



SUMMER 2016

# HELPING HAND

An Update from the Special Needs Practice Group

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## SPECIAL NEEDS PRACTICE GROUP

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*Administrative Assistant*

## 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., Esq.



Summer always seems too short. For me, it comes up far too quickly and leaves far too soon. Before I realize it, I'm confronted with the reality of another summer come and gone. Well, that's a sobering and mildly depressing thought, isn't it?! I do hope you enjoy the summer and beautiful early autumn days of New England, whether you're on the beaches, in the mountains, or in the lakes region. We are fortunate to live in such a beautiful place.

The article in this edition relates to the importance of putting durable powers of attorney and other supported decision-making tools in place for adult children who may be bound for residential school or college in the fall. It's never too early to plan for this, and the summer is the right time to do this. Having an adult child complete this type of planning is quick and inexpensive. It also is a subtle introduction to educating them about the importance of taking personal responsibility.

I recently had the privilege of representing The Arc of Massachusetts before the Massachusetts Supreme Judicial Court in an important case relating to guardianship law. The Supreme Judicial Court ruled that a person who has demonstrated interest in the welfare of a person subject to guardianship has a right to intervene in the guardianship to modify the limits of the guardian's authority. As legal counsel to The Arc of Massachusetts, I filed an amicus brief and urged the court to adopt this ruling. The court ruled that a person subject to a guardianship has a broad right of advocacy to advance his or her liberty interests in a limited guardianship.

In this case, a maternal grandfather sought to rekindle his relationship with his granddaughter, a young woman with an intellectual disability. The young woman also expressed an interest in rekindling the relationship. The biological father and guardian of the young woman refused to permit any contact between the grandfather and the young woman, prohibiting any physical

contact and communication between the two, including social media.

The grandfather filed a petition in Probate Court to limit the guardianship in order to permit him to have contact with his granddaughter. The Probate Court ruled that the grandfather did not have standing under the Uniform Probate Code to intervene and dismissed the grandfather's petition. The grandfather appealed.

A subsidiary legal issue presented was whether an interested party in a guardianship proceeding is required to show that the person under guardianship is inadequately represented in order to intervene. In my brief, I argued that once a person meets the standing requirement of an "interested party" in a guardianship case, that person has a right, as a matter of law, to intervene to advance the liberty interests of the person subject to guardianship and need not make a showing of inadequate representation. The Massachusetts Supreme Judicial Court also adopted this argument in its ruling. **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](mailto:fmisilo@fletchertilton.com).

## LOOK INSIDE for important seminars.

Register now as seating  
is limited. Visit:

[www.fletchertilton.com/  
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### The Guaranty Building

370 Main Street, 12th Floor  
Worcester, MA 01608-1779  
tel 508.459.8000 fax 508.459.8300

### The Meadows

161 Worcester Road, Suite 501  
Framingham, MA 01701-5315  
tel 508.532.3500 fax 508.532.3100

### Cape Cod

1597 Falmouth Road, Suite 3  
Centerville, MA 02632  
tel 508.815.2500 fax 508.459.8300

## DON'T LET YOUR SON OR DAUGHTER LEAVE FOR COLLEGE WITHOUT SIGNING THESE IMPORTANT DOCUMENTS

by Theresa M. Varnet, MSW, JD



Shortly after registering for school in another state, my niece became very ill and required hospitalization. A friend called my niece's home and advised my sister-in-law of the name of the hospital where my niece had been admitted.

When my sister-in-law called the hospital, they initially refused to give her any information about my niece. Fortunately, after a brief delay, my niece was able to give verbal permission for information to be shared with her mom so the family was assured that she was getting the care she needed and would be all right.

Had my niece signed a power of attorney and/or a health care proxy prior to her departure for school, this moment of panic could have been avoided. Few clients will associate the need for a health care proxy and a durable power of attorney for property with getting ready for school in the fall. The adult child is in his or her prime, health-wise, and often has too few resources to think about the need for a POA for property.

Upon reaching the age of 18, your child is an adult, and laws such as HIPAA or Massachusetts confidentiality laws provide total protection of his or her privacy. Even if you are paying for your adult child's tuition and/or living expenses, your son or daughter is entitled to medical and financial privacy. Should there be a medical emergency, as in the case of my niece, you may not be able to get the information you need to advocate for your child, especially if he or she is attending school many miles away from home.

If you have a son or daughter leaving for college this fall, be sure to have him or her sign a health care proxy and a durable power of attorney.

The power of attorney for health care, advocacy and property are documents that are equally helpful for families with adult children who are challenged with health impairments, visual, hearing or mild cognitive disabilities, or anyone who may need health services more than the average child. Once a child reaches the age of 18, the parents are legally "out of the loop" when it comes to decision-making. If your son or daughter has a special need and may need help with making decisions or applying for benefits, you may want to consult with a Special Needs attorney to determine if a power of attorney is a viable option for your son or daughter. For more information, call our office and schedule a visit or phone conference with one of our Special Needs Law attorneys to discuss in more detail.

I would argue that regardless of a disability, when a child reaches the age of 18, he or she should consider signing a durable power of attorney designating a person he or she trusts to make decisions should an accident or a sudden illness occur. We who are able-bodied should never take our good health and abilities for granted. A single accident or illness could put any of us at need for protection.

It is better to have these documents and not need them than it is to need but not have them! **FT**

## NEWS AND ANNOUNCEMENTS

### JOHN "JACK" McNICHOLAS AND MARY PROULX JOIN FLETCHER TILTON ELDER LAW TEAM



Jack McNicholas, Esq.

McNicholas and Proulx, LLP, is now "of counsel" to Fletcher Tilton PC. The Medfield firm is highly regarded in the elder law field.

Jack McNicholas and Mary Proulx bring over 55 years of experience in elder law, sophisticated long-term care planning and complex MassHealth applications.

Both Jack and Mary have been active in the Massachusetts chapter of the National Academy of Elder Law Attorneys (MassNAELA). Jack served for 10 years on the Board of Directors of MassNAELA and is currently co-chair of the Litigation



Mary Proulx, Esq.

Committee which supports member attorneys in administrative and court advocacy on behalf of individuals needing MassHealth benefits.

We are thrilled that Jack and Mary have joined the Special Needs and Elder Law Practice Group as they share a wide range of knowledge and experience in the area of elder law.

Jack and Mary will be available to meet in Worcester, Framingham and Cape Cod offices on an as-needed basis. Their Medfield location will also be used for Fletcher Tilton client meetings. **FT**

#### RECEIVE THIS NEWSLETTER VIA EMAIL

Send an email to [solutions@fletchertilton.com](mailto:solutions@fletchertilton.com) with the subject "SNP Newsletter" and we'll add you to our email list!

## FLETCHER TILTON WELCOMES ATTORNEYS DANI RURAN AND LAUREN MILLER



Dani N. Ruran, a resident of Hopkinton, Massachusetts, recently joined the firm and will continue to practice Trust & Estate law (estate planning and trust and estate administration). Attorney Ruran has 20 years of experience practicing Trust & Estate law at large law firms, mostly in Boston.

Attorney Ruran received his law degree from Boston University School of Law and is admitted to practice in Massachusetts, Rhode Island, and Connecticut.

He works out of the firm's Worcester and Framingham offices and can be reached at 508-459-8048 or [druran@fletchertilton.com](mailto:druran@fletchertilton.com).



Attorney Lauren Miller is a new associate with the firm's Trust & Estate Department and Elder Law & Special Needs Practice Group. Her practice focuses primarily on estate planning, asset protection planning, MassHealth applications for long term care, and complex MassHealth appeals.

Attorney Miller received her Juris Doctor from Loyola Law School, Los Angeles. Prior to joining Fletcher Tilton, Mrs. Miller practiced at a metro west Estate Planning and Elder Law firm. Mrs. Miller is a member of the Massachusetts Bar Association and the Mass. Chapter of the National Association of Elder Law Attorneys.

Attorney Miller can be reached at 508-459-8044 or [lmiller@fletchertilton.com](mailto:lmiller@fletchertilton.com). **FT**

### GROUP PRESENTATIONS

Fletcher Tilton attorneys are available for group presentations on a variety of topics pertaining to special needs planning and transition planning. There is no charge for parent advisory boards, parent organizations and nonprofit organizations. We prefer groups to be no smaller than 20 people.

For more information on group presentations or to set one up for your school or organization, contact Christina Lamb at [clamb@fletchertilton.com](mailto:clamb@fletchertilton.com).

### UPCOMING SEMINARS

#### SPECIAL NEEDS BRIEFING FOR CFPs

Thursday, September 15, 2016

*Speakers:* Frederick M. Misilo, Jr., Esq.  
& Theresa M. Varnet, MSW, JD

*Location:* Sheraton Hotel, Framingham, MA

- Certified Financial Planners can earn 3 CE credits.
- Seminar fee is \$50 and includes a breakfast buffet.



#### LIFELONG PLANNING FOR YOUR RELATIVE WITH SPECIAL NEEDS

Saturday, September 17, 2016

*Speaker:* Theresa M. Varnet, MSW, JD

*Location:* Venus de Milo Restaurant, Swansea, MA

#### MEDICAID & LONG TERM ELDER CARE PLANNING

Tuesday, September 20, 2016

or Wednesday, September 28, 2016

*Speaker:* Frederick M. Misilo, Jr., Esq.

*Location:* Beechwood Hotel, Worcester, MA

- Both seminars are complimentary.
- Breakfast buffet included.
- Co-sponsored by BrightStar Care.

#### SHARED LIVING AND AFC CONFERENCE

Thursday, September 22, 2016

*Speaker:* Frederick M. Misilo, Jr., Esq.

*Location:* Best Western Royal Plaza, Marlborough, MA

#### SPECIAL NEEDS HOUSING SEMINAR

Thursday, October 6, 2016

*Speaker:* Frederick M. Misilo, Jr., Esq.

*Location:* Courtyard Marriott Hotel, Marlborough, MA

- For families of special needs persons who need to secure or improve their housing arrangements.
- Seminar is complimentary.
- Breakfast buffet included.

#### HOW TO ADMINISTER A SPECIAL NEEDS TRUST

Saturday, November 5, 2016

*Speaker:* Fletcher Tilton's Special Needs Practice Group

*Location:* Courtyard Marriott Hotel, Marlborough, MA

- Our annual training for trustees of special needs trusts.
- Seminar fee is \$50 and includes a breakfast buffet.

**For details and registration, visit:**  
[www.fletchertilton.com/seminars-events](http://www.fletchertilton.com/seminars-events)

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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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