

From: [REDACTED]
To: [Walsh, Kathryn E.](#); [Berg, Karen E.](#); [Carson, Timothy](#); [Sheinberg, Samuel I.](#); [Six, Anne](#); [Musick, Vesselina](#)
Subject: FW: 801.1(b) - Control over a trust and the contractual power "presently" to designate... trustees
Date: Tuesday, January 21, 2020 11:29:12 AM
Attachments: [image001.gif](#)

From: Whitehead, Nora
Sent: Tuesday, January 21, 2020 11:29:10 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: 801.1(b) - Control over a trust and the contractual power "presently" to designate... trustees

Agree.

[REDACTED]

From: [REDACTED]
Sent: Saturday, January 18, 2020 3:27:25 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: 801.1(b) - Control over a trust and the contractual power "presently" to designate... trustees

Hi,

My question is in regards to the definition of Control with respect to a Trust – as found in Rule 801.1(b)(2). Specifically, I am looking for some more guidance on the relevance of the word “presently” in the definition of Control and its applicability to the fact pattern below. The rule provides that Control includes having the contractual power **presently** to designate 50 percent or more of the trustees of a trust that is irrevocable and/or in which the settlor does not retain a reversionary interest.

Facts: Assume that there is a trust that is irrevocable and the settlor does not retain a reversionary interest. The question is whether the trust is “controlled” by the settlor. The settlor has the contractual power to designate the successor trustee **upon** the current trustee’s death or resignation. For clarity, the settlor’s ability to name the successor trustee is conditioned and may not be exercised until the current trustee’s death or resignation. The settlor does not have the power to remove the current trustee. It would seem as if the settlor’s contractual power is not **presently** to designate 50% or more of the trustees. Rather the settlor’s contractual power is to designate 50% or more of the trustees only when a future condition is met.

You guidance is appreciated. Thank you.

[Redacted]

[Redacted]



[Redacted]