

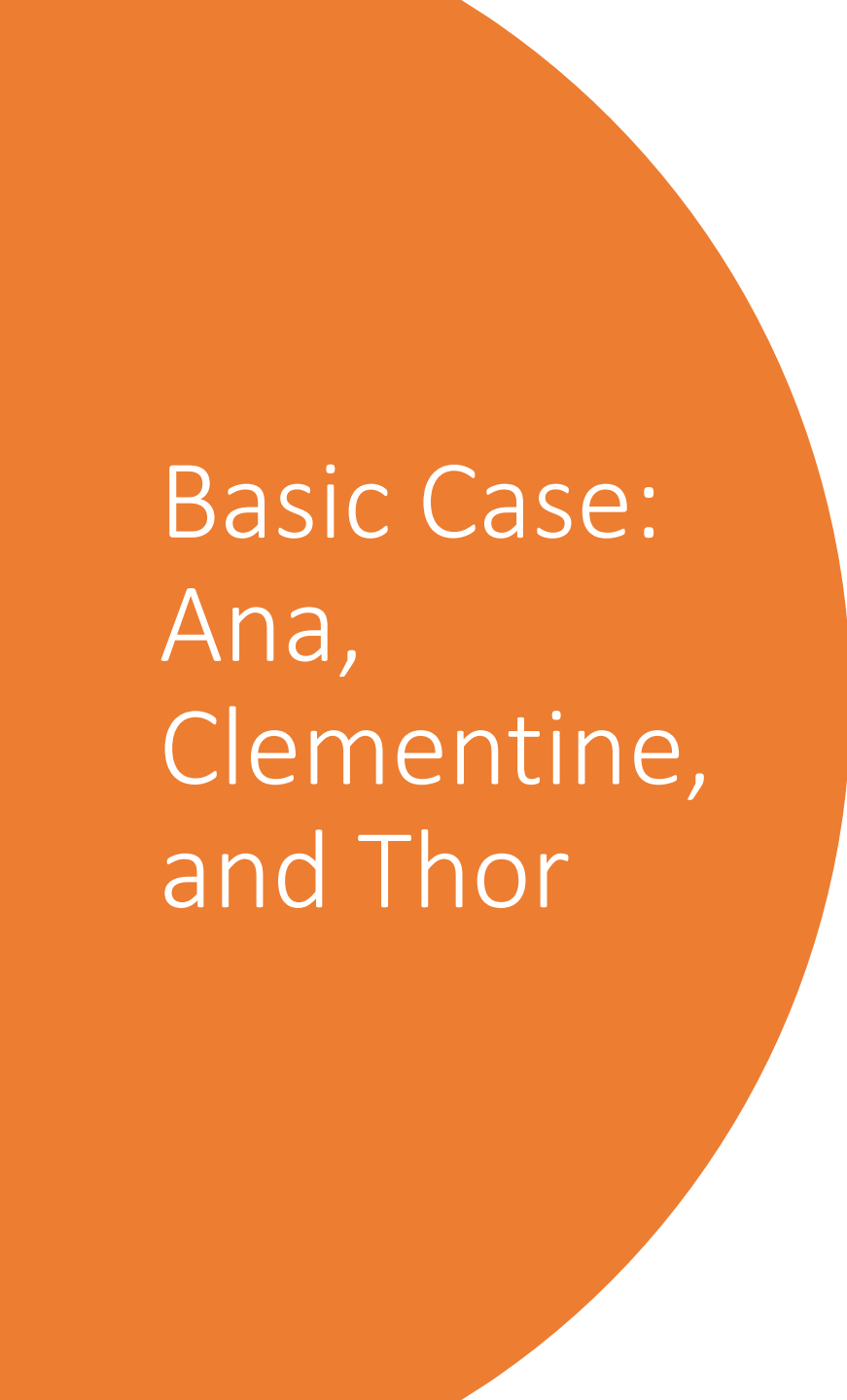


“My Lawyer Said to Call You...”

**Best Practices for Attorney Referrals as a
Potential Successor Trustee**

**MURTAUGH TREGLIA
STERN & DEILY LLP**
ATTORNEYS AT LAW



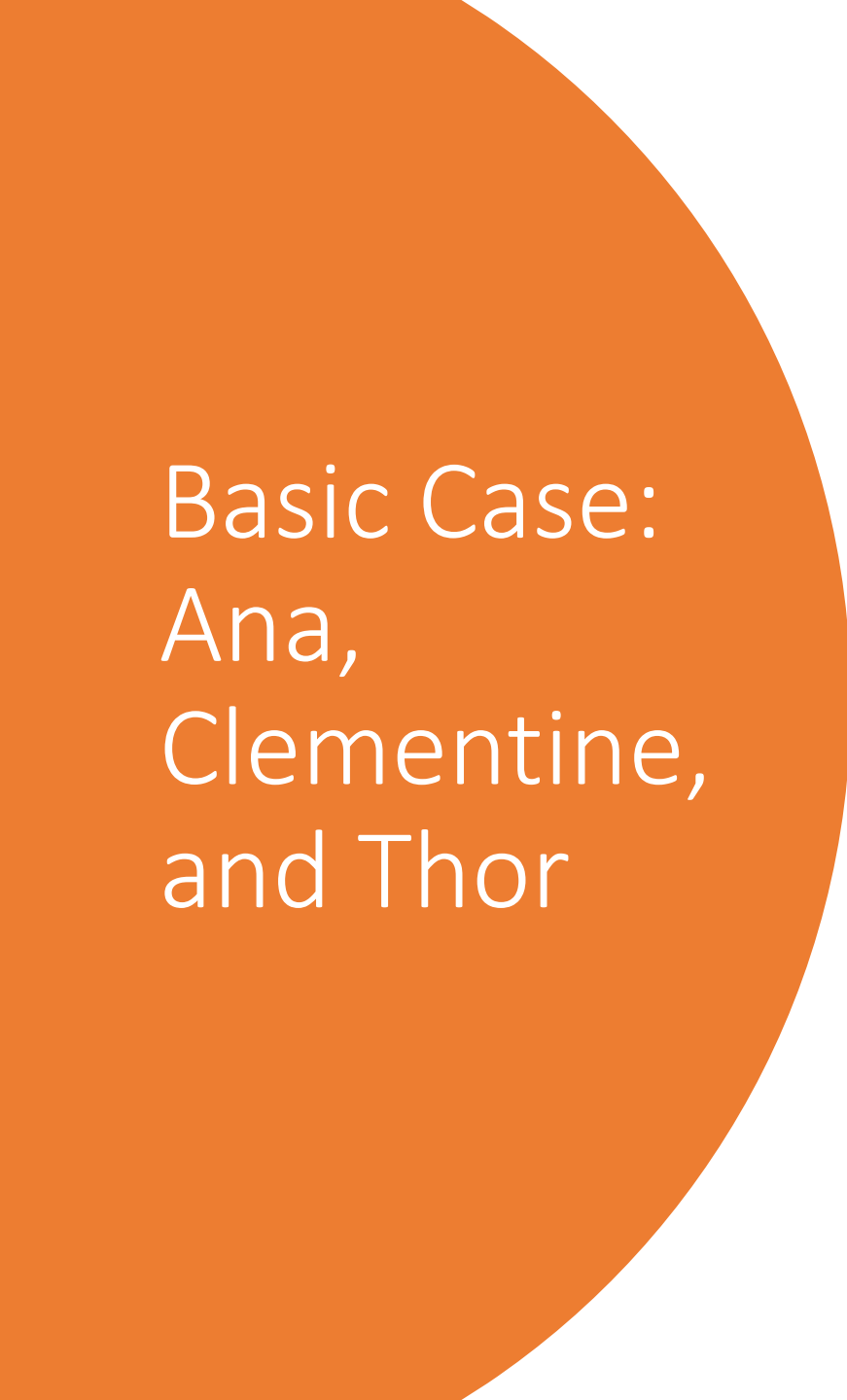
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Basic Case: Ana, Clementine, and Thor

Attorney Ana Alvarez has been a solo practitioner attorney for 25 years and has been offering basic estate planning services for 10. Over time she has seen the value of appointing a neutral fiduciary as successor trustee for her estate planning clients. Her network includes a number of professional fiduciaries with a range of backgrounds, personalities, and experience.

She has recently been retained by a new client named Clementine Coburn.

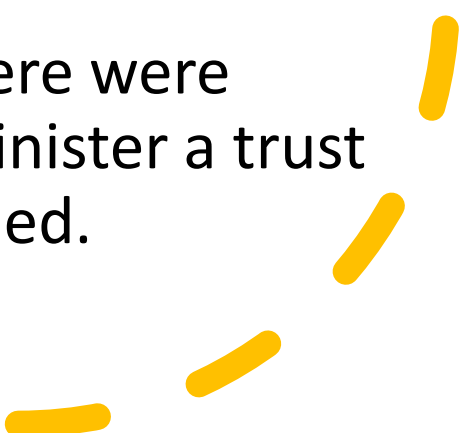
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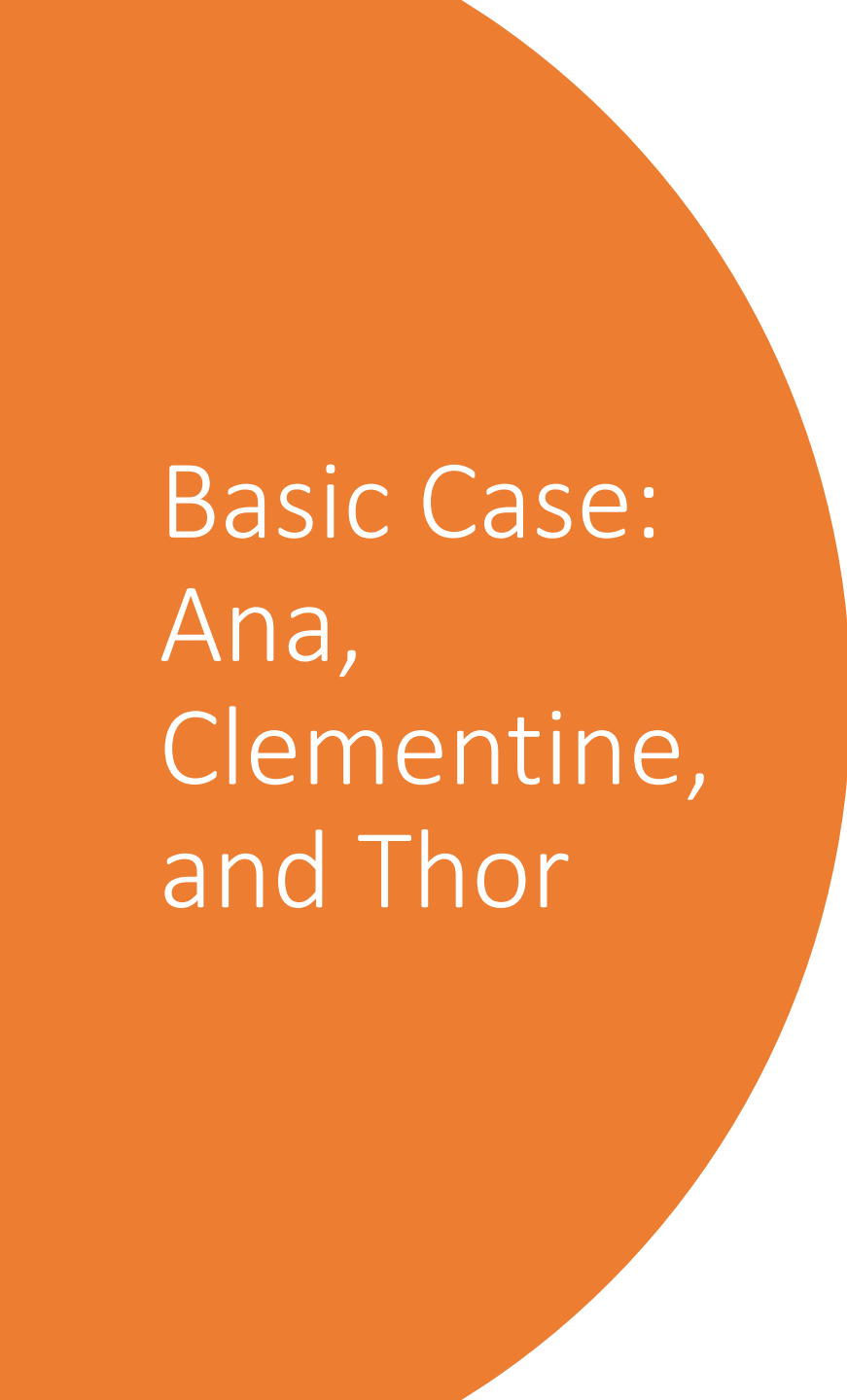
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Basic Case: Ana, Clementine, and Thor

Ana's client, Clementine Coburn, has never worked with an attorney before but feels she should create a will (or maybe a trust?). She has recently married her second husband who has four adult children from a prior marriage, and she has her own adult child from whom she is estranged. She is not sure who should inherit her assets, which are fairly modest: a small investment account, a $\frac{1}{4}$ share in a condo that she uses as a rental, and her 401k from her work.

Clementine's tax guy told her that there were professional trustees who could administer a trust for pay after her death. She is intrigued.

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A large orange circle is positioned on the left side of the slide, partially cut off by the edge. It contains the text 'Basic Case: Ana, Clementine, and Thor' in white.

Basic Case: Ana, Clementine, and Thor

Trustee Thor Tankov has just started his professional trustee practice after 8 years as a bookkeeper for a local non-profit. He enjoys the work because he likes meeting new people “bringing order to chaos,” especially in the difficult days after the death of a family member. He is in a professional networking group with Ana.

Ana would like to refer Clementine to Thor as a potential successor trustee.

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Presentation Outline

1. Survey of experiences with referrals from estate planning attorneys and other advisors
2. Legal issues surrounding the initial consultation period
3. Comparison between the role of an attorney and the role of potential successor trustee
4. What NOT to do versus what TO do
5. Sample forms





War Stories from Professional Fiduciaries



Survey via QR Code

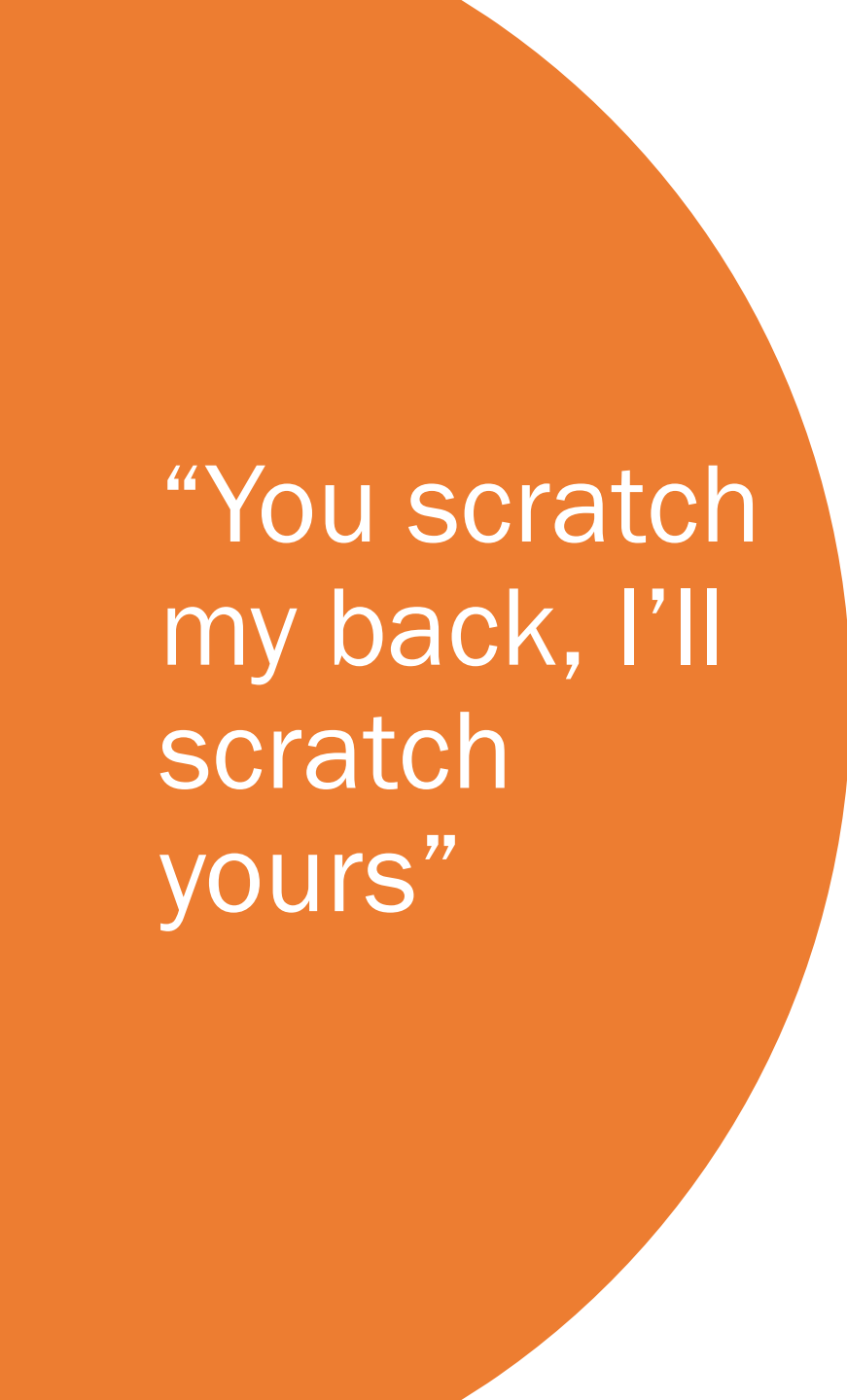


Legal Issues Surrounding Initial Consultations

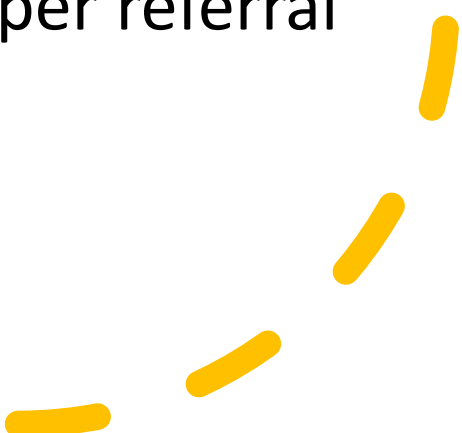
“First of all,
I’m not
giving you
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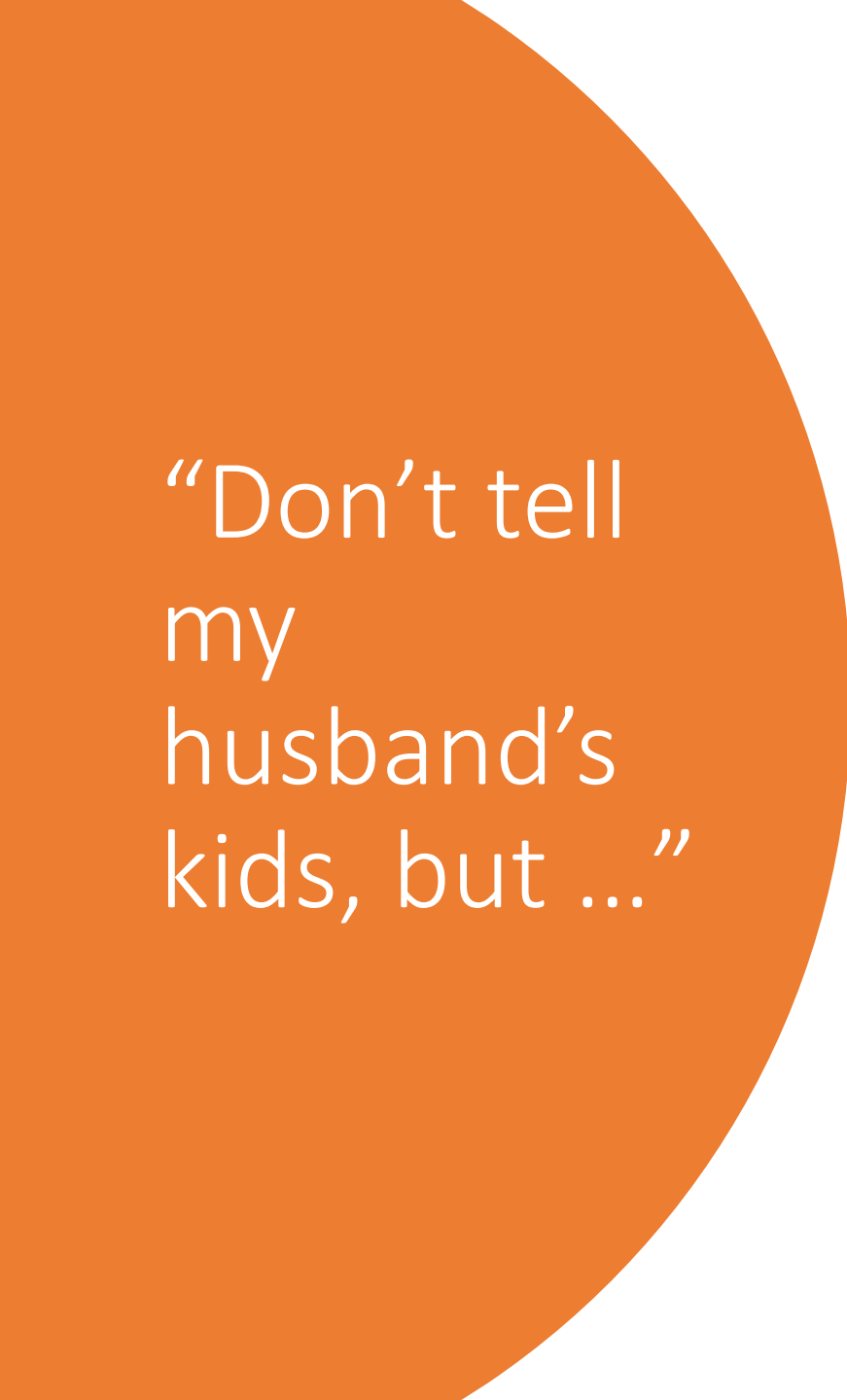
- What is “unauthorized practice of law”?
 - Complex and controversial
 - Varies state by state
 - California Business and Professions Code section 6125 and 6126
 - ABA’s Model Rule of Professional Conduct
 - Rule 5.3 (Responsibilities Regarding Nonlawyer Assistance)
 - Model Code of Professional Responsibility Ethical Consideration 3-5
- Considerations
 - Specific versus general information
 - Preparation of legal instruments versus clerical work
 - Designing versus reporting




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“You scratch
my back, I’ll
scratch
yours”

- Ethical restraints on referral arrangements
 - ABA Model Rule 5.4 (Professional Independence of a Lawyer)
 - ABA Model Rule 7.2 (Communication Concerning a Lawyer’s Services)
 - ABA Model Rule 1.5 (Fees)
 - ABA Model Rule 1.7 (Conflicts of Interest)
 - Best practices for avoiding improper referral arrangements
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“Don't tell
my
husband's
kids, but ...”

- Attorney-Client Privilege
 - ABA Model Rule 1.6
 - ABA Formal Opinion 98-411
 - California Evidence Code section 954
 - California Evidence Code section 956
 - Trust Administration Confidentiality for Fiduciaries
 - California Probate Code section 16060
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Attorney Versus Successor Trustee

DRAFTING ATTORNEY

- Duties
- Liabilities
- Confidentiality
- Payment
- Experience
- Ongoing relationship

SUCCESSOR TRUSTEE

- Duties
- Liabilities
- Confidentiality
- Payment
- Experience
- Ongoing relationship

Inefficient versus Efficient Referrals

EFFICIENT


- Client is fully advised of the role of a professional trustee and enters the consultation prepared to ask questions directly relevant to that trustee's role in light of their planning goals
- Client names the trustee and updates the trustee with documents as relevant changes are made

INEFFICIENT

- No documents
- Trustee consultation is an extended estate planning consultation
- Trustee becomes source for legal advice
- Trustee doesn't get paid
- Attorney loses relationship
- Trustee is appointed decades later, if at all

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Sample Forms

- Checklist of questions to ask a potential successor trustee
 - Fiduciary introduction sheet
 - Form description of the role of a successor trustee
 - Sample rate sheet
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Questions?