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## U.S. District Court Upholds Penalties for Transfers to Pooled Trusts for Individuals Over 64

*Amanda L. Smith, ESQ*

On February 27, 2018, a United States District Court dismissed a challenge by a Maine pooled special needs trust (Maine Pooled Disability Trust, hereafter "MPDT") to the state Medicaid departments' practice of penalizing transfers to a pooled trust by individuals over 64. The complaint alleged a violation of 42 U.S.C. § 1396p(d) "Treatment of Trust Amounts," which sets forth the eligibility rules for determining when trust corpus or payments from a trust are countable to the individual. MPDT reasoned that § 1396p(d)(4)(C) specifically exempted pooled special needs trusts, such as MPDT, from the uncompensated transfer penalties found in 42 U.S.C. § 1396p(c). The Court did not find this argument persuasive. Rather, it held that § 1396p(d)(4)(C) exempts the corpus and disbursements from a pooled special needs trust for eligibility purposes regardless of the beneficiary's age, but the uncompensated transfer exemptions found in § 1396p(c)(2)(B)(iv) are only applicable when the beneficiary is under 65.

This is in line with the Social Security Administration manual, which exempts transfers to trusts when the individual is under 65, and a CMS bulletin from 2008 stating a pooled special needs trust established by an individual age 65 and older is not exempt from the transfer of assets provisions.

Click here to read the full opinion:  
[https://www.gpo.gov/fdsys/pkg/USCOURTS-med-2\\_17-cv-00134/pdf/USCOURTS-med-2\\_17-cv-00134-1.pdf](https://www.gpo.gov/fdsys/pkg/USCOURTS-med-2_17-cv-00134/pdf/USCOURTS-med-2_17-cv-00134-1.pdf)

While many state Medicaid departments are not currently enforcing the uncompensated transfer penalties for individuals over 64-years old who fund pooled special needs trusts, it is important to recognize that this is inconsistent with much of the federal rationale. When advising clients on contributing to pooled special needs trusts, one should be aware of the potential implications for those over 64, for both Medicaid and SSI purposes.

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# Lawyers With Purpose would like to recognize **Douglas Ley** of Wisconsin as **MARCH 2018** *Member of the Month*



## What is the greatest success you've had since joining LWP?

Hiring a new attorney and client services coordinator with complimentary Kolbe scores. Goals, goals, goals. Now that we have well-planned goals and a vision. We have more than doubled our

revenue and I no longer stress (too much) about the expense side of the balance sheet.

## What is your favorite LWP tool?

The Money Plan Focuser and Brainstorming Sprints stretch our team into common goals and create accountability and buy-in. I love that it is intentional and our office is becoming more organized and goal driven. Actionstep is a tremendous resource that ties all this together.

*Congratulations to you on your continued success!*

## How has being part of LWP impacted your team and your practice?

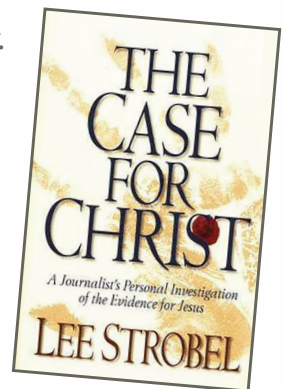
The implementation process and the coaching has changed everything. We are still improving and each step has had dramatic effects on the firm. Although painful at times, as in revealing our weaknesses, the process has strengthened our firm and the team's honesty is a healthy outcome.

## Share something about yourself that most people don't know about you.

I am a Tournament Bass Fisherman! I love the comradery and competition and have been doing this for 20 years.

## What is your favorite book and how did it impact your life?

Lee Strobel's book *The Case for Christ*. I read this book in 2005 during a particularly stressful time of my life. My Christian faith was brought front and center, and forgotten childhood dreams and ambitions were revealed to me, one of which was studying law. I eventually acted on this and went to Law School in 2010, and am now honored to be associated with so many at Lawyers With Purpose.



## Actionstep Questions



- ▶ Are you having issues running your LWP reports?
- ▶ Have you ever had a question about Actionstep that was never answered?
- ▶ Do you wonder if you're using Actionstep to its highest potential?
- ▶ Do you just want to learn more?

**Reach out to Ryan Wegner, your in-house LWP Actionstep Consultant and schedule a one-on-one call now. We will get you on track and fully integrated with the LWP system in Actionstep and more.**

**[rwegner@lawyerswithpurpose.com](mailto:rwegner@lawyerswithpurpose.com) or 315-801-5418**



Did you know that your Client Goal Focuser can help protect you from malpractice, and maybe even reduce your malpractice insurance premiums by demonstrating you have a process to reduce future risk?

In Part 1 of this article series we explored why the Client Goal Focuser is one of the most important tools used in client enrollment and the estate planning process.

In Part 2 of the series we demonstrated the value it provides to your RMS process and improving the communication with your professional relationships.

In Part 3 of this series we will uncover how the Client Goal Focuser will help protect you.

If you have properly used the Client Goal Focuser through the process as outlined in the first series, then you should clearly show that you identified your client's goals and wishes, how the plan they chose addressed those needs and how you resolved them.

The Client Goal Focuser is your evidence if a child wants to come after you saying this is not what his or her parents wanted or claim that you didn't do what you said you would do. You can clearly show that you walked the client through a process that helped you discover what was important to them throughout the counseling and design of the plan.

In addition, you are able to demonstrate that in the signing meeting the client clearly understood what you did to resolve and address their goals and concerns and where in the planning documents you solved it. Using the Client Goal Focuser makes it clear that you took every step to fulfill your client's wishes and they understood everything they were doing and not doing.

Let's look at the flip side. If you don't use the Client Goal Focuser, then do you have clear evidence that the client truly understood what you were helping them accomplish or what they were not accomplishing with the plan they chose? Have you opened the door to possible litigation? Are you making it a more difficult and an uphill battle with the child or beneficiary that is not pleased with the result of your planning?

You have to look at the younger generation and what they feel they are entitled to. If they get a feeling you didn't protect everything you could, or they don't feel they got their share, they are likely to blame you! Be sure you are watching out for yourself and the potential for future issues.

The choice is yours whether you use the Client Goal Focuser, but with the many benefits this tool provides, you are leaving yourself open to higher risk, and leaving a lot of opportunity on the table.