

THE SPOTLIGHT

BROUGHT TO YOU BY ROBINS KAPLAN LLP'S WEALTH PLANNING,
ADMINISTRATION, AND FIDUCIARY DISPUTES GROUP



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Stewardship, Undue Influence, and AI, Oh My!

ROBINS  KAPLAN LLP

WELCOME TO THE SPOTLIGHT

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The Spotlight strives to provide a forum to discuss the latest news and compelling issues impacting fiduciaries and those to whom fiduciaries owe duties. Whether you are an officer, director, trustee, beneficiary, trust officer, attorney, financial advisor, or anyone impacted by the law governing fiduciaries, we hope that you will find this newsletter interesting, informative, and perhaps at times even a bit entertaining.

Fiduciary disputes come in many varieties, but they share some consistent themes that involve the erosion of trust, high emotion, and opportunities—sometimes missed—for creative approaches to avoid or resolve litigation. As practitioners and teachers of fiduciary law, our attorneys have built a reputation for excellence in meeting the needs of individuals and organizations facing complex fiduciary issues, starting with the transactional and estate planning work that can mitigate risk from the beginning. We counsel individuals and business owners in a broad range of fiduciary issues, from estate planning and business succession, to dispute resolution and litigation when unavoidable.

Is there a topic affecting your practice that you would like us to discuss in an upcoming issue of The Spotlight? Let us know at all_marketing@robinskaplan.com.

– Denise S. Rahne and Steven K. Orloff



After Centuries of Courtroom Battles, States Breathe New Life into Undue Influence Claims

BY AMY R. SISK

When a person manipulates someone into changing their will, what's a family member who finds themselves cut out of an inheritance to do?

The answer has played out in courtrooms for hundreds of years and increasingly in statehouse debates as lawmakers seek more options for people who find themselves wrongfully disinherited by another's undue influence.

Even today, disputes over undue influence often mirror one of the earliest cases on the subject heard by Sir Francis Bacon in 1617.¹ The niece of George Lydiatt, an 80-year-old man “weak of body and understanding,” challenged her uncle’s will after a married woman entered his life and preyed “upon his simplicity and weakness and by her dalliance and pretence of love unto him.” The woman convinced George to write his family out of his will and leave his estate to her. She then neglected him, letting him “lie loathsomely and uncleanly in his bed until three o’clock in the afternoon without anybody to help him.” After George died, Sir Bacon voided the will on grounds of undue influence.

¹ Joy v. Bannister (Ch. 1617), *reported in Reports of Cases Decided by Francis Bacon* 33 (John Ritchie ed., 1932).

As awareness of elder abuse rises and as younger generations inherit substantial wealth from baby boomers, states are taking steps to further deter undue influence. Some have created new tort remedies, a few allow punitive damages, and others are expanding so-called “slayer statutes” to disinherit people who financially exploit vulnerable adults.

THE TRADITIONAL APPROACH

Undue influence involves a third party—the influencer—using coercion to overcome a person’s free will so that the person substitutes the influencer’s desires for their own in a legal instrument. The influence must be excessive and overpowering to be considered *undue*. A lesser amount is insufficient. For example, a family member may advise a loved one on estate planning, a friend may urge someone to write a will or make a particular gift, and a person may decide on their own to disinherit a family member shortly before death. Undue influence arises only when:

- A confidential relationship exists between the influencer and the person subject to influence. The influencer is often a family member, friend, caretaker, professional, or new love interest.
- The influencer has access to the person subject to influence and often restricts the person’s access to others.
- The influencer actively participates in shaping the will.
- The will makes unnatural dispositions with inequitable results.

Evidence of some or all the above elements may establish a presumption of undue influence in many states. Then, the burden falls to the will proponent to prove that any influence was not undue. The traditional remedy for someone who finds themselves cut out of an inheritance due to undue influence is to contest the will in probate court. A judge may void a particular gift or the entire will, which would revive an earlier will or cause the estate to be distributed according to state intestacy law.

A NEW TORT EMERGES

Increasingly, states are creating other remedies to discourage or punish undue influencers and to compensate those wrongfully disinherited. In half the states, a plaintiff can sue a third party for tortious interference with an expected inheritance. This tort claim is different than a will contest. It is a lawsuit against a defendant who engages in wrongful actions similar to undue influence. Unlike in a will contest, a plaintiff who prevails may recover damages and often has more time to bring a claim, making this an attractive option.

This tort remedy gained more attention when Playboy model Anna Nicole Smith litigated a tortious interference claim related to her late husband’s estate all the way to the U.S. Supreme Court in 2006. The Court characterized the tort as “widely recognized” and held that, unlike other probate matters, tortious interference claims are not the exclusive domain of state probate courts and may be brought in federal court if other requirements are also met.²

Recently, however, several states have rejected the tort. For example, South Dakota declined to recognize it in 2019 when a man claimed his mother disinherited him under the wrongful influence of his sister. According to the man, the sister acted as the mother’s caregiver, isolated her from others, and failed to inform him of her death, which he learned about from her attorney

² *Marshall v. Marshall*, 547 U.S. 293, 312-14 (2006).

a month later when he received a letter stating his mother had disinherited him. The South Dakota Supreme Court ruled that the man could not maintain a suit against his sister, declining to “expand tort liability to the already existing panoply of remedies available to estate litigants in South Dakota.”³ That is a common refrain among states that reject the tortious interference concept—that other options, including traditional will contests, provide adequate relief.

STATES OFFER PUNITIVE DAMAGES AS A DETERRENT

Some states have made punitive damages available to someone who prevails in challenging a will for undue influence. The rationale is to deter future would-be influencers by awarding high damages to punish egregious behavior.

California lawmakers, for example, adopted a 2013 law that makes people who engage in undue influence in bad faith liable for damages at twice the value of the wrongfully taken property. Most undue influence cases since then have settled out of court, according to a 2024 study by law professors David Horton and Reid K. Weisbord.⁴ The professors found the new law is having an impact, as many cases brought under the reforms settled for more money than traditional undue influence claims that did not allege bad faith. New Jersey courts also allow for punitive damages in limited cases where a stranger, not a family member, is the influencer.

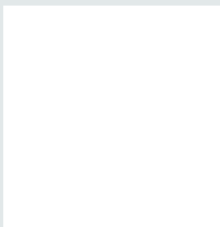
SLAYER STATUTES EXPAND TO ELDER ABUSE

Every state has a “slayer statute,” or an equivalent court-imposed rule, to prevent someone who murders another from inheriting from the estate of the person they killed. At least 10 states have expanded their slayer statutes to disinherit people who financially exploit vulnerable adults. The most recent state to do so is Pennsylvania, which passed a law in 2024 disinheriting people convicted of certain elder abuse crimes. Like Pennsylvania, most states require a criminal conviction related to elder abuse to trigger their expanded slayer statute. In other states, including Montana, Washington, and California, the statute covers people who engage in such exploitation even if no conviction has occurred.

The landscape surrounding undue influence is complex, changing, and varied across the states. If the 17th century drama in Sir Francis Bacon’s courtroom instead came before an American judge today, George Lydiatt’s niece could have used more tools to go after the woman who manipulated her uncle. Though undue influence is not new, the remedies to address it are still evolving.

³ *Briggs v. Briggs*, 931 N.W.2d 510, 511-12, 518 (S.D. 2019).

⁴ David Horton & Reid K. Weisbord, *The New Undue Influence*, 2024 UTAH L. REV. 231, 265-70 (2024).



AMY SISK is an associate in the firm’s Bismarck office who represents clients in high-stakes litigation in North Dakota and beyond.



Insights on Fiduciary Duty in the Age of AI

BY ANNALI CLER AND TIM BILLION

At this year's Fiduciary and Wealth Disputes Seminar, Robins Kaplan partner Tim Billion facilitated a panel discussion titled, "Unusual Assets and Contemporary Trends." The session featured David Axtell (Partner, Stinson LLP), Katherine Johnson (Executive Chair, Storj Institute), and Jordan Vitek (Chief Fiduciary Officer, Wealth Enhancement Group). Together, they unpacked the evolving world of fiduciary oversight amid technological disruption—from AI and blockchain to closely held businesses, and even deepfakes.

Here are five key takeaways:

1. NEW AND UNUSUAL ASSETS REQUIRE AN AGILE APPROACH

"Unusual assets" can mean anything from farmland and family businesses to cryptocurrency and cannabis ventures.

Even with directed trusts and liability carveouts, fiduciaries can still end up in the headlines when something goes wrong. The takeaway: Fiduciaries must consider reputational risk and carefully adjust to unique situations, especially when new assets, legal issues, or trends push into legal or ethical gray zones.

2. TECHNOLOGY KEEPS CHANGING THE RULES

Each technological wave reshapes fiduciary responsibility. From early debates over hyperlinks in the 1990s to today's blockchain and AI challenges, change is a constant. The pace can feel overwhelming, but the solution isn't panic. It's returning to fundamentals like diligence, governance, and ethical judgment.

Fiduciary duties of care, loyalty, and oversight are expanding in scope. If we haven't kept up with the implications of those duties, fiduciaries will struggle to apply them to new technologies.

3. AI BRINGS BOTH EFFICIENCY AND EXPOSURE

Based on past bubbles in blockchain and tech startups, fiduciaries and investors should resist the urge to buy the hype without verifying the substance behind it. Many AI companies today operate more like early-stage experiments, with limited structure and no clear ownership of their data, code, or IP.

Fiduciaries must take ownership of effective due diligence. Regulatory enforcement, particularly from the FTC and EU, could lead to extreme outcomes like forced destruction of models trained on unauthorized data.

4. HUMAN JUDGMENT STILL MATTERS

While AI offers powerful tools for compliance, monitoring, and client service, overreliance on generative tools can lead to complacency or misinformation.

Deepfakes are becoming increasingly convincing and expanding to include tactics like voice spoofs to take advantage of assumptions that telephonic communications are reliable. Vigilance and human intuition can prevent victimization, particularly when combined with multiple levels of scrutiny or verification. Technology enhances, but cannot replace, human oversight.

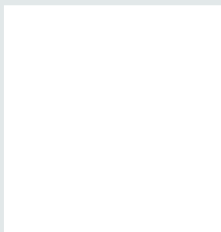
5. LOOKING AHEAD: OVERSIGHT, ETHICS, AND GUARDRAILS

When asked for future predictions, the panelists offered these insights:

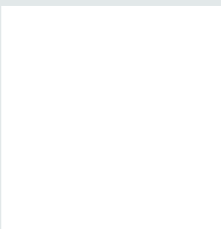
- Axtell expects AI adoption across professional services to accelerate with clients increasingly demanding proof of its use and efficiency.
- Johnson anticipates growing emphasis on governance, oversight, and alignment between corporate goals and societal responsibility.
- Vitek urged fiduciaries to “embrace the technology, but with guardrails,” emphasizing risk assessments and staff training to prevent misuse.

FINAL THOUGHT

If one theme tied the discussion together, it was the enduring value of stewardship in a high-tech age. Whether managing farmland or algorithms, fiduciaries must stay curious, cautious, and principled. We’ve been adapting to change since the dawn of time. We must challenge ourselves to remember what makes us human as we do it.



TIM BILLION is a partner in the firm’s Sioux Falls office who represents clients in a wide variety of cases, including trust and fiduciary litigation, contract and fraud claims, and earn-out disputes.



ANNALI CLER is a staff attorney in the Trust and Estates Group who assists clients with wills, trusts, health care directives, and other estate planning strategies.



Lessons Learned from Our Annual Seminar: **Stewardship, Ethics, and Accountability**

BY DENISE RAHNE AND THOMAS BERNDT

At Robins Kaplan's annual Fiduciary and Wealth Disputes Seminar "What Keeps Fiduciaries Up At Night?" attendees heard from John Taft, Vice Chair at Baird and a 40-year veteran of the financial services industry. A former CEO of RBC Wealth Management–U.S. and past Chair of the Securities Industry and Financial Markets Association (SIFMA), Taft's keynote address, "Stewardship in Times of Uncertainty," explored the moral and civic foundations of fiduciary duties—connecting his family's multigenerational legacy of public service to the modern challenges facing finance, business, and society. Taft described those foundations using the concept of stewardship—service, responsibility, and community-minded leadership. In uncertain times, stewardship is not optional. It is essential. Whether in finance, law, business, or government, leaders must remember that their purpose is to serve others and to safeguard the systems that allow society to thrive.

In keeping with the theme of stewardship, Karin Ciano (Senior Assistant Director, Office of Lawyers Professional Responsibility) and Nicole Frank (Senior Counsel, Bradford Andresen Norrie & Camarotto), explored how professional standards intersect with real-world pressures—and how fiduciaries can stay steady when the boundaries of duty, judgment, and ethics begin to blur. The presentation addressed some of the ethical and practical challenges fiduciaries can face in a modern context.

COMMUNICATION AND THE EXPECTATION GAP

Few things create sleepless nights faster than miscommunication. Fiduciaries are expected to be responsive and transparent, yet modern technology has made "constant availability" the new norm. Ciano and Frank encouraged fiduciaries to set expectations early, outlining in writing how and when they will respond, what qualifies as urgent, and how decisions will be communicated.

Establishing those parameters not only protects fiduciaries from burnout but also provides clarity for beneficiaries who might otherwise feel left in the dark.

WHEN CO-FIDUCIARIES COLLIDE

Working with co-fiduciaries can offer balance and shared responsibility, but it can also open the door to confusion and conflict. A proactive governance structure, such as regular meetings, clear documentation, and defined decision-making protocols, can prevent disagreements from escalating.

The message was simple: If fiduciaries don't define their working relationship at the start, the conflict will define it for them later.



DENISE RAHNE co-chairs the Wealth Planning, Administration, and Fiduciary Disputes Group and focuses her practice on disputes involving estates, trusts, fiduciaries, shareholders, and closely held corporations.



THOMAS BERNDT is a partner in the Business Litigation Group, focusing on high-stakes disputes involving fraud, breach of contract, fiduciary duty, shareholder oppression, antitrust, and unfair trade practices.

MEDIATION, DELEGATION, AND DIMINISHING RETURNS

Disputes often arise over communication, transparency, or investment judgment. Mediation can be an effective option, but Ciano and Frank cautioned against endless attempts to reconcile differences when outcomes remain unchanged. Each round of mediation consumes time, emotional energy, and estate assets. Fiduciaries must weigh whether ongoing negotiation truly serves beneficiaries or merely prolongs dysfunction.

Delegation was another key theme. While fiduciaries can and should rely on professional counsel, they cannot outsource accountability. Whether it is a financial advisor, attorney, or property manager, ultimate responsibility rests with the fiduciary.

DUAL ROLES AND THE IMPORTANCE OF SEPARATION

Serving as both fiduciary and legal counsel can seem efficient, particularly for smaller estates, but the practice carries inherent risks. If undertaken, the two functions must remain separated, both substantively and financially. Billing rates, documentation, and decision-making processes must clarify when a person is acting as a lawyer versus when they are acting as a fiduciary.

Even when such dual roles are chosen by a client for reasons of trust or convenience, transparency is critical to maintaining credibility and avoiding claims of self-dealing.

RECOGNIZING ETHICAL RED FLAGS

When does questionable behavior cross into misconduct? The answer often lies in context and transparency. Fiduciaries should be able to explain every decision in terms that would make sense to an objective observer. If a transaction or relationship cannot withstand that scrutiny—or if it benefits a friend, family member, or the fiduciary personally—it may be time to pause and reassess. Writing down observations, consulting trusted colleagues, or seeking confidential ethics guidance can help clarify next steps before a potential problem becomes a professional one.

ELDER ABUSE AND THE FIDUCIARY'S ROLE

With housing instability and financial stress on the rise, elder exploitation has become an increasing concern. Fiduciaries are often the first to notice warning signs: isolation, unexplained financial shifts, or sudden changes in estate planning. While lawyers' reporting obligations may differ from those of other fiduciaries, all share a moral and professional responsibility to stay alert and avoid facilitating abuse—directly or indirectly.

PRIVILEGE, CONFIDENTIALITY, AND TRANSPARENCY

The session closed with a reminder that confidentiality and privilege are not interchangeable. Attorney-client privilege protects communication between lawyer and client, not between fiduciaries and beneficiaries. When multiple fiduciaries are involved, there can be no secrets among them. Clarity around what can and cannot be shared helps avoid confusion, protects privilege where it applies, and ensures transparency where it is owed.

THE TAKEAWAY: TRANSPARENCY, DOCUMENTATION, AND ETHICAL INSTINCT

Transparency and documentation are a fiduciary's best tools for maintaining trust. Every major decision should be explainable, traceable, and defensible in hindsight.

Equally important is the role of intuition. Ethical discomfort is often the first sign that something deserves closer scrutiny. Fiduciaries who take that instinct seriously and act before small issues grow into larger problems fulfill not just their legal duties but the deeper ethical promise at the heart of fiduciary service and the core concept of stewardship.

MEET OUR ISSUE EDITOR:

TIM BILLION

PARTNER
SOUTH DAKOTA

Tim practices in Robins Kaplan's Business Litigation Group and has represented clients in a wide variety of cases, including trust and fiduciary litigation, contract and fraud claims, earn-out disputes, class action lawsuits, personal injury claims, constitutional litigation, internal investigations, and criminal proceedings. Tim also advises tribes across the country. Regardless of the size or type of case, Tim uses the litigation process to maximize strategic advantage while staying focused on his clients' goals.

Tim has garnered numerous recognitions for his practice. In 2025, he was named to the Best-in-State Lawyers list by *Forbes* and recognized in *The Best Lawyers in America*. He was also ranked by *Chambers USA* for "Litigation: General Commercial" in South Dakota and named an "Up and Coming Attorney" in Native American Law.

Reach out to Tim at TBillion@RobinsKaplan.com.

FEATURE BIO:

STEVE ORLOFF

PARTNER; CO-CHAIR,
WEALTH PLANNING,
ADMINISTRATION,
AND FIDUCIARY
DISPUTES

Steve Orloff is a partner in the Minneapolis office and Co-Chair of the firm's Wealth Planning, Administration, and Fiduciary Disputes Group. A trusted advisor to individuals, families, and closely held businesses, Steve helps clients define, protect, and steward their legacy. With a background as both a tax accountant and an experienced estate and trust lawyer, he brings a deep understanding of the laws and regulations governing wealth transfer, tax strategy, and end-of-life planning.

Steve develops thoughtful, strategic estate plans that preserve assets and honor client intent. He regularly advises family business owners on succession planning, guiding them through complex estate, tax, and corporate considerations while navigating the interpersonal dynamics that can accompany multigenerational enterprises. When disputes arise, Steve is an effective litigator whose subject-matter mastery provides clients and client teams with a clear advantage.

Beyond his practice, Steve is committed to strengthening his community. He has served on the Executive Board of the Jewish Day School and as Treasurer of Shalom Alliance, and he supports the firm's work on behalf of clients injured by medical malpractice by developing settlement plans that ensure long-term care. Steve has been recognized by *The Best Lawyers in America* and *Minnesota Monthly* for his excellence in trust and estate work.

Reach out to Steve at SOorloff@RobinsKaplan.com.



800 LASALLE AVENUE
SUITE 2800
MINNEAPOLIS MN 55402

BISMARCK
BOSTON
LOS ANGELES
MINNEAPOLIS
NEW YORK
SILICON VALLEY
SIOUX FALLS

800 553 9910
ROBINSKAPLAN.COM

BOSTON

ANTHONY A. FROIO
Managing Partner
Chair of the Executive Board
AFroio@RobinsKaplan.com
617.267.2300

PETER N. FOUNDAS
Partner
PFoundas@RobinsKaplan.com
617.267.2300

LOS ANGELES

DANIEL ALLENDER
Partner; Chair, LGBTQ+ Resource Group
DAllender@RobinsKaplan.com
310.552.0130

DAVID MARTINEZ
Partner
Member of the Executive Board
DMartinez@RobinsKaplan.com
310.552.0130

JAMES MENTON
Partner; Co-Chair, Corporate
Restructuring and Bankruptcy Group
JMenton@RobinsKaplan.com
310.229.5813

NORTH DAKOTA & SOUTH DAKOTA

TIMOTHY BILLION
Partner
TBillion@RobinsKaplan.com
612.349.8475

MINNEAPOLIS

DENISE S. RAHNE
Partner; Co-Chair, Wealth Planning,
Administration, and Fiduciary Disputes
DRahne@RobinsKaplan.com
612.349.8500

ANNE M. LOCKNER
Business Fiduciary Disputes Partner
ALockner@RobinsKaplan.com
612.349.8470

STEVE K. ORLOFF
Partner; Co-Chair, Wealth Planning,
Administration, and Fiduciary Disputes
SORloff@RobinsKaplan.com
612.349.8500