

Special Needs Trust Update

2025 Stetson SNT Conference

October 24, 2025

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Cases

Matter of H., ___ A.D.3d ___ (2nd Dep't 2025), ___ N.Y.S.3d ___, 2025 N.Y. Slip Op. 03190 (NY Supreme Ct., App. Div., 2nd Dep't, May 28, 2025). Father transferred life estate in his home to daughter. Later, father/guardian petitioned to transfer that life estate back to himself and transfer a 52% remainder interest into an SNT for daughter and the other 48% 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 interests.

In 2009, father was appointed as the guardian of the person and property of daughter. In 2015, father, in his individual capacity, executed a deed transferring to daughter a life estate in the property where they both resided (the "subject property").

In 2022, father, in his role as daughter's guardian, filed a petition to create an SNT for daughter and to execute, in both his individual capacity and as guardian, a deed whereby he would transfer to himself a life estate in the subject property, transfer 52% of the remainder interest to himself as trustee of the SNT, and transfer 48% of the remainder interest to himself. The petition alleged, among other things, that the transfers were in daughter's best interests because, as a result of daughter's life estate in the subject property, father could not secure certain real estate tax benefits that would make the subject property more affordable. The petition also requested that the court authorize father to use the subject property to secure a mortgage loan of up to \$100,000. There was no opposition to the petition. In an order dated January 10, 2023, the court denied the

petition and, in effect, dismissed the proceeding, stating that father had provided no authority for the relief requested.

On appeal, the New York Supreme Court, Appellate Division, determined that the letters of guardianship clearly contemplated that father had the ability to petition the probate court to collect or dispose of any property belonging to daughter, and, therefore, that the probate court erred in determining that father did not provide authority for the relief requested. Since the relevant statute requires the court to employ a “best interests” analysis and the probate court denied the petition solely on the ground that father did not provide authority for the relief requested, the probate court never determined what was in daughter’s best interests.

Accordingly, The Court of Appeals reversed the order, reinstated the petition, and remanded the matter to the probate court for a determination of the petition on its merits.

[*In re Hector M. Hernandez Supplemental Needs Trust*](#), ____ Mich. App. ____, ____ N.W.2d ____ (Mich. Ct. App., October 14, 2024). 2024 WL 4486764. Michigan Court of Appeals affirmed probate court’s modification of its own order that had allowed the guardian to designate the residual beneficiaries of an SNT.

Hector M. Hernandez, Sr. suffered a stroke in 2014, resulting in quadriplegia. Hector was legally incapacitated and his sister, Luisa, was appointed his guardian. Hector received a \$2 million settlement from a medical malpractice lawsuit. The probate court required Luisa to create a special needs trust (SNT) for Hector’s benefit. The petition for authorization and approval of the trust was a protected proceeding and the probate court’s authorization of the establishment of the trust was a protective order.

With the oversight of the Court, the funds from the lawsuit were placed in a SNT special needs trust for Hector’s benefit. Hector’s children never received notice of the proceedings to establish or fund the trust.

The trust included a residuary clause that directed any remaining assets to Luisa – *unless* – Hector exercised his power of appointment through a valid Last Will and Testament or “other estate plan.”

After Hector died in 2021, the probate court approved distribution of trust funds to Luisa. However, Hector’s children (the heirs of his Estate) were never provided notice of the petition to establish or fund the trust, nor were they provided notice of the petition to distribute funds to Louisa. Hector’s children learned of the Court’s order to distribute all trust funds to Luisa and petitioned to vacate the order approving the distribution of trust assets to Luisa, arguing they were entitled to notice as presumptive heirs. The probate court granted the children’s motion and ruled that the court improperly authorized the

trust because neither the Trustee nor the Guardian notified Hector's adult children of the proceedings. The Court then altered the residuary clause of the trust and replaced Luisa with Hector's estate as the remainder beneficiary. The Court also modified its order allowing a final account and directed all remaining assets to the personal representative of the Estate.

In her appeal Luisa argued that the probate court erred that Hector's children were entitled to notice of the petition because at the time of the trust funding Hector was not a "protected individual" and for this reason notice was never required. The Appeals Court disagreed and found that the probate court's authorization of the special needs trust was a "protective order," and thus Hector's adult children were entitled to notice of the proceedings. In addition, the Court of Appeals ruled that Luisa failed to show by clear and convincing evidence that Hector intended the residuary clause to allocate his property upon his death. The probate court's modification of the residuary clause to direct the trust's remaining assets to Hector's Estate was warranted, because the trust's purpose became impossible to achieve upon Hector's death.

The Court of Appeals affirmed the probate court's decision to grant summary disposition in favor of Hector's adult children and to modify the trust's residuary clause.

[*In the Interest of Joanne Black*](#), 2025 WL 1466913 (Unreported, Colo. Ct. App., May 22, 2025). Colorado Court of Appeals affirmed decision of the Probate Court to deny brother's motion to terminate sister's conservatorship retroactively, just as the court was about to allow sister to recoup the funds stolen from her by brother.

Bernard Black was removed as the conservator for his sister, Joanne Black, in 2015, after the probate court discovered that he had stolen more than \$1 million from her (he placed the money in an SNT for Joanne and an "Issue Trust" for himself and his children). The damages were trebled and Black was surcharged in the amount of \$4.6 million. Rather than repay the stolen money, as ordered by the court, Black embarked on a campaign of scorched earth multi-jurisdictional litigation against Joanne that has persisted for a decade.

Some examples follow. In 2016, Black sued Joanne in federal district court in Illinois, seeking a declaration that he controlled the assets he had stolen, even though the Colorado probate court had by then frozen all of Joanne's assets. When Joanne asked the Colorado probate court to disburse funds from the SNT so she could hire a lawyer to defend her in the Illinois lawsuit, Black objected by challenging the probate court's jurisdiction over the SNT. In 2017, Black's wife brought an action in Illinois state court, asserting that the Issue trust owed her nearly half a million dollars. Within weeks, Black, as trustee, consented to the court's entry of judgment, but the Illinois Appellate Court later vacated the consent

judgment, concluding that it was the “product of fraud or collusion.” In 2018, after Black funneled more than \$250,000 out of the SNT in violation of the Colorado probate court’s order, the court suspended Black as trustee of all trusts benefiting Joanne. In other cases, Black’s behavior was described as “in bad faith, vexatious, and without reasonable basis,” “frivolous and baseless,” and “shocking.” One court declared that Black is the antithesis of a person interested in Joanne’s welfare. Joanne is not the beneficiary of her brother’s concern and care; she is his “victim.”

In the present case in 2023, as the probate court was fashioning a remedy that would finally allow Joanne to recoup some of the stolen funds, Black moved to terminate Joanne’s conservatorship, retroactively, based on a New York order issued in 2016. The probate court denied the motion and Black appealed.

The Court of Appeals held that, according to state law, termination of a conservatorship may only be sought by the protected person, the conservator, or a “person interested in a protected person’s welfare.” Because “Black is none of those,” the court concluded that he lacked standing to move for termination of Joanne’s conservatorship. Accordingly, the court affirmed the probate court’s order

[Matter of Black](#), ___ A.D.3d ___ (2nd Dep’t 2025), ___ N.Y.S.3d ___, 2025 N.Y. Slip Op. 04174 (NY Supreme Ct., App. Div., 2nd Dep’t, July 16, 2025). In a disciplinary proceeding begun in 2020, a New York Appellate Court sustained a Special Referee Report and disbarred Bernard Black.

In 2020, the Grievance Committee for the Ninth Judicial District in New York commenced a formal disciplinary proceeding against Bernard Black. The petition contained six charges against Black and stated that the Grievance Committee intended to move for an order to apply the doctrine of collateral estoppel to bar Black from relitigating the issues from an order of the Colorado Probate Court that was affirmed by the Colorado Court of Appeals. Following numerous motions and cross-motion, the New York Appellate Court granted the request of the Grievance Committee and applied the doctrine of collateral estoppel.

In 2022, the court referred the matter to a Special Referee to hear and report. A hearing was conducted. Following the hearing, the Grievance Committee withdrew charge five of its petition. In a report dated July 20, 2023, the Special Referee sustained charges one through four and charge six of the petition and found that “[t]here was no showing that [the respondent] acted with venal intent.” The Grievance Committee moved the court to confirm the Special Referee’s report as to the charges, disaffirm the report insofar as it determined that the respondent acted without venal intent, and impose such discipline

upon Black as the court deemed just and proper. Black cross-moved to confirm the report as to charge six and the finding of substantial evidence in mitigation, including the lack of venal intent, disaffirm the report as to charges one through four, and to impose various forms of discipline short of disbarment.

There was mitigating evidence produced, including testimony regarding Black's honesty and integrity provided by several highly regarded law professors. But, as we have seen over the last eight years or so, there was also plenty of damning evidence that was produced.

In view of the evidence adduced at the hearing, the court found that the Special Referee properly sustained charges two through four and charge six of the petition, but that charge one was not properly sustained. Based on the record, the court sustained charges two through four and charge six and determined that the proper sanction was disbarment. Black disbarred!

[*In re Center for Special Needs Trust Administration*](#), 2025 WL 1293218 (Bankr. M.D. Fla., May 9, 2025). United States Bankruptcy Court in Florida finds Govoni and Boston Finance Group LLC in contempt and grants bankruptcy trustee's emergency motion for sanctions.

The Center for Special Needs Trust Administration, Inc. ("The Center") served as a trustee of special needs trusts for over 2,000 beneficiaries. The Center loaned more than \$100M to Boston Finance Group, LLC (BFG), a company controlled by The Center's founder, Leo Govoni. The loan was in default. The Center filed for Chapter 11 bankruptcy in February of 2024 and Michael Goldberg was appointed as the Chapter 11 Trustee. The Trustee filed an adversary proceeding against BFG and Govoni for breach of the loan documents.

The court granted summary judgment against BFG and Govoni, finding them liable for \$120,324,391.07 in damages. The Trustee sought a temporary restraining order to prevent the dissipation of assets, which was later converted into a preliminary injunction. Despite court orders, BFG and Govoni failed to produce required documents and comply with discovery orders. Govoni's actions, including dissolving sixteen Alter Ego Entities, violated the court's preliminary injunction.

On May 2, 2025, the court found Govoni and BFG in contempt for failing to comply with court orders and granted the Trustee's Emergency Motion for Sanctions. Govoni was ordered to pay \$5,000 per day until compliance and to cover attorneys' fees and costs incurred by the Trustee and the Unsecured Creditors' Committee.

[*Chamberlin et al v. Goldberg*](#), 2025 WL 545958 (M.D. Fla. February 21, 2025). United States District Court in Florida affirmed bankruptcy court's order on appeal.

This is another case concerning The Center for Special Needs Trust Administration, Inc. ("The Center"). The appellants in this case have a son who is a beneficiary of one of the special needs trusts mismanaged by The Center. The parents filed a class action lawsuit against Boston Finance Group, LLC (BFG), a company controlled by The Center's founder, Leo Govoni (and involved in the Bankruptcy proceedings). The bankruptcy court granted the Chapter 11 Trustee's motion to enforce the automatic stay.

The District Court affirmed the bankruptcy court's order enforcing the automatic stay because the complaint violated the automatic stay because it sought to exercise control over the property of the estate and interfered with the Trustee's administration of the case. Automatic stay under 11 U.S.C. § 362 prevents actions that seek to control property of the bankruptcy estate. Commingled funds are considered property of the bankruptcy estate unless they can be traced. The claims in the Appellants' complaint were deemed to be intertwined with those against The Center.

Order affirming bankruptcy court's order on appeal.

[*United States v. Leo Joseph Govoni*](#), 2025 WL 1997709 (M.D. Fla., July 18, 2025). United States District Court in Florida denied Govoni's motion to revoke the order of detention that was issued due to his repeated flaunting of court orders and ongoing attempts to hide his assets from the bankruptcy court.

After May 2025 when the Florida Bankruptcy Court found Leo Govoni in contempt and ordered him to pay \$5,000 per day until he complied with the Bankruptcy Court's orders, he was indicted on 15 counts in a separate court case. The indictment by the Federal District Court included conspiracy to commit mail fraud, wire fraud, bank fraud and illegal monetary transactions among other crimes. Govoni was accused of embezzling more than \$100M from beneficiaries of the special needs trusts that were managed by The Center for Special Needs Trust Administration, Inc., a company he owned.

Govoni argued that he should not be detained because he was in poor health. He also tried to argue that his alleged crimes were only economic in nature and for this reason, he was not a danger to others and should be released on bond. The United States argued that Govoni posed a substantial risk of flight and obstruction of justice, citing his access to financial means and potential access to a private plane. The Court reviewed Govoni's actions after the ruling of the Bankruptcy Court, which included refusing to allow chief restructuring officers to enter his building in violation of the Court's order and, on the same day that the Bankruptcy Court ordered sanctions based on Govoni's actions, he was caught inside the Govoni headquarters removing valuable commercial-grade coffee machines and

barrels of rum (preventing the chief restructuring officer from taking it), in violation of the Court's order. In addition to other evidence, the United States presented evidence of Govoni's attempts to obstruct justice, including transferring funds to his wife's accounts. Despite the Bankruptcy Court finding Govoni in contempt and imposing a \$5,000 daily fine, Govoni refused to pay the contempt fine (which reached \$200,000 before the Bankruptcy Court stopped the daily fine). The Magistrate Judge ordered Govoni's detention, concluding that no conditions of release would ensure his appearance in court.

Govoni filed a motion to revoke the detention order, arguing that the government failed to prove he was a danger to the community or a flight risk. Upon de novo review, the District Court agreed with the Magistrate Judge's decision, emphasizing Govoni's history of obstructive conduct and the risk of flight due to the potential lengthy prison sentence he faced. The motion for revocation of the detention order was denied.

[In the Matter of G. W.](#), ____ A.2d ____ (N.J. Super. Ct. App. Div., June 18, 2025). New Jersey Court of Appeals enforced a state agency's present lien prior to the funding of a pooled SNT.

Gabrielle is an adult who resides in a group home operated by the Arc of Bergen and Passaic Counties (Arc), where she receives day and residential services paid for through the Division of Developmental Disabilities (DDD), which is a division of New Jersey's Department of Human Services, and New Jersey's Medicaid program, which is implemented through the Division of Medical Assistance and Health Services (DMAHS). These two programs have separate and different state lien statutes.

On December 11, 2019, Gabrielle's sister died intestate, leaving Gabrielle to inherit approximately \$600,000 from her estate. Arc petitioned for guardianship and transfer of the inheritance to a pooled SNT so Gabrielle could continue to be eligible for Medicaid. In response, DDD notified the court that it had a lien pursuant to the state statute in the amount of a little more than \$1 million. DDD and DMAHS, both represented by the state Attorney General, filed a joint response to Arc petition. DMAHS took no position regarding Arc's requested relief, but DDD argued that it held a present lien against Gabrielle's property that must be addressed before any trust could be established for Gabrielle. Arc filed a reply arguing DMAHS's future Medicaid lien would take priority over the existing DDD lien.

The probate court accepted Arc's arguments and granted the petition, finding that it did "not make sense" that the monies paid by DDD should have to be repaid because of the inheritance and "the monies due to Medicaid, which Gabrielle was required to be eligible for in order to get those DDD benefits [would] take a back seat," not to mention that it

would be in Gabrielle's best interest for the DDD lien not to be recognized and thereby allow the pooled SNT to be funded.

The Court of Appeals reversed the trial court's order, holding that it was contrary to the plain language of both statutes. A DDD lien attaches to a living person's assets or a decedent's estate, while a Medicaid lien attaches only to a decedent's estate. In the event both DMAHS and DDD have liens against a decedent's estate, it is only then that a DDD lien is subordinate to a Medicaid lien.

[*Tami Corrello v. Douglas Corrello*](#), No. A-2592-23 Unpublished (N.J. Super. Ct. App. Div., August 6, 2025). Appeals Court upholds lower Court's orders and sanctions ex-husband after he fails to follow Court order to pay alimony and alleges that the assets in the special needs trust funded for the benefit of his ex-wife are resources attributable to her.

Tami and Doug Corrello divorced and the Judge required Doug to pay his ex-wife, Tami, alimony of \$352 per week. In subsequent years the Court addressed Doug's requested modifications to alimony. Doug alleged (among other things) that Tami failed to disclose assets, which consisted of a special needs trust established by her mother and funded for her benefit. The lower court ruled that the trust was not to be treated as a regular income source, and Doug's challenge to that was barred by res judicata. When Doug did not pay alimony, Tami had to borrow a significant sum from her mother's estate to compensate for the unpaid alimony. The court found Tami did disclose loans from her mother's estate and addressed the existence of the special needs trust in her earlier filings.

Divorce court denied Doug's motion to terminate or modify alimony based on Tami's past representations. The court granted most of Tami's cross-motion to enforce prior orders and to sanction Doug. Appeals Court affirmed.

[*Conservatorship of the Person and Estate of Mercado*](#), No. D084147 Unpublished (Cal. Ct. App., May 28, 2025). California Court of Appeals affirmed a decision of the probate court to deny a petition to establish a special needs trust but to invite a petition to fund a pooled SNT based on the small size of the proposed trust fund.

In 2015, Julia Hernandez petitioned for a limited conservatorship of the person of her son, Martin Mercado, and the probate court eventually named Hernandez, as well as Alicia Mercado ("Mercado") and Roxana Hernandez as co-limited conservators of the person. In December 2022, the court appointed Mercado as the limited conservator of the

conservatee's estate. In March of 2023, Mercado dismissed her counsel and began representing herself. At the same time, the court appointed counsel for the conservatee.

In September 2023, Mercado filed a petition to create and fund an SNT. At some point thereafter, the court appointed a guardian ad litem for the conservatee. In December 2023, Mercado filed an amended petition to create an SNT. The court set a March 6, 2024, hearing on Mercado's amended petition. In advance of the hearing, both the conservatee's guardian ad litem and court-appointed counsel, respectively, filed reports with the court.

Observing that the conservatee's estate contained approximately \$90,000, the conservatee's attorney recommended it was in the conservatee's best interest to establish an SNT. The two petitions had each included a different proposed SNT, and the conservatee's counsel recommended that the first SNT be approved. The guardian ad litem also recommended that an SNT be established, but stated that she felt a pooled SNT was a more appropriate and cost-effective option.

On March 6, 2024, the probate court denied Mercado's amended petition. It ordered payment of the conservatee's counsel's requested fees, but ordered that the guardian ad litem's fees be deferred until a petition was filed by Mercado regarding the establishment of a pooled SNT account for the conservatee. Mercado appealed this order.

Remember that Mercado is unrepresented. Even so, she managed to file an opening brief with the appellate court in which she contended that she as conservator had the authority to create an SNT, that her amended petition was compliant with the rules of court and Social Security Administration requirements, and that the probate court failed to consider certain factors under the California Probate Code and "under undue influence" erred by misinterpreting or misapplying the law when it denied her amended petition. The problem for Mercado was that the hearing at which the probate court made the order was not reported and Mercado was not able to get a reporter's transcript of the hearing or copies of the petitions and proposed trust documents into the appellate record.

The Court of Appeals affirmed the probate court's order, stating that, having no evidence to support Mercado's claims, they presumed the probate court did not abuse its discretion.