

# SNT Update 2020

Robert B. Fleming  
Fleming & Curti, PLC  
Tucson, Arizona  
[www.FlemingAndCurti.com](http://www.FlemingAndCurti.com)

Robert W. Fechtman  
Fechtman Law Office  
Indianapolis, Indiana  
[www.IndianaElderLaw.com](http://www.IndianaElderLaw.com)



# Administrative



# 2021 → 1.3% COLA

- MFBR (max SSI): \$783 → **\$794** (\$1175 → **\$1191** couples)
- PMV / ⅓ reduction rule: \$281 → **\$284.67**
- SGA: \$1,260 → **\$1,310** (\$2,110 → **\$2,190** blind)
- QC: \$1,410 → **\$1,470**
- Maximum SS benefit at FRA: \$3,011 → **\$3,148** (at age 70: \$3,974 → **\$4,153**)
- Trial work period (in 9 of 60 months): \$910 → **\$940**
- Estate tax exemption: \$11.58 million → **\$11.73 million?**
- Gift tax exemption: \$15,000 (also for ABLE maximum contributions)

# IRS Proposed Final Regulations – Sept 29, 2020 release, subject to final editing

- Reg. §1.529a-2(e)(1) requires an ABLE beneficiary to have “marked and severe functional limitations” – defined in (e)(2) as the standard for SSI eligibility for children “but without regard to age or to whether the individual engages in substantial gainful activity.”
- Reg. §1.529a-2(c)(1)(i)(C) permits an ABLE Act account to be established by the individual, the individual’s agent, a conservator or legal guardian, spouse, parent, sibling, grandparent or representative payee (in that order)

# Legislation



# CARES Act, March 27, 2020 (P.L. 116-136)

- Direct payment (of up to \$1,200) to most individuals
- Mortgage payments may in some circumstances be extended for up to two 180-day periods
- Required minimum distributions from IRAs and defined contribution retirement plans suspended for calendar year 2020
- On the other hand, withdrawals of up to 100K from IRAs and defined contribution retirement plans for coronavirus-related purposes will avoid the 10% early distribution tax, and
- Participants may borrow up to 100K from their own defined contribution plans for coronavirus-related purposes, and loan repayment requirements are suspended for one year

# Families First Coronavirus Response Act (FFCRA), March 18, 2020 (P.L. 116-127)

- Congress extended the coverage of the Family and Medical Leave Act (the FMLA) to all employers with fewer than 500 employees and granted subsidized leave rights to employees suffering from, or dealing with, COVID-19 illness (or care concerns occasioned by quarantine orders) until December 31, 2020

# Not In Materials



# John Doe v. NYSARC Trust Service, Inc. (N.D. NY, September 28, 2020)

- NB: Not an appellate nor even a final Dist. Court decision
- *Pro se* plaintiff, pooled trust beneficiary, sued administrator citing violation of ADA and NY State Human Rights Law
- Also alleged intentional infliction of emotional distress, etc.
- Plaintiff alleged that he is schizophrenic and mildly cognitively impaired, and that he was ejected from the trust's offices and barred him from returning
- In other actions, plaintiff had been tagged as filing frivolous complaints
- U.S. Magistrate Judge recommends dismissal

# Peter W. v. Saul (ND Ill., October 13, 2020)

- Another Federal District Court case
- \$20,000 SNT properly established
- SSA finds trust assets are available resources because:
  - Early termination provision
  - Permitted payments to family and friends to visit beneficiary
  - Payback provision invalid
- ALJ disagrees, but decides that payback provision should not include payment of “any taxes and fees” and denies
- Appeals Council agrees (refuses testimony of SN lawyer)
- Fed Dist Ct upholds denial, agrees no hardship because Peter W lives with his parents

# In Materials



# *Pfoser v. Harpstead*, (Minn. App., January 13, 2020), p. 2

- David Pfoser inherited money and used it to fund a pooled SNT when he was 65 years old.
- DHS imposed a Medicaid transfer of assets penalty, and Pfoser appealed.
- Director of pooled SNT testified Pfoser's sub-account would easily be spent during his expected lifetime and could be used to pay for things not covered by Medicaid.
- The District Court reversed, and the Court of Appeals affirmed the decision of the District Court.
- **DHS should have considered both the fair market value of the trust sub-account and other consideration.**

# *Alabama Medicaid Agency v. Britton*, (Ala. Civ. App. July 10, 2020), p. 3

- At a hearing on trustee's petition for final settlement of SNT, Alabama Medicaid Agency objected to \$1,500 compensation payment made to trustee after beneficiary's death but before Medicaid reimbursement to the state.
- The trial court approved the payment, and the Agency appealed, arguing trustee was a third-party debtor and payment was not authorized by the POMS.
- The state intermediate court held that trustee was not a third-party debtor and trustee fees were allowed as reasonable administrative expense of the trust estate.

# Background: *Black v. Black v. Anyone Mr. Black Knows Or Is Related To*, p. 3

- Bernard (he's a lawyer law professor) was surprised by his mother's late-life estate planning changes, proceeded to undo them post-death.
- Bernard was appointed as conservator for his sister Joanne in Colorado, proceeded to disclaim interests on her behalf. Colorado courts imposed \$4.3 million surcharge (we told you about this two years ago).
- Joanne's conservator filed the Colorado judgment in Illinois, and Bernard objected. The Illinois Ct of Appeal ruled that the judgment was enforceable in Illinois (we told you about this last year).

*Litvak v. Black*, (Ill App.,  
November 22, 2019), p. 4

- Bernard's wife, Katherine (also a ~~lawyer~~ law professor) brought an action against Bernard and her step-son, Samuel, as co-trustees of two trusts established for Joanne and one trust established for her step-children, alleging that the three trusts were indebted to her to the tune of 400K. Circuit court entered agreed judgment.
- Katherine didn't notify a third trustee (a cousin) or Joanne's conservator of her actions.
- Appellate court held that agreed judgment was product of collusion, vacated judgment, and remanded to circuit court to ensure participation of Joanne's conservator.

# *Black v. Black*, (Colo Ct. App., April 9, 2020), p. 6

- Colorado probate court issued various orders authorizing (cousin) co-trustee to disburse assets from SNT to pay out-of-state legal fees, suspending Bernard (brother) and Samuel (nephew) as trustees of SNT, and asserting in rem jurisdiction over conservatorship assets transferred to out-of-state trusts and personal jurisdiction over Bernard and Samuel as co-trustees of out-of-state trusts.
- Bernard and Samuel appealed.
- Court of appeals affirmed all decisions, but probate court lacked subject matter jurisdiction to change form of relief regarding trust funds during pendency of appeal.

*Black v. Goodwin*, (N.D. Ill.,  
July 20, 2020), p. 7

- Bernard alleged in federal court that two cousins (Dain and Wrigley) had conspired with his sister Joanne's conservator (Goodwin) in a scheme to strip assets from three trusts for their own personal benefit.
- Goodwin argued in 12(b)(1) motion that the probate exception and the *Rooker-Feldman* doctrine deprived the federal court of jurisdiction over Bernard's claims.
- Federal district court found that probate exception barred one of Bernard's claims, but *Rooker-Feldman* doctrine barred all three.

# *Commonwealth v. Bradley*, (Penn. App., August 7, 2020), p. 8

- Attorney/trustee was convicted for stealing money (127K) from SNTs and victimizing clients by not completing work for which they had paid him (41K).
- He was sentenced to 17 to 34 years' incarceration.
- He argued he should have been given a shorter sentence, because he needed to get out and work to pay restitution, and, when he committed the crimes, he had had health problems and really needed the money.
- Court of appeals was not persuaded, but found he should have been eligible for a reduced sentence through a recidivism risk incentive program.

# *Gonzalez v. Gonzalez*, (Ala. App., July 10, 2020), p. 8

- Settlement agreement in divorce proceeding called for husband to transfer life insurance policy to SNT for son.
- Husband moved to reopen divorce decree because he did not intend to agree to change policy's ownership.
- After trial, court agreed and modified decree.
- State appellate court reversed and ordered appointment of a GAL for son.
- After GAL report, trial court agreed again. Wife appealed.
- State appellate court reversed again. Husband should have read the settlement agreement before he signed it!

## *Puff v. Puff*, (Connecticut, January 14, 2020), p. 9

- Divorced parties stipulated in court to an oral agreement where Greg would pay 10K/month into SNT for Claudia.
- Greg submitted a form of trust and asked the court to formalize the oral agreement. The court complied.
- After numerous motions by Claudia, trust was approved and Claudia was found to be in contempt and ordered to pay 169K of Greg's attorney and expert witness fees.
- Claudia appealed and was found not to be in contempt.
- Greg appealed: order included litigation misconduct.
- State supreme court remanded to new trial court judge.

# *Conservatorship of O.B.*, (Calif., July 27, 2020) p. 10

- O.B. was found by trial court to be incapacitated and mother and sister were appointed as limited conservators.
- Court of appeals upheld the finding, ruling that trial court was required to find incapacity by clear and convincing evidence, but standard of appellate review was whether decision was supported by substantial evidence.
- State supreme court reversed and remanded to court of appeals, ruling that standard of review must be adjusted to recognize the higher standard of proof required.
- O.B. was fairly high functioning, and conservatorship effectively modified IEP.

# *Indiana FSSA v. Anderson*, (Ind. App., September 3, 2020), p. 12

- Anderson became eligible for Medicaid in 2015.
- In 2016, an SNT was established for Anderson's benefit and was funded with Anderson's farm property.
- Anderson died in 2018. Later that year, Indiana Medicaid (FSSA) imposed a transfer penalty starting in 2016.
- Anderson's representative appealed. ALJ reversed transfer penalty. FSSA requested agency review and later withdrew this request.
- Anderson's representative filed petition for judicial review.
- FSSA moved to dismiss. Trial court denied motion. Ct. of appeal affirmed.

# *McC Campbell by and through Hidani v.*

## *McC Campbell*, (D. Minn., May 8, 2020) p. 10

- David and Laura moved from WI to MN to care for David's aging parents and his disabled sister, Martha.
- Mother created trust naming David and Laura as residual beneficiaries, with SNT for Martha if most of the other children died and she was under age 65.
- After mother's death, Martha's sister, Julie Hidani, sued David and Laura to require proceeds from house sale to go to SNT for Martha "as required by her mother's trust."
- David and Laura brought four counterclaims and moved for summary judgment. US District Court denied motion finding trust language ambiguous.

*Ex parte N.G.*, (Ala.,  
September 4, 2020), p. 13

- Father was injured, got settlement, and established SNT.
- Years later, mother filed petition in juvenile court seeking to recover 70K in past-due child support and claiming a fraudulent transfer occurred when SNT was funded.
- Father moved to dismiss, asserting juvenile court did not have subject matter jurisdiction. Juvenile court agreed, and transferred the mother's claim to the local circuit court.
- Father's guardian filed for writ of mandamus with court of appeals. Court of appeals denied. State supreme court affirmed decision of court of appeals. Alabama statute requires court to transfer to proper court in same county.