

# How to Avoid Ethical Issues In Resolving Personal Injury Claims for Aging and Disabled Clients



**Yale S. Hauptman**  
354 Eisenhower Parkway  
Plaza I, 2<sup>nd</sup> Floor  
Livingston, NJ 07039  
(973) 994-2287

**Yale@HauptmanLaw.com**



# Effect on Your Law Practice

If you have aging or disabled clients, you need to be aware of the issues that uniquely affect this segment of the population even if your area of practice is not specifically targeted towards the needs of the elderly or disabled

# What are the Relevant Rules of Professional Conduct We Will Be Touching Upon Today?

- RPC 1.1 Competence
- RPC 1.3 Diligence
- RPC 1.14 Client Under a Disability



# If you have aging or disabled clients

You must know how your legal representation and the results you achieve for them impact other areas of their lives

**Example: Will a money settlement cause a loss of government benefits?**

**Even though most of us are “specialists” and not “generalists”, our clients often look to us for guidance outside our areas of expertise**

**Diligently representing your  
client does not end with  
resolution of your case**

**How might the money you secure  
for your clients negatively impact  
them?**

# A Word about Special Needs Trusts

- You settle a client's personal injury claim
  - Are they receiving government benefits?
  - Are they likely to receive government benefits in the future?



# Did you know . . .

- If your client receives needs based benefits, he could lose those benefits when he receives his settlement
- Is there a way to “have your cake and eat it too”?



# Special Needs Trust

- First-Party Special Needs Trust
  - Must be under age 65
  - Payback provision to the government



# Case Study #1

- Client age 70 in nursing home on Medicaid
- Attorney files negligence claim and settles it for \$250,000
- Attorney has client call to set up SNT



# NO SNT Possible - > Age 65

- Alternative for your client?
  - Client has a child deemed disabled by Social Security
  - Transfer to a disabled child is not a transfer for less than fair value per Medicaid rules
  - Can then transfer to a trust from which funds can be used for client and passed on to heirs after death

# Case Study #2

- Client age 70
- Case settles for \$100,000
- No disabled child



# What are the Options?

- Spend down assets for the benefit of client
- Cell phone, computer, motorized wheelchair
- To keep Medicaid uninterrupted funds must be spent within a month of receiving funds
- May need to give money to nursing home

# If Too Much Money?

- Give it all to the State of New Jersey and you can keep Medicaid
- Leads to very unhappy client and family
- “Why did we pursue the claim?”
- “The only person who made money was my lawyer”

# Case Study #3

- Client is 64 years old
- 2 year statute of limitations
- Try to settle case before filing suit?



# Be Careful

- Remember that an SNT cannot be funded after age 65
- Knowing that my client will need an SNT could be important in pushing to resolve the claim before he/she turns 65

# Case Study # 4

- Client is on Medicaid
- “Health insurance” Medicaid not “Nursing Home” Medicaid
- Client not currently needing nursing home care or may not have a disability resulting in a greater likelihood of needing care than average person





# Is SNT Always Best Option?

- Sometimes it isn't
- SNT is restrictive
- Can only benefit the disabled person and not other family members
- Annual accounting requirement
- Payback provision

# Other Options

- More flexible irrevocable trust
- Can benefit other family members
- Can be eligible for Medicaid again in 5 years
- Look to other health insurance options to replace Medicaid during that 5 year time frame

# What Should or Can You Do to Help Your Client and Protect Yourself?

- Assess immediately when you first take the case, what government benefits your client is or may be eligible for
- Is case a 5, 6 or 7 figure case?
- It makes a difference in the options available
- Avoids the angry client left with the choice of losing benefits vs. keeping the money settlement
- No surprises to client or attorney
- Consultation with an elder and disability planning attorney early on is critical

# What if Client says:

- “Just give me the money. I don’t want a trust”
  - What do you do?
  - Is the client competent?
  - Does the client understand the ramifications of accepting the money?
  - What is your ethical obligation?



# Client Consult with Attorney

- Client meets elder/disability planning attorney to discuss options
- Opinion letter covers attorney if client takes the money and then loses his/her benefits or isn't eligible in the future



# How to Avoid Ethical Issues In Resolving Personal Injury Claims for Aging and Disabled Clients



**Yale S. Hauptman**  
354 Eisenhower Parkway  
Plaza I, 2<sup>nd</sup> Floor  
Livingston, NJ 07039  
(973) 994-2287

**Yale@HauptmanLaw.com**

