Ethical Matters in Representing the Fiduciary

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I. Introduction

On January 1, 2005, Indiana adopted the majority of the text of the American Bar Association's Model Rules of Professional Conduct.[1] The Indiana Rules of Professional Conduct (referred to herein collectively as "the Rules" or singularly as a "Rule") set forth guidance on the ethical standards that govern all lawyers in Indiana.[2] Therefore, all potential ethical problems involved in the legal representation of fiduciaries in Indiana must necessarily be read in the context of the Rules.

Because the Rules are closely modeled on the ABA's Model Rules, the ABA's comments on the Model Rules can be quite helpful in interpreting and discussing Indiana's rules. Additionally, the American College of Trust and Estate Counsel publishes useful commentaries on the Model Rules.[3]

These materials will focus on the Indiana Rules of Professional Conduct and their application to the legal representation of personal representatives and trustees. Occasional references will be made to the Model Rules/comments, the ACTEC commentaries, and other sources when they are helpful in interpreting the Indiana Rules.

II. Who Do You Represent?

In order to determine whether or not there is an ethical problem in your representation, you must first determine the identity of your client.

In the past, a great degree of confusion has reigned regarding the identity of the lawyer's client in an estate or trust administration. We Hoosiers are not alone in this – Comment 27 to Rule 1.7 of the American Bar Association's Model Rules of Professional Conduct acknowledges that "[i]n estate administration the identity of the client may be unclear under the law of a particular jurisdiction."

However, recent legislation has made this issue much clearer in Indiana with respect to estate administrations. House Bill 1056, effective as of July 1, 2013, adds § 29-1-10-20 to the Indiana Code.[4] This new code section states that "[e]xcept as otherwise provided in a written agreement between the estate lawyer and an interested person, an estate lawyer . . . represents and owes a duty only to the personal representative."

With respect to trust administrations, there is no comparable legislation to IC § 29-1-10-20, so it is less clear whether or not the lawyer represents the trustee, the trust entity itself, the

[1] *Available at:* http://www.americanbar.org/groups/ professional_responsibility/publications/model_rules_of_ professional_conduct/model_rules_of_professional_conduct_table_of_contents.html.
[2] *Available at:* www.in.gov/judiciary/rules/prof_conduct/.
[3] *Available at:* www.actec.org/public/commentariespublic.asp.
[4] The entire text of H.B. 1056 and the new § 29-1-10-20 is available online at www.in.gov/legislative/bills/2013/HB/HB1056.1.html.

beneficiaries, or some combination thereof. As will be discussed more extensively in Sections III and IV below, the best way to avoid any ambiguity in the identity of your client is a combination of a carefully prepared engagement letter and clear and consistent communication with the various parties involved in the estate administration.

III. Fees and the Scope of the Representation

1. Reasonable Fees

Pursuant to Rule 1.5, a lawyer is ethically obligated to charge a reasonable fee for her estate or trust administration services. What is 'reasonable' is highly subjective, and dependent on a laundry list of factors set forth in Rule 1.5(a):

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee customarily charged in the locality for similar legal services;
>
> (4) the amount involved and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances;
>
> (6) the nature and length of the professional relationship with the client;
>
> (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
>
> (8) whether the fee is fixed or contingent.

As with so many things in the area of legal ethics – and as will be discuss further below – much can be solved by a clearly-worded engagement letter setting out the understanding between the lawyer and client regarding fees.

Case law provides a bit more guidance in the specific context of estate administration. As a general rule, a trial court has great discretion to approve the amount of lawyers' fees in

connection with an estate administration.[5] However, it is not unprecedented for the Indiana Court of Appeals to reverse such a grant of fees if they are deemed patently unreasonable.[6] The determination of the reasonableness of a lawyers' fees in an estate administration is inherently fact-sensitive and subjective, determined upon such factors as:

> the labor performed, the nature of the estate, the difficulties attending the recovery of the assets and location of heirs or devisees, settlements in the estate, the peculiar qualifications of the administrator, her faithfulness and care, and all other factors necessary to aid the court in a consideration fair to the estate and reasonable for the personal representative and attorney.[7]

Also be sure you are familiar with the local rules of the county in which you are representing a personal representative. Some counties (Allen, Lafayette, and Hamilton come to mind, although this is in no way a comprehensive list) have fee guidelines that provide a 'safe harbor' with respect to the reasonableness of estate administration fees.

2. Engagement Letters

Ethical issues can be difficult to foresee and, thus, difficult to avoid. Understanding the scope and breadth of the lawyer's responsibilities to the fiduciary is the first step in predicting and understanding the ethical issues that may arise. Engagement letters are also the best tool for clearly setting out your fees and avoiding future 'sticker shock' and client conflict. The best way a lawyer can protect himself from inadvertent violation of the Rules is by the preparation of a comprehensive engagement letter. As Rule 1.5 succinctly states:

> The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

There is no one-size-fits-all formula for engagement letters. For this reason, several colleagues have been gracious enough to share their typical estate/trust administration engagement letters with me, and I have included them (as well as an example from my firm) as Exhibits A through D to these materials. Hopefully they will be of some assistance to you in crafting or updating your own engagement letters.

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[5] *See, e.g., In re: Estate of Kingseed*, 413 N.E.2d 917 (Ind. Ct. App. 1980).
[6] *See, e.g., In re: Estate of Meguschar*, 511 N.E.2d 307 (Ind. Ct. App. 1987); *In re: Estate of Newman*, 369 N.E.2d 427 (Ind. Ct. App. 1977).
[7] *Newman*, 369 N.E.2d at 433.

IV. Potential Conflicts of Interest

Rule 1.7 sets forth the "general rule" with respect to conflicts of interest. A lawyer cannot represent a client if such representation involves a "concurrent conflict of interest." There are two types of concurrent conflicts of interest: 1.) the representation will be "directly adverse" to another of the lawyer's clients; or 2.) the representation presents "significant risk" that it will be "materially limited" by the lawyer's responsibilities to someone else.

Pursuant to Rule 1.7, concurrent conflicts of interest can be waived by the clients in certain circumstances, as long as the clients give written, informed consent to the nature and extent of the conflict. However, Rule 1.7(b)(3) makes it clear that conflict is not waivable in certain circumstances, namely, proceedings in court.

There is almost <u>always</u> a risk that co-fiduciaries or fiduciaries and beneficiaries will come into conflict. It is therefore a subjective judgment call whether or not that risk is "significant" enough under Rule 1.7 to prevent the lawyer's initial engagement.

The most common situations giving rise to conflicts of interest in estate and trust administration are set forth below:

1. Co-Fiduciaries

Representing co-personal representatives or co-trustees does not automatically present a conflict. Such fiduciaries presumably share the goal of properly and legally administering the estate or trust with which they have been charged. It is possible, however, that conflicts arise between the co-fiduciaries as the administration proceeds. Perhaps the co-fiduciaries are unequal beneficiaries of an estate. Or perhaps they disagree as to the application of a trust's discretionary distribution standards. This does not automatically create a conflict necessitating the lawyer's withdrawal. Comment [28] recognizes that clients can be "generally aligned in interest even though there is some difference in interest among them." In such circumstances, the lawyer and the clients must work together to determine whether the differences can be resolved, and whether the expense of separate lawyers for each fiduciary can be avoided:

> The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication, or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

As a practical matter, when faced with the significant increased cost and hassle of hiring separate counsel, many co-fiduciaries will feel compelled to resolve minor differences in a mutually beneficial manner.

However, the question remains – what is the nature of the duty of confidentiality when a lawyer represents co-fiduciaries? Pursuant to Comment [30] to Rule 1.7, "the prevailing rule is that, as

between commonly represented clients, the privilege does not attach." This is because, as stated by Comment [31] to Rule 1.7, the "lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests." However, it behooves the attorney to make this clear to both co-fiduciaries at the onset of the representation in an engagement letter or similar communication. Therefore, if either co-fiduciary ever insists on individual confidentiality, he will not be shocked when the lawyer refuses to keep secrets from the other fiduciary or is forced to ultimately terminate the representation.

2. Beneficiaries as Current or Former Clients

Estate planning is often a family affair, with the same lawyer preparing wills for parents and their children. This can eventually result in your representation of a third party fiduciary of an estate or trust that benefits the decedents' children, your current or former clients.[8] As with co-fiduciaries, this is not automatically a concurrent conflict of interest, but it can require some sensitivity and planning on the lawyer's part. Upon any significant risk that the lawyer's representation of the fiduciary could create a concurrent conflict with the children/clients, a meeting should be held with the fiduciary and the children/clients to discuss the perceived conflict and obtain the parties' written consent thereto under Rule 1.7.

However, remember that conflict waivers are sometimes impermissible – especially in the context of a court proceeding. For example, a lawyer who represents a trustee or a personal representative cannot simultaneously represent a beneficiary in an action against that trustee or personal representative, or represent a beneficiary's interests at a hearing on a petition for instruction by the trustee or personal representative.

3. Decedents as Former Clients

Pursuant to Rule 1.9, a lawyer has ongoing duties to former clients. After termination of representation (by death or otherwise) a lawyer cannot represent a new client whose "interests are materially adverse to the interests of the former client." One example of such a conflict with a former client is illustrated in Comment [1] to Rule 1.9: "Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client."

This Comment raises interesting questions in the context of estate planning – specifically, trust planning. If you draft a trust for a client that delays distributions to the trustor's children for some number of years, what do you do when, after the trustor's death, all of the trustor's children come to you unanimously asking you to bring an action to rescind the trust because they are impatient to get their inheritance?

[8] Whether or not the attorney-client relationship terminates upon completion of an estate plan is somewhat unclear in the absence of an engagement letter clearly addressing this issue. *See, e.g.*, *Report of the Special Study Committee on Professional Responsibility: Counseling the Fiduciary*, Real Property, Probate and Trust Journal Vol. 28, No. 4 (1994).

Indiana Code § 30-4-3-24.4 governs those situations in which modification or recission of a trust can be granted by the court, and § 30-4-3-26 governs the court's ability to direct deviation from the terms of a trust. Pursuant to § 30-4-3-24.4, the trust can be modified or rescinded if, "because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust," and such modification must be undertaken "in accordance with the settlor's probable intention." Similar restrictions are placed on deviations pursuant to § 30-4-3-26.

It is an unfortunate fact that, faced with a well-drafted petition and unanimous consent among trustee and trust beneficiaries, some courts may modify or revoke a trust based more on the beneficiaries' wishes rather than the trustor's demonstrable intent. I would propose, however, that it is a violation of a lawyer's obligations under Rule 1.9 to participate in such an action with respect to a trust that he or she drafted.

V. The Duty of Confidentiality

Does lawyer-client confidentiality prevent the fiduciary's lawyer from disclosing information to estate or trust beneficiaries? In my opinion, the answer to this question is unclear. Rule 1.6 states that the lawyer may make such disclosure as is "impliedly authorized to carry out the representation." It has been suggested that the "impliedly authorized" language of Rule 1.6 permits, but does not require, disclosures to the beneficiaries of past breaches of fiduciary duty in order to protect the beneficiaries.[9]

But what about a beneficiary who is reasonably requesting information in the case where the fiduciary has done nothing wrong? In such cases, it is best for the lawyer to strongly encourage the fiduciary to communicate more openly with the beneficiaries.[10] This is yet another area where open and honest (and sometimes blunt) client communication can save a lawyer much doubt and heartache.

In more extreme situations, Rule 1.6 governs in cases where the lawyer suspects that the fiduciary may be contemplating not just a breach of fiduciary duty, but a breach rising to the level of a criminal or fraudulent action. In such cases, the lawyer may disclose otherwise privileged information in order to prevent action that is "reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services." If the criminal or fraudulent action has already taken place and is subsequently discovered by the lawyer, the lawyer may disclose privileged information if such disclosure will "prevent, mitigate, or rectify" any "substantial injury" that would otherwise result from the fiduciary's actions.

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[9] ACTEC commentary to Model Rule 1.6. *See also Report of the Special Study Committee on Professional Responsibility: Counseling the Fiduciary*, Real Property, Probate and Trust Journal Vol. 28, No. 4 (1994).

[10] *See* ACTEC commentary to Model Rule 1.2, which states that it is primarily the fiduciary's responsibility to communicate with beneficiaries, and not the lawyer's.

As for the right or obligation of the lawyer to withdraw from representing a fiduciary who has or is going to commit a crime or fraud, please see VIII, below.

VI. Dealing with Beneficiaries

Comment [11] to Rule 1.2 cryptically states that [w]here the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary." Sounds logical – but what does this sentence really mean?

The ACTEC commentary to Rule 1.2 may perhaps provide a bit more guidance. This comment states that:

> [t]he lawyer for the fiduciary owes some duties to the beneficiaries of the fiduciary estate although he or she does not represent them. The duties, which are largely restrictive in nature, prohibit the lawyer from taking advantage of his or her position to the disadvantage of the fiduciary estate or the beneficiaries. In addition, in some circumstances the lawyer may be obligated to take affirmative action to protect the interests of the beneficiaries. Some courts have characterized the beneficiaries of a fiduciary estate as derivative or secondary clients of the lawyer for the fiduciary. The beneficiaries of a fiduciary estate are generally not characterized as direct clients of the lawyer for the fiduciary merely because the lawyer represents the fiduciary generally with respect to the fiduciary estate (emphasis added).

Some states (Indiana not included) have gone so far as to state that the lawyer for a fiduciary has privity or an affirmative duty vis-à-vis estate or trust beneficiaries.[11]

The complex relationship with beneficiaries is perhaps one of the most commonly faced ethical issues when representing a trustee or a personal representative. Most often, estate or trust beneficiaries do not have their own counsel, and instead rely on the fiduciary's honesty and judgment. When a beneficiary is thus unrepresented by counsel, it sometimes becomes necessary for the fiduciary's lawyer to deal with her directly, whether it be providing distributions and receipts, providing a copy of the trust instrument, preparing tax returns, dealing with claims paperwork for life insurance or annuities, etc. When a beneficiary frequently communicates with the fiduciary's lawyer, he can mistakenly gain the impression that the fiduciary's lawyer is "his" lawyer too.

[11] *See, e.g., Charleson v. Hardesty*, 839 P.2d 1303 (Nev. 1992); *Elam v. Hyatt Legal Svcs.*, 541 N.E.2d 616 (Oh. 1989); *contra Goldberg v. Frye*, 217 Cal. App. 3d 1258, 1269 (1990) ("[P]articularly in the case of services rendered for the fiduciary of a decedent's estate, we would apprehend great danger in finding stray duties in favor of beneficiaries.")

Rule 4.3 gives a lawyer some guidance in this situation. In such circumstances, a lawyer should never "state or imply that the lawyer is disinterested." Rather,

> [w]hen the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

Make every effort to insure – preferably in writing – that the beneficiary completely understands the nature of your representation of the fiduciary. The ACTEC commentary to Model Rule 1.2 states that it is primarily the fiduciary's responsibility (rather than that of the fiduciary's lawyer) to communicate with the beneficiaries, so be sure to communicate through the fiduciary whenever possible. Additionally, the ACTEC commentaries suggest an initial meeting between the fiduciary, her lawyer, and all beneficiaries in order to give everyone the opportunity to discuss and understand the complex relationship between all parties in an estate or trust administration.

Rule 4.4 is also sometimes relevant in the lawyer's dealings with the beneficiaries, especially those who are unrepresented. This rule states that "a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person." Frequently, there is personal or family animosity between a lawyer's fiduciary client and a 'black sheep' beneficiary. The lawyer must always be careful not to participate in any way in such animosity. For example, be careful of the wording of correspondence and court filings. Also be sure that your fiduciary client is making distributions in a timely and equal manner among trust beneficiaries, regardless of any strained relationships.

VII. When Good Fiduciaries Go Bad

Being a personal representative or a trustee is a great deal of responsibility, frequently with respect to large sums of money. Unfortunately, it is all too common that temptation gets the better of a fiduciary and he starts using estate or trust funds as his own personal piggy bank. In such situations, what is the fiduciary's lawyer's responsibility and ethical duty?

This discussion must necessarily start with a discussion of the *Colussi* case and its progeny, Indiana House Bill 1056. In February 2009, the estate of Dora Lee sued Colussi, the attorney formerly handling the estate administration, because one of the personal representatives had stolen nearly a quarter of a million dollars of estate funds. The estate alleged that Colussi had a duty to monitor the estate checking account. Colussi moved for summary judgment on the basis that the lawyer's duty did not include the duty to monitor the checking account. The trial court granted summary judgment in Colussi's favor, but on September 23, 2011 the Indiana Court of Appeals reversed the grant of summary judgment and remanded the case to the trial court.[12]

[12] *In re: Estate of Lee v. Colussi and the Colussi Law Office*, 954 N.E.2d 1042 (Ind. Ct. App. 2011). Transfer was later denied on May 3, 2012 by the Indiana Supreme Court. *In re: Estate of Lee v. Colussi and the Colussi Law Office*, 967 N.E.2d 1034 (Ind. 2012).

Colussi therefore created a great deal of concern among Indiana lawyers, among whom the common practice was not always to maintain or even closely monitor the estate checking account. Because of this concern, the Indiana General Assembly's Probate Code Study Commission recommended legislation to clarify a lawyer's duty of care vis-à-vis estate assets. This bill, now passed into law as IC § 29-1-10-20 and effective as of July 1, 2013, states that (unless otherwise agreed upon by the estate lawyer and an interested person) the estate lawyer:

> (2) does not have a duty to collect, possess, manage, maintain, monitor, or account for estate assets, unless otherwise required by a specific order of the court; and
>
> (3) is not liable for any loss suffered by the estate, except to the extent the loss was caused by the estate lawyer's breach of a duty owed to the personal representative.

As stated before, however, it is not clear exactly what the application is of § 29-1-10-20 (if any) in the trust context. It is not beyond the realm of possibility that an aggressive trust beneficiary might try to use the *Colussi* holding to pursue the lawyer who represents a misbehaving trustee.

Even with the liability protection afforded by IC § 29-1-10-20, a lawyer representing a fiduciary may face an ethical dilemma if she finds out that a fiduciary is inappropriately using estate or trust funds.

Pursuant to Rule 1.2, a "lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent." However, if a fiduciary is contemplating a course of action that the lawyer believes may be criminal or fraudulent, Comment [9] to Rule 1.2 states that the lawyer may "give an honest opinion about the actual consequences that appear likely to result from a client's conduct" without being deemed to have assisted the client in committing a crime or fraud.

If a fiduciary is contemplating illegal action, is a lawyer obligated to withdraw? Rule 1.16 gives the grounds under which a lawyer "shall" or "may" withdraw from representation. Comment [2] to Rule 1.16 states that a lawyer "must" withdraw from representation if a fiduciary client insists or "demands" that the lawyer engage in illegal conduct. The lawyer is not automatically "obliged to decline or withdraw simply because the client suggests such a course of conduct." However, according to Comment [2], if after receiving contrary advice from the lawyer, a client still "persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent," the lawyer has discretionary grounds for withdrawal from representation.

But what about a lawyer who only becomes aware of a fiduciary client's bad behavior after the fact? Comment [10] to Rule 1.2 states that "[a] lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter."

In fact, under Rule 4.1, withdrawal may even need to be 'noisy,' making beneficiaries and other interested parties aware of the fiduciary's misconduct, because a lawyer may not "fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting in a criminal or fraudulent act by a client." This can be a very difficult situation for a lawyer, and a very difficult decision to make. Comment [3] to Rule 4.1 provides a bit more guidance:

> Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

As with all other ethical matters involving the Rules, whether or not a lawyer 'shall' or 'may' make a noisy withdrawal from representation is highly subjective, requiring a great deal of insight and factual analysis of the particular situation.

VIII. Communication with the Client

It is unfortunate that Rule 1.3 is ever an issue for any lawyer, but busy days and heavy workloads mean that the duty to "act with reasonable diligence and promptness" is frequently compromised. It is not worth a lot of ink in these materials, but Rule 1.3 serves as a good reminder - it is always incumbent on the lawyer to act with reasonable diligence in representing the fiduciary client and to work hard to keep the fiduciary well-informed.

IX. The Lawyer as Fiduciary

As a final matter, it is sometimes asked whether or not a lawyer can serve as fiduciary pursuant to documents that she drafted. This is not *de facto* impermissible, and Comment [8] to Rule 1.8 gives very specific guidance as to when a lawyer (or his partner or associate) may serve as fiduciary:

> This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the

> appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary.

Sometimes a client is truly at a loss as to whom she should appoint as fiduciary, and the same client has a long-standing relationship of trust with a particular lawyer. In this situation, provided there is no un-waivable conflict of interest problem, the lawyer may in fact be the most appropriate choice as fiduciary. It is advisable that the lawyer never suggest herself as fiduciary.[13] Furthermore, in order to ensure that the lawyer is not running afoul of Rule 1.8 by serving as fiduciary, the lawyer should obtain the client's written informed consent to "the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position."[14]

As a commonsense matter, I also recommend documenting in your notes the client's unique motivation for appointing you, the lawyer, as fiduciary. It is inadvisable to have a demonstrated pattern of appointing yourself as fiduciary in every client's documents – such can strengthen the argument that you are not giving objective advice to clients about the appointment of fiduciaries, or are potentially exercising undue influence over vulnerable clients.

Lawyers also need to carefully ensure that their malpractice insurance will cover situations in which the lawyer acts not only as lawyer, but as fiduciary. Frequently malpractice coverage does not include this type of coverage.[15]

X. Where to Turn for Guidance

As should be readily apparent, there are very few bright-line rules in the arena of legal ethics. Situations can be complex and difficult to resolve. Therefore, turning to other legal professionals for guidance is advisable.

Comment [4] to Rule 1.6 states that "[a] lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved."

I therefore encourage you to seek 'hypothetical' guidance from your colleagues, whose input and experience can be invaluable. In addition to partners, associates, and friends, the Indiana State Bar Association provides two telephone ethics advisors for each county. The name and number of these advisors is attached hereto as Exhibit E and is periodically updated on the ISBA website

[13] "[C]are should be taken to avoid even the appearance of impropriety . . . it is clear that an attorney should not suggest oneself as the person to be named as [fiduciary]. The client must be the one to take the initiative and ask you to serve in this capacity." Aline F. Anderson and Diane Kennedy, *Ethical Constraints on Appointing Attorney Who Drafted Will*, 3:289 Indiana Practice Series: Anderson's Wills, Trusts and Estate Planning (2012-2013).
[14] *Id*.
[15] *Id*.

at http://www.inbar.org/ISBALinks/Committees/LegalEthics/tabid/145/Default.aspx (available to ISBA members only).

The email list serve for members of the Probate, Trust and Real Property Section of the Indiana State Bar Association is also a great place to discuss ethical questions. To become a member of this Section and subscribe to the list serve, please visit http://www.inbar.org/ISBALinks/Sections/tabid/284/Default.aspx.