

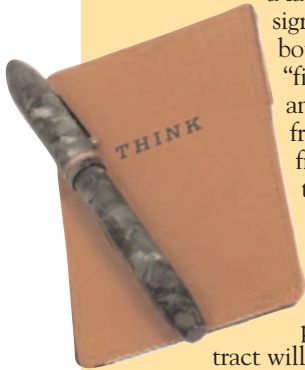
▲ **More Contract Myths**

Myth: You can have a lawyer fix problems with the contract after the contract is signed. **Fact:** Have a lawyer review the contract before it is signed. Once the contract is signed by both parties, it is binding and cannot be “fixed”, unless there is a provision for amendment. A party can obtain relief from a contract that was induced by a fraudulent or material misrepresentation upon which the party justifiably relied. See *Carpenter v. Vreeman*, 409 N.W.2d 258, 261 (Minn. App. 1987).

Myth: If you know the other party well, you can assume the contract will be followed. **Fact:** You must assume that the contract will be breached and draft it with that in mind. Most people have good intentions when they enter into a contract. As a litigator, I have seen many contracts breached when parties never anticipated that there would be a breach.

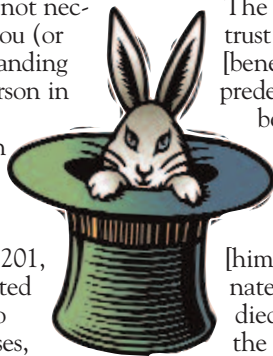
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▼ **Now You See It, Now You Don't**

Simply being named trust beneficiary does not necessarily mean that you (or your estate) have standing as an “interested person in the trust” to petition the court for an order regarding a matter relating to the trust. Under Minn. Stat. §524.1-201, subd. 24 an “interested person” is defined to include “heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent.” In a recent (unpublished) Minnesota Court of Appeals case a trust beneficiary did not have standing to petition the probate court even though he



was a named trust beneficiary of a grantor’s revocable living trust and survived the grantor.

The reason was the trust provided: “[i]f [beneficiary] should predecease me or die before complete distribution of the trust share, the trust share set aside for [him] shall terminate.” The grantor died in 2001 and the trust beneficiary died in 2007. The petition was filed in 2008 before any trust proceeds had been distributed. Therefore, neither the trust beneficiary (nor his estate) had a property interest in the trust and no standing to petition the court. *In re the matter of: The Colene P. McDonough Living Trust*,

A08-2176 (Minn. App. 2009)(unpublished).

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▲ **Partial Appeals**

Appellate courts generally do not hear appeals until a case is concluded before a trial court or other adjudicatory body. Some exceptions allow interlocutory appeals before final judgment, such as immunity defenses, claims under the Minnesota SLAPP law (Minn. Stat. §554.01, et seq.), and others. But the general prohibition against appeals before lower tribunal proceedings are final is a fairly firm one that allows the adjudicative bodies, litigants, and lawyers to economize by avoiding piecemeal review.

That point was driven home by the 8th Circuit Court of Appeals in dismissing two cases that had been submitted by trial courts before the lawsuits were fully concluded. In both cases, partial appeals were brought under Rule 54(b) of the Federal Rules of Civil Procedure, which permits trial courts to enter final judgment on particular issues, even before a case is fully resolved, coupled with an express declaration that there is “no just reason for delay.” A parallel provision exists under Rule 54 of the Minnesota Rules of Civil Procedure. The 8th Circuit tossed out two Rule 54(b) appeals in *Huggins v. FedEx Ground Package System, Inc.*, 566 F.3d 771 (8th Cir. 2009) and *Taco John’s of Huron, Inc. v. Bix Produce Company, Inc.*, LLC, 569 F.3d 401 (8th Cir. 2009) on grounds that they were inappropriately certified under that provision.

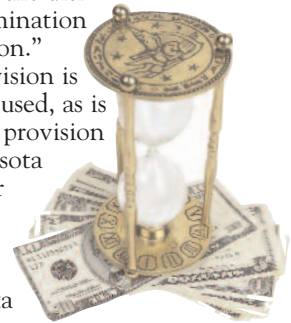
In addition to Rule 54,

under both federal and state procedural codes, there are other ways that litigants may seek to bring partial appeals during the course of litigation. Under federal law, 28 U.S.C. §1292, appellate courts may hear cases on an interlocutory basis if they involve a “controlling question” of law on which there is “substantial ground for difference of opinion” and an interlocutory appeal could “advance the ultimate termination of litigation.” This provision is sparingly used, as is a parallel provision in Minnesota law under Rule 103.03(i) of the Minnesota Rules of Civil Appellate Procedure, which permits interlocutory appeals of issues that are both “important” and “doubtful” and likely to be dispositive of the litigation.

Appellate advocates seeking interlocutory appeal should bring their mid-course request for review under these provisions. A key point to emphasize is how interlocutory appeal may advance the ultimate resolution of the case and save time, expense, and other resources for the parties and the courts. In resisting interlocutory appeals, a party should emphasize the undesirability of piecemeal appellate litigation and the additional resources that often are expended to hear partial appeals, rather than wait until a case is concluded and all of the issues can be appealed in an orderly manner.

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