

The Ethics of SNT Administration

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With guest appearances by Robert Fleming and Mary Alice Jackson

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In this session we will:

Discuss	Discuss the attorney's role,
Using	Using hypotheticals, list various ethical issues for the attorney when reviewing the decisions a trustee makes in administering a trust,
Offer	Offer suggestions regarding the trustee's decision-making process, and
Discuss	Discuss a framework for the attorney to make sure the trustee's decisions and actions are ethical.

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What is the attorney's role?

Drafter of the documents?

Representing the trustee or other fiduciary?

Hired by, and representing, the beneficiary?

Expected to draft the documents and represent one of the parties?

Drafting the documents and serving as a fiduciary once the drafting is finalized?

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- How identify client?
- Why important?
- Ethics rules; substantive law, see Scope (12)
- To whom does the attorney owe a duty?
- Restatement (3rd) Law Governing Lawyers § 14 (how create client-attorney relationship)

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- First Party Trust
 - More options, more questions
- Third Party Trust
 - Clear client identification

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- Fiduciary representation
- Potential for conflicts?
- Duties to others?
- When beneficiary is not the client.

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Question

- Trustee asks if ok to make distributions to parents for care of a beneficiary in light of their existing legal responsibilities as a parent?



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Question

- Trustee fails to keep trust property in good condition and as a result, beneficiary is injured. Can a trustee be liable?



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Question

- But what if the trustee has kept the property in good condition, and the beneficiary is injured. Can a trustee be liable?



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Question

- What if beneficiary asks you to seek action vs. trustee for beneficiary's injuries caused by the trust property?



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- Communication?
- Conflicts?
- Confidentiality?

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Question

- Trustee asks you if ok to allow non-beneficiary person to remain in trust-owned property now that the beneficiary no longer lives there?



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Question

- Trustee asks you if it is ok to make distributions to a non-beneficiary?



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- Communication
- Conflicts
- Confidentiality
- Fees
- Liability to beneficiary?

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- Beneficiary
- Others
- Is the information privileged?
- Who can consent to sharing info?
- Should they?

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Question

- Beneficiary, now 18, no cognitive limits, asks for bank statements, etc. Do you say ok?



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Difficult Situations: What Does the Attorney Advise?

- Trustee tells you that parents of a beneficiary are preventing the beneficiary from achieving financial independence in order to continue to receive trust benefits (parents are threatening that beneficiary will not go to college because they are worried once he's done with school, parents will be kicked out of house). What do you advise?

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Difficult Situations: What Does the Attorney Advise?

- Trustee tells attorney that beneficiary has allowed "friends" to move in and they are cooking meth in the garage. What do you advise?

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- Trustee: read the trust, talk to the attorney, remember the purpose of the trust and the role of the trustee.
- Attorney:
 - Read the trust, read the law, repeat.
 - Remember who is the client.
 - Educate trustee on asking permission vs. asking forgiveness.
 - Pay attention!

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Thank
You

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