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PROPER PLANNING MAY CREATE PEACE OF MIND



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Is Failure To Offer A Structure Malpractice?

Trial lawyers may face increasing lawsuits for failure to advise their clients about structured settlements and special needs trusts. Elder law attorneys can help you avoid potential liability by advising your clients of asset preservation strategies and making you aware of laws and issues affecting your clients.

THE TALE:

Christina Grillo was born with cerebral palsy, cortical blindness and other medical problems due to negligent medical care. The two cases settled for \$2.5 million, the child received \$1.5 million (*Grillo v. Petiete*, 96-145090-92, *Grillo v. Henry Cause*, 96-167943-96 96th Dist. Ct., Tarrant Cty., TX). Plaintiff's counsel and the Guardian ad Litem were later sued for malpractice. The plaintiff claimed that her attorney failed to inform her that the defense had offered a structured settlement, that counsel had failed to make a structured settlement proposal of their own, and that she had not been advised how to plan to preserve SSI and Medicaid benefits. The suit against the lawyer settled for \$1.6 million and the suit against the guardian ad litem settled for \$2.5 mil-

lion.

During the malpractice case an allegation was made that because there was no structured settlement and no special needs trust in place, the proceeds were countable to the child and she lost entitlement to Medicaid benefits. Consequently, she would need to rely solely on the settlement funds to pay for her expensive, on-going medical needs. The proceeds would likely be insufficient to meet her need for 24 hour care. Interest earned on the lump sum she received was taxable.

THE TIP:

1. Communicate the settlement offer to the client in writing.
2. Confirm the client's response to the offer in writing.
3. Arrange for the client to meet with a structured settlement specialist who can explain why and how a structure is beneficial for tax, financial management and long-term care planning reasons.
4. Advise the client in writing to consult with a qualified elder law attorney who specializes in public assistance eligibility and preservation of settlement proceeds.

“A personal injury attorney may be liable to a client for failing to offer a structured settlement and failing to advise of the need for a special needs trust to protect Medicaid and SSI benefits.”

ANNOUNCEMENTS:

Stephanie has been elected Chair of The Florida Bar Elder Law Section as of July 1, 2003.

Our firm is a proud Business Patron of the Eagle Program of the Academy of Florida Trial Lawyers.

Meet The Staff

Rose Skinner - CLA

- Special Needs Trusts
- Medicaid & SSI
- Nursing Home Resident Rights
- Estate Planning

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