

1 WYATT A. GLADE, Custer County Attorney
2 SHAWN A. QUINLAN, Deputy County Attorney
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7 Counsel for Plaintiff

8 MONTANA SIXTEENTH JUDICIAL DISTRICT COURT, CUSTER COUNTY

9 STATE OF MONTANA, 10 Plaintiff, 11 -vs- 12 DEL LINDA FROST, 13 Defendant.	14 Cause No. <u>DC-18-</u> 15 HONORABLE MICHAEL B. HAYWORTH 16 MOTION AND AFFIDAVIT 17 FOR LEAVE TO FILE 18 INFORMATION
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19 STATE OF MONTANA)
20) :ss.
21 COUNTY OF CUSTER)

22 SHAWN A. QUINLAN, deposes and says that he is the duly appointed and qualified
23 Deputy County Attorney for Custer County, Montana, and hereby moves the Court for leave to
24 file an Information direct in the above-entitled Court charging the Defendant, DEL LINDA
25 FROST, with the offense(s) of: COUNT 1: THEFT OF PROPERTY BY EMBEZZLEMENT, a
26 felony, as specified in § 45-6-301(6)(a), MCA; and COUNT 2: EXPLOITATION OF OLDER
27 PERSON, a felony, as specified in § 45-6-333, MCA.

28 The following facts were developed by investigating officers, and the affiant has no
reason to believe these facts are not true, and believes them to be true. In the affiant's opinion,
these facts constitute sufficient probable cause to justify the filing of the charges.

The Court is informed that on August 4, 2011, Rena Baker Thomas (Thomas) was
appointed as Temporary Full Guardian for her 90 year old uncle, Arthur Joseph Yamada
(Yamada) in Custer County Cause DG-2011-4. On November 3, 2011, Thomas was appointed
as Full Guardian and Conservator for Yamada. On March 10, 2014, the Defendant was
appointed as Temporary Full Conservator for Yamada, due to Thomas being unable to act
because of health problems. On January 22, 2016, the Defendant was appointed as Permanent

1 Full Co-Conservator of Yamada along with Thomas. An Initial Accounting and Report for
2 March 11, 2014, through December 31, 2015 was filed by the Defendant and approved by the
3 Court on March 30, 2016.

4 On August 23, 2017, Paula Coate (Coate), business manager at the Friendship Villa,
5 located at 2300 Wilson Street, in Miles City, Custer County, Montana, reported to Sergeant Kord
6 Merial, of the Miles City Police Department, that she received a check in the amount of \$8,400
7 that was returned for insufficient funds. Coate explained that the Defendant is Co-Conservator
8 for Yamada and signed the check on August 3, 2017. Coate became concerned because
9 Yamada's account was behind on payments to the Friendship Villa. The Defendant also wrote
10 two (2) more checks totaling \$14,382 on August 17, 2017 for Yamada's care at Friendship Villa.
11 Coate was advised these checks would also fail to clear.

12 Coate explained that Yamada's Friendship Villa account had been on an electric transfer
13 from his bank account and that Friendship Villa had been paid for one year without any
14 problems. Coate stated that Yamada was also given cash for spending money but had not
15 received any cash for awhile. Coate explained she went to the Defendant's place of employment,
16 Carr Law Firm concerning payment to the Friendship Villa. Coate spoke with the Defendant and
17 advised the Defendant that she needed a cashier's check to cover the payment due to insufficient
18 funds.

19 On October 17, 2017, Detective/Lieutenant Dan Baker, of the Miles City Police
20 Department, called the Division of Criminal Investigation, Medicaid Fraud Control Unit
21 (DCIMFCU) regarding allegations of financial exploitation of Yamada, a nursing home resident.
22 Yamada was a resident of the Friendship Villa, a Medicaid provider. It was reported that the
23 checks issued to pay for Yamada's stay at Friendship Villa bounced due to insufficient funds.

24 On October 18, 2017, Auditor Cody Strietzel along with Supervising Agent Debrah
25 Fosket, both with the DCIMFCU, informed Detective/Lieutenant Baker that in August, 2017,
26 checks the Defendant wrote as Co-Conservator that were issued to the Friendship Villa bounced
27 due to insufficient funds. Friendship Villa filed a complaint with Adult Protective Services
28

1 (APS) and APS Specialist Beth Ann Weideman began investigating the cause of the insufficient
2 funds.

3 The Defendant issued a number of checks from Yamada's U.S. Bank checking account
4 for "cash" which drained the account to the point that Yamada no longer had funds to pay for his
5 expenses. Included in the funds were two (2) certificate of deposits (CDs) at U.S. Bank for
6 approximately \$20,000 each. Both CDs were completely closed out.

7 On October 23, 2017, Auditor Strietzel reviewed records provided by the Miles City
8 Police Department and APS. It appeared Yamada had two (2) checking accounts, one at U.S.
9 Bank, and one at First Interstate Bank. Yamada also held two (2) CDs at U.S. Bank, and had
10 funds invested in a High Impact Money Market account. Yamada appeared to hold
11 approximately \$181,998.91 in liquid assets as of January 2014.

12 Based on the information from Yamada's bank statements, Auditor Strietzel created a
13 projected income and expense tracker for comparison. The projection was built from monthly
14 bills that were paid in January and February, 2014, to provide the closest estimate that may have
15 been available to the Defendant when anticipating all reoccurring bills for Yamada. Based off
16 that information, it was estimated that the anticipated income was approximately between
17 \$22,000 and \$23,000 a year, with approximately \$58,000 in expenses, which would have left
18 Yamada short over \$35,000 for living expenses per year. Auditor Strietzel then added the
19 income and expenses for each year and compared it to the initial projection to provide a
20 difference in projected and actual amounts.

21 To cover the shortfall of income, transfers took place from Yamada's Money Market
22 account and CDs into his U.S. Bank checking account. Additionally, there were several transfers
23 where a check was written from Yamada's U.S. Bank checking account into his First Interstate
24 Bank checking account to cover expenses from that account. In addition to the identified
25 transfers, income from CP Rail System, Yamada's railroad retirement, and checks that were
26 issued for "cash" allowances varied considerably. From January 9, 2014, through September 8,
27 2017, a total of 345 checks were issued as "cash" from Yamada's U.S. Bank checking account
28 along with two (2) ATM withdrawals for a total of \$108,025. Approximately \$9,350 of this cash
was deposited into Yamada's First Interstate Bank checking account to cover his monthly

1 payments to United Healthcare. \$4,600 appeared to be deposited back into the U.S. Bank
2 checking account leaving approximately \$94,075 issued as “cash” that was unaccounted for.

3 Auditor Strietzel then reviewed the Initial Accounting and Report authored by the
4 Defendant in Custer County Cause DG-2011-4. The Initial Accounting and Report for Yamada
5 contained the financial record, income and expenses from March 11, 2014, through December
6 31, 2015. Auditor Strietzel compared that information to the First Interstate Bank checking
7 account records and the U.S. Bank checking account records. Auditor Strietzel found that the
8 information provided on the Initial Accounting and Report was inconsistent with the banking
9 records.

10 Auditor Strietzel found two (2) discrepancies that arose between the Initial Accounting
11 and Report and the bank records. The first discrepancy indicated there was no record of the
12 electronic deposit from CP Rail System in the amount of \$21,044.98 on December 1, 2014 on the
13 Initial Accounting and Report. The second discrepancy indicated a large variance in the amount
14 of checks that were issued from Yamada’s U.S. Bank checking account for “cash” payments.

15 The Initial Accounting and Report stated the cash allowance to Yamada was \$2,200,
16 which equaled \$100 per month for the 22 month time period. The total transfer from Yamada’s
17 U.S. Bank checking account to his First Interstate Bank checking account was \$8,000.
18 Approximately \$6,000 of the \$8,000 transfer appeared to have been the result of checks issued as
19 “cash” from U.S. Bank with a matching cash deposit into First Interstate Bank. According to the
20 bank records for this time period, approximately \$39,200 was issued for “cash” from the U.S.
21 Bank checking account. Approximately \$31,000 in “cash” was unaccounted for within the Initial
22 Accounting and Report.

23 On January 2, 2018, Detective/Lieutenant Baker and Auditor Strietzel interviewed the
24 Defendant. The Defendant explained how she became involved with Yamada’s finances. The
25 Defendant stated she was a paralegal for Carr Law Firm for approximately 10 years and Yamada
26 was a client of the firm before she began her employment. The Defendant stated that Yamada’s
27 niece, Rena Baker Thomas (Thomas), was taking care of Yamada’s finances as Full Guardian
28 and Conservator in Custer County Cause DG-2011-4, but health issues led Thomas to seek help

1 from Carr Law Firm. The Defendant observed Yamada's many overdrafts and past due balances.
2 The Defendant's employer, James Carr asked the Defendant to take over responsibility of
3 Yamada's finances. The Defendant agreed and was appointed Temporary Full Conservator, and
4 ultimately Permanent Full Co-Conservator in Custer County Cause DG-2011-4. After sorting
5 out all of Yamada's account information, income, and expenses, the Defendant stated that she
6 learned what needed to be paid. The Defendant also discovered U.S. Bank held the majority of
7 Yamada's income, the two (2) CDs, and the Money Market account.

8 The Defendant claimed responsibility for taking care of Yamada's finances and agreed to
9 out of concern for Yamada. The Defendant said it was not connected to her job or employment
10 with Carr Law Firm. The Defendant stated she was not getting paid to take on Yamada's
11 finances in Custer County Cause DG-2011-4, but she was entitled to a percentage based on
12 Yamada's assets at that time. The Defendant claimed she never paid herself for her services and
13 that every payment out of Yamada's accounts was done for the benefit of Yamada.

14 The Defendant then explained the number of checks issued for "cash". The Defendant
15 stated that the checks were issued for Yamada's monthly allowance, Yamada's monthly
16 premiums, personal items for Yamada, and additional funds Yamada requested. The Defendant
17 was then informed that the amount issued for "cash" out of the U.S. Bank checking account that
18 was unaccounted for amounted to approximately \$94,000. The Defendant could not explain why
19 there was so much money missing.

20 Auditor Strietzel then questioned the Defendant about the Initial Accounting and Report
21 she provided to the Court. The Defendant confirmed that she prepared the report and denied any
22 participation of Carr Law Firm. Auditor Strietzel asked the Defendant about the missing income
23 from CP Rail System, Yamada's railroad retirement. The Defendant was aware of that payment
24 but could not explain why it was not included in the Initial Accounting and Report. The
25 Defendant also could not explain why \$31,000 of checks issued for "cash" from the U.S. Bank
26 checking account were unaccounted for on the Initial Accounting and Report.

27 The Defendant was aware Yamada's funds were running low; however, she did not
28 realize the account was overdrawn until the checks began to bounce. Throughout the interview

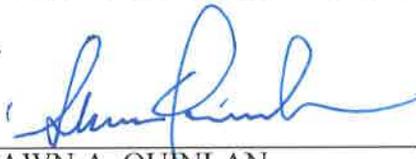
1 the Defendant denied taking any money from Yamada. The Defendant agreed to gather and
2 provide documentation for the "cash" issued out of Yamada's accounts.

3 The Defendant provided a spreadsheet to Auditor Strietzel on January 30, 2018, however
4 no additional records or documents relating to the checks issued for "cash" were provided other
5 than listing transfers to Yamada's First Interstate Bank checking account and cash allowances for
6 Yamada from March 2014 through December 2015. Further, no additional records or documents
7 relating to the checks issued for "cash" from the U.S. Bank checking account have been provided
8 to date.

9 On March 13, 2018, Detective/Lieutenant Baker conducted an interview with James Carr
10 (Carr). During the course of the interview, Carr informed Detective/Lieutenant Baker that the
11 Defendant was an employee of his and that he asked her if she wanted to manage Yamada's
12 income, and that she had agreed.

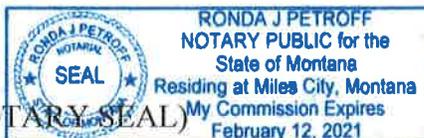
13 On March 14, 2018, the Defendant resigned as Co-Conservator for Yamada in Custer
14 County Cause DG-2011-4.

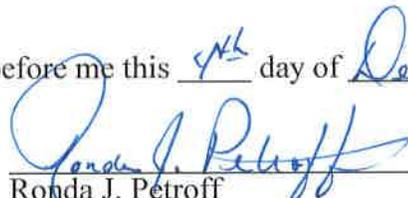
15 WHEREFORE, based on the foregoing facts and those contained in the officer's
16 statement and by this reference incorporated herein, your affiant prays that this Court issue an
17 Order granting leave to file an Information charging the Defendant, DEL LINDA FROST, with
18 the offense(s) of: COUNT 1: THEFT OF PROPERTY BY EMBEZZLEMENT, a felony, as
19 specified in § 45-6-301(6)(a), MCA; and COUNT 2: EXPLOITATION OF OLDER PERSON, a
20 felony, as specified in § 45-6-333, MCA.

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22 SHAWN A. QUINLAN
23 DEPUTY COUNTY ATTORNEY

24 SUBSCRIBED AND SWORN TO before me this 4th day of December, 2018.



25 
26 Ronda J. Petroff
27 Notary Public for the State of Montana
28 Residing in Miles City
My Commission Expires: February 12, 2021

1 WYATT A. GLADE, Custer County Attorney
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8 MONTANA SIXTEENTH JUDICIAL DISTRICT COURT, CUSTER COUNTY

9 STATE OF MONTANA, 10 11 Plaintiff, 12 13 -vs- 14 15 DEL LINDA FROST, 16 17 Defendant.	18 Cause No. <u>DC-18-</u> 19 20 HONORABLE MICHAEL B. HAYWORTH 21 22 INFORMATION
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23 Shawn A. Quinlan, Deputy County Attorney for Custer County deposes and says that
24 between March 10, 2014 and March 14, 2018, in Miles City, Custer County, Montana, the
25 above-named Defendant, DEL LINDA FROST, believed to be the age of majority, committed the
26 offense(s) of: COUNT 1: THEFT OF PROPERTY BY EMBEZZLEMENT, a felony, as
27 specified in § 45-6-301(6)(a), MCA; and COUNT 2: EXPLOITATION OF OLDER PERSON, a
28 felony, as specified in § 45-6-333, MCA.

MAXIMUM PENALTIES

The maximum penalty for the offense of Theft of Property by Embezzlement exceeding \$10,000 in value, a felony, is imprisonment in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

The maximum penalty for the offense of Exploitation of Older Person, a felony, is a fine in an amount not to exceed \$10,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

The facts constituting the offense(s) are:

1 **COUNT 1: THEFT OF PROPERTY BY EMBEZZLEMENT, a felony:**

2 That between March 10, 2014, and March 14, 2018, in Custer County, Montana, the
3 above named Defendant, Del Linda Frost, committed the offense of Theft of Property by
4 Embezzlement when, with the purpose to deprive Arthur Joseph Yamada of his property, she
5 purposely or knowingly obtained or exerted unauthorized control over his property entrusted to
6 her. The value of the property exceeds \$10,000.

7 **COUNT 2: EXPLOITATION OF OLDER PERSON, a felony:**

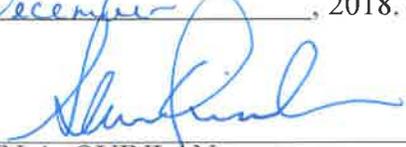
8 That between March 10, 2014, and March 14, 2018, in Custer County, Montana, the
9 above named Defendant, Del Linda Frost, committed the offense of Exploitation of Older Person
10 when she purposely or knowingly obtained or used Arthur Joseph Yamada's funds, assets or
11 property with the intent to temporarily or permanently deprive Arthur Joseph Yamada of the use,
12 benefit, or possession of funds, assets, or property or to benefit someone other than Arthur
13 Joseph Yamada; and stood in a position of trust or confidence with Arthur Joseph Yamada.
14 Arthur Joseph Yamada was 65 years of age or older. The value of the property exceeds \$10,000.

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16 The Witnesses now known to the prosecution are as follows:

17 Det/Lt Dan Baker, MCPD, Miles City
18 Captain Casey Prell, MCPD, Miles City
19 Sgt. Kord Merial, MCPD, Miles City
20 Cody Strietzel, Auditor, Montana Department of Justice, 2225 11th Ave., Helena, MT
21 Debra Fosket, Supervising Agent, Montana Department of Justice, 2225 11th Ave., Helena, MT
22 Beth Ann Weideman, Specialist, Adult Protective Services, Miles City, MT
23 Gene Benson, Claims & Program Representative, Railroad Road Retirement Board, 2900 4th
24 Ave. N., Billings, MT
25 Rena Thomas, Guardian, 1789 Kendall St. Apt 612, Lakewood, CO
26 Paula Coate, Business Manager, Friendship Villa, 2300 Wilson, Miles City, MT
27 Denise Clark, Friendship Villa, 2300 Wilson, Miles City, MT
28 James T. Carr, Attorney, 611 Pleasant, Miles City
John/Jane Doe, First Interstate Bank, Miles City, MT
John/Jane Doe, U.S Bank, Miles City, MT
Michelle Meckle, U.S. Bank, Miles City, MT
Pat Cline, President, U.S. Bank, Miles City, MT
Valerie Paul, Town Pump, 600 S. Main St., Butte, MT
Kathy Griffith, Town Pump, 600 S. Main St., Butte, MT
John/Jane Doe, Club Royale, Miles City, MT
Rhonda Verbeck, Miles City, MT
Denis Leidholt, Miles City, MT

1 That the undersigned represents that these facts were developed by investigating officers,
2 and the affiant has no reason to believe these facts are not true, and believes them to be true.

3 DATED this 4th day of December, 2018.

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6 SHAWN A. QUINLAN
7 DEPUTY COUNTY ATTORNEY

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