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Your Trusted Planning Advisor Through Life

**TIPS FOR PROVIDING VALUE-ADDED SERVICES TO DISABLED PLAINTIFFS
AND REDUCING PROFESSIONAL LIABILITY**

[on behalf of the Academy's Women's Caucus Section]

By: Stephanie L. Schneider, Certified Elder Law Attorney

As an elder law attorney I have had the privilege of working with many talented trial lawyers who achieve settlements for permanently disabled individuals. These experiences have taught me that trial lawyers and elder law attorneys can benefit their clients and elevate the profession through joint education programs and sharing of expertise. Trial lawyers representing disabled plaintiffs or plaintiffs receiving public assistance can best protect the client and themselves by working in conjunction with an elder law attorney to identify the issues that are unique to those persons. Consider incorporating the following suggestions into your practice:

1. Client Intake: Ask the client, adults and minors, whether they are receiving public assistance either through Medicaid or Social Security and request a copy of their benefit letter. This will alert you to lien issues and that advance planning is important to preserve settlement proceeds.
2. Is the Plaintiff Competent? A guardianship may be required to either institute or settle a lawsuit if the plaintiff is a minor or, an incapacitated adult. By identifying this issue early a knowledgeable guardianship attorney can be consulted and timely establish a guardianship so as not to delay a settlement.
3. Identify the Liens: Be aware that there is a Medicaid Third-Party Lien (TPL) and a Medicaid Estate Recovery Lien. The TPL cannot be negotiated or reduced by procurement costs however; there is a formula which caps the amount of reimbursement. Being aware of the amount of the lien before engaging in mediation can be very beneficial to your client. As to the Medicaid Estate Recovery Lien, there are exceptions to the government's lien right which can benefit heirs of the deceased. Probate cases should be evaluated to determine whether an exception applies.
4. Preserving Public Assistance: Distributing proceeds outright to a plaintiff receiving public assistance will cause immediate loss of valuable medical benefits! This can potentially create liability for the attorney for failing to advise the client of the effect of receiving the proceeds. I recommend that the trial lawyer and the client consult with an elder law attorney to identify the available options and creative solutions for preserving settlement proceeds and maintaining public assistance eligibility. The public assistance client needs to be advised that he/she has an obligation to notify the public assistance agency of a change in financial circumstances (receipt of proceeds) within ten days. By going the extra mile your client will be grateful to you for having saved them from making an expensive mistake. It is recommended that you document this in a letter to the client.

**Estate & Incapacity
Planning**

- ◆ Probate & Trust Administration
- ◆ Last Will & Testament
- ◆ Revocable Trust
- ◆ Durable Power of Attorney
- ◆ Designation of Healthcare Surrogate
- ◆ Quit Claim Deed
- ◆ Living Will

Advocacy Services

- ◆ Guardianship & Guardian Advocate
- ◆ Facility Residents' Rights
- ◆ Medicaid Applications & Appeals
- ◆ Veterans Benefits Counseling

**Government
Assistance**

- ◆ Special Needs Trusts
- ◆ Representation of Trustees
- ◆ Protecting Lawsuit Proceeds & Inheritances to Preserve Medicaid & SSI Eligibility
- ◆ Exceptions to Medicaid Lien Recovery

*Proper Planning
May Create Peace
of Mind*

5. Beware of The Effect of Parents Recovering for a Derivative Claim. The law of public assistance are like a maze filled with nuances and exceptions. One unique rule is the income and assets of a parent are “deemed” (counted) to a minor child living with the parents. As a result, a parent who receives outright proceeds from a derivative claim can jeopardize their child’s public assistance eligibility. It is crucial that timely and proper planning be done to preserve the parent’s derivative proceeds while maintaining the minor’s public assistance.

I hope that these suggestions improve your practice and increase customer satisfaction.

Stephanie L. Schneider Board Certified Elder Law Attorney works with clients of all ages. Based in Plantation, FL, she can be reached at 954-382-1997 or sschneider@fl-elderlaw.com.

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