Avoiding Pitfalls, Preparing for Potholes and Surviving Speed Bumps Educating Laypeople About the Roles and Responsibilities of Fiduciaries

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1. **Overview -** Why should we, as attorneys care about whether the agents that our clients name are educated about their duties and responsibilities? Why should we take the time and make the effort to work with those named individuals to ensure that we have made an effort to explain to them the limits of their positions and the ongoing requirements of their service?

    a. **Added service to our clients** – Elder and special needs law attorneys do more than draft documents. We are putting together a security plan for a person's well being and security. When clients know that the agents they put in place will have some guidance and assistance, they are often more comfortable executing the documents and, because they want their children to know which attorney to go see, they share information more readily – including sharing your contact information!

    b. **Build relationships –** Advising client's fiduciaries can lead to client relationships with other family members and build word of mouth referrals. Just be certain that you have a good inter-generational conflict letter in hand. An excellent example can be found in Stuart Zimring's article, Ethical Issues in Representing Multiple Family Members, found in the December 2011/January 2012 issue of the NAELA News.

c. **Distinguish yourself from other estate planners or estate planning services** – Online "do it yourself" estate planning companies and trust mills will not be available to answer questions when an attorney in fact has difficulty using a power of attorney document or help a trustee. We can give our client's fiduciaries the assistance and guidance they need in a crisis situation.

d. **Prevent conflicts and misunderstandings** – Educating fiduciaries about the need to maintain open communication and providing information to beneficiaries

e. **Protect against malpractice claims** – As we will discuss later, there is a possibility that failure to properly advise a fiduciary can result in liability for an attorney.

2. **<u>Client Identification</u>** – In the world of elder law and fiduciary representation, this is perhaps the most critical, and often vexing, question attorneys face. It is also the most important. Unfortunately, the Model Rules of Professional Conduct are fairly thin on this point. Turning to NAELA's Aspirational Standards, Standard B deals entirely with client identification.

    a. Standard B2 states that an elder law attorney "Recognizes the unique challenges of identifying the client when a fiduciary is acting on behalf of a protected individual."

        i. In a typical case, there could a few possible clients

            1. The principal
            2. The agent, on behalf of the principal
            3. The agent, individually

        ii. Each carries its own risks and requirements

b. The Standards specify that, once an attorney identifies who will be the client, it should be memorialized in writing in the engagement agreement.

    i. If the attorney represents the principal, you can receive authority to later represent the agent in his or her capacity as a fiduciary via an authorization to disclose or a waiver of conflict. A sample is available with the Aspirational Standards on the NAELA website. See also the ACTEC Commentaries to MRPC 1.6

3. **Attorney Liability/Responsibility** – MRPC 1.2 can be, and has been, interpreted to allow beneficiaries and principals to hold attorneys responsible for the misdeeds of agents when the attorney could have or should have advised the agent to act differently. See the ACTEC Commentaries on MRPC 1.2.

Unless the case arises in a state with strict privity rules (Texas, Nebraska, New York and Ohio), the court is likely to apply a multi-factor test to analyze whether an attorney owes a duty to the beneficiaries of the trust. See *Biakanja v. Irving*, 320 P.2d 16 (Cal. 1958), *Trask v. Butler*, 872 P.2d 1080 (Wash. 1994), *Charleston v. Hardesty*, 839 P.2d 1303 (Nev. 1992). Depending upon the test applied, the court may consider criteria such as**:**

a. The extent to which the transaction was intended to affect the beneficiary;

b. The foreseeability of harm to the beneficiary;

c. The degree of certainty that the beneficiary suffered harm;

d. The closeness of the connection between the attorney's conduct and the injury suffered;

e. The policy of preventing future harm; and

f. The burden on the legal profession if a duty is found to exist

4. <u>Educating the Principal</u>

a. In some cases, the principal is the first line of defense and the first person to notice something is wrong.

b. Prior to drafting documents, review the powers, duties and responsibilities of each potential agent with the client, both to ensure the correct agents are named and so that the principal understands the scope and purpose of each document.

c. Discuss whether the principal wants to authorize a third person to review the actions of the principal (for example, receive accountings) if the principal is incapacitated

d. Share your educational materials with the principal so they can review and reinforce your instructions

e. Get advance authorization to disclose information to agents and discuss the scope and limits on that authorization, if any.

5. <u>Educating the Fiduciary</u>

a. The Basics

i. <u>Who you represent</u> – Especially in cases of powers of attorney, you may be meeting with the agent when the case is already well underway. Even if you had a clear representation agreement with your original client, you should, at a minimum, provide a written disclosure to the agent of who you consider to be your client and to whom your duties and confidentiality belong.

If the attorney did not have a prior relationship with the principal, the attorney should be very clear in what capacity the attorney is representing the agent. In most cases, the agent is represented in his or her capacity as attorney in fact and the duty of the attorney is to the interests of the principal being represented by the agent. In rare circumstances, the attorney may be presented with a situation where the agent requires representation themselves in conjunction with actions that were undertaken in their capacity as agent. A clear representation agreement is needed so that the agent understands clearly who the attorney had a duty to represent.

ii. Self-dealing – The first rule of acting as an agent is the rule against self dealing. While self dealing may be permissible in certain circumstances, it is likely better for you and the agent to set clear boundaries early, requiring disclosure and discussion of any possible self dealing **IN ADVANCE**. As I often tell agents, many times we can figure out a way to make something work within the boundaries of their authority, but I cannot put a genie back in a bottle once it's loose.

iii. Showing authority – Fiduciaries should clearly understand what documents provide them with their authority, who should be provided with copies, and what the limitations of the document itself may be. For example, many financial institutions and brokerage services will not accept court letters authorizing an executor or personal representative that are more than sixty days old. To avoid possible fees and charges

associated with getting new copies from the court, the fiduciary should get the documents on file with financial institutions as soon as is practicable after issuance.

iv. How to sign/act – One of the most frequent mistakes made by fiduciaries is failing to sign documents correctly. Providing the fiduciary with examples and frequent reminders can prevent this from happening. You may also need to provide answers to such seemingly basic questions as "how do I access trust/estate funds?" or "how will I know which bills to pay?" Keep in mind that, although we deal with these situations on a daily basis, many of our fiduciaries have never been in this position before and may never have known someone else who was, either. You may also need to correct misinformation that comes from the fiduciary having either acted before in a similar situation or knowing someone who did. If you know your fiduciary has some experience and you were not the attorney in that case, ask how they handled the responsibility and how they managed things. This can allow you to correct bad habits before they affect your case.

v. Money management – If you are in a situation where a financial planner is not already involved in the case and the fiduciary has little experience with managing finances, refer them to trusted financial planners who can help. All fiduciaries should be briefed on the prudent investor rule, even if it needs to be in the simplest terms possible. You never want to put yourself

in a situation where the fiduciary turns to you and says "You never told me I couldn't invest in Bitcoin."

vi. Recordkeeping – Although the timeframes for required recordkeeping and the form may be different for each type of fiduciary, the basics are the same. There are tips and trick you can arm fiduciaries with to make recordkeeping easier and minimize questions on any future accounting.

1. Agents should always have check copies included with bank statements, even if the bank charges an extra fee. Many courts require them with accountings and it can save on hassle and expense later

2. Check registers have two available lines for each check, one usually shaded in grey. That second line is the perfect place to note what a transaction or check was for to help jog an agent's memory in the future.

3. The memo line on a check is an agent's best friend. It can also be used to specify purpose of any check written

4. Software and apps such as Quicken can make accountings quick and easy. Some accountants provide software and tutorials for clients.

5. Scanning apps such as Scannable or PDF Scanner make keeping and tracking bills and receipts easy. Scannable has the added feature of linking to Evernote, where you can organize and tag the pdfs.

6. If someone is serving multiple roles such as Trustee/ guardian/ representative payee, color coding can help. I'm a big fan of colored masking tape on checkbooks coordinated with a color coded flowchart of accounts and regular expenses to keep things on track. For online banking, use the "account nickname" function to label accounts. If there are multiple trusts involved, try to use names that will help the trustee, family and beneficiary keep things straight. It doesn't help the trustee if the family frequently refers to the wrong account.

vii. Who the fiduciary is responsible to – You should clearly set out for the fiduciary their responsibilities to the various individuals involved in the case, whether that is beneficiaries of an estate or trust or the principal hand his or her heirs in the case of a power of attorney. Contact information should be provided, if available, and the fiduciary should be encouraged to maintain direct contact with these individuals, if feasible. In certain situations, direct contact between the fiduciary and beneficiaries is not in anyone's best interest, in which case, the fiduciary should be in frequent contact with the attorney who can provide updates to the beneficiaries.

viii. What reports are required/suggested – Each type of fiduciary role has its own accounting requirements. From the laughably simple for required by the Social Security Administration to the complicated, detailed accountings required by some jurisdictions in guardianships, an agent should be prepared to give detailed reports on income to and withdrawals

from all accounts with explanations of each transaction at any time. If the principal is competent, quarterly reports are not so frequent to be burdensome, but often enough to keep the principal informed. In addition, quarterly reports allow any questions to be asked while the transaction is still fresh enough in the agent's mind to respond. At a minimum, reports should be complied annually, even if the reporting requirements are less frequent.

ix. CFPB Guides The Consumer Financial Protection Bureau has guides available on their website for agents who are managing someone else's money (www.consumerfinance.gov) In addition to general guides, several states have their own state-specific guides and the CFPB provides a Word version of the guides that you can customize for your own clients.

x. Guides to managing someone else's healthcare - While the best guide is always instructions from the principal prior to incapacity, that doesn't always happen. The Conversation Project has a helpful publication on their website (www.the conversation project.org) for these situations.

b. Educating Attorneys in Fact – This is where the most danger lies, because this is where the drafting attorney has the least control, especially when the documents are released at the time of signing. Agents may begin acting with very little guidance, if any. Michigan requires attorneys in fact to sign a specific acceptance of authority that outlines some responsibilities, but does so only briefly. If documents are not released at time of signing, or if the attorney in fact comes back to the drafting attorney for certified copies, that is an opportune time to give

some guidance and education. Always supplement your verbal instructions with written ones. Samples are attached as Exhibit A.

i. Understanding scope of authority - An attorney in fact does NOT have power of attorney OVER someone. They are an agent acting FOR someone. That simple fact alone can be very hard for some agents to understand. They believe that having a power of attorney that names them gives them ultimate authority over the principal. An attorney in fact can not override the wishes of the principal.

ii. Understanding how to use authority – There are two pieces to using authority under a power of attorney – presenting the document and executing transactions. First and foremost, the agent should be provided with certified copies of the power of attorney document. If the document is particularly dated or unusual, a letter from the attorney setting out the requirements for acceptance of the document can be useful. Second, the agent must understand the process for signing on behalf of the principal. Failing to note "attorney in fact," "AIF" or "POA" after their signature can bind the agent personally and create individual liability for them.

iii. Understanding accountability – Most state statutes provide rules for accounting requirements for attorneys in fact. Indiana Code 30-5-6-4 requires an attorney in fact to keep records of all transactions for six years. Although the principal always has a right to demand an accounting, they should never have to do so. As long as the principal is competent, the attorney in fact should openly provide information on a regular basis.

Some people may want the attorney in fact to continue to be accountable to a third party if they become incapacitated and that can be written into the power of attorney document. While attorneys in fact bear some responsibility to the ultimate heirs of the principal's estate, they are typically not required to provide an accounting to these individuals unless the principal directs them to or is deceased. That said, a lack of transparency can breed suspicion and raise questions about the agent's actions.

c. Educating Guardians/Conservators

i. Power/Authority - In many cases, the court overseeing the guardianship or conservatorship will have a specific system for educating appointed individuals. (NOTE: For purposes of simplicity, I'm going to will refer to both guardians and conservators under the general term "guardian"). However, many courts skip this step or simply hand the guardian a list of instructions. The attorney or a member of the attorney's staff should take time before and after the hearing to review all of the requirements of the guardianship, provide instructions on how to move forward with asserting the authority granted and guidance on the next steps to take. Often, it may be more efficient to schedule a follow up meeting the day after the court hearing. Especially in courts which require the protected person to appear, the day of the hearing can be stressful and chaotic.

A guardianship or conservatorship can come with tremendous authority. Courts are increasingly looking to limit this authority, requiring potential guardians to seek the "least restrictive means possible" to protect the interests of the ward. While this trend benefits those who need assistance and protection without losing all of their decision making authority, it can make a guardian's job more complicated, requiring a complete and detailed understanding of what decisions the guardian can make and what decisions the protected person needs to be involved in. This is where visual aids can help. It may sound silly, but charts and graphs can help a guardian see more clearly what the limits of their authority are.

ii. Duties In a guardianship, the guardian owes a significant duty to the protected person. In some cases, such as parents obtaining guardianship over a disabled adult child, these responsibilities come naturally and require little explanation. However, when a child is getting guardianship over a parent or sibling, this can be less clear. Making decisions without taking one's own best interest into account is not instinctive to most people and may often require the guardian to pause and step back from the decision to evaluate whose best interest is being served.

d. Educating Trustees

i. Rules for distributions. – Whether the trust is a true "sole discretion" special needs trust, an ascertainable standard trust, or some hybrid of the two, the trustee must have a clear understanding of how and under what circumstances distributions can or must be made. The trustee should be

clearly advised to seek counsel if he or she has any questions as to whether a distribution is appropriate.

ii. Who the trustee is responsible to – You should clearly set out for the trustee their responsibilities to the various individuals involved in the case, including the present and remainder beneficiaries. Contact information should be provided, if available, and the trustee should be encouraged to maintain direct contact with these individuals, if feasible. In certain situations, direct contact between the trustee and beneficiaries is not in anyone's best interest, in which case, the trustee should be in frequent contact with the attorney who can provide updates to the beneficiaries.

iii. What reports are required/suggested – Each type of trustee role has its own accounting requirements. From the laughably simple for required by the Social Security Administration to the complicated, detailed accountings required by some jurisdictions where a trust is part of a guardianship or conservatorship, an trustee should be prepared to give detailed reports on income to and withdrawals from all accounts with explanations of each transaction at any time. If the principal is competent, quarterly reports are not so frequent to be burdensome, but often enough to keep the principal informed. In addition, quarterly reports allow any questions to be asked while the transaction is still fresh enough in the trustee's mind to respond. At a minimum, reports should be complied annually, even if the reporting requirements are less frequent.

iv. Trustee Guidebook – Most SNT practitioners are familiar with the SNA guide to administering a special needs trust, which can be a great tool for educating trustees. I have recently started using the guidebook written by Michele Fuller and Keven Urbatsch entitled Administering the Michigan Special Needs Trust (Available on Amazon). For my Indiana clients, we compiled a quick addendum to point them to the Indiana citations and law differences. For any trustee, beneficiary or family member, we give them a quick guide to the key features of their trust and then go through and highlight and tab important sections. While we haven't been doing this long enough to know how effective it is, I know how much the clients seem to appreciate it.

e. **Personal Representatives/Executors and Trustees**. These situations are more case-specific, depending upon the type of estate or trust and the requirements imposed by the document or court.

6. **When Educating Doesn't Work** – When an attorney represents an agent acting on behalf of a principal and the agent acts against the wishes or best interest of the principal, what action can an attorney take?

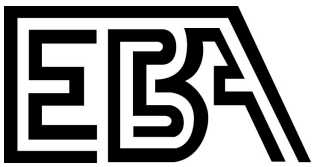
   a. **Court authorized action –** In the case of a court appointed fiduciary, some courts have begun allowing attorneys to file "notices of non-compliance" or similar pleadings to alert the court to the malfeasance. An example of this notice from the Probate Court in Marion County, Indiana is attached as Appendix B. See also the ACTEC Commentaries on MRPC 3.3 and 4.1.

b. **Withdraw from the case** – In some situations, this may be easier said than done. However, an attempt to withdraw can put a court on notice and a letter to beneficiaries of a trust that you no longer represent the trustee would hopefully cause someone to realize there is something wrong.

c. **Take action against the fiduciary** – This can get tricky. See the ACTEC Commentaries to MRPC Rule 1.6. If you have been clear in your non-representation of the fiduciary and that your loyalty is to the principal, you can take action upon direction of the principal to do so. However, in a family situation, that can be hard to get. In that case, you may be able to get the principal's authorization to notify adult protective services or a similar third party to take action and to execute new documents stripping the agent of their powers.

Appendix A

ATTORNEY IN FACT INSTRUCTIONS AND ACCOUNTING RECORDS



Prepared by

The Evansville Bar Association
Probate, Elder Law and Guardianship Section
Katherine J. Rybak, Chair

The attached instructions and accounting sheets are provided to assist you with your responsibilities as attorney in fact.

Nothing in this brochure is intended as legal advice or as a substitute for legal consultation. If legal or other expert advice is required, you should consult with your attorney or other professional.

March 22, 2007

GUIDELINES FOR ATTORNEYS IN FACT

You have been granted power of attorney by an individual, "grantor", who trusts you to serve in a "fiduciary" capacity. As an attorney in fact, you must act for the benefit of the individual who appointed you, in complete good faith and candor. You generally are to act prudently, as you would in your own business affairs of the highest importance, rather than incurring high risks. You can become personally liable for breaches of fiduciary duty. Consider the following Guidelines of **"DOs"** and **"DON'Ts"** your guiding principles:

Your actions are not supervised by any Court. However, the grantor, a successor attorney in fact, or the grantor's heirs may request that you give an accounting of your activities. You must provide a complete accounting within sixty days of when you receive a request.

All income and expenses should be deposited in or drawn from a checking account in the name of the grantor with the grantor's social security number. Photocopy all checks deposited to the grantor's checking account and attach the copies to a copy of the deposit slip. This will greatly assist you in preparing an accounting should one be required.

Keep all cancelled checks and receipts. You may have to repay any money you spend without a receipt.

The grantor of a power of attorney does not give up the right to make financial decisions or to exercise any of the powers granted to you. As the result it is important to coordinate your activities with the grantor. The grantor may have appointed you so that you will be in position to help with financial matters should the grantor become incapacitated in the future. In that case, you may not have to do anything with regard to the power of attorney until some time in the future. You should request guidance from the grantor so that you understand the grantor's current needs and so that the grantor can let you know where assets and important documents are located for future reference.

You do not have to accept the responsibility of attorney in fact. If you decline to act on the power of attorney, you should let the grantor and the successor attorney in fact know your decision.

IF YOU DECIDE TO ACCEPT THE RESPONSIBILITY OF ATTORNEY IN FACT

Things to Do:

1. Identify all assets immediately. Their safekeeping is your responsibility. Locate, collect and maintain all property owned by the grantor. If necessary, fill out a change of address form with the Post Office immediately so the grantor's mail will be forwarded to you.

2. Assure that all real estate holdings and motor vehicles are adequately insured. Consult with the grantor's insurance agent to assure appropriate coverage.

3. If the grantor has stock or bond holdings or other investments, you should consult a professional for investment advice, as you will be responsible for the supervision of the portfolio and required to maintain prudent investments.

4. Ascertain all legal debts of the grantor. A review of the grantor's checkbook and business records should greatly assist you. Consult an attorney if you have questions about what to pay.

5. File all necessary income tax returns each year. You may retain an accountant to prepare taxes and will need to provide the accountant with the necessary information for tax return preparation.

6. Protect and preserve the grantor's assets, pay the grantor's legal debts and taxes.

7. You are entitled to a reasonable fee for the services that you render as attorney in fact, unless you waive the fee or the power of attorney indicates that no fee is to be charged. If you charge a fee, you must keep an accurate ledger of the time you have expended on the grantor's affairs in order to be compensated, as well as receipts for your out-of-pocket expenses. You will need records to be able to justify and defend your fee. No fee is to be taken by you as attorney in fact until you provide a statement to the grantor.

8. Promptly record all transactions in connection with affairs of the grantor's estate. This continuous record will simplify the preparation of an accounting if one is requested. If you use Quicken, QuickBooks, Microsoft Money or a similar product, you may want to open a separate file for tracking the grantor's finances, so as to simplify reporting. An accountant can assist with the appropriate income and expense categories for a fiduciary account.

Things Not To Do:

1. **Never** co-mingle or mix the grantor's assets or income with your personal or business property. The grantor's funds should never be co-mingled with your personal funds. This would be a breach of your fiduciary duty, and may cause you to incur personal liability.

2. **Never** use the grantor's funds other than for the payment of the grantor's legal debts and obligations. Unauthorized use of the grantor's funds will result in personal liability.

3. **Never** self-deal in any manner, unless specifically authorized in the Power of Attorney – that means do not buy anything from the grantor, sell anything to the grantor, borrow any funds from the grantor, or the like. Such actions may result in personal liability.

4. **Never** pay with cash without obtaining a receipt.

YOU ARE CHARGED WITH A DUTY OF FAITHFULLY ADMINISTERING AND ACCOUNTING FOR ALL ASSETS IN THE GRANTOR'S ESTATE; IF YOU HAVE ANY QUESTIONS WHATSOEVER, CONTACT AN ATTORNEY FOR ADVICE.

CHECKLIST OF GRANTOR'S ASSETS

If you assume responsibility for the grantor's affairs, you should gather the following documents. If you are not assuming responsibility for the grantor's affairs at this time, you should determine the location of the following documents for future reference.

Real Estate

☐ All deeds, abstracts, certificates of title, and title policies

☐ Contracts for deed (land contracts)

☐ Mortgages and deeds of trust

☐ Leases

☐ Current year's tax statements

☐ Partnership agreements relating to real property interests

Securities

☐ Stock and bond certificates

☐ Mutual fund statements

☐ Brokerage house statements

Bank Accounts and Cash

☐ Amount and location of cash

☐ Uncashed checks on which grantor's name appears

☐ All checkbooks, bank books, certificates, and other evidence of deposits with financial institutions

☐ Promissory notes

Life Insurance

- ☐ All policies on grantor's life
- ☐ All policies owned by grantor on the lives of others

Miscellaneous Assets

- ☐ Business interests in sole proprietorships
- ☐ Partnership agreements
- ☐ Trust instruments and information on any pending estate or trust which grantor has an interest.
- ☐ Description of tangible personal property and its value
- ☐ Accounts receivable
- ☐ Certificates of ownership in motor vehicles, boats, and recreational vehicles
- ☐ Fraternal lodge benefits or union benefits
- ☐ Employee benefits, i.e. IRA, Keogh, Profit Sharing, 401K, etc.
- ☐ Annuities
- ☐ Safety Deposit Box Numbers and Keys

Other Items

- ☐ Copies of grantor's income tax returns for last three years preceding guardianship
- ☐ Any gift tax returns filed by grantor
- ☐ List of grantor's debts at date of establishment of guardianship
- ☐ Birth certificate
- ☐ Marriage certificate and/or divorce decree
- ☐ Military records (Branch of service, ID, dates of service)
- ☐ Passport/Citizenship Papers
- ☐ Advance Directives, Living Wills, Organ Donor Card
- ☐ Burial arrangements and Cemetery Information

RECEIPTS

Enter on this page all moneys received.

DATE RECEIVED	FROM WHOM RECEIVED	FOR	AMOUNT

DATE RECEIVED	FROM WHOM RECEIVED	FOR	AMOUNT

DATE RECEIVED	FROM WHOM RECEIVED	FOR	AMOUNT

DISBURSEMENTS

On this page enter every payment at the time you make it. Under the heading “FOR” show briefly the matter covered by the check such as “court costs,” “school tuition,” “monthly allowance for support.” Whenever you release possession of, or sell any asset, the transaction should be listed under the heading **“Disbursements.”**

DATE	CHECK NO.	PAYABLE TO	FOR	AMOUNT

DATE	CHECK NO.	PAYABLE TO	FOR	AMOUNT

DATE	CHECK NO.	PAYABLE TO	FOR	AMOUNT

Appendix B

Marion County Probate Form 402.4 Notice to Court and Order Setting Hearing

STATE OF INDIANA) IN THE MARION SUPERIOR COURT
) SS: PROBATE DIVISION
COUNTY OF MARION) CAUSE NO. 49D08_____

IN THE MATTER OF:)
)
THE ESTATE/GUARDIANSHIP OF)
)
_____)

NOTICE OF POSSIBLE NON-COMPLIANCE

Comes now _____, attorney for _____ [fiduciary] heretofore appointed as [guardian / personal representative] on _____by the Court to serve in such capacity, and, pursuant to MCPR 402.4, hereby notifies the Court that __he is concerned that said fiduciary is not timely performing or improperly performing h___ fiduciary duties to the [protected person or creditors and beneficiaries of the estate].

Wherefore, the Court is requested to set the matter for hearing and require the fiduciary to personally appear and account to the Court for all actions taken or not taken by the fiduciary.

Respectfully submitted,

LAW FIRM
Attorneys for the Fiduciary

_____
Attorney, #_____

Attorney Contact Information

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the following by first class, United States mail, postage prepaid, this _____day of _____, 2_____:

Fiduciary
Address

Beneficiary
Address

Creditor
Address

_____
Attorney

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	PROBATE DIVISION
COUNTY OF MARION	)	CAUSE NO. 49D08_____

IN THE MATTER OF:	)
	)
THE ESTATE/GUARDIANSHIP OF	)
	)
_____	)

ORDER TO APPEAR FOR COMPLIANCE HEARING

This matter came before the Court on a Notice of Possible Non-Compliance filed by the attorney for the personal representative/guardian heretofore appointed to serve by the Court in this cause.

AND THE COURT being duly advised in the premises, hereby issues an Order that the personal representative/guardian _____ and their counsel _____ shall appear in this Court on the _____ day of _____, 20____, at __ _____ o'clock ____.m. to report to the Court on the actions of the personal representative/guardian in this matter.

The Clerk is hereby directed to mail a copy of this Order to the personal representative/guardian, their attorney, the protected person and all heirs/beneficiaries and creditors.

ALL OF WHICH IS ORDERED this _____ day of _____, 20_____.

_____
Steven R. Eichholtz, Judge, Marion Superior Court
Probate Division

SERVE PERSONAL REPRESENTATIVE/GUARDIAN AT:
_____
_____

SERVE ATTONEY FOR PERSONAL REPRESENTATIVE/GUARDIAN AT:
_____
_____
_____

SERVE PROTECTED PERSON/HEIR/BENEFICIARY AT:
_____
_____
_____

SERVE CREDITOR AT:
_____
_____
_____

Marion County Probate Form 412.3. Instructions to Personal Representative of Unsupervised Estate

MARION SUPERIOR COURT – PROBATE DIVISION

SUPERVISED ESTATE OF _____

CAUSE NUMBER_____

COURT'S INSTRUCTIONS TO PERSONAL REPRESENTATIVE OF UNSUPERVISED ESTATE

Please read carefully before you date and sign. One copy of this form must be filed with the Court before your appointment as personal representative is confirmed by the Court. Keep one copy for your records.

Introduction:

You have been appointed as the personal representative of the estate of a deceased person. By your appointment, the Court has placed in you the highest trust that you will perform your duties in the best interests of all beneficiaries and creditors of the estate. It is important that you fully realize your duties and responsibilities. Listed below are some, but not all of them.

You must be represented at all times by an attorney of record approved to so act by written order of the Court. Your attorney is required to reasonably supervise and guide your actions as personal representative unless and until that attorney is permitted by order of the Court to withdraw from representing you.

Your attorney is required to notify the Court in the event that you are not timely performing or improperly performing your fiduciary duties to the beneficiaries and creditors of the estate and by signing these Instructions you agree that the filing of that notice does not violate the attorney-client privilege. If the Court receives such notice it will set the matter for hearing and require you to personally appear and account to the Court for all actions taken or not taken by you as personal representative. You are required to notify the Court in writing in the event that your attorney is not timely performing or improperly performing their duties to reasonably supervise and guide your actions as personal representative. Upon receipt of the notice, the Court will set the matter for hearing and require you and your attorney to personally appear and account to the Court for all actions taken or not taken by the attorney.

The Instructions which follow are to be considered by you as Orders of the Court which require you to perform as directed. Although your attorney will file all papers with the Court, you, as personal representative, are ultimately responsible to see that the estate is properly and promptly administered, and you are personally liable for incorrect distributions, payments, or acts, as well as any unpaid taxes or costs of administration.

The Court appreciates your efforts on behalf of the estate.

Steven R. Eichholtz
Judge, Marion Superior Court
Probate Division

As personal representative, you are required to:

1. Locate, collect and maintain all property owned by the decedent.

2. Keep motor vehicles and real estate insured and protected.

3. Immediately fill out a change of address at the post office to have the decedent's mail forwarded to you.

4. Within two (2) months of your appointment you must either:

A. file with the Court an inventory conforming with the requirements of I.C. 29-1-7.5-3.2 (b) and forthwith serve a copy of the inventory on all known heirs, beneficiaries or distributees of the estate, or,

B. file with the Court a verified certification that an inventory conforming with the requirements of I.C. 29-1-7.5-3.2 has been prepared, that it is available to be furnished to distributees on request and that notice of preparation of the inventory and its availability has been forthwith served on all known heirs, beneficiaries or distributees.

5. **Estate Checking Account.**

A. Open a separate checking account in your name "as personal representative for the estate of (the decedent)." Obtain a federal tax I.D. number for the checking account. Do not use your Social Security number or decedent's Social Security number.

B. DO NOT put any of your funds or anyone else's funds in this account.

C. Always pay for estate expenses by checks from this account. DO NOT pay any expenses with cash..

D. Make sure that the bank is willing to return cancelled checks or electronic copies or digital images of the paid checks to you.

E. Keep records of all deposits, including the identity of each person or entity paying the money into the estate.

6. Determine all debts that the decedent owed. Look through decedent's tax returns and other papers. Talk to anyone who knew decedent's business. Consult your attorney as to payment of debts, costs of administration, bond premiums, and funeral bills. Some debts may be unenforceable. Some may have priority over others.

7. Have your attorney provide written notice of the administration of the estate to all known creditors of the estate.

8. **NEVER** borrow estate property or put it to your own personal use.

9. DO NOT distribute any estate assets until assets (including personal property) are appraised, and consult with your attorney prior to making any distribution.

10. Prepare and file income tax returns for the tax year in which the decedent died and any returns for prior years if needed. Timely prepare and file any estate, inheritance or fiduciary tax returns and pay taxes as they come due.

11. After you fully complete the estate administration, you must file a closing statement with the Court verifying that all proper claims, expenses and taxes have been paid, that all assets have been properly distributed, and that a copy of the closing statement has been sent to all distributes, fully accounting for all assets, expenses and distributions made to the heirs.

12. Notify the Court and your attorney of any change in your address or telephone number.

13. Keep a record of the time you spend working on the estate. You are entitled to a reasonable fee, unless you waive a fee. Time records will help the Court determine your fee.

14. Always contact your attorney for advice if you are unsure as to any act as personal representative. Have your attorney counsel you in relation to the estate and explain anything that you do not fully understand.

I authorize my attorney to notify the Court in the event that he or she has reason to believe that I am not timely performing or improperly performing my fiduciary duties to the beneficiaries and creditors of the estate even if such information would be otherwise confidential.

I acknowledge that I have carefully and completely read the above instructions and received a copy for my records. I agree to properly carry out my duties.

Dated this _____day of _____, 20 _____.

_____ _____
Signature, Personal Representative Signature, Personal Representative

_____ _____
Print, Personal Representative Print, Personal Representative

I acknowledge that I have carefully and completely discussed the above instructions with my client before this form was signed and believe that he or she is fully aware of and capable of performing the duties required of a personal representative of a supervised estate.

_____ _____
Signature, Attorney Signature, Attorney

_____ _____
Print, Attorney Print, Attorney