

## Trusts & Estates Litigation

Foster Garvey has one of the most experienced Trusts & Estates Litigation teams in the Pacific Northwest. Attorneys in our group, who are licensed to practice law in Washington, Oregon and California, have successfully litigated landmark will contests and trust cases, including one case that resulted in the Washington Supreme Court's 9-0 decision affirming invalidation of the decedent's marriage and will on grounds of fraud of the grossest kind and undue influence, respectively. Others in the group possess the advanced degrees in tax law required to analyze the complex financial issues these disputes usually involve. All of the attorneys, paralegals and assistants in our group understand that trusts and estates litigation often involves very sensitive and difficult family dynamics, which we handle with great care and confidentiality. In short, the Foster Garvey Trusts & Estates Litigation team is uniquely positioned to provide you with excellent representation in any will contest, trust claim or contested guardianship that may arise.

### Representative Work

Below is a summary of representative cases from the many [will contests](#), [trust disputes](#) and [contested guardianships](#) handled by our team.

### Will Contests

We represent beneficiaries in their pursuit of their rights, including individuals challenging the validity of a will and charitable organizations disputing the interpretation of a will. We work with fiduciaries to prevent disputes and to defend the will, or other testamentary instruments, from challenge when those disputes arise. Will contests often require evaluation of historic financial documents, an understanding of complex medical reports, and retention of and clear communication with medical professionals as well as forensic and document experts. Foster Garvey Trusts & Estates Litigation attorneys are experienced with issues related to incapacity and undue influence and are experts at analyzing the information needed to prove or defend claims in this complicated area of the law. Our team has substantial trial experience and has successfully handled appeals before Washington's Court of Appeals and Supreme Court. We have

### Related Professionals

Andrew J. Goodman  
Alan A. Heller  
Maurice W. Heller  
Maggie S. Sholian  
David R. West

### Related Services

Charitable & Tax-Exempt Organizations  
Trusts, Estates & Charitable Organizations

also litigated to favorable settlement before trial a whole host of will contests. Key representative cases are featured below.

- ***In re Estate of Lint*, 135 Wn 2d. 518, 957 P.2d 755 (1998).** The decedent was a woman who left most of her substantial wealth to a significantly younger man who claimed to have "married" her shortly before her death. On behalf of her siblings, we prevailed in a nine-week trial. The trial judge invalidated both the marriage and the will on grounds of undue influence and fraud of the grossest kind, and the Washington State Supreme Court unanimously affirmed the decision.
- ***In re Estate of Egtvedt*.** We represented several outstanding local and national charities in their suit to invalidate a new will and trust executed by a 96-year-old widow. The new will would have disinherited the charities of \$25 million under her previous long-standing estate plans by favoring a retired minister instead. The charities argued that the new documents were a product not only of a lack of capacity on the part of the testator, but also of a persistent and clever campaign of undue influence on the part of the minister. The matter was hard-fought and just before the trial we succeeded in negotiating a settlement with which the charities were very pleased.
- ***In re Estate of Rabinowitz*, 114 Cal. App. 4th 635, 7 Cal. Rptr. 3d 722 (2003).** We successfully defended the creation of a charitable trust by the decedent's brother under a durable power of attorney. The trust and power were challenged by a woman who had married the decedent after he was diagnosed with terminal brain cancer. We prevailed at trial and on appeal and successfully defended an attempt to obtain review by the California Supreme Court.
- ***In re Estate of Rhodehamel*, 138 Wn. App. 1062, 2007 WL 1589547 (2007).** We successfully defended revisions to the decedent's estate plan, including the creation of charitable annuity and remainder trusts, against a challenge by a disgruntled daughter. We prevailed on summary judgment and on appeal from that judgment, obtained a fee award against the challenger to reimburse the estate's legal fees. We then defeated attempts by the daughter to circumvent these rulings through federal court lawsuits in two different states and ultimately recovered a six-figure award from the challenger.
- ***In re Estate of Calvert* and *In re Estate of White*.** Both of these cases involved a sub-species of will contest involving insane delusion, in which the testator does not necessarily lack testamentary capacity, nor is being unduly influenced, but is suffering from persistent and irrational delusions as to a natural object of her bounty that materially affects that potential devisee's share. Our litigation of these cases, while difficult, led to favorable settlements on behalf of our clients.

#### ***Trust Disputes***

The Foster Garvey team has helped numerous clients recover substantial assets when trustees breached their fiduciary obligations. In addition to tax and other technical issues, these cases

often trigger strong emotional responses. Mediation and arbitration are often the most effective tools for addressing these responses and resolving the underlying dispute. Mediation and arbitration can also be far less expensive than litigation, which is precisely why Washington's Trust and Estate Dispute Resolution Act, which was drafted by a committee headed by a firm legacy founder Kenneth Schubert, Jr., grants parties the right to mediate or arbitrate their trust disputes. Below are representative trust disputes handled by our team.

- ***Estate of Evelyn Egtvedt v. Wells Fargo Bank.*** We sued for damages flowing from the Bank's administration of the trust involved in the Egtvedt will contest described above. The trust dispute was settled quite favorably for the Estate.
- ***Estate of Evelyn Egtvedt v. Schwabe Williamson.*** In a related matter, we sought damages for the actions of the widow's lawyer in connection with her changes in estate plans from those favoring the charities to those favoring the retired minister. Again, that matter settled shortly before the trial to the charities' significant benefit.
- ***Benton v. Wells Fargo, Union Bank of California, et al.*** We brought suit on behalf of the primary beneficiaries of two trusts against the professional trust departments at two of the largest banks in the world. The trusts had been established by their grandparents. We proved that the trust officer at one of the banks failed to comply with a single provision in the trust. We also showed that the other bank failed to resign as trustee (which in turn, caused that bank to sue its own lawyers for failing to ensure the bank resigned). After a 18-hour mediation before trial, we succeeded in negotiating a confidential settlement about which we can only state that "the parties have resolved their differences with respect to this matter to their mutual satisfaction."
- ***In Re Estate of the James D. Garred Revocable Living Trust.*** We brought suit on behalf of a successor trustee to remove the current trustee and fund trusts which were to have been funded upon the decedent's death – three years prior. After successfully removing the initial trustee, we addressed a variety of issues arising from her negligence, including federal and state tax issues, marshalling assets, environmental compliance, recovery and sale of multiple business enterprises, and ultimately funding of the trusts. Suits for damages were filed against both the former trustee and her counsel, both of which settled.

#### **Contested Guardianships/Vulnerable Adult Protection Actions**

Vulnerable Adult Protection Actions (VAPA) and contested guardianships frequently require emergency court procedures to protect the alleged incapacitated person's resources, stop abuse or to ensure he or she receives necessary care. Our team responds very quickly to protect our clients' interests. We are experienced with obtaining and responding to petitions to obtain temporary restraining orders, as well as the evidentiary hearings or trials that often follow. Our familiarity with the court system and with the confluence of conflicted family members, social services organizations, court-appointed guardians ad litem, physicians,

psychologists and caregivers allows us to quickly and efficiently achieve the appropriate result.

Guardianship disputes and vulnerable adult protection actions are often the precursor to other trust and estate disputes. Handled appropriately, however, these pre-death disputes can short-circuit future litigation over the ultimate distribution of an alleged incapacitated person's estate. The Foster Garvey team has prevented numerous trust and estate lawsuits by disposing of the dispute in a pre-death proceeding. Because of the highly sensitive nature of guardianships and vulnerable adult protection actions, and because courts often seal those matters from public view, we believe it is best not to summarize the many matters we have handled. We will gladly give you a general idea of our experience in that area when we discuss the representation you might need.