

Creative Writing Meets
Drafting SNTs

1

Why Do We Do What We
Do?

- "...to improve the beneficiary's quality of life by providing that monies are spent for the benefit of the beneficiary for items and services not covered by public benefits..."

2

The Trustee

- It's not just a job, it's a sentence.
- Ask your client:
 - ◆ What does the Trustee know about the Beneficiary's condition?
 - ◆ Is it important for the Trustee to have some medical/psychological/health care knowledge or background?

3

The Trustee

- Does the Trustee have any familiarity with government benefit programs?
 - ◆ Which ones?
- How much time is the Trustee able to devote to the job?
- How good is the Trustee at money management?
- Can the Trustee be Bonded?

4

The Trustee

- Does the proposed Trustee have a built-in inherent conflict of interest?

5

**Discretion, Discretion,
Discretion**

- "Wise conduct and management; cautious discernment; prudence"

6

Fiduciary

- "...a person who is required to act for the benefit of another person on all matter within the scope of their relationship; one who owes another the duties of good faith, trust, confidence & candor."

7

The Perfect Clause?

- "The Trustee, in the Trustee's sole and absolute discretion shall do whatever the Trustee, in the Trustee's sole and absolute discretion deems appropriate to maintain and improve the Beneficiary's quality of life so long as those actions and/or distributions supplement but do not supplant the Beneficiary's public benefits."

8

Abuse of Discretion - I Know It When I see It. Or Do I?

- The 20/20 Hindsight Conundrum

9

Factors to Consider

- (1) the extent of the discretion conferred upon the trustee by the terms of the trust; (2) the purposes of the trust; (3) the nature of the power; (4) the existence or non-existence, the definiteness or indefiniteness, of an external standard by which the reasonableness of the trustee's conduct can be judged;

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Factors to Consider Cont'd

- (5) the motives of the trustee in exercising or refraining from exercising the power; [and] the existence of nonexistence of an interest in the trustee conflicting with that of the beneficiaries.”

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Do You Really Want the Trustee to Do That?

12

Some Final Thoughts
