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March 18, 2012

Lessons for agents and executors

An agent under a Power of Attorney document has a fiduciary responsibility to the principal, that is, the person who is giving authority to the agent. The agent is charged with working for the benefit of the principal, using reasonable caution and prudence, and to keep full and accurate records. The assets of the principal are not to be co-mingled with the assets of the agent. Similarly, when a personal representative is appointed in an estate, the representative is sworn to follow the provisions of the Will, and administer the estate with fiscal responsibility to all heirs and according to the law. Tim Takacs, in his [Elder Law FAX blog](#) reports on a case in Tennessee which he calls "Lessons in how not to be an attorney-in-fact and personal representative of an estate."

Viola and Clyde Copas owned a farm in Washington County, Tennessee. They had three children, Randall, Norman and Phyllis. In 1991, Viola executed a Will giving the farm to Randall, and splitting the monetary assets between Norman and Phyllis. In 1997, Randall was named by his parents as attorney-in-fact or agent under their Powers of Attorney (POA). Clyde died in 1998, and Randall and his wife lived on the farm; Randall had no outside job. Apparently Randall began taking money from his mother over the next several years, including selling a parcel of farmland for \$320,000. He took some of the initial payment for himself. He transferred his mother's money to a joint account with right of survivorship with himself, and continued to help himself to her money on various occasions.

When Viola died in 2005, she had \$302,000 in cash in various accounts. When Randall was named personal representative of the estate, he did not open an estate account, but used the farm account, adding his wife as a signer. In 2008, Randall filed an accounting of the estate with the Washington County Probate Court. The account was objected to for insufficient documentation. He was ordered to file a second accounting, which he did in February 2009; this again was met with objections by the Court. In the meantime, Norman and Phyllis discovered that Randall could not account for most of the \$2 million to which he had had access when he was his mother's agent under her Power of Attorney.

By the time there was a hearing on the third accounting (which was also met with objections) Randall admitted that starting in 1998 he took at least \$709,420.74 from his mother and her estate. However, his justification was that he and he alone took care of his parents, especially his mother, and that he deserved the money. He claimed that his siblings never came around, and he kept his mother out of a nursing home (note: that may have been less altruistic than the statement seems). Never mind that he had a fiduciary duty to protect his mother's assets, and to administer the estate according to her Will. At the end of the proof, the trial judge said, "[T] is the worst estate and power of attorney case I've seen come through my court. I've been on the bench now about twenty-one years, and I have seen some real messes so far as operating an estate account, but I have never seen any that are in this bad a shape...The record is clear that Mr. Copas wrote checks to cash and then cashed them in and put the money in his pocket...The Court finds he's a thief." (*In re Estate of Viola B. Copas*, January 20, 2012).

Most agents and personal representatives take their responsibilities seriously, and messy estate accounts are often just the result of poor accounting skills. A good lesson to be learned from this case is that agents and personal representatives must keep the principal's wishes in mind before inserting their own objectives, however they may seem justified.