THE SNT TRUSTEE AS A “SUPERFIDUCIARY?”

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Generally, all trustees have certain duties they must perform. These include: the duty of loyalty, the duty to adequately invest trust assets, the duty to follow the terms of the trust document, keep careful records, prepare accountings, communicate with trust beneficiaries, file tax returns and pay taxes, and distribute trust income and assets to or for the benefit of the trust beneficiaries in accordance with the terms of the trust.

The SNT trustee, however, may have additional duties. If the trust beneficiary is receiving means-tested public benefits such as SSI and Medicaid, the trustee has to make sure that the distributions that are made to or for the benefit of the trust beneficiary do not render the beneficiary ineligible for those benefits. This requires the trustee to know the eligibility rules for the means-tested benefits received by the beneficiary. As these rules and regulations are subject to change, the SNT trustee must keep up with changes that may affect the beneficiary's benefits.

Distributions of trust income and/or assets for food and shelter are considered "in-kind income" and may result in a decrease of the beneficiary's monthly SSI benefit by one-third. If the trustee makes distributions to the beneficiary above the monthly limit allowed by the program, they will be considered unearned income and the beneficiary's SSI monthly benefit may be reduced dollar for dollar. Accordingly, the trustee must be aware that distributions generally should be made directly to the vendors of goods and services rather than to the beneficiary.

In addition, the trust document may have provisions which direct trustees to perform certain tasks that are not related to the management, investment and distribution of assets and income. For example, the trust document might direct the trustee to apply for public benefits on behalf of the beneficiary. The trustee may also be directed to work with family members and allied professionals to provide support to the beneficiary.

In many cases, the beneficiary has no involved family members or friends and is unable to set express his or her needs and preferences. Under such circumstances, it may incumbent on the trustee to act affirmatively to ascertain and meet those needs and preferences of the trust beneficiary. Indeed, trustees of special needs trusts may be liable to the beneficiary for failing to be proactive.

Failure to apply for public benefits on behalf of the beneficiary

All trustees have a duty to act in accordance with the terms of the trust. Many special needs trusts contain provisions requiring the trustee to seek and maintain public benefits for the beneficiary. In *Sargent v. Sargent*, No. PC-08-1429, 2009 R.I. Super. LEXIS 109, 2009 WL 3328560 (R.I. Super. July 31, 2009), the court held that the trustee breached her fiduciary duty by failing to affirmatively do so.

In April 1998, Diane Sargent established the Diane M. Sargent Revocable Trust –1998. The grantor was named as trustee. Her daughter, Pamela Sargent, was designated successor trustee. The grantor died in November 1999 and was survived by four adult children. Assets that were not owned by the trust at the time of the grantor's death were passed directly to the trust pursuant to a pourover will. Among other things, the trust provided that after the grantor's death, the assets were to be divided into equal shares for her children. Her son, Kennett's, one-quarter share was to be administered in a special needs trust for his benefit.

The special needs trust provided, in pertinent part:

> My primary intention in establishing the Special Needs Trust is to provide for KENNETT'S special needs in order that he can be maintained at a level of human dignity. As used herein, the term "special needs" means the requisites for maintaining KENNETT'S