

A MESSAGE FROM THE PRACTICE GROUP CHAIR

By Frederick M. Misilo, Jr., Esq.



In this edition, the lead article is written by Attorney Theresa Varnet and emphasizes the need for trustees of Supplemental Needs Trusts to receive adequate training and support. As Attorney Varnet points out, a well meaning, but ill-informed Trustee can literally do more harm than good simply by not being aware of very basic issues facing trustees of supplemental needs trusts.

I am sure many of you read with interest and alarm the lead front page story on August 31, 2008 in the Boston Sunday Globe entitled, "Trusts for Mentally Retarded Neglected." The article relates to the Client Trust Fund Project, created twenty two years ago by the Commonwealth, which established Medicaid eligibility for 910 residents of Massachusetts state facilities for persons with intellectual disabilities. These trusts were created for the benefit of each of these 910 individuals. The article describes the systemic failure of the Probate Court to properly oversee the actions of the Trustees. In the vast majority of cases reviewed by the Globe, no distributions had been made for the benefit of the beneficiaries of the trusts.

Fortunately, but twenty-two years too late, the Probate Court initiated new procedures earlier this year to reverse the problems identified in the Globe

article. As part of this new initiative, I provided Chief Justice Carey with a set of recommendations as to how these trusts should be monitored. I was pleased to learn that she distributed these recommendations to all Probate Court Judges in Massachusetts. Consequently, I, along with Probate Court Judges and Probate Court staff, conducted trainings to attorneys who will be appointed to monitor these cases. The training covered, in part, what types of services and supports can be purchased from these trusts, how to properly identify the beneficiary's needs, and how to do so while maintaining the beneficiary's eligibility for Medicaid. I believe that the beneficiaries will ultimately benefit from the Probate Court's new initiative.

On October 18, 2008, Fletcher, Tilton & Whipple will be conducting its very own annual trustee training. Information on this training is included in this newsletter. This training will be quite useful to the persons you've named as successor trustees in your supplemental needs trust. Clearly, a well informed Trustee goes a long way to ensuring that your supplemental needs trust will be administered properly. I hope to see you there!

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.



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The Special Needs Planning Practice Group A Commitment that Lasts a Lifetime

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ftwlaw.com

How To Administer A Special Needs Trust
A Seminar For Parents, Trustees, and Successor Trustees of Special Needs Trusts and OBRA '93 Trusts
Saturday, October 18
8:30 a.m. to 12:30 p.m.
Courtyard Marriott, Marlboro, MA



FLETCHER, TILTON & WHIPPLE, P.C.
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HELPING HAND

A Monthly Update from the Special Needs Planning Practice Group



NEWS BRIEFS

Department of Mental Retardation to Become Department of Developmental Services

As of July 1, 2009, the Department of Mental Retardation will be the Department of Developmental Services.

Deputy DMR Commissioner Larry Tummino said there will be no change in eligibility rules for the department's clients or any other difference because of the name change. (*Telegram & Gazette, September 5, 2008*)

Attorney Misilo In The Spotlight

Attorney Frederick M. Misilo, Jr., head of FTW's Special Needs Planning Practice Group, was interviewed by NECN on September 3 about the possible closing of the Walter E. Fernald Center and was recently quoted in two articles in the Boston Globe about special needs advocates' responses to the movie "Tropic Thunder" (August 15) and the far-reaching neglect of trusts set up for people with special needs and how the court system is taking steps to end the abuse (August 31).

The video and both articles can be viewed at the firm's website www.ftwlaw.com

Governor Signs Transition Age Bill Into Law

SPED Transition Planning To Stay At 14

Governor Patrick signed into law a bill (S286) that will require schools to continue initiating special education transition planning at age 14. Federal law now allows schools to wait until 16, but a broad group of educators, administrators, parents and advocates understood that waiting until the middle of high school is too late to facilitate the most effective transition planning for youth with disabilities. (*From The ARC of Massachusetts*)

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.

REGISTER TODAY!

FTW's Annual Special Needs Trust Training Saturday, October 18

Essential information for those who will be called upon to handle a trust for a person with a disability.

Registrations are now being accepted 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, CTFA, Director of Trust Services
- Andrea Stolberg, Tax Manager

REGISTRATION FEE:
1 or 2 family members, \$75.00. Additional family members, \$20.00 each.

To register, contact Sara at smurphy@ftwlaw.com or (508) 459-8021 or visit ftwlaw.com under "Seminars & Events"



What keeps you up at night?

Please join us for an informative seminar that will focus on the following:

- What is my retirement strategy?
- Will I have enough income to maintain my lifestyle throughout my retirement?
- Am I prepared to care for my family member?
- What will be my legacy?
- When is *really* the best time to start taking Social Security benefits?
- Am I reaching my maximum financial potential?

Guest Speakers:

Phyllis Kramer & Joanne Geary



This seminar is for informational purposes only. Securities products including Annuities will be discussed in this presentation. Neither New England Securities nor any of its agents are in the business of giving tax, legal or accounting advice. Attendees should consult their own professional advisors to determine the appropriateness of an course of action. Securities products are offered through New England Securities Corp., a broker-dealer (member FINRA/SIPC), Branch office: 503 South Street, Suite 503, Waltham, MA 02453. Tel: (781) 789-4616. Strategic Financial Partners is a service entity from New England Securities Corp. (L10V3491) (08/03/08)

Wednesday, October 15, 2008
6:00PM - 8:00PM
Law Offices of Fletcher, Tilton & Whipple, PC
161 Worcester Road • Framingham, MA

RSVP to Sara at smurphy@ftwlaw.com or (508) 459-8021 by October 10



THANK YOU!

With your support, attorney Fred Misilo raised over \$2,000 to benefit Children's Hospital in Boston at the Falmouth Road Race in August!

TRAINING FOR TRUSTEES OF SUPPLEMENTAL NEEDS TRUSTS IS ESSENTIAL

By Theresa M. Varnet, Esq.



A primary purpose of creating a supplemental needs trust ("SNT") is to protect assets held for the benefit of a person with special needs who requires needs based governmental benefits such as Supplemental Security Income ("SSI"), Mass Health, a housing subsidy or voucher, food stamps, and subsidized fuel. Drafting the trust correctly is the first step in protecting a person's eligibility for government benefits. Managing the trust correctly is the second step. It is critical that the trustee of an SNT makes him or herself knowledgeable as to how distributions from the trust can affect eligibility for government benefits. A distribution from an SNT by an uninformed or misguided Trustee which results in a decrease in government benefits is not uncommon and defeats one of the reasons the SNT was created.

Many families choose well meaning friends or relatives to serve as trustee of the SNT. If this friend or relative doesn't take the time to identify what types of benefits the beneficiary of the trust is receiving and how these different benefit programs deem assets in a trust or distributions from a trust, the friend or relative could commit a naive error. This error may result in the loss or diminution of government

benefits. By way of illustration, if a person is receiving SSI, any distributions for food or shelter will result in a one-third reduction in SSI benefits. If the trustee naively gives the beneficiary spending money, the amount of the spending money will be deducted from future SSI checks because it is deemed as 'unearned income'. A person on SSI who receives more than \$20 per month in spending money will have the

A distribution from an SNT by an uninformed or misguided Trustee which results in a decrease in government benefits is not uncommon and defeats one of the reasons the SNT was created.

excess subtracted, dollar for dollar, from the next month's SSI check. SSI monitors all distributions from trusts and will reduce the SSI check for all cash distributions and if such unearned income is not reported by the beneficiary may charge a penalty as well. SSI will require a full account of how all funds are distributed from a SNT at least once a year.

The SSI and Mass Health rules are not intuitive. A trustee can be extremely knowledgeable about money management issues but if he or she does not take the time to educate him or herself

on how distributions from the trust affects eligibility for needs based benefits, then the parent's intent to supplement and not to supplant benefits will fail. Proper administration of an SNT will allow the beneficiary with special needs to enjoy the benefit of his or her inheritance, a retroactive payment from the Social Security Administration, a law suit settlement or other large cash payment while retaining his or her eligibility for government benefits.

On Saturday, October 18th, FTW will hold its annual workshop on how to manage an SNT. Information will be shared with trustees regarding fundamental tax issues in trust administration, government reporting responsibilities, proper distribution methods and what types of goods and services can be purchased for the beneficiary without decreasing benefits. Tips on how to avoid common pitfalls when administering a trust will also be presented. This annual seminar is a "must" for those families who have designated an individual friend or family member to serve as trustee of an SNT. We hope to see you on the 18th.

To contact Theresa Varnet for more information, email tvarnet@ftwlaw.com.

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