



HELPING HAND

A Monthly Update from the
Special Needs Planning Practice Group

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How to Administer a Special Needs Trust Saturday, October 18, 2008

JUNE 2008

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The Special Needs Planning Practice Group

A Commitment that Lasts a Lifetime

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A MESSAGE FROM THE PRACTICE GROUP CHAIR

JUNE 2008

By Frederick M. Misilo, Jr., Esq.



The featured article in this month's edition is from Attorney Katherine Bohan Finnerty on the use of trusts in the context of personal injury settlements and awards.

Many situations give rise to an individual becoming unable, either partially or fully, to engage in work or other activities of daily living due to the act or omission of someone. When that occurs a personal injury claim is brought to compensate the injured party for their loss.

A supplemental needs trust meeting the requirements of 42 U.S.C. 1396p(d)(4)(a) as explained by Attorney Finnerty can provide the advantages of receiving government benefits along with the ability to have trust assets supplement those benefits. It is surprisingly common for our practice group to meet with an individual who received a substantial recovery from a personal injury action whose personal injury lawyer did not consider the use of a special needs trust.

Over the past month, I've been asked to provide consultation to the Massachusetts Probate Courts on the training of guardian ad litem in cases involving the Client Trust Fund Project. This project was established approximately thirty years ago to obtain eligibility for residents in the Massachusetts DMR facilities for Supplemental Security Income and Medicaid. These federal dollars have proven to be an important part of the budget for the DMR and its providers. The Client Trust Fund

Project established special needs trusts for the benefit of individuals who were residing in state facilities through the Massachusetts Probate Court. The Chief Justice of the Probate Court has initiated an aggressive training and case management effort to ensure that the beneficiaries receive benefits from these trusts and that the trustees properly perform their duties on behalf of the beneficiaries. Chief Justice Carey and John Cross, a staff attorney in her office, are to be commended for taking this initiative on behalf of individuals with intellectual disabilities.

Our annual training for trustees of special needs trusts has been scheduled for Saturday, October 18, 2008. This training has become a very popular seminar for our clients and for those persons they have identified as successor trustees of their special needs trusts. This year we will be covering the basics of fiduciary responsibilities, tax considerations in special needs trust administration, co-trustee options, recent developments in government benefits and common mistakes many non-professional trustees make. In addition to the presentations, those attending the seminar will receive helpful written background material. I encourage you to register early by contacting Sara Murphy at smurphy@ftwlaw.com or (508) 459-8021.

Have a great summer!!

If you would like to communicate with me on any special needs planning issue, please feel free to contact me at (508) 459-8059 or fmisilo@ftwlaw.com. ●

MEET THE SPECIAL NEEDS PLANNING PRACTICE GROUP!



The Special Needs Planning Practice Group

Back Row L-R: Theresa M. Varnet, Esq., Richard C. Barry, Esq., Frederick M. Misilo, Jr., Esq., David C. Guarino, Esq., Lucille B. Brennan, Esq.

Middle Row L-R: Carol B. Lawrence, Director of Trust Services, Wilma E. Vallejos, Administrative Assistant

Front Row L-R: Lori A. Gerber, Paralegal/Case Manager, Katherine Bohan Finnerty, Esq., Emily C. Andrus, Esq., Jeanne Tolomeo, Paralegal/Case Manager

Not Pictured: Marisa W. Higgins, Esq., Ralph F. Sbrogna, Esq., Sandra Burgos, Paralegal

SAVE THE DATE!

Annual Special Needs Trust Training October 18

Mark your calendar now for the Special Needs Planning Practice Group's annual Special Needs Trust Training on Saturday, October 18 at the Courtyard Marriott in Marlboro, MA.

Presenters:

- Frederick Misilo, Jr., Esq.
- Theresa M. Varnet, Esq.
- Carol Lawrence, Director of Trust Services
- Andrea Stolberg, Tax Manager

Visit www.ftwlaw.com for the most up-to-date information or for questions contact Sara at smurphy@ftwlaw.com or (508) 459-8021.

PERSONAL INJURY SETTLEMENTS: Planning Considerations For Persons With Disabilities



By Katherine Bohan Finnerty, Esq.



Personal injury claims for malpractice and work place injuries often result in monetary awards or settlements that jeopardize an individual's eligibility for government benefits. Whether the award or settlement is paid to the individual in the form of a lump sum, a structured settlement, or a combination of the two, the proceeds are expected to provide for the individual's care over his or her lifetime. Despite this intention, many settlements and awards are implemented without considering the long-term needs of the individual or the effect of the settlement or award on the individual's eligibility for public benefits. Often, the settlement or award alone fails to meet all of the individual's needs, the funds are rapidly dissipated, and the individual fails to qualify for public benefits because his or her assets are over the program limit. Unfortunately, by the time family members realize the inadequacy of the settlement and attempt to restructure it, precious time and resources have been wasted.

Achieving access to public benefits must be contemplated during any settlement negotiation or trial. The objective of establishing public benefit eligibility and the

preservation of substantial assets can be met through the use of a certain type of supplemental needs trust, often referred to as an "OBRA Trust", a "d(4)(A) Trust", or an "Under 65 Trust". To meet the statutory requirements, the Trust must be established by the individual's parent, grandparent, guardian, or by the court prior to the individual turning 65 and it must be irrevocable. The individual

Often, the settlement or award alone fails to meet all of the individuals needs, the funds are rapidly dissipated, and the individual with a disability fails to qualify for public benefits because his or her assets are over the program limit.

with special needs must be the only beneficiary during his or her lifetime and the state must be reimbursed for the amount of Medicaid benefits paid on the individual's behalf. Any trust assets remaining in the trust after the payback is satisfied may be distributed pursuant to the individual's wishes as established in the trust.

Incorporating a supplemental needs trust into an individual with a disability's settlement or award

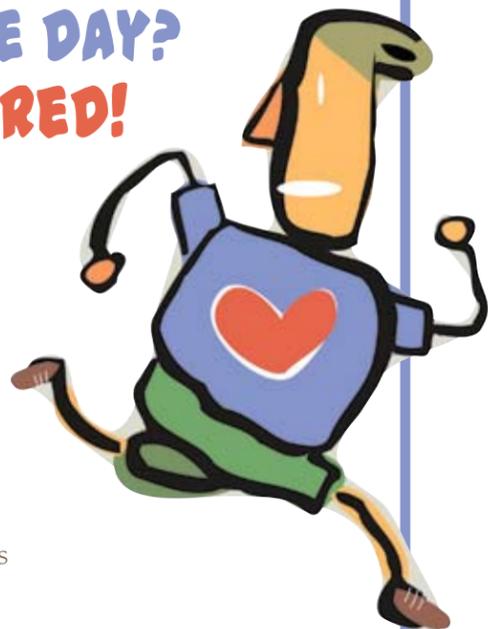
enables the client to remain on public benefits despite the receipt of substantial assets, or enables him or her to achieve eligibility without being subject to a penalty or look-back period for the transfer of assets. In addition, the amount of reimbursement that the trust must pay upon the individual's death is based on the care received by the individual at a discounted government rate, rather than what individuals pay for private care.

The use of a supplemental needs trust in the context of a personal injury award or settlement enables an individual with a disability access to the public benefits they are entitled too, while establishing a supplementary pool of money to provide for all the extras your family member deserves.

For feedback or questions, contact me at (508) 459-8057 or kbohan@ftwlaw.com.

FRED'S FRIENDS

7 MILES IN ONE DAY? HOORAY FOR FRED!



WHAT/WHEN: On Sunday, August 10, Attorney Fred Misilo will be running all seven miles of the 36th CIGNA Falmouth Road Race to benefit Children's Hospital in Boston and he needs your support!

HOW TO HELP: Log on to www.childrenshospital.org/falmouth and follow the "sponsor a runner" link to help Fred in his quest to become a super-duper fundraiser! \$5, \$10 or any other amount you are able to contribute will help make a difference!

WHO BENEFITS: As one of the largest pediatric medical centers in the United States, Children's Hospital offers a complete range of health care services for children from birth through 21 years of age. It is also home to the world's largest research enterprise based at a pediatric medical center.

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Send an email to smurphy@ftwlaw.com with the subject: SNP Newsletter and we'll add you to our list.

The FTW Special Needs Planning Practice Group provides legal counseling, advocacy and innovative solutions on behalf of individuals with differing abilities and their families. We strive to serve as a reliable trusted advisor committed to providing excellent service to our clients throughout their lifetimes. We recognize the importance of treating our clients with respect and dignity.