Navigating Trusts and Conservatorships with a Fiduciary: Key Insights for Probate Attorneys.

Estate Planning & Probate Section
November 16, 2023

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What Will We Cover?

Introduction.

How did we land in your matter?

Pitfalls of Trusts.

It's only harder in a Conservatorship.

How can we work together smarter, not harder?

Questions?

Introduction – Angelique Friend

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Case Loads

- 161 Active Fiduciaries in Los Angeles County
- 19 Active Fiduciaries in Santa Barbara County
- 118 Active Fiduciaries in San Diego County
- 13 Active Fiduciaries in Ventura County
  - 3 Fiduciaries Accept Court Appointments (That we know of).

In 1920, the older population (65 years or older) was 4.9 million people (less than 1 in 20 people). In 2020, the older population rose to 55.8 million (now 1 in 6 people). This represents a growth rate of about 1,000%.

Business opportunities are like buses. There's always another one coming.

Richard Branson

How did we land in your matter?

- Referrals
  - CPA
  - Attorney
  - Family
  - Financial Advisor
- Court Appointments
- Mediators
- Public Guardian via Adult Protective Services

At what point can we help?

Planning	Blended Family	Bond	Accusations	Access to resources
No family or friends No one to trust or can count on	Avoiding conflict (Neutral 3rd Party)	Successor cannot qualify	Matter is filed, accusations are made.	Successor no longer lives in the area, can't administer from afar or no one is available

Collaboration and Communication with Our <u>Attorney</u>

- Key responsibilities
  - Determine WHO is really the client
  - Sharing information
- Meeting expectations
  - Check-in
  - Reports/telephone calls
  - Meeting deadlines
    - Reminders
- Complimenting each other
  - Establishing a collaborative working relationship to benefit the client

Collaboration and Communication with Our Client

- Key responsibilities
  - Determine WHO is really the client.
  - Determine WHO is our main contact (could be family)
- Meeting expectations
  - Check-in, when we need to do it.
  - Reporting, finances, health, etc.
  - Client's emergency? Well, is it really?
- Complimenting each other
  - Establishing a collaborative working relationship to benefit the client
  - Managing time and fees

General issues that arise in some matters

Arbitration Agreements

- Financial Advisor agreements
- Care provider agreements
- Tax preparer agreements

Ethical Boards

- No previous AHCD, no history
- Inconsistent with AHCD

Financial Institutions

- Order of the Court
- Language in the Order
- Conformed copies or Certified copies (stamp)
- Notes on the margins or language changes
- Mistakes made by banker when account is opened by deceased person

More issues that arise in some matters

Gifts and Tips

- Holiday gifts for caregivers and family
- Birthday gifts
- Cash gifts and tips

Caregiver

- It's the only person your client trusts, but they don't work for a service
- Relationship evolves with caregiver
- Stealing (but Client wants her personal property to remain)
- Pets - Who cares for the pet when the caregivers won't?

Need to Change the other Trusted Professional

- CPA costs
- Advisor doesn't understand our role
- Doctor refuses to complete Capacity Declaration or draft a letter
- Doctor isn't listening

Estate Planning and Trust Administration

Can we streamline and simplify the process? Common challenges and pitfalls.

- A PF is sometimes the easy answer, but not always the right fit.
- If named, let us know sooner than later.
- What is the value of the SNT after the Settlor passes?
  - After distributions, what's really left for the beneficiary?
- Trust Protectors.
- Trust Restatements, please. Amendments are sometimes more complicated when it comes to banking.
- When the Health Care Agent is not the named PF, and agent is not doing their job.
  - How do we get the capacity letter without help?
- Settlement Agreements, give us time to review and have them reviewed before committing a successor to the job.

Conservatees and ships, what happens when…

- Conservatee is married and financial obligations are to both of them.
    - Working with family who is involved with "healthy spouse"
- Conservatee refuses healthcare
    - First responders don't understand your role
    - Family demands that you "do something"
- Someone else is Trustee and holds all or majority of funds.
- Conservatorship dies with the Conservatee, but who is making post death decisions when there's no one, or heirs are fighting (which is why you were appointed in the first place).
- Conservatee gives his/her stuff away.

Adhering to legal and ethical standards, why is this a problem?

- Juggling priorities.
- Explaining over and over why we can’t meet their demand.
- Client or beneficiaries do not like what they are told.
- Post death wishes that cannot be honored.
- When the bequeathed personal property does not exist.
- The result leads to complaints, claims, and negative reputations.

Lessons learned

*Choosing the right representation and choosing the right Fiduciary, not just the one willing to take the case.

*Good cop/bad cop works for us

*Not offended when it's time to switch, not just when the client/beneficiaries think it's time.

* Be wary when the referral source says "this a good one."

What else are we up against?

- For Clients:
  - Rising costs, especially in care
  - The client with the least amount of assets often requires the most amount of time and effort
- For Fiduciaries:
  - Staffing
  - Nothing is as easy as it used to be, more hoops
  - Costs
    - Overhead
    - PF requirements by the state. Continuing education, fees, insurance, take more time every year
  - Work, family, balance
    - We are responsible 24/7

Questions?

* Now, how can we help you?
* How can we address your concerns or scenarios?
* Open for discussion.

Thank you

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