Special Needs Trust Case Law Update

ROBERT W. FECHTMAN
FECHTMAN LAW OFFICE
INDIANAPOLIS, INDIANA

ELIZABETH NOBLE ROLLINGS FRIMAN
FLEMING & CURTI, PLC
TUCSON, ARIZONA

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IRC §529A – the ABLE Act Account

- Prior to OBBBA, penalty-free conversions from 529 accounts to 529A accounts were permitted but with a "sunset" date of 12/31/2025
- OBBBA removes the sunset provision, allowing such transfers for disabled 529 beneficiaries:
  - Maximum conversion remains keyed to gift tax exemption amount
  - 529A accounts have payback provision for state Medicaid expenditures (but not in every state)
  - "Qualified Disability Expenses" much broader than "Qualified Education Expenses"
  - Conceptually, 529A account "owned" by beneficiary

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Other ABLE-Related Changes

- ABLE-to-Work Act also made permanent (for 529A beneficiaries who work but do not participate in a work-related retirement program)
- ABLE contributions continue to qualify for Saver's Credit; in 2027, maximum credit increases to $2,100 (up to $1,050 tax reduction)
- Some states permit state income tax deduction for some or all of 529 and/or 529A contributions
- Strategy opportunity: create 529 account for disabled child?

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Other OBBBA Provisions of Note

- Use of §529 accounts liberalized
  - Starting in 2026, limit on K-12 expenses lifted from current $10K/year to $20K
  - K-12 expenses can include "educational" therapies starting in 2025
- Medicaid redeterminations switched to 2X/year, and with new work requirements for many (implementation by 1/1/27)
- Medicaid (LTC) application dates back to 60, not 90, days before application; Medicaid (medical) stays at 30 days retroactive eligibility
- Federal government explicitly prohibited from requiring minimum staffing levels in nursing home facilities

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2026 →2.7%?? Social Security COLA

- MFBR (max SSI): $967 → **$993?** ($1,450 → **$1,489?** couples)
- PMV / ⅓ reduction rule: $342.33 → **$331?**
- SGA: $1,620 → **$??** ($2,700 → **$??** blind)
- QC: $1,730 → **$??**
- Maximum SS benefit at FRA: $4018 → **$??** (average all retired workers ≈$1,976 → ≈**$??**)
- Trial work period (in 9 of 60 months): $1,160 → **$??**
- Estate tax exemption: $13.99 million → **$15 million**
- Gift tax exemption: $19,000 → **$19,000** (also for ABLE maximum contributions)

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Matter of H., (NY Supreme Ct., App. Div., 2nd Dep't, May 28, 2025), p. 1

- Father transferred life estate in home to daughter with special needs.
- Seven years later, in his role as daughter's guardian, father petitioned court to create SNT for daughter and to execute, in both his individual capacity and as guardian, a deed to transfer life estate back to himself, transfer 52% of remainder interest to SNT, and transfer 48% of remainder interest to himself.
- Probate court denied petition, stating father had provided no authority for the relief requested.
- Appellate court reversed and remanded for a determination of the merits of the petition and whether it was in daughter's best interest.

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In re Hector M. Hernandez Supplemental Needs Trust, (Mich. Ct. App., October 14, 2024), p. 2

- Hector was injured (found to be incapacitated) and received $2M from PI action. His sister/guardian received approval of the Court to establish and fund a SNT.
- Guardian was residuary beneficiary of SNT. Hector never exercised power of appointment.
- Hector died. Court ordered SNT funds to be distributed to Sister/Guardian. Hector's children learned of the SNT for the first time. Probate Court vacated order to distribute because notice was never provided to children.
- Probate Court modified residuary clause of SNT to name Hector's Estate residuary beneficiary of SNT.
- Court of Appeals upheld Probate Court's ruling. Guardian failed to show by clear and convincing evidence that Hector intended her to be sole beneficiary of SNT.
- Probate Court's modification to void original residuary clause was warranted because he died intestate.

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In the Interest of Joanne Black, (Unreported Colo. Ct. App., May 22, 2025), p. 3

- Bernard Black was removed as conservator for his sister, Joanne Black, in 2015 after probate court discovered he had stolen more than $1M from her. The damages were trebled and Black was surcharged in the amount of $4.6M.
- Rather than repay the stolen money, Black embarked on "campaign of scorched earth multi-jurisdictional litigation against Joanne that has persisted for a decade."
- In present case, just as probate court was fashioning a remedy that would finally allow Joanne to recoup some of the stolen funds, Black moved to terminate conservatorship, retroactively, based on NY court order from 2016. Probate court denied the motion and Black appealed.
- Court of appeals held termination of conservatorship may only be sought by protected person, the conservator, or person interested in protected person's welfare. "Black is none of those." Probate court order affirmed.

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Matter of Black, (NY Supreme Ct., App. Div., 2nd Dep't, July 16, 2025), p. 4

- In 2020, Grievance Committee for Ninth Judicial District in NY commenced formal disciplinary proceedings against Black. Petition contained six charges against Black and stated intent to apply doctrine of collateral estoppel to bar Black from relitigating issues from order of CO probate court that was affirmed by CO court of appeals. NY Appellate Court did apply doctrine of collateral estoppel.
- In 2022, matter was referred to Special Referee. Hearing was conducted. Special Referee sustained all five charges (one had been withdrawn) but found Black had not acted with venal intent. Grievance Committee moved court to confirm Special Referee report but disagreed about venal intent. Black cross-moved to confirm report as to only one charge and the report's finding of substantial evidence of mitigation and lack of venal intent.
- Appellate Court sustained four of the charges and determined proper sanction was disbarment. Black disbarred!

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In re Center for Special Needs Trust Administration, (Bankr. M.D. Fla., May 9, 2025), p. 5

- The Center served as a trustee of thousands of SNTs. The Center loaned more than $100M to Boston Finance Group, LLC (controlled by The Center's founder, Leo Govoni).
- Loan was in default. The Center filed for bankruptcy. Chapter 11 Trustee appointed.
- Bankruptcy court granted summary judgment against BFG and Govoni, finding them liable for $120M+ in damages.
- Trustee's temporary restraining order converted into a preliminary injunction. BFG and Govoni failed to produce required documents and comply with discovery orders.
- Govoni and BFG found in contempt. Court granted the Trustee's Emergency Motion for Sanctions. Govoni was ordered to pay $5,000 per day until compliance.

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Chamberlin et al v. Goldberg, (M.D. Fla. February 21, 2025), p. 6

- Parents of beneficiary of an SNT managed by The Center filed class action lawsuit against Boston Finance Group, LLC (BFG), a company controlled by The Center's founder, Leo Govoni.
- Bankruptcy Court granted trustee's motion to enforce the stay.
- Automatic stay under 11 U.S.C. § 362 prevents actions seeking to control property of the bankruptcy estate. Commingled funds are considered property of the bankruptcy estate unless they can be traced.
- Appellants' complaint were deemed to be intertwined with those against The Center. District Court denies motion.

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United States v. Leo Joseph Govoni, (M.D. Fla., July 18, 2025), p. 6

- After the Florida Bankruptcy Court found Leo Govoni in contempt and (among other things) ordered him to pay $5,000 per day until he complied with the Court's order, Govoni found himself before the District Court on other charges.
- The District Court indicted him on 15 counts and detained him. Govoni argued he was old and ill and was not a flight risk and should be able to post bond and be released.
- District Court denies motion to revoke the detention order.

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In the Matter of G. W., (N.J. Super. Ct., App. Div., June 18, 2025), p. 7

- Gabrielle lives in a group home that is funded by two different state programs that have separate and different state lien statutes.
- Gabrielle inherited approximately $600,000 from her sister's estate. The local Arc petitioned for guardianship and transfer of the inheritance to a pooled SNT so Gabrielle could continue to be eligible for Medicaid.
- One of the state programs notified the court that it had a *present* lien of a little more than $1 million. Arc filed a reply arguing that the other state program's (New Jersey Medicaid's) *future* lien would take precedence.
- Probate court accepted Arc's arguments, finding it did "not make sense" to pay the lien now. Court of appeals reversed based on the "plain language of both statutes."

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Tami Corrello v. Douglas Corrello, (Unpublished N.J. Super. Ct. App. Div., August 6, 2025), p. 8

- Doug required to pay his ex-wife, Tami, alimony of $352 per week. Doug made many attempts to modify alimony.
- Tami is beneficiary of SNT funded with assets from the estate of her mother. Doug alleged that Tami failed to disclose assets of SNT when Court performed calculation of alimony.
- Lower court ruled distributions from SNT were not to be treated as a regular income. Doug's challenge was barred by res judicata because Tami previously disclosed loans taken from SNT to cover expenses when Doug failed to pay alimony.
- Divorce court denied Doug's motion to terminate or modify alimony
- Court granted most of Tami's cross-motion to enforce prior orders and to sanction Doug. Appeals Court affirmed.

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Conservatorship of the Person and Estate of Mercado, (Unpublished Cal. Ct. App., May 28, 2025), p. 8

- Unrepresented conservator filed a petition to create and fund an SNT with about $90,000. The court set a hearing and both the counsel for the conservatee and the the GAL filed reports with the court. Counsel for the conservatee recommended establishment of the proposed SNT, but the GAL argued that a pooled SNT was a more appropriate and cost-effective option.
- Probate court denied the petition but ordered GAL fees be deferred until a petition to fund the pooled SNT was filed. Conservator appealed.
- Unrepresented conservator managed to submit a decent brief, but was not able to get a transcript of the hearing or copies of the pleadings into the appellate record. Court of Appeals affirmed, citing no evidence the probate court abused its discretion.

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