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SNT Update 2021

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Stetson Poetry Slam

- First, Robert F.
- I can't compete

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2021's "Best SNT Beneficiary Quotes"

- One of Robert's SNT beneficiaries called to explain that there was a flood in the basement due to a faulty suck pump
- One of Robert's SNT beneficiaries emailed to ask if the trust would cause her to no longer be indecent

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Administrative

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2022→5.9% Social Security COLA

- MFBR (max SSI): $794 → **$841** ($1191 → **$1261** couples)
- PMV / ⅓ reduction rule: $284.67 → **$300.33**
- SGA: $1,310 → **$1,350** ($2,190 → **$2.260** blind)
- QC: $1,470 → **$1,510**
- Maximum SS benefit at FRA: $3,148 → **$3,345** (average ≈$1,565 → ≈**$1,657**)
- Trial work period (in 9 of 60 months): $940 → **$970**
- Estate tax exemption: $11.7 million → **$12.04 million? $6.02 million?**
- Gift tax exemption: $15,000 → **$16,000? $10,000?** (also for ABLE maximum contributions)

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Legislation

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Effect of Various Government Payments on SSI

- Child Tax Credit amounts pursuant to the American Rescue Plan Act of 2021 (March 11, 2021) are not treated as income or available resources for one year after receipt. Monthly payments of $250 or $300 per child began as of July 15, 2021.
- Economic Impact Payments pursuant to the CARES Act (March 27, 2020), the Consolidated Appropriations Act (December 27, 2020), and the American Rescue Plan Act (March 11, 2021) are similarly not treated as income or available resources for one year after receipt.
- As of the one-year anniversaries of these various payments, unspent benefits will become problematic.

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Not In Materials

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DeCamp v. State Farm Fire & Casualty, (MD Fla [St. Petersburg], Sept 7, 2021)

- Trial court case – dueling expert witnesses
- Issue: When State Farm refused to pay the attorneys fees and costs to secure probate court approval of a settlement with Timothy Decamp, did it act with bad faith (either statutory or common law), or commit unfair claims practices?
- Decision #1: The Decamp's expert, Daniel Doucette, Esq., signed an affidavit that it is "custom and practice" in the insurance industry to pay
- Decision #2: State Farm's expert, Kelly Gray, Esq., signed an affidavit that while some insurance companies pay these costs, not all do and it's not required
- In separate rulings, District Court rules that both may testify, but may not offer opinions or conclusions of law

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Background: ***Black v. Black v. Goodwin v. Dain v. Litvak v. Black v. Chase Bank***

- Bernard was surprised by his mother's late-life estate planning changes, determined to undo them post-death.
- Bernard was appointed as conservator for his sister Joanne in Colorado, proceeded to disclaim interests on her behalf. Colorado court imposed $4.3 million surcharge (we told you about this three years ago).
- Since then, Bernard and his wife, Katherine (they're both law professors) have filed multiple lawsuits in various jurisdictions, and, so far, they are batting zero.

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JPMorgan Chase Bank v. Black (N.D. Ill., September 29, 2021)

- Bank is holding millions of dollars that are the subject of extensive litigation in Colorado, Illinois, and New York. Bank sought order regarding interpleader assets, permanent injunction, and discharge. Bernard and son, Samuel, sought injunction and filed motion to compel. Dain (cousin and co-trustee) and Goodwin (Joanne's Colorado conservator) filed motion to dismiss. Dal (Bernard's wife's cousin) filed motion to proceed to collect judgment.
- All requests and motions were granted and/or denied, partly in part. The millions of dollars will continue to be held by the bank until all of this extensive litigation is finally concluded. The fun continues!

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In Materials

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Black v. Wrigley, (7th Cir., May 10, 2021), p. 4

- Bernard's cousin, Wrigley, allegedly made offensive comments to Katherine after the hearing in Colorado. Katherine sent 23-page letter (on her law school's letterhead) to NY court complaining about Colorado case.
- Wrigley and Kerr (forensic accountant from Colorado case) both called the law school dean, and Wrigley filed an ethics complaint with the university.
- Katherine sued in federal court for defamation and intentional infliction of emotional distress. Jury trial did not go well for Katherine. She appealed *pro se*. U.S. Court of Appeals found no reversible errors.

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Pfoser v. Harpstead, (Minn., January 20, 2021), 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, and now the Minnesota Supreme Court affirmed that decision.
- DHS should have considered both the fair market value of the trust sub-account and other consideration.
- Update (per Laurie Hanson): the more things change,the more they stay the same.

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Matter of Valerie R. Pecce SNT, (Mass.App.Ct., March 31, 2021), p. 2

- Albert established SNT for daughter, Valerie, in 2001, and transferred $200,000 into the SNT immediately.
- The SNT explicitly provided that it was a (d)(4)(A) trust.
- Albert died in 2007. Substantial assets poured into SNT.
- Valerie died in 2015 and DHS sought Medicaid "payback."
- Trustee asked court to reform trust as a third-party SNT.
- Court refused to reform the trust, finding that Albert intended the payback. Trustee appealed.
- Court of Appeals affirmed but remanded with instructions to remove the payback as to inheritance from Albert.

M.E.W. v. W.L.W., (PA App., September 18, 2020), p. 6

- Mother and father divorced in 2011. Son, J.Z.W., has Down Syndrome. Divorce decree required father to pay mother $800 per month alimony during J.Z.W.'s lifetime.
- In 2016, mother filed a petition asking for child support. Trial court set child support at medical insurance only, based on J.Z.W.'s assets in an SNT, his monthly SSI, the monthly alimony, and interest on promissory note father was paying to become 50% shareholder in his business.
- Mother appealed. State appellate court reversed, holding that trial court couldn't deviate from normal child support guidelines.

Wright v. Wright-White, (Ala.Civ.App., March 26, 2021), p. 6

- 2004 divorce judgment ordered father to pay $1,300 per month child support to SNT for disabled son and awarded father weekend visitation to serve as "mandatory respite care," or he could pay for respite care in lieu of visitation.
- In 2009, father moved away and stopped providing respite.
- In 2017, father filed petition to modify child support to reflect fact that son was, by then, receiving SSI. In 2019, mother filed petition to modify support to cover respite.
- Trial court increased father's child support to $3,000.
- On appeal, state appellate court affirmed.

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Matter of James H. SNTs, (NY App Div., May 6, 2021), p. 7

- Mother died in 2014. She left her estate to son John (a lawyer) and to John as trustee of two SNTs for son James. Five years later, nothing had been done to distribute the estate. John was also the trustee of third, self-settled SNT, and he did not handle this job very well.
- James' guardian successfully moved to remove John as trustee of all three SNTs.
- Guardian was granted attorney fees of 17K, guardian fees of 36K, and guardian's attorney's fees of 30K, all from SNT. John appealed. State appellate division affirmed the award of fees from SNT.

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Matter of Joseph M.W., (NY App Div., November 13, 2020), p. 8

- Personal injury proceeds were placed in self-settled SNT for Joseph, after payment of Medicaid subrogation lien.
- When Joseph died, the trustee (brother who was also remainder beneficiary) sought an order determining that any Medicaid liens against SNT had already been paid.
- At hearing, DHS argued that existing Medicaid lien against SNT was greater than remaining trust corpus. Trial court ordered trustee to pay all SNT proceeds to the state. Trustee appealed.
- State appellate division affirmed, ruling that prior payment of subrogation lien didn't satisfy "payback."

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Matter of Dousmanis, (NY App Div., January 19, 2021), p. 9

- Peter's will appointed Dousmanis as executor and directed him to place remaining estate funds in general benefit trust for Peter's disabled brother, Andrew, with Dousmanis as trustee and residual beneficiary.
- Upon Andrew's death, DHS sought to impose a Medicaid lien on trust assets. Dousmanis argued to the court that Peter had intended to create a third-party SNT for Andrew and remaining trust assets should pass to him. Trial court ordered payment to the state. Dousmanis appealed.
- State appellate division affirmed, finding nothing in Peter's will confirming intention to create SNT.

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Broadway National Bank v. Yates Energy Corporation., (Tex.,May 14, 2021) p. 10

- Settlor's trust was to send disabled son's share to an SNT for him. After settlor's death, bank trustee filed a mineral deed, but son received his share in fee simple. Trustee filed corrected deed clarifying son's share was only life estate. Six years later, son conveyed his royalty interests from oil and gas leases to Yates. Title attorney raised concerns, so Trustee filed amended correction deed.
- John's death ignited dispute over the extent of his conveyance to Yates. Probate court declared amended correction deed to be valid. Yates appealed.
- State appellate court reversed. State supreme court reversed again.

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Matter of ABB Trust, (Ariz. App., May 11, 2021), p. 11

- Austin divorced wife of 57 years and married his caretaker, Lindi. Shortly before divorce, Austin hired Deloughery to create an irrevocable trust, with the residual beneficiaries to be 45% former wife, 45% children, and 10% Lindi. Austin appointed Deloughery as the Trust Protector.
- Trust Protector amended the trust within six months to leave all in discretionary trust for Lindi. First wife and daughters sued Lindi (not Deloughery) for undue influence.
- Probate court dismissed undue influence claim and invoked trust's *in terrorem* clause. Petitioners appealed. State appeals court reversed and remanded.

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