

# 2009 Changes and Trends Affecting Special Needs Trusts

## February 19-20, 2009 • InterContinental Stephen F. Austin Hotel • Austin, TX

### Thursday Morning, Feb. 19, 2009

**Presiding Officer:**

**Patricia F. Sitchler**, Schoenbaum, Curphy & Scanlan, PC - San Antonio, TX

10:00 am	<b>Registration Opens</b>  Includes light refreshments - sponsored by Wells Fargo
10:50 am	<b>Welcoming Remarks</b>
11:00 am 0.75 hr 0.25 hr ethics	<b>Special Needs Trust Overview</b>  This presentation will examine the underlying laws special needs trusts are based upon and provide examples that give rise to their use and purpose. The information will include how to spot opportunities to use SNTs, analyze the options available and understand potential ethical issues.  Wesley E. Wright, Wright Abshire Attorneys - Bellaire, TX
11:45 am 0.75 hr 0.25 hr ethics	<b>Protecting and Maximizing Public Benefits</b>  Planning options - and related ethical issues - to ensure a trust's beneficiary qualifies for the most important disability benefits: Supplemental Security Income, Medicaid, Social Security Disability Insurance and Medicare; and how to manage trust distributions to avoid losing benefits while enhancing the beneficiary's quality of life.  H. Clyde Farrell, Attorney at Law - Austin, TX Christina Leshner, Attorney at Law - Houston, TX

### Thursday Afternoon, Feb. 19, 2009

**Presiding Officer:**

**Patricia F. Sitchler**, Schoenbaum, Curphy & Scanlan, PC - San Antonio, TX

12:30 pm	<b>Lunch on your Own</b>
1:45 pm 0.50 hr	<b>The Third-Party Special Needs Trust</b>  This session will discuss the use of the Third-Party SNTs in special needs planning, including the contrast with self-settled SNTs. It will also explore current Medicaid law in Texas defining the corpus as an "unavailable resource" as compared to national trends under the <i>UTC</i> and <i>Restatement Third</i> ; plus implementing these trusts in veteran benefits planning.  <i>This session has moved to Thursday at 4:45 p.m.</i>  Randy Drewett, Attorney at Law - Beaumont, TX

2:15 pm 0.75 hr	<p><b>Court Created Trusts: What Makes Them So Special?</b></p> <p>This presentation will focus on the use of self-settled, court-created trusts established under Section 142.005 of the Texas Property Code, Section 867 of the Texas Probate Code, and 42 U.S.C. Section 1396. It will include a discussion of the current rules and methods used to adapt the trusts for special needs beneficiaries.</p> <p>Moderator: Shari M. Scholten, Wells Fargo/The Private Bank - Austin, TX Deborah A. Green, Attorney at Law - Austin, TX Glenn M. Karisch, The Karisch Law Firm, PLLC - Austin, TX</p>
3:00 pm 0.75 hr	<p><b>Pooled Trusts</b></p> <p>This session will recap the history of both third-party and self-settled pooled trusts and will address current national pooled trust activity and trends. Experienced pooled trust administrators will discuss the benefits and challenges of operating pooled trusts.</p> <p>Moderator: Renee C. Lovelace, Attorney at Law - Dripping Springs, TX Christopher Joseph Oglesby, ARC Of Texas - Austin, TX John Staunton, The Center for Special Needs Trust Administration, Inc. - Clearwater, FL</p>
3:45 pm	<b>Break</b>
4:00 pm 0.75 hr	<p><b>Winding Up Trusts</b></p> <p>A discussion of the steps required to wind up a special needs trust upon the death of a beneficiary, including, but not limited to reimbursement of Medicaid, payment of federal estate taxes (including valuing annuities and paying taxes in an illiquid estate), and administering the deceased beneficiary's estate.</p> <p>David J. Reber, Locke Lord Bissell &amp; Liddell, LLP - Dallas, TX Nancy Sosa, Encore Trust Company - Austin, TX</p>
4:45 pm 0.50 hr	<p><b>The Deficit Reduction Act Requirements for Annuities Paying into a Special Needs Trust</b></p> <p>This session will discuss the Bernstein Letter and its ramifications on structured settlements paying into special needs trusts.</p> <p><b>This session has moved to Thursday at 1:45 p.m.</b></p> <p>Pi-Yi Mayo, Attorney at Law - Baytown, TX</p>
5:15 pm 0.50 hr	<p><b>The Language of Poverty</b></p> <p>This session will discuss the language of poverty as a means to understanding and connecting with the culture of poverty.</p> <p>Ed Gomez, El Buen Samaritano - Austin, TX</p>
5:45 pm	<b>Adjourn</b>

## Friday Morning, Feb. 20, 2009

### Presiding Officer:

**Renee C. Lovelace**, Attorney at Law - Dripping Springs, TX

7:45 am	<b>Conference Room Opens</b>  Includes continental breakfast - sponsored by Wells Fargo
8:15 am 0.75 hr 0.25 hr ethics	<b>Planning for Children with Special Needs Trusts</b>  The presentation will highlight Medicaid benefits available to children with disabilities, and to children of needy families, plus trusts and other planning techniques that can be implemented to protect both types of Medicaid benefits. Additionally, the presentation will include an overview of possible trust distributions focused on providing the highest quality of life for these little ones.  Patricia F. Sitchler, Schoenbaum, Curphy & Scanlan, PC - San Antonio, TX
9:00 am 0.50 hr 0.25 hr ethics	<b>Special Education: Advocacy and Trust Distributions</b>  The Individuals with Disabilities Education Act requires that every eligible special education student receive a free appropriate public education. Do special education students and their families need an advocate to ensure their right to appropriate special education services? How can trust distributions help students get what they need from the school and provide supplemental services to address needs that are not met by school district special education services?  Rona W. Statman, The ARC of Texas - Austin, TX
9:30 am 0.75 hr	<b>Advocating Olmstead: How Far Do You Go?</b>  This session will review the 1999 <i>Olmstead vs. L.C.</i> 527 U.S. 581 (1999) decision, and its holding that individuals with disabilities have the right to live and receive services in the least restrictive setting possible. It will then explore whether the ADA and <i>Olmstead</i> applies to SNTs, and how trustees can successfully promote independence in a cost-effective manner.  Patricia E. Kefalas Dudek, Patricia E. Kefalas Dudek & Associates - Bloomfield Hills, MI
10:15 am	<b>Break</b>
10:30 am 0.75 hr 0.25 hr ethics	<b>Advising Trustees</b>  Whether the trustee is an unsure or cautious corporate trustee, a clueless family member or a well-meaning but over-reaching professional, problems with trust administration regularly arise. What can you tell the trustee about his or her duties and responsibilities? How involved should you be--in advising the trustee, monitoring expenditures and investment decisions or providing training and periodic reviews? This presenter provides unusual insight--both as an attorney and as a trustee--into what trustees must do and how you can help them.  Robert B. Fleming, Fleming & Curti, PLC - Tucson, AZ

11:15 am  
0.75 hr  
0.25 hr ethics

### **Administering an Inadequate Trust with a Challenging Beneficiary/Family in an Imperfect World**

Your trust has to operate in a world notable for its imperfections. Beneficiaries--and their families--fail to understand limits or the reasons for the rules. Benefit agencies misconstrue the facts or misapply the law. Trustees and lawyers forget, bend or ignore the rules. How do you administer a special needs trust in the real world, what ethical issues and problems arise most frequently, and how have real trustees managed to address those problems?

Moderator:

Robert B. Fleming, Fleming & Curti, PLC - Tucson, AZ

Leah Cohen, ArrangeCARE - Austin, TX

Allyson Nelson, Encore Trust Company - Dallas, TX

Nancy Sosa, Encore Trust Company - Austin, TX

## **Friday Afternoon, Feb. 20, 2009**

### **LUNCHEON PRESENTATION**

Sponsored by The Center for Special Needs Trust Administration

12:00 pm

### **Pick up Box Lunch**

12:15 pm  
0.75 hr

### **Case Law Update**

This presentation will cover recent cases involving special needs trusts as well as other cases of note.

Mary Alice Jackson, Boyer & Jackson, P.A. - Austin, TX

Rebecca C. Morgan, Stetson University College of Law - Gulfport, FL

1:00 pm

### **Break**

1:15 pm  
1.00 hr

### **Agency Panel: Questions, Answers and Options**

A panel of government experts will address emerging issues arising in such programs as Supplemental Security Income and Medicaid.

Moderator:

Patricia F. Sitchler, Schoenbaum, Curphy & Scanlan, PC - San Antonio, TX

Beth Brown, Social Security Administration - Dallas, TX

Barry Browning, Texas Dept of Aging & Disability Services - Austin, TX

Reba Collins, Social Security Administration - Dallas, TX

Shari L. Nichols, Health and Human Services Commission - Austin, TX

Gayle Sandoval, Texas Department of Aging and Disability Services - Austin, TX

John Stockton, Health and Human Services Commission - Austin, TX

2:15 pm 0.50 hr	<p><b>What You Need to Know About the New Medicare Set Aside Rules and Their Impact on SNT's</b></p> <p>An overview presentation addressing the basic Medicare set aside (MSA) concepts; the history of the expansion of the MSA requirements from the workers compensation arena to all personal injury cases; the current positions of the Center for Medicare Services; the application of the Medicare Secondary Payer Statute and the Medicare, Medicaid, and SCHIP Extension Act of 2007; and practical recommendations of what to do in light of the new MSA developments including the possibility of MSA provisions embedded in SNT's.</p> <p>Ronald R. Cresswell Esq., Locke Lord Bissell &amp; Liddell LLP - Dallas, TX</p>
2:45 pm 0.75 hr	<p><b>Medicare Set Aside Panel: Current MSA Issues and Possible Solutions</b></p> <p>The panel will discuss the impact of the new MSA developments upon the drafting, funding and administration of special needs trusts from the standpoint of both the Center for Medicare Services agency policies and from the viewpoint of practicing elder law and trust attorneys.</p> <p>Moderator:  Ronald R. Cresswell Esq., Locke Lord Bissell &amp; Liddell LLP - Dallas, TX  Deborah A. Green, Attorney at Law - Austin, TX</p> <p>Materials By:  Pi-Yi Mayo, Attorney at Law - Baytown, TX  Patricia F. Sitchler, Schoenbaum, Curphy &amp; Scanlan, PC - San Antonio, TX  Sally Stalcup, Centers for Medicare &amp; Medicaid Services - Dallas, TX</p>
3:30 pm	<p><b>Adjourn</b></p>