CONFERENCE

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# Elder & Disability Law Conference 2008

## *Beyond the special needs trust: life planning for people with disabilities*

### Why attend?

Many lawyers practicing in the field of special needs planning limit their effectiveness as well as their practice opportunities because they lack the perspective and background necessary to advise their clients on critical life planning concerns beyond special needs trusts.

This program gives practitioners an overview, at different stages in the lives of person with significant disabilities, of the agencies with which such persons may be involved, the programs offered by the agencies, the public benefits which may be of relevance at each stage of life and the eligibility requirements therefor, in order to give the practitioner the information necessary not only to advise and advocate at each stage but also to understand how, if at all, special needs trusts fit into the overall picture.

Featuring a faculty of 19 experience legal practitioners and human services professionals in the forefront of disability services in Massachusetts, the program is broken down into two parts.

### Lifetime planning for persons with disabilities

The first part of the program addresses the complex issues and opportunities that can arise at different life stages of a disabled person and the interrelationship of the programs in the following areas: **Income**—SSI and SSDI (disability and adult disabled child's benefits); deeming; impact of work; living arrangements; programs which pay family caregivers; **Work**—the role of DMR and the Massachusetts Rehabilitation Commission; SSI and SSDI work incentives; **Housing**—DMR and DMH group homes; Section 8 and other housing subsidies; assisted living for younger disabled persons; creative private housing arrangements; **Health care**—childhood early intervention program; Medicare's role; special MassHealth eligibility rules under Kaleigh Mulligan, CommonHealth, and premium assistance; MassHealth financed programs including PACE; adult foster care programs; family foster care; community choices; PCA programs; and Commonwealth Care; **Education**—the role of special education and disability related regular education; 688 transition from school to adult services; the interplay between the schools, MassHealth and DMR; **Competence**—evaluating the need for guardianship at adulthood; plenary guardianship or guardianship of the person only; clinical team reports; and alternatives to guardianship.

### Trusts for persons with disability

The second part of the day focuses on trusts for persons with disabilities and addresses selected issues in this context. After discussing what role a trust plays in supporting persons with disabilities the panel discusses selected topics including: trust funding issues, tax issues, and selected administration issues.

KEYNOTE SPEAKER

## Jean Flatley McGuire, PhD.

Jean Flatley McGuire of the Executive Office of Health and Human Services. Dr. McGuire is Assistant Secretary for Disability and Disability Policy. She oversees the Department of Mental Retardation, the Massachusetts Rehabilitation Commission, the Massachusetts Commission for the Blind, and the Massachusetts Commission for the Deaf and Hard of Hearing, and also has cross-Secretariat responsibility for disability related policies and programs, relating, for example, to education, housing and employment. Her objective is to give participants a sense of the public policy context of life planning for people with disabilities—of the complex interrelationships among agencies, among levels of government, and among the elements of the public and private sector, of which the attorney must have at least a general understanding to be effective.

### CONFERENCE COCHAIRS

**Donald N. Freedman, Esq., Cochair,** Rosenberg, Freedman & Goldstein, Newton; **Emily S. Starr, Esq. Cochair,** Ciota, Starr & Vander Linden LLP, Worcester and Fitchburg

### FACULTY

**Elizabeth L. Baum, Esq.**, Weber & Baum, Waban; **Hyman G. Darling, Esq.**, Bacon & Wilson, PC, Springfield; **Gail Epstein,** Community Case Management Program, University of Massachusetts Medical School, Worcester; **Deborah Fins**, Deborah Fins & Associates, Worcester; **Patricia M. Freedman, Esq.**, PLAN of Massachusetts, Newton; **Cynthia Haddad**, Bay Financial Associates, Waltham; **John F. Halliday,** Institute for Community Inclusion, University of Massachusetts, Boston; **Barbara D. Jackins, Esq.**, Belmont; **Dafna Krouk-Gordon,** Toward Independent Living and Learning, Inc., Dedham; **Linda L. Landry, Esq.**, Disability Law Center, Boston; **Michelle B. LaPointe, Esq.**, Wade & Horowitz LLC, Brookline; **Clare D. McGorrian, Esq.**, Cambridge; **Jean Flatley McGuire, PhD.**, Executive Office of Health and Human Services, Commonwealth of Massachusetts; **Rich Robison**, Federation for Children with Special Needs, Boston; **Charles E. Vander Linden, Esq.,** Ciota, Starr & Vander Linden LLP, Worcester and Fitchburg; **Neal A. Winston, Esq.**, Moschella & Winston LLP, Somerville; **Mark W. Worthington, Esq.**, Smith Worthington LLC, Worcester; **Liane Zeitz, Esq.**, Dedham

AGENDA

## The Stages in a Disabled Person's Life

- **Age 0-3**
  The "pre-school years," focusing on early intervention programs of the Departments of Public Health and Mental Retardation; MassHealth including special financial eligibility rules under CommonHealth and Kaleigh Mulligan, and premium assistance.
- **Age 3-22**
  The "school-age years," focusing on the evolving role of special education, disability-related regular education issues involving MCAS and graduation, the Americans with Disabilities Act and Vocational Rehabilitation Act Section 504; the influence of local-aid formula and special education reimbursements; income supports under SSI; pre-planning for Childhood Disability Benefits under Social Security; DMR family support programs; the potential role of the MassHealth Family Care Program; the often pivotal role of MassHealth for "prior approval" services such as private duty nursing, durable medical equipment, and behavioral health services for children with severe health and mental health care needs; and family support services from the Department of Mental Retardation.
- **Age 18-22**
  The "years of transition to adulthood" focusing on the transitions from special education to adult services (especially through DMR and the Massachusetts Rehabilitation Commission); from financial dependence to independent eligibility for SSI and MassHealth; and from childhood to adult legal status (competency, decision-making, guardianship and alternatives). Panelists discuss shades of capacity for decision-making, levels of guardianship including limited guardianship, alternatives to guardianship including surrogate arrangements, and ways to enhance the capacity of disabled individuals to participate in decision-making.
- **Age 18-65**
  The "adult years" utilizing four panels to discuss health care and other support services, work, residential living arrangements and on income supports. On health care, MassHealth is again the key, with special attention to changes in MassHealth benefits and eligibility criteria from age 55; but also Department of Mental Retardation, Mental Health and Public Health programs. On work, the panelists review current approaches in vocational training, placement and support, including the role of the Massachusetts Rehabilitation Commission; the real-world application of work-related rights such as under the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act; and the complex relationship between work activity and maintenance of benefits under SSI, SSDI. Medicare and Medicaid. Regarding adult residential options, the panelists survey the nature and availability of services from the Departments of Mental Retardation and Mental Health; the status of the state and federal housing subsidy programs; the increasing role of assisted living in serving the needs of non-elders with disabilities; the new Adult Foster Care program; and the new "collaborative" housing approaches that depend on both family/trust financial support and individual governmental benefits such as low-income subsidies, Section 8 and Group Adult Foster Care under MassHealth. On income supports, the focus is on special problems under both SSI (particularly in relation to living arrangements and the impact of earned and unearned income and third-party support) and also SSDI (especially relating the problems of proof and marriage under Childhood Disability Benefits). Pertinent to all life stages is the potential but often under-utilized role of private health insurance, including the new Massachusetts universal health care program.

## Trusts for Persons with Disability

The second part of the day focuses on trusts for persons with disabilities and addresses selected issues in this context. After discussing what role a trust plays in supporting persons with disabilities the panel discusses selected topics including:

## Trust Funding Issues

- For self settled trusts, the need for the person transferring funds to the trust to have the legal right to direct the funds, the family home—exposure to pay back requirement
- For third party trusts, what role life insurance and other investment vehicles play

## Tax Issues

- Fundamentals of trust taxation/distributable net income
- Funding trusts with retirement benefits
- Qualified disability trusts (QDT), what are they, self settled QDTs, third party QDTs
- Gifts to special needs trusts and Crummey powers

## Selected Administration Issues

- Administering self settled trusts for the "sole benefit of" including, family vacations, family housing expenses
- Administration of trusts for residents of subsidized housing
- Guidance provided by letters of intent.

**DATE AND LOCATION**
Monday, March 3, 2008
9 a.m. – 5 p.m.
MCLE Conference Center,
Ten Winter Place, via Winter Street,
Boston

**PROGRAM NO.** 2080054P01

7 *Substantive Credits*

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