

# OUR PRACTICE

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## Trust, Estate and Fiduciary Litigation

**Baker Donelson's Trust, Estate and Fiduciary Litigation Team is led by a diverse group of attorneys who focus exclusively on matters involving trusts and estates, and the unique and complex issues that arise within them. Our team is comprised of attorneys who are nationally recognized in the field of trust and estates, including Fellows of the American College of Trust and Estate Counsel (ACTEC), a former Chair of the Florida Wills, Trusts & Estates Board Certification Committee, a former Chair of the Probate & Estate Planning Section of the State Bar of Michigan, and a Certified Fraud Examiner. Our team members are consistently recognized by *Chambers USA*, *Best Lawyers in America*<sup>®</sup> and *Super Lawyers*, and are AV<sup>®</sup>-rated by Martindale Hubbell.**

### Why Baker Donelson?

Our collaborative team members are experienced with the "three legs" of the trusts and estates stool – planning, administration, and litigation. Clients rely on our attorneys for strategic advice and counsel, helping them to avoid the mistakes and pitfalls in planning and administration that often lead to disputes.

When litigation arises, our trial experience allows us to zealously and effectively represent our clients. Because our experience in the courtroom gives us insight into what works and what doesn't, we can determine when being practical is the client's best course. This includes approaching problems with insightful solutions, advising our fiduciary clients on risk management issues, and educating our individual and beneficiary clients on the role of fiduciaries in a proper administration. Fulfilling our role as counselors is crucial because trust and estate disputes often involve individuals with complicated needs, motivations, relationships, and histories.

### Our Clients and Experience

We represent a broad spectrum of clients embroiled in trust and estate disputes and other probate matters. On the fiduciary side, we represent trust companies, banks, institutions, corporations, and individuals in their capacities as trustees, personal representatives, and agents. On the beneficiary side, we represent individuals, trusts, charities, and other stakeholders.

Our team members are experienced in representing clients in the defense and pursuit of:

- Will and trust contests (which sometimes arise pre-death), including alleged lack of capacity and undue influence;
- Breaches of fiduciary duty, including misconduct, malfeasance, mismanagement of investments, and fraud;
- Removal and surcharge of personal representatives (executors), trustees, agents, and other fiduciaries;
- Disputes regarding beneficiary designations for life insurance policies, retirement accounts, joint and transfer on death accounts, and other non-probate assets;
- Claims for tortious interference with an inheritance or expectancy;
- Interpretation of wills, trusts, and other governing instruments;
- Nonjudicial settlements and judicial reformation or modification of wills and trusts;
- Disputes involving accountings and other reports;
- Disputes involving title or ownership to estate or trust property;
- Disputes involving the financial exploitation of vulnerable adults;
- Disputes regarding proper estate and trust administration;

- Termination and distribution of estates and trusts;
- Guardianship, conservatorship, and related incapacity proceedings; and
- Appeals of trust and estate disputes.



## Representative Matters

- Representation of a personal representative of a multi-million dollar estate in a dispute with a beneficiary trust over the proper handling of assets in excess of \$40 million, which were ear-marked for a charitable purpose.
- Representation of the beneficiary of a \$30 million residual trust in litigation concerning a conditional bequest that violated public policy prohibitions against discrimination.
- Representation of beneficiaries of an estate in excess of \$20 million in a controversy relating to the calculations of commissions claimed by the corporate personal representative.
- Representation of the personal representative of an estate in excess of \$10 million in defending a will caveat against claims of fraud, undue influence and lack of testamentary capacity.
- Representation of the estate of a worldwide music legend in breach of contract and copyright infringement litigation against a major record label for misapplication of international royalties.
- Representation of beneficiaries of a multimillion dollar estate in a hotly-contested lost will dispute involving dozens of witnesses, experts and forensic computer analysts.
- Representation of a successor fiduciary in obtaining a multimillion fraud, breach of fiduciary duty, and undue influence judgment against prior fiduciary and engaging in substantial collection activities in order to collect on the judgment for the benefit of individual and charitable beneficiaries.
- Representation of the beneficiary in multimillion dollar litigation involving the misappropriation of assets from an irrevocable trust in violation of the trust instrument.
- Successfully pursued a declaratory judgment action against trustees in an arbitration proceeding involving the administration of an eight-figure charitable remainder unitrust and distributions due the primary beneficiaries. Obtained a sweeping ruling in favor of the beneficiaries, including payment of attorneys' fees.
- Representation of a financial institution serving as corporate trustee in the defense of a lawsuit asserting fraud and attempting to specifically enforce a real estate contract.
- Representation of a corporate trustee against claims of alleged breaches of fiduciary duty in connection with the preservation of the assets of the trust.
- Representation of corporate and individual trustees with proceedings to partition assets held in common by two family trusts, each having separate trustees and beneficiaries.
- Representation of a fiduciary in recovering estate assets that were misappropriated as a result of undue influence.
- Representation of a not-for-profit skilled nursing facility in cy pres litigation necessary to allow continued operation of the facility consistent with the testator's charitable intentions.
- Representation of a health and rehabilitation center in obtaining conservatorships for residents in need of assistance but who have no known loved ones to help care for the resident.
- Representation of a beneficiary of a will and a trust in proceedings to remove the personal representative for failing to carry out responsibilities in the administration of the estate and to remove a trustee for failure to satisfy fiduciary obligations.
- Representation of beneficiaries in federal litigation involving claims of breach of fiduciary duty by corporate trustees in the sale to an individual trustee of real property held by the trust.
- Representation of a trust beneficiary in the adoption of adult stepchildren in order to qualify the stepchildren as beneficiaries of a family trust.
- Representation of estate beneficiaries in proceedings to remove a personal representative based on her direct involvement in the decedent's death and in subsequent litigation of claims by the estate against the former personal representative.

- Representation of a beneficiary in a declaratory judgment seeking to validate a contract to make a will and to invalidate a prenuptial agreement.
- Representation of a family in defending the defending challenges to the decedent's will and in related partition proceeding involving valuable real property.
- Representation of a surviving spouse in obtaining declaratory judgment that the missing spouse be declared deceased following the spouse's disappearance.
- Representation of a daughter in an emergency conservatorship proceeding for mother undergoing involuntary commitment proceedings due to mental illness.
- Successfully closed disputed estate with various institutions and beneficiaries and resolved more than ten years of the decedent's individual income issues.
- Negotiated family dispute involving disabled individual through trust and guardianship proceedings and family settlement agreement to address distribution of assets.
- Successfully represented the trust beneficiary in a breach of trust action against her sister as trustee of a trust created by the client/beneficiary's father. Initially secured a court order forcing the trustee to disgorge and repay back to the trust all amounts paid to her attorneys for defense of the action and pay her own litigation fees. Ultimately resolved the matter by settlement, with the trust being terminated and dissolved, and all of the trust funds being paid to the client/beneficiary.



## Shareholder Team Leaders

- Duane L. Pinnock
- Kelly M. Preteroti