

Trust Litigation: Trends and Developments

New Hampshire Trust Council

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ProbateTrial.com

Pleadings bank

Court orders

Law summaries

Commentary

Elder Exploitation

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Elder Exploitation



May 29, 2001

Mr. [REDACTED] came to the office of [REDACTED] at approximately 10 a.m. and left the office at 11:15 a.m. When Bernice [REDACTED] and Judy [REDACTED] entered the conference room he was reading his Last Will and Testament and Trust. Norman [REDACTED] asked him if he was all set to sign his Will. He said he had a question about his tangible property. He stated that they took his license away-greatest blow- so he did not have a car. Tangible property meant boat, canoe, clothes, jewelry, books, watch. These go to Alison.

Mr. [REDACTED] got to the part about cash bequests. He asked where is the cash coming from. I have mostly securities. They will have to sell the securities.

Then he got to the part about the Trust. He stated that this trust is for the benefit of [REDACTED] and [REDACTED]. After they die it goes to [REDACTED] and [REDACTED] (I call him [REDACTED]).

My son [REDACTED] gets \$10,000 and his wife gets 5,000.00, \$5,000 to Elliott. Can [REDACTED] challenge it? I think he will challenge it.

When [REDACTED] dies goes to [REDACTED] and [REDACTED] and [REDACTED] probably will challenge it.

After Mr. [REDACTED] signed the Trust. Norman [REDACTED] said trust is in effect. No assets in it. I thought it happened when I die.

When signing the date of the trust he recognized that Bernice had typed in the year. He voluntarily signed each page and know it was the month of May on page 6. He voluntarily stated "that the document was his Will. This is to protect me from my son. Yes, I want everything to Alison. Everything to Alison except gifts and real estate."

When asked if his signing was voluntary he stated "yes" loud and clear.

When asked if he was 18 he joked by saying not until tomorrow. Judy [REDACTED] asked him when his birthday was and he answered October 3, 1912.

When asked if he was of sound mind he answered appropriately and then recited "Being of sound mind and body I spent it all".

How did you acquire property in Francestown. My wife's family had a house in Francestown and she like the town. When I was in college around 18 I first went to Francestown. Where did you go to college Harvard. I played intermuriel football. I went to Northwood Prep School (Lake Placid) on a scholarship and was on the crew. However, I was not good enough to make the team at Harvard also did was skiing.

[REDACTED] did a lot of skiing at Green Mountain College. Where is that in Vermont.

<u>Date</u>	<u>Medical Record Event</u>
3/3/01	He asked staff over and over again: Where is his wife? Where is his home and all his furniture? Why was he here? Was he bad? Has he lost his mind?
3/4/01	He asked about arrival time of his wife (deceased)
3/8/01	He asked when his wife (deceased) would arrive
3/15/01	He was up most of the night hollering for help and kept trying to answer his phone when no one was on the phone
3/23/01	He stored dirty, moldy coffee cups in his drawers
3/26/01	He did not recognize his own furniture and had no idea of the place or date
3/28/01	He had no insight into his mental problems
5/31/01	The day after a six-day trip with his daughter, he said, "What trip[?] I've been right here."
6/3/01	He asked for wife (deceased) often
6/10/01	He asked for wife (deceased) frequently

Elder Exploitation

Duty to report varies by state

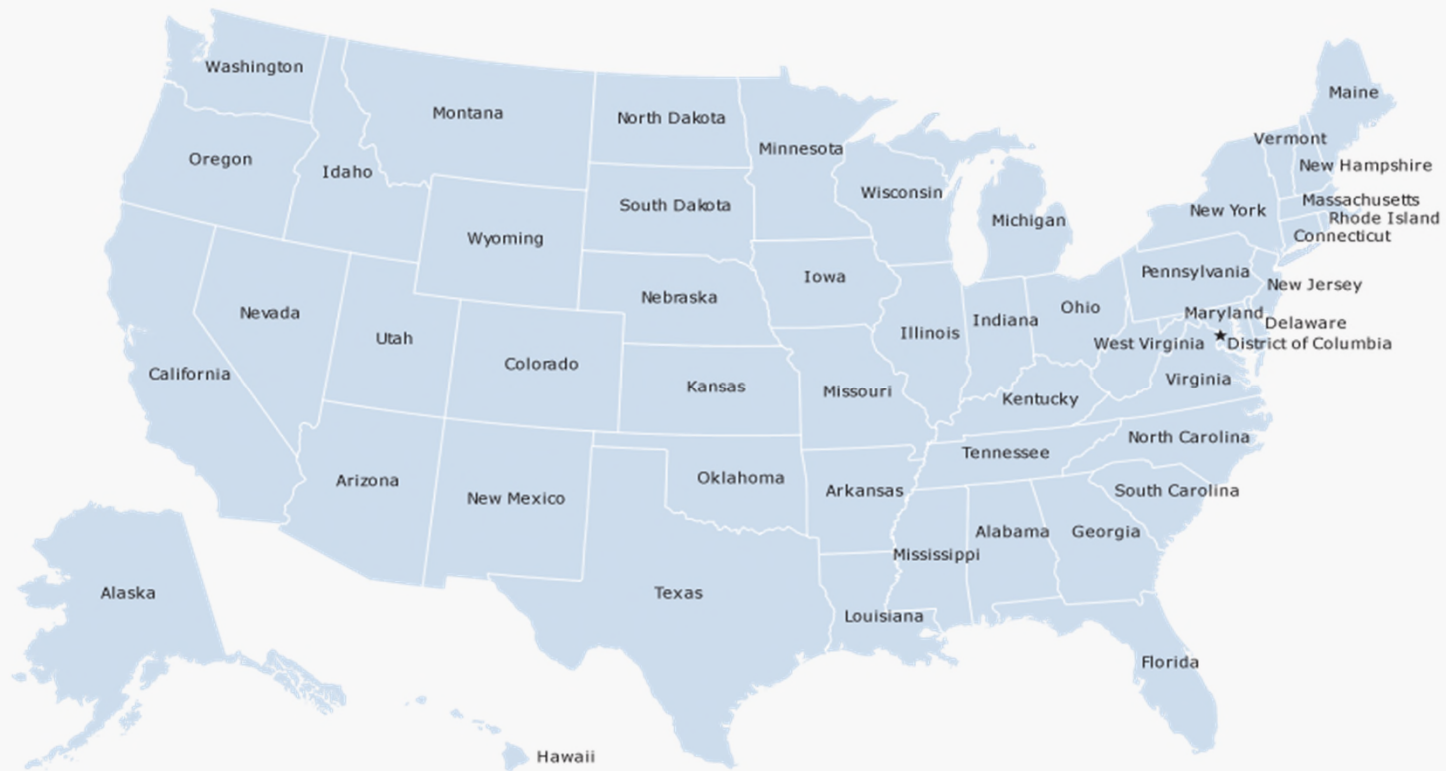
Victim might be settlor, beneficiary, co-trustee, family member

Difficult detection and confidentiality issues

Liable if fail to report?

National Center on Elder Abuse

<https://ncea.acl.gov/resources/state.html>



Conflicts When Attorneys Are Fiduciaries

In re Estate of McCool, 131 N.H. 340 (1988)

“[B]ecause he was both the executor and the attorney for [the] Estate, Attorney Bossie could not waive the Estate’s objections to his own conflicts of interest.”

McCool, 131, N.H. at 353.

“[W]e hold that an attorney who violates our rules of professional conduct by engaging in clear conflicts of interest, of whose existence he either knew or should have known, may receive neither executor’s nor legal fees for services he renders an estate”

McCool, 131 N.H. at 351.

Is the Trustee Crazy?

Matter of Levitin, 2015 N.Y. Slip Op. 25184

Standing and the Slayer Rule

Bagley v. Bagley, 387 P.3d 1000 (UT 2016)

Kelley v. State, 105 N.H. 240 (1963)

Santilli v. Carmann, (NH Trust Docket)

Right to an Accounting of Pre-Death Administration of Revocable Trust

In Rhea Brody Living Trust, 312 Mich. App. 304 (2017)

Hilgendorf v. Coleman, 201 So.3d 1262 (Fl. App. 2016)

Trust Material Purposes

Tay v. Grondin, NH 10th Cir. Probate Div. (2016)*

Grueff v. Vito, 145 A.3d 86 (2016)

Ceremonial Spouse vs. Common Law Spouse To Serve As Administratrix

Brown v. Alley, 384 P.3d 496 (2017)

Thank You