

Top 10 Tips for the Professional Fiduciary to Avoid Litigation

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1. **Communication is Key.** This may seem obvious, but good communication can go a long way in preventing a dispute. This includes timely responding to emails and voice messages. Don't forget the *power* of phone calls and in person meetings. Tone is often misread when communications are electronic. Taking the extra time to discuss sensitive issues over the phone or in person will help to ensure everyone is on the same page and to further establish trust and a good rapport with the beneficiary.
2. **Involve Counsel Early.** Don't wait until a court action begins. Hiring counsel to consult at the first signs of trouble is a great way to mitigate the conflict - or the damages. Having a new and fresh set of eyes on the situation is an added bonus and, if the situation doesn't get resolved, you'll already have counsel that is up to speed and ready to roll.
3. **Take Preventive Steps.** Don't hesitate to petition for a court order approving transactions beforehand or ratifying transactions afterwards if there are concerns about any matter relevant to the administration of the trust.
4. **Hire the Right Attorney.** A "litigator" is not enough. You require counsel that has expertise in trust and estate litigation as civil and probate cases are different -- the discovery rules are different, the procedures are different, and there are nuances with conflicts analyses and unwritten "local rules."
5. **Understand the Relationships to Avoid Conflicts of Interest.** It may be necessary or desirable for the trust company, family office personnel, and/or individual trustees to seek independent legal counsel.

6. **Understand Your Duties**. Understand your statutory duties and responsibilities under the governing document. Know who you owe these duties to.
7. **Understand the Governing Document**. Know the players, the distribution standards, and any other obligations you may have under law or the documents.
8. **Watch for Capacity and/or Undue Influence Issues**. Most states have mandatory reporting when comes to these issues. Pay attention to your elderly beneficiaries or co-fiduciary and be mindful that these issues are on the rise. Take action where necessary or required.
9. **Get to Know Your Beneficiaries**. Many issues are the result of either long standing issues amongst beneficiaries, or a slow burning issue a beneficiary has with the concept of a trustee. By spending time actually getting to know the beneficiaries and understanding what concerns drive their decision making, potential litigation can be avoided.
10. **Cannot Play Favorites**. It is inevitable and unavoidable that as a fiduciary you will like certain beneficiaries more than others - it is human nature. However, it will lead to issues. It is okay to treat beneficiaries different, based upon their needs, but treating them differently (including in the tone of your communications with them), because of your relationship with them, is likely to lead to litigation.