q What did you think about this petition once you
23 had read it?

24 A Well, as I said, I was alarmed. One, because we
25 had not -- I mean, it was a -- my first reaction was that

1 was a violation of our representation agreement. One,
2 because it was outside of the scope of the agreement. We
3 were only talking about removal of guardianship
4 proceedings. We weren't talking about a writ of mandate or
5 visitation, which was what -- what the writ of mandate
6 seemed to be seeking in terms of relief. So that was the
7 one thing.

8 The other thing is that we were supposed to be
9 consulted and supervising and authorizing on these kinds of
10 actions, and we certainly had not done that and knew
11 nothing of this.

12 Q So what did your agency do?

13 A Well, we asked that it be undone, so to speak, as
14 soon as possible. The petition -- actually, what we asked
15 is that our name be stricken from the petition. We didn't
16 ask explicitly that it be withdrawn or removed.

17 Q Okay. And what did Ms. McCann do after you asked
18 her to remove your name, your agency's name?

19 A I'm going to say that she sort of waffled. In
20 some of those initial contacts she was apologetic and
21 agreed, and then she backed away from that position and
22 began to resist us on that note. And then, ultimately, she
23 did just withdraw the petition.

24 Q How long after? Was it weeks? Months? Do you
25 know?

1 A I think it was more in the neighborhood of weeks.

2 Q Turning your attention to Exhibit 66.

3 CHAIRMAN TALEFF: Sorry, Counsel. I did not hear
4 the number.

5 MR. MOOG: 66. I'm sorry, Mr. Chair.

6 CHAIRMAN TALEFF: Thank you.

7 THE WITNESS: Yes, that's the unopposed motion to
8 withdraw petition for writ of mandate.

9 Q (By Mr. Moog) So filed within about three weeks
10 of the petition?

11 A It's dated December 19th.

12 Q You stated that Ms. McCann was apologetic. What
13 was she apologetic for?

14 A That she had not sought our participation, if you
15 will, or authorization in filing this writ.

16 Q Okay. Directing your attention to Exhibit 61.
17 That's your termination letter?

18 A Yes.

19 Q Page 3, first full paragraph, is that a true and
20 accurate recitation of what occurred on November 28th,
21 2016?

22 A Yes.

23 Q So Tina was pushing hard for this petition;
24 correct?

25 A Yes.

1 Q Returning to the petition, let's look at some of
2 those exhibits that Ms. McCann attached.

3 A You have to remind me what number.

4 Q I was just reminding myself. It's 51.

5 A Thank you.

6 Q Directing your attention to Exhibit F to that
7 petition, have you seen this before?

8 A Yes, I presume I have. Not sure I'm on F yet.
9 What does F look like?

10 Q It's the affidavit of Janice Sanderson.
11 I'm sorry. It's Page 27 of 30, Roberta.

12 A Okay. Thank you. All right. Yes, I have seen
13 this.

14 Q Does this concern the voting issue that we
15 touched on earlier?

16 A Yes, it does.

17 Q Okay. Directing your attention to Exhibit 52,
18 Roberta --

19 A Okay.

20 Q -- and specifically your email there at the
21 bottom, November 28th at 9:41.

22 A Yes.

23 Q What were you advising Ms. Morin and Ms. McCann
24 at that point?

25 A This email is dated Monday, November 28th, and I

1 say: I think it's probably important that we remember the
2 scope of our representation. DRM has associated with Genet
3 so that she can file a petition to remove the guardianship.
4 Judy seems to already understand this. Given this limited
5 scope of representation, DRM is not in a position to
6 facilitate contact between Ron and Judy.

7 Q Okay. And if you turn to -- two more pages
8 further into the exhibit, I'm looking at the email to
9 Ms. Morin, copying Ms. McCann, copying Ms. Marie
10 Franks-Angoy, dated Tuesday, November 29th at 4:04.

11 A Yes.

12 Q And is this where you advise that you're
13 terminating the association agreement, or withdrawing from
14 the association agreement?

15 A Yes. Suffice to say that after careful
16 consideration, DRM has determined that it must withdraw
17 from the association agreement.

18 Q And now that Ms. McCann has her representation
19 agreement with Judy, she no longer needs DRM's access;
20 correct?

21 A That's correct.

22 Q Okay. Turning your attention to Exhibit 53.

23 A 53?

24 Q 53. And is it correct that in the email from
25 Ms. McCann to Tina Morin, copying others -- this is at the

1 bottom -- Wednesday, November 30th, 9:32, Ms. McCann is
2 asking for you to be removed?

3 A Correct.

4 Q And did that occur?

5 A No, it did not.

6 Q Directing your attention to Exhibit 59, and I'll
7 represent to you that there's some allegations here in this
8 email that you breached in duty to Judy Lowney.

9 Did you breach any duty to Judy Lowney?

10 A No, I did not.

11 Q Did you have any duties to -- did you hold any
12 duties to Ms. Lowney?

13 A No, I did not.

14 Q Okay. Following receipt of this petition and
15 Ms. McCann's withdrawal of this petition, did you have any
16 feelings about how your agency had been treated?

17 A Yes.

18 Q What were those?

19 A Well, it's probably poor articulation, but we
20 felt like we had been used.

21 Q Duped?

22 A Duped? Certainly.

23 Q Bamboozled?

24 MR. SHERWOOD: Leading.

25 THE WITNESS: It's not a word in my lexicon,

1 but...

2 Q (By Mr. Moog) Throughout your interaction with
3 Ms. Morin with respect to the Judy Lowney guardianship, do
4 you feel that Ms. Morin remained objective?

5 A No.

6 Q Do you feel like Ms. Morin was able to appreciate
7 the realities of litigation she found herself in?

8 MR. SHERWOOD: Objection; calls for opinion.
9 There's been no expert disclosure.

10 CHAIRMAN TALEFF: It's asking for her feeling, so
11 just on a foundation basis, I'll sustain that.

12 Q (By Mr. Moog) You've met Judy a couple times; is
13 that correct?

14 A Yes.

15 Q You've met Genet a few times; is that correct?

16 A Yes.

17 Q Would you be able to identify them for the
18 commission if I showed you a video?

19 A Yes.

20 MR. MOOG: At this time, Mr. Chair, I would ask
21 for the opportunity to play Exhibit 49 for foundational
22 reasons. It has not yet been admitted.

23 CHAIRMAN TALEFF: Well, the objections pending
24 are foundation and hearsay. And it's a video of
25 Ms. McCann's visit with Judy Lowney, which I understand

1 Ms. Morin was not in attendance.

2 THE WITNESS: Zenker. No, I was not in
3 attendance.

4 CHAIRMAN TALEFF: No. How about Ms. Morin? Was
5 Tina Morin in attendance?

6 THE WITNESS: Excuse me. When Ms. McCann and I
7 went to visit with Judy, no, Tina was not.

8 CHAIRMAN TALEFF: Okay. So this video will not
9 include Ms. Morin.

10 THE WITNESS: There was no video when I went to
11 visit her.

12 CHAIRMAN TALEFF: Well, I guess I'm asking the
13 wrong person.

14 Mr. Moog, does this video include Ms. Morin?

15 MR. MOOG: No, it does not, but it was attached
16 to Ms. McCann's petition, so I believe that it's fair game
17 for judicial notice.

18 CHAIRMAN TALEFF: The petition that was
19 withdrawn?

20 MR. MOOG: Correct, but still filed for a period
21 of three weeks.

22 CHAIRMAN TALEFF: Okay. Well, I'm going to
23 sustain the objection on relevance. I -- at least I
24 haven't been shown -- I don't understand why this is
25 particularly relevant in terms of the allegations against

1 Ms. Morin.

2 MR. MOOG: Can I explain?

3 CHAIRMAN TALEFF: Yeah, that's what I'm asking
4 for.

5 MR. MOOG: Okay. Mr. Chairman, this is the end
6 result of Ms. Morin's misconduct.

7 CHAIRMAN TALEFF: This conference?

8 MR. MOOG: This videotaped interview between Judy
9 and Ms. McCann.

10 CHAIRMAN TALEFF: How long is the video?

11 MR. MOOG: Several minutes.

12 CHAIRMAN TALEFF: Not more than 10?

13 MR. MOOG: Not more than 10.

14 CHAIRMAN TALEFF: All right. I'll allow it. I'm
15 not sure for what purpose, but I'll allow it at this point.

16 MR. MOOG: Okay. Thank you.

17 CHAIRMAN TALEFF: Your objection is noted,
18 Mr. Sherwood.

19 MR. SHERWOOD: Thank you, your Honor -- or
20 Mr. Chairman.

21 Mr. Chairman, is that going to take a while to
22 set up?

23 MR. MOOG: Just the screen. We could take a
24 brief recess if you'd like.

25 CHAIRMAN TALEFF: All right. We've been going

1 almost an hour. We will take a recess until 10:15. I do
2 expect everyone back in their seats at 10:15.

3 MR. MOOG: I'll be here.

4 (Proceedings in recess from 10:04 a.m. until
5 10:13 a.m.)

6 CHAIRMAN TALEFF: Okay. We're back on the
7 record.

8 Mr. Moog, you may proceed with the video.

9 MR. MOOG: Thank you.

10 Q (By Mr. Moog) Do you -- Ms. -- Roberta, do you
11 recognize the lady on the screen here?

12 A I do.

13 Q Who is that?

14 A That's Judy Lowney.

15 Q Okay.

16 MR. MOOG: May we proceed with play?

17 CHAIRMAN TALEFF: Yes.

18 (Video played.)

19 Q (By Mr. Moog) And is that Ms. McCann?

20 A Yes.

21 (Video played.)

22 MR. MOOG: At this time, Mr. Chair, I'd offer
23 this Exhibit 49. It's also Exhibit H to McCann's petition,
24 which is Exhibit 51.

25 CHAIRMAN TALEFF: Well, I allowed you to play it,

1 so it's a little hard at this point to not -- having seen
2 it, I'm -- frankly, I don't see the connection. But it's
3 admitted. Let's proceed.

4 MR. MOOG: Thank you, Mr. Chair.

5 Q (By Mr. Moog) Roberta, directing your attention
6 back to Exhibit 48, this is an email received from Genet
7 McCann; is that correct?

8 A Yes.

9 MR. MOOG: I'd offer 48, Mr. Chairman.

10 CHAIRMAN TALEFF: Based on witness's own
11 foundation, I'm going to overrule the objection and admit
12 Exhibit 48.

13 Q (By Mr. Moog) And directing your attention to
14 Exhibit 50, Roberta, are these emails you received from
15 Genet or your boss? It looks like you either received or
16 were copied.

17 A Yes.

18 MR. MOOG: I'd offer 50, Mr. Chairman.

19 CHAIRMAN TALEFF: Exhibit 50 will be admitted,
20 the foundation having been established.

21 Q (By Mr. Moog) All right, and then back to 61,
22 Roberta, the termination letter. And directing your
23 attention to Page 6 of that exhibit, which is Attachment A
24 to the letter.

25 A Yes.

1 Q Is this the engagement agreement your agency had
2 with Ms. McCann?

3 CHAIRMAN TALEFF: Did you say Exhibit 61, Page 6?

4 MR. MOOG: Correct, which is Attachment A to the
5 letter.

6 THE WITNESS: It appears to be, yes.

7 CHAIRMAN TALEFF: That's fine. I -- apparently
8 I've got a different exhibit, but go ahead. I'm familiar
9 with the document.

10 MR. MOOG: Would you like to see a copy of it?

11 CHAIRMAN TALEFF: No, that's fine.

12 Q (By Mr. Moog) And then if you want to turn to
13 Page 8 of that exhibit, which is Attachment B to the
14 letter.

15 Can you identify this document, please?

16 A Yes. This looks like the handwritten document
17 that Genet McCann drafted in our visit with Judy Lowney in
18 October of 2016.

19 MR. MOOG: And, Mr. Chair, that's been admitted;
20 is that correct?

21 CHAIRMAN TALEFF: Yes.

22 MR. MOOG: Okay. That's all for now.

23 CHAIRMAN TALEFF: Mr. Sherwood?

24 MR. SHERWOOD: Thank you, Mr. Chairman.

25 /////

1 CROSS-EXAMINATION

2 BY MR. SHERWOOD:

3 Q So I'll try to start out with what Mr. Moog
4 started with.

5 Is it okay if I'm Michael and you're Roberta?

6 A Michael?

7 Q Michael or Mike. Whatever.

8 A Yes.

9 Q Okay. So I think we'll work backwards, but --
10 and you ended up discussing, with Mr. Moog's suggestion,
11 Exhibit 61, which was the termination letter with
12 Ms. McCann?

13 A Yes.

14 Q Okay. So -- and we know now, you've told us,
15 that you had a relationship -- your agency; call it DRM --
16 had a relationship with Ms. McCann; right?

17 A Yes.

18 Q And it was reduced to writing?

19 A Yes.

20 Q And as I understand it, your notion of it was
21 that she was going to provide legal services for a specific
22 reason, to attempt to terminate the guardianship for Judy
23 Lowney.

24 A Yes.

25 Q Okay. Did you have any written agreement with my

1 client, Tina Morin?

2 A No.

3 Q When someone calls you as -- "you" being your
4 agency -- and says, I'd like you to look into something,
5 what -- could you describe what, if any, relationship you
6 have with the person that makes the call?

7 A We would -- a third-party caller or association
8 caller, we would list them as a possible contact person.
9 And depending on the circumstances, they would remain in
10 our database as a contact person.

11 Q So --

12 A They are not the client.

13 Q They are not the client. So who is the client?

14 A The person who experiences the disability.

15 Q Okay. And at some point did you make it -- "you"
16 being, collectively, DRM -- did you make a determination
17 that Judy Lowney was your client?

18 A DRM made a determination that she was a client of
19 the agency, but we had no attorney-client relationship with
20 her.

21 Q Okay. Good point.

22 A So --

23 Q So --

24 A So we were just providing -- you know, our intake
25 specialists provide information and referral services and

1 also short-term assistance that -- it looks a little like
2 casework. So that would be the client relationship I'm
3 talking about.

4 Q And you talked about some definitions about a
5 facility, I think?

6 A Right.

7 Q And did the Renaissance meet your definition of
8 "facility"?

9 A Yes.

10 Q Okay. And you talked about disability. Did Judy
11 meet the definition of "disability" for you?

12 A Yes.

13 Q And why is that?

14 A Well, the -- on the face of it, she was said to
15 experience dementia, which would qualify under the grant I
16 mentioned earlier, PAMI.

17 Q So you have a person that you've identified as
18 disabled, and they're in a facility, and that -- your
19 mission or your statutory authorization allows you to go
20 see that person?

21 A Yes.

22 Q Okay. And you did?

23 A Yes.

24 Q Okay. And when you went to the front door or the
25 front desk of Renaissance, were you allowed to simply go

1 into the facility?

2 A No.

3 Q Eventually you were allowed?

4 A Yes.

5 Q Okay. And that was because you showed them
6 identification and insisted that you had a right under
7 federal law to do so?

8 A Yes.

9 Q Okay. And did you have any sense whether they
10 were restricting -- "they" being the facility and the staff
11 there -- were restricting access to Ms. Lowney?

12 A I did not think they were, no.

13 Q Okay. But --

14 A I think they were just being judicious and
15 careful.

16 Q Okay. So -- and is it fair to say that when --
17 how many times were you present with Ms. Lowney at the
18 facility?

19 A Michael, I want to say twice.

20 Q Okay. And you talked about -- during those times
21 you were there she expressed some wishes; right?

22 A Correct.

23 Q Okay. She wanted to see her husband more?

24 A Yes.

25 Q And she wanted to go home?

1 A Yes.

2 Q Okay. Now, Mr. Moog asked you about whether you
3 had ever seen the court file for the guardianship
4 proceedings, and I believe you said no.

5 A The district court file?

6 Q Yes.

7 A That's correct.

8 Q Okay. Did you have any sense that anyone had
9 ever advocated on behalf of Ms. Lowney for her to go home?

10 MR. MOOG: Objection; relevance.

11 CHAIRMAN TALEFF: I'm sorry. Could you repeat
12 the question?

13 Q (By Mr. Sherwood) Did you have any sense, in the
14 course of these -- of dealing with Ms. Lowney, I guess,
15 that anyone had ever advocated for that position, that --
16 to go home and be with her husband?

17 MR. MOOG: Objection; relevance.

18 CHAIRMAN TALEFF: I'm going to allow the
19 question, but we -- as I've said in several rulings, I'm
20 not going to allow this to be an inquiry into whether
21 Ms. Lowney wanted to go home, should have gone home, or
22 otherwise retry the guardianship proceedings. So I allowed
23 you to play the video, and so I think you've opened the
24 door a little bit. But I'm not going to let you drive a
25 truck through it.

1 Go ahead and answer the question, please.

2 THE WITNESS: Okay. Do you mind if I lean on the
3 podium?

4 CHAIRMAN TALEFF: I do not.

5 THE WITNESS: It will change my posture, but I'm
6 trying to get as close to the mic as I can. Thank you.

7 CHAIRMAN TALEFF: That is fine. Thank you.

8 THE WITNESS: Could you repeat the question,
9 please?

10 Q (By Mr. Sherwood) During the course of the time
11 that you -- you and DRM were doing things with or for
12 Ms. Lowney, she expressed some wishes.

13 A Right.

14 Q I'm wondering if you know whether anybody ever
15 advocated for those wishes?

16 A I do not know.

17 Q Okay. Is it fair to say that, based on your
18 discussions with Tina, that her husband -- or her client,
19 Ron Lowney, wanted the same things that Judy wanted, for
20 her to go home and be with him?

21 A I think so.

22 Q Okay. Did Ms. Morin advocate on behalf of Ron
23 that you assist her in representing Ron?

24 A Yes.

25 Q Okay. In doing so, did she ever -- was she ever

1 in a position where you needed to follow her directives?

2 A No.

3 Q Well, you went to see Ms. Lowney -- or, I'm
4 sorry. I think Janice went to see Ms. Lowney first; right?

5 A Michael, I don't recall exactly.

6 Q Okay. But somebody went to see her? Oh, and I
7 think -- yeah, maybe --

8 A Janice and I both went together.

9 Q Okay. Was that your call or Tina Morin's?

10 A That was my call.

11 Q Okay. And then you went to see Judy again with
12 Ms. McCann?

13 A Correct.

14 Q Was that your decision or Tina Morin's?

15 A I think it -- it was not Tina Morin's. Sort of a
16 collective agreement between me and -- I offered to take
17 Mrs. McCann there -- Ms. McCann there.

18 Q Okay. But then while you're off, gone,
19 Ms. McCann files this motion, names you as -- or includes,
20 somehow, DRM as a party to the guardianship proceeding, and
21 is asking for visitation; right?

22 A Yes.

23 Q Okay. Did Tina's name show up on any of that?

24 A I don't have it in front of me to remember that.

25 Q We'll come back to it on that so I can run

1 through these exhibits, but --

2 A Okay.

3 Q At some point Tina actually wrote you a letter
4 saying you guys really need to do all these things; right?
5 And --

6 CHAIRMAN TALEFF: The witness is nodding
7 affirmatively.

8 THE WITNESS: Yes. Thank you.

9 Q (By Mr. Sherwood) Sorry. And is it fair to say
10 that you rankled at that?

11 A You know, you'd have to show me a specific
12 letter, Michael.

13 Q Okay. Then we'll wade through it when we get
14 there.

15 A All right.

16 Q You talked about how you felt that the -- your
17 agency, DRM, had been used.

18 A Correct.

19 Q Okay. Could you explain that?

20 A Yes. We had a specific association agreement for
21 a limited scope that was to remove the guardianship and
22 possibly look at this novel legal theory of a 1983 action
23 against the guardians. And I had anticipated that that
24 would require some research and take some time. And lo and
25 behold there is a completely different pleading that's put

1 forth in our name without any consultation. So that
2 appeared to be more the agenda than what we had discussed,
3 the scope of the association agreement.

4 Q Do you know whether Ms. Morin ever saw that
5 agreement?

6 A The association agreement?

7 Q Yes.

8 A I do not know.

9 Q It was drafted by you?

10 A No.

11 Q It was drafted by Ms. McCann?

12 A I believe so.

13 Q Okay.

14 A I was gone during that period of time.

15 Q Do you know whether Ms. Morin played any part in
16 that being drafted?

17 A I do not know.

18 Q And -- but we do know that Ms. Morin was not a
19 party to that?

20 A She was not.

21 Q Okay. So she was still in the category of
22 interested person calling in, for you guys?

23 A Yes.

24 Q Okay. Well, cut to the chase on that issue:
25 This complaint filed against Ms. Morin alleges that

1 Ms. Morin -- that you were her agent when you dealt with
2 Judy. Were you?

3 A I did not understand that we had an agency
4 relationship.

5 Q Okay. Did she pay you?

6 A No.

7 Q Did -- she certainly lobbied you on behalf of
8 Ron; right?

9 A Yes.

10 Q Okay. Would you agree that she had an obligation
11 to zealously advocate for Ron's position?

12 MR. MOOG: Objection; relevance.

13 CHAIRMAN TALEFF: Sustained.

14 Q (By Mr. Sherwood) Did, at any time, you allow
15 Ms. Morin to dictate what you were going to do?

16 A No.

17 Q I think you said on direct that there was a
18 question here -- and I don't have the exhibit in front of
19 me, and -- but at one point you sort of muse in writing
20 about an issue: Can someone who has been declared
21 incapacitated, I think is the term, can they still have a
22 lawyer to try to undo the guardianship? And correct me if
23 I'm wrong, but I think you said you'd concluded that they
24 had to have.

25 A Yes.

1 MR. MOOG: Objection; calls for a legal
2 conclusion.

3 MR. SHERWOOD: Well, I think you gave --

4 CHAIRMAN TALEFF: I don't know if I understand
5 the question. I think you mixed about two different
6 potential rights in there. I guess you can opine, or at
7 least give your, rather, understanding of that issue. I
8 think you testified to it, so --

9 THE WITNESS: I think there's a statutory right
10 for the person under guardianship to have representation
11 and to challenge the guardianship appointment. I also
12 think there's a constitutional right that comes into
13 conflict with the capacity to contract issue.

14 CHAIRMAN TALEFF: Okay.

15 Q (By Mr. Sherwood) And as you understand it, does
16 the constitutional due process -- or constitutional right
17 trump?

18 A Due process works.

19 Q Okay. It trumps the inability --

20 MR. MOOG: Objection. It calls for a legal
21 conclusion; relevance.

22 MR. SHERWOOD: I'm asking for her understanding.

23 CHAIRMAN TALEFF: I don't need argument, Counsel.

24 Again, I think you opened the door on the issue,
25 and she's just testifying her understanding and not

1 offering a legal opinion as such.

2 So you can testify about why you took certain
3 action based on those beliefs. I think you already
4 testified --

5 THE WITNESS: Yes, I think the due process right,
6 particularly in Montana, where liberty is a fundamental
7 constitutional right.

8 Q (By Mr. Sherwood) And you said you think that
9 it's a statutory basis. Is that 72-5-325, or do you
10 remember?

11 A I don't remember, but it's -- that's likely it.

12 Q Okay. But is there a statute that, in fact,
13 allows somebody in Judy's position --

14 A Yes.

15 Q -- to then challenge the guardianship?

16 A Yes.

17 Q Okay. And does that statute talk in terms of her
18 having the same rights that she would have had when they
19 established the guardianship?

20 A Yes.

21 Q And that would include a right to counsel?

22 A That is correct.

23 Q Do you have any idea what the arrangement was
24 between Ms. Morin -- between Tina and Ms. McCann?

25 A Not other than very generally, the way that it

1 was introduced to me by them.

2 Q Okay. Well, you'd seen Judy and you decided she
3 wasn't being abused by the facility.

4 A That is correct.

5 Q But then apparently there was some discussion
6 about trying to get her a lawyer so she could challenge the
7 guardianship.

8 A Correct.

9 Q Did you have -- you said wide scope of aim, but
10 not a lot of resources?

11 A Correct.

12 Q Okay. And so did you have any in-house resources
13 or resources that you could reach out to for a lawyer to
14 handle that representation?

15 A No.

16 Q Okay.

17 A As I said before, we don't do guardianships
18 generally.

19 Q Okay. But still you felt it fit -- this
20 situation fit within your mission to the extent that it was
21 defined with your agreement with Ms. McCann?

22 A Yes. This would be an appropriate case for
23 information and referral to outside counsel.

24 Q Okay. But you didn't have a referral system?

25 A Not per se. We're in the process now of

1 developing one with Montana Legal Services Association.

2 Q Okay. Do you know whether Ms. McCann worked in
3 Tina's office?

4 A I don't believe she did.

5 Q Okay. Do you know if there was any financial
6 arrangement between she and Ms. McCann?

7 A I do not know.

8 Q Given that Ron's wishes and Judy's wishes were
9 the same, did you have any sense of impropriety with -- as
10 far as Tina urging -- Judy challenging the guardianship?

11 A Could you say the last part of that question
12 again?

13 Q Well, I think -- I think at one point that you
14 talked about how, in a letter, somebody was saying that
15 Tina was pushing hard.

16 A Genet said that.

17 Q Right. Genet said that Tina was pushing hard.
18 Did you -- I'm just going to drop the line of questioning;
19 okay?

20 So you -- you indicated, Roberta, that you had --
21 you actually -- I think, if I'm correct -- you got online
22 and read the supreme court decision?

23 A Correct.

24 Q Okay. And that would have been the one where
25 Tina had now come on board for Ron and challenged some

1 rulings by Judge Krueger?

2 A Yes.

3 Q Okay. Did you pick up on Debbie Churchill being
4 involved --

5 A No.

6 Q I'm sorry?

7 A I did not. Sorry.

8 Q You did not. Okay. It wasn't your focus to look
9 at the end and see who was attorney?

10 A No. I just went right to the opinion.

11 Q Okay. And do you know what information Tina
12 provided to Genet about Ms. Churchill?

13 A I do not.

14 Q We've seen this video, and you talked about the
15 first time that you met with Judy and how she seemed
16 oriented as to --

17 A -- person, place, and time.

18 Q Right. As far as your mission, DRM's mission,
19 had you gone there and determined that she wasn't oriented,
20 would you nevertheless have attempted to get her a lawyer?

21 MR. MOOG: Objection; calls for speculation.

22 CHAIRMAN TALEFF: Sustained.

23 MR. SHERWOOD: The beauty of having a lawyer on
24 the stand is they know what to do when the objection is
25 sustained, so...

1 Q (By Mr. Sherwood) Could you turn to Exhibit 46,
2 if you could, please.

3 A Yes.

4 Q So this is from Genet McCann, and she's writing
5 you and Bern -- or you and Bernie.

6 I presume that the Robbie in the salutation is
7 you?

8 A Must be. I'm in the caption in the -- up above
9 as Roberta Zenker.

10 Q You did sometimes go by Bobbie, I think?

11 A I go by Bobbie for short, but not Robbie.

12 Q Not Robbie. Okay. And this is Ms. McCann asking
13 you to review, on November 21st, 2016, something. And is
14 this something she's asking you to review the sort of
15 memorandum of agency between you at DRM and Ms. McCann?

16 A Well, I was gone on this day, so I cannot say
17 what it was.

18 Q But when that agreement was signed that we talked
19 about -- you didn't sign it?

20 A I did not.

21 Q Okay. Would that have been your superior,
22 Ms. Franks-Angoy?

23 A Yes.

24 Q Okay. Well, I just want to make sure we're
25 straight with the commission here.

1 I asked you if, to your knowledge, Tina had ever
2 seen it, and I note here that there is a --

3 A Uh-huh.

4 Q -- notation that she was at least cc'ed on this.

5 A Yeah. I assume that's what it was.

6 Q Okay. So the odds are that, if she reads her
7 emails, that she might have seen the --

8 A Yeah. The subject says engagement letter, so I
9 think we can safely assume that's what it was.

10 Q Okay. Thank you.

11 Mr. Moog at one point phrased Ms. Morin's action
12 by saying that Ms. Morin had "brought" Ms. McCann to you.

13 Did Ms. Morin actually bring Ms. McCann to you?

14 A I think so, yes.

15 Q Okay. And was that after Ms. Morin was advised
16 that you didn't have the internal resources for an attorney
17 for Ms. -- or for Judy Lowney?

18 A Correct.

19 Q Okay. You mentioned, I think twice now, the
20 notion that Ms. McCann was exploring some sort of 1983
21 action. That would be under -- I think it's 42 USC 1983
22 where a person can, in some instances, sue state agencies
23 for a violation of their rights. Is that --

24 A Constitutional rights.

25 Q Constitutional rights.

1 Do you know whether Ms. McCann -- whether
2 Ms. Morin was endorsing that course of action or not?

3 A I do not, no.

4 Q But it was novel?

5 A I'm sorry?

6 Q It was novel?

7 A It was novel.

8 Q It was novel.

9 When you spoke with Ms. McCann about in what
10 venue she might initiate a state action, either in Lewis
11 and Clark County or Silver Bow, was Ms. Morin a party to
12 those discussions?

13 A Yes.

14 Q Do you know whether she and Ms. McCann agreed on
15 a position or disagreed with each other?

16 A I do not know.

17 Q Were you ever privy to discussions in which
18 Ms. McCann was present, Ms. Morin was present, you were
19 present, and maybe others, in which Ms. Morin and
20 Ms. McCann disagreed about what course of action should be
21 taken?

22 A I don't recall any.

23 Q Okay. Is it possible it may have occurred and
24 you just don't recall?

25 A Doesn't seem likely.

1 Q Okay. May I ask you to look at Exhibit 44,
2 please, Roberta.

3 A Yes. Okay.

4 Q So this bottom paragraph -- I'm just sort of
5 looping back here -- where it says, Finally, Montana code
6 72-5-325 makes clear that a ward may petition a court to
7 remove a guardian.

8 Is that -- had Ms. McCann done any research to
9 assist you in getting to that position?

10 A I don't believe so.

11 Q Okay. And how about Ms. Morin? Had she provided
12 you with anything?

13 A No. I think I just pulled out the statute and
14 looked.

15 Q Okay. So then I asked you earlier if Ms. -- to
16 your knowledge, Ms. Morin had any involvement -- I should
17 stop right now.

18 I interviewed you before; right?

19 A Yes.

20 Q And we -- you've talked several times about a
21 hunting trip.

22 A Yes.

23 Q Okay. And that was sometime in November of 2016?

24 A I actually think it was November 20th --

25 Q Uh-huh.

1 A -- till the -- which was Sunday. So I think I
2 came home on Friday, which was the Friday after
3 Thanksgiving.

4 Q So I've been rude. Did you get a deer?

5 A I did.

6 Q Great.

7 So now back to the petition. This, I believe, is
8 the petition. This is Exhibit -- ODC Exhibit 51. I
9 believe this is the petition that was filed and gave you
10 concern?

11 A Yes.

12 Q Okay. Because it didn't -- it went beyond the
13 scope of the agency that you had with Ms. McCann and was
14 now asking for visitation, for instance; right?

15 A It wasn't the agreement at all.

16 Q At all. Right.

17 A I think "beyond the scope" is genteel.

18 Q Okay. But I asked you if, to your knowledge,
19 Ms. Morin played any role in Ms. McCann filing this. And
20 I've just asked you to at least take a look at the document
21 for a minute and see if Ms. Morin surfaces anywhere in
22 there.

23 A No, I don't see Ms. Morin's name on this document
24 anywhere.

25 Q Okay. Mr. Moog brought to your attention the

1 language -- this is Exhibit 61, at the bottom. It's --
2 Page 3 of 17 is what we're going to.

3 I think you characterized -- this is an email
4 from Ms. McCann to -- let me make sure.

5 A 61?

6 Q Yeah. I'm wrong.

7 A And this is the letter --

8 Q This is a letter --

9 A -- terminating the association agreement from
10 Ms. Franks-Angoy to Genet.

11 Q Okay. But when you -- we get to Page 3 -- and
12 I'm talking about the first principal paragraph that
13 begins, On November 28th, 2016 --

14 A Yes.

15 Q -- Ms. Zenker called you.

16 So is -- are you just referring -- are you
17 writing this letter?

18 A I drafted it.

19 Q You drafted it? Okay. And at some point you
20 indicated that Ms. McCann -- I think maybe the term you
21 used was waffled -- but did -- did she indicate some sort
22 of regret for having done something at some point?

23 A Yeah. She stated here when I first spoke to
24 her -- this was Monday morning, the 28th, after I had been
25 gone -- and I see this petition, and of course the first

1 thing I wanted to do was contact her and say, one, What's
2 going on, and, two, it shouldn't have gone on, and, three,
3 could you undo it.

4 Q Okay.

5 A So I called her, and having had that discussion
6 generally, she said, I can only apologize.

7 Q Okay. And then said, Well, Tina was pushing hard
8 for it.

9 A That is correct.

10 Q Okay. But you don't know whether that's true?

11 A That is correct.

12 Q There was some -- there was some discussion about
13 you folks at DRM facilitating Ms. Lowney's ability to vote.

14 A Correct.

15 Q Okay. And you said something about you believe
16 that she also voted in Helena?

17 A I didn't believe that. I've heard that.

18 Q You'd heard that. Okay. But you just heard
19 that? You don't know?

20 A That is correct.

21 Q And you don't know whether she voted either
22 before or after she filled out the absentee ballot?

23 A That is correct.

24 Q Did -- did you -- if DRM had not shown up on that
25 pleading of Ms. McCann's asking for visitation, based on

1 what you knew, did you see anything inappropriate -- would
2 there have been anything inappropriate about Ms. McCann
3 filing that petition if she didn't gratuitously put DRM's
4 name on it?

5 A I -- I'm really in no position to comment on
6 that.

7 Q Fine. So this is back in -- Tina initially calls
8 in or makes a request for some help --

9 A Yes.

10 Q -- in January of '16, I think; right?

11 A Yes.

12 Q Does she say anything about she -- about
13 Ms. Churchill?

14 A I don't recall that. There was nothing on the
15 intake form.

16 Q Does -- in all of the dealings that she had with
17 you, did she ever indicate that she thought Ms. Churchill
18 was Judy's lawyer?

19 A No, I do not believe so.

20 Q Okay.

21 A Frankly, I don't remember the name coming up
22 until well after.

23 Q Okay. Okay. Could you please look at
24 Exhibit 53, Roberta.

25 A Yes. Okay.

1 Q I mentioned earlier that Tina had, as I
2 understand it, written you a letter saying that she thought
3 you guys -- to Bernie, your superior, saying, Well, you
4 guys should do a bunch of stuff. And I think, if I'm
5 correct, that would be the email that Tina sent to Bernie
6 on November 29th, 2016, which is the first email at the top
7 of the first page for Exhibit 53.

8 A Yes.

9 Q Okay. And then -- and she's also unfairly, I
10 think, as far as you're concerned, indicating that she
11 thought that you had some sort of conflict; is that
12 correct?

13 A I didn't see any conflict.

14 Q Right. Okay. She was misinformed as far as
15 you're concerned; right?

16 A Yeah. I just didn't know where that was coming
17 from.

18 Q Right. So then the second email in this sort of
19 1 of 2 pages document, Exhibit 53, is Genet sort of chiming
20 in about you guys should be doing things; right?

21 A Yes. And it looks like it was sent the next day,
22 the next morning, 9:32 a.m.

23 Q Okay. And then --

24 A And this is where she sort of waffles from the
25 last time I had spoken to her on the 28th.

1 Q And could you point out where you thought she was
2 waffling?

3 A She begins to say why she thinks removing DRM
4 would hurt Judy's attempts and suggests that that's not
5 what she wants to do.

6 Q And where is that in the letter, please?

7 A Beginning right in the first paragraph.

8 Q So -- okay.

9 A So where I had last left this with her on Monday,
10 two days earlier, she was amenable to filing a petition to
11 revoke the -- or a motion to revoke the petition.

12 Now, two days later, following this email from
13 Tina, she's sort of flopped her position entirely.

14 Q And what do you perceive her petition to be --
15 her position to be here?

16 A She wants to continue the representation and go
17 forward with this 1983 action.

18 Q And your position is no?

19 A Correct. And I should say, at this point, where
20 we felt like the representation agreement, association
21 agreement, had been breached and violated in such a strong
22 way that the best course for us was to dissociate entirely.
23 So we weren't interested in hearing anything.

24 Q And, again, this association agreement was with
25 Ms. McCann?

1 A Yes.

2 Q And drafted by Ms. McCann?

3 A Correct.

4 Q So this video we saw --

5 A Yes.

6 Q -- I think you told us you weren't there.

7 A I was not.

8 Q Was somebody from DRM there?

9 A I don't believe so.

10 Q Okay. So you think this is now Genet, because
11 she has something from Judy in writing saying she's her
12 lawyer, is allowed into the facility?

13 A That's my assumption.

14 Q Okay. Did -- were you aware that she was going
15 to go see Judy?

16 A On that day I don't think I was. I'm not sure of
17 the exact date that that visit was.

18 Q Okay. Did --

19 A As I understand it, that was in preparation for
20 the filing of this writ of mandate, so that would have been
21 during the week that I was gone. Because that -- that writ
22 was filed on the 25th, which was the day after
23 Thanksgiving. I was still gone.

24 Q I've got to stumble through my notes here.

25 A That's okay.

1 THE WITNESS: Mr. Chair, may I take a quick break
2 to go to the restroom?

3 CHAIRMAN TALEFF: We will take a seven-minute
4 personal needs break. It is 11:15. Everyone please be
5 back at 11:22. We are in recess.

6 THE WITNESS: Thank you, Mr. Chair.

7 (Proceedings in recess from 11:13 a.m. until
8 11:20 a.m.)

9 CHAIRMAN TALEFF: All right. We're back in
10 session at 11:22.

11 Mr. Sherwood, you may continue your
12 cross-examination.

13 MR. SHERWOOD: Thank you, Mr. Chairman.

14 Q (By Mr. Sherwood) So could I direct your
15 attention now to Exhibit 43?

16 A Yes.

17 Q All right. And this is the exhibit that you
18 talked about on direct where Genet writes you on November
19 11th saying Tina is wanting to file a motion with the Court
20 to order the guardians to allow Judy to visit with her
21 husband over the holidays.

22 A Correct.

23 Q Skipping ahead, We want to get a video statement
24 from Judy.

25 This is on November 11th, and we know that

1 Ms. McCann tells us on the video -- make sure I'm
2 right -- that it is November 23rd, 2016, when the video is
3 taken.

4 Of course, you don't know, but were you assuming
5 that the "we want to get a video" meant Tina and
6 Ms. McCann, or do you know?

7 A I don't know. That seems reasonable given what's
8 in the body of the --

9 Q Okay.

10 A -- email.

11 Q After you -- you hadn't left, I think, on your
12 hunting trip?

13 A No.

14 Q Okay. Did you get anything -- or did you have
15 any discussions with Tina that led you to believe that she
16 was online with Ms. McCann filing a motion and embroiling
17 Disability Rights in that motion?

18 A I didn't. I don't recall any discussions with
19 Tina about this email.

20 Q Okay.

21 A I did respond to the email on the 14th, to Genet.

22 Q Okay. And -- on the 14th?

23 A Yeah. That's Exhibit Number 44.

24 Q 44. Right. Okay.

25 A And I, again, told her that the -- the

1 petition -- that the visitation, the video, was outside the
2 scope of the proposed agreement that was supposedly for
3 petition to remove the guardianship.

4 Q Right. So you actually forewarned Ms. McCann
5 that you didn't think that her doing that with your agency
6 was appropriate given the agreement?

7 A Right.

8 Q Okay. So this agreement, you referred to it as
9 an association agreement?

10 A Yes.

11 Q Did you -- does DRM do those routinely?

12 A Yes.

13 Q Okay. And having done it, can you characterize
14 whether Ms. McCann becomes DRM's agent or you folks become
15 her agent or none of the above?

16 A I don't think I'm prepared to answer that. I
17 haven't assessed it in terms of agency.

18 Q Okay.

19 A So I'm not prepared to say.

20 Q But whatever it was, once Ms. McCann went beyond
21 the scope of that agreement, still invoking DRM, you felt
22 that was inappropriate?

23 A I did.

24 MR. SHERWOOD: Okay. Mr. Chairman, may I have a
25 moment to consult with --

1 CHAIRMAN TALEFF: Certainly.

2 MR. SHERWOOD: Thank you.

3 (Break taken.)

4 MR. SHERWOOD: Mr. Chairman, I have no more
5 questions.

6 CHAIRMAN TALEFF: Any redirect by ODC, Mr. Moog?

7 MR. MOOG: Just a few follow-ups.

8 CHAIRMAN TALEFF: Okay. Let's let Mr. Sherwood
9 clear the counsel table.

10

11 REDIRECT EXAMINATION

12 BY MR. MOOG:

13 Q Roberta, it's true that your meeting with Judy in
14 the January, February time frame was at Tina's request;
15 correct?

16 A Yes.

17 Q And also your meeting with Genet McCann and Tina
18 that summer, that next summer, was at Tina's request?

19 A Yes.

20 Q And at least with respect to Genet McCann, Tina
21 was asking for the visitation petition to be filed;
22 correct?

23 A Yes.

24 Q Was McCann ever an employee of DRM?

25 A No.

1 Q Did it seem to you that Ms. Morin and Ms. McCann
2 were working in concert?

3 A Yes.

4 Q That both were pursuing Ron's interests?

5 A Yes.

6 Q During this eight or ten-month time period
7 between Ms. Morin's initial report and the withdrawal of
8 the petition for writ of mandate, was there any discussion
9 of Judy's best interests among the three of you?

10 A Yes.

11 Q Stated interests or best interests?

12 A Stated interests.

13 Q What about her best interests?

14 A Her best interests -- I don't mean to be crass,
15 but our agency, in supporting individual choices for people
16 who experience disabilities, is focused on stated
17 interests. So we don't inquire about best interests. It's
18 a standard that we don't employ.

19 Q Do you know what the focus of guardianship
20 proceedings is?

21 A Best interests.

22 Q Okay. And I believe that when you visited Judy
23 back in early 2016 you did not detect any sign of abuse; is
24 that correct?

25 A That is correct.

1 MR. MOOG: That's all I have, Mr. Chairman.

2 CHAIRMAN TALEFF: Okay.

3 Ms. Zenker, you may not be familiar with the
4 procedure, but at this point members of the commission are
5 entitled to ask you questions, so --

6 THE WITNESS: All right.

7 CHAIRMAN TALEFF: So we'll start to my left with
8 Ms. DeVries.

9 COMMISSIONER DEVRIES: No questions.

10 CHAIRMAN TALEFF: Mr. O'Brien?

11 COMMISSIONER O'BRIEN: No questions.

12 CHAIRMAN TALEFF: Mr. Ogle?

13 COMMISSIONER OGLE: No questions.

14 CHAIRMAN TALEFF: Ms. Menzies?

15 COMMISSIONER MENZIES: No questions.

16 CHAIRMAN TALEFF: Ms. Maloney?

17 COMMISSIONER MALONEY: No questions.

18 CHAIRMAN TALEFF: Mr. Belke?

19 COMMISSIONER BELKE: None.

20 CHAIRMAN TALEFF: Mr. Black?

21 COMMISSIONER BLACK: I have some, Ms. Zenker.

22

23 EXAMINATION

24 BY COMMISSIONER BLACK:

25 Q May I refer to Disability Rights Montana as DRM?

1 A Yes, please.

2 Q Okay. Has Ms. Morin ever served on the board of
3 DRM?

4 A No.

5 Q Has she ever been an officer of DRM?

6 A No.

7 Q I think you said she wasn't an agent of DRM for
8 the purposes of this matter; is that correct?

9 A That's correct.

10 Q Has she ever been an agent of DRM for any other
11 matter that you know of?

12 A Not that I am aware of.

13 Q Has she ever been hired by DRM?

14 A No.

15 Q Has she served on any advisory committee with
16 respect to DRM ever?

17 A Not that I am aware of.

18 Q Okay. And you're an attorney Ms. Zenker; isn't
19 that correct?

20 A That's correct.

21 Q In your mind, in your practice with DRM, is there
22 a distinction between a guardian ad litem and an attorney
23 representing a ward?

24 A An attorney representing a ward?

25 Q A ward. W-a-r-d.

1 A Yes, I think so.

2 Q What is the distinction in your mind?

3 A I think a guardian ad litem would be a guardian
4 appointed by the Court for -- to give a report back to the
5 Court about the progress and what's going on with the ward,
6 where the attorney is there to protect and advocate for the
7 interests of the client.

8 Q Okay. So there was some discussion early on in
9 your testimony that you weren't aware of Ms. Churchill's
10 involvement until later; is that right?

11 A That's correct.

12 Q What is your understanding of Ms. Churchill's
13 involvement as we sit here today, or do you have one?

14 A I understood that she -- I think -- is that she
15 represented Ms. Lowney in the district court proceedings in
16 front of Judge Krueger.

17 Q Okay. And represented her in what capacity?

18 A I assume court-appointed counsel.

19 Q Okay. And what is that assumption based on?

20 A That's a guess.

21 Q Okay. And that's fair. I don't want you to
22 guess; okay?

23 In your capacity as an attorney for DRM, you
24 actually went and met with Ms. Lowney; isn't that correct?

25 A That's correct.

1 Q Did you see any problems with that based upon
2 your knowledge at that time with respect to the rules of
3 professional conduct?

4 A No. My assumption was that, because that case
5 had been -- as I understood it -- twice to the supreme
6 court and back that it was closed and all representation
7 had ended, if there had been any. I mean, there's a foggy
8 notion in the back of your head, if this case has gone to
9 the supreme court, it's had representation. But --

10 Q Representation of whom, I guess, is my question.

11 A Of all the parties. Of Mr. Lowney, of Judy
12 Lowney, of whom -- of Judy's.

13 Q I think that -- is it your understanding that,
14 based upon the supreme court opinions, that Ms. Churchill
15 represented Mrs. Lowney as her attorney?

16 A No. I didn't -- I just read the opinion. I
17 didn't know about her involvement at that time. This is
18 all in retrospect.

19 Q Sure. I mean -- and I'm not saying you should
20 have, but did you ever go back and look at the files in the
21 court docket independent of this proceeding to figure out
22 what was going on?

23 A No. You mean the district court?

24 Q Yes.

25 A No, I did not look at that.

1 COMMISSIONER BLACK: Okay. I don't have any
2 other questions. Thank you so much.

3 CHAIRMAN TALEFF: Ms. Perry?

4
5 EXAMINATION

6 BY COMMISSIONER PERRY:

7 Q Hi.

8 A Hi.

9 Q Okay. So I just -- based on your testimony then,
10 DRM is -- has essentially two federal mandates: One is
11 similar to Child and Family Services, in that you check to
12 make sure there's no abuse or neglect by caregivers. And I
13 want to talk a little bit about that visit.

14 You found there was no abuse and neglect. Was
15 Judy Lowney ambulatory? Was she able to get around?

16 A Yes.

17 Q Okay. Was her phone restricted?

18 A I don't know.

19 Q Okay. So --

20 A I did not inquire.

21 Q Okay. Was she able to write letters?

22 A I believe she was.

23 Q Okay. Do you know, was she able to administer
24 and take her own medication, or was she being supervised
25 for that?

1 A I believe she was being supervised.

2 Q Okay. Was she in a place where she could prepare
3 her own snacks or that type of a thing, or was that done
4 for her?

5 A I think she could do that, but I think it was
6 being done for her.

7 Q Okay. Have you ever -- and then the second part
8 of this that I understand is DRM has -- is somewhat
9 concerned about, once a guardianship is in place then,
10 about whether or not the guardianship should be terminated,
11 almost analogous to, like, an involuntary commitment, where
12 they get stabilized and then they don't need to be
13 committed anymore.

14 Is that -- is that sort of where you were headed
15 with this with Ms. McCann?

16 A I think that, you know, we hadn't made our mind
17 up. You know, there were concerns, and these concerns may
18 or may not have been legitimate, but they were being
19 raised. And if so, we felt like there was a statutory
20 process by which they could be legitimately raised before
21 the Court, and that that process then ought to be followed.

22 Q All right. And when you met with Mrs. Lowney,
23 was she able to articulate those concerns to you
24 independent of any leading questions?

25 A Yes.

1 Q Okay. And was she -- are you familiar then with
2 the process for petitioning for a guardianship under
3 Chapter 7 -- or Title -- under 72-5, part 3?

4 A Generally.

5 Q Okay. So you were aware then that, in order to
6 do this, there had to be a report from a visitor, a report
7 from a doctor, and even once the guardian was appointed,
8 there was an initial accounting, an inventory?

9 A Yes.

10 Q All right. And what was Mrs. Lowney able to tell
11 you with regard to her doctor appointments and her visitor
12 report with respect to the guardianship?

13 A Well, I didn't inquire. I did not talk to her
14 about those things.

15 Q Okay. Did you talk to her about her -- anybody
16 representing her or advocating for her position during the
17 guardianship proceedings?

18 A I did not. I was not there to assess the
19 guardianship proceeding. I was simply there to assess
20 whether or not she was being abused or neglected in her
21 present setting at Renaissance.

22 Q Okay. Once you determined that she was not, I am
23 trying to figure out why the association agreement happened
24 and why this went further than your -- either -- I don't
25 know if it's like DFS, but they either substantiate or they

1 do not substantiate --

2 A Right.

3 Q -- the report.

4 A Well, frankly, because Ms. Morin continued to
5 insist over the months that these problems were going on.
6 And I'm not in a position to say whether they are or
7 whether they're not. But there is a process by which that
8 can be contested in court, and that process was to
9 challenge the guardianship proceedings through a motion or
10 a petition to do that.

11 And then ultimately that's what we got to in that
12 discussion with Ms. Morin and Ms. McCann, is that there is
13 a statutory process by which you can bring these matters
14 back before Judge Krueger, or if we can find a way, before
15 another judge.

16 Q Okay. So let's talk about that for a second,
17 because I think that's really important.

18 I am curious that, if mail wasn't restricted, we
19 don't know if phone was restricted for Mrs. Lowney, to what
20 extent -- because you were involved in this at the time, if
21 you know -- was Mrs. Lowney able to select her own
22 attorney?

23 A She did not take out the Yellow Pages, as far as
24 I'm aware. Ms. McCann asked her did she want
25 representation. She said that she did.

1 Q Okay. You had already -- you testified earlier
2 on a -- on a question from Mr. Sherwood, and I believe you
3 had answered something to the effect that it was not likely
4 that Ms. Morin and Ms. McCann would have disagreed on a
5 course of action.

6 Can you explain to me a little bit about why you
7 answered that question that way?

8 A Well, it's not likely that I would have known
9 that they disagreed because if I would have known, I would
10 have remembered that they disagreed.

11 Q Okay. I want to follow up on that a little bit.

12 So you said you read the supreme court opinions,
13 and there was language in the supreme court opinions that
14 discussed the reasons or some reasons why Mr. Lowney was
15 not appointed the guardian, as he would have generally had
16 priority as surviving spouse. During your conversations
17 with Ms. Morin -- or were you made aware by Ms. McCann --
18 was there ever any conversation about the fact that the
19 representation of Mrs. Lowney could be adverse to the
20 representation of Mr. Lowney?

21 A I don't remember that. I don't remember any such
22 discussion.

23 COMMISSIONER PERRY: No more questions. Thank
24 you.

25 CHAIRMAN TALEFF: Thank you.

1 Ms. Faure?

2 COMMISSIONER FAURE: I have nothing.

3 CHAIRMAN TALEFF: I have a couple, a couple to
4 several.

5 THE WITNESS: There's a follow-up over here,
6 Mr. Ogle.

7 CHAIRMAN TALEFF: Mr. Ogle?

8 COMMISSIONER OGLE: Oh, yeah. The other
9 questions prompted a question of mine.

10

11 EXAMINATION

12 BY COMMISSIONER OGLE:

13 Q So what I'm curious about, if what you were doing
14 at DSM was assessing the facility, how did this engagement
15 agreement come to be entered in the first place where you
16 were authorizing Ms. McCann to do some work?

17 A In the first instance, we have ongoing
18 monitoring, investigating responsibility, ability. So that
19 happened early on -- January, February 2016. We continued
20 to hear from Ms. Morin after that about concerns that she
21 had for Judy Lowney and whether she was able to exercise
22 her rights to visit, to engage in her church activities and
23 those kinds of things. So it's just enough to say, well,
24 you know, is there anything to these? You know, should we
25 be concerned?

1 So when Tina and Ms. McCann came back to see us,
2 I think in October, if they could -- you know, we didn't
3 have the resources. It's not something we ordinarily do.
4 So we had told them already that we can't take this on.
5 And -- but we still had this concern that maybe there's
6 something to this.

7 So that seemed like a reasonable compromise, to
8 enter into an association agreement that would allow them
9 accessibility to records and things like that if they
10 needed it. But that they were essentially going to do the
11 work. We would have to authorize and then supervise
12 anything that was filed in our name.

13 Q But the work that they were going to do had to do
14 with the guardianship proceeding in Butte; right?

15 A Yes.

16 Q So why did they not just go directly to
17 Ms. Lowney and get the engagement agreement from her?

18 A I don't know.

19 COMMISSIONER OGLE: Thank you.

20 COMMISSIONER BLACK: Mr. Chair, I have one
21 follow-up question.

22 CHAIRMAN TALEFF: Okay.

23

24 FURTHER EXAMINATION

25 BY COMMISSIONER BLACK:

1 Q Ms. Zenker, in response to a question, you
2 indicated, during your meeting with Mrs. Lowney, that
3 Ms. McCann asked her if she wanted representation, and she
4 said she did.

5 Did I -- do I recall that correctly?

6 A Yes.

7 Q Did anybody ask her whether she already had
8 representation in that meeting?

9 A No.

10 COMMISSIONER BLACK: Okay. That's all I wanted
11 to know. Thank you.

12

13 EXAMINATION

14 BY CHAIRMAN TALEFF:

15 Q Now, I confess to being -- I think I understand
16 your responses, but I confess to being confused, if you
17 weren't there to assess the guardianship proceedings, why
18 you would enter into an association agreement with
19 Ms. McCann to challenge the guardianship proceedings
20 without getting a copy of the file or looking at the file
21 to see what the status was.

22 You seem to be saying that simply because Tina
23 Morin continued to raise questions about the guardianship
24 proceeding, you thought that was sufficient.

25 So I know that's kind of a compound question, but

1 is the latter question true -- or statement true -- that
2 simply because she was raising issues, you thought that was
3 sufficient to enter into this and continue the association
4 with Genet McCann?

5 A There was, yeah, significant documentation from
6 Ms. Morin, including the -- the analysis from their -- I
7 don't know if it was a psychologist or LCSW or something of
8 that -- a counselor that suggested something different than
9 what had been testified to in court. So there were --
10 there was just enough confusion that I thought there's a
11 proper forum for these issues to be contested in. And not
12 that we necessarily agreed or we necessarily had reached
13 the same conclusion, but there was enough concern that it
14 ought to have its day in court, which is the way that I
15 looked at it.

16 Q At any time in this process of DRM's association
17 with Ms. McCann and their contacts with Tina Morin, did you
18 or anybody at DRM ask them to provide you with copies of
19 any portions of the district court file?

20 A No.

21 Q Is there any kind of a policy at DRM about that,
22 that if you're asked to become involved in a matter that is
23 in pending litigation of some sort, that you are to request
24 copies of appropriate pleadings?

25 A No, but that -- in retrospect, that would

1 certainly seem appropriate. In my view, I thought that
2 just looking at the supreme court opinions was sufficient,
3 but...

4 Q You made -- or you testified this -- I thought
5 you testified to the effect that you made the assumption
6 that once the supreme court issued its opinion, the
7 representation of the parties ended.

8 Did I -- do I recall that testimony correctly?

9 A Yes.

10 Q Was there something in the supreme court opinion
11 that led you to conclude that the guardianship had
12 terminated?

13 A No.

14 Q Who was going to be responsible for Ms. McCann's
15 attorneys fees incurred under your association agreement?

16 A I understood that she was going to be doing it
17 pro bono.

18 Q Did she ever send you a bill or a statement?

19 A She did not.

20 Q If you would look at Exhibit 46, please.

21 This is the November 21, 2016, email from
22 Ms. McCann to yourself, Tina Morin, looks like she copied
23 herself, and Bernie Franks-Angoy --

24 A Yes.

25 Q -- that says:

1 Hopefully with this in hand I can gain access to
2 Judy without being shut down immediately by the guardians.

3 Did you have some understanding of what -- or how
4 she could be shut down immediately by the guardians without
5 this engagement letter?

6 A I was under the impression that she believed that
7 she would -- that the guardians would tell Renaissance
8 facility who could have access to Judy and who could not.

9 Q Okay. And, again, I just need to be really clear
10 on this. Is it your testimony that until some point
11 subsequent to the ODC complaint in this matter you were
12 completely unaware of Debbie Churchill's involvement in the
13 Judy Lowney guardianship proceedings?

14 A That's correct.

15 Q Okay. Then Exhibit 53, if you would look at
16 that, please, and I would direct your attention to the
17 bottom of the first page. This is the November 30, 2016,
18 email at 9:32 a.m. The second paragraph starts with this
19 statement:

20 At the October 20th meeting between Bernie,
21 Roberta, Tina, and I, when we reached an agreement, the
22 representation was not limited to a petition for a removal.

23 Do you agree that that -- that the representation
24 was to be something more than just limited to the petition
25 for removal?

1 A Well, she goes on in the next sentence to make
2 reference to the 1983 suit. So as I understood, the scope
3 of that agreement was that she would pursue the removal of
4 the guardianship and also research this theory about a 1983
5 action, to be discussed as that research developed.

6 Q Was the 1983 action, as you understood it, to be
7 for the purpose of obtaining damages of some sort as
8 opposed to removal of the guardians?

9 A I think both, but, you know, that -- the remedies
10 would be part of the research.

11 Q Okay. But you thought it was a novel idea?

12 A I did.

13 Q Novel approach. Okay.

14 That's all my questions. Thank you.

15 CHAIRMAN TALEFF: Counsel, starting with
16 Mr. Moog, did the questions from the commission cause you
17 to have any further follow-up?

18 MR. MOOG: Just one, in response to Commission
19 Ogle's question.

20

21 FURTHER REDIRECT EXAMINATION

22 BY MR. MOOG:

23 Q I think you responded that you didn't know why
24 Genet needed the association agreement, but it was for
25 contact; right? So she could get into Renaissance --

1 A Yes.

2 Q -- under the umbrella of DRM?

3 A Right. That's correct.

4 MR. MOOG: That's all I have.

5 CHAIRMAN TALEFF: Okay.

6 Mr. Sherwood, any follow-up?

7

8 RECROSS-EXAMINATION

9 BY MR. SHERWOOD:

10 Q So, Roberta, as a follow-up to Commissioner
11 Black's questions, you indicated that you saw your role --
12 you indicated that, I believe, that the role of a guardian
13 would be to look after the best interests of Ms. Lowney.

14 A Correct.

15 Q But your role was different?

16 A Yes.

17 Q And is that because you felt -- you said you
18 didn't have an attorney-client relationship with
19 Ms. Lowney?

20 A I'm talking about our role as an agency.

21 Q Agency. Right.

22 A And that, generally speaking, Disability Rights
23 Montana supports the independent decision-making process of
24 people who experience disabilities, so that we would be
25 looking at stated interests, which may or may not always be

1 consistent with what somebody else might say are the best
2 interests.

3 Q So do you perceive your role to be similar to the
4 ethical duties under Rule 1.2 for a lawyer to represent
5 their client's stated wishes?

6 A Yes.

7 MR. SHERWOOD: Okay. Nothing further.

8 CHAIRMAN TALEFF: Okay. Thank you.

9 You may step down and be excused.

10 THE WITNESS: Thank you.

11 CHAIRMAN TALEFF: It is a public hearing, so if
12 you want to stay, you're entitled to.

13 THE WITNESS: I think they probably want to get
14 some work out of me today. Thank you very much.

15 CHAIRMAN TALEFF: Please just leave the exhibit
16 book there.

17 THE WITNESS: Yeah.

18 CHAIRMAN TALEFF: Thank you.

19 We're close to the noon hour. I'd -- rather than
20 start the next witness and get about five minutes in, I
21 think we'll start up at 1:10 and --

22 MR. MOOG: We have those admonitions. Is that
23 going to --

24 CHAIRMAN TALEFF: Pardon?

25 MR. MOOG: We have those admonitions at 1:00. Is

1 that going to be sufficient --

2 CHAIRMAN TALEFF: Oh. I'm sorry. Thank you for
3 reminding me. Let's be prepared to start up at 1:20. That
4 should give us plenty of time.

5 I'm going to remind counsel that I issued an
6 order indicating what the four issues I believe are before
7 this commission, and I think we've gone quite far afield in
8 part. I'm going to again reiterate, whether Judy Lowney
9 wanted Ron to be her guardian, that issue has been decided.

10 We're here to decide whether Debbie Churchill
11 represented Judy Lowney as an attorney, whether Tina Morin
12 knew that she represented Judy Lowney in the guardianship
13 proceedings as an attorney, whether Tina Morin arranged for
14 Ms. McCann to have contact with Judy Lowney without proper
15 consent, and whether Ms. Morin aided or induced Ms. McCann
16 to violate the Montana Rules of Professional Conduct.

17 The other issues are irrelevant and off the
18 table, in my view, and we are going to keep this proceeding
19 moving forward. So I'm going to be receptive -- just
20 warning counsel up front -- to objections on irrelevant
21 areas; okay?

22 Mr. Sherwood, you jumped up. You must have
23 something you want to say.

24 MR. SHERWOOD: Well, I'm well aware that this
25 body has a lot to do, and I got permission to subpoena a

1 whole lot of people.

2 I just want to tell you, Mr. Chairman, I don't
3 anticipate calling more than three of those witnesses.

4 CHAIRMAN TALEFF: Okay. Well, I appreciate the
5 heads-up on that. Thank you.

6 We'll be in recess until 1:20 in this matter.

7 Thank you.

8 (Proceedings in recess from 11:53 a.m. to
9 1:20 p.m.)

10 CHAIRMAN TALEFF: Back in session in the matter
11 of Tina Morin. Counselors are present.

12 Mr. Sherwood, I see your client is not present.

13 MR. SHERWOOD: I apologize, your Honor -- or
14 Mr. Chairman.

15 (Mr. Sherwood leaves courtroom to get
16 respondent.)

17 CHAIRMAN TALEFF: Okay. We are now all present.

18 Mr. Moog, call your next witness.

19 MR. MOOG: Thank you, Mr. Chair.

20 ODC calls Tina Morin as an adverse witness.

21 CHAIRMAN TALEFF: Please come forward. Counsel
22 noted that -- feel free to move that chair so that you're
23 more comfortable, but before you sit down, let me swear you
24 in, please.

25 (Witness sworn.)

1 CHAIRMAN TALEFF: Okay. Please be seated.

2 MR. SHERWOOD: Mr. Chairman, Ms. Morin has in
3 front of her a notebook that contains various documents and
4 notes, et cetera, that I think will aid her in her
5 testimony, and I'd ask that she be allowed to refer to
6 those during her testimony.

7 CHAIRMAN TALEFF: Well, if you -- if the question
8 comes up and the requisite foundation is laid for
9 refreshing her recollection, that's fine. But absent that
10 occurring, Mr. Moog is entitled to ask her questions based
11 on the exhibits that have been offered and admitted, and
12 we'll see what happens.

13 MR. SHERWOOD: Thank you, Mr. Chairman.

14 CHAIRMAN TALEFF: Mr. Moog?

15 MR. MOOG: Thank you, Mr. Chairman.

16
17 DIRECT EXAMINATION OF ADVERSE WITNESS TINA MORIN

18 BY MR. MOOG:

19 Q Please state your name for the record.

20 A Tina Morin.

21 Q And you're the respondent in this matter; is that
22 correct?

23 A Yes, it is.

24 Q When did you become licensed to practice law in
25 Montana?

1 A 1992.

2 Q You said 1992?

3 A Correct.

4 Q Okay. Since that time, which fields have you
5 practiced in?

6 A Again, predominantly at Poore, Roth & Robinson in
7 Butte, employment law with Don Robinson, and estates and
8 probate. And then toward the end of my term at Poore, Roth
9 & Robinson -- I was there 16, 16 and a half years -- I had
10 shifted into plaintiff's work, predominantly still in the
11 employment arena.

12 And then when I opened my own practice, I shifted
13 again in doing personal injury litigation, still
14 plaintiff's employment law, and also some securities
15 litigation.

16 Q Okay. And have you done much guardianship
17 practice?

18 A I have done a fair amount.

19 Q How many, approximate, guardianships have you
20 been involved with?

21 A Well, possibly -- maybe four direct
22 guardianships. But then in my time at Poore doing estates
23 and probate, that whole concept kind of just is in and
24 around estates and probate.

25 Q Okay. There's several exhibits that I have to

1 get offered and admitted, so if I can have you take a look
2 at Exhibit 36.

3 A Yes.

4 Q Do you recognize this document?

5 A I do.

6 Q What is it?

7 A It is my response, dated October 13th, 2016, to
8 the Bugnis' complaint against me at the Office of
9 Disciplinary Counsel.

10 Q And this is right near in time to when McCann and
11 DRM and you were meeting about her potentially representing
12 Judy Lowney; is that correct?

13 A I believe -- I believe this is about that time
14 frame, maybe November more.

15 Q Okay.

16 MR. MOOG: And move for admission of ODC's 36.

17 CHAIRMAN TALEFF: This was objected to on the
18 basis of relevance, hearsay, and foundation. I'm sorry,
19 it's objected to only on the basis of relevance. That
20 objection is overruled. This is a statement of a party, so
21 it's admitted.

22 Q (By Mr. Moog) Okay. And directing your
23 attention, Ms. Morin, to ODC's Exhibit 37, have you seen
24 this document before?

25 A Yes. Yes, this is the copy of the contract that

1 Genet McCann had with Disability Rights Montana.

2 Q Or with Mr. Lowney?

3 A Oh. I'm sorry. Yes.

4 Q And it includes -- the cover is actually an email
5 transmittal; is that correct?

6 A Correct.

7 Q To you from Genet?

8 A Yes.

9 MR. MOOG: I'd move for admission of ODC's 37.

10 CHAIRMAN TALEFF: This was subject to objections
11 of relevance, hearsay, and foundation. Those are
12 overruled. This is admitted. Exhibit 37.

13 Q (By Mr. Moog) And, Ms. Morin, directing your
14 attention to ODC's Exhibit 64. Might take a few minutes to
15 flip there.

16 A I have it.

17 Q And have you seen this document before?

18 A Yes.

19 Q Okay. And is it correct it's an email string
20 starting with you, response of Ms. McCann and then ending
21 in you?

22 A Not sure what you mean by ending. It's an email
23 from Genet McCann dated Friday December 16, 2016, to me.

24 Q Okay.

25 A And it begins, the order sent should suffice.

1 Q Right.

2 MR. MOOG: ODC moves for admission of 64.

3 CHAIRMAN TALEFF: This was objected to on the
4 basis of attorney-client privilege. I find that there is
5 no attorney-client relationship between Ms. McCann and
6 Ms. Morin. The Exhibit 64 is admitted.

7 Q (By Mr. Moog) And directing your attention,
8 Ms. Morin, to ODC's Exhibit Number 70.

9 A Yes.

10 Q Have you seen this email and attachments before?

11 A Yes.

12 Q And it's an email with attachments from Genet
13 McCann to yourself?

14 A Yes, dated December 28th, 2016, and it attaches
15 invoices that she sent to Ron Lowney for September and
16 October 2016.

17 MR. MOOG: ODC moves for admission of Number 70.

18 CHAIRMAN TALEFF: These were objected to on the
19 basis of hearsay. Unless Ms. McCann testifies, I find that
20 the requisite foundation has been made, and I will admit
21 Exhibit 70 as a business record, if nothing else.

22 MR. MOOG: Thank you, Mr. Chairman.

23 Q (By Mr. Moog) And, Ms. Morin, finally directing
24 your attention to ODC's Exhibit 78, proposed Exhibit 78.

25 COMMISSIONER FAURE: Jon, can you also speak up?

1 I've having a hard time hearing you.

2 MR. MOOG: I apologize. I will.

3 THE WITNESS: 78. Yes.

4 Q (By Mr. Moog) Have you seen this document before?

5 A Yes. I drafted it.

6 Q Okay. And is it your request -- or your response
7 to ODC's supplemental request for information?

8 A Correct, dated April 20th, 2017, addressed to
9 Sean Thompson.

10 MR. MOOG: ODC moves for 78, Mr. Chairman.

11 CHAIRMAN TALEFF: Okay. The relevance objection
12 is overruled and the Exhibit 78 will be admitted.

13 MR. MOOG: And, Mr. Sherwood, I have more
14 questions I'll reserve for cross, if you'd like, to speed
15 this along.

16 MR. SHERWOOD: I'm not sure I understand what
17 you're telling me.

18 MR. MOOG: I can complete my direct now, or I can
19 just cross after you've done your direct.

20 MR. SHERWOOD: Well, I intend to call Ms. Morin
21 in my case.

22 MR. MOOG: Okay. Is it okay if I reserve,
23 Mr. Chair?

24 CHAIRMAN TALEFF: It's your decision.

25 MR. MOOG: Yes. I'll reserve. I have witnesses

1 waiting.

2 CHAIRMAN TALEFF: Do you wish to conduct your
3 direct exam now, Mr. Sherwood, or wait until your case?

4 MR. SHERWOOD: Judge, I think it would be much
5 more fluid if I just reserve at this point and call her on
6 direct.

7 CHAIRMAN TALEFF: Okay. You may step down,
8 Ms. Morin.

9 MR. SHERWOOD: Did I just call you Judge this
10 time?

11 CHAIRMAN TALEFF: You did.

12 MR. SHERWOOD: I'm sorry, Mr. Chairman.

13 CHAIRMAN TALEFF: Notwithstanding my newfangled
14 hearing aides, I'm just ignoring those kinds of
15 attributions. We're just all too used to that.

16 MR. MOOG: ODC calls Steven Shapiro.

17 CHAIRMAN TALEFF: Mr. Shapiro, we know each
18 other, but raise your hand and I'll swear you in.

19 (Witness sworn.)

20 CHAIRMAN TALEFF: Okay. Thank you. The chair is
21 there for you to sit it in, if you feel more comfortable
22 doing that.

23 THE WITNESS: Thank you.

24 CHAIRMAN TALEFF: It's important, and at the same
25 time, difficult for us to hear a lot unless you kind of

1 either lean forward or move the chair forward.

2 MR. MOOG: Thank you, Mr. Chair.

3

4 DIRECT EXAMINATION OF STEVEN SHAPIRO

5 BY MR. MOOG:

6 Q Good afternoon, Mr. Shapiro.

7 Please state your name for the record.

8 A Steven Shapiro.

9 Q And a mailing address?

10 A 9 Friendship Lane, Clancy, Montana.

11 Q And what is your occupation, sir?

12 A I'm an attorney.

13 Q How long have you been practicing law?

14 A 38 years.

15 Q Which fields?

16 A I've engaged in the general practice of law. I
17 was at the McDonough, Cox and Simonton firm in Glendive for
18 four years. I was chief counsel of the workers'
19 compensation division for six years. I was an attorney for
20 the Department of Commerce for two years. And since 1992
21 I've been in private practice at Montana City. And for the
22 last 20 years I was the part-time contracted city attorney
23 for Boulder.

24 Q So sounds like some diverse experience.

25 A Yes.

1 Q Okay. Have -- during that time have you had
2 occasion to practice guardianship law?

3 A Yes, I have.

4 Q About how many guardianships have you been
5 involved with?

6 A Approximately 12 to 15 in which I was either the
7 attorney for the petitioner or attorney for the alleged
8 incapacitated person.

9 Q Okay. Do you know a woman by the name of Judy
10 Lowney?

11 A Yes, I do.

12 Q And how do you know Ms. Lowney?

13 A In 2011 her adult children, son and daughter,
14 asked my assistance to obtain a guardianship for Judy
15 Lowney, who is a disabled person.

16 Q Okay. And how did they come to find you? The
17 adult children, I mean.

18 A I think that Tammy Teeter, who is the daughter,
19 was signed up through the Hyatt Legal Insurance program,
20 and I was one of the attorneys that that program referred
21 cases to. So they got her in contact with me.

22 Q Okay. In that regard, did you have payment for
23 your fee set up through that program?

24 A Yes. The Hyatt Insurance program did pay a fee.

25 Q Okay. Was it nominal? Or was it -- do you

1 recall?

2 A It was expected for an uncontested guardianship
3 to be \$2,200, and that was all that they paid.

4 Q Okay. Can you advise the commission why Judy
5 suffers from a disability? What type?

6 A Judy Lowney was diagnosed by her physicians and
7 the psychologist who examined her to have multiple
8 sclerosis and dementia, and those being of increasing
9 degrees over time.

10 Q Okay. So she won't be getting better; is that
11 correct?

12 A That is correct.

13 Q Prior to your involvement with the adult
14 children, do you know whether or not Adult Protective
15 Services had been involved with the Lowney family?

16 A Adult Protective Services had been --

17 MR. SHERWOOD: Your Honor -- or, excuse me,
18 Mr. Chairman, I object to relevance.

19 CHAIRMAN TALEFF: Sustained.

20 MR. MOOG: Okay.

21 Q (By Mr. Moog) Can you advise the commission the
22 procedural history of the Lowney -- Judy Lowney's
23 guardianship case?

24 A I initiated a petition for guardianship in the
25 district court in Silver Bow County. An attorney was

1 appointed to represent Judy. A physician, who I believe
2 would have been her regular treating physician, was
3 appointed to report to the Court. A psychologist was lined
4 up and appointed to report to the Court, and a visitor was
5 appointed by the Court to report on Judy's condition.

6 Q As attorney on the case, would you be familiar
7 with the case register report?

8 A Yes.

9 Q Could you refer to ODC's Proposed Exhibit 1,
10 please.

11 A I'm at Exhibit 1.

12 Q Can you review that document, please.

13 A It is very lengthy, but indicates the various
14 filings in the district court in Silver Bow County.

15 Q In the Judy Lowney matter?

16 A In the -- yes, in the Judy Lowney matter.

17 MR. MOOG: Mr. Chair, I move for admission of
18 ODC's 1.

19 CHAIRMAN TALEFF: The objections included
20 foundation, hearsay, and an incomplete record.

21 I find that this appears to be a record of a
22 court of which we can take judicial notice.

23 I'm not sure, Mr. Sherwood, what your complaint
24 is or objection with regard to incompleteness. It
25 obviously stops at December 20th of 2016, and that's the

1 extent to which the commission would consider the document.

2 Am I missing something?

3 MR. SHERWOOD: Your Honor, there is a second case
4 history report, which is more complete, which clarifies
5 when the case was closed on August 14th, 2014, after the
6 remitter was sent down from the supreme court.

7 MR. MOOG: That's on the cover page -- the closed
8 open history is on the cover page of Exhibit 1.

9 CHAIRMAN TALEFF: Yeah. The commission will take
10 note of the document, such as it is, and you can make your
11 points during cross-examination, if you choose.

12 MR. SHERWOOD: Yes, Mr. Chairman.

13 CHAIRMAN TALEFF: Subject to that, Exhibit 1 will
14 be admitted.

15 MR. MOOG: Thank you, Mr. Chair.

16 Q (By Mr. Moog) Addressing your attention to
17 Exhibit 2, Mr. Shapiro -- is it okay if I call you Steven?

18 A Yes.

19 Q Okay. Call me Jon.

20 Do you recognize this document?

21 A Yes, I do.

22 Q What is it?

23 A This is caption order appointing attorney to
24 represent an alleged incapacitated person. It is a
25 document which I prepared in preparation of the

1 guardianship.

2 Q Okay. And the judge signed it?

3 A Yes. Signed by Judge Kurt Krueger of Silver Bow
4 County.

5 Q Okay. And it appoints Debbie Churchill as
6 attorney for Judy?

7 A Correct.

8 Q Did you draft this yourself or is it a form that
9 you found some place?

10 A This is the usual form of several forms that I
11 use in preparing any guardianship in which I'm representing
12 the petitioner, and this was based long ago on a state bar
13 form book, which I believe was copyrighted in about 1980.

14 But this is the standard form that I have used
15 for many years.

16 Q Okay. When this -- let me ask you this: Was
17 Mr. Lowney a party to this case?

18 A Mr. Lowney was an interested party because he
19 was -- okay. First of all, the Ronald L. Lowney appearing
20 in the first line of this order would have referred to the
21 son.

22 Q Junior?

23 A Junior.

24 Q Okay.

25 A So -- and then Ronald Lowney, Sr., was a party to

1 the proceeding in that it involved -- he had a legitimate
2 interest to participate, in that it was a petition
3 affecting his wife.

4 Q Okay. And who represented Mr. Lowney?

5 A Mr. Lowney was represented by four attorneys over
6 the course of time. There was John Myers, I believe, from
7 Whitefish. I think Jack --

8 Q Was his first attorney Robert Whelan?

9 A Robert Whelan from Butte was involved at some
10 point, and then Jack Myers from Whitefish, then Bill
11 Driscoll from Helena was involved, I believe, at the
12 hearing in 2013. And after the conclusion of that hearing,
13 an appeal was filed by Ronald Lowney, Sr., and in that
14 appeal he was represented by Tina Morin.

15 Q Okay. When Exhibit 2 was entered by Judge
16 Krueger back in 2011, did any party object to it?

17 A No.

18 Q Does it concern you generally when an adverse
19 party in one of your litigations cycles through attorneys
20 that way?

21 A It is --

22 MR. SHERWOOD: Relevance.

23 CHAIRMAN TALEFF: Sustained.

24 Q (By Mr. Moog) So Ms. Morin came on board for the
25 appeal; is that correct?

1 A Yes.

2 Q And some post-judgment issues, I presume?

3 A Yes. There were some matters that she raised
4 over the course of the next four years or more, yes.

5 Q Okay. Directing your attention to ODC's
6 Exhibit 10.

7 A Yes. Yes.

8 Q Have you seen this document before?

9 A Yes. It's a letter from Ms. Morin dated
10 December 3, 2013.

11 Q Okay. And addressed to whom?

12 A Addressed to Debbie Churchill, who is the
13 attorney appointed for Judith Lowney, and to myself.

14 Q Okay. And had you had phone conversations with
15 Ms. Morin before you got this letter?

16 A I believe that I had heard from her by telephone
17 twice, and then there were -- well, I don't recall in what
18 sequence, but I believe I received two telephone calls from
19 her. I did receive this letter, and then there were a
20 series of emails from her.

21 Q Okay. Directing your attention to ODC's
22 Exhibit 12.

23 CHAIRMAN TALEFF: The objection to Exhibit 12 is
24 overruled because Mr. Shapiro is testifying.

25 Go ahead and proceed with your questions.

1 Q (By Mr. Moog) Do you recognize this letter?

2 A This is an email from Don Martin at Tina Morin's
3 firm.

4 Q Are you on Exhibit 12, Mr. Shapiro?

5 A I'm sorry. Looking at the wrong item. Pardon
6 me.

7 Q Not at all.

8 A I'm looking at a letter that was composed by me,
9 dated December 9, 2013, and tries to respond to Ms. Morin's
10 previous letter.

11 Q Okay. And you were disagreeing with what was in
12 Ms. Morin's letter?

13 A I disagreed and tried to lay out all my
14 disagreements with her.

15 Q Okay. And directing your attention to ODC's
16 Exhibit 17.

17 A Exhibit 17 is a letter composed by myself on
18 March 27, 2014, addressed to Tina Morin, and, again,
19 indicating my disagreements with her -- her comments.

20 MR. MOOG: Okay. Move for 17.

21 CHAIRMAN TALEFF: 17 is admitted.

22 Q (By Mr. Moog) And I'm sorry, Steven, we have to
23 go back towards the beginning. Directing your attention to
24 ODC's Exhibit 3.

25 A Yes. I --

1 Q Do you recognize that order?

2 A Yes, I do. It's an order filed in the district
3 court on May 17, 2013, caption: Order regarding emergency
4 hearing held on May 15, 2013. It's an order issued by
5 Judge Krueger.

6 MR. MOOG: Move for 3.

7 CHAIRMAN TALEFF: The objection was relevance.
8 That is overruled. The order is admitted on the basis
9 simply that the order was entered as part of the record.

10 MR. MOOG: Okay.

11 Q (By Mr. Moog) And that is the order that swaps
12 out the guardians; is that correct?

13 A Yes, it does. That's when Bob and Debbie Bugni
14 became the guardians rather than Tammy Teeter and Ron
15 Lowney, Jr.

16 Q And what are the Bugnis' relationship to Judy?

17 A Bob Bugni is a brother of Judy Lowney, and Debbie
18 Bugni is the sister-in-law of Judy Lowney.

19 Q Okay. And the order speaks for itself, but can
20 you briefly explain to the commission why that change
21 happened.

22 A The children, Tammy and Ron Jr., were expressing
23 some concerns with the interference coming from Ron, Sr.
24 So -- and they were feeling such stress in not being able
25 to deal with their own father that they were asking to be

1 relieved of their duties. And the Bugnis stepped forward
2 and expressed that they were willing to help Judy.

3 Q Okay. At the time this order was entered, where
4 was Judy living?

5 A Judy had been in at least -- at least two
6 assisted living facilities in Butte. She was terminated
7 from both programs because of misconduct that was coming
8 from Ron. And either he was being disruptive or he was
9 encouraging Judy to be disruptive. So I think at the time
10 that this order was issued she had actually been kicked out
11 of the two programs and was at her home with Ron, Sr. And
12 the immediate concern -- part of the immediate concern was
13 that if she was not in an assisted living facility for
14 30 days or longer, then she would have lost her eligibility
15 for Medicaid.

16 Q Okay. But correct me if I'm wrong, but just
17 prior to this order being issued she had been living in
18 Helena at Renaissance?

19 A Yes. And she had actually been asked to leave
20 Renaissance because Ron was interfering with her care at --
21 at the program there.

22 Q Okay. So the point being is the adult children
23 had moved her to Helena?

24 A They had already moved her to Helena, and there
25 were problems again then with Ron interfering.

1 Q Okay. Subsequent to this order being issued,
2 were the Bugnis able to get Judy back to Renaissance?

3 A Yes. The Bugnis got her placed in the
4 Renaissance program again, and it was with the clear
5 understanding that Ron, Sr., would not be allowed to come
6 to the Renaissance.

7 Q He had been trespassed by Renaissance?

8 A He had been trespassed, and I believe Adult
9 Protective Services had been involved. And part of the
10 features that was important to have her at Renaissance was
11 it is a locked facility so that people cannot come in and
12 out without asking permission from the staff.

13 Q Okay. Okay. Steve, directing your attention to
14 ODC's proposed Exhibit 29.

15 A 29 is the report to the Court filed on
16 February 3, 2013, which was composed by me.

17 MR. MOOG: I'd offer 29, Mr. Chairman.

18 CHAIRMAN TALEFF: The objection is overruled.
19 It's admitted.

20 Q (By Mr. Moog) What was the genesis for this
21 report?

22 A We were informing Judge Krueger of the occurrence
23 of visitations from Ron and the involvement of Disability
24 Rights Montana, as they had come to the Renaissance living
25 facility and were trying to investigate what supposedly was

1 going on with Judy's condition at the request of Tina
2 Morin.

3 Q So is this the first reference in the record that
4 DRM had been investigating Judy's condition, meaning had
5 Ms. Morin identified this as an issue to the Court?

6 A No, this was not raised to the Court by
7 Ms. Morin. And I believe it was early in 2016 that it was
8 a surprise to me, in that I received a call from Roberta
9 Zenker indicating that Disability Rights Montana was
10 involved, and to the best of my recollection I had not been
11 informed by them that they were checking into any concerns.

12 Q Okay. To your knowledge, did DRM reach out to
13 the guardians?

14 A No, they had no information from DRM, and it was
15 just -- actually, it was from a -- from the Renaissance
16 living facility that -- they were the first ones who
17 informed me that Disability Rights Montana was involved.
18 Otherwise, I didn't know.

19 Q Okay. So Renaissance told you, and then Bobbie
20 Zenker called you?

21 A And eventually Bobbie Zenker called and indicated
22 they were checking into her living situation, how she was
23 being cared for.

24 Q Okay. Backing up to 2011 when the initial
25 litigation started, was Ron considered to be a potential

1 guardian at that point?

2 A As -- in 2011, Ron was having his own health
3 problems and he was not being considered as a guardian.
4 The petition was by the son and daughter, and I did not
5 hear at any point that Ron was objecting to the
6 guardianship as proposed.

7 Q Okay. So whether or not Judy was incapacitated
8 back in 2011 wasn't really at issue, was it?

9 A It was not an issue. It was well known that she
10 had MS and dementia, and I did not hear an objection from
11 anyone that she was actually an incapacitated person.

12 I certainly understand that there's a process
13 laid out in the statutes for the district court to
14 determine that she is an incapacitated person and all of
15 the information must be provided to the Court. But that's
16 the process I was going through, was to lay out all that
17 information for the Court.

18 Q Okay. And the Court did, in fact, determine that
19 Judy is incapacitated?

20 A Yes.

21 Q During the 2011 time frame, during these initial
22 guardianship proceedings, had Ron been committed to Warm
23 Springs?

24 A Ron was committed for an evaluation period. I
25 believe it was 90 days. But he was discharged after -- I

1 think it's standard procedure for mental health
2 commitments. He was committed by Judge Krueger of Silver
3 Bow County and went through the evaluation period and was
4 discharged.

5 Q Okay. At some point during the litigation was
6 Ron determined to be incapable of being the guardian of
7 Judy?

8 A He did not raise any objections or concerns about
9 his children, and then his brother and sister-in-law, being
10 the guardians until approximately in 2013, we had a hearing
11 in which he was represented by Bill Driscoll, and I believe
12 I understood the issues to be primarily about Ron being
13 able to visit his wife at her place of residence. And I
14 think he -- he may have, to some point, asked that he be
15 allowed to be the guardian himself, but that was very
16 clearly rejected by Judge Krueger.

17 Q On competent grounds?

18 A I'm sorry. Could you rephrase --

19 Q For good -- for good reason?

20 A Judge Krueger laid out in his order all of the
21 good reasons, and the fact of the matter is Ron had not
22 cared for Judy in the past, and he had actually interfered
23 in her care at the living facilities in Butte and Helena.
24 And I think Tammy Teeter was at the hearing in 2013 and
25 explained what was going on, and certainly the Bugnis were

1 there. And Judge Krueger made a very clear decision that
2 Ron could not be the guardian, and the permanent guardians
3 would be Bob and Debbie Bugni.

4 Q And those determinations were upheld on appeal;
5 is that correct?

6 A They were appealed to the Montana Supreme Court.
7 The decision of the district court was affirmed, and I
8 think to the point of both courts found that Ronald, Sr.,
9 his conduct in the proceedings was frivolous.

10 Q To the point where I believe you were awarded
11 attorney's fees against Ron?

12 MR. SHERWOOD: Objection; leading.

13 CHAIRMAN TALEFF: Sustained.

14 Q (By Mr. Moog) Were you appointed attorney's fees
15 from Ron?

16 A I was awarded attorney fees by the district
17 court. Debbie Churchill, the attorney for Judy, was
18 awarded attorney fees by the district court. And we've not
19 collected those.

20 Q And I believe those fees were appealed by
21 Ms. Morin; correct?

22 A Yes. And they were affirmed on appeal.

23 Q It seems unusual that there's an award of
24 attorney fees in guardianship cases. Can you explain why
25 the Court imposed those?

1 A It appears, from the decisions of the courts,
2 they simply found that the conduct of Ronald, Sr., in
3 pursuing these arguments without any factual basis and
4 really going on and on beyond the bounds of having, like, a
5 reason to appeal, both the district court and supreme court
6 determined that his conduct was frivolous.

7 And, yes, it is unusual, and they -- I believe
8 the supreme court disagreed with the district court in
9 the -- the legal reference of which the district court had
10 awarded fees, but the supreme court said, nevertheless,
11 here's the reason, and in this case where the appeal is
12 frivolous, we certainly affirm the awarded fees.

13 Q Okay. You mentioned Ms. Churchill. Did she work
14 on the appeal with you?

15 A Yes. We worked on one brief together.

16 Q Okay. So I take it then Ms. Churchill joined
17 your position with respect to the district court
18 litigation?

19 A Yes.

20 Q Directing your attention to Exhibit 84, Steven.

21 A Yes. I'm at Exhibit 84, which is the brief of
22 the appellant, that being Ronald Lowney, Sr.

23 Q And who filed this on behalf of Ron?

24 A That was filed by Tina Morin.

25 Q Okay. And if you'll flip towards the back,

1 Page 30 of 30.

2 A Yes.

3 Q Is Ms. Churchill listed here as attorney for
4 Judy?

5 A Yes. This -- Page 30 is the certificate of
6 service on the brief that indicates that Debbie Churchill
7 is the GAL and attorney for Judy.

8 Q And this is electronically signed by Tina Morin;
9 is that correct?

10 A Yes.

11 Q Directing your attention to Exhibit 85.

12 A This is the reply brief of appellant Ronald
13 Lowney, Sr.

14 Q And similarly, if we flip towards the back --
15 CHAIRMAN TALEFF: Wait. Go ahead. Excuse me.

16 Q (By Mr. Moog) Exhibit 85, Page 15 of 16.

17 A Yes, the certificate of service.

18 Q And, again, Debbie Churchill is listed as
19 attorney for Judy A. Lowney?

20 A She is listed as GAL and attorney for Judy.

21 Q And this is -- I don't know if Ms. Morin signed
22 this one. It's a filed copy, but this was filed by
23 Ms. Morin; correct?

24 A Yes. This is the same brief which I received a
25 copy of, and it also indicates on the front cover page

1 Debbie Churchill as attorney for Judy.

2 Q Okay. From your interactions with Ms. Morin --
3 phone calls, emails, briefing -- is there any doubt in your
4 mind that she knew that Debbie Churchill was the lawyer for
5 Judy?

6 A Not in my mind. I don't have any question. I
7 can't -- and from my understanding of correspondence and
8 briefs, Tina Morin was addressing correspondence to Debbie
9 Churchill as attorney for Judy.

10 Q Directing your attention to Exhibit 81 in front
11 of you. This is a cover letter from Tina addressed to
12 Ms. McCann, but I direct your attention to Page 2 of 3 of
13 that exhibit.

14 Take a minute and read that, please.

15 A Okay. I've read Page 2 of 3.

16 Q From your knowledge of the guardianship
17 proceedings, is there some inaccuracies in this letter, or
18 sworn statement?

19 A Well, I have been involved in this guardianship
20 since 2011. I believe that I'm aware of all of the details
21 of the case. I'm in frequent contact with the Bugnis. And
22 there are, in fact, many inaccuracies in this document.

23 Q Let me ask you this: Did Bob and Debbie rip
24 apart Judy's marriage?

25 A We did, in fact, go through standard procedure in

1 a guardianship proceeding in the district court, initiated
2 by their children and later taken up by the Bugnis, as I've
3 described.

4 Q Right.

5 A The actual decision was made by Judge Krueger
6 after he was presented with all of the information,
7 including reports of the attorney for Judy, the visitor, a
8 psychologist, and a physician. We had numerous hearings --
9 and I believe the record indicates six hearings or more,
10 which is very unusual for a guardianship, but I think at
11 least indicates Judge Krueger's diligence in being sure
12 that he was aware of everything going on.

13 In this letter it indicates that Bob and Debbie
14 Bugni are motivated by greed to take her Social Security,
15 her inheritance, and so forth. In fact, Judy has been
16 receiving Medicaid. Her Medicaid goes to the Renaissance
17 assisted living facility to pay for her care. And I
18 presume she would not be receiving Medicaid for those
19 services if the Medicaid program at the State Department of
20 Health had not taken her application and determined that
21 she had no other assets.

22 Q Let me ask you this, Steven: Did her half of the
23 marital estate have to be spent down back in 2011 to
24 qualify for Medicaid?

25 A Apparently -- her half would have been spent

1 down, but apparently they arranged -- I don't know if she
2 was involved or her husband -- but even the family home in
3 Butte was transferred to their children, which I think, in
4 folklore, is how you become eligible for Medicaid. But as
5 far as I knew, Ron was going to stay at home, so it was not
6 necessary to transfer their home, even, to their children.

7 But somehow they had -- Judy's share of whatever
8 she had had been spent down, so she became eligible for
9 Medicaid and that's what paid for her care.

10 Q And long story short, is there any money to steal
11 even if the Bugnis had wanted to?

12 A There is nothing.

13 Q As a matter of fact, there is shortfall every
14 month, isn't there?

15 A There is a shortfall, and even the support which
16 Judge Krueger ordered Ronald Lowney, Sr., to pay, he's
17 never paid.

18 Q Okay.

19 A So, yes, it's Bob and Debbie Bugni who have been
20 making up whatever odds and ends that Judy needs.

21 Q Whatever Medicaid and Social Security doesn't
22 cover?

23 A Whatever they don't cover, the Bugnis have been
24 taking care of.

25 Q Okay. And do the Bugnis have any claim on Judy's

1 inheritance or Mr. Lowney's retirement?

2 A I don't know what inheritance there may be. I've
3 not seen or heard of an inheritance. There may be
4 something from her parents from long ago -- and I don't
5 take it they were wealthy people, and if there was
6 anything, it's long since been gone. But -- so all of the
7 Medicaid is spent for Judy's care. There's no way for
8 anybody to attach Ron's retirement. I presume that that's
9 what he's living on. And he hasn't paid his bills for
10 attorney fees as ordered by Judge Krueger.

11 CHAIRMAN TALEFF: I'm sorry, Mr. Shapiro. We're
12 going way far afield here.

13 THE WITNESS: I'm sorry.

14 Q (By Mr. Moog) Next paragraph down Mr. Lowney
15 reports to -- a complaint about the visitation issue.

16 It's true, isn't it, that Judge Krueger limited
17 Ron's visitation to once monthly, if practical; right?

18 A Yes. And it was my understanding, clearly, from
19 Judge Krueger, that he was limiting Ronald, Sr.'s access to
20 Judy.

21 Q Okay. Have you received any reports from
22 Renaissance that Judy has not been taken care of,
23 specifically around July 2017? Third paragraph down.

24 A I've been to the Renaissance facility myself. It
25 is a very clean, very nice facility on the south end of

1 Helena. And, no, I've not heard of any problems with
2 Judy's care.

3 Q Okay. Fourth paragraph, is Judy imprisoned at
4 the Renaissance?

5 A No. It's a home-like atmosphere, and, yes, there
6 is a lock on the front door, which is designed mainly for
7 keeping out persons who are not authorized to be there.

8 Q Okay.

9 A But she -- she is in there. There's plenty of
10 room to move about. She does have outings.

11 Q Okay. Is it an accurate assessment that
12 Renaissance is an assisted death home?

13 A I certainly would not characterize it as such.

14 Q Okay. And this sworn statement is attached to a
15 letter from Tina Morin.

16 Was it clear to you from dealing with Ms. Morin
17 in this case that she was just parroting her client's
18 statements?

19 MR. SHERWOOD: Leading.

20 CHAIRMAN TALEFF: I'm sorry. I did not hear.

21 MR. SHERWOOD: Leading.

22 CHAIRMAN TALEFF: Sustained.

23 Q (By Mr. Moog) Do you have an opinion about
24 whether or not Ms. Morin is just parroting Mr. Lowney's
25 statements?

1 A It appears to me that she is, but obviously I
2 haven't been part of those conversations.

3 Q Well, and that's why your opinion is relevant.

4 A My opinion is relevant in that Ron Lowney, Sr.,
5 has been very agitated and demanding, and these are the
6 same kind of communiqués that I've received from Ms. Morin
7 demanding more visits and demanding that she come home.
8 And Judge Krueger specifically ordered that there shall not
9 be unsupervised visits. And we keep getting demands
10 repeatedly that she be dropped off or -- at his home -- or
11 he be able to pick her up and take her to Butte. And that
12 is not happening. The guardians are not allowing that.

13 Q Okay. And the guardians are -- basically they've
14 stepped into a parental role over Judy; is that correct?

15 A Yes, that is the role of guardians.

16 Q And Ms. Lowney has the rights and duties as a
17 minor?

18 MR. SHERWOOD: Objection; leading.

19 CHAIRMAN TALEFF: Sustained.

20 Q (By Mr. Moog) What is the legal status of
21 Ms. Lowney?

22 A Ms. Lowney is essentially as -- she's essentially
23 in a child-like position. She's subject to the direction
24 and control of the guardians. And I think in some of
25 Mr. Lowney's objections, such as the guardians interfering

1 with their marriage, I am aware that the supreme court has
2 specifically indicated that guardians may not interfere
3 with a marriage, and they have not done so.

4 Q They can't file for divorce?

5 A No, they cannot file for divorce, but that's the
6 restriction. Nevertheless, Judy is subject to the
7 direction and control of the guardians, and subject to the
8 exclusion of all other persons who might assert that they
9 want to indicate control over Judy.

10 Q Steven, during the pendency of the appeal and
11 thereafter, did Ms. Morin relay concerns to you other than
12 the visitation issue?

13 A I received many communications from Ms. Morin
14 over the course of -- well, since 2013, I think is when she
15 took over the appeal.

16 Q What's been the general tone of those written
17 communications?

18 MR. SHERWOOD: Objection; relevance.

19 CHAIRMAN TALEFF: I didn't understand the
20 question or hear the question.

21 MR. MOOG: What was the general tone of those
22 communications?

23 CHAIRMAN TALEFF: And your objection was what?

24 MR. SHERWOOD: Relevance.

25 CHAIRMAN TALEFF: The question is certainly

1 vague, and I'm -- I'm having a difficult time understanding
2 the relevance to the four issues that I've identified
3 repeatedly for the parties.

4 But if you can characterize the tone and do it
5 somewhat succinctly, it would be appreciated.

6 THE WITNESS: I'll be brief.

7 Rude, obnoxious, argumentative.

8 I tried to respond to these, as indicated in
9 those earlier letters which you -- which you showed us, and
10 her communications started coming through email. I -- I
11 don't care for email as a means for people to talk things
12 over.

13 CHAIRMAN TALEFF: Mr. Shapiro, the question --
14 I'm sorry to interrupt you, but -- was what was the tone.
15 And whether Ms. Morin is rude or discourteous is not one of
16 the issues before the commission. So I'm going to politely
17 sustain the objection and ask you to move on, Mr. Moog.

18 MR. MOOG: I will do so.

19 Q (By Mr. Moog) So these other issues that I've
20 talked to you about that -- were happening hand in hand
21 with the visitation dispute; correct? Like the money
22 complaints? We've already touched on that?

23 A Yes.

24 Q Was there any merit to Ms. Morin's complaints
25 about the money issue?

1 A No.

2 Q What about the communion issue that's been
3 addressed?

4 A She has received communion at the Renaissance
5 facility. I am not sure if it's by a priest or a
6 layperson, but I'm advised that she has received communion.

7 Q Okay. And can you briefly address this voting
8 issue? What happened in November of 2016?

9 A She did -- with the assistance of the guardians,
10 she registered to vote in Lewis and Clark County.

11 Apparently Ron, Sr., had a concern about her
12 registration in Silver Bow County, but somehow the
13 information was conveyed that she was later registered in
14 Lewis and Clark County.

15 Q And voted here?

16 A And she voted in Lewis and Clark County.

17 Q Are you aware that DRM assisted her in voting
18 absentee in Butte?

19 A I don't recall that I'm aware of that.

20 Q Mr. Shapiro, were you aware back in October 2016
21 that Genet McCann was visiting Judy at the Renaissance
22 center?

23 A I was not initially aware of those contacts.

24 Q Including the later November meeting then?

25 A I did not become aware of them until after they

1 happened.

2 Q And how did you become aware of them?

3 A I think there was a filing by Genet McCann in the
4 district court seeking to interfere in the guardianship.

5 Q Prior to that time, had you heard from
6 Ms. McCann?

7 A No.

8 Q How about from Ms. Morin about that issue, that
9 petition?

10 A No, that was not -- that was not communication
11 made to me.

12 Q Okay. And to your knowledge did the guardians
13 know about Ms. McCann visiting Judy at Renaissance?

14 A No, they were not aware. And they expressed
15 their surprise to me when they found out.

16 Q Did you have to respond to McCann's sixth writ of
17 mandate?

18 A Yes.

19 Q Was that a frivolous motion?

20 A In my opinion, yes. And she ultimately withdrew
21 it.

22 Q Okay. Approximately how many hours did you spend
23 on responding to that petition?

24 MR. SHERWOOD: Objection; relevance.

25 MR. MOOG: Goes to prejudice.

1 CHAIRMAN TALEFF: I'll allow it.

2 THE WITNESS: Probably up to 10 hours.

3 Q (By Mr. Moog) Okay. And was that paid time to
4 you?

5 A No. I have been representing the Bugnis pro bono
6 since 2013.

7 Q Okay. Do you know whether or not Ms. Morin
8 continues to attempt to contact Judy through a third party?

9 A Even as late as about four to six weeks ago,
10 Genet McCann appeared at the Renaissance facility and used
11 some kind of misrepresentation to the staff in order to
12 take Judy out of the building in a wheelchair. And our
13 understanding was it was -- well, she took Judy out, and
14 someone observed her signing some piece of paper outside
15 the building.

16 It was not Tina Morin present, but it was Genet
17 McCann present. The staff called the police. And as I
18 understand it, the City of Helena has filed charges against
19 Genet McCann.

20 Q And that happened after Ms. McCann was disbarred?

21 A Yes. That happened in about September, but
22 certainly she was already disbarred by this body. And the
23 supreme court.

24 Q Have you received any reports that Ron has
25 attempted to contact Judy surreptitiously with legal

1 advice?

2 MR. SHERWOOD: Objection; competence, relevance.

3 CHAIRMAN TALEFF: I'd like to hear some
4 foundation. And if it can't be tied to Ms. Morin, what's
5 the relevance?

6 MR. MOOG: Okay. I'll move on.

7 CHAIRMAN TALEFF: You can explore it. I just
8 want some foundation.

9 MR. MOOG: I'll ask Ms. Morin.

10 Q (By Mr. Moog) Mr. -- Steven, from your experience
11 in the guardianship proceedings after Ms. Morin came on
12 board, does it seem to you that she's able to appreciate
13 the realities of the situation?

14 MR. SHERWOOD: Objection; relevance.

15 CHAIRMAN TALEFF: Sustained.

16 Q (By Mr. Moog) Does it seem to you that Ms. Morin
17 retained objectivity during this litigation?

18 MR. SHERWOOD: Objection; relevance.

19 CHAIRMAN TALEFF: I'll allow that question. It
20 hits pretty close to opinion evidence rather than some
21 actual, factual evidence. So you may answer the question.

22 THE WITNESS: Could you repeat, please?

23 Q (By Mr. Moog) During this litigation, did it seem
24 to you that Ms. Morin maintained objectivity?

25 A It did not seem like it to me, no.

1 Q Do you have any concerns for Mr. Lowney?

2 MR. SHERWOOD: Objection; relevance.

3 CHAIRMAN TALEFF: Sustained, unless -- unless you
4 can tie it in to Ms. Morin.

5 Q (By Mr. Moog) Steven, did Ron submit an ethical
6 grievance concerning you to my office, to your knowledge?

7 A Yes.

8 Q I'd direct your attention to Exhibit 82.

9 A I'm looking at Exhibit 82.

10 Q Have you seen this document before?

11 A Yes.

12 Q Is it Mr. Lowney's grievance against you?

13 A It appears to be.

14 Q Does this have any merit whatsoever?

15 A No, it does not, in my opinion.

16 Q Do you suspect Mr. Lowney had help drafting this?

17 A That would be my expectation, as I don't believe
18 that Mr. Lowney himself would have been able to compose
19 this kind of discussion, and including with reference to
20 the --

21 MR. SHERWOOD: Objection; non-responsive.

22 MR. MOOG: There's an objection --

23 CHAIRMAN TALEFF: Oh. I'm sorry. I didn't hear
24 an objection.

25 MR. SHERWOOD: I apologize. I objected as

1 unresponsive to the question.

2 CHAIRMAN TALEFF: That objection is overruled.

3 Q (By Mr. Moog) Mr. -- Steven, would it surprise
4 you to learn that I was accused of being your agent on
5 Friday?

6 A Yes, I was surprised.

7 Q Have you ever requested that ODC take any action
8 in this matter?

9 A No, I have not.

10 Q Have you ever directed my actions?

11 A I have not.

12 Q Can you tell the commission how you became
13 involved in this prosecution?

14 A I was representing the Bugnis, Deb and Bob,
15 for -- well, since 2013, and I was conveying to them the
16 communications that I was receiving from Tina Morin. And
17 they indicated that they were concerned that I was having
18 to deal with all of this pro bono when it really was not
19 accomplishing anything with -- the main thing that was
20 supposed to be accomplished in the guardianship was taking
21 care of Judy. And all of the communiqués that we received
22 from Tina Morin did not help with that.

23 So it was, in fact, Debbie Bugni who filed the
24 complaint with ODC and informed me sometime after that she
25 had done so. But I certainly, myself, did not initiate

1 this complaint.

2 Q And how did you and I become connected?

3 A I have been a witness and have been available to
4 you as needed, and I have done my best to not be involved
5 with you at all unless you ask me for something -- like for
6 information, for factual matters, and for, like, my
7 interpretation of the guardianship chapter.

8 But other than that, I've been quiet unless you
9 ask me for something.

10 Q And you did not assist the Bugnis in lodging
11 their grievance?

12 A No, they composed that themselves.

13 Q Have you had occasion to review Ms. Morin's
14 responses to their grievance?

15 A Yes.

16 Q And that's Exhibits 36 and 78.

17 Briefly, do you have any comment on the factual
18 accuracy of her responses?

19 A I don't know to what extent you want me to go
20 through all of this, but I -- to me, suffice it to say, and
21 for the sake of the time of the commission, I think I
22 disagree with everything.

23 This started out with a standard guardianship and
24 there were reasons for everything that was done that
25 followed standard procedure. And I think that my

1 responsibility to the Court is to present a matter that I
2 have already screened. And I do not want to get into a
3 contested guardianship. I've heard reference at various
4 times in preparation to, like, why didn't we have a jury
5 trial? Well, we didn't have a jury trial, I guess, because
6 I didn't want to get into that. I would not have presented
7 a case to the district court in which I thought there was
8 any question that Judy Lowney needed a guardian.

9 And certainly I needed to follow the procedures
10 to show Judge Krueger that everything was lined up and this
11 was a proper situation in which a guardian should be
12 appointed. But I did not ever think about getting into a
13 situation in which it would be a contested guardianship.

14 And --

15 Q When did it become contested?

16 A Well, throughout 2012 and '13, Ron Lowney, Sr.,
17 was agitating at various times for more visitation. And
18 when he couldn't get what he wanted -- to see his wife as
19 often as he wanted and take her home and everything he
20 wanted to do -- then I think by the big hearing in 2013, he
21 was asking that he be made the guardian.

22 I don't know that that was even necessary --

23 CHAIRMAN TALEFF: But that's the -- that's the
24 date. 2013. The question was when.

25 THE WITNESS: When? Probably in 2013 was when it

1 got -- started getting out of hand. And certainly by 2014,
2 in the appeal, it was getting out of hand.

3 Q (By Mr. Moog) Okay. In your approximately five
4 years of experience dealing with Ms. Morin, do you believe
5 she is a good example of a Montana lawyer?

6 MR. SHERWOOD: Objection; relevance.

7 CHAIRMAN TALEFF: Sustained.

8 MR. MOOG: Thank you. That's all I have, Mr.
9 Chair.

10 CHAIRMAN TALEFF: We're going to take a 10-minute
11 break. In fact, let's take a little bit longer. Be back
12 in your seats at 10 minutes to 3:00, please.

13 We'll be in recess.

14 (Proceedings in recess from 2:31 p.m. until
15 2:50 p.m.)

16 CHAIRMAN TALEFF: Let's resume. We're back in
17 session at 2:50.

18 Mr. Shapiro is still on the stand.

19 Mr. Moog, I'm sorry, I don't recall whether
20 you've concluded your exam or not.

21 MR. MOOG: I have.

22 CHAIRMAN TALEFF: Okay.

23 Mr. Sherwood, it's your cross-exam.

24 MR. SHERWOOD: Thank you, Mr. Chairman.

25 ////

1 CROSS-EXAMINATION

2 BY MR. SHERWOOD:

3 Q So, Mr. Shapiro, we've met; right?

4 A Yes.

5 Q And I interviewed you at your office; is that
6 correct?

7 A Yes.

8 Q And my investigator recorded that interview
9 and -- do you recall that?

10 A Yes.

11 Q And then I would have sent you a copy of a sound
12 recording of that interview, together with a transcript of
13 the interview.

14 Did you receive those?

15 A Yes.

16 Q And at one point did I write and ask you if you
17 had reviewed the transcript and had any corrections; is
18 that correct?

19 A Yes.

20 Q And did you have any corrections?

21 A I did not note any specific corrections for you,
22 but I indicated that certainly I may respond or interpret,
23 depending on your questions.

24 Q Well, did you find any inaccuracies?

25 A No specific inaccuracies.

1 Q So, Mr. Shapiro, you said, I think repeatedly
2 now, that this was done -- this -- this guardianship
3 proceeding was done in a standard fashion.

4 Did you say that?

5 A Yes.

6 Q And what is a standard fashion?

7 A Standard fashion, in my mind, is to prepare a
8 petition to have appointed the necessary parties to examine
9 and report upon the alleged incapacitated person and
10 eventually to obtain orders from the district court.

11 Q Okay. And among those orders, do -- is it
12 standard fashion to ask for the appointment of an attorney?

13 A Yes.

14 Q And is it standard fashion to ask for the
15 appointment of private counsel?

16 CHAIRMAN TALEFF: I'm sorry, Mr. Sherwood. I'm
17 having a hard time hearing you.

18 MR. SHERWOOD: You know, I apologize. I'll be
19 louder.

20 CHAIRMAN TALEFF: That would be good.

21 MR. SHERWOOD: How's that?

22 CHAIRMAN TALEFF: The courtroom is not set up for
23 a mic at that position, and it's makes it difficult. It's
24 really unfair, but if you wouldn't mind speaking up, I'm
25 absolutely sure the commission and the court reporter would

1 appreciate it.

2 MR. SHERWOOD: Yes, Mr. Chairman.

3 Q (By Mr. Sherwood) So you -- is it standard
4 practice to ask for the appointment of a private attorney
5 to represent the person who is the subject of the
6 guardianship?

7 A The statute provides for various options for
8 appointment of attorney to represent the alleged
9 incapacitated person. In my practice, it is customary for
10 the -- the attorney preparing the guardianship to nominate
11 a licensed attorney to the district court, and then the
12 district court makes the decision whether to appoint that
13 attorney.

14 Q So you indicated you've been doing this for a
15 long time, and you used this form that you got out of a
16 form book for the order for Judge Krueger to sign; right?

17 A That was the -- the origin of the form for
18 appointment of an attorney for the alleged incapacitated
19 person appears to have originated in a state bar form book.
20 And I've used it several times.

21 Q Okay. And do you have any knowledge of any
22 change in the law regarding the language in that form in
23 2006?

24 MR. MOOG: Objection; relevance.

25 CHAIRMAN TALEFF: Overruled. If he knows.

1 THE WITNESS: I'm not aware specifically of what
2 changes you're referring to.

3 MR. SHERWOOD: May I have just a minute?

4 CHAIRMAN TALEFF: Yes.

5 Q (By Mr. Sherwood) Could you, sir, please take
6 look at Exhibit 2.

7 A I'm looking at Exhibit 2, which is the order
8 appointing an attorney.

9 Q And this is the order we're talking about that
10 you believe had origins in some form book?

11 A Yes.

12 Q Okay. And we see that it says that Debbie
13 Churchill, attorney at law, with her address, is hereby
14 appointed to represent Judith Ann Lowney in the proceedings
15 before the Court and shall have the powers and duties of a
16 guardian ad litem.

17 A Yes, that is what it says.

18 Q Okay. And are you aware of any change in the law
19 in 2006 which struck from the law the language at the end
20 of that -- "in the proceedings before the Court and shall
21 have the powers and duties of a guardian ad litem"?

22 A I am not aware of the -- aware of any changes in
23 the law which you refer to, and -- unless you would provide
24 me with the verbiage of the law so I could review and
25 compare.

1 Q Well, I -- if I could show you the senate bill,
2 but you wouldn't recognize it. You've never seen it
3 before; right?

4 A Senate bill?

5 Q Yes.

6 A Probably not, but I may have. I don't know.

7 Q So it appears -- well, let's go back a minute.
8 So Debbie Churchill. How do you know Debbie
9 Churchill?

10 A She's a colleague attorney in the Helena
11 community.

12 Q And have you ever asked a court to appoint her in
13 a guardianship case before?

14 A I believe we have participated in more than one
15 guardianship, but I -- I do not recall before or after this
16 one.

17 Q And has she ever been involved in a guardianship
18 in which she asked the Court to appoint you?

19 A Yes.

20 Q How many times?

21 MR. MOOG: Objection; relevance.

22 CHAIRMAN TALEFF: Overruled.

23 THE WITNESS: Probably at least twice.

24 Q (By Mr. Sherwood) Okay. And when that occurred,
25 did you send a bill for your services to somebody?

1 MR. MOOG: Objection; relevance.

2 CHAIRMAN TALEFF: I'm not sure where it's going,
3 and it's -- I don't know that the question -- I'm sorry. I
4 don't want to inject myself in the counsel, but I don't
5 know in what capacity he was appointed counsel, so...

6 MR. SHERWOOD: Well, were -- let me ask.

7 Q (By Mr. Sherwood) Were you appointed using a form
8 similar -- based on a motion that was similar to this form?

9 A I do not have specific recollection about the
10 form upon which I may have been appointed. I just don't
11 remember.

12 Q Okay. Well, when you were appointed, did you
13 receive income as a result of serving in that capacity?

14 A In the capacity of attorney for the incapacitated
15 person?

16 Q Yes.

17 A Yes, I expect I received some income.

18 Q So what do you think the role of a guardian ad
19 litem is?

20 MR. MOOG: Objection, relevance, calls for a
21 legal conclusion.

22 CHAIRMAN TALEFF: As phrased, I will sustain
23 that.

24 Q (By Mr. Sherwood) Well, you represent currently
25 the guardians, Robert and Debbie Bugni. What's your

1 obligation in representing them?

2 A I give them legal advice and representation in
3 the context of this guardianship.

4 Q Okay. And would you agree that Rule 1.2 would
5 require you to do what they asked you to do within the
6 bounds of ethical considerations?

7 MR. MOOG: Objection; relevance, outside the
8 scope.

9 CHAIRMAN TALEFF: Sustained.

10 Q (By Mr. Sherwood) Well, back to Exhibit 2. This
11 order says that -- purports to say that Ms. Churchill, or
12 the motion -- well, this is your order here, I guess -- is
13 to serve as attorney for Ms. Lowney; right?

14 A It indicates that the Court is appointing Debbie
15 Churchill to be -- to represent Judith Lowney in the
16 proceedings before the Court and shall have the powers and
17 the duties of a guardian ad litem.

18 Q I know it says that. But does that mean she's
19 supposed to play the role of attorney and guardian ad
20 litem?

21 A I take it as this order means exactly what it
22 says. I'm not familiar with what -- the statute may have
23 been amended in 2006, but I think we also took a look at a
24 civil rule that indicated that the district court, at any
25 time, may appoint a guardian ad litem to represent an

1 individual.

2 I take it as this form indicates that the Court
3 is appointing Debbie Churchill as attorney for Judith
4 Lowney with the powers and duties of a guardian ad litem.

5 And may I expound on that?

6 Q Go ahead.

7 A Okay. And I take it, in some situations, the
8 alleged incapacitated person may be unable to express their
9 wishes and how to proceed, and this particular attorney,
10 who is appointed to represent that alleged incapacitated
11 person, is given the authority by the Court to make
12 decisions on her behalf. And this attorney is not being
13 placed in a permanent role of guardian, by any means, but
14 it's a temporary order of the Court that this person shall
15 be the attorney with the powers of a guardian ad litem.

16 And I presume that at the time that they exercise
17 those powers, that they will be so advising the Court of
18 the person's particular problems so that they are not able
19 to express their wishes.

20 Q Well, we've seen this, today, footage of
21 Ms. Lowney saying, I want to go home; of Ms. Lowney saying,
22 I want to spend time with my family and my husband.

23 You're aware that she made those representations;
24 right?

25 A I'm aware. And I understand from all that we've

1 been through that Judy Lowney is an incapacitated person
2 who suffers from dementia and multiple sclerosis. And,
3 yes, she expresses that she would certainly like to go
4 home, but she is not able to go home and receive the care
5 that she needs.

6 Q So standard procedure, in your mind, is that her
7 wishes are not -- no one advocates for them.

8 Is that what you're saying? Because she is
9 purportedly impaired?

10 A Not at all. I think that the attorney for the
11 alleged incapacitated person should duly report to the
12 Court what information that they are able to obtain from
13 that person, and indicate what their wishes are and what
14 the concerns of the attorney are.

15 Q And the attorney then says this is what should
16 happen because it's in my client's best interest. Is that
17 what you're saying?

18 A The attorney, along with the visitor and the
19 physician and the psychologist, are going to report to the
20 Court, and, as in this case, it ultimately had to be the
21 district judge who would put all the information together
22 and make a decision about what would happen with Judith
23 Lowney.

24 Q So is it this person's -- somebody appointed
25 under this order, it's their job to report to the Court

1 that this is in the best interest, and then the Court
2 makes -- of Ms. Lowney -- and then the Court makes the
3 decision. Is that it?

4 A I do not ever expect that the district judge is
5 going to buy what anybody presents to them without the
6 judge's own analysis of what the circumstances are. That
7 includes the information provided by this attorney for the
8 incapacitated person, along with the information from the
9 visitor, the psychologist, and the physician. It all has
10 to come together.

11 Q So who filed a motion on Judy's behalf that would
12 allow her to attend the hearing in which a ruling was made
13 that she would be placed in an assisted living facility
14 with a locked door? Who filed a motion that said she would
15 be even attending that hearing or having anything to say?
16 Who filed a motion on her behalf to say she wants to go
17 home? Did anybody do that?

18 A I'm not aware that anyone did.

19 Q Right. So this Ms. Churchill, are you saying
20 that she didn't have a duty to do that?

21 MR. MOOG: Objection; calls for a legal
22 conclusion.

23 CHAIRMAN TALEFF: Overruled. I think the door's
24 been opened, and I think -- I keep saying Ms. Churchill's
25 role is a pivotal issue here, so we need to get to that.

1 So please answer if you can.

2 THE WITNESS: Can you present the question to me,
3 please?

4 Q (By Mr. Sherwood) What was Ms. Churchill supposed
5 to do, based on this order, if Judy Lowney says, I want to
6 go home; I want to see my husband and I want to live with
7 my family.

8 What was she supposed to do based on this order?

9 A She was to report to the Court all of the
10 information that she was able to gather regarding the facts
11 and circumstances of Judith Lowney, and that included the
12 attorney would also be aware of the information from the
13 psychologist and the physician and the visitor, of what the
14 person's circumstances are.

15 Q So could we go to Exhibit 4, please.

16 And when we look at 4, we see we have a report of
17 guardian ad litem. Do you see that?

18 A Yes.

19 Q And that is filed with a heading of Ms. Churchill
20 and her office; right?

21 A Yes.

22 Q Okay. And would you agree that she does what --
23 exactly what you said; she says she reviewed various
24 reports -- that's at the second paragraph -- and she
25 reports about talking to people, et cetera. Met with the

1 guardians --

2 MR. MOOG: Mr. Chair, this has not been admitted
3 yet.

4 CHAIRMAN TALEFF: I was just going to say, are
5 you withdrawing your objection? You're asking the witness
6 about an exhibit that you didn't identify you objected to.

7 MR. SHERWOOD: I'm withdrawing my objection.

8 CHAIRMAN TALEFF: Is ODC still offering
9 Exhibit 4?

10 MR. MOOG: I am.

11 CHAIRMAN TALEFF: All right. Then Exhibit 4 is
12 admitted.

13 MR. SHERWOOD: Thank you, Mr. Chairman.

14 CHAIRMAN TALEFF: I'm going to admonish counsel
15 though, as I've said in my prehearing rulings, this
16 proceeding is not going to be an indictment of Debbie
17 Churchill, about whether she did or didn't do her job.

18 To the extent that you're going to talk about
19 roles that she may have had as an attorney and as a
20 guardian ad litem, that's fair game. But beyond that, I'm
21 expecting counsel to adhere to my rulings.

22 MR. MOOG: And on that note, Ms. Churchill is out
23 in the hallway and can testify.

24 Q (By Mr. Sherwood) So if we could go to Page 5 of
25 that report, sir, and in the last major paragraph it says:

1 Based upon the foregoing reports, discussions,
2 attached exhibits, and my personal observations, it is my
3 opinion that Judy is in need of a permanent guardian and
4 conservator to protect her well-being.

5 It is my opinion that it is in Judy's best
6 interests that Bob and Debbie Bugni be appointed as Judy's
7 permanent co-guardians. Furthermore, it is my opinion that
8 Judy remain at Renaissance as long as possible and that
9 continued limited contact between Ron and Judy is not only
10 appropriate but necessary for the court-appointed
11 co-guardians and the co-conservators to perform their
12 duties and protect Judy's placement.

13 She submitted this just prior to the hearing in
14 which there was a determination that the Bugnis would be
15 the guardians, didn't she?

16 A Yes.

17 Q And would you agree with me that what this report
18 says is that she's making a recommendation to the Court
19 based upon the best interests of Judy Lowney?

20 A That would be my understanding of the general
21 purpose of the report.

22 Q Okay. And at the hearing -- first of all,
23 Ms. Lowney didn't appear; right?

24 A No.

25 Q Okay. And were you aware -- I think in this

1 report it actually says that Judy wanted to go, but she
2 didn't think it was in Judy's best interest to go to the
3 hearing.

4 A Where are you referring?

5 Q Let me make sure.

6 I apologize. I'm using a different...

7 I'll withdraw the question for now. I'll search
8 this on my computer while I'm asking you additional
9 questions.

10 So you talked about how fees were paid -- or, not
11 paid, but billed in this case; right? You billed the
12 guardians money for your work; is that correct?

13 A No, I did not bill the Bugnis anything.

14 Q Did you compile a bill based on your time?

15 A My bill was just piling up in my computer, and
16 Judge Krueger had issued orders for payment of bills, and
17 they were not paid.

18 Q So at one point is it true that both you and
19 Ms. Churchill moved to withdraw from the case?

20 A I don't recall at what point Ms. Churchill moved
21 to withdraw. I moved to withdraw in January of 2012 when I
22 was very ill. The Court denied my motion, and I carried
23 on.

24 Q And when the Court denied your motion, did you
25 have a discussion with Judge Krueger involving any

1 assurances that you would be paid if you stayed on?

2 A The reason that I moved to withdraw had
3 absolutely nothing to do with payment. The reason I moved
4 to withdraw is that I was very ill in January of 2012.

5 Judge Krueger denied my motion.

6 Q Well, he denied it in -- if I recall correctly --
7 in August of -- eight months later; is that correct?

8 A It may be that's when he got to it, and I
9 certainly did not push Judge Krueger to do anything with
10 his paperwork.

11 Q And how much was your bill? Round numbers.

12 A As of 20 -- it was either 2014 -- it was after
13 the appeal that -- that my bill was up to \$26,000, and I
14 wrote it all off.

15 Q Okay. And how much was Ms. Churchill's bill?
16 Well, I get to cross. It was over \$22,000; right?

17 A I -- she -- are you referring to an order or are
18 you referring to a bill? I don't know about her bill. I
19 know about an order of the Court.

20 Q Well, you both sought approval of attorneys fees
21 from the Court. The same order came out. Judge approved
22 about 10,000 for you and about 22,000 for Ms. Churchill;
23 right?

24 A Okay. And those were orders that were directed
25 at Ronald Lowney, Sr., expecting that he would pay, and he

1 did not do so.

2 Q Okay.

3 A And I did not pursue the matter.

4 Q Are -- were you aware that in 2006 and '07 the
5 public defender system came into Montana?

6 A I am aware of the existence of the public
7 defender system.

8 Q Okay. And are you aware that the public defender
9 system, when it came in, there was a system set up for
10 these sorts of situations where an adult is the subject of
11 a guardianship proceeding and the appointment of an
12 attorney?

13 MR. MOOG: Objection; relevance.

14 CHAIRMAN TALEFF: Sustained. This is getting
15 beyond perilously close to violating my ruling that we're
16 not going to talk about whether somebody else should have
17 done the job differently or Debbie Churchill didn't do the
18 job appropriately or Mr. Shapiro.

19 The question here it what was Ms. Churchill's
20 role, and we need to stick with that, Counsel.

21 Q (By Mr. Sherwood) So Ms. Churchill's role, as she
22 perceived in these proceedings, was to act as a guardian ad
23 litem; isn't that true?

24 A Her role, as indicated by order of the Court, was
25 to be attorney for Judith Lowney with the powers and duties

1 of a guardian ad litem.

2 And I do not see a conflict in that sentence.

3 Q So you perceive that one person can wear two
4 hats; be an attorney for -- for Ms. Lowney and be her
5 guardian ad litem at the same time?

6 A Yes. One person who must be a licensed
7 attorney -- licensed by the supreme court of the State of
8 Montana -- who also has the powers and duties of a guardian
9 ad litem.

10 And may I expand on what I mean by that?

11 Q I was trying to get you to do it earlier. What
12 does a guardian ad litem do?

13 A I think I already had said it. In the situation
14 where an alleged incapacitated person may be unable to make
15 decisions on their own, then the attorney has, essentially,
16 expanded duties to make some decisions for them.

17 Q Can you cite me a rule that says that? An
18 ethical rule?

19 A An ethical rule? I don't know. I would have to
20 do some studying.

21 Q Okay. Well, is what you're telling me just your
22 opinion, not based on any authority you've ever read?

23 A You know, I think we looked at the civil rule
24 that indicates the court may appoint a guardian ad litem at
25 any time for any case. And the question then becomes, can

1 it be one and the same person? I think, yes, it can be one
2 and the same person.

3 Q And do you have any -- did you have any legal
4 authority for that position when you drafted this order?

5 MR. MOOG: Objection; relevance.

6 CHAIRMAN TALEFF: Relevance objection is
7 overruled.

8 THE WITNESS: At that time in which I prepared
9 that order I was using a standard form provided by the
10 state bar of Montana. And I continued to use that form for
11 many years thereafter.

12 Q (By Mr. Sherwood) Even after '06?

13 A Even after '06. And you're referencing -- I
14 think you were getting off onto the tangent of shouldn't it
15 be ODC -- or rather the PD system representing these
16 persons. I interpret those statutes to be protections for
17 the public defenders system. And the statute indicates
18 that the public defenders system may represent alleged
19 incapacitated persons in guardianship proceedings, but it
20 is not a mandatory statute indicating that it is only and
21 solely the public defender office that may represent such
22 persons. And that leaves open the --

23 CHAIRMAN TALEFF: Mr. Shapiro, I've ruled that
24 the PD system is not on trial here, so please just answer
25 the question, and if he wants to explore it further, I'll

1 let him do that.

2 THE WITNESS: I'm sorry.

3 CHAIRMAN TALEFF: I'm not trying to be sharp with
4 you or interfere with counsel's examination, but we have a
5 set amount of time, we have some specific issues, and we
6 need to keep focused on those issues.

7 THE WITNESS: Yes, sir.

8 Q (By Mr. Sherwood) So you were part of the process
9 throughout the proceedings all the way to the -- all the
10 way until now; is that right?

11 A Yes.

12 Q This is ongoing litigation?

13 A It hasn't been to the court in quite a while, but
14 I guess it is an open case.

15 Q Okay. And during all that time, did
16 Ms. Churchill advocate for what we -- for Ms. Lowney's
17 wishes that we saw expressed earlier, to go home, be with
18 her husband, go to communion, those sorts of things?

19 MR. MOOG: Objection; relevance, Mr. Shapiro.

20 CHAIRMAN TALEFF: Sustained. Again, it's outside
21 the scope of the rulings here.

22 As phrased, Counsel, that question is improper,
23 and it's -- the objection is sustained.

24 Q (By Mr. Sherwood) So, Mr. Moog referred you to
25 Exhibit Number 1. Could you turn to that, please.

1 And Exhibit Number 1 indicates that it went up on
2 appeal -- right up at the top, status history, it says went
3 up on appeal on 11/18/13, and then on 8/14/2014 the case
4 was closed.

5 Do you see that?

6 A I see that's what it says.

7 Q Okay. And if we go to the long transcript of
8 this -- that would be Page 6 of 6 -- we see that document
9 sequence 132. In the middle of the page, 132, it says
10 8/14/2014, that same date that's on the summary, on the
11 status history, we see that that date the remitter was
12 affirmed.

13 That would be that the remitter came down from
14 the supreme court; right?

15 A Yes.

16 Q Okay. When permanent guardians are appointed,
17 does the guardian ad litem's duty end?

18 A No.

19 Q So now we have two Bugnis and a guardian ad litem
20 all looking after the interests of Judy?

21 A They were different people with different roles.

22 Q What's the distinction between the role of a
23 guardian ad litem and the role of a guardian?

24 MR. MOOG: Objection; relevance at this point.

25 CHAIRMAN TALEFF: Seems to me it's been asked and

1 answered twice. But if you haven't answered that question,
2 answer. And if you think you have, say so.

3 THE WITNESS: I'll be brief.

4 And the -- the purpose of the guardian ad litem,
5 as indicated from the Latin, it's the guardian; ad litem,
6 for the purpose of litigation. If there was anything to be
7 done in this particular case, that's the attorney that the
8 district judge appointed, and that's the attorney who would
9 act upon it. The Bugnis were the general, overall
10 guardians who had the authority over Judith Lowney to
11 determine her care and living arrangements and so forth.

12 Q So guardian ad litem translated from Latin means
13 for purposes of litigation, of the proceedings?

14 A Yes.

15 Q And on 8/30 -- or 8/14/2014, we see that these
16 proceedings are closed; is that correct?

17 A Not correct.

18 Q It says closed; remitter affirmed.

19 Was something going on on 8/15/2014?

20 A There have been proceedings going on through --
21 in this matter throughout, and I am not aware of Judge
22 Krueger releasing me or releasing Judge -- I mean, excuse
23 me -- Debbie Churchill.

24 So my understanding of how the court works is
25 until Judge Krueger were to issue an order releasing these

1 attorneys, then they are still obligated to participate
2 whenever necessary.

3 Q And is there a second -- this is second; right?
4 Is there a Silver Bow County district court local rule that
5 says that?

6 A I believe so, but I would have to do some
7 research. I don't have an answer for you at the moment.

8 Q Okay. In fact, there isn't, is there?

9 A I am not going to concur with you that there is
10 not. It is custom, I understand, amongst attorneys in all
11 of the districts that I have practiced in that an attorney
12 is on the case until released by the district judge.

13 Q So Mr. Moog referred you to multiple exhibits;
14 Exhibit 10, in which Ms. Churchill -- Ms. Morin writes to
15 Ms. Churchill and talks about how it's in your clients'
16 interest to act in Ms. Lowney's best interest.

17 And you would agree with that; right?

18 A Certainly it is the duty of the guardians to
19 address and do their best to serve Judy Lowney's best
20 interests.

21 Q And this -- this Exhibit 10 is December of 2013.
22 This would be a couple months after Ms. Morin entered into
23 the litigation; right?

24 A That's seems approximately the time frame.

25 Q Okay. And if we go to Page 2 of that letter, the

1 third from the bottom paragraph, it reads:

2 Ms. Churchill, as her -- being Judy Lowney -- as
3 her GAL -- that would be guardian ad litem.

4 Ms. Churchill, as her guardian ad litem, we are
5 requesting that you step in, look into these issues, and
6 make changes necessary to protect Mrs. Lowney from a
7 further decline and further violation of her constitutional
8 rights. Please make the arrangements for Mr. Lowney to see
9 Mrs. Lowney as previously agreed.

10 So we've got Ms. Morin, two months into these
11 proceedings, identifying Ms. Churchill as a guardian ad
12 litem. Is that true?

13 A That's what she says in this letter.

14 Q Okay. And did she -- when she had all these
15 complaints about her client, when she's advocating for her
16 client's access to his wife of over 50 years, she comes to
17 you to the point that you're annoyed and a complaint gets
18 filed against her; right?

19 A Against who by who?

20 Q Well, didn't we talk about a complaint being
21 filed by -- against Ms. Morin?

22 A I did not file a complaint against Ms. Morin.

23 Q I didn't say you did, but one was filed; right?

24 A As I explained, the Bugnis filed a complaint.

25 Q Are you aware of any complaints that Ms. Morin

1 made to Debbie Churchill, asking her to do her job as
2 attorney and advocate for Ms. Bugni's wishes to go -- or
3 Ms. Lowney's wishes to go home and be with her husband?

4 MR. MOOG: Objection on relevance and
5 argumentative.

6 CHAIRMAN TALEFF: The question is is he aware.
7 Overruled.

8 THE WITNESS: Am I aware that Ms. Morin
9 complained on various occasions?

10 Q (By Mr. Sherwood) Ever encouraged Ms. Churchill
11 to do her role as -- the issue here is was Ms. Churchill
12 acting as a lawyer or as a guardian ad litem as a result of
13 your order. And I want to know if you know whether
14 Ms. Morin ever complained to Ms. Churchill and asked her to
15 do her job as an attorney.

16 Are you aware of anything like that?

17 A I do not know. I have no information other than
18 this letter which you referred to. Otherwise, I have no
19 information to respond.

20 Q Okay. But you do know -- we know, based on this
21 letter, that within two months Ms. Morin had decided that
22 Ms. Churchill was a GAL, for whatever reason; right?

23 A I presume that Ms. Morin had the case record and
24 she would have been aware of the order indicating that
25 Debbie Churchill was appointed as attorney and guardian ad

1 litem.

2 Q So the answer to my question, though, is yes.
3 She's referring to Ms. Churchill two months into her
4 representation as a guardian ad litem. She's identifying
5 Ms. Churchill in April --

6 A That's the reference she made.

7 Q Fine. So then if we go to Exhibit 12, you -- we
8 see that you are responding and denying everything that she
9 alleges. And, of course, do you have a reason why
10 Ms. Morin would be writing these letters to you if she
11 believed that Ms. Churchill was Judy Lowney's lawyer and
12 had a duty to advocate for her?

13 A I have no information. I can't respond to what's
14 in Ms. Morin's mind at the time.

15 Q Okay. But then you said on June -- this is
16 Exhibit 17. You said you had to send another letter saying
17 that you don't agree with everything, and, again, this
18 letter that was sent to you and to which you're now
19 responding, it wasn't cc'ed to Ms. Churchill; right?

20 A I believe I was responding to a letter I received
21 from Ms. Morin. And I didn't -- well, you're -- are you --

22 Q You cc'ed Ms. Churchill; right?

23 A Yes, at the bottom of the letter dated March 27,
24 2014, it is copied to Debbie Churchill and the Bugnis.

25 Q But you -- you were the only one who received

1 this letter to which you were responding. It didn't go to
2 Ms. Churchill; right? There was no cc?

3 A The letter I received from Tina Morin, apparently
4 she addressed to me.

5 Q And so you testified about current conditions for
6 Ms. Lowney. And I think you said you've been to the
7 Renaissance. It's clean, nice; right?

8 A Yes.

9 Q It's got a lock on the door?

10 A Yes.

11 Q And you're aware, of course, that the Bugnis have
12 taken away her phone. Is that true?

13 MR. MOOG: Objection; relevance.

14 CHAIRMAN TALEFF: Well, it probably would have
15 been irrelevant, but you opened the door, I'm afraid. So I
16 think in the overall scheme of this case and what Ms.
17 Morin's been charged with and what time period, I frankly
18 don't see the relevance, but you asked him the questions
19 about her current status, so go ahead and answer.

20 THE WITNESS: I do not know about the phone.

21 Q (By Mr. Sherwood) Are you aware that they monitor
22 her mail and open it and don't allow it to be delivered
23 sometimes?

24 A I am aware that they monitor her mail. I don't
25 know the details of what they may or may not allow her to

1 receive.

2 Q Okay. So I think you were pretty adamant on the
3 issue of -- you said that in these standard proceedings
4 that were had, no one objected to Judy -- the notion that
5 Judy might be incapacitated; right?

6 A That is my understanding of the proceedings, as
7 there was not an objection to the concept that she was an
8 incapacitated person.

9 Q Okay. And that was -- that all came together at
10 a hearing in which Ms. Churchill decided that it wasn't in
11 her best interests to even attend. Is that true?

12 MR. MOOG: Objection; calls for facts not in
13 evidence. I think Ms. Churchill needs to testify to that.

14 CHAIRMAN TALEFF: Sustained.

15 Q (By Mr. Sherwood) Was Ms. Churchill at -- or was
16 Ms. Lowney at the hearing in which Judge Krueger determined
17 that she was incapacitated?

18 A To the best of my knowledge, she was not present.

19 Q So she wasn't there to object?

20 A She was not present.

21 Q And Ms. Churchill was there and didn't object;
22 right?

23 A Ms. Churchill submitted a report indicating what
24 she indicated.

25 Q And she indicated that it was in the best of

1 Ms. Lowney's -- it was in Ms. Lowney's best interest to
2 stay in the Renaissance and restrictions with visitation
3 with her husband. Is that right?

4 A In very general terms, that's part of what she
5 reported.

6 Q I think I heard you say -- and I want to make
7 sure of this -- on direct that you -- your position at the
8 hearing to determine the future of Judy Lowney, that
9 Ms. Churchill joined in your position. Is that fair? Is
10 that what you said?

11 A I don't know if that's what I said before, but I
12 think I can say at this point that, in general,
13 Ms. Churchill concurred with the petition which I presented
14 to the Court, and ultimately the judge made the decision.

15 Q You talked about Ms. McCann going to attempt to
16 see Judy lately. I don't think you -- somebody's told you
17 that; right? Reported that? You weren't there when
18 Ms. McCann attempted to do it?

19 A I had information from the Bugnis and from the
20 staff at the Renaissance, whom I talked to directly, and
21 another resident of the Renaissance, who was also present
22 at the time Genet McCann appeared and took Judy Lowney out
23 of the facility.

24 Q So the answer to my question is yes?

25 A I wasn't there, no.

1 Q Thank you. Did any of these folks report to you
2 that somehow what Ms. McCann is apparently doing was in any
3 way -- that Ms. Morin was in any way associated with her
4 behavior, McCann's behavior?

5 A The conduct -- I can't answer the question in a
6 simple yes or no. May I --

7 CHAIRMAN TALEFF: The question is, Did any of
8 these people report to you that Tina Morin was responsible
9 or behind Genet McCann showing up at the Renaissance that
10 day? They either did or didn't.

11 THE WITNESS: All they reported was that Tina
12 Morin was in the Helena area at the time this was going on.
13 There were people that observed that.

14 Q (By Mr. Sherwood) That she was in town?

15 A That she was in Helena.

16 Q You talked about how this case became contested
17 and sort of heated up, and I think by that you mean that
18 Ron, who had been -- had his own mental problems, had sort
19 of resolved them and now wanted to get involved and now
20 wanted to see Judy. Is that fair?

21 A No.

22 Q He didn't want to see -- he didn't want to see
23 his wife of 50 years?

24 A No. The scenario which you just laid out is not
25 accurate.

1 Q Okay. He didn't want her to come home?

2 A You asked me if I concur in that scenario. I do
3 not. Do you want me to expand on --

4 Q No. Did he want her to come home?

5 CHAIRMAN TALEFF: Counsel, we've heard this
6 testimony.

7 MR. SHERWOOD: Fine. I'll move on.

8 CHAIRMAN TALEFF: Please move on.

9 Q (By Mr. Sherwood) Would you agree that there were
10 multiple other occasions in which Ms. Morin -- starting in
11 that December, a couple months after -- multiple other
12 occasions in which she wrote you and professed to you that
13 she didn't believe that Ms. Churchill had any role in this
14 case, that it was her belief that Ms. Churchill's role had
15 lapsed as guardian ad litem when the litigation stopped?

16 Do you remember any of those?

17 A No, I do not remember those.

18 Q Are you aware of whether or not there are any
19 current appointments in Silver Bow County in adult
20 guardianship proceedings where the appointment was for
21 the -- where the attorney appointed was a public defender?

22 MR. MOOG: Objection; relevance.

23 CHAIRMAN TALEFF: Sustained.

24 MR. SHERWOOD: May I have just a moment?

25 CHAIRMAN TALEFF: Yes, you may.

1 In fact, Mr. Sherwood, we've been going about an
2 hour. This might be a good opportunity, so you can well
3 organize your thoughts. So let's reconvene at 4:00; okay?

4 MR. SHERWOOD: Yes, sir.

5 CHAIRMAN TALEFF: Okay. We'll be in recess.

6 (Proceedings in recess from 3:46 p.m. until
7 3:58 p.m.)

8 CHAIRMAN TALEFF: We'll go back on the record.

9 Mr. Sherwood, you were going to do some follow-up
10 on your cross-exam?

11 MR. SHERWOOD: Yes, your Honor.

12 CHAIRMAN TALEFF: And I -- for just housekeeping
13 purposes, I need to say for the record that somehow I
14 mispronounced Mrs. Lowney's last name throughout the
15 earlier part of the proceeding. I put an R in it, and for
16 that, I apologize, but that is the person I've been talking
17 about.

18 And although you invoked the exclusion of
19 witnesses rule, I noted that the chief investigator for the
20 Commission on Practice has been seated at counsel table,
21 and I would have made an exception for her presence anyway.

22 MR. MOOG: She's not listed.

23 CHAIRMAN TALEFF: As a witness? Okay. I thought
24 maybe she was.

25 But regardless, she's -- I think she's there --

1 necessary for your presentation.

2 Okay. You may proceed.

3 MR. SHERWOOD: Thank you, Mr. Chairman.

4 Someone was kind enough to give me a mic, so...

5 CHAIRMAN TALEFF: I wish I could take credit, but
6 that was Commissioner Belke's idea.

7 MR. SHERWOOD: Okay. Well, thank you.

8 Q (By Mr. Sherwood) So, Mr. Shapiro, could you go
9 to ODC Exhibit 16.

10 A Yes.

11 Q If you could go to Page 2 of 4 of that letter, my
12 notes indicate that this has been offered without my
13 objection. If I'm wrong, Mr. Moog, I'm sure you'll let me
14 know.

15 CHAIRMAN TALEFF: Exhibit 16 was admitted without
16 objection.

17 Q (By Mr. Sherwood) And so if we go to the
18 paragraph that starts: The Bugnis have indicated that
19 Debbie Churchill is running the show, to use their words,
20 and we -- oh, well, this is a letter from Ms. Morin to you;
21 right?

22 A It is a letter from Tina Morin to myself.

23 Q Okay. And this is on March 14, 2014?

24 A Yes.

25 Q Okay. So this is not only four months after she

1 wrote the letter that we talked about earlier about how she
2 thought that Ms. Churchill was the GAL, and so we now have
3 her saying that Ms. Churchill's role as GAL ended as soon
4 as permanent guardians were appointed.

5 So, again, we've got Ms. Morin expressing to you
6 her position that not only was Ms. Churchill not the
7 lawyer -- a lawyer advocating for Ms. Lowney, but that she
8 wasn't even any longer a GAL; is that correct?

9 That's kind of a long question.

10 A That appears to be her assertion.

11 Q Okay. And then -- let's see if I can get out of
12 this.

13 If we could go to ODC Exhibit 31, this -- oops.
14 I'm sorry. I thought this was a letter to you. Never
15 mind. I've got to load this up for myself.

16 So I would direct your attention to -- this is
17 some email back and forth regarding Ron having visitation
18 with Judy at Christmas, I believe, and if we go to the --
19 down the page to Friday, December 30th, 2016 --

20 THE WITNESS: Excuse me, Mr. Taleff --

21 CHAIRMAN TALEFF: Yeah, what exhibit are you on,
22 Counsel?

23 MR. SHERWOOD: I'm sorry. I believe I'm on -- I
24 apologize. It's Exhibit 69.

25 THE WITNESS: Mr. Taleff, I've been having a

1 little hard time hearing.

2 MR. SHERWOOD: All right. I'll turn it up.

3 THE WITNESS: Thank you.

4 MR. SHERWOOD: You're welcome.

5 CHAIRMAN TALEFF: If you can't hear the question,
6 you need to speak up, because I'm going to assume that you
7 have if you respond.

8 THE WITNESS: Thank you.

9 Q (By Mr. Sherwood) So I'm directing your attention
10 to ODC Exhibit 69, and we see you emailing to Ms. Morin and
11 to Genet McCann on December 30th, 2016. It's down the
12 page. It's after the first email, and then yours is the
13 second at 12:34 p.m.

14 And you say to them:

15 As I have stated repeatedly, neither one of you
16 represent Judith Lowney. She is an incapacitated person
17 with court-appointed guardians.

18 Is there -- I know it's a long time ago, but when
19 I read that I was wondering why you wouldn't also say that
20 she was represented by an attorney. Do you recall?

21 A I do not know the context of -- of what you're
22 indicating, but I was responding briefly to Ms. Morin's
23 assertions. I indicated that there are permanent
24 guardians. I did not refer to guardian ad litem at all. I
25 just didn't refer to her.

1 Q Was there some reason -- well, did you think, at
2 that point -- this is in December 30th of 2016 -- did Judy
3 have an advocate?

4 A I can't hear.

5 Q Did Judy have an advocate?

6 A An advocate? To the point that she needed an
7 advocate in some instances, her advocates would have been
8 her permanent guardians. If there were something going on
9 in the district court, then her advocate would have been
10 Debbie Churchill.

11 Q So was there some reason why you didn't refer
12 these folks to Churchill -- or to Debbie Churchill when
13 they had this complaint?

14 A Yes, there is a reason.

15 Q Okay. What is it?

16 A The reason is I was dealing with repeated,
17 lengthy emails from Ms. Morin that kept going on and on. I
18 was trying to provide a short answer, and the answer did
19 not require referral to any other person. I felt that I
20 could handle the response on my own, and I did.

21 Q After the remitter came down on August 14th,
22 2014, if I recall correctly, do you know what, if any,
23 actions Ms. Churchill took in this case, in the guardian
24 case?

25 A We would have to go through the whole docket to

1 see what else occurred after the case was remitted from the
2 supreme court, but at this moment I am not prepared to
3 respond in detail to your question. I do not have a
4 response for you at this moment.

5 Q You don't recall?

6 A I would have to get into the file and the docket
7 and proceed further. I am not prepared at this moment to
8 respond to that.

9 Q Because you don't recall?

10 A Whatever terminology you care to put it with, I
11 don't have that information for you.

12 Q Thank you. Can we go to ODC Exhibit 74, please.
13 Please. That's 74.

14 I apologize. That's not the exhibit to which I
15 wanted to refer you, so -- but I do have a question
16 about -- earlier we talked about Exhibit 4, and that was
17 Docket Number 92.

18 Do you recall Ms. Churchill filing another
19 addendum to Report of Guardian Document Number 72 back in
20 May?

21 I know this is an entire deal, and you don't have
22 the pleadings in front of you, but do you recall her filing
23 a pleading back in May in which she mentioned that Judy
24 expressed a desire to attend the hearing, but that she did
25 not want Judy to come to the hearing because it wasn't in

1 her best interests? Do you have any recollection of that
2 document?

3 A No, I do not recall.

4 Q Okay.

5 MR. SHERWOOD: May I approach, your Honor? Or
6 Mr. Chairman, may I approach?

7 CHAIRMAN TALEFF: Are you talking about
8 approaching me or approaching the witness?

9 MR. SHERWOOD: The witness.

10 CHAIRMAN TALEFF: To what end?

11 MR. SHERWOOD: I want to hand him this to see if
12 it will jog his memory.

13 MR. MOOG: I'm beginning to object on relevance
14 grounds.

15 CHAIRMAN TALEFF: I'm going to sustain that. I
16 have said I don't know how many times, whether Judy wanted
17 to attend or didn't attend is not an issue in this case.
18 We have beaten this horse beyond death. So we need to move
19 on. Objection sustained.

20 Q (By Mr. Sherwood) So, Mr. Shapiro, you -- we've
21 seen the order that the judge signed in response to your
22 motion to have Ms. Churchill appointed in whatever role
23 this order that you drafted purports that she should serve.
24 You put her name out there right?

25 A I nominated Debbie Churchill to the district

1 court, and he accepted that nomination.

2 Q Yes.

3 A I proposed her name.

4 Q Yes. And when you did so, did you have any
5 expectation that she would somehow act as your agent and do
6 what you wanted to do in this proceedings?

7 A Never. I have always addressed this situation as
8 if someone -- if I nominate someone to be the attorney for
9 the alleged incapacitated person, then I generally don't
10 even talk to the attorney until after they have prepared
11 their report.

12 Q You don't ask them if they're available?

13 A I ask them if they're available, and I nominate
14 them to the court. And if the court accepts them, then
15 they do their work. And, no, I do not convey information
16 about the alleged incapacitated person. That's up to that
17 attorney to figure out.

18 Q You expect them to exercise their independent
19 judgment as licensed attorneys and not expect them to
20 follow what you're -- what you want?

21 A The role of that attorney appointed by the court
22 is to represent the alleged incapacitated person, and my
23 understanding is that they will do so, and I do not direct
24 their activities.

25 Q You don't consider them your agent then?

1 A Absolutely not.

2 Q All right.

3 MR. SHERWOOD: I have nothing further,
4 Mr. Chairman.

5 CHAIRMAN TALEFF: Mr. Moog, any redirect?

6 MR. MOOG: Just a few, Mr. Chair.

7

8 REDIRECT EXAMINATION

9 BY MR. MOOG:

10 Q Mr. Shapiro, referring you to Exhibit 1.

11 A Yes, I see it.

12 Q Is it true that there were several filings
13 subsequent to the supreme court's remand?

14 A Yes, there were numerous filings.

15 Q By Ms. Morin; correct?

16 A Yes.

17 Q And is it true that this guardianship case, just
18 like any guardianship case, will continue until either the
19 guardianship is dissolved or the ward dies?

20 A Yes.

21 Q And, Mr. Shapiro, Steven, since 2011, who has
22 spoken for Judy Lowney's interests?

23 A It's been -- Debbie Churchill has been the
24 attorney and guardian ad litem for Judith Lowney, and her
25 permanent guardians have been Bob and Debbie Bugni.

1 Q And the guardians speak for Judy's interest;
2 isn't that correct?

3 A Yes.

4 MR. MOOG: That's all I have, Mr. Chair.

5 CHAIRMAN TALEFF: Questions from the panel.

6 Ms. DeVries?

7 COMMISSIONER DEVRIES: None.

8 CHAIRMAN TALEFF: Mr. O'Brien?

9 COMMISSIONER O'BRIEN: None.

10 CHAIRMAN TALEFF: Mr. Ogle?

11 COMMISSIONER OGLE: No questions.

12 COMMISSIONER MENZIES: (Shakes head.)

13 COMMISSIONER MALONEY: (Shakes head.)

14 COMMISSIONER BELKE: None.

15 COMMISSIONER BLACK: (Shakes head.)

16 CHAIRMAN TALEFF: Ms. Perry?

17 COMMISSIONER PERRY: One.

18

19 EXAMINATION

20 BY COMMISSIONER PERRY:

21 Q Are your guardians under an obligation to file an
22 annual accounting?

23 A They are under an obligation unless the district
24 judge waives that obligation. In this particular case, we
25 presented one accounting, and then Judge Krueger waived the

1 obligation.

2 Q Follow up. Was the obligation waived then due to
3 very limited income and qualification for Medicaid, or for
4 another reason?

5 A It was our understanding that Judy Lowney had
6 already been found by the Medicaid office to be eligible,
7 so her -- her funds were established. That was her only
8 source of funds. So unless something changed, the same
9 report would have been made to the Court every year. So
10 the Court, at that point, made a decision to waive further
11 accountings.

12 Q When you did the initial accounting after the
13 guardians were appointed, was that copied on Debbie
14 Churchill?

15 A I don't have the exhibit in front of me, but it
16 is my -- my belief that, yes, in fact, it was copied, and
17 at that time would have been copied to both Debbie
18 Churchill because she was still on the file.

19 COMMISSIONER PERRY: Thank you.

20 CHAIRMAN TALEFF: Ms. Faure?

21 COMMISSIONER FAURE: I have nothing. Thank you.

22

23 EXAMINATION

24 BY CHAIRMAN TALEFF:

25 Q Mr. Shapiro, we've got the docket sheet as

1 Exhibit 1, and we've certainly seen some pleadings. This
2 question is directed just to your recollection.

3 At any time, did Ms. Morin file in the
4 guardianship proceedings a pleading that sought
5 clarification as to the role of Debbie Churchill?

6 A No, there was no such document submitted to the
7 Court.

8 Q Okay. Thank you. I have no further questions.

9 MR. MOOG: No questions.

10 CHAIRMAN TALEFF: Mr. Sherwood, did the questions
11 from the panel engender any additional from you?

12 MR. SHERWOOD: We can plug in the answer to the
13 question about whether Ms. Churchill was served, and so,
14 no, I have no questions here.

15 CHAIRMAN TALEFF: Okay.

16 Mr. Shapiro, you're excused.

17 THE WITNESS: Mr. Taleff, I'm here with a -- by
18 subpoena, of course.

19 CHAIRMAN TALEFF: Okay. Then you're released
20 from the subpoena.

21 THE WITNESS: Okay. So do you want me to be
22 available tomorrow, or am I just excused?

23 CHAIRMAN TALEFF: You are released. If someone
24 asks you to come back, that's between you and counsel. But
25 as far as the commission is concerned, if you appeared by

1 subpoena, you have done your duty. You fully complied.
2 You're released from it.

3 THE WITNESS: Thank you.

4 CHAIRMAN TALEFF: Thank you for your time and
5 patience.

6 Will ODC call its next witness.

7 MR. MOOG: Certainly, but before I do that, I'd
8 like to direct the chair's attention to respondent's
9 witness, Eli Parker, has been sitting out in the hall since
10 10:00 a.m. this morning.

11 I don't think the chair is going to let him
12 testify. He certainly isn't going to be testifying
13 tonight. I'm calling Debbie Churchill next.

14 I just wanted to alert the chair that that issue
15 was out there.

16 CHAIRMAN TALEFF: Well, I -- we'll note for the
17 record that there has been some -- some pleadings and at
18 least some email communication about Mr. Parker. He was
19 denied as an expert witness. The retort was he would
20 testify as a fact witness. I, of course, don't know what
21 his factual information would be with regard to what I
22 continue to say is the threshold issue here, which is, what
23 was Debbie Churchill's role.

24 If he's simply going to answer questions about
25 the public defender system or what Debbie Churchill did or

1 shouldn't have done or didn't do, I'm not going to allow
2 that testimony. But I can't say until he actually gets on
3 the stand.

4 So I guess I appreciate that he's here, but it is
5 the ODC's case. So unless you want to somehow allow him to
6 come out of order, I'm saying call your next witness.

7 MR. MOOG: ODC calls Debbie Churchill.

8 CHAIRMAN TALEFF: Okay.

9 Ms. Churchill, before you sit down, if you'd
10 raise your right hand to be sworn, please.

11 (Witness sworn.)

12 CHAIRMAN TALEFF: The chair is for your
13 convenience if you feel more comfortable sitting rather
14 than standing at the podium.

15 THE WITNESS: Okay. Thanks.

16 CHAIRMAN TALEFF: And you can change, as long as
17 you lean forward enough to speak clearly into the
18 microphone.

19 THE WITNESS: Okay. Can you hear me?

20 CHAIRMAN TALEFF: I can hear you now.

21 THE WITNESS: Okay.

22 MR. MOOG: Was she sworn, Mr. Chair?

23 CHAIRMAN TALEFF: She has been sworn.

24 MR. MOOG: Okay. Thank you.

25 ////

1 DIRECT EXAMINATION OF DEBBIE CHURCHILL

2 BY MR. MOOG:

3 Q Thank you for your patience today, Ms. Churchill.
4 Is it okay if I call you Debbie?

5 A Yes, please.

6 Q Okay. In light of the lateness of the hour, I'm
7 going to truncate my direct examination.

8 How long have you been practicing law?

9 A Since 2001.

10 Q And in which fields?

11 A In estate planning and guardianships and probates
12 and related areas.

13 Q Okay. How many guardianships have you been
14 involved with?

15 A I have no idea.

16 Q Can you ballpark it?

17 A Probably more than 20.

18 Q Okay. And do you know Judy Lowney?

19 A Yes.

20 Q How?

21 A I was the attorney for Judy in a guardianship
22 proceeding.

23 Q And were you appointed by the Court?

24 A Yes, I was.

25 Q When?

1 A I don't recall exactly, but in 2011.

2 Q Okay. Fair enough. So you've been on the case
3 from the beginning then?

4 A Yes.

5 Q Okay. And there's been some testimony today that
6 Steven called you up and asked you to be nominated.

7 A Yes.

8 Q Okay. And were you willing?

9 A Yes.

10 Q And have you represented wards before?

11 A Yes.

12 Q And is it true that Judy was determined to be
13 incapacitated in 2011?

14 A Yes.

15 Q And, in fact, was that a contested issue back
16 then?

17 A No.

18 Q Without divulging any attorney-client privileged
19 communication, in your experience with Judy, are her stated
20 interests malleable?

21 A In that -- no, it's difficult to determine what
22 Judy is trying to communicate. She's speaks very softly --

23 Q Okay.

24 A -- and she mostly agrees with everything you say.
25 So, yeah, I mean, yes. I guess the answer would be yes.

1 Q Okay. So depending on who she's talking to, it
2 could vary?

3 A Yes.

4 Q And Ms. Morin eventually appeared in the case; is
5 that correct?

6 A Yes, eventually.

7 Q For the appeal?

8 A Yes.

9 Q And did Ms. Morin serve her briefs on you as
10 counsel for Judy?

11 A Initially I was receiving things, but then she
12 stopped.

13 Q What about the appellate brief, specifically?

14 A I don't remember exactly if I was served. I
15 believe I was.

16 Q Okay. Let's take a look at Exhibits 84 and 85.

17 A Yep.

18 Q That's you on the cover page; correct?

19 A Yes.

20 Q As attorney for JAL?

21 A Yes.

22 Q And that's Judy's initials; correct?

23 A Yes.

24 Q And if you'll turn to the certificate of service,
25 which is Page 30 of 30 of that exhibit.

1 A Yes.

2 Q Are you served as --

3 A Uh-huh.

4 Q You were served as attorney for JAL?

5 A Yes.

6 Q And that was as of February 26th, 2014, the day
7 this brief was dated?

8 A I assume so, yeah.

9 Q And turning your attention to 85, this was the
10 reply brief that's been admitted. Do you appear there on
11 the cover page?

12 A Yes.

13 Q And, again, that's Ms. Morin's brief?

14 A Yes.

15 Q And directing your attention to the certificate
16 of service, which is Page 15 of 16.

17 A Yes.

18 Q Are you listed there as attorney for JAL?

19 A Yes.

20 Q As well as her GAL?

21 A Yes.

22 Q So at least at the time those briefs were filed,
23 Ms. Morin knew you were counsel of record; correct?

24 A Yes.

25 Q Did you have any conversations with Ms. Morin

1 around this time period?

2 A I believe so.

3 Q Over the phone?

4 A Yes.

5 Q Okay.

6 A And email.

7 Q And during those conversations, was it evident
8 that Ms. Morin knew you were Judy's lawyer?

9 A Absolutely.

10 Q As a matter of fact, were you awarded fees,
11 attorney fees, in this case?

12 A Yes.

13 Q From Ron?

14 A Yes.

15 Q Do you recall how much?

16 A About 20,000 or so.

17 Q Okay. Did Ms. Morin raise that issue on appeal?

18 A I don't recall. I don't think so.

19 Q Do you recall what issues were raised?

20 A No, I haven't looked at the pleadings, so --

21 Q Okay.

22 A It's been a long time.

23 Q Okay. Did Ms. Morin know that you'd been awarded
24 fees?

25 A I believe so.

1 Q Do you recall whether or not you assisted
2 Mr. Shapiro with drafting his response brief?

3 A Yes, I did.

4 Q About how many hours did you spend; do you know?

5 A Boy. I don't remember. It was quite a few.

6 Q Okay.

7 A We shared in the job of replying. Yeah.

8 Q It was a collaborative effort?

9 A Yes, it was.

10 Q Okay. After the appeal, were there post-judgment
11 filings?

12 A Yes.

13 Q Did Ms. Morin serve you as counsel of record?

14 A I believe so.

15 Q Were you aware that Ms. Morin had arranged for
16 Genet McCann, through DRM -- Disability Rights Montana --
17 to have contact with Judy?

18 A I was not at the time. I am now, but I was not
19 notified at all.

20 Q So around the October-November 2016 time frame
21 Tina never asked you whether she could have contact with
22 Judy?

23 A No. Never.

24 Q Genet McCann?

25 A No.

1 Q And did you consent to their -- to McCann's
2 contact with Judy?

3 A No.

4 Q And it's fair to say that you joined
5 Mr. Shapiro's position during this litigation?

6 A Yes.

7 Q Is that because he directed you to?

8 A No. I acted independently.

9 Q Okay. Did you do an independent investigation?

10 A Yes.

11 Q You talked to Judy?

12 A Yes.

13 Q You talked to the guardians?

14 A Yes.

15 Q You talked to the Renaissance?

16 A Yes.

17 Q There's been some questioning about whether Judy
18 was present during the hearing in 2013 where the guardians
19 were switched.

20 Do you have any recollection of whether Judy was
21 present at that hearing?

22 A Yes, I believe she was.

23 Q Okay. However, she was not present in 2011?

24 A No, I don't believe she was.

25 Q And is that because her incapacity was not

1 contested?

2 A Right. And I don't generally -- I mean, I
3 generally don't have the incapacitated person appear at
4 that hearing because it tends to be more confusing and
5 disruptive for them. It doesn't really add to the
6 situation. So that would be my normal course, would be to
7 just appear on her behalf --

8 Q Okay.

9 A -- at the initial hearing.

10 Q And you were present back in 2011 on her behalf
11 as her representative?

12 A Yes.

13 MR. MOOG: That's all I have, Mr. Chair.

14 CHAIRMAN TALEFF: Thank you. Cross-exam?

15

16 CROSS-EXAMINATION

17 BY MR. SHERWOOD:

18 Q Good afternoon, Ms. Churchill. We've met. You
19 were good enough to speak with me back a while; right?

20 A Correct.

21 Q When we did, my investigator recorded the
22 conversation. Do you recall that?

23 A Yes.

24 Q And later I would have sent you, or had sent to
25 you -- I can't remember -- an actual copy of the sound

1 recording, digital recording, together with the transcript;
2 right?

3 A Yes.

4 Q And at some point I reached out to you and said,
5 do you have any corrections about -- to the transcript?

6 A Yes.

7 Q And do you?

8 A I did find that there were incorrect things in
9 there, and I didn't take the time to go through and edit
10 and correct it for you. But there were -- there was some
11 section of the transcript where it identified the wrong
12 people speaking at the wrong time and things like that.

13 Q Anything substantive?

14 A I don't know.

15 Q Okay. Well, so you represented Judy Lowney.
16 There was a court order. We've seen it. And as I
17 understand it, you viewed your role as represent -- as to
18 represent her best interests in the proceedings?

19 A Yes.

20 Q And if her best interests differed from what she
21 was asking to have done, then you ignored what she was
22 asking to have done?

23 MR. MOOG: Objection; argumentative.

24 CHAIRMAN TALEFF: Overruled.

25 It's in your opinion.

1 THE WITNESS: Yes. I would just disagree with
2 your statement. I didn't ignore what she said. I took
3 what she said into consideration. I didn't necessarily do
4 exactly what she asked me to do --

5 Q (By Mr. Sherwood) Uh-huh.

6 A -- if I didn't think it was in her best interest.
7 So there's a difference; right? I didn't ignore what she
8 said.

9 Q But you didn't advocate for her position if you
10 thought her position was not in her best interest.

11 MR. MOOG: Objection; relevance.

12 CHAIRMAN TALEFF: Again, it probably isn't, but
13 I'm going to allow very limited cross-exam on this.

14 I've issued rulings in this case, Ms. Churchill,
15 that your conduct is not on trial here. It's not at issue.
16 What is at issue is what your role was, whether you were
17 counsel or not, whether Ms. Morin knew you were counsel or
18 not, and whether she assisted Genet McCann in having
19 contact with your client without your consent, knowledge,
20 or a court order.

21 So I'm going to allow you to testify as to
22 whether or not you believe this was in her best interest or
23 not or things along those lines, but it's not particularly
24 germane here.

25 THE WITNESS: Well, then maybe we should move on.

1 CHAIRMAN TALEFF: No. He gets -- I'm going to
2 allow him some leeway, but limit it. So go ahead --

3 THE WITNESS: Can you repeat the question? I'm
4 not sure what you were getting at.

5 Q (By Mr. Sherwood) Well, there are attorneys and
6 then there are attorneys. Would you agree that sometimes
7 attorneys get appointed to serve as guardians ad litem?

8 A Probably.

9 Q Have you ever been appointed, say, in a dependent
10 neglect hearing or anything like that, to serve as guardian
11 ad litem?

12 A No. I've always been an attorney of record for
13 the incapacitated person or the petitioner.

14 Q But when you served as attorney of record, at
15 least in this case, you perceived your role as guardian ad
16 litem?

17 A I perceived it as an attorney for the
18 incapacitated person.

19 Q Okay. Can you name one thing that you did?
20 Well --

21 MR. MOOG: Objection; relevance.

22 CHAIRMAN TALEFF: Overruled. Plus, I'm not even
23 quite sure the question was finished, but...

24 MR. MOOG: Yeah.

25 CHAIRMAN TALEFF: If there's a question pending,

1 Counsel, would you please restate it?

2 MR. SHERWOOD: I'll withdraw it and I'll start
3 over.

4 Q (By Mr. Sherwood) I can't find -- tell me if I'm
5 wrong. I can't find anything in the record where you -- or
6 in your billing -- where you attempted to find people that
7 could assist Judy living in her own home.

8 Did you do anything like that?

9 A No.

10 Q Did you try to get some sort of counselor that
11 might be able -- say, a marriage counselor -- that might be
12 able to work out any problems that Judy and Ron were
13 having?

14 A No.

15 Q Did you file any motion asking the Court to allow
16 Judy to go home?

17 A No.

18 Q Did you file any motion asking for more extended
19 visitation for Ron?

20 A No.

21 Q When you came up here, you said -- your response,
22 specifically, was, I was the attorney for Judy Lowney.

23 A Correct.

24 Q Is that true?

25 A Uh-huh. Yes.

1 Q You used the past tense.

2 A Yes. Well, no, I'm currently her attorney
3 because I haven't been released by the Court. But I am
4 retiring from the practice of law, so I have filed a motion
5 with the Court to be removed as her attorney.

6 Q And since the remitter on the appeal about your
7 \$22,000 in attorney's fees, after that remitter was sent
8 back down, we've seen a document saying that the case was
9 closed.

10 Have you done anything on this case since
11 August 14, 2014?

12 A No, not that I recall.

13 Q Does Judy know how to reach you?

14 A Probably not. I don't think she ever did.

15 Q Does she have your phone number?

16 A She probably did, but I don't think she ever knew
17 how to call me.

18 Q Uh-huh. Have you -- you continue to be her
19 lawyer. Have you reached out to her to see if she has any
20 needs for which you might advocate?

21 A Not recently.

22 Q Well, when was the last time you did?

23 A I don't recall.

24 Q Was it before the remitter came down in August of
25 2014?

1 A Well, there was a point in time when Ms. Morin
2 refused to acknowledge me as her attorney and she just quit
3 serving me. So -- and we had the new guardians in place.
4 So they seemed to be handling everything and they were
5 represented by counsel, so rather than doubling all the
6 attorney fees and confusing the matter, mostly I took a
7 step back unless something went awry that I was notified
8 of. But everything that I was notified of had -- was able
9 to be handled by the counsel for the guardians, and it was
10 just a repeat of the past.

11 Q Well, as far as repetition, as I understand it, a
12 visitor was appointed in this case; right?

13 A Well, at the beginning. Yes.

14 Q Yeah. What do visitors do?

15 A They talk to the ward and the person who's
16 alleged to be incapacitated, and they make a recommendation
17 in a report to the Court as to whether or not it would be
18 appropriate for a guardian or conservator to be appointed
19 and whether or not the petitioners were appropriate to be
20 appointed.

21 Q And the -- the rule that governs the visitor's
22 actions is that they should be acting in the best interest
23 of the protected person?

24 A Yes.

25 Q And that's what a guardian does too; right?

1 A Yes.

2 Q Okay. Do you have any reason -- do you know why
3 there was this redundant appointment both of a guardian and
4 a visitor in this case?

5 A Well, just so you know, in a guardianship
6 proceeding, initially, the Court appoints a visitor and a
7 attorney and a physician to determine the facts and report
8 back to the Court. And then the Court takes that into
9 consideration in making a determination as to incapacity
10 and the appropriateness for the appointment of the
11 petitioners. And so then the guardian is appointed by the
12 Court after the attorney, the visitor, and the physician
13 have already made their reports to the Court.

14 Q I may have misspoke, and I -- what I meant to ask
15 you, if I didn't, was, do you have -- do you have an
16 insight as to why a guardian ad litem, or you, were
17 appointed to serve and do the things that a guardian ad
18 litem does, and a visitor was appointed?

19 I think, if I understand it, the visitor and the
20 guardian ad litem do the same thing?

21 A No.

22 Q What's different?

23 A Well, the visitor is usually a social worker in
24 most cases, and they come at it from a different
25 perspective as far as their own professional opinion -- or

1 they could be a medical person -- as to the capacity of the
2 person. They visit their home. They go into more of the
3 personal, social aspects of what's happening with the
4 alleged incapacitated person, and they make their report
5 from their professional perspective.

6 The attorney, which is what I was, basically
7 represents the alleged incapacitated person to make sure
8 that their rights are being addressed and represented
9 within the proceeding.

10 So that's just the general difference.

11 Q So is it fair to say that sometime within a few
12 months of Ms. Morin agreeing to represent Ron Lowney, Sr.,
13 Judy's husband, that there was a series of correspondence
14 between you and she, or at least on which you were copied,
15 in which her position was that your role had been of
16 guardian ad litem, and that that had lapsed when the
17 guardians were appointed.

18 Is that fair to summarize her position?

19 A Well, I would say that initially that wasn't the
20 case, but, yes, it became her position that I was no longer
21 needed and I was not Judy's attorney. And she just quit
22 copying me on the pleadings and --

23 Q Well --

24 A So I don't know.

25 Q Well, we know that she copied -- I'm sorry. I

1 cut you off.

2 A That's okay.

3 Q We know that she copied you on the supreme
4 court --

5 A Right.

6 Q -- but she didn't copy you on anything in the
7 district court, did she?

8 A I would have to look at the pleadings. I don't
9 recall. But we definitely had conversations about -- I
10 mean, I talked to her as Judy's attorney, and we had
11 emails. And Tina, for some reason, didn't want to
12 acknowledge me as Judy's attorney and so she didn't. But
13 it didn't change the fact that there's an order appointing
14 me as Judy's attorney and there wasn't any order allowing
15 me to withdraw or not represent Judy.

16 Q But you -- would you agree that ethical rules or
17 Rules of Professional Responsibility 1.2 says that you have
18 an obligation to do what Judy asks you to do if you're her
19 lawyer?

20 MR. MOOG: Objection; relevance.

21 CHAIRMAN TALEFF: Sustained.

22 Q (By Mr. Sherwood) Is it fair to say that not only
23 did you perceive your role as being someone who would lobby
24 for Judy's best interests, but that you expressed that
25 role -- you expressed your belief in multiple pleadings in

1 the guardianship proceeding?

2 A Yes.

3 Q Okay.

4 MR. SHERWOOD: May I confer with my client for
5 just one moment?

6 CHAIRMAN TALEFF: Yes.

7 Q (By Mr. Sherwood) Did you ever interact -- were
8 you even aware of the name Genet McCann?

9 A No.

10 Q Okay. She had no interaction with you?

11 A No.

12 Q Is it fair to say that -- there's been talk about
13 other things that Judy wanted. She wanted to vote -- to
14 vote. She wanted to receive communion.

15 Fair to say you weren't aware of any of that
16 because that was after you stopped doing things?

17 A No, that's not fair to say.

18 Q Okay. What is?

19 A Judy did not ever express those to me.

20 Q Uh-huh.

21 A But I was aware through conversations with Steve
22 Shapiro that -- when things came up, you know, what was
23 going on. So I was aware that she had requested that, but
24 I wasn't involved.

25 Q You weren't -- you didn't step in and advocate

1 for her positions?

2 A Not at that point. That was well past the time
3 that she was adjudicated incapacitated.

4 Q Yes. So you said you continued to be her lawyer.
5 Doesn't she have a right to have you continue to advocate
6 for her?

7 A Yes.

8 Q But you didn't?

9 A I wouldn't -- I didn't agree with that request,
10 just like I didn't agree with the request to go home when
11 she wanted to go home. I didn't think it was her best
12 interests, and I didn't think Judy had the mental capacity
13 to vote. I figured Ron wanted to vote for her or
14 something. But I didn't think she had the capacity to make
15 an independent judgment of her own, so I didn't pursue a
16 request for Judy to vote.

17 Q The chairman has pointed out that, you know, this
18 isn't some sort of -- the issue here is not whether you did
19 something right or wrong. And I used to be a prosecutor,
20 and now I do criminal defense, and I do because I'm just
21 not comfortable pointing fingers at people. But is it fair
22 to say that somebody who's looking at the record in this
23 case and the things you did for Judy to come to the
24 conclusion that you really had decided not to advocate for
25 things that she wanted to have done because -- or that you

1 just decided not to advocate for the things she wanted
2 done?

3 A No, that's not --

4 MR. MOOG: Objection.

5 CHAIRMAN TALEFF: Hold it. Hold it. Hold it.
6 Hold it. That's way beyond my order. Counsel, you're
7 about crossing the line. Now let's move on.

8 Q (By Mr. Sherwood) Did -- in Judy's best
9 interests, did you ever advise her that she could have a
10 public defender appointed for free?

11 MR. MOOG: Objection; privileged.

12 CHAIRMAN TALEFF: So -- absolutely sustained.
13 It's also beyond my ruling.

14 Counsel, I don't know why you keep going there
15 after I've told you repeatedly this is out of bounds.

16 Now, ask germane questions, please, or you're
17 going to be done. I'm not going to have this entire panel
18 be subject to repeated discussion of issues I've told you
19 are not issues in this case.

20 If you disagree, you can go on appeal. But those
21 are my rulings and I expect you to honor them and stand by
22 them and respect them.

23 Am I clear? Mr. Sherwood? Am I clear on that?

24 MR. SHERWOOD: You appear to be clear, sir.

25 CHAIRMAN TALEFF: Not appear. I am. So ask

1 germane questions or you're done.

2 MR. SHERWOOD: I'm done.

3 CHAIRMAN TALEFF: Okay.

4 Mr. Moog, any redirect?

5 MR. MOOG: I have a couple.

6 CHAIRMAN TALEFF: Okay.

7

8 REDIRECT EXAMINATION

9 BY MR. MOOG:

10 Q Ms. Churchill, from my review of Ms. Morin's
11 pleadings in the matter, it's apparent she did not
12 appreciate the positions you were taking on behalf of Judy.

13 A No, she did not.

14 Q Okay. And probably wanted you to be substituted
15 off the case?

16 A Absolutely.

17 Q Were there any times when Judy's stated interests
18 were a physical impossibility?

19 MR. SHERWOOD: Objection; relevance.

20 CHAIRMAN TALEFF: Sustained.

21 MR. MOOG: That's all I have.

22 CHAIRMAN TALEFF: Questions from the panel.

23 Ms. DeVries?

24 COMMISSIONER DEVRIES: None.

25 CHAIRMAN TALEFF: Mr. O'Brien?

1 COMMISSIONER O'BRIEN: None.

2 CHAIRMAN TALEFF: Mr. Ogle:

3 COMMISSIONER OGLE: No questions.

4 CHAIRMAN TALEFF: Ms. Menzies?

5 COMMISSIONER MENZIES: No, sir.

6 CHAIRMAN TALEFF: Ms. Maloney?

7 COMMISSIONER MALONEY: Nothing.

8 CHAIRMAN TALEFF: Mr. Belke?

9

10 EXAMINATION

11 BY COMMISSIONER BELKE:

12 Q At any time did Ms. Morin file any kind of motion
13 with the district court to modify your position as the
14 attorney in this matter or to clarify it?

15 A No, not that I am aware of.

16 COMMISSIONER BELKE: Nothing further.

17 CHAIRMAN TALEFF: Mr. Black?

18 COMMISSIONER BLACK: I have a couple questions,
19 Mr. Chairman.

20

21 EXAMINATION

22 BY COMMISSIONER BLACK:

23 Q At any time did Ms. Morin file a motion with the
24 Court asking you to prove your authority to appear on
25 behalf of the ward?

1 A No.

2 Q Did she ever indicate to you that she was
3 considering filing such a motion?

4 A Not that I recall.

5 Q At any time did Ms. Morin file a motion asking to
6 stay all proceedings until you proved your authority to act
7 on the behalf of the ward?

8 A No.

9 Q Did she ever indicate that she was considering
10 such a motion?

11 A No, not that I recall.

12 Q Did Ms. Morin ever file a motion to ask for
13 relief on behalf of the ward from any of your actions as
14 her attorney?

15 A No, not that I'm aware of.

16 Q Did she ever indicate that she may be considering
17 such a motion?

18 A No.

19 COMMISSIONER BLACK: Thank you. I have no
20 further questions.

21 CHAIRMAN TALEFF: Ms. Perry?

22

23 EXAMINATION

24 BY COMMISSIONER PERRY:

25 Q I just want to clarify. I believe my notes

1 reflect that you stated in your testimony you had had no
2 conversations with Genet McCann. Is that accurate?

3 A Yeah, not that I recall did I ever talk to her or
4 hear from her. I believe I first learned about her
5 involvement through Steve letting me know that something
6 had gone on, so...

7 Q Okay. So fair to say then that any
8 conversations -- and by conversations, I mean emails or
9 letters -- did you receive any emails or letters from
10 Ms. McCann?

11 A I don't believe so.

12 Q So all conversations then regarding your
13 representation or non-representation of the incapacitated
14 person, those were all -- excluding Mr. Shapiro -- those
15 all came from Ms. Morin then; correct?

16 A Correct.

17 COMMISSIONER PERRY: No more questions. Thank
18 you.

19 CHAIRMAN TALEFF: Ms. Faure?

20

21 EXAMINATION

22 BY COMMISSIONER FAURE:

23 Q Debbie, if I could have you turn to Exhibit 2 in
24 the notebook in front of you.

25 A Hope I don't knock the mic over. Okay.

1 Q There's been some question about the nature of
2 this order, specifically the second paragraph in which
3 Judge Krueger appoints you to represent Judith Ann Lowney
4 in a proceeding, and shall have the powers and duties of a
5 guardian ad litem.

6 A Uh-huh.

7 Q Can you explain this order to those of us that
8 don't practice in this area?

9 A I don't generally use that language myself, as
10 between attorney and guardian ad litem. It's always been
11 attorney. And that order, to me, said that I was the
12 attorney with the duties or powers of the guardian ad
13 litem. So I didn't consider myself a -- specifically a
14 guardian ad litem. I just -- it just represented to me --
15 and I think it's sort of some form language that's been
16 around for a long time -- to indicate my authority, but not
17 necessarily what they're trying to say is that I was a
18 guardian ad litem.

19 Does that make sense?

20 Q Yes.

21 A Okay.

22 Q As of June 2011, was there a guardian ad litem
23 appointed for Judith?

24 A No.

25 Q Subsequent to that, was there a guardian ad litem

1 appointed?

2 A No.

3 COMMISSIONER FAURE: Okay. Thank you. I have
4 nothing further.

5 CHAIRMAN TALEFF: Okay.

6

7 EXAMINATION

8 BY CHAIRMAN TALEFF:

9 Q When you say Ms. McCann -- or Ms. Morin stopped
10 recognizing you as an attorney, did she tell you why?

11 A Well, she told me why all along, is that she
12 didn't believe I was Judy's attorney. And so I figured
13 after we argued about it and I didn't change my position
14 and she couldn't show any court order where I'd been
15 removed or anything changing the status, I guess she just
16 decided that she didn't want to include me. I don't -- it
17 was kind of weird. I don't know.

18 Q Okay. Thank you.

19 CHAIRMAN TALEFF: Mr. Moog, any questions
20 engendered by panel's questions?

21 MR. MOOG: No follow up.

22 CHAIRMAN TALEFF: Mr. Eastwood? I mean Sherwood,
23 I'm sorry.

24 Any questions that you have based on the
25 questions the commission has asked the witness?

1 MR. SHERWOOD: No, Mr. Chairman.

2 CHAIRMAN TALEFF: All right. We will be in
3 recess until 9:00 tomorrow morning. You are excused.

4 (Proceedings in recess at 4:59 p.m.)

5 *****

6
7 (Proceedings reconvened at 9:00 a.m. on
8 Tuesday, December 4, 2018.)

9 CHAIRMAN TALEFF: We'll come to order. This is a
10 continuation of the hearing in the matter of Tina Morin.

11 Mr. Moog, you concluded your examination of
12 Ms. Churchill. Do you want to call your next witness?

13 MR. MOOG: Subject to my reservation of
14 examination of the respondent, ODC rests.

15 CHAIRMAN TALEFF: Okay.

16 Mr. Sherwood, call your first witness.

17 MR. SHERWOOD: Your Honor, I call Eli Parker.

18 CHAIRMAN TALEFF: Okay.

19 Mr. Parker, if you want to approach the podium
20 and I'll swear you in, and then you're entitled to sit in
21 the chair, if you prefer, to standing, as long as you
22 adjust the mic enough so that we can hear you.

23 (Witness sworn.)

24 ////

25 ////

1 DIRECT EXAMINATION OF ELI PARKER

2 BY MR. SHERWOOD:

3 Q So could you please state your name full name.

4 A Eli Parker.

5 Q And, Mr. Parker, how old are you?

6 A 42.

7 Q And where do you reside?

8 A Missoula, Montana.

9 Q And what's your current occupation?

10 A I'm an attorney for the public defender system.

11 Q And how long have you been an attorney for the
12 public defender system?

13 A Since December of 2006.

14 CHAIRMAN TALEFF: Mr. Parker, could you pull the
15 mic a little closer to yourself? Thank you.

16 THE WITNESS: How's that?

17 CHAIRMAN TALEFF: We'll see.

18 Q (By Mr. Sherwood) And was that when the state
19 public defender system as we know it today came into
20 existence?

21 A I think it was a few months before that, in the
22 summer, that it came in.

23 Q Okay.

24 A June or July of 2006.

25 Q And I want to talk briefly about your education.

1 Where did you attend college?

2 A Cornell College in Iowa. Mount Vernon, Iowa.

3 Q And law school?

4 A Missoula, Montana. University of Montana.

5 Q So you currently work for the public defender
6 system. What is it you do for them?

7 A Since probably about November 2011 I've handled
8 the civil cases involving guardianships and involuntary
9 commitments.

10 Q And the public defender system, is that a
11 statewide system now?

12 A It is.

13 Q There are certainly laws that pertain to its --
14 how it functions, but are there -- are those laws, do they
15 have statewide application?

16 MR. MOOG: Mr. Chairman, I'm going to object to
17 this line of questioning on relevance.

18 CHAIRMAN TALEFF: Sustained.

19 Q (By Mr. Sherwood) so when you -- you say you
20 represent people in -- when there are guardianship
21 proceedings?

22 A Yes.

23 Q And when you do that, are you appointed?

24 MR. MOOG: Objection; relevance.

25 CHAIRMAN TALEFF: I'll allow that question, but

1 I've made rulings pretrial on this issue, Counsel, so go
2 ahead and proceed.

3 You may answer the question, Mr. Parker.

4 THE WITNESS: Thank you.

5 Yes, I'm appointed by the Court, which is under
6 the statute.

7 Q (By Mr. Sherwood) And, Mr. Parker, there has been
8 a pretrial ruling that you won't be allowed to testify as
9 an expert. We discussed that. If you think I'm asking you
10 a question that is why you do things, I'm not. I just want
11 to ask what you do.

12 A Okay.

13 Q All right. And so for last seven years, roughly,
14 you said you performed that role in Missoula County?

15 A Yes.

16 Q Okay. And in the last seven years, when there
17 are adults charged with -- or that are subject to
18 guardianship proceedings, has any other attorney been
19 appointed to represent those individuals?

20 MR. MOOG: Objection; relevance.

21 CHAIRMAN TALEFF: Sustained.

22 Q (By Mr. Sherwood) There was some discussion
23 yesterday about the standard operating procedure in
24 guardianships. Is it standard operating procedure in
25 guardianships for the appointment of private counsel?

1 A No.

2 Q If you were to be appointed to both serve as
3 attorney and guardian for a person in a guardianship
4 proceeding for an adult, would you accept the appointment?

5 MR. MOOG: Objection; relevance.

6 CHAIRMAN TALEFF: Sustained. This is
7 impermissible expert testimony, Counsel.

8 Q (By Mr. Sherwood) Have you ever been appointed to
9 represent a guardian or a protected person in a
10 guardianship proceeding as both counsel of record and
11 guardian?

12 MR. MOOG: Objection; relevance.

13 CHAIRMAN TALEFF: I'll allow that question.

14 THE WITNESS: No, I haven't. Specifically, you
15 said guardian. I think you meant guardian ad litem.

16 Q (By Mr. Sherwood) I did. I'm sorry.

17 A And neither.

18 Q Do you currently represent some individuals
19 that -- in your capacity as attorney for people who are
20 protected people under guardianship proceedings?

21 MR. MOOG: Objection; relevance.

22 CHAIRMAN TALEFF: Sustained.

23 Q (By Mr. Sherwood) When you are appointed to
24 represent people as attorney of record, is there any -- do
25 those people get your services regardless of whether they

1 can afford to pay or not?

2 MR. MOOG: Objection; relevance.

3 CHAIRMAN TALEFF: Sustained.

4 MR. SHERWOOD: Well, Mr. Chairman, I don't want
5 to spend a lot of time here in some sort of -- having
6 issues. I would make an offer of proof at this time,
7 however.

8 MR. MOOG: Can I voir dire?

9 CHAIRMAN TALEFF: Pardon?

10 MR. MOOG: May I voir dire the witness?

11 CHAIRMAN TALEFF: No, I don't think there's any
12 reason to voir dire the witness. Counsel can certainly
13 make an offer of proof. We will let this witness -- if
14 you're concluding your examination of him and then making
15 an offer of proof, in order to not have the panel tainted
16 by the offer of proof, I would excuse the panel. If you
17 make the offer of proof on the record before me and
18 counsel, then we'll proceed.

19 So if you're concluded -- if you've determined
20 that you can cannot proceed any further with Mr. Parker,
21 that's fine. We'll recess and I'll let you make the offer
22 of proof.

23 MR. SHERWOOD: I have one more question.

24 CHAIRMAN TALEFF: That's fine. Go ahead.

25 Q (By Mr. Sherwood) Do you currently represent a

1 millionaire in guardianship proceedings?

2 MR. MOOG: Objection; relevance.

3 CHAIRMAN TALEFF: Sustained.

4 MR. SHERWOOD: Mr. Chairman, I don't want to get
5 in an argument with you, but I do want to establish some
6 things on the record. And I'm happy to wait for the rest
7 of the panel to -- or we can leave the panel here and go
8 somewhere.

9 CHAIRMAN TALEFF: Well, the court reporter is set
10 up here, Mr. Sherwood. So we will --

11 MR. MOOG: Should I do my cross first?

12 CHAIRMAN TALEFF: You -- I don't know what there
13 is to cross, but go ahead.

14 MR. MOOG: I have one question.

15

16 CROSS-EXAMINATION

17 BY MR. MOOG:

18 Q Have you ever practiced in Butte, Silver Bow
19 County?

20 A No.

21 Q Ever practiced before Judge Krueger?

22 A No.

23 MR. MOOG: That's all I have.

24 MR. SHERWOOD: May I redirect on that?

25 CHAIRMAN TALEFF: On that particular line of

1 questioning, sure.

2

3

REDIRECT EXAMINATION

4

BY MR. SHERWOOD:

5

Q Are there standards that have been adopted in the
6 public defender system?

7

A Yes.

8

Q And are you aware of any standard that excepts
9 your performance -- in which there's an exception for
10 public defenders for Judge Krueger?

11

MR. MOOG: Objection; relevance, argumentative.

12

CHAIRMAN TALEFF: Sustained.

13

MR. SHERWOOD: Then I believe I'm done here.

14

CHAIRMAN TALEFF: All right.

15

Mr. Parker, thank you. You're excused.

16

I don't know if you're here under subpoena or
17 not.

18

THE WITNESS: I am.

19

CHAIRMAN TALEFF: If you are, you're excused. I
20 appreciate your patience. I will note that I don't think
21 the situation in terms of your testimony should come as a
22 surprise based upon some prehearing rulings that have been
23 made, so I'm sorry and apologize that you had to sit
24 outside for a day waiting for this. But you are excused.

25

And we'll be in recess while counsel and

1 respondent make this offer of proof.

2 COMMISSIONER O'BRIEN: Mr. Chairman, are we going
3 to get a chance to ask him questions or not?

4 CHAIRMAN TALEFF: Fair question. All right.

5 COMMISSIONER O'BRIEN: After the offer of proof?

6 CHAIRMAN TALEFF: No, we'll do it now.

7 Ms. DeVries?

8 COMMISSIONER DEVRIES: No questions.

9 CHAIRMAN TALEFF: Mr. O'Brien?

10 COMMISSIONER O'BRIEN: No questions.

11 CHAIRMAN TALEFF: Ogle?

12 COMMISSIONER OGLE: I have a couple of questions.

13

14 EXAMINATION

15 BY COMMISSIONER OGLE:

16 Q So it's required, is it not, that in a
17 guardianship proceeding for the alleged incapacitated
18 person to have an attorney?

19 CHAIRMAN TALEFF: Mr. Ogle, I'm sorry. I've
20 ruled that he's not allowed to testify as an expert
21 witness, so I don't want him examined, if I may, on
22 questions that would amount to expert testimony after I've
23 precluded it.

24 That's why I was hesitant to have questions from
25 the panel.

1 COMMISSIONER OGLE: Okay. I -- I'm -- I don't
2 know that this is --

3 CHAIRMAN TALEFF: Okay. Well, that's fine then.
4 Just -- I want to be consistent with the ruling. But go
5 ahead.

6 COMMISSIONER OGLE: I was just asking him what
7 the statutes required. Is that considered opinion
8 testimony?

9 CHAIRMAN TALEFF: I think it is, but go ahead.
10 I've let some of the attorneys testify about it.

11 THE WITNESS: I'm sorry. Could you repeat the
12 question?

13 Q (By Commissioner Ogle) Isn't that a requirement
14 in a guardianship proceeding that the alleged incapacitated
15 person have an attorney appointed to represent them?

16 A Oh, absolutely. It would be a due process
17 violation if they didn't have an attorney.

18 Q And is there any necessity that that attorney be
19 from the public defender program?

20 A Either from the public defender or an attorney of
21 the respondent's choosing.

22 Q Okay. So it could be either a private attorney
23 or a representative from the public defender system?

24 A A private attorney of the respondent's choosing.

25 Q Okay.

1 COMMISSIONER OGLE: That's all I have,
2 Mr. Chairman. Thanks.

3 CHAIRMAN TALEFF: Ms. Menzies?

4 COMMISSIONER MENZIES: No, sir.

5 CHAIRMAN TALEFF: Ms. Maloney?

6 COMMISSIONER MALONEY: No.

7 CHAIRMAN TALEFF: Mr. Belke?

8 COMMISSIONER BELKE: No.

9 CHAIRMAN TALEFF: Mr. Black?

10 COMMISSIONER BLACK: No.

11 CHAIRMAN TALEFF: Ms. Perry?

12 COMMISSIONER PERRY: No.

13 CHAIRMAN TALEFF: Ms. Faure?

14 COMMISSIONER FAURE: None.

15 CHAIRMAN TALEFF: And I have no questions.

16 MR. MOOG: One follow-up.

17

18 RECROSS-EXAMINATION

19 BY MR. MOOG:

20 Q Mr. Parker, does -- the statute that speaks to
21 appointment of counsel for a ward, does it also allow a
22 court to appoint an appropriate official to represent the
23 ward?

24 A Yes.

25 Q That's all I have.

1 CHAIRMAN TALEFF: Okay. All right.

2 Now, we will be in recess, and we will allow the
3 offer of proof. I would imagine it will take five minutes
4 or less, so please don't go far.

5 MR. SHERWOOD: Thank you, Mr. Parker.

6 (Panel leaves the courtroom at 9:13 a.m.)

7 MR. SHERWOOD: So, Mr. Chairman, you've already
8 ruled pretrial that he cannot be called as an expert, and
9 for purposes of this offer I would iterate that we
10 respectfully disagree, and that if allowed to testify as an
11 expert, he would have testified consistent with the opinion
12 rendered in his -- in the expert disclosure that I
13 provided. But in addition to that today, Mr. Parker, if
14 allowed to testify, would testify not to as any opinions,
15 but to the standard practice in a statewide system of the
16 public defenders office, and he would testify that since
17 approximately 2006 when the public defender system went
18 into effect, there are new laws governing the
19 representation of adults in guardianship proceedings, and
20 not only new laws, but there was a critical amendment to
21 72-5-315 which struck the language that's found in
22 Mr. Shapiro's proposed order for Judge Krueger, the
23 language that talked about how there's an appointment of an
24 attorney and there -- and that the attorney is serving as a
25 guardian ad litem. That was Senate Bill 164 from 2006, and

1 it was labeled as an act to clarify the law.

2 He would also testify that under current law
3 the -- as to -- he was limited -- said in a limited fashion
4 today that all appointments are handled by public
5 defenders.

6 He has not -- does not -- isn't aware, as he
7 said, that anybody besides the public defenders office has
8 been appointed to represent a protected person in a
9 guardianship proceeding -- this is on an adult level. And
10 since -- since the inception of the public defender system,
11 I -- and that, pursuant to state law, that person is
12 provided those services free of charge because of a
13 legislative decision that they should not have to incur
14 costs or attorneys fees when an attorney has been
15 representing them.

16 He would also testify that he would not accept an
17 appointment, nor is he aware of anybody in his office or
18 statewide, that has ever accepted an appointment that -- in
19 which the Court purported to have them represent -- have
20 the appointed attorney represent the protected person both
21 as an -- as the attorney of record, in the role of
22 advocating on behalf of that attorney, and as a guardian ad
23 litem, in the role of looking after that person's -- the
24 protected person's best interests.

25 He would further testify that in his experience

1 of nine years, that no -- or seven -- the last seven years,
2 I apologize -- that the -- no guardian ad litem had been
3 appointed in any proceeding in which he was involved
4 because it would be redundant. He wouldn't say that here,
5 Judge. I wouldn't have asked him because I wasn't going to
6 ask him any whys -- any question of why. But he would say
7 that in -- universally, in those proceedings that he's been
8 involved, a visitor has been involved pursuant to the
9 current statutory provisions in Title 72.

10 I offer this for purposes -- not of establishing
11 anybody did anything wrong here. I offer it because
12 Ms. Morin was aware of these statutes, as she'll testify,
13 and -- and that the -- given the current state of the law
14 and what she saw in the pleadings in the guardianship
15 proceedings, it gave her no indication that
16 Ms. Churchill -- no reason to believe that Ms. Churchill
17 was playing or serving the role of anything other than
18 guardian ad litem.

19 I'm done.

20 CHAIRMAN TALEFF: Okay.

21 MR. MOOG: May I respond?

22 CHAIRMAN TALEFF: You don't need to respond to an
23 offer of proof, Counsel.

24 All right. We will gather the members of the
25 commission back, if you would, Shelly, please, and we'll

1 resume the hearing.

2 (Commissioners enter the courtroom.)

3 CHAIRMAN TALEFF: Back in session with the full
4 members of the commission.

5 Mr. Sherwood, call your next witness, please.

6 MR. SHERWOOD: Your Honor, I call Tina Morin,
7 please.

8 CHAIRMAN TALEFF: You were previously sworn,
9 Ms. Morin, but I think probably for purposes of making sure
10 the procedure is right, let me swear you in again.

11 (Witness sworn.)

12 CHAIRMAN TALEFF: You may be there a while, I
13 have a feeling, Ms. Morin. Do you want to get some water
14 or something?

15 THE WITNESS: I have some handy.

16 CHAIRMAN TALEFF: Okay. Well, if you need to
17 step away, feel free to do that to get your water.

18 THE WITNESS: Okay. There's a red light on. Is
19 that something --

20 CHAIRMAN TALEFF: I don't have any idea what that
21 is.

22 MR. SHERWOOD: I think it means your time is up.

23 CHAIRMAN TALEFF: Go ahead, Mr. Sherwood.

24 ////

25 ////

1 DIRECT EXAMINATION OF TINA MORIN

2 BY MR. SHERWOOD

3 Q So, Ms. Morin, you have in front of you a
4 notebook, and I mentioned it yesterday. If you need to
5 refresh your memory based on the information contained in
6 that notebook, please feel free to refer to it, the
7 information.

8 You -- so there was a brief intro yesterday, but
9 let's begin at the beginning.

10 You're the respondent in this case?

11 A Correct.

12 Q Okay. And what to you do?

13 A I'm an attorney.

14 Q And for how long have you been an attorney?

15 A Approximately 25 years.

16 Q And where were you born and raised?

17 A Arlee, Montana.

18 Q And where do you currently reside?

19 A Butte, Montana.

20 Q And where did you do your undergraduate work?

21 A The University of Montana, Missoula.

22 Q And law school?

23 A University of Montana, Missoula.

24 Q Okay. When you were at the U of M law school,
25 did you -- aside from just your class work, did you

1 participate in any other activities?

2 A Yes, I did. I was privileged to be a member of
3 the Public Land Law Review, and then ultimately editor of
4 the Public Land Law Review. I was also privileged to be
5 selected to be on the Moot Court team, and I competed at
6 the regionals and national level.

7 Q So I think you already told me, but you were
8 admitted to practice in '92?

9 A That's correct.

10 Q And you discussed it briefly yesterday with
11 Mr. Moog, but when you finished law school, your first
12 employment was with whom?

13 A I began immediately with Poore, Roth & Robinson
14 in Butte.

15 Q Okay. And for how long did you work for Poore
16 Roth?

17 A You know, I worked for them for a number of
18 years, but then eventually I was a partner. And I was
19 there approximately 16 years.

20 Q So at some point you decided to leave Poore Roth?

21 A Correct.

22 Q Okay. And by then did you have children?

23 A Correct. I had two children.

24 Q Minor children?

25 A At the time I left Poore, Roth & Robinson, yes.

1 I desired to have more time with them.

2 Q So when you were at Poore Roth, what were your
3 areas of practice?

4 A Initially, very predominantly it was employment
5 law defense. I was mentored with Don Robinson there. And
6 we also did a smattering of other things, but then also the
7 other area that I focused on was estates and probate.

8 Q When you left Poore Roth, where did you go?

9 A I opened my own law firm.

10 Q In Butte?

11 A Yes.

12 Q And what -- did you have any areas of emphasis or
13 practice, specifics in -- when you went to solo practice?

14 A Yes. It certainly has evolved, but initially it
15 was including employment defense. That evolved into
16 employment plaintiff's work. I did a fair amount of
17 securities litigation, which was very unusual and very
18 interesting. And then I have really evolved into personal
19 injury plaintiff's work. And still doing the employment
20 plaintiff's work, but a lot of personal injury.

21 Q So it is fair to say over the years that you had
22 not done to lot of guardianship proceedings?

23 A While at Poore, Roth & Robinson I was involved in
24 a fair number of guardianship proceedings that would be
25 attached to an estate or probate proceeding. But in

1 private practice -- or solo practice, I have been involved
2 in approximately four, I think, guardianship proceedings.

3 I currently represent a young man who's under
4 guardianship with a -- mostly representing him with regard
5 to his stated interests against a difficult trustee.

6 Q Throughout your career did you -- have you done
7 pro bono work?

8 A Yes. I have an ethical obligation to do pro bono
9 work, and I have always met that obligation.

10 Q And do you represent -- or did you represent
11 Mr. Lowney in the guardianship proceedings we've been
12 discussing pro bono?

13 A I didn't represent him during the guardianship
14 proceedings. I came late to that. And I represented him
15 in the appeal of those proceedings. And, yes, it was and
16 has always been pro bono.

17 Q As far as -- I just want to ask you briefly about
18 what you do in the world. Do you perform any, oh, let's
19 say, work on behalf of nonprofits or organizations,
20 charitable, et cetera? You talked to me something about
21 board of Safe Space. Could you explain that?

22 A Sure. There's a facility in Butte called Safe
23 Space. It's a battered women's shelter. I have served on
24 their board of directors for a number of years. I'm not
25 currently on that board. But I was on the board when their

1 address got published and -- in the Yellow Pages -- and got
2 them some great security measures.

3 I'm active in two churches. One in Butte,
4 Abundant Life Fellowship, where I have taught Sunday
5 school. My kids work in the nursery. Well, my son doesn't
6 now. He's at the University of Montana right now, but my
7 daughter still does.

8 And then I'm very active in a church in my
9 hometown on the Flathead Indian Reservation, One Voice
10 Children's Church where we provide a meal every Sunday for
11 the kids and services. There's no adult services. Just
12 for kids.

13 Q So you mentioned kids. You have two children?

14 A I do.

15 Q And are they now out of the home or --

16 A Nathaniel is 19, and he is currently at the
17 University of Montana. He is a red shirt freshman for the
18 Griz football team. Go Griz. And he is also in the
19 Davidson Honors College, where he is still deciding on his
20 undergrad, but contemplating law school.

21 Q And your daughter?

22 A My daughter Hannah is 15. She is a sophomore at
23 Butte High School. And she is active -- honor roll, good
24 student -- great student -- and active on three varsity
25 sports: Volleyball, basketball, and track.

1 Q In the course of your pro bono work, have some of
2 those cases upon which you worked been assigned to you by
3 district court judges?

4 A Yes. Yes. Butte-Silver Bow has a program where
5 the district court judges have assigned pro bono work.
6 I've been assigned dissolutions. I don't do any work in
7 that area myself, so I have looked more for assignments
8 that don't involve dissolutions. And so I did accept
9 Mr. Lowney as a pro bono case.

10 Q But he wasn't -- but not as an assignment or
11 appointment by a court?

12 A Correct.

13 Q Okay.

14 A Just as a choice of mine, to comply with my
15 ethical obligation.

16 Q So at one point you met Ron Lowney, your current
17 client?

18 A Correct.

19 Q How did that come about?

20 A You know, he was referred to me and walked
21 through my door one day.

22 Q And did you -- you met with him?

23 A I did.

24 Q So what was your understanding of the situation?

25 A As he explained it to me, and which I have since

1 confirmed, he had been married 50 years to the love of his
2 life. They'd been together since they were 16, and they
3 had an adult son with mental -- with a mental disorder,
4 bipolar. He was unemployed, out of work, homeless. He
5 came to the home, wanted his childhood hunting rifles to
6 sell --

7 MR. MOOG: Objection; relevance, and also
8 hearsay.

9 CHAIRMAN TALEFF: Sustained.

10 Q (By Mr. Sherwood) So let's focus a little more on
11 his status with Judy Lowney. Was it your understanding
12 that there had been proceedings, guardianship proceedings?

13 A Yes. While Ron was being held at Warm Springs in
14 an evaluation period -- he had not been committed and they
15 could not hold him eventually after that legal time period
16 because they found no mental illness -- while he was there,
17 this same son started guardianship proceedings on his
18 mother. And so when Ron came out of Warm Springs -- when
19 they had to release him because they couldn't hold him --
20 guardianship proceedings had been begun against his wife.

21 Q And apparently Mr. Lowney, your eventual client,
22 wanted you to do something?

23 A Yes. He asked me to get his wife back.

24 Q What was your understanding as to Judy's status
25 at that point?

1 A My understanding at that point in time is that
2 permanent guardians had been appointed over her, and the
3 guardians were her brother -- younger brother -- and his
4 wife.

5 Q Okay. And did you -- were you able to garner
6 what her residence status was at that point?

7 A Yes. She was being held at the Renaissance
8 living center in Helena.

9 Q And at this point this is all based on solely
10 what Mr. Lowney is telling you; right?

11 A Correct.

12 Q Okay. Other than the fact that he -- that she
13 was being held, did he -- at this Renaissance, did he
14 represent to you that there were other rights of hers that
15 might have been infringed?

16 MR. MOOG: Objection. Calls for hearsay, also
17 waiving privilege.

18 CHAIRMAN TALEFF: I'm concerned about the
19 privilege aspect of this.

20 Is Mr. Lowney going to testify, Counsel.

21 MR. SHERWOOD: No.

22 CHAIRMAN TALEFF: Then I'll sustain the
23 objection.

24 Q (By Mr. Sherwood) So you talked to Mr. Lowney
25 about this?

1 A I did.

2 Q And do you have his permission to discuss what he
3 would have told you?

4 A I do.

5 CHAIRMAN TALEFF: Is it in writing? His
6 permission to waive the --

7 THE WITNESS: His waiver, yes.

8 CHAIRMAN TALEFF: Go ahead, Counsel.

9 MR. SHERWOOD: Well, I think there was a second
10 to that objection, or second part of that, and that is
11 that --

12 CHAIRMAN TALEFF: That is hearsay?

13 MR. SHERWOOD: -- that is hearsay.

14 CHAIRMAN TALEFF: I wasn't saying you couldn't
15 ask the same question. I'm just saying proceed with your
16 examination.

17 Q (By Mr. Sherwood) Well, did you, at that point,
18 take anything Mr. Lowney told you as the gospel?

19 A No.

20 Q Okay. And so are you suggesting that what he was
21 telling you then -- that you're telling this panel that
22 you're offering it for the proof of what he told you as
23 being true?

24 A No.

25 Q So you had this -- discussions with him?

1 A I did.

2 Q And was it your understanding that there were
3 other rights that were being violated?

4 A Yes.

5 Q What were they, allegedly?

6 A He asserted that Judy's constitutional right --
7 of course, he didn't use that language. He doesn't know
8 that language. But that she was being prevented from
9 having representation, someone to speak for her. She was
10 being, of utmost importance to him -- and I found out
11 later, to her -- was being prevented from practicing her
12 religion. She's a devout Catholic. We're talking Mass
13 every day, communion every day from the hand of a priest,
14 and church on Sunday, every Sunday. And she was not being
15 permitted to practice her religion.

16 She also was not being permitted to have
17 communication with the outside world. Her cell phone had
18 been confiscated. Her mail was confiscated. She was not
19 allowed to send mail. She was not allowed to receive mail.
20 She wrote to Mr. Lowney every single day of her distress
21 and of her love for him, and only the letters that her
22 guardians perceived to be somewhat benign were allowed to
23 come through to Mr. Lowney.

24 Q This is all what he was telling you?

25 A Correct. But I subsequently confirmed every

1 single one of those.

2 Q Okay. So I don't think I'm alone in the world as
3 an attorney believing that every crackpot in the world
4 comes to my office, but did he disclose to you that he'd
5 had mental issues?

6 A I have to grin when you say that because
7 professor -- the Duke used to tell us, don't believe
8 everything your clients tell you; your clients will lie to
9 you.

10 So, yeah, I had concerns because there were
11 allegations that he had mental illness. And in some of the
12 pleadings I saw there were assertions that he had a long
13 history of mental illness, that he had a long history of
14 violence, none of which was true.

15 And I went -- I got the file from Warm Springs.
16 I consulted with two PhD psychologists after the fact, and
17 they confirmed that, yeah, there's no diagnosis of any
18 mental illness other than depression, which, as they all
19 said to me, to be -- fully understood; yeah, in this
20 situation, that might be occurring.

21 Q So who was this Mr. Lowney? What did he do?

22 MR. MOOG: Objection; relevance.

23 CHAIRMAN TALEFF: It's innocuous, but I don't
24 know that it's relevant. Go ahead.

25 THE WITNESS: Mr. Lowney is a gregarious

1 extrovert who is a longtime coach and teacher in Butte.
2 And he retired early in order to take care of his wife who
3 had been diagnosed with MS. He had been caring for her
4 with her MS for 20-plus years at the time that they were
5 split up.

6 He currently is just a -- I think what you would
7 call a character around Butte, in the sense that he attends
8 every sporting event of Butte High, Central, Tech -- he
9 goes to Dillon -- and roots and cheers for the kids.

10 Q So when you had your initial consultation with
11 Mr. Lowney, how did he present emotionally?

12 A Exceedingly distressed and very, very fervent in
13 trying to get me to understand how much he loved his wife
14 and how much they wanted to be back together.

15 Q So you had this meeting with him. And did you
16 commit on the spot to represent him?

17 A I did not.

18 Q Okay. I don't really want to know what other
19 people told you, but I want to know who you would have
20 reached out to to check out Mr. Lowney's story.

21 A You know, initially, my main concern was that he
22 was -- it's ironic that this was my main concern
23 initially -- was that he might still be represented,
24 because he had had prior attorneys. I knew one of them, so
25 I -- I ended up reaching out to all of them -- but

1 initially to Robert Whelan, now his Honor, in Butte, to
2 find out if he still represented Ron, and then also to find
3 out about what he knew about his representation and the
4 facts of the case. And he confirmed to me that he no
5 longer represented Ron, and that -- he also confirmed to me
6 everything that Ron was telling me as true.

7 When I think about it, it was just such an
8 incredulous story that there was sort of a disbelief at
9 first, but Bob did confirm it was true.

10 Q And was Mr. Lowney, Ron, was he also at one point
11 represented by a William Driscoll in Helena?

12 A Bill Driscoll, yes.

13 Q Okay. So did you reach out to Bill?

14 A I did. Bill was Ron's last attorney. He was the
15 attorney that represented him through the guardianship
16 proceedings and then, at the end of that, had told Ron that
17 he just didn't believe that he could go forward anymore.
18 And so that is why Ron came -- was looking for an attorney
19 to appeal that decision.

20 So, yes, I did speak with Bill.

21 Q And did you attempt to reach out to a third
22 lawyer at that time?

23 A Yeah. He -- John Michael Myers up in the
24 Kalispell area was, I believe, Ron's first attorney. I
25 think Bob was second. I heard that from Ron yesterday.

1 But, yeah, I did, and I didn't -- I did not hear back from
2 him prior to agreeing to represent Ron, but I was
3 comfortable in that simply because I talked to two of the
4 attorneys, and Michael Myers was first. So I knew, since
5 Ron had been represented by Bob and Bill, that it wasn't
6 possible that John Michael was still representing him.

7 Q And, now, with respect to any concerns you might
8 have had about Mr. Lowney's mental state, I think you said
9 that you reached out and -- or got documents from Warm
10 Springs?

11 A I did.

12 Q And would that have been -- what, Ron signed a
13 release or something?

14 A He did.

15 Q Okay. Did you attempt to reach out to a Dr.
16 Schafer?

17 A I did.

18 Q And was that because he showed up in those
19 reports?

20 A He did. After Ron was released from Warm Springs
21 because they could no longer hold him legally, he saw this
22 Dr. Schafer. Dr. Schafer, his records showed that Ron had
23 no -- no diagnosable mental illness. And -- but I was
24 never able to talk with him directly because he had moved
25 and we literally couldn't find him.

1 Q Did you also look at records from a Mr. Mahoney?
2 I don't really want to know what they have to say. I
3 just -- was that included as well?

4 A Yes.

5 Q Okay. So based on your, I guess, due diligence
6 in checking that out, did you have any concerns about Ron's
7 mental capacity to be a client?

8 A No concerns about his mental capacity. As a
9 human being, I certainly had concerns about the stress that
10 he was under.

11 Q So I think you indicated that you then agreed
12 that you would represent Ron.

13 A I did.

14 Q Okay. And for what purpose?

15 A The stated purpose of the representation was to
16 assist him in being reunited with his wife.

17 Q Okay. But wasn't there an immediate concern
18 about an appeal?

19 A Oh, yes, you're right. Yeah. Yes. He --
20 initially, I had to -- in order to get to the stated
21 purpose of reuniting him and his wife, I had to litigate
22 the appeal.

23 Q All right. So Ron Lowney comes to you, tells you
24 this story. You need to check it out, and you do. Does
25 that leave you much room for -- as far as time -- to meet

1 the appeal deadline?

2 A No, it was running. That deadline was running.

3 Q Okay. But you met it?

4 A I did, and I did with the help of Bill Driscoll.
5 He was very gracious in helping me understand the appeal
6 issues because I had not been involved prior.

7 It's hard to come in on a case and just do the
8 appeal when you haven't done the trial and lead-up. But he
9 did help with that.

10 Q So at the point that you filed the appeal, had
11 you reviewed all of the pleadings and record in the
12 guardianship proceeding?

13 A No.

14 Q Had you reviewed enough to where you felt that
15 the grounds on which you filed the appeal were legitimate?

16 A Oh, yes. Uh-huh.

17 Q So you had to file a notice of appeal. When you
18 did, whom did you serve?

19 A You know, I don't -- yes, it's -- it is my
20 document, and I signed it, but literally --

21 Q Let's take just the notice of appeal first.

22 A I believe on that certificate of service was
23 Steve Shapiro, Debbie Churchill, a woman from Adult
24 Protective Services -- Marian Murphy, I think, was her
25 name; I can see it -- and I think there was a fourth

1 person.

2 CHAIRMAN TALEFF: I'm sorry, but if you're
3 looking at a document that I've excluded as an exhibit,
4 that's improper.

5 THE WITNESS: I'm not looking at a document, sir.

6 CHAIRMAN TALEFF: I don't know what you have in
7 front of you, Ms. Morin. It's -- references something to
8 refresh your recollection. There's been no foundation laid
9 for you to refresh your recollection. So if you're looking
10 at a document, I'm just telling you I don't think it's
11 appropriate.

12 THE WITNESS: I understand, your Honor -- or
13 Mr. Chairperson. I'm not looking at anything. This is
14 from memory.

15 Q (By Mr. Sherwood) Well, you made some notes?

16 A I did.

17 Q And you've got notes in front of you. I want to
18 make sure we're clear with the chairman.

19 I'm looking at Page 8 of those notes.

20 CHAIRMAN TALEFF: Counsel, those notes are not in
21 evidence, and you haven't laid a proper foundation for her
22 to be reviewing notes.

23 MR. SHERWOOD: I thought that I had requested
24 when she took the stand that she be allowed to refer to her
25 notes to refresh her memory.

1 CHAIRMAN TALEFF: You made a statement. You did
2 not make any such request. And I would have denied a
3 request absent a proper foundation being laid. And you
4 haven't done that yet.

5 And Mr. Moog is entitled to look at those notes
6 if she's going to refresh her recollection. I don't think
7 that has happened.

8 So we're going to proceed under the rules.

9 Q (By Mr. Sherwood) Did you make notes?

10 A I did.

11 Q Okay. And do you have them in front of you?

12 A I do.

13 Q And did you make them because you were concerned
14 that you would not be able to remember everything when you
15 testified and wanted to be able to refer to those notes to
16 ensure that what you were saying is truthful and accurate?

17 A Yes. And clearly right now I can't remember who
18 all was on the certificate of service.

19 Q Okay. But in Page 8 of those notes, did you make
20 a note who you did serve?

21 A Yes.

22 Q Okay.

23 CHAIRMAN TALEFF: And I also do not want these
24 notes to be a circumvention of my pretrial orders limiting
25 exhibits. So I'm just telling you, Counsel, I'm going to

1 be very careful -- or you need to be very careful.

2 MR. SHERWOOD: Well, I don't want to get sideways
3 with the chairman, and so --

4 CHAIRMAN TALEFF: I'm not trying to get sideways
5 with you, Counsel. I'm telling you I've made some rulings,
6 and you don't get to circumvent that by creating notes
7 whereby she, in fact, is going to testify about documents
8 that I excluded because they weren't timely filed.

9 So Ms. Morin can talk about what her recollection
10 is, but if she has to refer to notes that are based on
11 documents that have been excluded, I think that's improper,
12 and I'm not going to allow it.

13 THE WITNESS: If I might help, the document that
14 shows the certificate of service is not excluded. It's an
15 ODC exhibit.

16 CHAIRMAN TALEFF: Well, then you should refer to
17 the exhibit. I don't recall the --

18 MR. MOOG: Notice of appeal is not an exhibit.

19 CHAIRMAN TALEFF: If it is an exhibit, then I
20 suspect counsel can point it out.

21 MR. SHERWOOD: Well, I acknowledge that you have
22 ruled that I can't introduce any exhibits because I was
23 late to producing them.

24 CHAIRMAN TALEFF: I didn't hold that you can't
25 use ODC's exhibits that have been admitted, so let's

1 proceed. That's my ruling.

2 MR. SHERWOOD: I don't want to get sideways with
3 you, Mr. Chairman, and she does have in a second portion of
4 those notes in front of her -- she has in front of her some
5 exhibits that are not ODC's that you said she could not --
6 that we couldn't move the introduction of, that are, as I
7 said, not ODC's. And I'd like an opportunity to take those
8 out of her notebook so that there's no allegation that
9 we're doing something that you've now told me we can't do.

10 CHAIRMAN TALEFF: Okay. I'm not telling you you
11 have to take anything out of the notebook. I don't want
12 her referring to the notebook and to items that have been
13 excluded. It's simply following the rules of evidence,
14 Counsel.

15 You don't need to be worried about getting
16 sideways with me. I'm just adhering to the rules of
17 evidence. And there's a proper procedure, and a document
18 is the best evidence of its content, and it should have
19 been introduced as an exhibit and offered. And it wasn't
20 timely identified, so it's excluded.

21 You can't get around that ruling by saying she
22 doesn't have a recollection of it unless she looks at the
23 documents and, in effect, testifies about it. So...

24 MR. SHERWOOD: Well, I don't want to get her in
25 trouble or me in trouble. I'd ask for a brief recess to

1 make sure what's in those notes and documents that she has
2 in front of you are nothing that you said we can't move --

3 CHAIRMAN TALEFF: That is fine. And I would also
4 suggest you share that with Mr. Moog so that he knows
5 what's in this documents notebook that she's referring to.

6 We'll be in recess.

7 Do you think 10 minutes will be sufficient,
8 Mr. Sherwood?

9 MR. SHERWOOD: I would hope so, your Honor.

10 CHAIRMAN TALEFF: We'll be in recess until five
11 after --

12 MR. SHERWOOD: Actually, your Honor, I have to
13 cross-reference to a computer to make sure that they are
14 ODC exhibits that are remaining. May I have 15 minutes?

15 CHAIRMAN TALEFF: You may. We'll be in recess
16 until 10:10.

17 MR. SHERWOOD: And, again, sorry for the "your
18 Honor," Mr. Chairman.

19 CHAIRMAN TALEFF: We'll just take that in stride.

20 (Proceedings in recess from 9:54 a.m. until
21 10:10 a.m.)

22 MR. SHERWOOD: Mr. Chairman?

23 CHAIRMAN TALEFF: Yes.

24 MR. SHERWOOD: So I presume that you anticipated
25 that Mr. -- I believe that Rule 612 requires that there be

1 a request by the opposing party to review the notes. You
2 anticipated that, and over the break Mr. Moog and/or his
3 co-counsel had indicated that they do want to review Tina's
4 notes.

5 We've now removed anything that is contradictory
6 to what you ruled earlier. I do wish, for the record, to
7 object to your ruling, in that I don't agree, but I don't
8 see a need to argue. And I believe that Mr. Moog will want
9 to see these before we proceed.

10 CHAIRMAN TALEFF: Well, he's entitled to, which
11 is my ruling. And you still have to have the requisite
12 foundation laid that she needs to reference that in order
13 to testify. But if you're now ready to show that to
14 counsel, you should do so.

15 And then when you're to ready proceed, Mr. Moog,
16 let me know.

17 MR. MOOG: (Reviews documents.)

18 I'm ready, Mr. Chair.

19 CHAIRMAN TALEFF: Okay. You want to put anything
20 on the record, Mr. Moog, about the notebook?

21 MR. MOOG: No, I think she can proceed.

22 CHAIRMAN TALEFF: All right. We're back in
23 recess with the full commission at 10:15. You may proceed
24 with your examination, Mr. Sherwood.

25 Q (By Mr. Sherwood) So, Ms. Morin, if there comes a

1 time when you don't recall -- because we're going to go
2 through quite a bit a stuff here, legal terms and stuff --
3 and you think you need to refer to those notes to refresh
4 your memory, just advise me; okay?

5 A I will.

6 Q All right. Well, I guess, more importantly, you
7 should advise the chair; okay?

8 A Yes.

9 Q All right. So, on appeal, do you recall what the
10 issues were?

11 A Yes. One of the appeal issues, of course, were
12 the fees that had been awarded to Mr. Shapiro and
13 Ms. Churchill. Another issue was that the appointment of
14 these particular guardians and how they were conducting the
15 guardianship was infringing on Judy and Ron's
16 constitutional right to be married, basically to engage in
17 a marriage relationship.

18 Q All right. So at some point you filed a notice
19 to appeal, and you said you served a number of people with
20 that. Did you then file a brief?

21 A Yes.

22 Q Okay. And we saw reference to it yesterday. I
23 don't think we need to -- that I have to figure out what
24 exhibit it was. But on that brief you identified
25 Mr. Moog -- or, excuse me -- Mr. Shapiro and Ms. Churchill

1 as attorneys, and you identified Ms. Churchill in her
2 capacity of representing Ms. Lowney.

3 At that point, when you filed that brief, had you
4 had an opportunity to thoroughly review the entire
5 procedural file?

6 A No, there was no need to.

7 Q Okay. So but when you filed that appellate
8 brief, you did identify Ms. Churchill as attorney for
9 Ms. Lowney; is that correct?

10 A Correct.

11 Q Why?

12 A I did because -- again, remember, I was not
13 involved in this process, so I don't really have an
14 understanding of who everyone is. I don't necessarily need
15 to for the appeal because there was no -- no issue that we
16 were taking up on appeal that had anything to do with who
17 was or wasn't appointed at the lower level.

18 And so I draft the brief. I have my secretary
19 do, you know, the cover page and the certificate of
20 service. She just pulls out of, you know, the lower
21 filings who should be on that certificate of service. And
22 on there is Steve Shapiro as an attorney for guardians, and
23 Debbie Churchill was pulled off because there was an order
24 that -- the caption of the order said order appointing
25 attorney.

1 Q Okay.

2 A So it was no -- there was no conscious
3 identifying of Ms. Churchill or Mr. Shapiro in any
4 particular role; just they were on the prior pleadings.

5 Q And so was there a need to comply with any
6 supreme court rule as far as service of parties?

7 A Yes, of course. Yeah.

8 Q Were you being careful that you didn't miss
9 somebody?

10 A I was very careful.

11 Q So yesterday Mr. Shapiro identified a document.
12 I believe it was December -- do you have their exhibits in
13 front of you?

14 A I do.

15 Q Okay. So could you go to Exhibit 10, please,
16 Tina.

17 A (Complies.)

18 Q And if we could go to Page 2 of that document,
19 please.

20 A I have it.

21 Q And I'm referring you to the fourth principal
22 paragraph. Do you see where you write, Ms. Churchill as
23 her GAL -- and I presume that would be Judy Lowney's GAL?

24 A I see that.

25 Q So you address Ms. Churchill as her GAL.

1 A Yes.

2 Q And you do that as early as December 3rd, 2013.

3 A Yes.

4 Q Why?

5 A Because that is what Judge Krueger's order said
6 she was, despite the caption, and that was the role that
7 she had taken. That was the role that she had exhibited to
8 that point, was as GAL.

9 Q So are you saying that by December 3rd -- well,
10 tell me whether or not I need -- by the December 3rd, can
11 you tell me whether or not you'd had an opportunity to
12 review the pleadings file in the guardianship more
13 thoroughly?

14 A Yes.

15 Q Okay. And so based on your review of that, did
16 you come to conclusions as to what Ms. Churchill's role was
17 here?

18 A Yes.

19 Q Okay. And I think I interrupted you. Why don't
20 you just tell us what that was.

21 A Judge Krueger's order, that is entitled something
22 to the effect Order Appointing Attorney, was drafted by
23 Steve Shapiro. And in the -- the caption says appointing
24 attorney. In the body, it says, will have the duties of
25 guardian ad litem.

1 And knowing that she had operated in the capacity
2 of guardian ad litem, in the sense that she had always put
3 out best interest concepts for Judy, had never advocated
4 for Judy's stated interests -- and that is the difference
5 between a guardian ad litem and an attorney for an
6 incapacitated person. Guardian ad litem is to be someone
7 who looks at things and reports to the Court and does not
8 have confidentiality to these -- to the client, and then
9 makes a report to the Court and advocates for best interest
10 of the party.

11 And, you know, Mr. Shapiro yesterday -- or
12 Ms. Churchill yesterday testified to that effect, that she
13 believed that if what her client wanted was not in her best
14 interest, that it was her duty to go for best interest.
15 And that is the definition of guardian ad litem.

16 Attorney is a different standard of
17 representation. It's stated interest. So, for instance,
18 right now I'm representing a young man who is under
19 guardianship, has a head injury. His trustee wants him to
20 go to Missoula to a month-long brain trauma center. He
21 does not want to go. And I am advocating for him to not go
22 because that is his stated interest. He has a guardian,
23 and the guardian is advocating for what she thinks is best
24 interest.

25 There's a reason for that separation. We are,

1 all of us, including Mrs. Lowney, entitled to an attorney
2 that advocates for our stated interests, has confidence.
3 So I identified her here as GAL.

4 I also know, under the law, that in 2006 -- prior
5 to 2006 there was a lot of meshing of guardian ad litem
6 and attorneys in these types of proceedings. 2006 our
7 legislature recognized that conflict that was occurring and
8 that people's constitutional rights were being violated.

9 So Senate Bill 167 ordered that the language in
10 the statute that said appoint -- can appoint an attorney or
11 attorney of their choice and will have the duties of
12 guardian ad litem -- the very language that's in Mr.
13 Shapiro's proposed order that Judge Krueger signed -- be
14 struck. It was struck from the statute. And if you go
15 through that legislative history, it was struck for the
16 very reason that you cannot be both attorney and guardian
17 ad litem in a guardianship proceeding.

18 So I know that. I know that in 2006 that
19 happened. And I -- I can see the order. It says order
20 appointing. I realize that it's someone who's used a form
21 that he's had for years. He's obviously not aware of the
22 change in the law. But the body does say, duties of a
23 guardian ad litem, and that is how she acted. There was no
24 reason for me to ever suspect that she would, six years
25 after the fact, claim to be an attorney.

1 Q So when you filed the notice of appeal -- and
2 ultimately you filed your appellate brief -- was that much
3 of an issue to you at that time?

4 A It wasn't an issue at all. It was on no one's
5 radar.

6 Q So you lost on the appellate level.

7 A We did.

8 Q But while you were on appeal, you filed some
9 motions in front of Judge Krueger. Is that fair to say?

10 A Yes.

11 Q When you filed in district court, pending the
12 appeal, did you ever serve Ms. Churchill on those
13 pleadings?

14 A I did not.

15 Q Why not?

16 A I knew and understood her to be the guardian ad
17 litem. And so for purposes of the appeal, which is still
18 considered the guardianship proceedings, she is still
19 appointed as guardian ad litem and still deserving of and
20 entitled to service of those documents, which I did. Very
21 recent supreme court case, 2017, in re AMM, the supreme
22 court doesn't hold -- it's dicta, but --

23 CHAIRMAN TALEFF: Counsel, I'm sorry.

24 You're not going to be getting into expert
25 testimony, Ms. Morin. I'm not talking about what happened

1 in 2017 with the supreme court.

2 So, I'm sorry, I'm going to jump here and say
3 this is irrelevant to the issues before this commission.

4 THE WITNESS: Mr. Chairperson, I'm just trying to
5 give you my state of mind, what I knew at the time. And I
6 knew that guardians --

7 CHAIRMAN TALEFF: Was there an appeal pending in
8 2017 in the guardianship proceedings? There wasn't.

9 THE WITNESS: No.

10 CHAIRMAN TALEFF: So I don't see your state of
11 mind in 2017 being an issue. I keep saying we need to
12 focus on what you did with respect to Ms. Churchill and her
13 role at the times that are set forth in the complaint
14 that's on file here.

15 So we can proceed.

16 THE WITNESS: So your question was why -- why
17 didn't I serve her then in the district court proceedings,
18 right, where I began to file motions or writs of mandate to
19 try to get my client time with his wife?

20 Because I know, based on my training --

21 Q (By Mr. Sherwood) At that time?

22 A At that time, based on my training and education,
23 that appointments in guardianship proceedings terminate as
24 soon as the proceedings terminate. And in this case it's a
25 guardianship proceeding, which means as soon as permanent

1 guardians are appointed, the appointments -- visitor,
2 physician, and guardian ad litem -- all terminate because
3 there's no need for the redundancy of guardians and
4 guardian ad litem. So that appointment terminated.

5 Q So that was your thinking on why there was no
6 need to be serving Ms. Churchill?

7 A At that point I only needed to serve the
8 guardians through their attorney, Mr. Shapiro.

9 Q This assertion that you made in December 3rd,
10 2013, in -- contained in Exhibit 10, did you iterate -- did
11 you repeat that assertion over time to Mr. Shapiro and/or
12 Ms. Churchill?

13 A Yes.

14 Q So I just want to get the chronology down here
15 right.

16 So you come into this case. You talk to
17 Mr. Lowney. There's -- you do your due diligence and you
18 agree to represent him. You're going to do it pro bono,
19 and you file a notice of appeal.

20 This all occurred when, roughly?

21 A October, November 2013, I believe.

22 Q Of '13?

23 A I believe.

24 Q Okay. And then you go up on appeal and you lose.

25 A Correct.

1 Q Do you recall when it was that you -- well, let
2 me direct you to --

3 A And can I correct something, Mr. Sherwood?

4 Q Yes.

5 A I had to refresh my memory with Exhibit 84, the
6 brief of appellant, and we filed that -- I believe the
7 notice of appeal was filed in 2013 and then our brief was
8 filed in February 2014.

9 Q Okay. And if you could look at ODC's Exhibit 1
10 if you need to refresh your memory, do you recall when the
11 case came back down from the supreme court? And the file
12 indicates -- the case register, I believe that it's
13 called -- indicates that the matter was closed.

14 Do you see that?

15 A Yeah. It -- according to this case register,
16 August 14, 2014, it's closed.

17 Q Okay. So now let's jump ahead to -- to when it
18 was that you reached out to Disability Rights of Montana.

19 Do you remember when that was?

20 A Not precisely, but I believe it was in 2016.

21 Q Okay. So we've got remitter comes down, case
22 closed, 8 of '14. There were no -- and it wasn't until
23 sometime in '16 that you reach out to Disability Rights of
24 Montana?

25 A Correct.

1 Q Okay. During that time between August of '14 and
2 early '16, do you make -- do you file anything else in the
3 district court?

4 A I believe I had filed some writs of mandate with
5 Judge Krueger.

6 Q And you -- feel free to look at ODC 1 if that
7 reminds you.

8 A What were your dates between?

9 Q From the time the remitter comes down on 8/'14,
10 of '14, and the time in early '16 when you're reaching out
11 to Disability Rights of Montana.

12 A Yes. On 11/19/2015 I filed a motion for annual
13 report and request for consistent and regular visitation
14 on -- I filed briefs to that in December.

15 Q December of which year?

16 A 2015.

17 Q '15. Okay.

18 A Then on December 21st, 2015, I filed a petition
19 for writ of mandate. That would have been to get Judy to
20 be able to be with her husband for Christmas. Well, I
21 should say it differently. For my client to be with his
22 wife for Christmas.

23 Q So you weren't purporting to represent Judy ever
24 here; right?

25 A Never did.

1 Q Okay. When you filed those two pleadings in '15,
2 did you serve Ms. Churchill?

3 A I did not.

4 Q From the time that the remitter came back down
5 okaying the payment of \$22,000 in fees, plus, to
6 Ms. Churchill, did you -- did Ms. -- to your knowledge, did
7 you have any reason to believe she was at all involved with
8 the case?

9 A No. She was on nobody's radar. She had done
10 nothing. She retained no role in this matter by law. Her
11 role was terminated.

12 MR. MOOG: Objection; asserting a legal
13 conclusion.

14 CHAIRMAN TALEFF: Sustained.

15 Q (By Mr. Sherwood) Okay. But that was your
16 belief. I think the chair has made it clear that we don't
17 get to argue law, but I want to know what your belief was.

18 A It was my belief and understanding.

19 Q Okay. So you filed these pleadings in late '15
20 and you don't serve her. You served Mr. Shapiro,
21 presumably?

22 A Yes.

23 Q Okay. And as a result of you filing those
24 pleadings and serving Mr. Shapiro, do you get anything from
25 Ms. Churchill?

1 A No.

2 Q So it's now December of '16 -- or, no, excuse
3 me -- it's now early '16. And I think -- well, let me see
4 if I can refer to a document.

5 A And, Mr. Sherwood, can I just add that, you know,
6 another thing informing my belief was Ms. Churchill filed a
7 report to the Court as GAL. It says GAL report to the
8 Court. She held herself out to be a GAL.

9 Q Time frame. When did that occur? Was that back
10 when the proceedings were still active?

11 A During the guardianship proceedings, which I then
12 reviewed as -- you know, moving forward, trying to figure
13 out what we could do -- what I could do for my client. And
14 I had to read her report to understand some of the things
15 that had happened, and she does the report as a GAL.

16 Q Fine. So -- well, let's -- let me look here.
17 Oh, I don't think there's any reason to review the
18 document, but would that have been the report that was
19 introduced yesterday and discussed by Mr. Shapiro?

20 A Yes.

21 Q Okay. So then it's -- it's now, say, the first
22 of the year, 2016. You're still representing Mr. Lowney.
23 And is he still asking you to see if Judy can come home and
24 he can visit her?

25 A Yes.

1 Q All right. So how do you run across the
2 Disability Rights of Montana?

3 A I was in almost weekly contact with Mr. Shapiro,
4 asking, begging that he have the guardians set up regular
5 visitation, because at this point visitation is only being
6 allowed very, very sporadically. Sometimes these people
7 who have been married for 50 years, spent 24/7 together,
8 hadn't seen each other in months.

9 Q That's what Ron is telling you?

10 A Yes. Yes.

11 Q Okay. And so you're urging Mr. Shapiro to take
12 some action; right?

13 A Yes. And --

14 Q Okay. So let me -- do you -- during all this
15 time, do you write Ms. Churchill --

16 A No.

17 Q -- asking her to take action on behalf of Judy?

18 A There was only -- I think only one time, and it
19 was just that letter that we were just on, when I thought,
20 possibly, as Judy's prior guardian ad litem, that she would
21 have an interest in, still, her best interest.

22 And we have reports from experts, PhD
23 psychologists saying that the isolation of Judy was harmful
24 to her. Very harmful to her. And one expert wrote that he
25 considered it abuse. So I thought maybe an appeal to her,

1 that maybe she'd step back in, consider stepping back in
2 and helping Judy out. And so I did ask her to, and she --
3 she did not respond.

4 Q Well, had you believed that Ms. Churchill's role
5 in the case was to serve as an advocate for Judy's
6 position, would you have written Ms. Churchill and asked
7 her to do that?

8 A Absolutely.

9 Q You didn't?

10 A I did not.

11 Q Never have?

12 A Never have.

13 Q So I think I have, again, interrupted you. I was
14 asking you about Disability Rights Montana. How did you
15 run across those folks?

16 A So we were getting nowhere with Mr. Shapiro and
17 the guardians. They were continuing to deny Judy -- or Ron
18 access to Judy. We knew that Judy wanted that access
19 because she had -- would write to Ron and --

20 Q So Ron would bring you in things that she had
21 written?

22 A Uh-huh.

23 Q Okay.

24 A Yeah. And on the rare occasion that they did let
25 them get together for a chaperoned lunch -- according to

1 Ron; I was not there -- she would cry and beg to be allowed
2 to come home.

3 So I'm casting about, trying to figure out -- and
4 Mr. Shapiro repeatedly said to me, You don't represent
5 Judy. Never said who did, but said, You don't represent
6 Judy.

7 Q And you agree with that?

8 A I confirmed that. I said, no, but -- and he
9 would say, Well, you can't know what she wants.

10 Well, yeah, we did have evidence of what she
11 wanted, a lot of evidence. And it's attached to that first
12 petition, the writ, what she wanted.

13 So I just started researching and trying to find
14 advocacy groups that advocated for the rights of the
15 elderly and the disabled, and in my research, found
16 Disability Rights of Montana.

17 Q Okay. So Ron is telling you Judy wants a lawyer,
18 somebody to represent her?

19 A Yes. And she told other people that too.

20 Q Okay. And you're getting that from other people
21 with whom you're speaking?

22 A Yes.

23 Q Are these friend of hers that were visiting her?

24 A Yeah. She had multiple friends that would visit
25 her, and she would beg them to help her, get her an

1 attorney, get her some representation --

2 MR. MOOG: Objection. She's testifying to
3 hearsay.

4 CHAIRMAN TALEFF: Sustained.

5 Q (By Mr. Sherwood) So you don't really know if
6 this is all true because you've never spoken to Judy.

7 A I've never spoken to her.

8 Q Okay. Why not go speak with Judy? Did you think
9 you'd get into Renaissance?

10 A No. These people that had been going and
11 visiting her -- some are family, some are friends -- as
12 soon as they brought out information about Judy's wishes,
13 they would be banned from visiting at the Renaissance. And
14 eventually there was a list developed by the guardians that
15 was at the front door of the Renaissance, and unless you
16 were on that list, you could not get in to see her.

17 Q You don't know that. You're being told that.
18 You haven't been to look at the list; right?

19 A Well, no, I haven't seen the list. But I was
20 told by Mr. Shapiro multiple times that neither I nor
21 anyone else would be allowed access to Judy without the
22 guardians present.

23 Q So this isn't just Ron and Judy's friends telling
24 you tough to get into see her; it's Mr. Shapiro telling you
25 this?

1 A Yes.

2 Q Okay.

3 A Yes.

4 Q So when you're looking for somebody that can
5 advocate on Judy's behalf, was there a particular
6 attraction in reaching out to Disability Rights of Montana?

7 A Yes. Because -- because we were not -- and "we"
8 being anyone -- was being allowed access to Judy, I found
9 in my research that Disability Rights of Montana has a
10 federal mandate that allows them to go and visit anyone in
11 an assisted living facility on their own and without the
12 permission of guardians.

13 Q So we heard testimony yesterday that you --
14 Ms. Zenker, Roberta, indicated that sometime in January --
15 their records indicated that -- I think it was a phone call
16 was made by you to -- we'll call them DRM. To DRM; okay?
17 Do you -- is that what you did?

18 A Yes.

19 Q Okay. And when you did that, do you remember
20 specifically to whom you spoke?

21 A Yes. I spoke to the woman that works there
22 that's a social worker, Janice Sanderson.

23 Q Okay. And you made a report?

24 A Yeah. She apparently does their intake.

25 Q Okay. We're going to circle back here, but I

1 just want to ask you right now, did you ever consider DRM
2 to be your agent?

3 A No.

4 Q Okay. And you're aware the complaint here
5 alleges that they were your agent?

6 A Yeah. No, and I also know that there's been
7 assertions that I somehow manipulated them. You know,
8 Mrs. Zenker -- that's just offensive. She's -- was a
9 classmate of mine. She has the same level of experience as
10 me. Bernie Franks-Angoy, who's the director, is older than
11 me.

12 I didn't manipulate anybody. I called them and
13 asked them, under their federal mandate, if they'd check on
14 this woman who was begging for representation.

15 Q And did you get an immediate response?

16 A No. No, they had to do whatever their process is
17 to look at it.

18 Q Well, if I recall correctly, Ms. Zenker said
19 yesterday that she and Ms. Sanderson, I believe, didn't
20 really go to visit Judy until that following fall; is that
21 correct?

22 MR. MOOG: That misstates the testimony from
23 yesterday. Objection.

24 CHAIRMAN TALEFF: Sustained.

25 Q (By Mr. Sherwood) See if you can correct me on

1 that.

2 A Yeah, they went in. I don't recall when my call
3 was there. But it was a way -- it was sometime after that
4 that they did decide to go in and visit with her.

5 Q Okay. And did they report back to you?

6 A Yes.

7 Q Ms. Zenker said something to the effect yesterday
8 they didn't really find any evidence that the assisted
9 living facility was violating Ms. Lowney's, Judy Lowney's,
10 rights. Is that your recall?

11 A Yes. The facility's defense of confiscating her
12 mail, not receiving mail, and telling the mail person that
13 she was a vegetable and couldn't receive mail, was that
14 they were under orders from the guardian to confiscate
15 mail. And that's what they would follow.

16 MR. MOOG: Objection. She's testifying to
17 hearsay.

18 CHAIRMAN TALEFF: Well, I don't think it's quite
19 an accurate recital of Ms. Zenker's testimony. I'd say
20 that's your recollection of it, but I don't see -- anyway,
21 that objection is overruled.

22 Q (By Mr. Sherwood) I'm going to divert you again
23 one more time here.

24 Ms. Zenker testified yesterday that you had
25 written or there was some correspondence about -- you had

1 gotten some information that maybe -- there was an argument
2 that Ms. Zenker had a conflict here.

3 Do you recall that?

4 A I do.

5 Q Okay. And so somebody had told you something
6 about -- that led you to believe that Ms. Zenker might have
7 a conflict?

8 MR. MOOG: Objection; calls for hearsay.

9 CHAIRMAN TALEFF: So far she hasn't said anything
10 to --

11 MR. MOOG: Yes, the question calls --

12 CHAIRMAN TALEFF: Overruled. When she starts
13 talking about someone else's statement, then you can make
14 that objection.

15 Q (By Mr. Sherwood) So you acted out on something
16 someone told you; is that right?

17 A I did. I asked if there was an issue.

18 Q And did you think that you had to raise that in
19 the interest of zealously representing Ron?

20 A Yeah. And I think that's one of the things
21 that's just really been lost here is I had a client. I was
22 representing a client through all of this, and it was Ron
23 Lowney. But, yeah, I had to ask.

24 Q Did you figure out later that you were
25 misinformed about the conflict?

1 A Yes.

2 Q Did you apologize to Ms. Zenker?

3 A I sure did.

4 Q Okay. So one of the commission members asked an
5 astute question yesterday about how -- well, how did we get
6 from the -- a possibility that Judy's rights are being
7 violated by the facility in which she's being held to
8 advocating for Judy to get -- to be able to arrange for
9 private counsel.

10 Could you explain that evolution?

11 A Sure. I was being informed by my client, and I
12 was getting confirmation of what he was reporting to me,
13 that Judy's constitutional rights were being violated. Not
14 just -- this wasn't like an abuse and neglect issue. This
15 was different, constitutional rights being violated, and
16 that she was asking for representation. And given the fact
17 that the guardians had made it so that no one could have
18 access to her, no -- no person, no attorney could go in and
19 say, Do you want representation? No one could get to her.

20 So in discussing that with Disability Rights of
21 Montana, they said, Yeah, we -- we can, under our federal
22 mandate, have someone go in there and confirm or not
23 confirm if she wants representation. So they did agree to
24 do that and --

25 Q Hold up. When they did, was that their call or

1 your call?

2 A I can't force them to do anything under their
3 federal mandate. It was their call. I certainly made the
4 request, as many people do who take part in their services,
5 but it was their call.

6 Q Okay. And at some point -- going to jump
7 ahead -- did you write them a letter saying, Geez, I really
8 want you to do this and this and this?

9 A Sure.

10 Q And did they respond saying --

11 A They responded --

12 Q -- we're not doing your bidding?

13 A We don't do your bidding; we don't have the
14 resources, whatever. But they did go in, confirm that she
15 wanted representation, and facilitated getting her
16 representation.

17 Q Okay. So now Judy had to get a lawyer.

18 A Yes.

19 Q Okay. As far as you know she doesn't have a cell
20 phone.

21 A Yes.

22 Q And did you have any discussions with Ms. Zenker
23 or anybody at DRM about maybe they would find somebody to
24 serve as a lawyer?

25 A Oh, yes, and that discussion was more with Bernie

1 Franks-Angoy, the director. She was just taken with the
2 case and desperately wanted to help and told me that they
3 often contracted with outside counsel because they just
4 didn't have the resources.

5 So she contacted, as far as I know, two attorneys
6 to see -- one was a woman who had retired from Disability
7 Rights of Montana. Another one was just a private
8 attorney.

9 CHAIRMAN TALEFF: This seems hearsay.

10 MR. MOOG: Objection.

11 CHAIRMAN TALEFF: And, I'm sorry, but we are
12 running out of time, and I do not want to -- you know, I'm
13 going to inject myself here. That's hearsay.

14 Q (By Mr. Sherwood) So let me -- I should have cut
15 you off because it doesn't really matter, Tina.

16 So were they able to get anybody in-house?

17 A They were not.

18 Q Okay. So what did you do?

19 A She -- Bernie had told me that --

20 Q Don't tell me what Bernie told you.

21 What did you do?

22 A I asked, if I could find someone, would they
23 accept that person and use that person and provide that
24 person with their federal mandate for access, and they said
25 yes.

1 Q Okay. So you went looking for somebody?

2 A I did.

3 Q Okay. Well, let's now talk about -- did you --
4 how many lawyers did you contact?

5 A I -- I don't know how many. Multiple.

6 Q Multiple. And was one of them Genet McCann?

7 A Yes.

8 Q Okay. Did you have any sort of history with
9 Genet McCann? Had you done cases with her? Had she
10 referred cases to you? Anything?

11 A No. I only knew her -- I got a cold call from
12 her at one point in time asking me to represent her in a
13 family matter. And it wasn't something that I was
14 interested in doing, and so I had declined.

15 So I tried her.

16 Q Met her on the phone?

17 A Correct.

18 Q Okay. When DRM said, Look, we just haven't -- we
19 can't get anybody in-house or to come in as a resource, did
20 you -- did you discuss with Ron a possibility that he could
21 engage the services of an attorney to represent Judy?

22 A Yes.

23 Q Okay. And was that the plan that you were
24 proceeding on when you were reaching out to these lawyers?

25 A Yes.

1 Q Okay. And so when you reached out to Ms. McCann,
2 was it on the terms that, Look, my client Ron is asking for
3 somebody -- to be able to hire somebody to represent his
4 wife?

5 A Yes.

6 Q Okay. Did Ms. McCann ever work for you?

7 A No.

8 Q And I think you said you never had done any work
9 for her?

10 A At that point. I did later.

11 Q Okay. When you spoke with Ms. McCann, was -- was
12 there any condition that said, Geez, Ms. McCann, if -- if
13 Ron hires you, you have to understand that your job is to
14 do his bidding.

15 A I'm sorry. I lost your question.

16 Q Well, so she's being -- it happens a lot. A
17 wants an attorney, but B pays for it.

18 A Yes.

19 Q Did you ever tell Ms. McCann that there was some
20 kind of glitch or some kind of condition saying, Well,
21 look, if you end up representing Judy that you have to do
22 what Ron wants.

23 A No, that was never said to her. There was a
24 discussion with my client about -- I'm very familiar with,
25 you know, representation like this where one party pays but

1 you actually represent the other party.

2 Q Right.

3 A It happens a lot in insurance defense cases;
4 right? Insurance company is paying the bill, but your
5 client is the insured. Same thing, you know, if the
6 parents are paying the bill and the kid is the insured.

7 So there was a discussion regarding that with my
8 client, that he needed to understand that he might pay the
9 bill because Judy had no access to money, but that Genet's
10 client was Judy.

11 Q Okay. So I think yesterday when Mr. Moog called
12 you, he had you identify -- there was a retainer agreement
13 or something?

14 A Yes.

15 Q Okay. We -- did you play any role in that
16 retainer agreement?

17 A No, I signed it as a witness.

18 Q As a witness?

19 A Well, as Ron's attorney.

20 Q As Ron's attorney. Okay. When you -- when
21 Ms. McCann agreed to, at least tentatively, represent
22 Judy -- at this point Ms. McCann hasn't seen Judy. Or was
23 the retainer agreement filed -- signed afterwards?

24 A No, I believe it was before.

25 Q Okay. So you don't know -- at that point you

1 have no personal knowledge, because you've never spoken to
2 Judy, about what she's going to say when Ms. McCann goes to
3 talk to her; right?

4 A None.

5 Q Okay. When Ms. McCann goes and talks to Judy,
6 presumably you have another meeting after that?

7 A Sure.

8 Q Okay. You don't go with her?

9 A I did not.

10 Q Okay. And as a result of the meeting after
11 Ms. McCann goes to see Judy, is it your understanding that
12 Judy's wishes and your client Ron's list of wishes are,
13 indeed, the same?

14 A Absolutely.

15 Q Okay. And did you then work with Ms. McCann
16 toward a common goal?

17 A Yes.

18 Q Were you pulling the strings with her? I mean,
19 was she your -- were you manipulating her? Were you -- was
20 she in any way your agent?

21 A No. And Genet is a competent, excellent
22 attorney. And she's older than me. No. Again, that's
23 offensive to suggest that I could manipulate this many
24 people.

25 Q Okay. So after Ms. McCann comes back from

1 meeting Judy, is it safe to say, though, that you and
2 Ms. McCann had conversations about how to proceed?

3 A Sure.

4 Q Okay. We heard from Ms. Zenker yesterday,
5 Roberta, about Ms. McCann's thoughts on a 1983 action
6 characterized as novel.

7 Did you -- did you buy into her suggestion that
8 this should be taken to federal court?

9 A No. And that was one of our disagreements. I
10 mean, I agree with Mrs. Zenker -- or Ms. Zenker -- that it
11 was novel. I mean, but you know what? Again, Genet's
12 entitled to, on behalf of her client, look at options and
13 pursue concepts. It wasn't where I was headed.

14 Q Okay. But we do know from talking to Ms. Zenker
15 yesterday that at some point Genet is headed, because she
16 filed a motion to attempt to get some more visitation.

17 A Yes.

18 Q At that point what's Ron telling you? How often
19 does he get to see Judy?

20 MR. MOOG: Objection; calls for hearsay.

21 CHAIRMAN TALEFF: Sustained.

22 Q (By Mr. Sherwood) We've been through this. You
23 don't know for sure what he's telling you is true; right?

24 A I know through my correspondence with Mr. Shapiro
25 that he was not being allowed to see Judy on a regular,

1 consistent basis, or for very much time.

2 Q Yeah, well, what's Mr. Shapiro telling you? Is
3 this, like, once a day? Once a week? Once a month?

4 A I was asking Mr. Shapiro to have the guardians
5 set up a consistent, once-a-week visit.

6 Q Uh-huh.

7 A And it just kept getting denied. No, we're not
8 going to do it.

9 Q Okay. So is it fair to say that you wanted -- on
10 behalf of Ron, you wanted more visitation?

11 A Correct.

12 Q Okay. We find -- and Ms. Zenker brings it up
13 yesterday, talks about it, how she's off on a hunting trip,
14 and she comes back to find that Ms. McCann has filed a
15 motion, not for -- to set aside the guardianship, but for
16 more visitation, and has somehow represented to the Court
17 that DRM, Disability Rights of Montana, is in on that
18 motion; right?

19 A Correct.

20 Q Okay. Did you know that Ms. McCann was going to
21 file a motion saying that she was working under the agency
22 of Disability Rights of Montana for additional visitation?

23 Is that a terrible question? Did you get the
24 question?

25 A I get it. I did not know that she was going to

1 file it under the representation that DRM was part of it.
2 I did know that she had met with Judy by then. She knew
3 what Judy's wishes were, and the holidays were right upon
4 them, and she wanted desperately to get to see her husband
5 for Thanksgiving.

6 Q That's what you're being told.

7 A Yes.

8 Q Okay. You don't know that.

9 A No. So -- but I know that she then made a
10 determination as Judy's attorney to act on her client's
11 stated interests, stated wishes, and to try to get
12 visitation.

13 Q Why don't you make a joint motion?

14 Well, let me withdraw that.

15 Had you had any success with any motion you filed
16 in front of Judge Krueger?

17 A None.

18 Q Okay.

19 A None. Any motion I filed mostly was allowed to
20 become moot based on time. Like they really want to get
21 together Christmas Day, and that can be facilitated through
22 family or the guardians, whoever, and he would let
23 Christmas come and go and then deny the motion based on its
24 mootness.

25 Q Okay. So you hadn't had much success?

1 A None.

2 Q All right. So then Ms. McCann makes a motion;
3 right?

4 A Correct.

5 Q Okay. Now, correct me if I'm -- had you seen
6 this, I believe Ms. Zenker referred to it as an association
7 agreement. Had you seen this association agreement between
8 Ms. McCann and Disability Rights of Montana?

9 A Genet drafted it, and I believe, after it was
10 signed, that she did send me a copy.

11 Q Okay. Did you play any part in drafting that?

12 A None. I had nothing to do with it.

13 Q Is it -- we talked about Ms. McCann's perception
14 that maybe this should be taken federal with some sort of
15 1983 action. Were there times when you -- or was there a
16 time ever that you asked Ms. McCann or suggested to her
17 that this was -- that you had a way to proceed, and she
18 rejected that?

19 A Well, sort of, I guess, in the sense that I
20 really thought we needed to stay in district court but
21 possibly look at what we could do in Lewis and Clark
22 County, because that was now where Judy was being forced to
23 reside.

24 Q Uh-huh.

25 A And she wasn't real hip on that because she was

1 all excited about the federal concept. So, I mean, that
2 was a disagreement, I guess.

3 Q Ms. Zenker was shown a document yesterday that --
4 let me get it.

5 Well, just cut to the chase. We saw something
6 yesterday where you -- Ms. McCann made a representation to
7 Ms. Zenker that you were pushing pretty hard, I think was
8 the term.

9 Did you push pretty hard at times?

10 A Oh, absolutely.

11 Q And was that in the --

12 A But on behalf of my client.

13 Q Your client?

14 A Yeah.

15 Q And did you think you had an obligation to
16 zealously represent Ron?

17 A Yes, I did. I know I did.

18 Q Okay. So when you are asking DRM if there's some
19 room for them to get involved, and you're asking -- well,
20 let's start with that.

21 Do -- Roberta yesterday said that she never heard
22 of Churchill. Did you ever talk to her about Churchill?

23 A No. I know there's been kind of this suggestion
24 that somehow I should have informed DRM about Ms.
25 Churchill, but, no, absolutely not, because she had no

1 capacity in what was happening. She had not participated
2 in what was happening. And she had never advocated for any
3 of Judy's wishes, desires, intent. There was just no --
4 I've used this phrase. She was not on anyone's radar until
5 Mr. Shapiro and his clients filed this claim against me and
6 they need to support it. I mean...

7 Q Okay. So now let's move on to Ms. McCann. Would
8 you have provided copies of documents to Ms. McCann that
9 you thought were germane to her role representing Judy?

10 A Yes.

11 Q Do you -- how much do you know about that? Did
12 she have the pleadings file? Did you give it to her? Or
13 do you know whether she had it? Or...

14 A I don't believe she had it, but she accessed it.
15 I believe she went and reviewed it.

16 Q Okay. Did you ever bring up Churchill
17 specifically -- Ms. Churchill -- to Ms. McCann?

18 A No.

19 Q But, as far as you know, Ms. McCann had the
20 pleadings file?

21 A Yes. Yes.

22 Q Okay.

23 A She didn't have them, but she went and viewed
24 them. As did DRM.

25 Q Well, Roberta yesterday said that she really

1 didn't. That she had gotten on the internet, I think, and
2 looked at the supreme court stuff --

3 A Right. She had access to them.

4 Q -- and hadn't noticed.

5 But are you saying you provided documentation to
6 somebody that Roberta didn't see?

7 A I don't understand your question.

8 Q Well, I asked Roberta, Well, did you read the
9 supreme court stuff? And she said yeah. And I said, Did
10 you notice that Ms. Churchill's name showed up in those
11 pleadings? And she said no.

12 But did you -- did you provide --- and it
13 seemed -- well, did you provide any pleadings to Bernie,
14 Ms. Churchill's superior, or to anybody else there at DRM?

15 A Not pleadings. What I provided was copies of the
16 brief, the appellate briefs, and, of course, on the front
17 page of that Ms. Churchill does appear. And so if -- if,
18 in fact, Ms. Zenker or Ms. Angoy-Franks -- they would have
19 been able to look at that and say okay, and make their own
20 determination about who she was.

21 But nobody needed to because she just -- I mean,
22 everyone who practices here knows the law. Her appointment
23 as GAL terminated, and she's never acted in the capacity of
24 an attorney.

25 Q Your position.

1 A Correct.

2 Q Okay.

3 A Well, and most other attorneys that practice in
4 this area.

5 MR. MOOG: Objection; she's giving opinion
6 evidence.

7 CHAIRMAN TALEFF: Sustained.

8 Q (By Mr. Sherwood) So --

9 A But I also provided them with a bunch of the
10 documentation of Judy asking for representation. And, you
11 know, I don't like "even if" arguments, but regardless of
12 Churchill's presence, Judy, under our U.S. Constitution,
13 Montana constitution, Sixth Amendment, is entitled -- and
14 the MCA, what is it, 3-3-15? -- is entitled to an attorney
15 of her choice.

16 Q Okay. So let's take a step back here. She's
17 entitled to appointed attorney or an attorney or her
18 choice; right?

19 A Correct.

20 Q So at any time when you were involved -- I know
21 you got in late. The guardians -- permanent guardians had
22 already been appointed. But did you ever make a move to go
23 back to Judge Krueger and say, I want you to appoint an
24 attorney for Judy?

25 A No.

1 Q Why not?

2 A I remember one of the commission members
3 yesterday asking if I had filed anything to clarify
4 Ms. Churchill's role. No, because, again, there was no
5 confusion as to her role. There was no --

6 Q No, you weren't -- I think we've got that, Tina,
7 that you believed that, whatever Ms. Churchill was, it was
8 a guardian ad litem; right?

9 But that left a hole. Judy wasn't getting
10 representation. So apparently you made a decision that,
11 Well, I'll try to see if she can get retained counsel as
12 opposed to filing some sort of motion with Judge Krueger to
13 get her appointed one.

14 Why take the first option of getting her --
15 arranging to get her own counsel?

16 A Because, as we've established, I had had
17 absolutely no luck with Judge Krueger on any motions that I
18 had filed in this matter.

19 Q Uh-uh.

20 A And there was a decision made that we did not
21 want to run the risk that he would appoint someone that was
22 not committed to Judy's stated interest, that he would just
23 appoint someone from the pool of available attorneys. And
24 I'm aware of the statute that an appointment in a case like
25 this is supposed to come out of the public defenders

1 office, and that didn't happen in the first case. He
2 appointed no attorney, in my opinion. And so a decision
3 was made that it would make more sense to get Judy someone
4 of her own choice. That was the better route for her.

5 Q And you thought the statute was pretty clear
6 that, indeed, she could hire a lawyer; right?

7 A I know it's clear. It's a constitutional right.

8 Q Okay. All right. So at any time -- well,
9 let's -- let's go back and make sure.

10 Ms. Zenker testified yesterday that she didn't
11 consider Disability Rights of Montana or herself -- that
12 they, either one of those, ever served in the capacity as
13 your agent.

14 Do you agree with that?

15 A I do.

16 Q Okay. With respect to Ms. McCann, did you ever
17 consider her to be your agent?

18 A No.

19 Q Did you ever have an expectation that she would
20 do anything other than act as an independent professional
21 bound by rules of professional responsibility?

22 A I expected her to do that.

23 Q Okay. Mr. Shapiro talked about how he had heard,
24 been advised, something, that Ms. McCann had gone to where
25 Judy resides sometime in the last few months, and that you

1 were in town.

2 So we know that date is August 28th, I believe,
3 was it?

4 A Yes.

5 Q Where were you on August 28th?

6 A I can confirm that I was -- I'm sorry. I've been
7 accused of so many things.

8 I was not in town on that day. I did not assist
9 Genet in going there. I was in Butte, Montana, attending
10 my 15-year-old daughter's volleyball game. I have her
11 schedule that I can produce that shows the game on that day
12 and the time, and I have a photo of her in the gym, playing
13 that game that I was there for.

14 Q Okay. At some point did -- did Ms. McCann start
15 doing things that were odd?

16 A She started doings things that I would not
17 necessarily do.

18 Q Uh-huh.

19 A But I'm not going to call them odd.

20 Q Okay.

21 A They weren't what I would do.

22 Q All right. Well, she's -- I think you're well
23 aware that she's gotten very sideways with this commission.

24 A Yes.

25 Q Were any of the actions that she took in dealing

1 with this commission at your request?

2 A At --

3 Q At your request?

4 A No.

5 Q Were you, in fact, aware of what she was doing?

6 A No.

7 Q Okay.

8 A I did, at one point, provide her with an
9 affidavit of support because there were suggestions being
10 made that she was in need of a psychological evaluation.

11 Q Uh-huh.

12 A And I provided an affidavit of support saying
13 that that was not true.

14 Q That -- in your opinion --

15 A In my opinion.

16 Q -- you didn't think she needed psychiatric help?

17 A And I was as qualified as anybody to state that.

18 Q Well, you don't have a degree in psychology?

19 A Well, who was stating the opposite. So...

20 Q Right. Could you turn to ODC Exhibit 11,
21 please.

22 A I have it.

23 Q Okay. This -- well, I'm sure if it's not been
24 admitted that I'll be told, but I believe it is.

25 Do you recognize this exhibit?

1 A Yes.

2 Q Okay. And it's --

3 CHAIRMAN TALEFF: Exhibit 11 has been admitted,
4 Counsel.

5 MR. SHERWOOD: Thank you. Did you say has?

6 CHAIRMAN TALEFF: Has.

7 MR. SHERWOOD: Thank you, Mr. Chairman.

8 Q (By Mr. Sherwood) So I see that this is actually
9 an email from Ms. Churchill to you, apparently in response
10 to your December 3rd that we talked about.

11 Did -- throughout all of this time with
12 Ms. Churchill, did you have -- were you on the phone with
13 her?

14 A No.

15 Q Did you meet with her in person?

16 A No.

17 Q Did you ever actually see her physically?

18 A No.

19 Q Okay. So whatever interaction you had with
20 Ms. Churchill was pretty much emails?

21 A I'm sorry. It was pretty much what?

22 Q Emails or correspondence?

23 A Yes.

24 Q Okay. And we see here in this email from her to
25 you that she says:

1 I have no problems with the way the Bugnis are
2 handling their duties as guardian ad litem and conservator.

3 Did she ever, at any time in the -- apparently in
4 the correspondence and emails that you had with her,
5 purport that she was doing anything other than playing the
6 role of guardian ad litem?

7 A No. And I referenced her as guardian ad litem.

8 Q Pardon?

9 A I referenced her as guardian ad litem.

10 Q Yes. So...

11 A You know, part of -- of my role in advocating for
12 my client, I filed motions to get him visitation. And if
13 Ms. Churchill believed that she was appointed as Judy's
14 attorney and still retained that role, she would have
15 needed to meet with her client and then either -- well, do
16 what Judy wanted her to do and join in those motions or
17 file her own.

18 Q That was your expectation?

19 A Yeah. If you're going to be someone's attorney,
20 that's what you need to do.

21 Q And she never did?

22 A She never did. Judy wanted to go to her 50th
23 high school reunion --

24 MR. MOOG: Objection; unresponsive.

25 CHAIRMAN TALEFF: Sustained.

1 MR. SHERWOOD: Yeah.

2 Q (By Mr. Sherwood) Mr. Lowney would have alleged
3 that Judy wanted to do a lot of things; right?

4 A Yeah, including have a 50th wedding anniversary.

5 Q Okay. And did you ever have any -- did any
6 motions show up from Ms. Churchill advocating for Judy to
7 do any of the things that Mr. Lowney was telling you she
8 wanted done?

9 A No.

10 MR. MOOG: Objection; relevance.

11 CHAIRMAN TALEFF: The record is going to speak
12 for itself, but you can testify to the extent you have
13 knowledge.

14 THE WITNESS: No. She didn't file any motions so
15 that Judy could celebrate her 50th wedding anniversary.

16 Q (By Mr. Sherwood) Just to avoid any tacit
17 admissions here, yesterday Mr. Shapiro -- and I don't think
18 we need to engage in any ad hominum attacks here, Tina --
19 but Mr. Shapiro was asked and allowed to render several
20 opinions about his -- how he thought of you.

21 Are any of those justified?

22 A No.

23 Q Did you ever do anything other than zealously
24 advocate for your client, Ron Lowney?

25 A No. His suggestion that my contact with him was

1 obnoxious -- I forget his other three words -- are
2 inaccurate. And also, interestingly, they're not
3 unethical, even if they were true.

4 Q Okay.

5 A He was annoyed by me.

6 Q And without getting into specifics or name
7 calling on your behalf, was it fair to say that you were a
8 bit annoyed with him?

9 A Sure.

10 Q Okay.

11 MR. SHERWOOD: I have no more questions at this
12 time.

13 CHAIRMAN TALEFF: How long do you think your
14 cross is going to be, Mr. Moog?

15 MR. MOOG: An hour.

16 CHAIRMAN TALEFF: Do you have another witness --

17 MR. SHERWOOD: No.

18 CHAIRMAN TALEFF: -- Mr. Sherwood?

19 All right. Let's take a five-minute break. In
20 fact, let's take a 10-minute break.

21 And even though I said we were going to be done
22 at noon, we've had a number of breaks. I'll extend the
23 hearing time to 2:00.

24 So let's be in recess for 10 minutes. We'll
25 resume at 20 to noon. We'll recess for one hour at lunch,

1 and then reconvene for one hour, max.

2 We're in recess.

3 (Proceedings in recess from 11:28 a.m. until
4 11:47 a.m.)

5 CHAIRMAN TALEFF: Okay. We will be back on the
6 record. It is 11:47, according to the court's clock.

7 Mr. Moog, you can conduct your cross-examination.

8 As I indicated to counsel off the record, rather
9 than recessing for lunch, we are going to go straight
10 through. We will conclude not later than 1:00, so that
11 ought to give us an hour and ten minutes for your cross and
12 any redirect.

13 MR. MOOG: Okay. I will truncate my examination.

14 CHAIRMAN TALEFF: Just letting counsel know the
15 time.

16 MR. MOOG: I appreciate that, Mr. Chairman.

17

18 CROSS-EXAMINATION

19 BY MR. MOOG:

20 Q Good morning.

21 A Good morning.

22 Q I believe you said on direct examination that you
23 faulted Ms. Churchill for not responding to your motions
24 filed in district court concerning the visitation issue?

25 A I didn't fault her because I wasn't thinking of

1 her. I'm saying after the fact. If she were Judy's
2 attorney, she would have responded to those motions.

3 Q However, you also stated that you didn't serve
4 her on those motions; correct?

5 A She wasn't -- she wasn't in any capacity in those
6 proceedings.

7 Q Okay. So you didn't serve her, but she should
8 have responded?

9 A No. I think what she should have done is know
10 what her client wanted and then proceeded in that regard.
11 She shouldn't be responding to me. She should be --

12 Q Thank you.

13 A -- representing her client.

14 Q Thank you. You answered the question.

15 You also stated on direct that you represented a
16 ward in a guardianship proceeding?

17 A An alleged incapacitated person, yes.

18 Q Was that by appointment or were you retained
19 counsel?

20 A It was by appointment.

21 Q And are you a member of the Office of Public
22 Defender?

23 A No.

24 Q Okay. Prior to agreeing to take Ron's case, did
25 you go to the district court and review the pleadings

1 filed?

2 A Oh, I should back up. I was a replacement
3 appointment. So the first one was from the public
4 defenders office, and then I was the replacement. And I
5 had to agree to do it pro bono.

6 Q Okay. So you must be an appropriate official on
7 any of the statute then?

8 MR. SHERWOOD: Objection; argumentative.
9 Objection; argumentative.

10 CHAIRMAN TALEFF: Please repeat the question. I
11 apologize.

12 (Record read.)

13 CHAIRMAN TALEFF: Why don't you rephrase the
14 question.

15 MR. MOOG: I'll move on. Thank you. Withdrawn.

16 Q (By Mr. Moog) So my other question is, prior to
17 agreeing to take Ron's case, did you go to the district
18 court, check out the file, and review the pleadings?

19 A No.

20 Q Did you call Mr. Shapiro and ask him about what
21 happened in the case prior to your involvement?

22 A No, I spoke with Mr. Driscoll.

23 Q Did you ask Mr. Shapiro for permission to speak
24 with the guardians?

25 A No, I didn't need to speak with them. I was just

1 appealing. And at that appellate level they don't take
2 evidence. So you all do is make a legal argument and write
3 a brief.

4 Q You were trying to collect background
5 information?

6 A I got background information from my client and
7 Mr. Driscoll.

8 Q Okay. And did you call Debbie Churchill up on
9 the phone and ask her what her role was on the case?

10 A No, no need to. I'm just appealing issues. I'm
11 just -- and what her role was was not an issue.

12 Q Okay. Until now; right?

13 Take a look at Exhibit Number 2, please,
14 Ms. Morin.

15 A I have it.

16 Q Okay. It's true here that the judge appoints
17 Debbie Churchill to represent Judith Ann Lowney; isn't that
18 correct?

19 A Yes. As a guardian ad litem.

20 Q No, that's not accurate. With the powers --

21 MR. SHERWOOD: Objection --

22 MR. MOOG: -- with the powers and duties --

23 MR. SHERWOOD: Objection. Is he testifying?

24 CHAIRMAN TALEFF: Well, that's argumentative.

25 Let's try and -- he's entitled to ask leading questions,

1 however.

2 Q (By Mr. Moog) Isn't it true that this order says
3 she shall have the powers and duties of a guardian ad
4 litem?

5 A Correct. I also notice that this order says
6 order appointing attorney to represent an alleged
7 incapacitated person. It doesn't say order appointing her
8 as attorney. She just is an attorney. We know that. So
9 he's appointing an attorney to represent her as a guardian
10 ad litem.

11 Q And that's how you interpret the order; correct?

12 A It's how it is under the law.

13 Q At some point you did review the court file;
14 correct?

15 A Yes.

16 Q And did you see that Ms. Churchill had moved to
17 withdraw at a certain time?

18 A Yes.

19 Q To withdraw as counsel of record; correct?

20 A Yes. My understanding is she wasn't getting paid
21 so she wanted out.

22 Q Would there be any reason to withdraw if she
23 wasn't counsel of record?

24 A Yeah, if she is a guardian ad litem. Yeah. And
25 she's not getting paid, yeah.

1 Q If I could direct your attention to Exhibit 36,
2 please.

3 A I'm there.

4 Q And this is response to the Bugni complaint;
5 isn't that correct?

6 A To the what complaint?

7 Q The Bugnis' complaint.

8 A Yes. This is my response to their complaint that
9 my correspondence with their attorney was harassing.

10 Q If you could turn to Page 5 of that exhibit,
11 please?

12 A I see it.

13 Q 5 of 34. Isn't it true that you classified this
14 as ongoing litigation?

15 A Yes. I was engaged in ongoing litigation with
16 Mr. Shapiro on behalf of my client.

17 Q And during that ongoing litigation, Judy was
18 unrepresented? Is that your position?

19 A She was unrepresented, yes.

20 Q Despite the court order appointing Debbie
21 Churchill?

22 A That court order only appointed her as a guardian
23 ad litem.

24 Q Okay.

25 A It says --

1 Q We don't need to --

2 A -- an attorney. Doesn't say as an attorney.

3 Q Okay. You can parse the language, but we'll move
4 on.

5 You did recruit Genet McCann to purport to
6 represent Judy; did you not?

7 A Yes, I asked Genet if she would consider that
8 role.

9 Q And, likewise, you did request DRM to do a
10 welfare check on Judy?

11 A Yes.

12 Q And, likewise, you did request DRM grant its
13 access authority to assist Genet in meeting Judy?

14 A Yes, on behalf of my client --

15 Q Okay.

16 A -- I advocated for his stated interest of wanting
17 to be with his wife.

18 Q Okay. And I take it you didn't get Debbie
19 Churchill's permission for that contact with Judy?

20 A I had no contact with Judy. None whatsoever.

21 Q I take it you did not get Debbie Churchill's
22 permission for Genet's contact with Judy?

23 A That would not be my role. If -- if there was a
24 need for permission, Genet would have had to have gotten
25 that.

1 Q Okay. And you didn't get the Court's permission;
2 correct?

3 A I had no contact with Judy, so I had no need to
4 get permission. I had no contact with her.

5 Q But you sent a third party to have contact with
6 her; did you not?

7 A I did not.

8 Q How so?

9 A My client, Ron Lowney, hired an attorney to
10 represent his wife, pursuant to her request.

11 Q And, likewise, you didn't have the guardians'
12 permission for Genet to meet with Judy?

13 A It wasn't up to me to get that permission.

14 Q Did you ever consider lodging a report with Adult
15 Protective Services?

16 A A report of what?

17 Q Well, you reported to DRM that Judy was being
18 abused or neglected; correct?

19 A We asked DRM to check on Judy because, in the
20 rare visits that Mr. Lowney had with her, she was not
21 wearing hearing aids that had been provided for her and
22 prescribed.

23 Q Okay. So why didn't you call APS?

24 A She -- she was smelling of urine.

25 Q Okay. So why didn't you call APS?

1 A APS doesn't -- didn't have -- Disability Rights
2 of Montana has a right to go in without permission. APS
3 doesn't have that right, and the guardians would never have
4 granted it.

5 Q Are you aware that APS was involved in this case
6 from the beginning?

7 A I'm aware that it was Mr. Lowney himself who
8 involved them and made the call to them that said, I need
9 some help caring for my wife. He had been informed that
10 they were people who could help him care for his wife.

11 Q Okay. And that was whole reason the guardianship
12 was necessary, is because Ron couldn't care for his wife;
13 correct?

14 A That is not correct.

15 Q That's not in the court record?

16 A It's not correct.

17 Q Okay. Well, didn't the court find that Ron was
18 incapable of caring for his wife?

19 A At the guardianship hearing -- and I was not a
20 part of that -- evidence, a lot of evidence, was presented
21 that Mr. Lowney was not only mentally competent and stable,
22 and -- but also evidence, including reports and letters
23 from experts, community members, and family members --

24 Q Ms. Morin, the question was --

25 A -- he was capable of caring for his wife.

1 Q Did the Court determine --

2 CHAIRMAN TALEFF: Counsel and Ms. Morin, do not
3 talk over each other.

4 MR. MOOG: Could I ask for a responsive answer?

5 CHAIRMAN TALEFF: Yes, you may.

6 And, Ms. Morin, you may not like the questions,
7 but please respond to the question that's asked rather than
8 volunteering information. Your lawyer will have a chance
9 to redirect.

10 Q (By Mr. Moog) So my question was, Ms. Morin, did
11 Court determine that Lowney was incapable of caring for his
12 wife?

13 A Yes.

14 Q Okay. And therefore he was not suitable to be a
15 guardian?

16 A Yes.

17 Q Okay. In addition to representing, or purporting
18 to represent Judy, Ms. McCann also entered into a
19 representation agreement with Ron; is that correct?

20 A Yes.

21 Q Okay. And she charged him a \$5,000 retainer?

22 A I don't recall the amount.

23 Q Okay. Let's take a look at Exhibit 37.

24 A I have it.

25 Q On Page 2 of 3 of that exhibit, is this a

1 contract for professional services from Avalon Law?

2 A Yes.

3 Q Okay. And Paragraph II, deposit and terms of
4 payment, \$5,000; correct?

5 A Yes.

6 Q And Ms. McCann was charging Ron \$200 per hour?

7 A Yes.

8 Q And I believe Ms. McCann sent invoices to Ron
9 through your office; is that correct?

10 A I don't believe that's true.

11 Q Directing your attention to Page -- or
12 Exhibit 70.

13 A Yes, I have it.

14 Q Is that an email transmittal from Genet's office
15 to yours?

16 A Yes. She sent me copies, but she didn't send
17 Ron's to me through me. This is just a copy.

18 Q Okay. And it appears to me that you and Genet
19 were working in concert; is that correct?

20 A We had, each, a client who had similar goals and
21 interests and objectives.

22 Q Well, and about the visitation issue, Ms. Morin,
23 isn't it true that the district court limited by court
24 order Ron's visitation with Judy?

25 A They did, despite expert opinions that said it

1 was harmful.

2 Q And that is, to be accurate, once per month, if
3 practical. Correct?

4 A Correct.

5 Q In the guardians' discretion; correct?

6 A Correct. And facilitated through counsel.

7 Q Now, directing your attention to Exhibit 45.

8 A I have it.

9 Q On Page 2 of that exhibit, I'm looking at an
10 email from yourself to Genet McCann dated Friday
11 November 18, 2006, at 1:01 p.m. Are you there?

12 A November 18th, 2016?

13 Q At 1:01 p.m.

14 A Yes, I have that.

15 Q Halfway down the page.

16 You state that your paralegal is sending a
17 proposed petition for holiday visitation; isn't that
18 correct?

19 A No, not proposed.

20 Q What was it?

21 A It was example of one that I had done for Ron.

22 Q For Genet to use?

23 A For -- if she wanted to reference it. No use
24 reinventing the wheel; right?

25 Q Okay. And the next email up is the day before,

1 November 17th, 2016, at 2:16 p.m. This is an email from
2 yourself to Genet McCann, and the final paragraph is what I
3 want to ask you a question about.

4 It looks like you're recommending to her that she
5 take Judy out of Renaissance to meet with Ron, despite the
6 restriction on visitation being supervised.

7 A Where do you see that?

8 Q So it's still on Page 2 of 3. It's the last
9 paragraph of your email that starts on Page 1. Thursday,
10 November 17, 2016, at 2:16 p.m. It's the middle email of
11 the string.

12 A I have the email.

13 Q Okay. On Page 2 of 3 of the exhibit, it's the
14 paragraph right above your signature block. And it looks
15 like you're suggesting that she take Judy out of the
16 Renaissance to meet with Ron.

17 A I really don't see where you're seeing that. Can
18 you point to the language or word that you're referencing?
19 I'm in the paragraph. Just say it to me. Where do you see
20 that I'm suggesting she take him out -- her out.

21 Q Maybe as her attorney you could pick Judy up and
22 bring her to DRMT -- that means DRM, I presume -- to their
23 conference room for the interview. DRM would not have to
24 attend.

25 It seems like you're asking her to get Ron there

1 as well. Is that a mistake?

2 A No. All I -- what had been discussed with DRM
3 was that, with their mandate, they are able to pick people
4 up, interview them without the presence of guardians, to
5 determine what's happening with them. That was my
6 suggestion. And she would have that right as Judy's
7 attorney.

8 Q Directing your attention to Exhibit 63,
9 Ms. Morin.

10 Are you there?

11 A I am.

12 Q Okay. I'm looking at an email from Genet McCann
13 on Tuesday, December 13th, 2016, at 6:30 p.m. where she
14 references Debbie Churchill. Do you see that?

15 A December. These are all 2016.

16 Q On Tuesday, December 13th, 2016, at 6:30 p.m. --

17 A Yeah.

18 Q -- Genet McCann wrote --

19 A -- has Debbie Churchill ever done anything -- I
20 think it's supposed to be anything -- on the case after the
21 proceeding that appointed the guardians?

22 Q Okay. So I take it that you were aware of
23 Ms. Churchill, as well as Genet McCann?

24 A Absolutely not. This is in reference to the fact
25 that you guys have now filed a complaint against Genet

1 alleging that she violated her oath in approaching a
2 represented party. So now she's asking me, who's Debbie
3 Churchill, clearly indicating none of us really know. She
4 just all of a sudden appears after about five years of
5 litigation.

6 Q Even though she was appointed in 2011?

7 A As guardian ad litem.

8 Q When you communicate with Ron, is it by email?

9 A No.

10 Q Does Ron have a computer?

11 A He does not.

12 Q Directing your attention to Exhibit 82.

13 A I have it.

14 Q This looks like a typewritten or
15 computer-generated document; does it not?

16 A It's been prepared on a machine for sure.

17 Q Okay. Did you assist Mr. Lowney with the typing
18 of this?

19 A I did not.

20 Q Do you know who did?

21 A I believe her name is Rose, and she's the owner
22 of Insty-Prints in Butte, Montana. And Ron used Rose
23 before my time and some after. She was a very, very kind
24 person to assist him in trying to put things together prior
25 to him having representation, and then after.

1 Q Did you provide these alleged rule violations to
2 Mr. Lowney?

3 A I provided him the Rules of Professional Conduct
4 because he wanted to know how an attorney could interfere
5 in his wife's right to have counsel.

6 Q And directing your attention to Exhibit 81, is
7 this your letter to Genet dated June 14th, 2017?

8 A June 14th, 2017. Yes.

9 Q And you're asking Genet to take some actions; are
10 you not?

11 A Yes. And this, you know, would be wholly
12 appropriate by me in advocacy of my client, to ask Judy's
13 attorney to address these issues.

14 Q And you stated that you had a duty to zealously
15 represent your client. Do you know that zealously was
16 removed from the rules several years ago?

17 A Many years ago, but it's the oath under which I
18 came into the practice of law.

19 Q Do you recall a year ago, October 2017, when you
20 attended an order to show-cause hearing for Genet McCann?
21 You were a subpoenaed witness? You and Mr. Lowney were
22 subpoenaed witnesses?

23 A I remember coming up for a hearing for her. I
24 don't remember a -- I don't -- I remember a show-cause
25 hearing, but I thought it was for me. I didn't think it

1 was for her.

2 Q There was one set for both of you. ODC was
3 trying to get the communications between the two of you.

4 Does that ring any bells?

5 A Oh, yeah.

6 Q Okay. And when Palmer Hoovestal came on board
7 for your case, he provided that, and your matter was
8 vacated.

9 Does that ring any bells?

10 A Correct. You threatened me that if I didn't
11 produce what I considered to be attorney-client privileged
12 material, that you would move for my disbarment. And so I
13 made the decision, with the consent of my client, to
14 present -- to provide those to you, despite the fact that I
15 believe it violates my confidence with my client.

16 Q Which client are you referring to?

17 A Ron Lowney.

18 Q No, I didn't ask for your communications with
19 Ron. I asked for your communications with Genet.

20 A Those are clearly privileged as work product.
21 There was no way you should have had those, and I should
22 never have been forced to produce those and break my oath
23 to my client.

24 Q Okay.

25 A And I was only allowed to do so by the grace of

1 him.

2 Q Okay. Directing your attention to Exhibit 78.

3 A I have it.

4 Q Is this your supplemental response to ODC?

5 A Yes, but it's only in regard to -- I believe it's
6 only in regard to what the Bugnis filed, which was that I
7 was harassing their attorney, because I was never given the
8 opportunity by your office to address the claim that I had
9 violated the rule to approach -- to not approach a
10 represented party. I was never provided that opportunity.
11 No one in your office ever spoke to me about it.

12 Q Ms. Morin, the point being here is ODC requested
13 your communications between yourself and Ms. McCann;
14 correct?

15 A Yes.

16 Q And this is the document where you tell ODC to
17 pound sand?

18 A That would be an offensive characterization.
19 This is a well-crafted legal argument that points out to
20 you that you are violating one of the most sacred rights of
21 a client, of our citizens, in breaching -- forcing me to
22 breach confidences with my clients.

23 Q How are your communications with Genet
24 confidences with your client?

25 A They are privileged work product.

1 Q Okay. Once your work product leaves your office,
2 it's no longer work product; correct?

3 A That's not true.

4 Q Okay.

5 A That is a misstatement of the law, sir.

6 Q It's not protected from disclosure.

7 A That's a misstatement of the law.

8 Q Okay. Well, the commission will decide.

9 So anyway, you were subpoenaed to come to a
10 hearing by Ms. McCann October 2017. Do you remember that?
11 You and Ron Lowney had to come. You weren't allowed to
12 testify.

13 A Right.

14 Q Do you recall at that hearing Ms. McCann
15 attempted to assert an agency privilege protecting her
16 communications with you?

17 MR. SHERWOOD: Objection; relevance and hearsay.

18 MR. MOOG: In the commission proceedings.

19 CHAIRMAN TALEFF: The question is, does she
20 recall, and that is a yes or no answer.

21 THE WITNESS: No.

22 Q (By Mr. Moog) Okay. At this time I'd ask the
23 commission to take judicial notice of those proceedings
24 involving Genet McCann, both the show-cause hearing and the
25 formal prosecution resulting in her seven-month suspension.

1 MR. SHERWOOD: I object.

2 CHAIRMAN TALEFF: Well, the -- I don't know that
3 we have a transcript of that. My initial reaction,
4 frankly, is that that's Genet McCann's position, not
5 necessarily one that Ms. Morin has adopted, that I'm aware
6 of.

7 So we'll take a look at it and take it for what
8 value it has.

9 MR. MOOG: Okay. I appreciate that.

10 THE WITNESS: Genet McCann was never my agent.

11 Q (By Mr. Moog) On direct, Ms. Morin, I believe you
12 said that you referred to Debbie Churchill as the prior
13 guardian ad litem in Exhibit 10.

14 Do you remember that testimony?

15 A Exhibit 10? And where are you looking?

16 Q I believe it was Page 2 of that letter. And I
17 recall on direct you classified this letter as being sent
18 to the prior guardian ad litem, but the letter refers to
19 the present tense, as her GAL; isn't that correct?

20 A I'm not sure where you are.

21 Q I'm on Exhibit 2, Page 2 of 2.

22 A Yes. Mrs. Churchill, as her GAL. Correct.

23 Q And that's present tense; correct?

24 A Yeah.

25 Q Okay. And your attorney asked you about Genet

1 McCann's visit to the Renaissance center in August and you
2 clarified that you were in Butte.

3 Did you know Genet was going to visit Judy that
4 day?

5 A I'm sorry, but I have a quick question back on 10
6 where Mrs. Churchill, as her GAL -- that's December of
7 2013; right?

8 Q Correct.

9 A Was it -- had the guardianship thing been
10 terminated?

11 Q The guardianship has never been terminated.

12 A No, I mean the permanent guardian appointment.

13 Q Yes, and the matter was on appeal.

14 A Okay. So on appeal, she's still her GAL. Okay.

15 Q It's only after remand that she disappears; is
16 that correct?

17 A Yeah, when that -- when the -- if you look at the
18 statute, the word "in these proceedings," when those
19 proceedings are over and permanent guardians have been
20 appointed, the in re AAM case states that those
21 appointments are over, terminated.

22 So this is accurate.

23 Q Do you recall your attorney filing for summary
24 judgement in this matter with the motion and brief filed
25 September 10th, 2018?

1 A Yeah. Vaguely.

2 Q Would you like to refresh your recollection?

3 A Sure.

4 MR. MOOG: May I approach?

5 CHAIRMAN TALEFF: Yes.

6 Q (By Mr. Moog) This is the summary judgement
7 motion and brief.

8 A Yes.

9 Q Okay. And directing your attention to --

10 MR. SHERWOOD: Pleading number, please.

11 MR. MOOG: It's your motion for summary
12 judgement. I don't have the pleading number in front of
13 me. This exhibit here, Appendix E to the motion for
14 summary judgement.

15 Q (By Mr. Moog) Can you identify that, please.

16 A I cannot. I can read what it is, but it's not my
17 document.

18 Q Okay. Well, tell the commission what it is.

19 A It appears to be a letter dated 5/9/18 by Judy
20 Lowney addressed to Judge Krueger asking him to appoint her
21 a lawyer.

22 Q And it's a typewritten document; is that correct?

23 A Yes.

24 Q To your knowledge, does Judy have access to a
25 typewriter or a computer?

1 A I have no idea.

2 Q Okay. Have you ever received any typewritten
3 communications from Judy through Ron, or they've all been
4 handwritten?

5 A I don't know what she has at the Renaissance.

6 Q Have you ever received a typewritten statement
7 from her through Ron?

8 A No. No, sir. I don't have any direct contact
9 with her.

10 Q No. You've testified that you've received
11 written communications from Judy through Ron; correct?
12 Ron's brought you communications?

13 A Yes. She writes him everyday. Beautiful cards,
14 beautiful love letters.

15 Q Handwritten; correct?

16 A Yeah.

17 Q Okay.

18 A She's old school.

19 Q Do you know where your lawyer got that signed
20 statement?

21 A I'm sure he got it from me.

22 Q Okay. Where did you get it?

23 A I would have gotten it from Ron.

24 Q Where did he get it?

25 A I have no idea. Obviously, from Judy.

1 Q Did you assist him in typewriting -- typing out
2 that statement, this Exhibit E to your --

3 A I don't believe he typed it.

4 Q Well, you think Judy typed this?

5 A I don't know who did, but I'm positive my client
6 didn't. He doesn't do typing.

7 Q Did you type it?

8 A I did not. I have absolutely no access to Judy.

9 Q Except through Ron; correct?

10 A That's not access to her.

11 The date of that, was Genet her attorney by then?

12 CHAIRMAN TALEFF: There's not a question pending.

13 MR. MOOG: Mr. Chairman, at this time ODC
14 withdraws proposed Exhibits 86 and 86.1.

15 That's all I have.

16 CHAIRMAN TALEFF: Redirect, Mr. Sherwood?

17

18 REDIRECT EXAMINATION

19 BY MR. SHERWOOD:

20 Q I'll try to be quick.

21 Tina, on this last exhibit -- I think it's 78 --
22 and there was a reference to an appendix to that. I didn't
23 quite follow -- Mr. Moog and you just talked about some
24 document. He wanted to know who typed it up?

25 CHAIRMAN TALEFF: Counsel, I think that was

1 attached to a brief, rather than Exhibit 78.

2 MR. MOOG: To be clear, it was Pleading Number
3 35, your motion and brief in support of summary judgement,
4 Mr. Sherwood.

5 Q (By Mr. Sherwood) Was there a date on that? Did
6 you get a look?

7 A I think it was May of 2018. I'm not finding it.

8 Q Okay. Never mind. At any rate, you didn't type
9 it up?

10 A No. But it's May of 2018, I recall.

11 Q I want to direct your attention to 63 again. And
12 there was reference to -- this is down at the bottom of the
13 page where Ms. McCann is, if I understand correctly, asking
14 you if Churchill had done anything on the case after the
15 proceeding that appointed the guardians.

16 Was Ms. McCann, do you know, at that point -- and
17 if you don't know, don't -- do you know where Ms. McCann
18 got Ms. Churchill's name?

19 A I believe that Ms. Churchill was associated with
20 a complaint filed against Genet by Mr. Shapiro and/or his
21 clients.

22 But I did respond to this. There is a response
23 to this email. ODC has not included it, but there is a
24 response.

25 Q So you did respond?

1 A I did. I told her no.

2 Q Okay. With respect to -- could you turn to
3 Exhibit 81, please.

4 A I have it.

5 Q Mr. Moog referred to that on cross about pointing
6 out that you were making an emergency request -- or asking
7 Ms. McCann to make an emergency request.

8 A Yes.

9 Q I note that you say please. Did you believe that
10 you were issuing a directive when you said that, that you
11 expected that she would follow some directive of yours?

12 A Absolutely not. Plus, I already filed my own on
13 behalf of Ron.

14 Q Okay. So at that point, were -- did you consider
15 Ron's wishes in the litigation to continue to be the same
16 as Judy's?

17 A Yes.

18 Q Of course, I don't -- I'm kind of new to this. I
19 haven't ever seen McCann's record. But did you ever take a
20 position in some other proceeding here that -- that she was
21 your agent?

22 A No. Never.

23 Q But, as I understand it, you did feel that you
24 were being asked to produce work product information and
25 thought that might be inappropriate.

1 A Oh, a hundred percent. Yes.

2 I -- I got the request -- I -- for the documents.
3 I responded with an excellent legal position that, no, it's
4 either confidential or work product privilege, which then
5 falls into the confidential category, and that I had not
6 been released by my client to release those documents and I
7 would not be doing so.

8 Next thing I know, Mr. Moog files an order to
9 show cause asserting to this body that I had failed to
10 respond and was not being cooperative with the ODC
11 proceedings, to which I responded and said, yes, I did
12 respond, and I'm not -- not being uncooperative. I've
13 taken a valid legal position.

14 Q And when you referred to client in that, the
15 reference was to Mr. Lowney, Ron Lowney; right?

16 A Correct.

17 MR. SHERWOOD: Nothing further.

18 CHAIRMAN TALEFF: Okay. And I understand,
19 Mr. Sherwood, that your client is your last witness?

20 MR. SHERWOOD: Yes, Mr. Chairman.

21 CHAIRMAN TALEFF: ODC, any rebuttal?

22 MR. MOOG: No, but maybe the panel has questions?

23 CHAIRMAN TALEFF: I'm not done yet.

24 Ms. DeVries?

25 COMMISSIONER DEVRIES: None.

1 CHAIRMAN TALEFF: Mr. O'Brien?

2 COMMISSIONER O'BRIEN: None.

3 CHAIRMAN TALEFF: Mr. Ogle?

4 COMMISSIONER OGLE: No questions.

5 CHAIRMAN TALEFF: Ms. Menzies?

6 COMMISSIONER MENZIES: No. No, sir.

7 CHAIRMAN TALEFF: Ms. Maloney?

8 COMMISSIONER MALONEY: No.

9 CHAIRMAN TALEFF: Mr. Black?

10 COMMISSIONER BLACK: I have a couple of
11 questions.

12

13 EXAMINATION

14 BY COMMISSIONER BLACK:

15 Q Ms. Morin, as I understand it, your involvement
16 in this matter involving the Lowneys was involving the
17 appeal in the district court?

18 A I agreed to represent Mr. Lowney in appeal, yes,
19 of the guardianship proceedings.

20 Q When did you first become involved?

21 A I believe it was in late 2013.

22 Q Okay. Could you look at Exhibit Number 1 for me,
23 please.

24 And I want to refer you to -- because I call them
25 docket entries, but it's Docket Sequence 112, which would

1 be on, right, Page 5. Page 5.

2 Let me get this chronology down so I understand
3 what's going on. 112, there's a notice and consent to
4 withdraw and substitution of counsel. It doesn't say who.
5 Is that when you would have appeared? Do you know?

6 A I don't. It was --

7 Q If you don't know, that's fine. It appears to be
8 around that time frame. I'm just curious if you remember.

9 You testified about --

10 A That probably is me.

11 Q Okay. That's my guess too, but I don't want to
12 guess.

13 A Yeah.

14 Q There was correspondence dated a couple of weeks
15 later, and I think it's Exhibit Number 10, if I recall
16 right. And you were just asked this by Mr. Moog.

17 That's a letter from you to Ms. Churchill and
18 Mr. Shapiro?

19 A Yes.

20 Q Okay. And Mr. Moog asked you about referring to
21 Ms. Churchill as the GAL on Page 2.

22 A Yes.

23 Q Okay. How did you know when you wrote this
24 letter that Ms. Churchill was the GAL?

25 A I had been in contact with -- because I had not

1 yet reviewed the early guardianship proceedings -- but I
2 had been in contact with Ron's prior attorney, Bill
3 Driscoll and spoke to him about, Hey, what's going down,
4 what do you think about all this. He wrote me a letter,
5 and in it he identifies Debbie Churchill as guardian ad
6 litem for Judy Lowney.

7 Q Okay. You referenced earlier in your testimony
8 that you saw a report of GAL.

9 A Uh-huh.

10 Q Do you recall that testimony?

11 A Yes.

12 Q Had you seen the report of GAL by the time you
13 wrote this letter?

14 A Probably not.

15 Q Is Exhibit Number 4 the report of GAL you're
16 taking about? It was filed in September.

17 A Yep.

18 Q That would be the one you referenced earlier?

19 A Yes, and then there's an addendum.

20 Q Okay. But it was filed September 4th of 2013?

21 A Right.

22 Q Okay. Thank you.

23 Now I want to go to Exhibit 37, and I have a
24 couple questions about that, and that has the retainer
25 agreement for Ms. McCann attached to it.

1 A Yes.

2 Q And this is -- this bears your signature on the
3 bottom of Page 2; correct?

4 A Yes.

5 Q And why are you giving informed consent?

6 A Well, ironically, Genet and I were being very
7 careful because Ron already had representation. That was
8 me. Now he's entering into another representation
9 agreement where he's not the client, and he needed to
10 understand that, while he was paying the bill, he was not
11 the client.

12 Q Okay. Why do you say he's not the client? The
13 agreement, the beginning, says he is the client.

14 A Well, it's -- it's similar to, the same as an
15 insurance company that pays the bill. They have retainer
16 agreements with the --

17 Q Well, but we're not talking about an insurance
18 company. Why does it say that Ron Lowney is the client, if
19 you know? If you don't know, that's --

20 A I don't know. Genet drafted it, and it just --
21 that's what she put there, I guess.

22 Q Did you ever provide this agreement to Disability
23 Rights of Montana?

24 A I believe she did.

25 Q No, I want to know if you did.

1 A I didn't.

2 Q Okay. And just a couple of other questions. Has
3 to do with the appeal.

4 Did you review filings in the appeal after you
5 filed the notice of appeal, when those filings were served
6 on you?

7 A I don't understand your question.

8 Q Well, when something's served on you in the
9 appeal, did you review it when it was served upon you?

10 A Like the response brief?

11 Q Like the appellate brief.

12 A Sure.

13 Q And you reviewed that prior to filing your reply
14 brief?

15 A Sure.

16 Q Okay. Did you review the orders of the Montana
17 Supreme Court that were served upon you in the appeal?

18 A Yes.

19 COMMISSIONER BLACK: That's all the questions I
20 have. Thank you, Ms. Morin.

21 CHAIRMAN TALEFF: Okay. Ms. Perry?

22 COMMISSIONER PERRY: I just have a couple.

23

24 EXAMINATION

25 BY COMMISSIONER PERRY:

1 Q We've gone through a lot of documents. And I've
2 made note, in most of your correspondence, or at least some
3 of your correspondence with other people involved in the
4 case, specifically, like, Exhibit 69, Exhibit 72,
5 Exhibit 10, your emails are always -- or letters are always
6 talking about Judy's best interest, and yet you've
7 testified today quite a bit about her constitutional right
8 to stated interests. And I just wanted to make sure I
9 wasn't missing something.

10 Can you direct me to any of your emails or
11 correspondence in which you use the term "stated interest"?

12 A There's a lot of emails that are not -- have not
13 been admitted as exhibits, but there was no discussion
14 about stated interests, as far as Debbie Churchill was
15 involved, because she was not her attorney.

16 So my emails to Mr. Shapiro and then the one
17 early one to Debbie Churchill when she was still the
18 guardian ad litem talks about best interests because that
19 was, you know, Churchill's role, and trying to get Shapiro,
20 because he represented the guardians, and their duty of
21 representation, their fiduciary duty, is best interest, for
22 guardians. So there was not really ever any dialogue about
23 stated interest because no one was representing Judy.

24 Q Okay. And you didn't raise that then with them
25 about stated interests?

1 A No. I was trying to get them to act on her best
2 interest.

3 Q Okay. I was listening to your testimony about
4 the appeal, and you said there were -- you testified there
5 were two main issues on appeal: One were the fees that Ron
6 was supposed to pay, and then you were also making an
7 argument -- my notes indicate that the appointment of the
8 those guardians affected her constitutional rights.

9 On appeal, did -- and maybe I'm just not familiar
10 with the record -- but did you challenge the appointment of
11 Debbie Churchill and the lack of an appointment of an
12 attorney to represent Judy's stated interests?

13 A No. There was no need to challenge that. We
14 weren't focused on -- I had no knowledge of the prior
15 proceedings. I wasn't involved in them. So there was
16 nothing in me to trigger that to say, Oh, well, you know,
17 Ms. Churchill is not acting as a guardian ad litem. You
18 know what I mean? So I wasn't -- it wasn't an appealable
19 issue.

20 Q So just so I'm clear then, you believe that the
21 representation of someone in an appeal doesn't require you
22 to read or become familiar with what has previously
23 happened in the district court?

24 A No, I need -- I -- to take someone up on appeal,
25 I need to know what the appealable issues are. And I did

1 rely heavily on Mr. Gillespie to help me figure out what
2 that -- what those appealable issues are. And in his
3 identifying, these are the ones that he thought might best
4 get a positive result for Mr. Lowney.

5 COMMISSIONER PERRY: Thank you. No more
6 questions.

7 CHAIRMAN TALEFF: Ms. Faure?

8 COMMISSIONER FAURE: I didn't have any, but you
9 just mentioned a Mr. Gillespie.

10 THE WITNESS: I'm sorry. Driscoll.

11 COMMISSIONER FAURE: All right. Thank you. I
12 don't have anything further.

13

14 EXAMINATION

15 BY CHAIRMAN TALEFF:

16 Q I just -- you say that Debbie Churchill's role
17 was not an issue, wasn't on the radar in the appeal, but
18 one of the appeal issues was the award to Debbie Churchill
19 of attorney fees, wasn't it?

20 A Yes, but as guardian ad litem.

21 Q If that distinction exists, it's in your brief?

22 A In what brief?

23 Q In the brief you filed with the Montana Supreme
24 Court on appeal. If your argument was that the awarded
25 fees was as to her in the capacity as a GAL, that would be

1 an argument that appears in your brief?

2 A No. I did the appeal on the attorney fees that
3 were awarded to attorneys with the knowledge that these
4 fees were awarded to an attorney who had been appointed as
5 the guardian ad litem.

6 And the issue that I raised was that they are --
7 in Montana, in order to get attorney fees in a case, you
8 have to have either an agreement between the parties or
9 statutory right to them. Now, there is a third prong that
10 is like a sort of catch-all, but I argued that there was
11 neither an agreement for Mr. Lowney to pay these fees or --

12 Q That's fine. We have the brief. I just wanted
13 to know -- I think you've answered my question. Thank you.

14 A Yeah. And one other point I'll make too, Mr.
15 Chairperson, is that her bill, as I recall it, did not
16 reflect an hourly rate of an attorney. It reflected an
17 hourly rate of a GAL.

18 CHAIRMAN TALEFF: All right. That's all. We
19 will -- you may step down.

20 We will regard the matter as having been
21 submitted. We will deliberate, and we will -- as soon as
22 we're able to after the transcript is received, we'll get a
23 decision out.

24 MR. MOOG: Thank you, Mr. Chairman.

25 CHAIRMAN TALEFF: Thank you.

1 MR. SHERWOOD: Mr. Chairman -- if chairman is
2 correct anymore, but -- my sense is that people have other
3 places to go, and so I'm not trying to delay this, but I
4 do -- having -- first time here, I find it a bit strange
5 that, you know, there are no real jury instructions, and
6 there are folks here that aren't lawyers. And so I would
7 offer -- and I recognize that it would be in your
8 discretion -- to submit proposed findings of facts and
9 conclusions if -- if the adjudicatory panel wanted us to do
10 that.

11 CHAIRMAN TALEFF: It's not typically done. It's
12 not something that I would refuse you the opportunity to
13 do, as long it's done in a reasonable and timely manner.

14 MR. SHERWOOD: You can pretty much say go, and
15 I'll jump. What sort of time do you want to --

16 CHAIRMAN TALEFF: Well, I know you've considered
17 calling me Mr. Dictator a couple of times, probably.

18 MR. SHERWOOD: No.

19 CHAIRMAN TALEFF: But I would not say jump and
20 expect you to go. Typically I would say within two weeks
21 to 20 days. I doubt we will get a transcript much earlier
22 than that. So why don't we say -- it's December 4th.
23 Let's say by December 20th -- close of business by
24 December 20th if you'd be kind enough to file whatever you
25 want to.

1 MR. MOOG: It's optional then?

2 CHAIRMAN TALEFF: It's optional. You're not
3 required to. If you want to. That would include a brief,
4 if you want, a post-hearing brief. I would encourage you
5 to go look in the definition of brief in the dictionary,
6 because I think we lawyers don't understand that very well.
7 But if you're so inclined, you're certainly entitled to do
8 that.

9 MR. SHERWOOD: Yes, well, I appreciate it, and we
10 will do that. And I did notice -- I mean, I'm aware of
11 brief, and I did my best. I believe I kept the hearing
12 brief under 10 pages.

13 CHAIRMAN TALEFF: You did, and I appreciated
14 that.

15 MR. SHERWOOD: Okay.

16 CHAIRMAN TALEFF: Thank you. We will be in
17 recess.

18 MR. SHERWOOD: Thank you.

19 (Proceedings concluded at 12:42 p.m.)

20 *****

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25

C E R T I F I C A T E

STATE OF MONTANA)
 ss.
COUNTY OF LEWIS AND CLARK)

I, HOLLY FOX, Freelance Court Reporter and a Notary
Public for the State of Montana, do hereby certify:

That I did report the foregoing proceedings to the
best of my ability.

IN WITNESS WHEREOF, I have set my hand and seal on
this 19th day of December, 2018.