

TABLE 6

TRUST CONFLICT OF INTEREST

Sam was a very successful neurosurgeon in Manchester for approximately 40 years. Earlier on in his career he was married to Linda and together they had three children; Alice, Bob, and Charles. Sam was so involved in his work during the earlier part of his career that he had little time for his wife and eventually they divorced 20 years ago. John, a New Hampshire attorney, represented Sam in his divorce and thereafter Sam would trust John with other matters such as helping out his adult son Charles when he was arrested for DWI in that John concentrated his law practice on family law, personal injury, and criminal defense. John had done an excellent job both in the divorce and the defense of Charles' DWI with both cases being fully concluded.

At age 70 Sam fell in love with Sally, a 40-year old nurse of the surgical unit of Elliot Hospital. After a two-year whirl wind romance Sam and Sally married. Sam trusted Sally completely and felt there was no need for a prenuptial agreement. When Sam met with his estate-planning attorney, who was not John, Sam decided it was appropriate to have all his assets, including his marital residence and his now accumulated approximate \$3,000,000 in investment funds, put in a revocable trust. The trust agreement provided Sally with a life-estate in the marital residence and the investment funds would be used, if necessary, for her reasonable care and support through her lifetime with remainder upon Sally's death, along with any proceeds from the sale of the marital residence going to his children from his first marriage; Alice, Bob, and Charles or if they did not survive Sally then to their children by representation (per stirpes). Sam hoped that this remainder could assist his adult children either pay for

college tuition or ease their own retirement planning. Sam was the trustee of his revocable trust while he was alive and upon his death the trust became irrevocable with his wife Sally and his attorney John as co-trustees. John had not been a trustee before, but it sounded interesting to him and a good way to make some extra money. Upon confirming with Sam that he could bill for his trustee time, he agreed to be a co-trustee.

The trust was then funded with a deed of the marital residence into the trust and the investment accounts transferred into the trust. When Sam died, John and Sally met. Sally informed John that she did not know much about finances. They agreed that John could make the investment choices as long as Sally had access to the funds. John did not have financial planner experience before, however he was unconcerned as the trust stated the trustees had discretion to make investments so he felt protected. He also thought that his handling of the investments would give him an opportunity to make money. Since Sam entrusted John with that task and it was Sam's money, John felt that would be fine. Soon after Sam's death, Sally began making large withdrawals from the investment funds. Sam's children, upon learning of this, tried to get John to do something, yet John pointed out a provision in the trust that the trustees have full discretion as to how much money is to go to the reasonable care and support of Sally so therefore the children as the remainder beneficiaries do not have any say in the matter. The children also questioned John's investment decisions. John was paying himself trustee fees based on a percentage of the value of the investments. John became indignant and threatened the children with invocation of the in terrorem clause. The children ultimately hired a lawyer and the matter is before the Circuit Court, Probate Division.