



**LOH** LESTER & HIRSCHBERG, LLP  
ATTORNEYS AT LAW

### Shifting to Neutral -

The Change in the Courts' View on Trustees Remaining Unbiased in Light of *Breslin v. Breslin* and *Zahnleuter v. Mueller* and Best Practices Considering the Same



PRESENTED BY: VCBA  
ESTATE PLANNING & PROBATE SECTION  
JULY 25, 2024



1

---

---

---

---

---

---


---

---

### Trustees Can No Longer Set Fires and Watch the Trust Estate Burn

Historically Trustees were provided a virtual blank check to litigate both pertinent and superfluous issues, subject only to "reasonable" under the circumstances, such as:

- *Conley v. Waite* (1933) 134 Cal.App. 505
- *Donahue v. Donahue* (2010) 182 Cal.App.4th 259
- *Smith v. Szezyller* (2019) 31 Cal.App.5th 450



Some men, just want to watch the world burn.

**But recent cases, have demonstrated that the Court is holding Trustees to a far more neutral position and economical standard.**

LESTER & HIRSCHBERG, LLP

2

---

---

---

---

---

---


---

---

### I. Trustee Fiduciary – General Duties

The General Duties of Trustees Are Set forth in California Probate Code §§ 16000 - 16015

- Probate Code § 16000  
"On acceptance of the trust, the trustee has a duty to administer the trust according to the trust instrument and, except to the extent the trust instrument provides otherwise, according to this division."
- Probate Code 16002  
"(a) The trustee has a duty to administer the trust solely in the interest of the beneficiaries."



LESTER & HIRSCHBERG, LLP

3

---

---

---

---

---

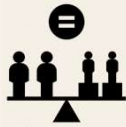
---

---

---

### A. Trustee Fiduciary – Duty of Impartiality

*California Probate Code § 16003*



“If a trust has two or more beneficiaries, the trustee has a duty to deal impartially with them and shall act impartially in investing and managing the trust property, taking into account any differing interests of the beneficiaries.”

LESTER & HIRSCHBERG, LLP

4

---

---

---

---

---

---

---

---

### B. Trustee Fiduciary – Prohibition Against Self-Dealing

*California Probate Code § 16004*

“(a) The trustee has a duty not to use or deal with trust property for the trustee’s own profit or for any other purpose unconnected with the trust, nor to take part in any transaction in which the trustee has an interest adverse to the beneficiary.”



LESTER & HIRSCHBERG, LLP

5

---

---

---

---

---

---

---

---

### C. Trustee Fiduciary – Duty to Inform

*California Probate Code § 16060*

The trustee has a duty to keep the beneficiaries of the trust reasonably informed of the trust and its administration.



LESTER & HIRSCHBERG, LLP

6

---

---

---

---

---

---

---

---

### D. Trustee Fiduciary – Duty of Care

#### California Probate Code § 16040

(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](#)).



LESTER & HIRSCHBERG, LLP

7

---

---

---

---

---

---

---

---

## II. Examples of the Differing Consequences for Trustees When They Remain Neutral v. Favoring One Beneficiary Over Others

A. *Breslin v. Breslin* (2021) 62 Cal.App.5th 801

B. *Zahnleuter v. Mueller* (2023) 88 Cal.App.5th 1294



LESTER & HIRSCHBERG, LLP

8

---

---

---

---

---

---

---

---

### A. *Breslin v. Breslin* (2021) – The Case & Holdings

1. Petition for Instructions / Construction by Successor Trustee
2. Opposition by Competing Beneficial Interests
3. Order to Mediation & Settlement
4. Petition to Confirm Settlement Agreement
5. Other Charities Sought Breach of Fiduciary Duties by Not Advocating for Potential Charitable Beneficiaries
6. On Appeal, *Breslin* Court Holds Trustee Fulfills Fiduciary Duties to All Beneficiaries by Filing Petition for Instructions and Not Taking Adversarial Position



LESTER & HIRSCHBERG, LLP

9

---

---

---

---

---

---

---

---

*Breslin v. Breslin* (2021) – The Case’s Famous (or Infamous) Holding

*The Court of Appeal, in the opinion after rehearing, affirms the trial court 2-1:*

“[T]he probate court has the power to establish the procedure. (PC§ 17206.) It made participation in **mediation** a prerequisite to an evidentiary hearing.

By failing to participate in the **mediation**, the [19 No-Shows] waived their right to an evidentiary hearing.

It follows that the [19 No-Shows] were not entitled to a determination of factual issues, such as [Don]’s intent....”

**FORFEITED**

LESTER & HIRSCHBERG, LLP

10

---

---

---

---

---

---

---

---

But How Does *Breslin* Specifically Help Trustees Regarding Neutrality?

The *Breslin* decision has weaponized a Trustee’s ability to seek instruction from the Court, under Probate Code § 17200, to define and/or maintain neutrality.

Here are the facts of the case...

LESTER & HIRSCHBERG, LLP

11

---

---

---

---


---

---

---

---

(Uncle) Don Kirchner & Nieces and Nephews



LESTER & HIRSCHBERG, LLP

12

---

---

---

---

---

---

---

---

**Donald's Trust**

Residue (\$3,000,000-\$4,000,000)  
per "Schedule A" attached



LESTER & HIRSCHBERG, LLP

13

---

---

---

---

---


---

---

---

No "Schedule A" attached

Trustee is nephew and \$10,000  
beneficiary David Breslin



LESTER & HIRSCHBERG, LLP

14

---

---

---

---


---

---

---

---

Trustee Breslin petitions the Court for instructions  
(§17200), giving notice to Breslin next of kin and the 24  
charities



*i.e. Retaining neutrality in the face of competing interests*

LESTER & HIRSCHBERG, LLP

15

---

---

---

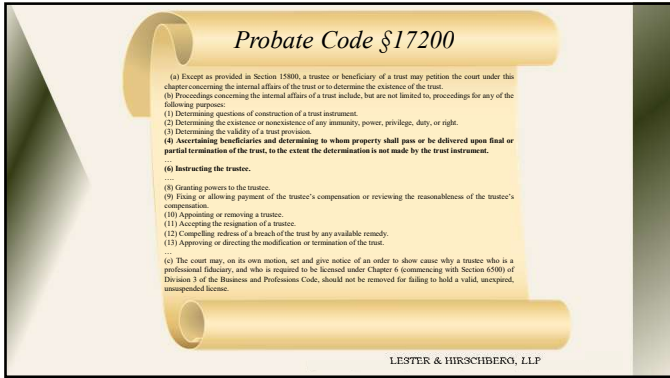
---

---

---

---

---



16

---

---

---

---

---

---

---

---

---

---



17

---

---

---

---

---

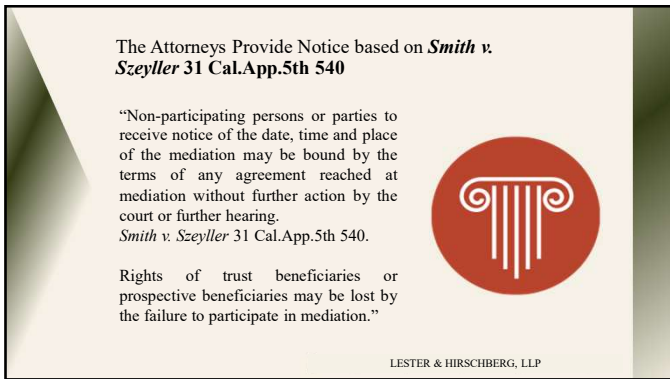
---

---

---

---

---



18

---

---

---

---

---

---

---

---


---

---



### Appellants Also Argued Trustee Breached His Duties:

- Duty of Impartiality (§ 16003) ✓
- Prohibition Against Self-Dealing (§ 16004) ✓
- Duty to Inform (§ 16060) ✓



LESTER & HIRSCHBERG, LLP

22

---

---

---

---

---

---


---

---

### Trustee Did Not Breach His Duty of Impartiality (§ 16003)

Court in *Breslin* held that:

“All interested parties received notice of the mediation and had an opportunity to participate. The [Appellants’] failure to participate was not the fault of the trustee.”



LESTER & HIRSCHBERG, LLP

23

---

---

---

---

---

---

---

---

### Trustee Did Not Breach His Fiduciary Duties by Self-Dealing (§ 16004)

The Appellants contended that “the trustee breached fiduciary duties by approving large gifts to Kirchner family members, including himself, who stood to gain little or nothing under the trust.”

The Trustee’s counsel argued that the Trustee “cannot force the appellants to defend their interests.” The Trustee was only required to act as a reasonable person under Probate Code § 16040.

**The *Breslin* Court held that:**  
 “all parties who participated in the mediation approved the settlement, not just the trustee. And the probate court approved the settlement. The [Appellants] may not refuse to participate and then complain that they received nothing.”

LESTER & HIRSCHBERG, LLP

24

---

---

---

---


---

---

---

---





### Trustee Did Not Breach His Duty to Inform (§ 16060)

The trustee argued that at every step of this matter, he made sure that appellants were given “adequate notice to enable them to defend their interests.” *Estate of Reed* (1968) 259 Cal. App. 2d 14, 22.

The Court of Appeal in *Breslin* held that:

“The information provided pursuant to [section 16060](#) must be the information reasonably necessary to enable the beneficiary to enforce the beneficiary’s rights under the trust or prevent or redress a breach of trust. (*Salter v. Lerner* (2009) 176 Cal.App.4th 1184, 1187, 99 Cal.Rptr.3d 1.)”

LESTER & HIRSCHBERG, LLP

25

---

---

---

---


---

---

---

---

“The [19 No-Shows] apparently believe that after the trustee and participating parties have gone through **mediation and** reached a settlement, they should have been notified before the settlement was signed. ...”



But that would defeat the purpose of the court-ordered mediation.

“Had they participated, they would have been informed of all the developments, including the trustee’s willingness to sign the settlement agreement.”

LESTER & HIRSCHBERG, LLP

26

---

---

---

---

---

---

---

---

### AGAIN - The Court of Appeal, in the opinion after rehearing, affirms the trial court 2-1:

“[T]he probate court has the power to establish the procedure. (§ 17206.)

It made participation in **mediation** a prerequisite to an evidentiary hearing.

By failing to participate in the **mediation**, the [19 No-Shows] waived their right to an evidentiary hearing.

It follows that the [19 No-Shows] were not entitled to a determination of factual issues, such as [Don]’s intent....”

LESTER & HIRSCHBERG, LLP

27

---

---

---

---

---

---

---

---

### Justice Tangeman’s Dissent:

“A charitable gift must be carried into effect if it ‘can possibly be made good.’ (Estate of Tarrant (1951) 38 Cal.2d 42, 46.) The majority’s newfound requirement that a party participate in mediation before it can inherit ignores this command.”  
 Are charitable gifts (or potential charitable gifts) entitled to greater protection under the dissent?



LESTER & HIRSCHBERG, LLP

28

---

---

---

---

---

---

---

---

### The California Supreme Court Denies Review AND Depublication



LESTER & HIRSCHBERG, LLP

29

---

---

---

---

---

---

---

---

### B. Zahnleuter v. Mueller (2023) - The Case & Holdings

1. Residual beneficiary filed Petition to Compel an Accounting and to Surcharge Trustee for trust assets he expended defending against her contest to validity of third amendment to the trust.
2. Trial court grants Petition to Surcharge ordering Trustee to pay the full amount of trust assets he expended on attorney fees, \$201,164.15, and found that Trustee breached his duty to deal impartially with all beneficiaries, as he did not take a neutral position in the dispute over the validity of the third amendment.
3. The Trustee appeals claiming that he properly expended trust assets to defend against the contest of the third amendment for the benefit of the trust, he did not have an interest in the trust, the no contest clause in the third amendment required him to defend against the contest, and a portion of the surcharge was for the other “legitimately incurred” trust administration fees.
4. On Appeal, *Zahnleuter* Court Holds Trustee did not participate in the litigation as a neutral trustee to defend the trust and protect its assets, but pursued the interests of some beneficiaries, to the detriment of others in breach of his duty under PC § 16003.



LESTER & HIRSCHBERG, LLP

30

---

---

---

---

---

---

---

---

### But How Does *Zahnleuter* Specifically Help Trustee with Regard to Neutrality?

The *Zahnleuter* decision is a cautionary tale as to how a Trustee may be *severely* penalized for disregarding neutrality in a dispute between beneficiaries as to the validity of an amendment to a trust.

Here are the facts of the case...

LESTER & HIRSCHBERG, LLP

31

---

---

---

---

---

---

---

---

### *The Mueller Family*

*The Settlers* - **Richard J. Mueller and Joan R. Mueller**

*Their children* -

- **Katherine Zahnleuter** – Plaintiff/Respondent/Beneficiary
- **Amy Mueller** – Beneficiary
- **Julie Van Patter** – Richard’s Daughter From Prior Marriage/Beneficiary

*The Trustee/Defendant/Appellant* – **Thomas Mueller** (Richard’s Brother)

*Trustee’s children* – **Sundha Mueller and Puja Mueller**

LESTER & HIRSCHBERG, LLP

32

---

---

---

---

---

---

---

---

### *Richard J. & Joan R. Mueller Living Trust*

In August 2004, the settlors created the Richard J. & Joan R. Mueller Living Trust.

Under the terms of that document, Katherine and Amy were equal residual beneficiaries, and Julie was left a specific gift of \$10,000. The trust also named Amy and then Katherine as successor trustees.

The trust authorized the trustee, in his or her discretion, to initiate or defend, at the expense of the trust estate, any litigation the trustee considered advisable related to the trust or any property of the trust, and to employ attorneys at the trust’s expense for the trust administration.

No Contests clause:

“The Trustee is authorized to defend, at the expense of the Trust Estate, any contest or other attack of any nature on this Trust or any of its provision. *This paragraph shall not apply to any amendment of this document ... executed after the date of this document.*” (Italics added.)

LESTER & HIRSCHBERG, LLP

33

---

---

---

---

---

---

---

---

### Amendments to the Richard J. & Joan R. Mueller Living Trust

November 2005 - Amendment by both settlors:

- No change to the distributions, the successor trustees, or the no contest clause.

In October 2017 - Joan died.

December 2017 - 2<sup>nd</sup> Amendment to trust by Richard:

- Names Katherine and Amy as successor co-trustees.
- Does not modify the distributions.
- Contained a no contest clause, which did not authorize the trustee to defend, at the expense of the trust estate, any contest to the amendment.



LESTER & HIRSCHBERG, LLP

34

---

---

---

---

---

---

---

---

---

---

### Suspect 3rd Amendment(s) to the Trust

- Amy moves into the family home with Richard in early 2018.
- In April 2018 Amy emails a hand written letter to attorney, Gabriel Lenhart, which purportedly outlines Richard's final wishes.
- The next day, Lenhart emails Amy the third amendment to the trust, which provides that:
  - Thomas is to be the successor trustee of the trust;
  - Thomas' daughters, Sidha and Pujja, are to receive \$10,000 each;
  - Amy is to be paid for caregiving services;
  - Amy is to have a life estate on the family home, but she has to pay maintenance;
  - The residue of the trust estate is to be distributed between Amy, Katherine, and Julie.
- There was a no contest clause, which like second amendment, **did not** authorize the trustee to defend, at the expense of the trust estate, any contest to the amendment.
- This amendment was purportedly signed the same day it was emailed

LESTER & HIRSCHBERG, LLP

35

---

---

---

---

---

---

---

---

---

---

### ... But there was another!

- Less than a week later, Lenhart e-mailed Amy a **second version** of the third amendment, which provided that Julie was to receive \$10,000 and not 1/3<sup>rd</sup> of the residue of the trust, Amy no longer paying the maintenance for the life estate, as well as other changes.
- The no contest clause was identical.



LESTER & HIRSCHBERG, LLP

36

---

---

---

---

---

---

---


---

---

---

*Zahnleuter v. Mueller* –Death and Petitions

- In August 2018, Richard died.



- Three days later, Thomas gave Katherine a copy of the second version of the third amendment.
- LITIGATION ENSUED...

LESTER & HIRSCHBERG, LLP

37

---

---

---

---

---

---

---

---

*Zahnleuter v. Mueller* –Death and Petitions

Petition To Invalidate Third Amendment

1. November 2018 - Katherine filed Petition To Invalidate based on the execution and delivery requirements of the trust not being satisfied and that it was the product of undue influence.
  - Thomas, as successor trustee, opposed the petition.
  - Both Thomas and Katherine filed cross Motions for Summary Adjudication as to whether third amendment was validly executed.
    - Thomas won (*Spoiler Alert* - this was the only thing Thomas won).
2. June 2020 - At the Bench Trial on Katherine’s contest of the third amendment, it was discovered that Lenhart had switched the versions of the third amendment through possible fraud.
  - It was determined that the second version of the third amendment was not the actual amendment.
  - Thomas was ordered not to make any further expenditures from the estate other than up to \$1,500 to provide Julie notice that she was a potential beneficiary under the third amendment.

LESTER & HIRSCHBERG, LLP

38

---

---

---

---

---

---

---

---

*Zahnleuter v. Mueller* –Death and Petitions

Amy’s Petition To Invalidate Third Amendment

- After the bench trial, Amy filed a Petition to invalidate both version of the third amendment to the trust.
- In August 2020, the trial court ruled that both versions of the third amendment were invalid.
  - Amy and Katherine agreed that neither version of the third amendment was properly executed by Richard.
  - Thomas nor any of the other purported beneficiaries under the third amendment (i.e., Thomas’s children, Julie) objected to Amy’s petition.
- The trial court also found that the trust, as amended by the first and second amendments, was valid and enforceable and appointed a private fiduciary as successor trustee.

LESTER & HIRSCHBERG, LLP

39

---

---

---

---

---

---

---

---

**Zahnleuter v. Mueller –Death and Petitions**

Petition to Compel an Accounting and to Surcharge the Trustee

1. April 2020 -After making two demands for Accountings from Thomas, Katherine filed this Petition.
  - The Petition sought to compel an accounting from Thomas and to surcharge him for the trust assets he expended to defend her contest to the validity of the third amendment.
2. In August 2020 – The trial court granted Katherine’s petition to compel an accounting, but deferred ruling on her request to surcharge the trustee.
3. In September 2020 - Thomas filed an accounting and a first corrected accounting, both of which indicated that he expended \$201,164.15 on attorney fees from November 15, 2018 to May 11, 2020.
  - The Accounting failed to provide any information regarding the specific services that were performed for the fees incurred.

LESTER & HIRSCHBERG, LLP

40

---

---

---

---

---

---

---


---

---

---

**Order on Katherine’s Petition to Surcharge the Trustee**

1. February 2021 - The trial court granted Katherine’s petition to surcharge the trustee, ordering Thomas to pay the full amount of trust assets he expended on attorney fees--\$201,164.15.
  2. The trial court found the express terms of the trust authorized the trustee to defend, at the expense of the trust estate, “any contest or other attack of any nature on th[e] Trust or any of its provisions,” but not “any amendment” to the trust.
3. The trial court found Thomas breached his duty to deal impartially with all beneficiaries, **as he did not take a neutral position in the dispute over the validity of the third amendment.** Instead, he represented the interest some beneficiaries over the interests of others.
 



LESTER & HIRSCHBERG, LLP

41

---

---

---

---

---

---

---

---

---

---

**Zahnleuter Court’s Analysis As to Duty of Impartiality and Reimbursement of Fees**

- **When A Trustee Can Use Trust Assets To Litigate A Position**
  - “[W]here litigation is necessary for the preservation of the trust, it is both the right and duty of the trustee to employ counsel in the prosecution or defense thereof, and the trustee is entitled to reimbursement for his expenditures out of the trust fund.” (*Metzenbaum v. Metzenbaum* (1953) 115 Cal.App.2d 395, 399, 252 P.2d 31.)
- **When Litigation Puts Neutrality At Issue.**
  - When a trust has two or more beneficiaries, “the trustee has a duty to deal impartially with them and shall act impartially in investing and managing the trust property, taking into account any differing interests of the beneficiaries.” (§ 16003.)
  - “[W]hen a dispute arises as to who is the rightful beneficiary under a trust, involving no attack upon the validity or assets of the trust itself, the trustee ordinarily must remain impartial, and may not use trust assets to defend the claim of one party against the other.” (*Doolittle v. Exchange Bank* (2015) 241 Cal.App.4th 529, 537, 193 Cal.Rptr.3d 818.)
- **When A Trust’s Drafting Renders Impartiality Moot.**
  - However, a trustee may defend against a contest by a beneficiary, even if the beneficiary’s contest will have no other effect on the trust except for modifying the dispositive provisions for the trust estate, when the authority granted by the trust document directs the trustee to defend against any contest brought by a beneficiary. (see *Doolittle* at 537-538, 544)

LESTER & HIRSCHBERG, LLP

42

---

---

---

---

---

---

---

---

---

---

**Zahnleuter Court's Analysis of *Whittlesey v. Aiello*, *Terry v. Conlan*, and *Doolittle v. Exchange Bank***

- *Whittlesey v. Aiello* (2002) 104 Cal.App.4th 1221
  - The Whittlesey court observed that, to the extent the trustee represents the interests of one side of the contest over the other, the trustee must look to the parties who stand to gain from the litigation for reimbursement, not the trust.
- *Terry v. Conlan* (2005) 131 Cal.App.4th 1445
  - In Terry, the court explained that the trustee did not participate in the litigation as a neutral trustee to defend the trust and protect its assets; but instead, she consistently pursued her own interests and those of her siblings, as beneficiaries under the second trust document, to the detriment of beneficiaries under the first trust document. Accordingly, the trustee must bear her own costs in the litigation, rather than be reimbursed from the trust.
- Similarly in *Zahnleuter*:
  - The record is clear that Thomas did not participate in the litigation as a neutral trustee to defend the trust and protect its assets. Conversely, he pursued the interests of others, including his two daughters, to the detriment of Katherine.
  - Accordingly he must bear his own litigation costs, rather than be reimbursed by the trust.

LESTER & HIRSCHBERG, LLP

43

---

---

---

---

---

---

---

---

---

---

**Zahnleuter Court's Analysis of *Doolittle v. Exchange Bank – Deficient No-Contest Language***

- *Doolittle v. Exchange Bank* (2015) 241 Cal.App.4th 529, 537, 193 Cal.Rptr.3d 818
  - In *Doolittle*, there was a trust provision specifically directing the trustee to defend, at the expense of the trust estate, any contest to the trust, including any amendment to the trust.
- **Doolittle is inapplicable in *Zahnleuter***
  - Unfortunately for Thomas, the trust document did not direct the trustee to defend against a contest to any amendment to the trust. In fact, the trust provided that:
 

"The Trustee is authorized to defend, at the expense of the Trust Estate, any contest or other attack of any nature on this Trust or any of its provision. This paragraph shall not apply to any amendment of this document ... executed after the date of this document."
  - Further, neither version of the third amendment directed or authorized the trustee to defend against a contest to the amendment.
- Without the specific authorization of the trust documents, *Terry* and *Whittlesey* apply, and Thomas breached his duty of impartiality.

LESTER & HIRSCHBERG, LLP

44

---

---

---

---

---

---

---

---

---

---

**Zahnleuter – Trustee's Accounting Failure**

Thomas contends the trial court erred in surcharging the entire amount of the trust assets he expended on attorney fees because some of those fees were properly incurred.

1. Thomas seeks reimbursement for the \$1,500 that the trial court authorized him to expend from the trust estate to provide Julie notice.
  - The Court denied this as Thomas does not cite anything in the record showing that he expended any trust assets for this purpose.
2. Although PC § 15684 provides that a trustee is entitled to reimbursement for expenditures that were properly incurred in the administration of a trust, Thomas:
  - never claimed in the trial court that he incurred any attorney fees related to the administration of the trust, and therefore he has forfeited this argument; and
  - failed to include any information about the specific services provided for the attorney fees incurred in his account.
3. Thomas argues that the trial court improperly surcharged him for the attorney fees incurred in connection with *his successful defense* of the third amendment.
  - Despite his success, the *Zahnleuter* Court determined that Thomas did not participate in the litigation as a neutral trustee.

LESTER & HIRSCHBERG, LLP

45

---

---

---

---

---

---

---

---

---

---

*Key v. Tyler (2024) 102 Cal.App.5th 365 (aka Part 4)*

1. Trust contest case that has been around for 10+ years and Trustee – Trust Beneficiary, who has used trust assets to defend her beneficial trust interests, **has lost every appeal** (although she has prevailed at the trial court from time to time on non-equitable issues)
2. In Part 4, Trustee / Beneficiary who advances a later version of the trust that is beneficial to her and loses presumptively violates the “no contest” clause in the prior version
3. Failure to include “no contest clause” in amendment does not preclude enforcement of “no contest clause” in prior version
4. There will be a day of reckoning for Trustees that abuse their fiduciary duties!

LESTER & HIRSCHBERG, LLP

46

---

---

---

---

---

---

---

---

III. Examples of “Naughty Kittens”



1. Trustee has beneficial interest in trust; potential beneficiary/heir challenges last amendment on lack of capacity and undue influence by nominated Successor Trustee prior to Settlor’s death; and Trustee defends attack using trust funds:

- What if Trustee’s AND a different beneficiary’s interest are favored more than other beneficiaries in the amendment?
- What if evidence developed during discovery reveals that Successor Trustee was present and active in the procurement of the amendment at issue?
- Does it matter whether the Successor Trustee is actively attempting to get the matter to an early mediation for resolution?
- Does it matter whether the Trust has a robust “No Contest and Defense of Trust” clause?

LESTER & HIRSCHBERG, LLP

47

---

---

---

---

---

---

---

---

III. Examples of “Naughty Kittens”



2. Professional Fiduciary Trustee has NO beneficial interest in trust; potential beneficiary/heir challenges last amendment on lack of capacity and undue influence by a different beneficiary prior to Settlor’s death; and Trustee defends attack using trust funds – Best Practices Would Be:

- Does it make a difference if Petitioner/Beneficiary was specifically disinherited in Trust with robust “No Contest and Defense of Trust” clause?
- Does it matter whether challenge is focused on actions of only 1 potential beneficiary rather than multiple or all other potential beneficiaries?
- Does it matter whether the Successor Trustee is actively attempting to get the matter to an early mediation for resolution?

LESTER & HIRSCHBERG, LLP

48

---

---

---

---

---

---

---

---



### IV. TAKE AWAYS

*Zahnleuter v. Mueller*

- Trustees should avoid taking sides between beneficiaries in disputes as to the validity of amendments to trusts, unless there is a trust provision specifically directing the trustee to defend, at the expense of the trust estate, any contest to the trust, including any amendment to the trust.



*Breslin v. Breslin*

- If there is a dispute between beneficiaries that puts a trustee's neutrality at risk, the Trustee should employ a Petition for Instruction to not take sides but allow the beneficiaries and Court to resolve the dispute.

LESTER & HIRSCHBERG, LLP

49

---

---

---

---

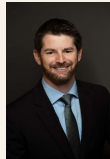
---

---

---

---

## Thank You!



[Mark@VCTrusts.com](mailto:Mark@VCTrusts.com)  
[Eric@VCTrusts.com](mailto:Eric@VCTrusts.com)

LESTER & HIRSCHBERG, LLP

50

---

---

---

---

---

---

---

---