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Providing:

Elder Law
Estate Planning
Tax Preparation
Probate Administration
Wealth Management
Financial Planning
Retirement Planning
Special Needs Trust

AFFIDAVIT OF COUNSEL

Now comes Joseph D. Cataldo of Everett, Massachusetts, and hereby deposes and states that:

1. I am an attorney in good standing, licensed to practice in the Commonwealth of Massachusetts since December of 1990, with offices at 369 Broadway, Everett, Massachusetts.
2. I am also a practicing Certified Public Accountant licensed to practice in the Commonwealth of Massachusetts since November of 1984.
3. My practice mostly consists of estate planning, tax return preparation/planning as well as elder law.
4. We prepare MassHealth applications all of the time attempting to assist seniors in obtaining necessary long-term care benefits.
5. For the first 23 years or so in my practice, I considered practicing before MassHealth to be fair, reasonable and honest, similar to my many dealings with the Internal Revenue Service and the Massachusetts Department of Revenue.
6. For the last 5 years or so, I can no longer state in honesty that dealing with MassHealth's legal department is in any way fair, reasonable and honest.
7. The Internal Revenue Service and the Massachusetts Department of Revenue understand very clearly that as practitioners, we have always strived to advocate for our client's best interest within the parameters of the law. When there are changes in the law via proper legislative acts, we advise our clients accordingly and pivot with our planning to be in compliance. We know what the rules are and we can rely upon administrative consistency in order to render the proper professional advice to our clients.

Joseph D. Cataldo, CPA, MST, ESQ.
AICPA Personal Financial Specialist

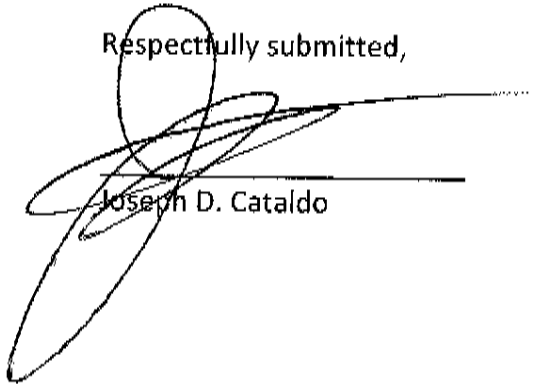
Member:

- *Massachusetts Chapter of National Academy of Elder Law Attorneys*
- *Massachusetts Society of Certified Public Accountants*
- *Association of CPA Financial Planners*

8. I can no longer say that is the case with MassHealth. In fact, I think MassHealth's total disregard for Trust law, as it has evolved in this country over the past 200 years, is nothing less than shocking.
9. I am currently on my fourth appeal in the last four years involving irrevocable Trusts. My client has been denied MassHealth benefits for excess assets. MassHealth has the audacity of not providing specific reasons as to why it is counting the assets in my client's Trust and provides absolutely no legal memorandum outlining its legal reasoning. The current case, as in the previous three cases, involves us having to wait for a fair hearing months down the road, only to be presented with MassHealth's legal memorandum the day of the hearing.
10. This results in tremendous administrative inefficiency and creates a real problem for my elderly clients and myself as an elder law attorney.
11. Representing clients, particularly with respect to irrevocable trusts has become ever so increasingly stressful as we have no idea what outrageous legal arguments it will come up with in order to render the Trust's assets countable. The ends cannot justify the means. MassHealth should spend its time lobbying Congress to change parts of the Medicaid law it does not like. MassHealth cannot and should not create its own Trust law.
12. I have never had a client come to me in over 35 years telling me that they want to pay more taxes than the law allows. Our job is to advocate our client's best interest. When the 3-year look back period was extended to 5 years, we advised our clients of this clear change in the law and proceeded to plan accordingly.
13. As estate planners, we have an obligation to advise our clients that they have the legal right to so structure their affairs as to result in protecting assets and minimize taxes, so long as our clients act within the letter of the law.
14. We can no longer determine what "the law" is any more in so many MassHealth proceedings. I have not seen anything like this in all the years I have been practicing. Even a high school student knows what a life estate is. It's the right to use, occupy and possess a home for the rest of one's life. The student knows it's not available to be spent on nursing home care. MassHealth's legal department is so badly stretching well-settled Trust law, this has amounted to an embarrassment on the part of its lawyers.
15. Our appeal that will be coming up in the next several months will cost my client at least \$7,500. The Trust being attacked is a perfectly fine Trust that complies with Federal Medicaid law. Trusts that were drafted 20 years ago are being held to a Trust's preferred provisions of today based upon the horrific attacks on them by MassHealth's legal department. It is worth mentioning that there is no grandfather provision for Trusts executed 20 years ago.

I sincerely hope that this agency's tactics in denying these applications (particularly involving irrevocable Trusts) stops and stops soon. I'm not aware of one elder law in the Commonwealth of Massachusetts that does not share this hope.

Respectfully submitted,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right. The signature is positioned above a horizontal line.

Joseph D. Cataldo