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FIDUCIARY LITIGATION EXPLAINED

Johnston Allison Hord has expertise in the area of **fiduciary litigation**. Fiduciary litigation encompasses a wide range of legal proceedings, including will contests (also known as will caveats); claims by a surviving spouse for an elective share; trust modifications, reformations, or terminations; removals of a personal representative or trustee from the fiduciary role; guardianship proceedings; and breach of fiduciary-duties claims based on, for example, abuse of authority granted to an agent under a power of attorney. Put simply, fiduciary litigation includes virtually any civil proceeding pertaining to **estates**, **trusts**, principal-agent relationships, or guardianships.

Recently, we have seen an increase in clients seeking redress for purported abuse of financial authority granted to an agent under a power of attorney. When the client comes to us, he or she usually has asked the agent for information, but the agent has rebuffed or otherwise ignored the request, and the client wants to know what rights he or she has.

Fortunately, our General Assembly adopted the North Carolina Uniform Power of Attorney Act (the "Act") in 2017, and with it came sweeping changes to existing legislation. Among other things, the Act now affords numerous remedies against an agent who is suspected to have engaged in misconduct. These remedies include the right of an interested party to petition the clerk of superior court to order the agent to provide an accounting of all transactions that the agent has made on the principal's behalf.

If the accounting shows that the agent has engaged in misconduct while serving as the principal's fiduciary, the agent necessarily has breached the agent's fiduciary duties. To redress such a breach, the court is empowered, among other things, to enjoin the agent from continuing to commit such breaches; to compel the agent to make the principal whole (whether through repayment of money or return of property); to deny the agent's request for compensation or reimbursement; and to void the act of the agent.

The Trusts and Estates Group of Johnston Allison Hord can assist with these issues in both North Carolina and South Carolina, and we invite you to contact us if you have questions or concerns.

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