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## **Duties of a Trustee in Managing a Trust for the Belief of an Individual with Special Needs**

**by Shannon A. Laymon-Pecoraro, Esq.**

It is common knowledge that one of the most important decisions in creating a trust is the selection of a trustee. The grantor, or person creating the trust, must choose a trustee that will understand what their duties are, the intent of the grantor, and exercise spending power for expenses that fall within the parameters set forth by the terms of the trust. Over the past year, two important decisions have emerged from New York which detail the affirmative duties assumed by trustees managing a trust for an individual with special needs.

The first case memorialized a trustee's requirement to take reasonable interest in and action on behalf of a beneficiary with special needs. In *Matter of JP Morgan Chase Bank N.A. (Marie H.)*, 2012 NY Slip Op 22387 (December 31, 2012 Sur Ct New York County), the trustees, in essence, abandoned the beneficiary and left him without adequate care, despite his significant inheritance. In finding that the co-trustees breached their duties, the court reflected on the co-trustee's failure to exercise a reasonable degree of diligence. Specifically, the court determined that a trustee has a duty "to make themselves knowledgeable about [a beneficiary's] condition and his needs, and the availability of services that would enable them to provide for those needs." This duty extends to determining the medical, educational, and quality of life needs that can be met by utilizing trust assets. By turning a blind eye to such needs and not approving proper and necessary payments to accommodate such needs, a trustee fails to fulfill their obligations.

The second case, *Liranzo v. LI Jewish Education/Research* (N.Y. Sup. Ct., Kings Cty., No. 28863/1996, June 25, 2013), focuses on the duty of a trustee to investigate the public benefits available to a beneficiary of a special needs trust and holds a trustee liable for such a breach. During the course of administration, the trustee of the trust made significant distributions for private caregivers, family cab rides, medications, and payments to family members that rendered the beneficiary of the trust ineligible for SSI and Medicaid. The court determined that it breached its duties by "failing to make the necessary inquiries.

While the findings of the court could be deemed as common sense, the lesson deducted from both of the cases is that a trustee has a duty to be actively

## **Duties of a Trustee in Managing a Trust for the Benefit of an Individual with Special Needs (con't)**

involved with the administration of trusts, particularly when such a trust was created for a the benefit of a beneficiary with special needs. By investigating a beneficiaries needs and availability of resources, both public and those held in trust, a trustee of a trust established for the benefit of an individual with special needs can protect themselves from the consequences imposed by courts.

The Hook Law Center's attorneys are led by Andrew H. Hook, a founding member of the Special Needs Alliance, and are experienced in the administration of special needs trusts. If you are interested in a establishing a special needs trusts, or need some assistance in administration, please contact the Hook Law Center to schedule a consultation.



### **Cats' Vision**

**Hook Law Center:** Kit Kat, what type of vision does a cat have?

**Kit Kat:** Well, it turns out we cats have better vision in some ways than people, but not quite as good as humans in other ways. Let me explain. In short, humans see better during the day, but cats see better when there is not quite full light, such as at dawn or dusk. The reason for this is in the shape of the cat's eye and its composition. For instance, the cat's eye has an elliptical shape , larger corneas, and a tapetum (a layer of tissue that reflects light back to the cornea). These features allow more light to be collected. However, cats do not have the same types of cones in their eyes, so their perception of color is much less vivid than a human's. Humans are really good at seeing reds, greens and blues, while those mostly appear blue and gray to a cat.

Other differences between the two species are their clarity of vision and perception of motion. Humans see objects very clearly at distances up to 200 feet. This is not the case with cats who need to be around 20 feet from an object to see it clearly. Humans are better at perceiving slow motion, but cats are better are seeing objects that move rapidly. So I guess you could say each species has its strengths and weaknesses that are suited to its lifestyle. That's what makes nature so interesting. Vive la difference!

(<http://www.nbcnews.com/science/cats-see-world-whole-different-light-you-knew-8C114>) (10/25/2013)

### **Upcoming Events**

- Hook Law Center will present a seminar to Wall, Einhorn & Chernitzer P.C. on **November 18, 2013**.

- Hook Law Center will present a seminar on Health Care Reform at Senior Advocate's Lunch & Learn at the Envoy of Thorton Hall, 827 Norview Avenue in Norfolk, VA on **November 21, 2013**.
- Hook Law Center will be presenting a webinar on the Affordable Care Act and Elder Law and Special Needs Planning on **December 4, 2013**. This webinar will be hosted by Interactive Legal.
- Shannon Laymon-Pecoraro, Esq. will speak at the Parkinson's and Caregivers Coffee Break on medical/legal issues concerning elders and those with significant health issues. The coffee break will take place at St. Andrew's United Methodist Church, 717 Tucson Rd., Virginia Beach, VA 23462 on February 5, 2014 from 10AM-12:00PM.
- Hook Law Center is a sponsor of the American Heart Association Ball which will take place on March 8, 2014 at the Norfolk Botanical Gardens. For event information, contact Stephanie Phipps at 757-628-2608
- Hook Law Center will be presenting a live webinar on POAs, AMDs and the Ethics of It All in Charlottesville, VA on **April 10, 2014**. This webinar will be hosted by Virginia Continuing Legal Education.
- Shannon Laymon-Pecoraro, an attorney at Hook Law Center, is a member of the advisory board of the Hampton Roads Chapter of the American Parkinson Disease Association. Please visit our website if you have any questions about this event on April 12, 2014.

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