

The Case of The Faithless
Fiduciary:
Dealing with Clients Who Don't or
Won't Do What They're Supposed
To Do

What's A "Fiduciary"

- "...A person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires."
 - ◆ Black's Law Dictionary

Types of Fiduciaries

- Trustees
- Guardians or Conservators
 - ◆ Person or Estate
- Agents under Powers of Attorney
- Spouses/Domestic Partners

The Attorney's Role

- Who is the client?
 - ◆ The person standing in front of me?
 - ◆ The Agent's Principal
- Answer this questions as soon as possible!

Avoiding the Problem To Begin With

- Clearly & frequently communicate with the client regarding her duties & responsibilities
- Put it in writing!
- Provide guidance during the representation
 - ◆ In writing!

Into the Breach!

- And how to get out.
- The "oh by the way, did I tell you...? Bombshell

Is There Really A Problem?

- Remember Douglas Adams admonition – “Stay Calm”
- Was it a breach of a fiduciary duty?
- Violation of a statute?
- Impermissible distribution under terms of the trust?
- Improvident investment?

Is There Really A Problem?

- Embezzlement?
- Negligent & Intentional?

Counseling & Correcting

- Educate the client
- Take corrective measures if possible
- Explain the consequences
- MRPC 3.3 – Duty to Disclose

And Then There's the Client from Hell...

- The Options –
 - ◆ Resign
 - ◆ Withdraw
 - ◆ “Noisily”
- Report
 - ◆ Court
 - ◆ Mandated Reporter?
