THE FIDUCIARY INSTITUTE
Guiding Fiduciaries to Excellence

Working with Professional Fiduciaries

A Guide for Attorneys

Attorneys are often the first professionals to identify situations where a professional fiduciary may serve a client's interests, whether through estate planning, guardianship or conservatorship petitions, trust administration, or crisis response. This guide provides a practical overview of how attorneys and professional fiduciaries collaborate, from the initial referral through ongoing case management.

This handout is for collaboration clarity, not a substitute for independent legal judgment on any specific case.

What Professional Fiduciaries Do

A professional fiduciary is an individual legally authorized to act on behalf of another person when decision-making, oversight, or management of personal, financial, or legal matters requires formal authority and accountability.

Professional fiduciaries:

- Are appointed by a court or legally designated through governing documents (such as a trust or power of attorney)
- Act under state law, court orders, and ethical standards
- Are accountable to courts, agencies, beneficiaries, or governing documents
- Focus on protecting the person's rights, safety, preferences, and best interests
- Always seek the least restrictive alternative, supporting independence wherever possible

Important distinction

Professional fiduciaries are different from financial fiduciaries. While financial fiduciaries manage investments, professional fiduciaries manage the whole person's situation, often during periods of vulnerability, incapacity, or complexity.

Professional Fiduciary Roles

- **Guardian:** Personal and healthcare decision-making authority, court-appointed
- **Conservator:** Financial and property management authority, court-appointed
- **Trustee:** Administers trusts per the governing document; may or may not involve court oversight
- **Estate Administrator (also called personal representative or executor):** Administers the closing of an estate, including asset marshaling, debt resolution, and distribution to beneficiaries, whether through probate or outside of it
- **Agent under Power of Attorney:** Acts for the principal per the POA document; no court involvement unless challenged
- **Representative Payee / VA Fiduciary:** Manages government benefits on behalf of a beneficiary. Although not traditionally classified as a professional fiduciary role, its responsibilities, accountability standards, and reporting requirements closely mirror those of a fiduciary, and many professional fiduciaries serve in this capacity alongside their other roles.

What Professional Fiduciaries Do Not Do

Understanding the boundaries of the fiduciary role prevents misaligned expectations and supports effective collaboration.

Professional fiduciaries do not:

- Provide legal advice or legal representation
- Replace the attorney's role in advising the client, the family, or the court
- Make medical diagnoses or clinical assessments
- Serve beyond the scope defined by their appointment or governing document

A note on investment management

Some professional fiduciaries manage investments directly. For example, a fiduciary who also holds financial planning credentials, or a fiduciary managing and liquidating assets during estate administration. Others engage separate financial advisors for investment management and direct strategy within their authority. The scope depends on the fiduciary's qualifications, the complexity of the assets, and the terms of the appointment or governing document. In either case, the professional fiduciary role is broader than investment management alone. It encompasses the whole person's situation. The fiduciary manages the person and/or property within their defined authority. The attorney advises and represents.

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How the Attorney-Fiduciary Collaboration Works

Before Appointment

The attorney typically identifies the need, evaluates whether a professional fiduciary is appropriate, and may recommend specific fiduciaries to the client or family. In guardianship and conservatorship matters, the attorney prepares the petition and supporting documentation. In estate planning, the attorney may draft documents naming a professional fiduciary as trustee, agent, or successor.

At this stage, the fiduciary may be consulted about their willingness and capacity to accept the case, the scope of authority needed, and any potential conflicts of interest.

During Appointment

Once appointed or engaged, the fiduciary executes within the scope of their authority. The attorney advises on legal questions, prepares court filings, and assists with compliance requirements. Communication between attorney and fiduciary should be direct and documented.

Common collaboration points include:

- Court reporting and accountings
- Petitions for expanded or modified authority
- Legal questions arising from case management decisions
- Real property transactions or other actions requiring court approval
- Responses to objections or challenges from family members or interested parties

Ongoing Communication

Attorneys should expect the fiduciary to:

- Communicate proactively when legal questions arise or situations change
- Provide documentation supporting court filings and accountings
- Consult before taking actions that may have legal implications
- Maintain records in a format that supports court reporting requirements

Fiduciaries should expect the attorney to:

- Respond to legal questions within a reasonable timeframe
- Advise on compliance obligations and court expectations
- Prepare and file required court documents
- Communicate relevant legal developments that affect the case

Compensation and Fee Structure

Professional fiduciaries are compensated for their services. Fee structures vary by jurisdiction and case type:

- **Court-appointed roles (guardian, conservator, estate administrator):** Fees are typically subject to court approval. The fiduciary submits fee petitions as part of regular accountings. Compensation is generally paid from the client's estate or assets under management.
- **Non-court roles (trustee, agent under POA):** Fees are governed by the trust document, power of attorney, or a separate engagement agreement. Compensation is typically paid from the trust or from the principal's assets.
- **Fee disclosure:** A professional fiduciary should be able to clearly explain their fee structure, billing practices, and the approval process before accepting an appointment.

Frequently Asked Questions

- **How do I find a qualified professional fiduciary?** State fiduciary associations, court lists, and professional networks are common starting points. The Fiduciary Institute's How to Evaluate a Professional Fiduciary checklist provides a structured framework for assessing candidates across seven areas of practice.
- **What happens if the fiduciary and the attorney disagree on a course of action?** Disagreements should be resolved through direct communication, with the fiduciary's legal authority and the attorney's advisory role clearly distinguished. If the disagreement involves a matter requiring court approval, the court provides the final determination.
- **How does the fiduciary handle situations where family members challenge decisions?** A professional fiduciary documents the basis for every significant decision, including the information considered, alternatives evaluated, and the standard

applied (substituted judgment or best interest). This documentation supports the fiduciary's position if decisions are challenged. The attorney may advise on the legal response to formal objections.

- **What is the fiduciary's succession plan if they become unavailable?** Professional fiduciaries should have a successor fiduciary arrangement or transition plan in place. This is a standard element of responsible practice and should be discussed at the outset of the engagement.

About The Fiduciary Institute

The Fiduciary Institute is a national, standards-driven organization that integrates training, tools, community, and research into a unified ecosystem for professional fiduciaries. The resources on this page are grounded in The Fiduciary Method™, our proprietary framework for structured, defensible decision making.

Learn more at www.thefiduciaryinstitute.com