



FALL 2014

HELPING HAND

An Update from the Special Needs Practice Group

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EARLY INTERVENTION

- Special Needs Planning
- Medical Malpractice

SCHOOL AGE

- Special Education Advocacy
- Transition to Adult Services
- Special Needs Planning
- Guardianship and Alternatives

ADULT

- Special Needs Planning
- Adult Service Advocacy
- Special Needs Trust Admin.
- Guardianship and Alternatives

EXTENDED FAMILY

- Special Needs Planning
- Elder Law
- MassHealth Planning

PROBATE AND FAMILY COURT PRACTICE

- Estate Planning Petitions
- Adult Support Petitions
- Guardianship/Conservatorship

PRACTICE GROUP MESSAGE

By Frederick M. Misilo, Jr.



Well, it's that time of year again. Summer is over and the autumn season is upon us. And that can mean only one thing (beyond apple

picking, Halloween and Thanksgiving) – our annual seminar, which I like to refer to as “Trustee Boot Camp” but which is more professionally titled *“How to Administer a Special Needs Trust”* is being finalized. This five-hour seminar will be held on **Saturday, November 8, 2014 from 8:00 a.m. to 1:00 p.m.** at the Courtyard Marriott in Marlborough, MA. The seminar is also available via a Webinar format, so those who may find traveling to Marlborough, MA, inconvenient or impractical on a Saturday can attend in the convenience of their home or office. Topics covered will include important legal updates on both the federal and state levels, a review of the roles and responsibilities of trustees, critical tax issues confronting the trustee, investment duties and the Prudent Investor Rule, and accounting responsibilities. Also, Kerry Mahoney from Support Brokers of The Arc of Massachusetts, Inc., will present on the importance of person-centered planning, advocacy and coordination of activities in the context of a special needs trust administration. This seminar really is a must for present or future trustees. It is also important for those who need to better understand what the work of a trustee entails and how to select a trustee.

I am pleased to announce that Attorney Meredith Greene has joined our Special Needs Planning and Advocacy Team here at Fletcher Tilton PC. As an attorney and a mother to a child with special needs, Meredith brings both competence and passion to her work. She has a background in civil litigation, estate planning and special education. Meredith is a parent-mentor at Minuteman Early Intervention, trained as a parent advocate through the Federation of Children with Special Needs, and is a member of the National Academy of Elder Law Attorneys, the Council of Parent Attorney and Advocates, and the Special Needs Advocacy Network. Additionally Meredith is an active participant in the Williams Syndrome Association and Operation House Call through the Arc of Massachusetts, Inc.

If you are a member of an organization with an interest in sponsoring an educational seminar on special needs planning, transition planning, housing development, guardianship and alternatives to guardianship, or advocacy strategies in adult service settings, please email me at fmisilo@fletchertilton.com. **FT**

To contact me on these or any other related issues, my direct line is 508.459.8059 and my email address is fmisilo@fletchertilton.com.

IT MAY BE TIME TO UPDATE YOUR WILL AND/OR ESTATE PLAN

by Theresa M. Varnet, M.S.W., J.D.

Fall is a time when many folks think about tackling tasks they have thought about for months but put off over the summer. If it has been five years or longer since you wrote your last will or living trust, it may be time to refresh your estate plan so that it properly reflects your current needs. Many of us would like to think once you write a will, you can put a checkmark next to an unpleasant task and never have to look at it again. Unfortunately, life

is too unpredictable to enable you to write a will once and assume your wishes are “set in stone” and will be followed after your death. Your will needs to be reviewed and updated whenever there is a major change in your life or in the lives of your beneficiaries or people you have put in charge of your affairs. It is also important to review your beneficiary designations on life

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SIBLINGS' ROLE IN MANAGING A SPECIAL NEEDS TRUST

by Theresa M. Varnet, M.S.W., J.D.

A special needs trust is a way to ensure that an inheritance intended for the benefit of a family member with a disability is left in a manner to supplement government benefits rather than supplant them. When a person is challenged with a disability, s/he may qualify for several needs-based government benefits such as SSI, Medicaid, SNAP, subsidized housing, fuel assistance, etc. If a brother or sister is left a direct inheritance, this may result in a loss of benefits that are critical for his or her support and independence. If the family member with a disability is left an inheritance in a special needs trust, s/he gets the best of both worlds: continued eligibility for needs-based benefits and a private source of funds to enable him or her to live a higher quality of life than s/he could otherwise afford.

Drafting a special needs trust is the first step in placing a safety net under a child or other family member with special needs to ensure a quality life for him or her. While parents often rely on siblings, or a cousin or close family friend, to monitor how funds are spent and to ensure that the special needs family member reaps the greatest benefit from having a special needs trust, the knowledge of how to manage a special needs trust is not intuitive. Families often name siblings in a number of fiduciary positions such as guardian, trustee of a special needs trust, executor of their estate, trust protector, etc. It is important for families to have a talk about how they have provided for the family member with special needs with the adult child or other person they have designated as trustee, guardian, or trust protector so that this person is aware of what is expected of him or her. Knowledge is power and if siblings know what is expected of them, they will be in a better position to educate themselves about what they need to know and learn for their future role as trustee or trust protector of a special needs trust.

If you are the sibling of a brother or sister challenged with a disability and your parents haven't said anything to you about their lifelong plans for your brother or sister, you may want to initiate the conversation with them. You will want to know what their hopes and dreams are for your sibling and what your role is, if any, in implementing that lifelong plan. If there isn't a plan, this may be the perfect opportunity to work with your parents to form a plan that is realistic given the long waiting lists for services in most states.

Parents should let their adult children know if they have included a special needs trust in their wills or living trusts that provides for the sibling with a disability. Some parents have merely disinherited the child with a disability and left what is commonly referred to as a morally obligated gift to the other sibling or all siblings with a request that they use the extra inheritance for the benefit of the brother or sister with a disability. This may create a number of legal problems for the relied-upon sibling. If the special needs child has been disinherited, the parents have created a potential conflict of interest between the typical siblings and the special needs sibling. A probate court may appoint an independent guardian to look into contesting the will if the person named as guardian is also named to receive a larger share of the estate. The naming of a GAL may result in substantial cost to the estate and may delay distribution for many months or longer.

While no parent enjoys discussing what is going to happen to their special needs child when they die, this is a discussion that can make a huge difference in the success of their plans for their special needs child. Fletcher Tilton PC, offers an annual seminar titled *How to Administer a Special Needs Trust*. It is highly recommended that if a parent has named an individual to serve as trustee, this future trustee be encouraged to attend the annual training in person or via webinar. Attending this training may open the door to a discussion of how the parent wants the funds s/he has left for the special needs child to be used and may make sure that everyone is on the same page.

The next seminar on *How to Administer a Special Needs Trust* is scheduled for **Saturday, November 8, 2014, from 8:00 a.m. to 1 p.m.** This training can be used as an opportunity to educate your typical child(ren) of their role in assisting their brother or sister with living as high a quality a life as possible and can open the door to communication about a topic that is difficult for all of us. If distance or your schedule prevents you from attending in person, you may want to attend via webinar. Information about registering for this annual training is available on the website at FletcherTilton.com. **FT**



CONGRATULATIONS TO OUR OWN GEOFFREY MISILO, ESQ.

Congratulations go out to Geoffrey Misilo, Esq., for his work as Chair of The Arc's Government Affairs Committee in getting legislation passed recently that will provide for national criminal background checks for all persons working/volunteering in settings with individuals with intellectual disabilities. Below is the press release sent out by The Arc of Massachusetts:

National Criminal Background Check (H4125):

The National Criminal Background bill was originally filed by former Representative and current Boston Mayor Martin Walsh. This would require that anyone who has potential for unsupervised contact with a client of DDS submit their fingerprints to be checked against a national criminal database. The bill would extend to DDS and its vendor agencies.

Currently, DDS and vendor agencies are required to conduct statewide CORI checks, but no national check, which means that an applicant's criminal record outside of MA may not be identified. The bill now comports with federal regulations and is patterned after a similar law passed to protect students up to age 22. The disability bill would use the same statewide infrastructure and nationally accredited vendor that is in place for the education law. Thank you to MA Down Syndrome Congress for its coordinating efforts on this bill. An active committee worked on the bill and included members from various groups – including two from The Arc, Paul Willenbrock and Geoff Misilo, and Tara Zeltner from ADDP.

Continued from page 1 – It May Be Time to Update Your Will and/or Estate Plan

insurance, annuities, 401Ks, IRAs and other assets that pass outside of probate to be sure they meet your current needs.

Perhaps your needs haven't changed, but what about the person(s) you have put in charge of your estate? Has his or her life changed in a way that makes it difficult for him or her to serve in fiduciary positions such as serving as a guardian for your child, managing your financial or personal affairs as agent under powers of attorney, or serving as executor or trustee of a child's trust or a special needs trust? What about your named beneficiaries? Have their lives changed in a manner that may require a change in your estate plan? Perhaps their marriage is at risk of a divorce, or an illness has occurred or a grandchild was born with a special need – all require you to look at how you are providing for your loved ones in your will or living trust. If your needs and circumstances, or those of your beneficiaries, have changed, or if your named agents and fiduciaries have moved away, died or become ill, married someone you do not trust, or suffered any number of setbacks or personal hardships that bring into question their ability to manage your affairs following your death, it may be time to refresh your documents. Life is constantly changing, and your will and estate plan need to be reviewed every few years to be certain they reflect your current needs and wishes.

The need to review your estate plan every five years or so is even more important when you have provided for a special needs family member. Government benefits are a moving target, so it is important to be sure that you have left an estate plan that maximizes your child's ability to remain eligible for any and all government benefits while providing extras for goods and services the government does not provide. As you age, Medicaid planning is something you need to think about, not just for your family member with special needs but for yourself and your spouse as well. If your estate plan includes proper Medicaid planning language, there are options that will preserve your estate for a special needs child should you require long-term nursing home care. If you haven't updated your estate plan, this Medicaid planning language may not be included in your estate plan because you were not ready at the time to consider this type of plan.

A good rule of thumb is to review your estate plan every five years. At the very least, it is recommended that powers of attorney be refreshed every five years as many banks will not accept an old, or what they consider "stale," power of attorney. For some banks, a 3-year-old POA might be considered stale! You may need to review your estate plan sooner if any of the following occurs:

- you receive an inheritance that changes your wealth status
- you move to another state
- you get married or divorced
- a named beneficiary dies, leaving a spouse and/or children
- an after-born grandchild has a special need
- a named beneficiary develops an illness or is at risk of a lawsuit or divorce
- the estate tax laws change significantly

If it has been five years or longer since you wrote your last will or trust, it is time to schedule an appointment with a knowledgeable estate planner to update your estate. Your estate should name those folks you have confidence in now and protect your interests today – not as they existed ten or twenty years ago. It is important that your estate reflect your current wishes as to how you want the estate you have worked so hard to acquire be distributed in a manner that gives you pleasure and satisfaction. **FT**

UPCOMING SEMINARS

NEXT STEPS: FUTURE FINANCES & SUPPORTS

October 21, 2014

Speaker: Theresa M. Varnet, Esq.

Location: CSS Academy, Brookfield, IL

FUTURE PLANNING FOR FAMILIES SUPPORTING PERSONS WITH LONG-TERM DISABILITIES

October 22, 2014

Speaker: Theresa M. Varnet, Esq.

Location: Alexian Brothers Medical Center, Elk Grove Village, IL

LIFELONG PLANNING FOR YOUR RELATIVE WITH SPECIAL NEEDS

October 23, 2014

Speaker: Theresa M. Varnet, Esq.

Location: New Hope Center, Crete, IL

LIFELONG PLANNING FOR YOUR RELATIVE WITH SPECIAL NEEDS

October 24, 2014

Speaker: Theresa M. Varnet, Esq.

Location: Day One Network, Geneva, IL

HOW TO ADMINISTER A SPECIAL NEEDS TRUST

November 8, 2014

Speaker: Fletcher Tilton Special Needs Practice Group

Location: Courtyard Marriott, Marlboro, MA

To arrange a seminar by a representative of the Elder Law and Special Needs Practice Group, contact Fred Misilo at 508-459-8059 or fmisilo@fletchertilton.com.

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The Fletcher Tilton Special Needs 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 lifetime. We recognize the importance of treating our clients with respect and dignity.

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