

How to keep your PPF Client from Breaking Bad

- I. Background on why this topic was chosen
- II. Attorney Client Privilege Between Counsel and PPF Client -- Be careful on how you communicate
- III. Liability of PPF

- A. Probate Code §16040
- B. *Moeller v. Superior Court*

Professional trustees...are held to a higher standard of care in discharging their legal duties than are others. [Citation omitted] In a trust relationship, then, the benefits belong to the beneficiaries and the burdens to the trustee. The office of trustee is thus by nature an onerous one, and the proper discharge of its duties necessitates great circumspection.

(Moeller v. Superior Court (Sanwa Bank) (1997) 16 Cal.4th 1124, 1134.)

- IV. Duty to Investigate. If counsel can do the investigation for the Trustee, what do you need the Trustee for?

- a. Probate Code §16012

- V. Advice of Counsel Defense

Advice of counsel defense must begin with the client providing the attorney with a full and fair statement of all material facts, the lawyer rendering advice, and the client relying on the advice. *Diggs v. Arnold Brothers Inc.* (1933) 132 Cal.App. 518, 524

From: [REDACTED]
To: [REDACTED]
Subject: Re: re Morgan
Date: Saturday, March 25, 2017 5:34:18 PM

I agree.

Regards,

[REDACTED]

From: [REDACTED]
Sent: Saturday, March 25, 2017 3:23 PM
To: [REDACTED]
Subject: Re: re Morgan

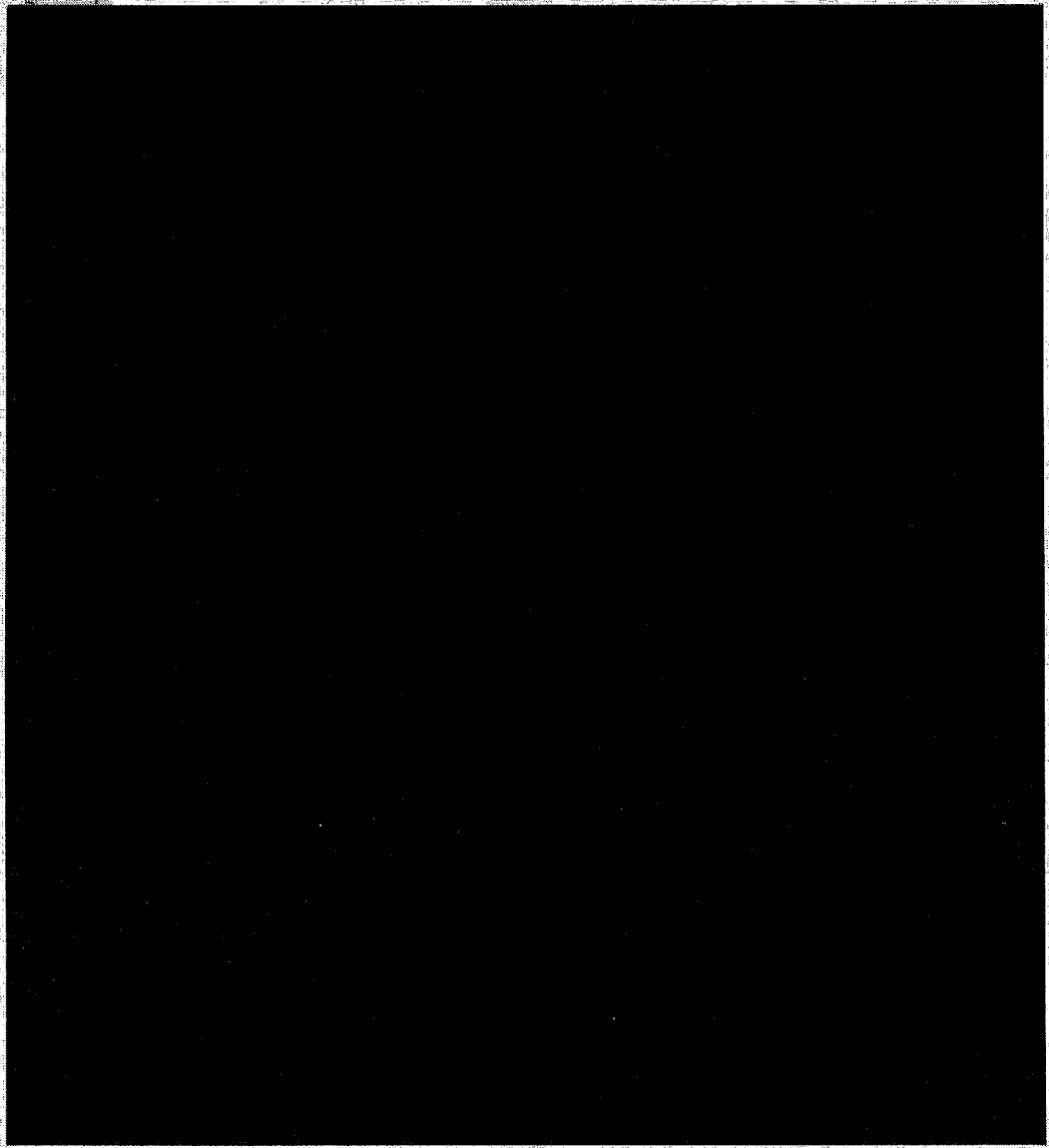
Dear [REDACTED],

I began drafting an email to Tom [REDACTED] about the Moeller issue and the new case that just came down but I decided not to send it because I don't want an email in our file that makes us look like we are aligned with Tom and his client. I will call him instead. This case looks like it is being heavily litigated.

[REDACTED]

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On Mar 24, 2017, at 5:09 PM, [REDACTED]



16 CCR 4470

This document is current through Register 2021, No. 48, November 26, 2021

CA - Barclays Official California Code of Regulations > TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS > DIVISION 41. PROFESSIONAL FIDUCIARIES BUREAU > ARTICLE 4. CODE OF ETHICS

§ 4470. General Principles

(a) A licensee's fiduciary duties recognized under this Article are based upon the fiduciary relationship established with the consumer as follows:

- (1) A licensee's relationship to a conservatee when acting as a court appointed conservator;
- (2) A licensee's relationship to a ward when acting as a court appointed guardian;
- (3) A licensee's relationship to a principal when acting under a durable power of attorney; and,
- (4) A licensee's relationship to a beneficiary when acting as a trustee.

(b) The licensee shall comply with all local, state, and federal laws, regulations, and requirements developed by the courts and the Judicial Council as a minimum guide for the fulfillment of the fiduciary duties recognized under this Article.

(c) The licensee shall protect all rights of the consumer that relate to licensee's fiduciary duties to the consumer.

(d) The licensee shall refrain from representing the consumer in areas outside the scope of legal authority.

(e) The licensee shall seek competent professional advice whenever appropriate for the benefit of the consumer.

(f) Consistent with the licensee's fiduciary duties, the licensee shall provide or arrange for services to the consumer, to the extent they are appropriate and reasonable based upon the needs of the consumer, that are in the best interest of the consumer.

(g) Notwithstanding any other provision of law, any expense incurred by the licensee for the delivery of services that are provided to, or arranged for, the consumer by the licensee, including attorney fees or fees to the licensee for services, shall be considered reasonable if approved by the court.

Statutory Authority

AUTHORITY:

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

History

HISTORY:

1. New article 4 (sections 4470-4484) and section filed 11-2-2007 as an emergency; operative 11-2-2007 (Register 2007, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-30-2008 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 11-26-2007 order, including amendment of subsections (b) and (c), transmitted to OAL 4-24-2008 and filed 5-19-2008 (Register 2008, No. 21).
3. Editorial correction of subsection (a) (Register 2008, No. 39).
4. Amendment of subsection (b) and new subsections (f)-(g) filed 5-17-2012; operative 6-16-2012 (Register 2012, No. 20).

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16 CCR 4476

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§ 4476. Conflict of Interest

- (a) The licensee shall avoid actual conflicts of interest, and consistent with the licensee's fiduciary duties, shall not engage in any activity where there is the reasonable appearance of a conflict of interest.
- (b) The licensee shall not engage in any personal, business, or professional interest or relationship that is or reasonably could be perceived as self-serving or adverse to the best interest of the consumer.
- (c) The licensee shall protect the rights of the consumer and the estate against infringement by third parties.

Statutory Authority

AUTHORITY:

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

History

HISTORY:

1. New section filed 11-2-2007 as an emergency; operative 11-2-2007 (Register 2007, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-30-2008 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11-26-2007 order transmitted to OAL 4-24-2008 and filed 5-19-2008 (Register 2008, No. 21).

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§ 4482. Management of the Estate

- (a) The licensee shall protect the assets of the estate.
- (b) The licensee shall pursue claims against others when it reasonably appears to be in the best interest of the consumer or the estate to do so.
- (c) The licensee shall defend against actions or claims against the estate when it reasonably appears to be in the best interest of the consumer or the estate to do so.
- (d) The licensee may incur expenses that are appropriate to the estate, in relation to the assets, overall investment strategy, purpose, and other relevant information and circumstances when investing and managing estate assets.
- (e) Consistent with the licensee's fiduciary duties, the licensee shall manage the assets of the estate in the best interest of the consumer.
- (f) The licensee shall manage the estate with prudence, care and judgment, maintaining detailed fiduciary records as required by law.

Statutory Authority

AUTHORITY:

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

History

HISTORY:

1. New section filed 11-2-2007 as an emergency; operative 11-2-2007 (Register 2007, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-30-2008 or emergency language will be repealed by operation of law on the following, day.
2. Certificate of Compliance as to 11-26-2007 order, including amendment of subsection (d), transmitted to OAL 4-24-2008 and filed 5-19-2008 (Register 2008, No. 21).

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16 CCR 4484

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§ 4484. Limitation or Elimination of Fiduciary Powers; Restoration of Capacity; Termination of Fiduciary Relationship

- (a) When appropriate and in the best interest of the conservatee, licensed conservators under the Act shall not oppose and, in appropriate circumstances shall seek, limitations on the licensee's powers or authority to act, elimination of unnecessary or no-longer necessary powers, or termination of the proceeding and restoration of the conservatee's legal capacity.
- (b) In all fiduciary relationships subject to the Act, when appropriate and in the best interest of the consumer, the licensee shall take all reasonable steps to facilitate termination of the fiduciary relationship.
- (c) In all fiduciary relationships subject to the Act, the licensee shall not oppose or interfere with efforts to terminate the licensee's fiduciary relationship with a consumer for any reason other than as necessary or appropriate to protect or promote the best interest of that consumer.

Statutory Authority

AUTHORITY:

Note: Authority cited: Sections 6517 and 6520, Business and Professions Code. Reference: Section 6520, Business and Professions Code.

History

HISTORY:

1. New section filed 11-2-2007 as an emergency; operative 11-2-2007 (Register 2007, No. 44). A Certificate of Compliance must be transmitted to OAL by 4-30-2008 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 11-26-2007 order transmitted to OAL 4-24-2008 and filed 5-19-2008 (Register 2008, No. 21).

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California Code, Probate Code - PROB § 16040

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(a) The trustee shall administer the trust with reasonable care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity would use in the conduct of an enterprise of like character and with like aims to accomplish the purposes of the trust as determined from the trust instrument.

(b) The settlor may expand or restrict the standard provided in subdivision (a) by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's good faith reliance on these express provisions.

(c) This section does not apply to investment and management functions governed by the Uniform Prudent Investor Act, Article 2.5 (commencing with [Section 16045](#)).

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California Code, Probate Code - PROB § 16012

Current as of January 01, 2024 | Updated by [FindLaw Staff](#)

(a) The trustee has a duty not to delegate to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate the entire administration of the trust to a cotrustee or other person.

(b) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.

(c) This section does not apply to investment and management functions under [Section 16052](#).

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