Special Needs Trust Update

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Cases

In re: Guardianship of James P. Dwyer, 2024-Ohio-2544 (Ohio Ct. App., 1st Dist., July 3, 2024). Coordinating care for a sibling with special needs can be difficult and, when disputes among family members arise related to caregiving and the management of resources, Ohio Court of Appeals held that it will consider the best interests of the protected person and the terms of the trust.

James has Down Syndrome and his parents created a third-party special needs trust (SNT) before they died. They named one of his siblings, his sister, Mary Anne, a trust advisor. James' other sister, Suzanne, was named as an alternate trust advisor. Another one of James's sisters, Maureen, was appointed Guardian for James when their parents died. She and James lived in their parents' home and she was also responsible for overseeing his STABLE account and funds in a Medicaid payback trust account for his benefit.

The siblings disagreed over James's care and management of his finances, leading to multiple court motions, settlement agreements, and removals of Maureen as guardian and from various financial roles. Among other things, the settlement agreements addressed how Maureen and Suzanne (now serving as a co-guardian for James) would coordinate his care, what information related to James' accounts she was required to share and what funds were required to be used by Maureen for James' benefit. The probate court ultimately found that Maureen had breached settlement agreements, failed to provide requested financial information, and acted against James's best interests. The court

removed her as co-guardian, from James's financial accounts, and ordered her to pay the siblings' attorney fees.

On appeal, Maureen challenged her removal from James's financial accounts and the attorney fee awards. The appeals court found that the probate court's rulings to remove Maureen as guardian and from matters related to James' financial accounts did not have any bearing on whether she could (or should) be removed as trustee of his SNT. The Court of Appeals affirmed the probate court's rulings, finding no abuse of discretion in removing Maureen from James' financial accounts given her beaches of the terms of the settlement agreements and failures to act in James' best interests. Maureen's appeal of the attorney fee awards was dismissed as moot since the fees had been paid via garnishment and Maureen had not sought a stay.

Black as Trustees of Black v. Black, ____ N.E.3d ____, 2024 IL App (1st) 221667 (Ill. App. Ct., 1st Dist., February 9, 2024). Illinois Appellate Court affirmed trial court's vacation of its own judgement once it was informed that Bernard Black and Samuel Black, as trustees of the Trust for the Benefit of the Issue of Renata Black, got the judgment without proper notice to the intervenors.

Some background facts from the numerous prior cases, to set the stage for this new one.

The Black siblings' mother died in New York in 2012. Mother's Will devised two-thirds of her estate to an SNT ("Supplemental Needs Trust") for her daughter, Joanne, who suffers from schizophrenia, and one-third to a trust ("Issue Trust") for her son ("Mr. Black") and his children. Mother's estate consisted of multiple accounts with a total value of approximately $3 million. Shortly before her death, mother designated 95% of the value of the accounts payable-on-death ("POD") directly to Joanne, and 1% POD to each of Mr. Black's five children from his first marriage.

This situation did not sit well with Mr. Black, or with Mr. Black's second wife, with whom he had two children. Mr. Black, is a tenured law professor who has written on the subject of corporate directors' fiduciary duties. His wife, Katherine Litvak, is also a tenured law professor. Mr. Black decided that the best course of action was to seek appointment as Joanne's conservator. Then, acting on Joanne's behalf, he could "disclaim" the money in the POD accounts, and the money would revert to the estate and be distributed as mother originally intended. In this way, Mr. Black could correct the "mistake" made in mother's designation of the POD accounts.

Joanne was in Denver, so Mr. Black initiated the conservatorship action there. He told the court that the assets were at risk of being "wasted and dissipated" because mother had

"inadvertently" designated the accounts as POD to Joanne, rather than routing the funds through the SNT. In 2013, the probate court appointed Mr. Black as Joanne's conservator and authorized him to disclaim Joanne's interests in the POD accounts and place the assets into the SNT. Mr. Black promptly executed the disclaimer and, notably, redistributed the assets two-thirds to the SNT and one-third to the Issue Trust.

It's a long story, but, in 2015, Joanne's court-appointed counsel filed a motion to void the disclaimer, and ultimately argued that Mr. Black's conduct amounted to civil theft. Following a hearing, the court found that Mr. Black had indeed engaged in civil theft, and the court enjoined Mr. Black from accessing any trust funds belonging to his sister and surcharged Mr. Black $1.5 million for the money he stole from Joanne. After trebling the damages under Colorado law, the court entered a $4.5 million judgment against Mr. Black. The Probate Court did not at that time void the POD disclaimers. Mr. Black appealed. The issue has gone up and down and from side to side through various Colorado courts three or four times, both state and federal, with no victories for Mr. Black.

Numerous cases in multiple jurisdictions have grown out of this original case, and many other family members and other parties have come into play. Several of the cases have arisen in Illinois, because Mr. Black and his wife live in Illinois and the trust investments are held at a bank in Illinois.

Now, as for the new case. . .

On June 17, 2021, Bernard Black and his son, Samuel Black, as trustees of the Trust for the Issue of Renata Black ("Issue Trust"), filed a complaint for declaratory judgment in Illinois naming all of the beneficiaries of the Issue Trust as defendants. The complaint stated that the point of the lawsuit was to guard against the actions "threatened" by Jeanette Goodwin, as Court-Appointed Successor Conservator for Joanne Black, and Anthony Dain, as trustee of the Supplemental Needs Trust for the Benefit of Joanne Black. These "threats" included attempts to get the Denver Probate Court to declare Bernard Black's disclaimer invalid so that Goodwin could try to claw back assets from the Issue Trust to place them under her control. The one-count complaint sought a declaratory judgment that the disclaimer executed by Bernard Black was valid and irrevocable.

On September 10, 2021, the Blacks filed both a motion to default all the defendants they had named in the case and a motion for summary judgment. The default motion stated that the 60-day period for responding to the complaint had passed for all defendants and none had appeared or responded. On October 4, 2021, the trial court entered an order granting the motion for summary judgment and stating that the disclaimer executed by Bernard Black was valid and irrevocable. The order also directed the Blacks' counsel to provide a copy of the order to all parties.

Eight months later, on May 27, 2022, Jeanette Goodwin and Anthony Dain filed petitions to intervene and to vacate, alleging that they were necessary parties and that the petition to intervene was timely filed because they first discovered the existence of the case on March 2, 2022.

During an evidentiary hearing, the lawyer for the Blacks and the lawyer for the intervenors disagreed about when the intervenors had discovered the existence of the case. The two lawyers had a phone call on November 1, 2021, where they discussed "numerous other cases related to the same subject matter" that they were both involved in. (In fact, these two lawyers e-mailed and called each other frequently regarding these many related cases.) The lawyer for the intervenors had tried searching for the "declaratory judgment case" in the court system and sent an e-mail to the Blacks' lawyer the next day when he couldn't find it. There was also an over-100-page motion filed in one of the other cases that referred to and attached the declaratory judgment as exhibit C, although it turned out there were two exhibits marked as exhibit C. All of this led to some understandable confusion. However, ultimately, the Blacks' lawyer had to admit that he had not provided notice to the intervenors or their lawyer about the June 2021 filing or the October 2021 judgement.

On October 17, 2022, the trial court issued an order granting the petitions to intervene and to vacate. The Blacks appealed.

On appeal, the appellate court found that the trial judge had not abused his discretion in finding that the intervenors' petitions were timely filed and had not erred in vacating his own prior order on the ground that necessary parties were missing.

Agency for Health Care Administration v. In re: Spence, ____ So.3d ____, No. 3D23-0552 (Fla. 3d DCA, May 22, 2024). Florida District Court of Appeal held that, even if a beneficiary no longer needs Medicaid services, the trustee must follow the payback provisions contained in a self-settled SNT to reimburse Medicaid before terminating the trust and distributing remaining assets to the beneficiary.

Ryan's mother, Kathleen, adopted him and received an adoption subsidy. When she died, Ryan's co-guardians pursued a wrongful death claim on his behalf. The Court awarded a portion of the settlement proceedings to a first-party special needs trust (SNT) for Ryan's benefit. After Ryan became an adult, the co-guardians petitioned the Court to terminate the guardianship and distribute all assets from the trust to Ryan because he was no longer disabled. AHCA, the agency responsible for Florida's Medicaid Program, filed an objection claiming that it was owed $50,281.73 for medical assistance payments made on behalf of Ryan. In response, the co-guardians argued that the Trust should not be responsible for any

payments made by the AHCA on Ryan's behalf because the original adoption agreement that Kathleen entered into contained no provision requiring repayment of benefits and as a result of the exceptional care provided by the co-guardians, Ryan was no longer disabled or receiving benefits from Medicaid. The probate court granted the petition.

On appeal, the AHCA was successful, arguing that the trust was established specifically to include a payback provision to comply with requirements necessary for Ryan to maintain his eligibility for Medicaid and the trustee was required to comply with the terms of the trust. In its ruling, the Court noted that while the adoption agreement that Kathleen entered into likely incentivized her decision to adopt Ryan, it was of little, if any, relevance in determining distribution of trust assets. The trust was established over a decade after the adoption agreement was signed and its purpose was to allow Ryan to receive settlement proceeds while continuing to qualify for Medicaid benefits.

Hegadorn v. Livingston Cty Dep't of Health & Human Servs., ____ N.W.2d ____, No. 356756 (Mich. Ct. App., October 19, 2023). Michigan Court of Appeals affirmed circuit court's decision (to award Medicaid eligibility to the estate of now-deceased institutionalized spouse) in part, reversed circuit court's decision in part, and remanded to ALJ for proper review of the terms of testamentary SNT for institutionalized spouse that would have received funds from community spouse's irrevocable trust had he died first.

Mrs. Hegadorn began receiving long-term care at a nursing home in December of 2013. In order to make Mrs. Hegadorn eligible for Michigan Medicaid, Mr. Hegadorn established and funded an irrevocable trust called the Hegadorn SBO Trust. Mr. Hegadorn was the beneficiary of this trust, neither Mr. Hegadorn nor Mrs. Hegadorn was the trustee or successor trustee of this trust, and the trust language required the trustee to distribute the trust resources at a rate calculated to use up all of the resources during Mr. Hegadorn's expected lifetime.

Mrs. Hegadorn applied for Medicaid benefits in April of 2014. The Michigan Department of Health and Human Services (MDHHS) denied the application, determining that the assets of the Hegadorn SBO Trust were countable assets that exceeded the applicable resource limit, known as the Community Spouse Resource Allowance (CSRA).

Mrs. Hegadorn appealed, and following an administrative hearing, the ALJ upheld MDHHS's decision. The ALJ explained that a person's countable assets include "the value of the trust's countable income if there is any condition under which the income could be paid to or on behalf of the person." Essentially, the ALJ concluded that a trust payment to Mr.

Hegadorn was effectively a payment for Mrs. Hegadorn's benefit because of the nature of marriage.

Mrs. Hegadorn appealed to the Livingston County Circuit Court, which reversed the ALJ's decision and ordered Medicaid benefits to begin as of the date of application. The court relied on a MDHHS memorandum showing that MDHHS's policy regarding SBO trusts had changed soon after Mr. Hegadorn had established his SBO trust, and the circuit court therefor concluded that the Hegadorn SBO Trust assets were not countable.

MDHHS appealed the decision of the circuit court. The Court of Appeals consolidated the Hegadorn case with two other cases and upheld the denial of Medicaid benefits in all three cases, reasoning that the critical issue was whether there was any condition under which the principal of the irrevocable trusts could be paid to or on behalf of the Medicaid applicant. The Michigan Supreme Court reversed, finding that both the ALJ and the Court of Appeals misread the operative statute, 42 U.S.C. 1396p(d). The case was remanded to the ALJ for further analysis to determine whether there were any circumstances under which the principal of the Hegadorn SBO Trust could be paid for Mrs. Hegadorn's benefit.

On remand, the ALJ again affirmed the denial of Mrs. Hegadorn's Medicaid application. The analysis included looking at a provision in the Hegadorn SBO Trust that stated "[a]t my death, if my Spouse is surviving, Trustee shall distribute the remaining trust property to the trustee of the Special Supplemental Care Trust for [my spouse], created by my Will dated the same day as this agreement." However, instead of relying on this provision of the SBO Trust to deny benefits, the ALJ repeated the assertion from the original appeal that a trust payment to Mr. Hegadorn was effectively a payment for Mrs. Hegadorn's benefit because of the nature of marriage.

Mrs. Hegadorn again appealed to the circuit court, which again reversed the ALJ's decision and again ordered MDHHS to approve Mrs. Hegadorn's application for Medicaid benefits. The circuit court noted that the Hegadorn SBO Trust did not provide payment to the institutionalized spouse even in the event of Mr. Hegadorn's death. Rather, the trust language provided that the residual assets would be transferred to a testamentary trust, which, the court concluded, are specifically exempted from the "any-circumstances test" under 42 U.S.C. 1396p(d)(3)(B).

On appeal, the Court of Appeals noted that "a document critical to the ALJ's analysis is not part of the record." After a lengthy analysis, the court affirmed the circuit court's decision in part and reversed the decision in part, but ultimately remanded to the ALJ for a review of the terms of the Supplemental Care Trust (the testamentary SNT that would have received the funds from the SBO Trust had Mr. Hegadorn died first).

Wiedner v. Stevenson, B323760 Unpublished (Cal. Ct. App., May 13, 2024). California Court of Appeals held that the Settlor's intent is relevant when determining whether distributions from a third-party SNT are appropriate.

Roberta established a special needs trust (SNT) for her disabled adult son, Daniel. Roberta appointed her sister, Charlyne successor trustee of the trust and also named Charlyne as a contingent remainder beneficiary of the trust. Roberta did not want her sister Patty to be involved with the trust, or benefit from the trust, so she was excluded as a contingent beneficiary. After Roberta's death, the SNT was funded with approximately $335,000.

Daniel's aunt, Patty, had not visited him in the seven years before Roberta's death. However, once Roberta died, Patty began visiting Daniel regularly. Using her own funds, Patty paid for things like Daniel's haircuts, lunch outings and clothing that she purchased for him. Patty became Daniel's conservator. As trustee, Charlyne did not have regular contact with Daniel and she did not routinely reach out to Patty or others, including the guardian ad litem regarding Daniels' needs.

Daniel's health deteriorated. He developed extensive dental problems, including a serious infection. During this time, Daniel was receiving benefits from Medi-Cal and Patty obtained estimates from various providers to privately pay for the dental care that Daniel needed. The Court was provided testimony from the medical provider who recommended Daniel undergo a full mouth reconstruction with dental implants, which would cost $65,000.

As Patty and Charlyne fought about whether trust funds should be used to pay for his dental care and whether trust funds should be used to reimbursement Patty for her out of pocket expenses and/or pay for her fees as conservator. Charlyne filed a petition seeking an order from the Court to confirm that as trustee she had sole discretion to determine what expenditures to make from the SNT. In response Patty filed pleadings alleging that Charlyne's failure to distribute funds from the trust for Daniel's medical care was a breach of fiduciary duty. The Court ordered Charlyne to distribute $30,000 from the SNT to Patty to begin Daniel's dental work. Daniel had his first dental procedure and died.

Shortly after Daniel's death Charlyne filed her first and final account and report for the SNT with the Court. In addition to approximately $15,000 of trustee fees, more than $45,000 in trust funds were used to pay the guardian ad litem for Daniel. In response, Patty filed a petition for allowance of conservator's fees ($8,000), reimbursement for costs advanced (approximately $90,000) and payment of costs incurred ($38,000). After a three-day evidentiary hearing, the Court authorized that funds from the SNT could be used to pay for some of the fees and costs sought by both Charlyne and Patty. Charlyne appealed, arguing that no legal basis existed to compel the SNT to reimburse Patty or to pay her fees as conservator or her attorney's fees.

On appeal, Patty argued that the SNT was part of Daniel's estate and thus subject to pay her fees as conservator and her attorney's fees. Charlyne contended that the SNT was not part of Daniel's estate and for this reason, she had no authority to direct the trust to disburse funds for these things. The Court found that while Daniel's estate was not part of the SNT, however, because the SNT was a third-party SNT (and established by his mother and funded with monies that were not his funds), the probate Court's order directing the trustee to reimburse Patty from the trust for her expenditures and costs incurred on Daniel's behalf was based on the terms of the trust. The Court went on to specify that Daniel's mother, Roberta's intentions were stated clearly in the trust and that the primary use of trust funds was to provide a supplemental and emergency fund for Daniel. Except for a few specific costs, the Court of Appeals ruled that the Trial Court did not err in ordering that Patty be reimbursement for her out of pocket expenditures made on Daniel's behalf.

Williams v. Bambery, ___ So.3d ___, No. 2D2023-2436 (Fla. 2d DCA, May 17, 2024). Florida District Court of Appeal determined that trial court had acted in excess of its jurisdiction and therefore quashed sua sponte order of trial court that had initiated an official investigation into all of the sub-accounts of one pooled SNT after successor guardian got permission to move the funds from one ward's sub-account to another pooled SNT on alleged suspicion that ward's assets had been misappropriated.

From September 2016 to March 2022, John A. Williams served as plenary guardian of the Ward, Mary Margaret Bambery. While Williams served as guardian, the Ward's assets were joined, pursuant to a court order, into the pooled SNT for which Williams serves as trustee (the Asset Preservation Pooled Trust Fund).

Following Williams' discharge as guardian, Matthew Young was appointed as the new plenary guardian. A few months later, Young filed an emergency petition with the trial court expressing concern that the Ward's assets held in the pooled SNT had been misappropriated. As a result, Young obtained permission to move the Ward's assets to a different pooled SNT.

Five months later, and without warning or notice to the parties, the trial court sua sponte entered an order appointing the Florida Division of the Inspector General, Guardianship Section, to do a complete review of ALL of the sub-accounts of the Asset Preservation Pooled Trust Fund.

Williams filed a petition for writ of prohibition with the Florida District Court of Appeal, asserting that the trial court acted in excess of its jurisdiction in issuing the sua sponte

order. Not surprisingly, the court of appeal agreed that the trial court had acted without jurisdiction and quashed the order appointing the Division of Inspector General.

In the Matter of Ellen H. (Cassandra H.), 2024 N.Y. Slip Op 50248(U) Unpublished (Sup Ct, Broome County, March 5, 2024). Mother and guardian, who failed to account and later misappropriated funds as trustee of daughter's special needs trust, was surcharged in the amount of $450,000.

Cassandra H. was a minor in 1984 when her parents (and co-guardians), Ellen and Scott, filed a personal injury action on her behalf. There was a substantial award to Cassandra and a self-settled special needs trust (SNT) was established and funded with settlement proceeds (including income from an annuity). Ellen and Scott served as co-trustees of the SNT. The Court ordered that annuity payments awarded to Cassandra be deposited directly to the SNT so that she would remain eligible for Medicaid. In 2006, the Court found that Ellen and Scott were misusing trust funds and warned them that they owed a duty to Cassandra to make sure that the funds were property accounted for, and must follow the terms of the trust to make sure that the funds were used in a way yielded a benefit to Cassandra.

Scott switched the depository of the annuity payments awarded to Cassandra from the account at HSBC Bank, N.A. held by the SNT to accounts titled in Scott's and/or Ellen's names, individually (nicknamed "Cassie's checking" and "Cassie's savings"). These two accounts received a total of $574,965.49 in annuity payments from 2016 to 2023.

Ellen and Scott were instructed to file annual accountings for the SNT with the Court and from 2016 to 2022, the Court Examiner was unable to approve the trust accountings. Moreover, in their capacity as go-guardians, they failed to file annual guardianship reports as required. The investigation into the accounts titled to Ellen and Scott found that there were cash withdrawals from the accounts and funds from these accounts were used to pay their debts (including auto and RV loans), expenditures made in California and Arizona (during a time when Cassandra was unable to leave her group home in New York), expenses for driveway repairs and a hot tub at Ellen's home as well as miscellaneous shopping expenses that did not benefit Cassandra.

After Scott's death, Ellen remained Cassandra's guardian and trustee. In 2023, the Court removed Ellen as trustee. Upon the Court's appointment of a successor property guardian and successor trustee of the SNT, the Court undertook an investigation of Ellen and Scott's actions as property guardians and co-trustees. The Court applied an abuse of discretion standard in analyzing the expenditures taken by the co-trustees and imposed a surcharge on Ellen in the amount of $450,000 for improper and unsupported expenditures from

Cassandra's funds. In its ruling, the Court acknowledged that it did not find that Ellen failed to fulfill her responsibility as person guardian for Cassandra. The Court emphasized that while "the travails and challenges of being the parent of a disabled child are immeasurable, "fiduciary duty still applies."

In the Matter of the Davi H. Kato Special Needs Trust, No. A-0414-22 Unpublished (N.J. Super. Ct. App. Div., February 26, 2024). In case where family moved back to Brazil and, with permission from the court, terminated New Jersey SNT and created new irrevocable trust with a different co-trustee, prior co-trustee objected and requested final commission of approximately $72,000, only half of which was approved, and the appellate court affirmed the decision of the trial court but remanded the former trustee's final commission for a slight increase.

Fabio and Maria Kato are natives of Brazil. While visiting New Jersey in 2015, they had a son, Davi H. Kato, who was born with cerebral palsy. The Katos filed a lawsuit alleging medical malpractice and ultimately reached a settlement in the amount of $5,700,000. The trial court approved the settlement and established a first-party SNT to be funded with $3,147,486.42 of the settlement. Tristan Cavadas-Cabelo and OceanFirst Bank were named as trustees.

Cavadas-Cabelo is a New Jersey attorney who came to know the Katos through his mother, who served as a Portuguese for the Katos. According to Fabio Kato, the Katos selected Cavadas-Cabelo as a trustee because they believed he spoke fluent Brazilian Portuguese, which would make administration of the trust easier. It turned out, however, that, while he spoke Portuguese, Cavadas-Cabelo did not speak Brazilian Portuguese. This language barrier and other things led to a breakdown in the relationship between the Katos and Cavadas-Cabelo.

In 2022, the Katos and Davi moved back to Brazil with no intention of returning to the United States. The Katos then moved to terminate the SNT and create a new irrevocable trust with OceanFirst and a newly named individual as co-trustees. They also requested attorneys' fees. OceanFirst supported the motion. Cavadas-Cabelo opposed it, contending termination of the trust was not in Davi's best interests and suggesting the Katos wished to terminate the trust so they could use the funds for their own purposes. Cavadas-Cabelo also requested a final commission of $72,435.67. After two hearings, the court terminated the SNT (with the pay-back to the State of New Jersey), created the new irrevocable trust, approved the requested attorneys' fees, but only allowed a final commission for Cavadas-Cabelo in the amount of $31,738.41. Cavadas-Cabelo appealed.

The appellate court reviewed the evidence and the relevant statutes and affirmed the order of the trial court, with one exception. The appellate court's calculation of the final commission due to Cavadas-Cabelo, based on the various New Jersey statutes that address this issue, amounted to $38,086.09, not $31,738.41.

In re Resignation of Kingsbury, 173 Ohio St.3d 1276, 2024-Ohio-90, ___ N.E.3d ___ (Ohio, January 12, 2024). Attorney who was convicted for stealing from clients, at least in part SNTs, sentenced to four years imprisonment, and ordered to pay $750,000 restitution, petitioned from prison and was allowed to resign from the practice of law, but one justice in his dissent argued that attorney should not have been allowed to resign until full restitution (she still owed $600,000) is paid.

After stealing more than one million dollars from various sources, including a number of special needs trusts, Dorthea Jane Kingsbury, Esq. was indicted on four counts of theft, one count of telecommunications fraud, four counts of money laundering and five counts of fraudulent actions concerning a tax return. She eventually pleaded guilty to lesser charges and was sentenced to four years in prison and ordered to pay restitution to her victims totaling $750,000. The Supreme Court of Ohio Court received notice of Kingsbury's felony conviction on March 21, 2023. On November 30, 2023, the Court received Kingsbury's application for retirement. Kingsbury was incarcerated and suspended from practicing law at the time when she submitted an application for retirement. While the Court granted her application for retirement, one judge (Hon. J. Fischer) wrote a blistering dissent, noting that the Court granted her application to retire when Kingsbury still owed $600,000 in restitution. He argued that allowing Kingsbury (or any attorney for that matter) to resign from the practice of law when she still owed her clients money, benefits Kingsburg was at the cost of the Lawyers' Fund for Client Protection, as well as other attorneys and the general public.

Matter of Krame, ___ N.Y.S.3d ___, 2023 N.Y. Slip Op. 06137 (N.Y. App. Div., 2d Dep't., November 29, 2023). Attorney who was disciplined and suspended from the practice of law for 18 months in the District of Columbia argued that he should not receive reciprocal discipline in New York because the length of the proceedings in DC violated his due process rights and his DC acts did not constitute misconduct in NY, but the NY Supreme Court, Appellate Division, disagreed and suspended him from the practice of law in NY for three years.

As we discussed last year, not long after Krame joined the District of Columbia Bar in 1983, he developed an expertise in administering special needs trusts. He preferred to be compensated based on a flat percentage of trust assets, typically 1%, determined annually. While that was once a fairly standard compensation scheme, by 2005, much to Krame's chagrin, judges in the Probate Division of the D.C. Superior Court indicated that he and other trustees should instead be paid on an hourly basis. Krame resisted that change in various ways, which eventually drew the attention of the Disciplinary Counsel and prompted an investigation into his handling of three special needs trusts.

After a thorough investigation and a ten-day evidentiary hearing in front of an ad hoc hearing committee, the ad hoc committee found that Krame violated various rules of professional conduct, including when he recklessly (but not intentionally) submitted four altered time entries in support of a trustee fee petition, and they recommended that Krame be suspended from the practice of law for six to eighteen months. The DC Board on Professional Responsibility disagreed with the ad hoc committee's credibility findings, determined that some of Krame's rule violations were intentional, and therefore recommended that Krame be disbarred.

The District of Columbia Court of Appeals held that the ad hoc committee's credibility findings were binding on the Board when making findings on the ultimate issue of Krame's intent, but that Krame did in fact violate five different rules of professional conduct. Considering the Board's incorrect reliance on its determination that Krame's rule violations were intentional, and aggravating factors, such as the vulnerability of the trust beneficiaries involved, and mitigating factors, such as Krame's otherwise unblemished record, his long history of serving the disabled and elderly communities, the significant time Krame has devoted to the profession, and the amicus brief that over a dozen of Krame's longstanding clients filed on his behalf, the Court decided to suspend Krame from the practice of law in the District of Columbia for eighteen months.

The present case arose because Krame is also licensed in the State of New York. On February 16, 2023, the New York Supreme Court, Appellate Division, issued an order to show cause directing Krame to show cause why reciprocal discipline should not be imposed upon him for his conduct in DC. In his unsworn response, Krame asserted various defenses, including that delays in the 13-year disciplinary process in DC constituted a violation of his due process rights. However, the New York court noted that both the ad hoc committee and the Board on Professional Responsibility in DC had concluded that the length of the disciplinary process in Krame's case was at least partly due to his request that the investigation be held in abeyance pending his appeal of certain compensation issues. Krame also asserted that his misconduct in DC does not constitute misconduct in New York. The New York court disagreed, explaining that many of the DC RPC rules that Krame violated have counterparts that are substantially similar in New York. Accordingly, the

New York court decided to suspend Krame from the practice of law in New York for three years.

In re: Tara Elwell, 378 So.3d 718 (La., February 1, 2024). Louisiana Supreme Court made sure to extend probation period for attorney subject to disciplinary action (and arbitration) for charging excessive fees in uncontested case to appoint successor trustee of SNT.

Tara Elwell, Esq. was retained by the grandmother of the beneficiary of a special needs trust to provide legal services necessary to appoint a successor trustee. The case was uncontested and Elwell charged more than $100,000 in fees. The fees, paid from the trust, were deemed excessively high and unjustifiable by the Court, especially since Elwell failed to provide contemporaneous billing records. The Court imposed sanctions in the initial disciplinary proceeding involving Elwell, which included a probationary term. After the Court's initial ruling, the Louisiana State Bar Association Fee Dispute Arbitration Program declined to review the case. When this occurred, Elwell failed to notify the Office of Disciplinary Counsel (ODC) or take any corrective action. The Court later surmised that her inaction was an attempt to avoid the consequences of her prior misconduct, hoping the probationary period from the earlier discipline would lapse without further consequences.

Upon notice that Attorney Elwell never participated in the fee arbitration process as ordered, the Supreme Court of Louisiana revisited the Case and found that it had exclusive jurisdiction over attorney disciplinary proceedings. The Court went on to revise the terms of Elwell's probation (granting an extension to February 6, 2025) so that Elwell and ODC had time to mutually select a third-party arbitration service. The Court's opinion confirmed that Elwell will be bound by the ruling of the arbitrator. Elwell was ordered to immediately return $75,000 of the disputed fee to her counsel's trust account pending the arbitrator's ruling. The Court went on to note that Elwell could request that the Court terminate the extended period of probation early by showing that the disputed fee issue had been resolved.