

**ADDICTION & TRUSTS -**

It Looks Great On Paper,  
But Does it Work?

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**Let's Talk About Susie**

- She has a “drug problem”
- Dad's View –
  - ◆ She can't get it together & enough is enough
- Mom's View
  - ◆ But she's our daughter!

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**What's The Real Issue?**

- Susie's well-being?
- Preserving the Estate?
- Assisting Rehabilitation?
- Punishment?
- Do the clients even know?

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### What is "Abuse"?

- "A maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within a 12-month period:
- (1) recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home.

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### What is "Abuse"?

- (2) recurrent substance use in situations in which it is physically hazardous.
- (3) recurrent substance-related legal problems..
- (4) continued substance use despite having persistent or recurrent social or inter-personal problems caused or exacerbated by the effects of the substance."
- DSM-5

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### The Drafting Dilemma

- Defining the "Abusive" Behavior
- Setting forth criteria that enable the Trustee to carry out the mandated course of action
- Determining the course of action and consequences

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## The Drafting Dilemma

- Will the Trustee understand it?
- Will the Trustee have the tools & authority to implement?
- Is it enforceable?

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## Our Focus

- “In applying a holistic approach to legal problems, the elder law and special needs planning attorney works to consider the larger context, both other legal consequences, as well as the extra-legal context in which the problems exist and most be solved.”
- NAELA Aspirational Standards, 2<sup>nd</sup> Ed. A.1

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