



October 12, 2018

The Honorable Tani Cantil-Sakauye,  
Chief Justice, and Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

Re: *Scott v. McDonald* (August 22, 2018), Fourth District, E062672

**LETTER REQUEST FOR DEPUBLICATION**

Honorable Justices:

On behalf of the Academy of Special Needs Planners (ASNP), the California Advocates for Nursing Home Reform (CANHR), the Consumer Attorneys of California (CAOC), the Professional Fiduciary Association of California (PFAC) and CPT Institute, we are writing to request depublication of the *McDonald* case pursuant to California Rules of Court, Rule 8.1125.

In *McDonald*, the Fourth District Court of Appeal, Division Two, held that a \$92,036.75 surcharge of a trustee of a special needs trust (SNT) was appropriate. This letter does not oppose the conclusion of the trial court surcharging this SNT trustee. There is sufficient evidence that supports this outcome. The objective of this request for depublication is to protect and serve the vital interests of all other SNT beneficiaries. Depublication is necessary because an erroneous part of the Court of Appeal's ruling will cause immediate and irreparable harm to thousands of Californians with disabilities by:

1. Contradicting longstanding federal and state law and policy on the proper use of SNT funds;
2. Improperly limiting the future use of SNTs for persons with disabilities who will then be forced into a poverty existence, contrary to Congress' intent in authorizing SNTs; and
3. Jeopardizing other SNT trustees who have been appropriately administering SNTs by fundamentally changing the legal standards they have been using for decades of administration.

**Academy of Special Needs Planner's Interest as Amicus Curiae**

The list of other signatories is attached at the end of the letter demonstrating the widespread concern about the harmful impact of this opinion, if published.

ASNP is a national membership organization representing over 300 special needs planning professionals. Its members assist persons with disabilities and their families in setting up appropriate plans for their lifetime care, mostly by establishing SNTs and assisting in SNT administration. ASNP has taken a leading role in advancing and protecting the rights of persons with disabilities in California and around the country.

The author of this letter is ASNP's National Director and has practiced law in California for over 25 years. He has a wealth of experience in the area of special needs planning and administration. He was the initial Attorney-Editor, creator, and contributing author of CEB's two-volume treatise titled *Special Needs Trusts: Planning, Drafting and Administration*. He is the author of the treatise titled *Administering the California Special Needs Trust*. He is the author for the 5<sup>th</sup> through 8<sup>th</sup> Editions of Nolo Press' book titled *Special Needs Trusts: Protecting Your Child's Financial Future*. He has represented clients in establishing and administering hundreds of SNTs throughout California and the United States. He is host of the annual California Special Needs Planning Symposium, a three-day event for attorneys and professional fiduciaries on mastering this difficult subject. He has testified as an expert witness on the proper planning needs for Californians with disabilities in Alameda County and in Great Britain. He is a State Bar of California, Certified Specialist in Estate Planning, Trust and Probate law. He is also a fellow of the American College of Trust and Estate Counsel (ACTEC).

**Depublication Is Necessary Because the Court of Appeal's Decision Incorrectly Interpreted the SNT Document and Fundamentally Alters the Ability to Properly Use SNTs for Californians with Disabilities as Intended by the Law**

The *McDonald* court's analysis concerning the proper use of SNT funds is insupportable under California's trust law. The part of the court's opinion that held that the SNT "[t]rustee had a duty to ensure that distributions were directed toward items that were made necessary due to Beneficiary's disabilities" is improper and overly restrictive. Further, the Court of Appeal erred by holding that the SNT document stating that this trust is not a "support trust" means that the SNT trustee cannot pay for a beneficiary's food, clothing, or shelter. The Court of Appeal's interpretation is not supported by the plain reading of the SNT document and a proper application of California trust law. If published, there will be an *immediate* chilling effect on hundreds of existing SNTs throughout California, all to the serious detriment of Californians with disabilities.

In order to understand the far-reaching effect this opinion will have on the lives of Californians with disabilities, it is important to understand Congress' intent in authorizing SNTs. The general intent behind SNT establishment is to make payments that *enhance* the quality of life of persons with a disability. In this context, the term "disabled" is limited to only those persons who have a permanent disability that prevents them from working and earning even a small amount of money per month. See 20 C.F.R. §416.905. In short, these people are profoundly disabled and unable to work at a meaningful job because of their disability. This population consists of those with developmental disabilities like Down syndrome, cerebral palsy, autism, those with serious mental illness

like schizophrenia, or those with serious physical disabilities like quadriplegia. This population relies on the funds inside an SNT being used to make their lives safer and more comfortable that would otherwise not be available to them. This opinion will take away the ability to use SNT funds the way Congress intended when it authorized SNTs.

Persons with disabilities must remain eligible for public benefits because often it is the only way they can meet their needs, for caregivers, therapies, treatments, and medical care. The federal and state governments recognized that public benefits like Supplemental Security Income (SSI) and Medi-Cal provide (at best) a marginal existence for persons with disabilities. To remain eligible for these programs, a person with a disability must follow stringent financial rules. The primary public benefit for persons with disabilities is SSI. The maximum SSI check for an individual in California in 2018 is \$910.72 per month. If a person with a disability receives SSI, he or she automatically receives Medi-Cal that will pay for his or her health care needs. The SSI recipient loses his SSI check (and Medi-Cal) if he or she has more than \$2,000 in countable resources. Because of these strict income and resource limitations, people with disabilities often must spend any money they receive in the same month of receipt or lose benefits. An SSI recipient must live entirely on \$910.72 a month to pay for all of his or her food and shelter costs and save no more than \$2,000 in his or her name. If they are assisted by others, beneficiaries are penalized with a reduction of public benefits.<sup>1</sup> Trying to live in California on \$910.72 per month to pay for food and shelter items is nearly impossible; it also leaves little (if any) to pay for basic necessities or any other items that enhance people's quality of life.

In response to this harsh result, Congress authorized the use of SNTs to provide people with disabilities with basic necessities and other extra goods and services that make life worth living without jeopardizing their eligibility for public benefits. In 1993, the federal government authorized the establishment and use of SNTs at 42 U.S.C. §1396p(d)(4). The SNT allows a person with a disability to have money held in trust for him or her that does not count against their \$2,000 resource limitation for SSI and Medi-Cal. California adopted the federal rules authorizing SNTs. See, 22 Cal Code Regs §§50489–50489.9. The federal agency that runs the Medicaid program, the Center for Medicare and Medicaid Services (CMS) has not issued regulations dealing with SNTs since passage of the 1993 law. There were not then, and are not now, any specific federal regulations concerning SNTs.

The main federal guidelines for SNTs are found in the Social Security Administration (SSA)'s Program Operations Manual System (POMS). The SSA is the federal agency that runs the SSI program. The POMS provide SSA field office personnel with operating instructions on evaluating trusts for eligibility purposes. As the Eighth Circuit Court of Appeals noted “the POMS provisions demonstrate valid reasoning; that is, the detailed

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<sup>1</sup> SSA penalizes SSI recipients if someone provides them financial aid. If someone gives cash to the SSI recipient, the SSI recipient loses his or her SSI benefit dollar-for-dollar (after the first \$20). For example, if someone pays an SSI recipient \$500 a month, the SSI recipient loses \$480 a month from his or her SSI check. Without the use of SNT funds to enhance their quality of life, persons with disabilities have no way of paying for many things that other people take for granted.

process required for establishing qualifying special-needs trusts contained in the POMS is consistent with 'Congress's command that all but a narrow class of an individual's assets count as a resource when determining the financial need of a potential SSI beneficiary.'" *Draper v. Colvin* (8<sup>th</sup> Cir 2015) 779 F.3d 556.

There is no limitation or requirement set forth in any federal or California statute, regulation, case or policy manual that SNT distributions must be limited to only provide items made reasonably necessary by the beneficiary's disability or that an SNT trustee cannot pay for a beneficiary's food, clothing, or shelter. In fact, the SSA's POMS note that SNTs are designed to pay for all types of services and goods (including food and shelter) that enhance a person with a disability's life:

Generally, disbursements from the [SNT] to a third party are not income to the trust beneficiary, unless otherwise stated in SI 01120.200E.1.a. and SI 01120.200E.1.b. in this section. **Disbursements that do not count as income may include those made for educational expenses, therapy, transportation, professional fees, medical services not covered by Medicaid, phone bills, recreation, and entertainment. This list is illustrative and does not limit the types of distributions that a [SNT] may permit.** For bills paid by a third party, see SI 00815.400.

Disbursements made from the [SNT] to a third party that result in the trust beneficiary's receiving non-cash items (other than food or shelter) are not income if those items would become a totally or partially excluded non-liquid resource if retained into the month after the month of receipt. **For example, if a [SNT] purchases a computer for the trust beneficiary, the computer is not income, since we would exclude the computer from resources as a household good in the following month...** SSA POMS SI 01120.200(E)(1)(c).

For example, **such payments [from an SNT] could be for the purchase of food or shelter or household goods and personal items that count as income. The payments could also be for services for medical or personal attendant care that the individual may need, which do not count as income.** (emphasis added). SSA POMS SI 01120.201(F)(2).

Because there is no statute, regulation, case law, or agency policy limiting the SNT's disbursements, the only way SNT distributions would be limited to only paying for items or services related to a person's disability is if the person setting up the SNT (called the Settlor) intended to set those limits in the trust documents. Trusts must be interpreted according to the Settlor's intent as expressed in the instrument. Prob. Code §21102(a). See *Newman v Wells Fargo Bank* (1996) 14 Cal. 4th 126. In construing a trust document, the guiding principle is "Not, What did he intend to say? but, What did he intend by what he did say? ..." [sic] *Kropp v Sterling Sav. & Loan Ass'n* (1970) 9 Cal. App. 3d 1033, 1044, quoting *Title Ins. & Trust Co. v Duffill* (1923) 191 Cal. 629, 642.

The Settlor of this trust is Ms. McDonald and there is no reason for her to severely restrict access to her own funds. Despite this, the Court of Appeal held that the language in this SNT limited access to the use of Ms. McDonald's own funds to only pay for items reasonably related to her disability and to not allow payments for any of her food, clothing, or shelter, even if she were destitute. This begs the question, why would any person voluntarily restrict access to his or her own funds so strictly if no law or regulation required it? It means that Ms. McDonald wanted to limit the use of her own funds, so she could not have any assistance for housing, transportation, clothing, or any other item or service that enhances her quality of life. This outcome lacks common sense. As discussed below, the Court of Appeals never properly determined Settlor's intent.

### **The Court of Appeal Did Not Properly Interpret the SNT Document**

The Court of Appeal in this matter misread the section of the SNT document dealing with appropriate SNT distributions by limiting them to only pay for items that were made reasonably necessary due to beneficiary's disabilities. When initially reviewing the opinion, the undersigned believed that this SNT document was poorly drafted or had a stated intent different than any other SNT he has worked with over the past 20 plus years. However, a review of the language relied upon by the Court of Appeal shows that this is not the case. The definition of "Special Needs" in this SNT document is the same or similar to many (if not all) SNTs in existence. Notably, the SNT document in this matter defined the intent and purpose as follows:

The intent and purpose of this trust is to provide a discretionary, spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary. Special Needs means the requisites for maintaining the Beneficiary's good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America. The funds of the trust may be used as an emergency or backup fund secondary to public resources. (Opinion, pp. 3, 22).

This is a standard SNT intent provision. This SNT (like nearly all other SNTs) is intended to pay for all goods and services that improve the life of the beneficiary with a disability that are not already being supplied or paid for by government benefits. The range of appropriate SNT disbursements is enormous as the government only provides a maximum of \$910.72 a month to pay for food and shelter. In issuing its opinion to limit SNT distributions, the Court of Appeal entirely ignores these essential statements and instead focuses on two phrases in the next section that state:

Special Needs include **without limitation** special equipment, programs of training, education and habilitation, travel needs, and recreation, which are related to and **made reasonably necessary by this Beneficiary's disabilities. This is not a trust for the support of the Beneficiary.** All payments made under this Trust must be reasonably necessary in

providing for this Beneficiary's special needs, as defined herein.  
(emphasis added) (Opinion, pp. 3, 22)

As the Court of Appeal stated in its opinion, its analysis of the SNT's intent focused solely on the bolded statement above (and ignores the prior section that actually expresses this Settlor's intent):

As explained by the trust instrument, the trust estate is to be used for necessary expenses related to Beneficiary's special needs, *e.g.*, the trust instrument provides, "which are related to and made reasonably necessary by this Beneficiary's disabilities." The trust estate was not to be used for Beneficiary's general support, *e.g.*, the trust instrument provides, "This is not a trust for the support of the Beneficiary." Accordingly, Trustee had a duty to ensure that distributions were directed toward items that were made necessary due to Beneficiary's disabilities. (Opinion pp. 22-23).

The Court of Appeal made several errors in this analysis: first, it ignored the plain language of the SNT document it relies upon to state the Settlor's intent; second, it ignores the other provisions of the SNT document that define the Settlor's intent; and, third, it does not understand the legal technical distinction of stating that an SNT is not a "support trust." The Court of Appeal ignored the basic rules of trust interpretation as set forth in Probate Code §§21101–21140 that state the following:

- The words of an instrument are to receive an interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative. Prob. Code §21120.
- All parts of an instrument are to be construed in relation to each other and so as, if possible, to form a consistent whole. Prob. Code §21121.
- The words of an instrument are to be given their ordinary and grammatical meaning unless the intention to use them in another sense is clear and their intended meaning can be ascertained. Prob. Code §21122.
- Technical words in an instrument are to be considered as having been used in their technical sense unless (a) the context clearly indicates a contrary intention or (b) it satisfactorily appears that the instrument was drawn solely by the transferor (testator) and that the transferor (testator) was unacquainted with the technical sense. Prob. Code §21122.

The Court of Appeal did not comply with the proper rules on trust interpretation. It interpreted the SNT document to only allow disbursements to those "made reasonably necessary by this Beneficiary's disability." This is an incorrect reading of the trust document. That phrase the Court of Appeal's relied upon "made reasonably necessary by this Beneficiary's disability" was preceded by the statement "**Special Needs include without limitation ...**". A plain reading of this sentence is that it was not meant to limit available disbursements from the SNT. Yet, this is exactly what this Court of Appeals incorrectly held.

The Court of Appeal compounded its error in interpreting this trust document by ignoring the other express statements of intent in the SNT document. The SNT states special needs include goods and services for the “[b]eneficiary’s good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America.” There is no way to harmonize this broad statement of intent to allow for disbursements for anything not covered by government benefits with the limited interpretation the Court of Appeal created. A broad interpretation makes sense because then an SNT trustee can use the beneficiary’s funds to enhance his or her own life. The Court of Appeal’s interpretation does not make sense because it limits access to a person’s own funds when there is no reason to do so.

The Court of Appeal made a separate error when it held that this SNT cannot pay for support items like food, clothing, or shelter. It misunderstands the legal technical use of the phrase “[t]his is not a trust for the support of the Beneficiary” in the SNT document. See Prob. Code § 21122 (legal technical words in an instrument are to be considered as having been used in their legal technical sense). This provision does not mean that a trustee cannot use trust assets to pay for support items (as concluded by this Court of Appeal). Instead, by stating “this is not a support trust,” the phrase means in its legal technical sense that this Trustee has no legal obligation to only pay for beneficiary’s support items. This is a basic misunderstanding of California trust law.

The Court of Appeal fails to appreciate the legal technical distinction between a discretionary trust and a support trust. The *McDonald* SNT document states “**The intent and purpose of this trust is to provide a discretionary, spendthrift trust, ....**” As stated in *Ventura County v. Brown* (2004) 117 Cal. App. 4th 144:

As background for our statutory interpretation, we briefly address the distinctions between spendthrift, support and discretionary trusts. A *spendthrift trust* is created when the trust instrument provides that the beneficiary may not assign his interest and the trust is not subject to the claims of creditors. (11 Witkin, Summary of Cal. Law (9th ed. 1990) Trusts, § 165, p. 1017; Rest.2d Trusts, § 152, p. 311.)

Under a *support trust*, the trustee is directed to pay no more than is necessary for the education or support of the beneficiary. (Witkin, *supra*, § 166, p. 1019; Rest.2d Trusts, § 154, com. a, p. 320.)

A *discretionary trust* directs the trustee to pay whatever amount the trustee sees fit. (Witkin, *supra*, § 166, p. 1019; Rest.2d Trusts, § 155, p. 323.) "A true discretionary trust, as it developed in England and as it is recognized in California, involves a discretion to pay over income (or principal) or to withhold it. It is not an abuse of discretion (if there is no improper motivation) for the trustee to pay nothing. [Fns. omitted.]"

As stated in the McDonald SNT document, it is a discretionary, spendthrift trust. Adding the phrase it is not a “support trust” is not intended to mean that a trustee can never make payments for support items like food, clothing, education, or shelter; it means that the trustee is not legally obligated and limited to only pay for support items. There is a legal reason that a SNT should never be a support trust. If the SNT trustee is legally obligated to pay for the beneficiary’s “support,” it disqualifies the beneficiary from public benefits because the assets in the SNT will be counted as an available resource by the SSA. See 42 U.S.C. §1382b(e)(3)(A), 20 C.F.R. §416.1201(a)(1); POMS SI 01120.200(D)(2)). Thus, by legal requirement every SNT is a discretionary, spendthrift trust, and is not a “support trust.”

The trouble with the Court of Appeal’s misunderstanding of these legal distinctions is apparent when it discusses payments of rent in its opinion:

Rent is a general support item, and such expenditures are expressly disallowed by the trust instrument. Accordingly, the finding that Trustee breached her fiduciary duty by making a disbursement for rent is supported by substantial evidence. (See § 16000 [duty to administer trust according to the trust instrument].) (Opinion, p. 23).

This statement is inaccurate. This is a discretionary, spendthrift trust, meaning the trustee has discretion to make a payment for rent or to not make a payment for rent. In fact, hundreds (if not thousands) of SNT trustees throughout California are currently exercising their discretion under a discretionary, spendthrift standard by paying beneficiaries rent or buying houses, even though their SNT documents state they are not “support trusts.” One of the best benefits a SNT trustee can provide a beneficiary with a disability is a safe and clean place to live. If this opinion is published, it takes away the ability of SNT trustees to provide housing for Californians with disabilities. This means persons with disabilities must remain living in squalor and unsafe circumstances, even when they have sufficient funds to improve their lives. Further, for the many SNT trustees who have been making disbursements for rent and housing, this opinion puts their whole livelihood at stake. If paying a beneficiary’s rent is a breach of fiduciary duty (as this opinion states), then hundreds (if not thousands) of well-intentioned SNT trustees will be liable for breach of fiduciary duty. These SNT trustees will then be at risk for surcharges, breach of fiduciary duty claims, multiple court hearings, and loss of their professional license -- all for administering the SNT as it was originally intended.

The other scenarios set forth in this opinion will also cause serious and profound harm to the ability of persons with disabilities to live any type of meaningful life:

Trustee’s reason for using the trust estate for vehicle expenses was not reasonable given that the vehicle expenses were not made reasonably necessary by Beneficiary’s disability... As set forth *ante*, one of the limitations on Trustee’s power to make disbursements is that the expense must be “made reasonably necessary by this Beneficiary’s disabilities.”



The vehicle was maintained at the trust's expense because Trustee did not think it was practical for Mother to bear the cost due to Mother being a full-time student. In other words, the car was not made necessary by Beneficiary's disability; rather, Trustee determined the car expenses were made necessary due to Mother being a student. Because Trustee did not exercise her authority within the limits of the trust, Trustee acted unreasonable and breached her fiduciary duty. (See § 16000 [duty to administer trust according to the trust instrument].) (Opinion, pp. 25-26).

Because this Court of Appeal applied an incorrect legal standard, this SNT trustee's actions were not judged correctly. A SNT trustee has discretion to make disbursements for "the requisites for maintaining the Beneficiary's good health, safety, and welfare." Paying automobile expenses for a safe and reliable means of transportation would certainly aid in beneficiary's health, safety and welfare. Public benefit programs will not pay for these expenses. If there is no other reasonable means of paying for beneficiary's transportation (*e.g.* because mother is a student), then a SNT trustee should be allowed to make such disbursements to make sure the beneficiary with a disability has a safe and reliable means of transportation. If the mother had a legal duty to pay for beneficiary's transportation and had sufficient funds to do so, then perhaps the SNT trustee would have been wrong to make it, but categorically disallowing the payment because it is not related to the beneficiary's disability is wrong, and dangerous.

The Court of Appeal's newly minted strict SNT distribution interpretation is even more harsh when discussing disbursements for clothing and phone bills:

One of the limitations on Trustee's power to make disbursements is that the expense must be "made reasonably necessary by this Beneficiary's disabilities." The trust estate is not to be used for Beneficiary's general support. Clothing is a general expense. For example, Trustee testified, "I wasn't making any food, clothing, and shelter payments." Trustee also testified that clothing was a basic need and therefore Trustee typically only made disbursements for holiday clothing. Trustee's testimony reflects an understanding that the trust estate was to be used for Beneficiary's special needs—not her general support—and that clothing was a general support item because it is basic human need. As a result, Trustee breached her duty to follow the terms of the trust by making disbursements for Beneficiary's clothing. (See § 16000 [duty to administer trust according to the trust instrument].) ...

Similarly, the long-distance telephone bills were a general household expense. Mother's family resides in Jamaica. It can reasonably be inferred that the long-distance telephone bills were for keeping in contact with family, rather than any particular need related to Beneficiary's disability. As a result, Trustee breached her duty to follow the terms of the trust by making disbursements for long distance telephone bills. (See § 16000 [duty to administer trust according to the trust instrument].) (Opinion, p. 29).

This is another example of the Court of Appeal using its incorrect legal standard in interpreting what is authorized in a SNT. Paying for a beneficiary's clothing is in aid of a beneficiary's health, safety and welfare as is set forth in the SNT document's general statement of intent. In this instance, the SNT trustee can pay for clothing; she just is not legally obligated to do so like she would be if this were a support trust. For public benefit purposes, a SNT trustee paying for clothing has no impact on public benefits. It is a common SNT distribution. If this opinion is published, it will cause harm not only to persons with disabilities, but also to SNT trustees who have been following the rules.

The Court of Appeal's incorrect legal standard being applied in interpreting other SNTs and other SNT trustees will cause people with disabilities immediate and incredible grief and hardship. As noted above, public benefits provide a maximum of \$910.72 to pay for a beneficiary's food and shelter. It is imperative that SNT trustees have the right to pay for those additional items that enhance the quality of life of persons with disabilities or they will again be marginalized to living a destitute existence. Congress' intent in authorizing SNTs was to make payments for exactly these items. For decades, SNT trustees have been paying for things to enhance SNT beneficiaries' quality of life. Following is a partial illustrative list of the types of things that SNT trustee have been paying for that will no longer be allowed if this opinion is published: automobile expenses, appliances (*e.g.*, stove or refrigerator), books, bus passes, cable tv, cell phone, clothing, computer equipment, conference fees, cosmetics, dental care, educational expenses, laundry services, vision care, funeral expenses, furniture, gasoline, haircuts/salon services, hobby supplies, holiday decorations, home alarm, home improvements, house cleaning, insurance, internet service, linens/towels, magazines, movie tickets, musical instruments, over-the-counter medications, personal service items (*e.g.* soap, deodorant, shampoo), pets and pet supplies, repair services, landscaping, snow removal, stationery, stamps, storage units, taxicab/uber fares, therapies not concerned with disability, event tickets, tuition, utility bills, vacations and much more.

In the more than twenty years since the original federal statutory authority was issued allowing for the creation of this type of SNT, no published court opinion or federal policy would support this court's interpretation of an SNT. Because *McDonald* set an incorrect legal standard on evaluating SNT distributions and because it will have a significant, immediate, and adverse impact on the rights of persons with disabilities to use their SNTs as intended by Congress, it should be depublished.

Sincerely,



Kevin Urbatsch

## **Service List**

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The following groups support this request for depublication set forth in this letter.

**California Advocates for Nursing Home Reform (CANHR)** is a statewide nonprofit organization with over 3,000 members dedicated to improving the care and quality of life for California's aged and disabled populations. As a support center funded through the State Bar of California, CANHR provides training and technical assistance to staff of legal services organizations throughout California on special needs trusts and the appropriate use of funds. In addition, CANHR operates the only statewide, State Bar-certified Lawyer Referral Service specifically geared toward serving California's long term care population, persons with disabilities and their family members. CANHR's Special Needs Trust panel refers persons with disabilities and their family members to qualified attorneys and conducts annual MCLE qualified attorney trainings on special needs trusts. At the state level, CANHR has advocated for many of the protections at issue in the *McDonald* case, including the ability of persons with disabilities to use special needs trust funds to maintain their health, safety and welfare, including food, shelter and clothing. Limiting the disbursements of special needs trust funds would severely impact the clients that CANHR serves and, in many cases, would render them impoverished or even homeless.



Patricia McGinnis  
Executive Director

**Professional Fiduciary Association of California [PFAC]** is a statewide 501(c)(6) professional organization with over 700 members with a mission to advance excellence in fiduciary standards and practices. PFAC members are dedicated to serving and protecting the best interests of those who have placed their trust in them by ensuring the highest standards of ethics and practice, maintaining high qualifications for membership and requiring member continuing education. PFAC was a co-sponsor of the legislation that established the Professional Fiduciaries Bureau and the Professional Fiduciaries Act in state law over a decade ago. Publication of the *McDonald* decision would restrict distributions from special needs trusts to only those related to the beneficiary's disability-related expenses. However, distributions to persons with disabilities should also help them maintain their health, safety and welfare, including food, shelter and clothing, and enhance their quality of life. Depublication of the case will protect and serve the vital interests of the beneficiaries of special needs trusts. PFAC's request for depublication is not meant to oppose the conclusion of the trial court imposing a surcharge against the SNT trustee. There is sufficient evidence described in the opinion that supports this outcome.

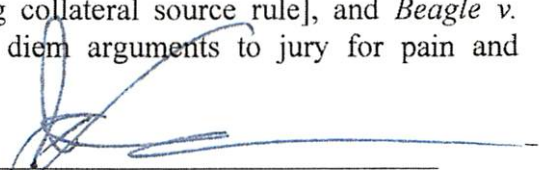


Donna Verna, CLPF  
PFAC President

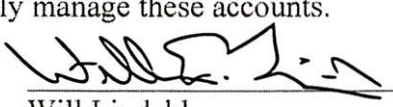


**Consumer Attorneys of California (CAOC)** Founded in 1962, COAC is a voluntary non-profit membership organization of over 3,000 consumer attorneys practicing in California. Its members predominantly represent individuals subjected to personal injuries, insurance bad faith, consumer fraud, and unlawful employment practices. CAOC has taken a leading role for over 50 years in advancing and protecting the rights of injured victims, consumers and employees in both the courts and in the Legislature. CAOC therefore has a substantive interest in the cases that interpret and apply statutes and the common law to tort actions and settlements of tort actions involving workers and consumers.

CAOC has a long history of participating as amicus curiae in significant cases involving actions and settlements of tort claims, including, *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764 [rejecting categorical rule of no duty owed to decedent of plaintiff who recovered wrongful death damages], *Cortez v. Abich* (2011) 51 Cal.4th 285 [reversing lower courts' grant of summary judgment for defense on scope of Cal-OSHA law], and *Vanhooser v. Superior Court* (2012) 206 Cal.App.4th 921 [allowing loss of consortium claim]. The amicus committee of CAOC (then CTLA) also has participated over the years as amicus curiae in some of the landmark appellate decisions involving tort liability, collateral source and evidentiary issues involving pain and suffering, including *Hrnjak v. Graymar, Inc.* (1971) 4 Cal.3d 725 [upholding the collateral source rule], *De Cruz v. Reid* (1968) 69 Cal.2d 217 [upholding collateral source rule], and *Beagle v. Vasold* (1966) 65 Cal.2d 166 [endorsing per diem arguments to jury for pain and suffering].

  
\_\_\_\_\_  
Lee Harris  
President  
Consumer Attorneys of California

**CPT Institute** is a 501(c)(3) entity that manages and administers the California Charities Pooled Special Needs Trust. For almost 25-years, CPT Institute has established over ten thousand trusts nationwide. They currently manage over 500 special needs trust accounts for Californians with over \$58,000,000 in assets under management in California. Administration has been performed to enhance the quality of life based on the rules concerning special needs trust distributions. If this opinion is published, it will drastically affect the ability of CPT Institute to properly manage these accounts.

  
\_\_\_\_\_  
Will Lindahl  
Executive Director

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA

I am employed in the County of Contra Costa, State of California. I am over the age of 18 and not a party to the within action; my business address is 3478 Buskirk Avenue, Suite 300, Pleasant Hill, CA 94523.

On **October 12, 2018**, I served the within document described as:

**LETTER REQUEST FOR DEPUBLICATION**

on the interested parties (attached Service List) in this action by placing true copies thereof enclosed in sealed envelopes addressed as set forth in the attached service list.

**X By Mail:** By depositing with the U.S. Postal Service on this day with postage thereon fully prepaid at Pleasant Hill, California

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

**Executed on October 12, 2018 at Pleasant Hill, California.**

\_\_\_\_\_  
Denise Chacon