

Ohio Court Confirms the Fiduciary Duty of a Third Party assisting an Attorney-in-Fact is only to the Principal, not the Attorney-in-Fact Individually

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An Ohio court recently confirmed the scope of a duty in professional relationships with agents under a durable power of attorney.

A decision last December of the Court of Appeals of Ohio confirms that where a third-party professional assists an agent acting under a durable power of attorney, the professional's duty of care runs not to the agent in his or her individual capacity, but to the agent only in the fiduciary capacity, that is, through the agent to the principal. *Hull v. Polous*, 2023 Ohio App. LEXIS 4320; 2023 WL 8613552.

Prior to his death, the principal appointed Agent as his agent under a durable power of attorney, as well as Executor of his estate. Agent claims he relied on the advice of certain financial advisors while performing his duties as an agent. Acts that Agent took at the suggestion of the financial advisors caused Agent to be removed as Executor and thereby to incur liability in his individual capacity. Agent, in his individual capacity, sued the financial advisors for professional negligence for the advice given to him in his capacity as an agent.

The trial court dismissed the suit on the grounds that the financial advisors owed no duty to Agent individually and therefore Agent lacked standing to bring the suit. Agent appealed, arguing the financial advisors did owe a duty of care to him, individually, and not just to him in his capacity as agent.

The appellate court disagreed, affirming the trial court's decision that the relationship creating a duty of care was between the financial advisors and Agent only in his capacity as an agent, not in his individual capacity. Insofar as Agent acted only on behalf of the principal, the advisors' duty ran ultimately only to the principal (and later to his estate): "The Advisors' only legal duty was owed to [the decedent] and [the decedent's] Estate. They owed nothing to [Agent] in his individual capacity. And that lack of duty is fatal to [Agent's] complaint."