



STETSON LAW

Center for Elder Justice

Access and Justice For All®

2026
Fundamentals of
Special Needs Trusts
Administration Webinar

Friday, May 8, 2026



STETSON LAW

Stetson University College of Law
Gulfport, Florida

2026 Fundamentals of Special Needs Trusts Webinar

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STETSON LAW

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Access and Justice For All®

The Fundamentals of Special Needs Trust Administration Webinar

Friday, May 8, 2026

1:00-1:05 pm EDT

Welcome and Announcements

Professor Rebecca Morgan

1:05-1:55 pm EDT

ABLE Accounts: Update for 2026

John Finch

ABLE accounts are tax-advantaged savings/investment accounts for people with a severe diagnosis or disability, designed to help individuals pay Qualified Disability Expenses while protecting eligibility for means-tested benefits. Beginning January 1, 2026, the ABLE Age Adjustment Act expanded eligibility to include individuals with a severe diagnosis that began before age 46 (previously before 26). This change significantly broadens who can use an ABLE Account. Several other changes went into effect this year including a new annual contribution limit, ABLE to Work provisions, and the ability to utilize 529 plans to fund an ABLE account.

1:55-2:45 pm EDT

Tax, Accounting, and Reporting Issues Trustees May Face

Benji Rubin

This session provides trustees with a practical overview of the tax, accounting, and reporting responsibilities involved in administering a Special Needs Trust (SNT). Attendees will learn how trust income is taxed, the basics of filing fiduciary tax returns, and how to manage distributions in ways that avoid unintended tax consequences. The session will also cover essential accounting practices, documentation standards, and common reporting obligations to beneficiaries, courts, and government agencies. Whether you are new to trust administration or seeking a refresher, this session will equip you with the foundational knowledge needed to manage an SNT responsibly and compliantly.

2:45-3:00 pm EDT

Sponsor Break – TrueLink Financial

3:00-3:50 pm EDT

Reasonable Fees: Using AI in Administering a Trust

Professor Roberta K. Flowers

This session examines the ethical considerations trustees must navigate when using AI in trust administration. It explores how AI-driven efficiencies intersect with a trustee's duty to charge only reasonable fees, maintain transparency, and act solely in the beneficiary's best interest. Participants will learn how to evaluate when AI use is appropriate, how to avoid overreliance on automated tools, and how to ensure that technology enhances—rather than replaces—sound professional judgment. The session will also address disclosure obligations, fairness in billing practices, and emerging ethical standards surrounding AI-assisted fiduciary work

3:50-4:40 pm EDT

Developing and Implementing an AI Use Policy in Your Office

Professor Linda Anderson and Crystal Edwards

As AI tools become increasingly common in legal and administrative workflows, organizations must establish clear, responsible policies to guide their use. This session walks participants through the key considerations for developing an effective AI use policy tailored to a fiduciary, legal, or nonprofit environment. Topics include identifying appropriate use cases, establishing data privacy and confidentiality safeguards, mitigating risks, and ensuring compliance with ethical and regulatory standards. Attendees will also learn practical strategies for training staff, communicating policy expectations, and implementing ongoing oversight as AI tools evolve. This session will help offices harness the benefits of AI while protecting clients, staff, and organizational integrity.

4:40-5:00 pm EDT

Q&A Session

All Webinar Speakers

Join the webinar speakers for an interactive Q&A session.



The Fundamentals of Special Needs Trust Administration Webinar

~2026 Speakers~

John Finch

John Finch serves as Director of ABLE United, Florida's ABLE program managed by the Florida Prepaid College Board. He played a key role in launching the program in 2016 and has overseen its growth, including enrollment of more than 14,000 Floridians and more than \$150 million saved in tax-free ABLE accounts.

He holds multiple positions within the ABLE Savings Plan Network, a national coalition of ABLE program administrators dedicated to enhancing financial access for individuals with disabilities.

Previously, John spent a decade with The Arc of Florida, where he advocated for individuals with intellectual and developmental disabilities and launched a statewide dental network to address gaps in access to care.

Benji Rubin

Attorney Benjamin "Benji" Rubin is the President of Rubin Law, a firm founded in 2001 by his father, Brian Rubin, and dedicated exclusively to special needs legal and future planning for families of individuals with intellectual and developmental disabilities or mental illness. Benji joined the firm in 2010 after graduating magna cum laude from the University of Illinois College of Law. He also holds both an undergraduate degree and an LLM in Taxation, with honors, from Northwestern University.

A recognized leader in the field, Benji is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and serves on the national Board of Directors of the Special Needs Alliance.

He is Vice-Chair of the ABA Elder Law and Special Needs Planning Group, a past chair of the ABA Special Needs Planning Committee, and a member of the Academy of Special Needs Planners. Deeply involved in disability advocacy, he has held leadership and board roles with SIBS, The Arc of Illinois, NSSRA Foundation, Clearbrook, DayOne PACT, and the SEDOL Foundation, among others. Benji is also an IICLE faculty member and a frequent speaker on special needs planning. His lifelong experience as the brother of an individual with Autism profoundly shapes his work and fuels his commitment to supporting families navigating similar challenges.

Roberta Flowers

Roberta K. Flowers is a professor of law at Stetson University College of Law. Within the Elder Law LLM program, Professor Flowers teaches Ethics in an Elder Law Practice. She also teaches Evidence, Criminal Procedure, and Professional Responsibility. While at Stetson, Professor Flowers has successfully coached trial teams, arbitration teams, and moot court teams to national championships. She has served as the director of the Center for Excellence in Advocacy and as the William Reece Smith Jr. Distinguished Professor in Professionalism. During her time at Stetson, Professor Flowers has received the university-level Excellence in Teaching Award, Most Inspirational Teacher Award from the Student Bar Association, and an award from the Student Bar Association for supporting student life. She also has received the university-level Homer and Dolly Hand Award for Excellence in Scholarship, the Dean's Award for Extraordinary Service, and been awarded the Distinguished Service Award four times. In 2005, the Florida Supreme Court awarded Professor Flowers the Faculty Professionalism Award.

Linda Anderson

Professor Linda Anderson is a consultant and legal educator focused on how artificial intelligence is reshaping professional judgment, decision-making, and accountability in legal practice. Her work centers on helping law firms and legal organizations integrate AI into their workflows in ways that support defensible, well-documented legal judgment. She is the creator of a judgment architecture framework that identifies “judgment moments” in legal work and establishes the systems, checkpoints, and documentation practices needed to ensure responsible, accountable decision-making when AI is involved. Her work focuses on

aligning AI use with professional responsibility standards, supervision obligations, and real-world risk. Professor Anderson also works with law schools to align curriculum, assignments, and assessment with these same shifts, particularly those reflected in the NextGen Bar Exam. Her approach bridges legal education and practice by focusing on how lawyers actually make and document decisions in AI-supported environments. She is the author of the NextGen Law Student Series, including Law School IS Bar Prep, 15-Week 1L Blueprint, and Issue Spotting Mastery: See What Others Miss, as well as AI for Law Faculty: What Actually Matters: Assignment Design, Assessment, and AI in Legal Education. She writes and speaks on AI, legal judgment, and professional responsibility, with a focus on building systems that make legal decision-making more transparent, structured, and defensible. Professor Anderson teaches at Stetson University College of Law, where she also serves as Director of the Flex JD program. She has been teaching and designing legal education programs since 1996 and practiced law in New Hampshire prior to entering academia.

Crystal Edwards

Crystal West Edwards is a Principal in the Wealth Preservation Group with extensive experience in elder law, special needs planning and advocacy, estate planning, estate administration, and counseling. She works closely with aging individuals, people with disabilities, and their families on complex estate and tax planning, asset preservation, eligibility for means-tested government benefits, and fiduciary appointments. She also advises financial institutions and corporate fiduciaries on trust administration, accountings, and beneficiary eligibility for government benefits. A sought-after speaker and published author, Crystal writes and presents frequently on elder and disability law, estate planning, special needs trusts, and government agencies. She serves as Co-chair of the National Academy of Elder Law Attorneys' Diversity, Equity, and Inclusion Committee and is a Fellow of the American College of Trust and Estate Counsel (ACTEC).



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- ✓ Trust Administration Software
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ABLE Accounts: Update for 2026

Presenter: John Finch

- PowerPoint



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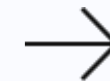
*Center for
Elder Justice*

Access and Justice For All®



ABLE today™

ABLE ACCOUNTS - Update



A FINANCIAL TOOL FOR PEOPLE WITH DISABILITIES

WWW.ABLETODAY.ORG

ABLETODAY.org



ABLE today TM is part of the National Association of State Treasurers (NAST) campaign to promote ABLER accounts, financial empowerment, and community inclusion for people with disabilities.

ABLE today TM was generously funded with founding support from Wells Fargo.

IMAGINE IF YOU COULD

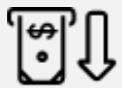
Save... Invest... Grow...



Save money in their own names –
and more than just \$2,000



Work and accumulate wealth while
protecting their eligibility for benefits.



Have other option than “spending
down” their savings or income.

Move from a
monthly
financial plan to a
lifetime
financial plan

ABLE ACCOUNTS

MAKE THESE CHOICES POSSIBLE



What is an ABLE Account?

An ABLE account is a financial tool for people with disabilities which protects eligibility for benefits programs.

ABLE accounts are offered under Section 529A of the U.S. Tax Code.

ABLE ACCOUNTS | BY THE NUMBERS

ACCOUNTS ARE OFFERED THROUGH

GOVERNMENT AGENCIES



47 STATES OFFER
ABLE PROGRAMS



Additionally, the District of Columbia and Guam offer
ABLE programs.

234,000+ total accounts

\$3 billion+ total assets

ABLE Data as of December 31, 2025 - Source: NAST and members of the ABLE Savings Plans Network

National data can be found on our website:

www.abletoday.org/national-able-data

WHO IS ELIGIBLE?



DISABILITY BEGAN
BEFORE AGE 46

1

ABLE accounts are for individuals whose disability began before age **46 (NEW)**. Eligible individuals can open an ABLÉ account at ANY age.

LONG-TERM

2

The disability must be long-term (more than 12 months) and must cause “marked & severe functional limitations.”

DIAGNOSIS

3

You can be eligible for an ABLÉ account if a doctor has diagnosed you with a disability (physical or mental) or you are eligible to receive SSI and or SSDI due to your disability.

Note: You do not have to be on public benefits to open an ABLÉ account

How do you open an ABLÉ account?

Consider your home state's program first for instate incentives or research ABLÉ programs offering nationwide enrollment.



RESEARCH ABLÉ PROGRAMS

Visit [abletoday.org/analyze -able-programs](https://abletoday.org/analyze-able-programs) for more info and examples



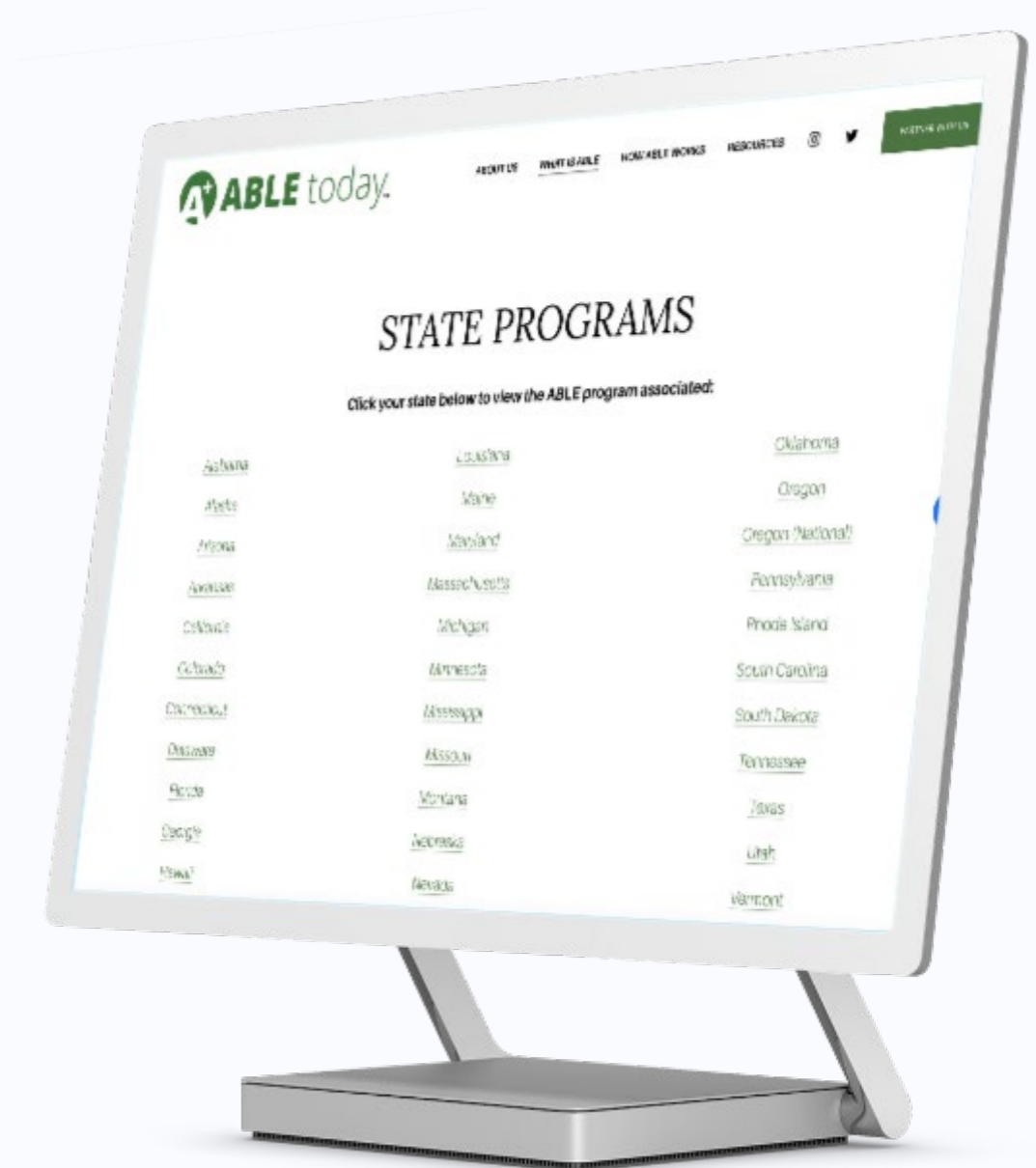
ENROLL ONLINE OR IN -PERSON

Enrollment process includes online for many ABLÉ programs, paper application, or in -person.



FLEXIBLE ENROLLMENT

Flexible enrollment and digital account management capabilities.



Who can serve as an ABLÉ account Support Person?

ABLE accounts are owned by the person with the disability.
They can administer their own ABLÉ account...

An ABLÉ Support Person can be an individual or an organization.



ABLE Supporters can manage multiple accounts at once.

The hierarchy (order) for who can be an ABLÉ Support Person includes:

1) Power of Attorney	5) Parent
2) Conservator	6) Sibling
3) Guardian	7) Grandparent
4) Spouse	8) Representative Payee



GETTING MONEY IN

ABLE offers a variety of options for getting money into the account including:



General Banking

Deposit money electronically or by check



Features

Most programs allow payroll deductions and e-gifting



Rollover

Can also rollover money from a 529 College Savings Account

How much can you contribute?

The 2026 ABLE contribution limits are:



ANNUAL

\$20,000

NEW Limit

Contributions can come from any source including directly from the ABLE account enrollee, family, friends, organizations, nonprofits, and employers.

IF EMPLOYED

\$35,650

The “ABLE to Work” annual contribution limit is \$15,650*. The ABLE enrollee must be employed and not be contributing to a workplace retirement account.

BALANCE LIMITS

\$500,000+

Programs have maximum balance limits that can be +\$500,000.

Check our website for program details.

** The limit for Hawaii is \$17,990; Alaska is \$19,550.*

ANNUAL COSTS

ABLE programs have fees associated with the ABLE accounts.



Annual Account Fees:

RANGES
\$0 to \$60

Asset -Based Fees:

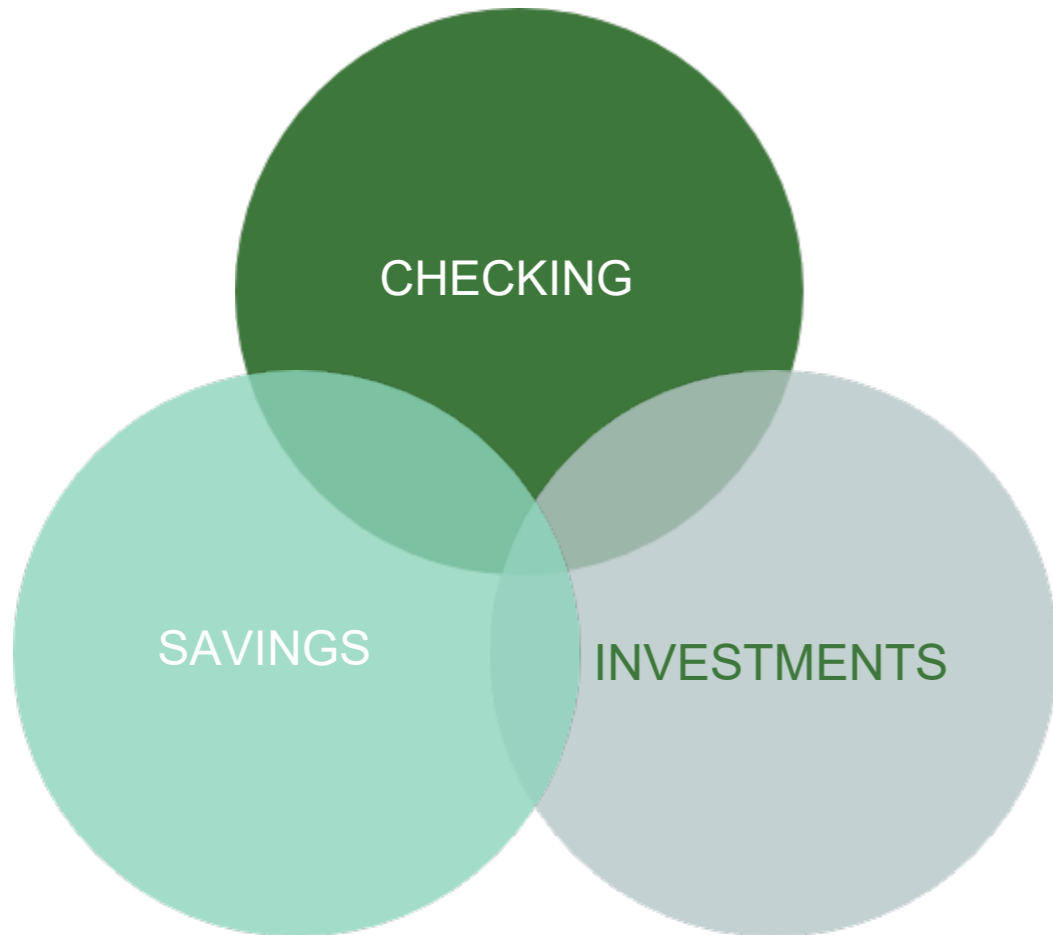
RANGES
0% to 0.9%

Please visit our website to review the costs associated ABLE programs via [abletoday.org/analyze -able-programs](https://abletoday.org/analyze-able-programs)

INVESTMENT OPTIONS

Most ABLE accounts offer multiple places to put your money:

You can pick one option or spread your money across multiple options.



Choose from:

- (a) Checking and savings options
 - FDIC insured

- (b) Market-based investment options
 - stocks, bonds, etc.

SPENDING ABLE FUNDS

ABLE accounts have a broad -based spending power for qualified disability expenses. A qualified disability expense is anything that relates to the disability and helps maintain or improve health, independence, or quality of life.



Housing and Rent



Transportation



Assistive Technology



Health & Wellness



Basic Living Expenses



Education



Financial Management



Legal Fees

How to Withdraw Money from Your ABLE Account

DIFFERENT PROGRAMS HAVE VARIOUS OPTIONS

CHECKBOOKS



THIRD PARTY CHECKS

DEBIT CARDS



BANK TRANSFER



SPECIAL BENEFITS RULES

for SSI and Medicaid

IF YOU RECEIVE SSI

Balances over \$100,000 start counting towards SSI resource limits.

Also, if you withdraw funds from your ABLE account to use for housing, you must spend it within the same calendar month.

IF YOU RECEIVE Medicaid

There is no balance limit that would then count towards the resource limit.

Medicaid payback still applies to ABLE accounts, just as it applies to other bank accounts - check with your state to confirm.

WHAT IF I ALREADY HAVE – OR AM CONSIDERING – A SPECIAL NEEDS TRUST?

We think ABLE accounts should be part of the special needs planning conversation and a complement to Special Needs Trusts (SNTs). ABLE accounts and SNTs work together.



SNTs accept larger deposits than ABLE accounts



ABLE accounts can reduce administrative process to use SNT funds



Use ABLE like a debit / transactional account



Some states offer deductions or credits for ABLE contributions

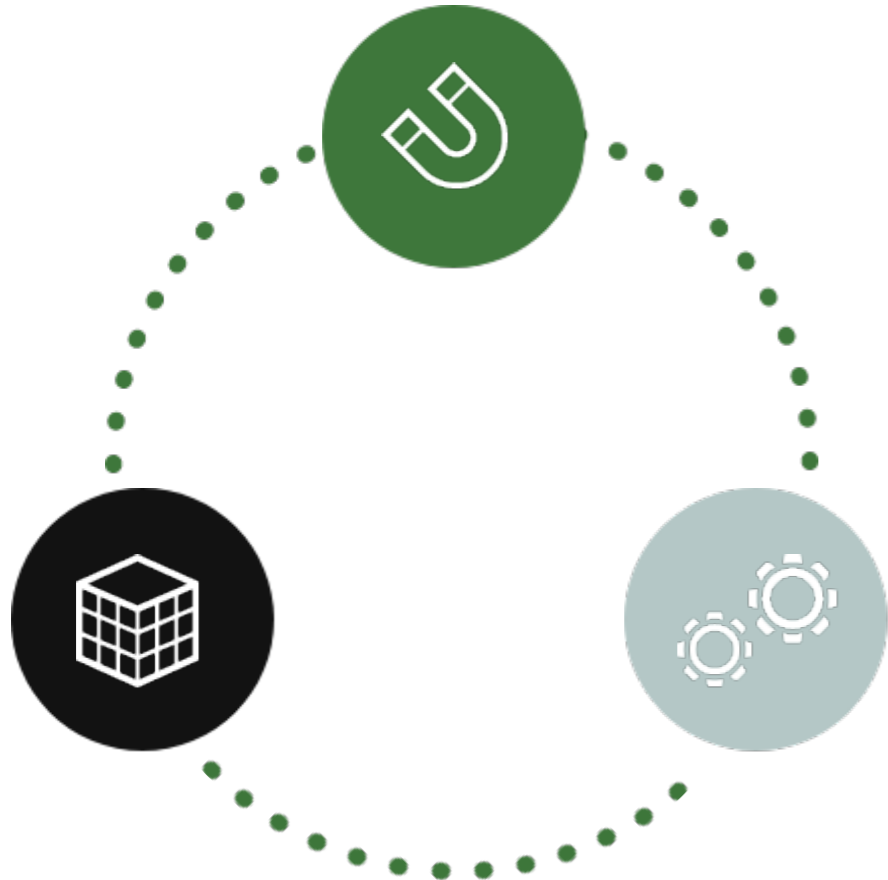


Can be established, administered, and owned by an individual with a disability



Gives additional autonomy to save and spend their own money

Next Steps...



[www. ABLETODAY .org](http://www.abletoday.org)

- **RESEARCH ABLE PROGRAMS**
Research via our ABLE today website
[abletoday.org/analyze -able-programs](http://abletoday.org/analyze-able-programs).

- **SIGNUP FOR OUR NEWSLETTER**
Help us spread the word either by sharing information on ABLE via email, social media, and with your network.

- **REQUEST A PRESENTATION**
Reach out via info@abletoday.org to partner together for a group presentation.

RESOURCES

ABLE ACCOUNTS ARE A GAME CHANGER FOR FINANCIAL EMPOWERMENT AND COMMUNITY INCLUSION. TO LEARN MORE, VISIT [OUR RESOURCES](#) :



We host monthly ABLE webinars open to the public.

** ASL interpreters included*

abletoday.org/intro



ABLE regulations and how federal agencies interact with ABLE accounts including SSI, Medicaid, HUD, and SNAP.

abletoday.org/regulations



Research and compare ABLE program details.

abletoday.org/compare-able-programs

THANK YOU!

Thank you on behalf of ABLE today, Wells Fargo, and the National Association of State Treasurers.



Visit abletoday.org for more information on ABLE accounts.



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Tax, Accounting, and Reporting Issues Trustees May Face

Presenter: Benji Rubin

- PowerPoint



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Taxation, Accounting and Reporting Issues facing Trustees of Special Needs Trusts

**Benjamin A. Rubin,
JD, LLM**

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**Special Needs Legal
& Future Planning**

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"Legal and future planning for our fellow families of individuals with special needs, including intellectual disabilities, developmental disabilities, and/or mental illness, is not one thing we do, it's the only thing we do; it's not one area of our practice, it's our only area of practice."

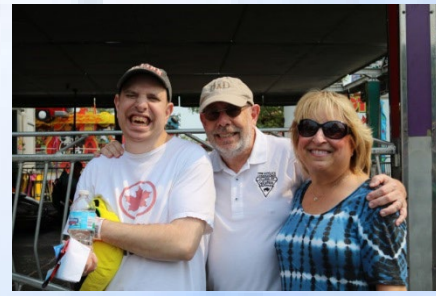


JANUARY 27, 1981

MITCH



Brian Rubin



RUBIN
LAW A Professional Corporation
Special Needs Legal & Future Planning

Growing up as a “Sibling”...

- **Helps put things in perspective in life**
 - **Different than parents...**
 - **Vacations...**
 - **Trips to the Store...**
- **Understanding our future responsibilities**

Benji Rubin

Past-President

S.I.B.S.

Supporting Illinois Brothers & Sisters

**Illinois Chapter of the national Sibling
Leadership Network**



TAXATION OF 3RD PARTY SNTs

- **Many 3rd party SNTs are drafted as Grantor Trusts to the parents to keep things simple**
- **But what if...**
 - **Gifts or inheritance directly from grandma to 3rd party SNT, during parents' lives?**
 - **When parents are both deceased?**

TAXATION OF 3RD PARTY SNTs: QDT

- When they are not, or are no longer considered grantor trusts SNTs are generally considered Qualified Disability Trusts (QDTs)
- “Check the Box”
- Defined in IRC §642(b)(2)(C)
- Current Exemption is \$5300 (Tax Year 2026)

MEMBER



Special needs require special attorneys.

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TAXATION OF 3RD PARTY SNTs: Example

2026 Income Tax Rates for Trusts

- \$0 to \$3,300: 10%
- \$3,300 to \$11,700: 24%
- \$11,700 to \$16,000: 35%
- \$16,000+: 37%

TAXATION OF 3RD PARTY SNTs: Example

- **\$50,000 of ordinary taxable income.**
- **\$15,000 spent for benefit of beneficiary**
 - **Trust 1041:**
 - **\$15,000 deduction for distribution for benefit of beneficiary**
 - **Leaves us with \$35,000**
 - **Then take QDT exemption of \$5300**
 - **\$29,700 is what is left as taxable income of the trust**

TAXATION OF 3RD PARTY SNTs: Example

- Apply the Tax rates to get tax liability on 1040:
 - $\$3,851 + 37\% \text{ of } \$13,700 (\$5,069) = \$8,920$
- Now beneficiary's 1040:
 - Assuming no other income: \$15K imputed income less standard deduction of \$16,100 = \$0 of Taxable Income for total Tax liability of \$0
 - Total combined Tax is \$8,920 for effective tax rate of 17.8%

What about a 1st Party SNTs?

- Is it a Grantor Trust or a Non-Grantor Trust? And who is the Grantor?
- Two PLRs:
 - PLR 200620025
 - PLR 201116005
- Both suggest that in the circumstances with a person with disabilities is the direct beneficiary of an inherited IRA, the IRA can be moved into a 1st Party SNT and preserve the “stretch.”
- “Check the Box”
- Defined in IRC §642(b)(2)(C)
- Current Exemption is \$4700 (Tax Year 2023)

What about a 1st Party SNTs?

- Ok BUT SEE...
 - PLR 201117042
 - Which states that when the IRA is NOT inherited but rather was contributed to by the beneficiary with disabilities themselves, 1st Party SNT is NOT given grantor trust treatment and the beneficiary will LOSE the stretch.
- Conclusion: IRS is confused...

What about a 1st Party SNTs?

- **Consensus: 1st Party SNTs are Grantor Trusts and the Grantor is deemed to be the beneficiary with disabilities. However, nonsensically, you cannot transfer the beneficiary's own IRA into the trust without taking major tax hit...**

Important note about income for government benefit eligibility vs income for IRS purposes:

- **SSI/Medicaid as discussed generally have \$2000 asset tests as well as income tests for eligibility that counts UNEARNED income (unlike SSDI)**
- **However, if the SNT never distributes assets directly to the beneficiary but only spends trusts assets for their benefit it is not income to them for SSI/Medicaid purposes even if it is taxable to them under IRS rules.**

IRAs Generally

- **Created by Congress with intent:**
 - **Save for retirement in a tax advantaged way.**
 - **NOT intended to be a good way to leave assets via inheritance.**

IRAs Generally

- **Disadvantage of traditional IRAs being inherited:**
 - **Taxed at beneficiaries tax rate when withdrawn and must be withdrawn within certain number of years.**
 - **The Total value of IRA (including the built-in tax liability) is included in the gross estate.**

IRAs Generally

- **What were the Rules before 2020 Secure Act?**
 - **Taxed at beneficiary's tax rate when withdrawn; and**
 - **Must be withdrawn within certain number of years;**
 - and**
 - **The Total value of IRA (including the built-in tax liability) is included in the gross estate.**

IRAs Generally

- **What were the Rules before 2020 Secure Act?**
 - **Generally beneficiary received stretch based on life expectancy.**
 - **So RMD's could be relatively small.**
 - **Example:**
 - **\$1M IRA**
 - **Beneficiary was 55 upon the decedent's death**

IRAs Generally

- **Example Continued (Pre-Secure):**
 - **\$1M IRA**
 - **Beneficiary was 55 upon the decedent's death**
 - **Based on standard life tables:**

Age of IRA or Plan Beneficiary	Life Expectancy (in years)	Age of IRA or Plan Beneficiary	Life Expectancy (in years)	Age of IRA or Plan Beneficiary	Life Expectancy (in years)
0	84.6				
1	83.7	41	44.8	81	10.5
2	82.8	42	43.8	82	9.9
3	81.8	43	42.9	83	9.3
4	80.8	44	41.9	84	8.7
5	79.8	45	41.0	85	8.1
					7.6
6	78.8	46	40.0	86	7.1
7	77.9	47	39.0	87	6.6
8	76.9	48	38.1	88	6.1
9	75.9	49	37.1	89	5.7
10	74.9	50	36.2	90	5.3
	73.9			91	4.9
11	72.9	51	35.3	92	4.6
12	71.9	52	34.3	93	4.3
13	70.9	53	33.4	94	4.0
14	69.9	54	32.5	95	3.7
15		55	31.6		3.4
16			30.6	96	3.2
17	69.0	56	29.8	97	3.0
18	68.0	57	28.9	98	2.8
19	67.0	58	28.0	99	
20	66.0	59	27.1	100	
	65.0	60			

IRAs Generally

- **Example Continued (Pre-Secure):**
 - **\$1M IRA**
 - **Beneficiary was 55 upon the decedent's death**
 - **Based on standard life tables: 31.6 years**
 - **$\$1M / 31.6 = \text{RMD of } \$31,645.57 \text{ per year}$**

IRAs Generally

- **Example Continued (Pre-Secure):**
 - **With RMD of \$31,645.57 per year. Let's say beneficiary had MAGI of \$100,000 that year.**
- Individual would stay safely in 24% tax bracket**

IRAs Generally

- **Post-Secure Act of 2020**
 - **Changed inherited IRA rules dramatically.**
 - **Beneficiarys of inherited IRAs lose the stretch in most cases.**

IRAs Generally

- **Example (Post-Secure Act):**
 - **\$1M IRA**
 - **Beneficiary was 55 upon the decedent's death**
 - **Generally Default: 10 year rule (Must take it out within 10 years).**
 - **For most people best option is to spread evenly**

IRAs Generally

- **Example Continued (Post-Secure Act):**
 - **\$1M IRA / 10 years =**
 - **\$100K per year of IRA distribution**
 - **If beneficiary had \$100K of MAGI before the distribution and filed individually, now pushed into the 32% tax bracket**

IRAs Generally

- **Example Continued (Post-Secure Act):**
 - **Alternate Example:**
 - **\$1M ROTH IRA**
 - **Remember with a Roth no tax on distributions even when inherited Roth IRA.**

IRAs Generally

- **Alternative Example Continued (Post-Secure Act):**
 - **\$1M ROTH IRA**
 - **Since no taxes, most let it grow tax free for most of the 10 years**
 - **Pull out tax free before 10 years have elapsed.**

IRAs and SNTs

- **Pre-Secure Act of 2020**
 - **SNTs were treated just like any other accumulation trust**
 - **They look to the oldest contingent beneficiary**
 - **NOTE: per PLR 201633025 a “mere potential successor beneficiary” didn’t count**

IRAs and SNTs

- **Pre-Secure Act of 2020**
 - **Example #1:**
 - **Upon PWD's death the contingent beneficiaries of the SNT are the PWD's siblings or their descendants.**
 - **Only if no living siblings or descendants does it go to charities**

IRAs and SNTs

- **Pre-Secure Act of 2020**
- **Example #1 Continued:**
 - **Since the charity is almost certainly a “mere potential successor beneficiary” we would have been able to stretch the RMDs over the oldest sibling’s life expectancy.**

IRAs and SNTs

- **Pre-Secure Act of 2020**
- **Example #1 Continued:**
 - **So let's say oldest sibling was 55 at time of the decedent's death, we get that 31.6 year stretch like before.**
 - **BUT remember: collapsed tax brackets.**

IRAs and SNTs

- **Pre-Secure Act of 2020**
- **Example #1 Continued:**
 - **So Collapsed tax brackets**
 - **BUT ALSO QDT and maybe lots of deductions to offset that...**

IRAs and SNTs

- **Pre-Secure Act of 2020**
 - **Example #2**
 - **Upon PWD's death the contingent beneficiaries of the SNT are 50% PWD's siblings or their descendants and 50% to the non-profit agency that provided residential services.**

IRAs and SNTs

- **Pre-Secure Act of 2020**
- **Example #2 Continued**
 - **Since a charity is a contingent beneficiary, NOT a “mere potential successor beneficiary”**
 - **We are stuck with 5 year rule. Virtually the worst case scenario.**

IRAs and SNTs

- **Post-Secure Act of 2020**
 - **Now the rules were thrown out for everyone except EDB (Eligible Designated Beneficiary)**
 - **Good news: SNTs are generally considered EDBs**

IRAs and SNTs

- **Post-Secure Act of 2020**
 - **Beneficiary of the SNT must be disabled.**
 - **SSI/SSDI determination is conclusive for IRS purposes, but not only way.**

IRAs and SNTs

- **Post-Secure Act of 2020**
 - **Type II AMBT is allowed to qualify as EDB and receive the stretch, even though there are other trust beneficiaries (contingent beneficiaries) who are not EDBs**

IRAs and SNTs

- **Post-Secure Act of 2020 (but before Secure 2.0)**
 - **The ages of the remainder beneficiaries are disregarded.**
 - **REMEMBER Pre-Secure 2.0: this disregard did NOT apply to charitable remainder beneficiaries that take on the passing of the death of the beneficiary with disabilities.**

IRAs and SNTs

- **Post-Secure Act of 2020 (but before Secure 2.0)**
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IRAs and SNTs

- **Example:**
 - **Assume SNT inherits IRA worth \$500K after surviving parent's death.**
 - **Assume SNT qualifies for stretch under secure act so RMDs are approximately \$15K per year.**
 - **Result:**
 - **\$15K of taxable income each year from the RMDs**
 - **If the money is spent, the Trust takes a deduction on it's 1041 return and the income is generally carried out to the beneficiary's 1040.**
 - **This is VERY confusing to many attorneys, CPAs, and even some SSI case workers because while it is income to the beneficiary for IRS purposes it is NOT unearned income for SSI/Medicaid eligibility purposes.**

IRAs and SNTs

Problem #1:

Parents often want to leave a % (or sometimes even the entire remainder) of their child's SNT to the organization that provided residential services to them.

IRAs and SNTs

- **If they did this under law prior to 2023 “Secure 2.0” it would likely have prevented qualification for the special exception for SNTs under the original Secure Act and proposed regulations.**
- **Note: A charitable successor contingent beneficiary might have still been okay.**
 - **See See PLR 201633025 and proposed regs which also suggest disregarding such contingent successor beneficiaries.**

IRAs and SNTs

Good News:

Secure 2.0 passed with provision protecting Special Needs Trust “Stretch”

- **SNTs with charitable contingent beneficiaries will STILL qualify as Eligible Designated Beneficiary!**
- **See Special Needs Trust Improvement Act or Section 337 of Secure 2.0**
- **NOTE: Must be a 501(c)(3) CANNOT name DAF or Private Foundation.**

IRAs and SNTs

Problem #2:

- **SNTs may qualify for lifetime stretch unlike the SNT beneficiary's siblings**
- **So...Always leave large IRA assets to SNT and leave other assets to the other kids??**
 - **Not necessarily...**
 - **Must balance:**
 - **Benefit of stretch over life expectancy**
 - **Negative impact of collapsed tax brackets on 1041 if RMD not spent during tax year**
 - **What bracket are the other kids in?**

IRAs and SNTs

- **What to consider:**
 - **What Tax bracket are the other siblings in?**
 - **Will RMDs when stretched over 10-year period push them into 32% bracket?**
 - **What expected expenses with the SNT have each year?**
 - **Do the parents spend more than the estimated RMDs on their child each year right now?**
 - **Do they have ongoing charitable commitment to their child's agency equal to or greater than the RMD?**
 - **Or are the expected expenses well less than the probable RMDs?**

IRAs and SNTs

- **Drafting Considerations:**
 - **Include a provision authorizing the trustee to amend to qualify as a type II AMBT for stretch IRA purposes.**
 - **Declare the grantor's intent that the trust be treated as a Type II AMBT**
 - **Parachute Clause/Escape Valve Clause:**
 - **i.e., distribution of trust to another individual if a new law banned SNTs could theoretically disqualify the trust as a Type II AMBT.**

IRAs and SNTs

- **Good News:**

- **Decanting and Reformation under state law is permitted to “save” Type II AMBT status. See Proposed Reg. 1.401(a)(9)-4(f)(5)(iii)**
- **Thus, a reformation or decanting completed before September 30 of the calendar year following the account owner’s death is available to correct drafting errors.**

IRAs and SNTs

- **Note:**

- The ages of the remainder beneficiaries are disregarded
- If “Joint SNT” is funded with IRA where there are multiple beneficiaries with disabilities that are beneficiaries of the Type II AMBT, the oldest beneficiary’s life expectancy will be used for RMD purposes. See Type II AMBT – RMDs - §1.401(a)(9)-5(f)(1)(ii) and (f)(2)(iii)

IRAs and First Party SNTs

- **Up until now in today's lecture we talked exclusively about 3rd Party SNTs**
- **What about 1st Party SNTs**
 - **They are considered GRANTOR trusts to the beneficiary with disabilities.**
 - **Remember per PLRs we cannot move PWD's own IRA into 1st Party SNT**

IRAs and First Party SNTs

- **Therefore it's only Inherited IRA left by mistake to the PWD directly that can be moved to 1st party SNT**
- **Since PWD is EDB RMD rules still permit stretch inside the First Party SNT.**
- **Of Course: Difficult to find Custodians that will do this.**

Summary

- **IRA and SNTs combine in confusing ways.**
- **3rd Party SNTs that receive inherited IRAs are generally going to be treated as Type II AMBTs post-secure and especially post-secure 2.0.**
 - **Therefore they get the stretch**
- **1st Party SNTs: get stretch as well since PWD is EDB**

Dilemmas that IRAs present in special needs planning

Problem #1:

Parents often want to leave a % (or sometimes even the entire remainder) of their child's SNT to the organization that provided residential services to them.

Dilemmas that IRAs present in special needs planning

- **If they did this under law prior to 2023 “Secure 2.0” it would likely have prevented qualification for the special exception for SNTs under the original Secure Act and proposed regulations.**
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 - **Or are the expected expenses well less than the probable RMDs?**

Age of IRA or Plan Beneficiary	Life Expectancy (in years)	Age of IRA or Plan Beneficiary	Life Expectancy (in years)	Age of IRA or Plan Beneficiary	Life Expectancy (in years)
0	84.6				
1	83.7	41	44.8	81	10.5
2	82.8	42	43.8	82	9.9
3	81.8	43	42.9	83	9.3
4	80.8	44	41.9	84	8.7
5	79.8	45	41.0	85	8.1
					7.6
6	78.8	46	40.0	86	7.1
7	77.9	47	39.0	87	6.6
8	76.9	48	38.1	88	6.1
9	75.9	49	37.1	89	5.7
10	74.9	50	36.2	90	5.3
	73.9			91	4.9
11	72.9	51	35.3	92	4.6
12	71.9	52	34.3	93	4.3
13	70.9	53	33.4	94	4.0
14	69.9	54	32.5	95	3.7
15		55	31.6		3.4
16			30.6	96	3.2
17	69.0	56	29.8	97	3.0
18	68.0	57	28.9	98	2.8
19	67.0	58	28.0	99	
20	66.0	59	27.1	100	
	65.0	60			

Definition of Disabled

SSI/SSDI determination is conclusive for IRS purposes, but not only way.

3rd Party SNIs are almost always considered “Type II Applicable Multi-beneficiary Trust” (“Type II AMBT”)

In general, under the Secure Act and proposed regulations:

- Type II AMBT is allowed to qualify as EDB and receive the stretch, even though there are other trust beneficiaries who are not EDBs.
- The ages of the remainder beneficiaries are disregarded.
- REMEMBER: this does NOT apply to charitable remainder beneficiaries that take on the passing of the death of the beneficiary with disabilities. BUT post Special Needs Trust Improvement Act of 2023, 501(c)(3)s remainder beneficiaries ARE exempt.

Drafting Considerations with 3rd Party SNTs

- **Include a provision authorizing the trustee to amend to qualify as a type II AMBT for stretch IRA purposes.**
- **Declare the grantor's intent that the trust be treated as a Type II AMBT**
- **Parachute Clause/Escape Valve Clause:**
 - **i.e., distribution of trust to another individual if a new law banned SNTs could theoretically disqualify the trust as a Type II AMBT.**

Modification of Trust Terms

- **Good News:**
 - **Decanting and Reformation under state law is permitted to “save” Type II AMBT status. See Proposed Reg. 1.401(a)(9)-4(f)(5)(iii)**
 - **Thus, a reformation or decanting completed before September 30 of the calendar year following the account owner’s death is available to correct drafting errors.**

Type II AMBT – RMDs - §1.401(a)(9)-5(f)(1)(ii) and (f)(2)(iii)

- **The ages of the remainder beneficiaries are disregarded**
 - **Note: If “Joint SNT” is funded with IRA where there are multiple beneficiaries with disabilities that are beneficiaries of the Type II AMBT, the oldest beneficiary’s life expectancy will be used for RMD purposes.**

Q & A



STETSON LAW

Center for Elder Justice

Access and Justice For All®

2026 Fundamentals of Special Needs Trusts Administration

Webinar

Friday, May 8, 2026

3:00-3:50 pm

Reasonable Fees: Using AI in Administering a Trust

Presenter: Roberta K. Flowers

- PowerPoint
- Materials



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Elder Justice*

Trust Administration Obligations in the Age of AI

Bobbi K. Flowers

Professor of Law, Stetson University College of Law

I. Introduction

The administration of trusts has historically been governed by well-established fiduciary principles, now largely codified in the Uniform Trust Code (UTC), particularly within Article 8.¹ These statutory provisions articulate the duties and responsibilities of trustees and operate as default rules unless expressly modified by the terms of the trust instrument. At their foundation, trustees are bound by enduring fiduciary obligations, including the duties of loyalty, prudence, impartiality, and transparency. Courts have long emphasized the elevated nature of fiduciary responsibility, describing it as among the “highest known to the law.”²

Although these principles remain unchanged, the environment in which trustees operate is rapidly evolving. The increasing integration of artificial intelligence (AI) into financial services, legal practice, and fiduciary decision-making introduces new complexities in how these duties are interpreted and applied. Trustees are no longer simply evaluating human advice or market data—they are increasingly interacting with automated systems that generate recommendations, predictions, and even decisions. This shift raises fundamental questions about responsibility, oversight, and the evolving standard of care.

¹ Unif. Trust Code §§ 801–813 (Unif. L. Comm’n 2010).

² *Meinhard v. Salmon*, 249 N.Y. 458, 464 (1928).

II. Duty to Administer the Trust

A trustee's fundamental obligation is to administer the trust in good faith and in accordance with its terms, purposes, and the interests of the beneficiaries.³ This duty is not passive; rather, it requires active engagement, inquiry, and judgment. In *Marsman v. Nasca*, the court emphasized that trustees must affirmatively investigate and respond to beneficiary needs, rather than passively relying on trust language.⁴

The introduction of AI does not diminish this responsibility. While AI tools can assist trustees by providing data analysis, projections, and scenario modeling, they cannot replace the trustee's obligation to exercise independent judgment. Courts have consistently held that fiduciaries cannot abdicate their responsibilities through delegation or blind reliance on third parties.⁵ Accordingly, a trustee who relies uncritically on AI-generated outputs risks breaching the duty of good faith. The trustee must understand how the tool functions, evaluate the reasonableness of its outputs, and determine whether those outputs align with the trust's purposes.

III. Duty of Loyalty

The duty of loyalty requires trustees to act solely in the interests of the beneficiaries and to avoid conflicts of interest.⁶ Transactions involving self-dealing are generally voidable unless expressly authorized or ratified. Courts strictly enforce this duty, as demonstrated in *In re*

³ Unif. Trust Code § 801 (Unif. L. Comm'n 2010).

⁴ *Marsman v. Nasca*, 573 N.E.2d 1025 (Mass. App. Ct. 1991)

⁵ Restatement (Second) of Trusts § 171.

⁶ Unif. Trust Code § 802 (Unif. L. Comm'n 2010).

Rothko, where trustees were held liable for engaging in conflicted transactions that compromised their fiduciary obligations.⁷

AI introduces new and less obvious forms of potential conflicts. For example, a trustee may use an AI platform provided by a company in which the trustee has a financial interest, creating indirect self-dealing concerns. Similarly, AI vendors may monetize data inputs, raising questions about whether trust information is being used for purposes beyond administration. Algorithmic bias may also influence investment decisions in ways that benefit certain parties over others. Because these risks are often hidden within the structure of the technology, trustees must engage in careful due diligence when selecting and using AI tools.

IV. Duty of Impartiality

The duty of impartiality requires trustees to balance the interests of multiple beneficiaries equitably.⁸ Courts have emphasized that impartiality requires thoughtful and context-sensitive judgment rather than rigid equality.⁹

AI-driven tools may complicate this balancing function. For instance, an algorithm optimized for income generation may disproportionately benefit income beneficiaries while disadvantaging remainder beneficiaries. Conversely, growth-oriented models may favor long-term beneficiaries at the expense of current income recipients. Trustees must therefore critically assess whether AI-generated recommendations align with the duty of impartiality. This requires

⁷ *In re Rothko*, 372 N.E.2d 291, 297–98 (N.Y. 1977).

⁸ Unif. Trust Code § 803 (Unif. L. Comm'n 2010). *In re Estate of Heller*, 800 N.Y.S.2d 346 (Sur. Ct. 2005).

⁹ *Estate of Cooper*, 913 P.2d 393 (Colo. App. 1996)

not only reviewing outcomes but also understanding the assumptions and objectives embedded within the AI system.

V. Prudent Administration

The duty of prudent administration requires trustees to exercise reasonable care, skill, and caution.¹⁰ This standard evolves with professional norms and technological advancements. The prudent investor rule requires trustees to consider both risk and return in managing trust assets.¹¹

AI has the potential to enhance prudent decision-making by enabling more sophisticated analysis and reducing human error. However, it also raises the question of whether the use of such tools is becoming part of the standard of care. Courts have suggested that fiduciaries must adapt to evolving practices.¹² As AI becomes more widely adopted, failure to use reliable tools in appropriate circumstances could be viewed as imprudent, particularly where those tools materially improve decision quality.

VI. Delegation and AI

Delegation permits trustees to rely on agents, provided they exercise reasonable care in selecting, instructing, and monitoring those agents.¹³ Courts have upheld delegation where trustees maintain oversight but imposed liability where supervision is inadequate.¹⁴

¹⁰ Unif. Trust Code § 804 (Unif. L. Comm'n 2000). *See* Estate of Cooper, 913 P.2d 393 (Colo. App. 1996).

¹¹ Restatement (Third) of Trusts § 77 (Am. L. Inst. 2007).

¹² *Tibble v. Edison International*, 843 F.3d 1187 (9th Cir. 2016).

¹³ Unif. Trust Code § 807 (Unif. L. Comm'n 2010).

¹⁴ Restatement (Second) of Trusts § 171 (Am L. Inst. 2007).

AI systems function similarly to delegated agents, performing tasks that would otherwise require human expertise. However, unlike human agents, AI systems may lack transparency, making oversight more challenging. Trustees must therefore implement processes to monitor performance, verify outputs, and identify errors. Failure to do so may constitute improper delegation and expose the trustee to liability.

VII. Property Protection and Recordkeeping

Trustees must protect trust property, maintain accurate records, and ensure proper reporting.¹⁵ Courts have emphasized the duty to safeguard assets against foreseeable risks.¹⁶

AI can enhance these functions by improving fraud detection, monitoring financial activity, and automating recordkeeping. However, it also introduces risks, particularly in the areas of cybersecurity and data integrity. Trustees must ensure that AI systems are secure, that data is protected, and that records remain accurate and auditable.¹⁷ The inability to explain or verify AI-generated records may itself constitute a breach of fiduciary duty.

VIII. Fees and Billing

The reasonableness of trustee and attorney fees remains governed by traditional standards.¹⁸ Attorneys are subject to ethical rules prohibiting unreasonable fees.¹⁹ Courts retain authority to review and reduce excessive fees, even where agreed upon by clients.²⁰

¹⁵Unif. Trust Code §§ 808–812 (Unif. L. Comm’n 2010).

¹⁶ *Keach v. U.S. Trust Co. NA*, 313 F.Supp.2d 818 (United States District Court, C.D. Illinois 2004).

¹⁷ Unif. Trust Code § 810 (Unif. L. Comm’n 2000).

¹⁸ Unif. Trust Code § 805 (Unif. L. Comm’n 2000); Model Rules of Pro. Conduct r. 1.5(a) (Am. Bar Ass’n 2024).

¹⁹ *Id.*

²⁰ *In re Fordham*, 668 N.E.2d 816 (Mass. 1996).

AI significantly impacts billing practices by reducing the time required to complete many tasks. Under hourly billing, professionals may only charge for actual time spent. Flat fees must remain reasonable in light of reduced effort, and contingency fees must reflect fairness. Courts have consistently rejected fees that are not justified by the services provided.²¹ As AI increases efficiency, professionals must ensure that those efficiencies benefit clients rather than simply increasing profit margins.

IX. Ethical Use of AI

ABA Formal Opinion 512 provides guidance on the ethical use of AI, emphasizing competence, confidentiality, and proper billing practices.²² Lawyers must understand the capabilities and limitations of AI tools, safeguard client information, and verify outputs before relying on them.²³

These obligations reflect broader fiduciary principles. Trustees, like attorneys, must exercise informed judgment and maintain control over decision-making processes. The use of AI does not reduce ethical obligations; rather, it requires heightened awareness and oversight.

X. Conclusion

AI represents a powerful tool that can enhance trust administration, but it does not replace fiduciary judgment. Trustees remain fully responsible for their decisions and must ensure that their actions comply with established fiduciary duties. The integration of AI into trust

²¹ Restatement (Third) of the Law Governing Lawyers § 34 (Am. L. Inst. 2000).

²² ABA Formal Op. 512 (2024).

²³ *Noland v. Land of Free L.P.*, 336 Cal Rptr 3rd 897 (2nd Cir. 2025); *Deutsche Bank National Trust Company v. LeTennier*, 250 N.Y.S.3d 260 (Supreme Court, Appellate Division, Third Department, New York, 2026).

administration represents an evolution in method, not a change in obligation. The core principles of loyalty, prudence, and accountability remain central to the trustee's role.

Trust Administration Obligations in the Age of AI

Bobbi K Flowers

Professor of Law

Stetson University, College of Law

Agenda



**Fiduciary
Duties/Standards of
Conduct/Administration
under the Uniform Trust
Code**

Ethical Issues in using AI

**Reasonable Fees when
using AI**

Overview

- Uniform Trust Code (UTC) framework.
- Trustee duties are primarily codified in Article 8.
- Default rules apply unless modified by the trust
- Core principles:
 - Loyalty
 - Prudence
 - Impartiality
 - Transparency
- Duties fall into three functional categories:
 - Fiduciary obligations
 - Administrative standards
 - Property + reporting responsibilities



Fiduciary Duties (UTC 801–803)

Duty to Administer Trust

- Good faith administration
- In accordance with:
 - Terms of the trust
 - Trust purposes
 - Beneficiaries' interests

AI Impact: Trustees may use AI for decision support, but must still:

Understand outputs

Exercise independent judgment



Blind reliance on AI could violate good faith.

“I relied on AI” is not a defense if the result is unreasonable.

Fiduciary Duties

Duty of Loyalty

- Solely in beneficiaries' interests
- Self-dealing transactions are voidable unless:
 - Authorized by trust
 - Approved by court
 - Beneficiary consent/ratification
- Presumption of conflict in certain transactions.

AI Impact: Conflicts can arise if:

Trustee uses AI tools tied to their own business interests.

Data is shared with third-party AI providers for profit.

Risk of indirect self-dealing (e.g., steering investments via biased algorithms).

Trustees must vet AI for hidden conflicts or incentives.

Fiduciary Duties

Duty of Impartiality

- Applies when multiple beneficiaries exist
- Must balance:
 - Income vs. remainder beneficiaries.
- Requires equitable (not equal) treatment.

AI Impact: AI-driven investment or distribution models may:

Favor one class of beneficiaries (e.g., income vs. growth)

Bias in algorithms could unintentionally skew outcomes.

Trustees must ensure AI outputs align with balanced treatment.

Standards of Conduct & Administration (UTC 804–807)

Prudent Administration

- “Prudent person” standard
- Requires:
 - Reasonable care
 - Skill
 - Caution

AI improves decision-making by:
Processing large datasets
Identifying market trends
Reducing human error

If prudence is about acting as a reasonable trustee would, then failing to use widely available, reliable AI tools may itself become imprudent.



Standards of Conduct & Administration

Delegation

- Permitted with safeguards:
 - Care in selecting agent
 - Define scope/terms
 - Periodic review
- Trustee not liable if compliant

AI functions like a delegated agent.

Trustee must:

Select appropriate tools

Define scope of use

Monitor performance

Failure to supervise AI = improper delegation.



Trust Property Management Duties (UTC 808–812)

Control and Protection of Trust Property

Must:

- Take control of trust assets
- Safeguard them

AI can enhance:

Fraud detection

Risk monitoring

But also introduces:

Cybersecurity risks

Data breaches

Trustees must ensure secure use of AI systems.



Trust Property Management Duties

Recordkeeping and Identification

- Keep adequate records
- Segregate trust property from personal assets
- Properly title trust property

AI Impact: AI can improve:

Tracking, auditing, and reporting

But raises issues:

Data integrity

Explainability of decisions

Trustees must maintain clear, auditable records, even with AI.



Duty to Inform and Report (UTC 813)

Information Duties

- A. Keep beneficiaries informed about administration and material facts
- B. Respond to requests and promptly provide requested information
- C. Provide key notices about the acceptance of trusteeship, the trust becoming irrevocable, or any change in trustee compensation.
- D. Provide documents or a copy of the trust upon request.
- E. Annual reporting on trust properties, liabilities, and receipts/
disbursements.



Fees



+

+



Standards of Conduct & Administration

UTC 805

Costs of Administration

- Only **reasonable** costs permitted
- Must relate to:
 - Trust assets
 - Trust purposes
 - Trustee's skills



What do Courts Consider

Time and labor required

Complexity and difficulty

Trustee's skill and expertise

Size and nature of the trust

Risk and responsibility assumed

Local custom for similar services

Results achieved and quality of performance



AI impact on Fees

- **Percentage**
- **Hourly**
- **Flat Fee.**



- Automate accounting and reporting
- Reduce administrative overhead
- More trust assets preserved for beneficiaries → advances the core purpose of trusts.



I. Frameworks on Legal Fees

- American Bar Association Model Rules
- American Bar Association Opinions
- Judicial Review
- Restatement of the Law



Rule 1.5(a): Reasonableness Standard

(a) A lawyer shall not make an agreement for, charge, or collect an **unreasonable fee or an unreasonable amount**... The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood... hat the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;
and

(8) whether the fee is fixed or contingent.

Lawyers may
not:



Inflate time entries



Bill for time not actually
spent



“Double bill” the same
time to multiple clients

ABA Formal Opinion 93-379



Judicial Authority to Review Fees

Courts retain inherent authority to review attorney fees for excessiveness.


For example, *In re Fordham*

- Even if a client agrees to a fee, courts can discipline attorneys for charging excessive fees.

Restatement (Third) of the Law Governing Lawyers § 34 - Reasonable Fees

"A lawyer may not charge a fee larger than is reasonable in the circumstances or that is prohibited by law."

This applies to fee disputes between lawyers and clients, even if a fee contract exists, and courts will not enforce unreasonable fee arrangements.



Traditional Billing Models

- Hourly Billing
- Flat Fees
- Contingency



Hourly Billing



Clients pay based on the number of hours worked multiplied by an hourly rate.



Under 1.5, lawyers may only bill for actual time spent, not for traditional assumptions about how long a task “ought” to take.



Flat Fees



Fixed price for defined service.



Lawyers must evaluate the cost up front.



Fees must still be reasonable at the time of the agreement under 1.5.



AI Implications for Traditional Billing



Flat Fees - If AI drastically reduces effort but the flat fee remains high, reasonableness is still



Contingency Fees - If AI makes the work easier, the lawyer's effort may be dramatically reduced, raising questions about whether high contingency percentages remain fair.



Hourly Fees - AI may reduce hours, disrupting traditional value metrics.

ABA Formal Opinion 512: AI Competence

Lawyers must:

- Understand how generative AI works.
- Understand what AI can do (hallucinations, inaccuracies).
- Verify and supervise AI output.

Invokes Model Rule 1.1

- "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

ABA Formal Opinion 512: AI and Confidentiality

Lawyers should:

- Evaluate the security practices of AI vendors
- Know whether client data is used for “training”
- Obtain client consent when appropriate
- Consider where data is stored, whether the vendor uses the data, and whether the security meets confidentiality standards.

Invokes Model Rule 1.6

"A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation..."



ABA Formal Opinion 512: AI and Billing

- Lawyers must verify AI outputs before billing for it.
- Lawyers should not create “phantom hours” just because AI output took minimal time.

AI drafts a research memo in 10 minutes, billing 2 hours simply because “that’s standard” violates ethical billing norms.

Invokes Model Rule 1.5

- "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee..." taking into consideration "time and labor required."

Emerging Issues

- **Rising Standard of Care**

- AI may redefine what is “prudent”.

- **Explainability Requirement**

- Trustees may need to explain AI decisions to beneficiaries/courts.

- **Bias and Fairness**

- Algorithmic bias could breach loyalty or impartiality.

- **Cybersecurity as Fiduciary Duty**

- Protecting data becomes part of safeguarding trust property.

- **No “AI Defense”**

- Liability remains with the trustee, not the tool.



Take way: AI is a Tool



Know what Tools are available.

Know which Tool to use.

Know how to evaluate the result of the Tool.



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2026 Fundamentals of Special Needs Trusts Administration

Webinar

Friday, May 8, 2026

3:50-4:40 pm

Developing and Implementing an AI Use Policy in Your Office

Presenter: Linda Anderson and Crystal Edwards

- PowerPoint



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AI in Elder Law Practice

The Governance Gap Nobody Is Talking About

Who is responsible for what AI does in your firm?

Linda Anderson | Professor of Law, Stetson University College of Law

Elder Law Conference

The Question Nobody Is Asking

*When something goes wrong with an AI output in your firm —
who is responsible for catching it?*

Not technically. Professionally.

Who reviews the output?

Who approves it for client use?

Who is accountable when it is wrong?

This Is Not a Technology Problem

What Firms Are Asking

- Which AI tool should we subscribe to?
- Is this platform ABA-compliant?
- How much does it cost?
- Can it handle the work we do?

What Firms Need to Ask

- Who decides which AI outputs we rely on?
- How do we document that decision?
- What is our fallback when the output is wrong?
- Who owns this system once it is running?

Why This Matters More in Elder Law

Elder law clients are among the most vulnerable. The stakes when AI gets it wrong are not abstract.

Capacity Assessments

AI summarizing medical records or identifying capacity issues can miss context that changes everything. Who reviews that summary before it drives a legal conclusion?

Medicaid Planning

Medicaid rules are state-specific, time-sensitive, and constantly changing. AI playbooks built on general rules can produce advice that is legally wrong and financially devastating.

Estate Document Generation

A will or trust generated with AI assistance can look complete and be wrong. Tracked changes with cited reasoning are not the same as verified reasoning.

The Governance Gap

*Most firms are making tool decisions
without making accountability decisions.*



The tool doesn't close this gap. A decision structure does.

What AI Governance Actually Means in Practice

Governance is not a compliance checkbox. It is the set of decisions your firm makes — deliberately — about how AI is used, who decides, and how that is documented.

Risk Mapping

1

Classify which tasks carry what level of AI risk. Not all uses are equal. Drafting a client summary carries different risk than generating a Medicaid analysis.

Reliance Checkpoints

2

Before AI output is acted on, who reviews it? The checkpoint is the moment a lawyer makes a professional judgment about whether to rely. That moment needs to be named and owned.

Audit Trails

3

Document what AI produced, who reviewed it, and what decision was made. This is not busywork. This is your professional responsibility record.

Accountability Assignment

4

One person or role must own each part of the system. Not 'everyone is responsible.' Specific accountability. Named. Documented.

A Framework for Structured Judgment

The goal is not to limit AI use. It is to make sure the right person is making the right call at the right moment.

Judgment Architecture

AI Decision Risk Map

Classifies tasks by risk level
before AI is used

Reliance Checkpoint

Named moment where
lawyer decides to rely or
not

Judgment Ledger

Record of what AI
produced and what was
decided

TRACE Template

Structured output
verification before client
use

Audit Trail

Professional responsibility
documentation

What This Looks Like in an Elder Law Practice

Scenario A: Medicaid Planning

AI does:

AI analyzes client financials and flags look-back period issues.

Checkpoint:

Supervising attorney reviews AI output against current state rules before advising client.

Documented:

Decision documented: AI flagged risk. Attorney confirmed, modified, and directed next step.

Scenario B: Estate Documents

AI does:

AI drafts trust provisions based on client intake form.

Checkpoint:

Drafting attorney reviews each provision for client-specific accuracy. Does not approve batch.

Documented:

Tracked changes show AI draft. Attorney edits logged with rationale. Client version marked final.

Scenario C: Capacity Concern

AI does:

AI summarizes medical record for attorney review.

Checkpoint:

Attorney does not rely on summary alone. Reads source document for anything affecting legal capacity determination.

Documented:

Summary used as navigation aid only. Source review documented.

Three Questions to Ask Your Firm This Week

01

Can every attorney in your firm name the moment they stop relying on AI and start exercising their own judgment?

If no one can answer this, there is no checkpoint. There is just output.

02

If an AI-assisted document caused client harm tomorrow, what is your record that the work was reviewed?

The audit trail is your professional responsibility defense. Does it exist?

03

Who in your firm is assigned to maintain and supervise your AI tools — not just use them?

Using and supervising are not the same function. Both require accountability.

The question is not "should we use AI?"

*The question is: who in your firm
is responsible for what it does?*

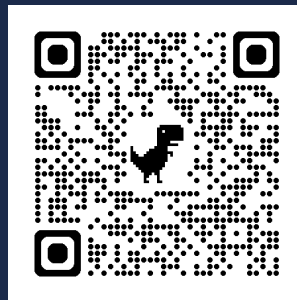
That answer requires a structure. Not a subscription.

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Responsible AI Integration in Legal Practice: Building Policies, Frameworks, and Guardrails

Ensuring Ethical and Secure AI Use in Law

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Agenda Overview

- Overview of Generative AI Policy in Legal Practice
- Approved Use and Training Requirements for AI Tools
- Prohibited Uses and Data Protection Measures
- Quality Control and Professional Responsibility
- Bias, Discrimination, and Content Standards
- Incident Reporting and Policy Enforcement
- Alignment with Legal, Ethical, and Regulatory Obligations

Overview of Generative AI Policy in Legal Practice



Policy scope and purpose for generative AI tools

Generative AI Applications

AI tools generate text, visuals, or code aiding in brainstorming, drafting, and summarizing tasks efficiently.

Risks and Data Security

These tools pose risks to client data security and confidentiality, potentially affecting legal privileges.

Accuracy and Bias Concerns

AI outputs can be inaccurate or biased due to training data, algorithms, and user interaction influences.

Policy Compliance

All employees must follow these guidelines to ensure responsible and secure use of generative AI tools.

Approved Use and Training Requirements for AI Tools





Guidelines for legitimate and ethical use of firm-approved AI tools

Approved AI Tools Usage

Employees are encouraged to use only firm-approved generative AI tools for ethical and efficient work production.

Mandatory Training and Compliance

Employees must complete firm-provided training on the lawful and ethical use of AI tools to maintain compliance and awareness.

Monitoring and Licensing Controls

The firm monitors AI tool usage, requiring prior approval for costly tools and managing licenses to optimize resources.

Prohibited Uses and Data Protection Measures



Data Protection & Prohibited Inputs

Strict Prohibition of Sensitive Data Input

Employees must not enter confidential or legally protected information into AI platforms unless using approved tools.

Approved Exceptions (firm tools only)

Only firm-approved Generative AI tools listed on Porzio Pages ensure data is not captured beyond technical boundaries.

Examples of Protected Data

Includes personal data, trade secrets, intellectual property, financial, and other sensitive client and employee information.

Quality Control and Professional Responsibility





Quality Control and Professional Responsibility

AI as a Support Tool (not a decision maker)

AI may assist with drafting and analysis but cannot replace attorney judgment.

Mandatory Human Review & Verification

All AI-assisted work must be reviewed for accuracy, completeness, and legal sufficiency before use or submission.

Disclosure Obligations (court/client rules)

Comply with all court and client rules regarding disclosure of AI use in legal work.

Bias, Discrimination, and Content Standards



Risks of bias and discrimination in AI-generated content

Risk of Bias in AI Outputs

AI may reflect biases present in training data, leading to incomplete or unfair results.

User Responsibility (Input Controls)

Prompts must be carefully drafted to avoid generating inappropriate or misleading content.

Prohibited Content

Do not generate or rely on output that is offensive, discriminatory, or exclusionary.



Incident Reporting and Policy Enforcement

Procedures for reporting breaches and violations involving AI tools

Report Immediately

Promptly report any suspected misuse, data exposure, or erroneous AI output.

Notify Appropriate Teams

Escalate issues to IT and Security in accordance with firm protocols

Examples of Reportable Incidents

- Accidental entry of confidential information
- Inaccurate or hallucinated AI output used in work product

Accountability & Consequences

Policy violations may result in disciplinary action
Including potential limitation of access to tools or termination of employment.

Duty to Safeguard Client Information

All users are responsible for protecting confidential and sensitive data.

Responsibility for Appropriate AI Use

Proper use supports ethical obligations, client trust, and firm standards.

Alignment with
Legal, Ethical, and
Regulatory
Obligations



Compliance with Laws

Includes state and federal requirements governing confidentiality, privacy, and professional conduct.

Consistent with Ethical Obligations

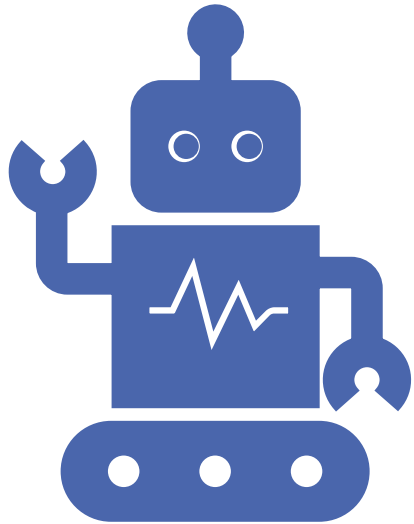
AI use must align with attorney duties of competence, confidentiality, and supervision.

Policy Supplements Existing Obligations

This policy does not replace—but reinforces—firm policies and legal requirements.

Legal & Regulatory Compliance

Firm-Approved GAI Tools



- ▶ **COPILOT** - Enterprise AI assistant embedded in Microsoft tools for secure drafting, summarization, and workflow support
- ▶ **SPELLBOOK** - Contract-focused AI tool designed to enhance drafting accuracy, identify risks, and improve review efficiency
- ▶ **HARVEY** - Legal AI platform supporting research, analysis, and complex drafting tailored to legal professionals
- ▶ **LAUREL** - AI-driven timekeeping system that automates time capture and improves billing accuracy
- ▶ **BLUE J** - AI-powered tax research tool that analyzes case law and predicts likely outcomes based on fact patterns. Supports faster, more data-informed legal analysis and decision-making

From Policy to Practice

- We've focused on structured, firm-based environments...
- What does responsible AI use look like with fewer resources and less formal guidance?