

CHILD SUPPORT FOR CHILDREN WITH DISABILITIES

KEITH D. MAPLES

Noelke English Maples St. Leger, L.L.P.
901 S. Mopac Expressway
Barton Oaks Plaza II, Suite 200
Austin, Texas 78746
(512)480-9777
kmaples@nems-law.com

PI-YI MAYO

Attorney at Law
5223 Garth Road
Baytown, Texas 77521
(281) 421-5774
www.pi-yimayo.com

State Bar of Texas
36TH ANNUAL ADVANCED FAMILY LAW COURSE
August 9-12, 2010
San Antonio

CHAPTER 44

KEITH D. MAPLES
NOELKE ENGLISH MAPLES ST. LEGER, LLP
901 S. Mopac Expressway
Barton Oaks Plaza II, Suite 200
(512) 480-9777
(512) 480-0074

Expertise: Career devoted to divorce and custody matters

Certification:

Board Certified Family Law – Texas Board of Legal Specialization

Special Skills:

Collaborative Family Law Practitioner
Attorney-Mediator

Honors & Affiliations:

State Bar of Texas – Family Law Section - Checklist Committee, 1998-1999
Travis County Bar Association – Family Law Section – Director 1998-2002;
Treasurer 1990-2000; Vice-Chairman 2000-01; and Chairman 2001-02
Texas Academy of Family Law Specialists
Travis County Family Law Advocates – Treasurer – 2003-2007
Mediation and Collaborative Law training:
“Learn from the Masters” – Basic Mediation Training Seminar 2002
“Chip Rose Basic Collaborative Law Training Seminar – 2004
Collaborative Law Institute of Texas –
Spring Retreat, 2005 and 2006
“Advanced Family Law Training” – Pepperdine Straus Institute for
Dispute Resolution – 2007

Publications:

Co-author, “Expect the Unexpected” Winning Techniques in Family Law Litigation. (1998)

Co-author, “Valuation: How much is that Double-wide Worth?” Advanced Family Law Course (1998)

Author, “Confidentiality Issues in CPS Cases” - Advanced Family Law Course (2005)

Author, "Lead from Behind" – The Collaborative Law
Institute of Texas Spring Retreat (2007)

Author, "How to Balance Litigation, Collaborative Law
and Mediation for Those Who Do It All"
Collaborative Law Spring Conference (2008)

Law Degree: South Texas College of Law, Houston, Texas - Juris Doctor, May 1991

Undergraduate: University of Houston – Clear Lake, Houston, Texas
Bachelor of Science, May 1988

Martindale-Hubbell Rating:

AV: Highest Legal Ability and General-Ethical Standards

PI-YI MAYO
Attorney At Law
5223 Garth Road
Baytown, Texas 77521
Phone: (281) 421-5774
Fax: (281) 421-1103

EDUCATION:

Lee College, Honor Graduate, 1978

Phi Beta Kappa Honor Society

Outstanding former student of Lee College, 1987

Bachelor's Degree from University of Houston,

Magna Cum Laude with Finance Major, Minor in Accounting, 1980

Honors: Beta Gamma Sigma Honor Society

Phi Kappa Phi Honor Society

Omicron Delta Kappa Honor Society

Mortar Board Honor Society

Outstanding undergraduate College of Business Administration, 1980

Law Degree from Bates College of Law at University of Houston, 1983

CERTIFICATIONS:

C.E.L.A. Certified as an Elder Law Attorney by the National Elder Law Foundation (which is the only organization authorized by the American Bar Association to provide certification in elder law), November 30, 2001

V.A.

Accreditation Accredited attorney for the Department of Veterans Affairs, September 24, 2008

PROFESSIONAL ACTIVITIES:

University of Houston, Bates College of Law, formerly an adjunct professor teaching Elder Law.

Lee College of Baytown, former Associate Professor for 8 years teaching Real Estate Law, Finance, and Mathematics

Member of: American Bar Association

American Bar Association, Elderlaw Committee-Past Vice Chairman

State Bar of Texas

Houston Bar Association

East Harris County Bar Association

Houston Bar Association Elder Law Committee - Past Chairman

Member of Disabilities and Elder Law Attorneys - Past President

Member of National Academy of Elder Law Attorneys

Texas Chapter of National Academy of Elder Law Attorneys -Past President

The Supreme Court of Texas Unauthorized Practice of Law Committee

Instructor for National Elder Law Foundation Certification Course - 2002 and 2003

AUTHOR OF SEMINAR MATERIALS:

Using Medicare for Long- Term Care, PESI, July 25, 1991

Key Considerations in Elder Law, South Texas College of Law Wills, Probate Institute;

Primer on Elder Law, National Academy of Elder Law Attorneys, Introduction to Elder Law in Texas, San Antonio, November 14, 1991;

Introduction to Elder Law-A Practice Comes of Age, American Bar Association, February 1, 1992;

Medicare: What Every Lawyer Should Know, Houston Bar Association, South Texas College of Law, April 3, 1992;

Family Relationships by Judicial Decree and Legislative Action, Co-Author, San Francisco, 4th Annual Symposium on Elder Law, 1992

Primer on Elder Law, National Association of Legal Assistants, Inc., March 11-13, 1993, El Paso, Texas

Medicare and Medigap Instead of Medicaid, Houston Bar Association, April 23, 1993

Seventh Annual Wills and Probate Institute, South Texas College of Law, September 23 and 24, 1993, Houston, Texas

Medicare and Medicaid Issues for Attorneys, National Business Institute Inc., November 5, 1993, Houston, Texas

Medicare/Social Security Entitlements, State Bar of Texas, March 25, 1994, Dallas, Texas

Miller Trusts, State Bar of Texas, November 3-4, 1994, Austin, Texas

Medicare/Health Maintenance Organizations (HMO), PESI, March 30, 1995, Dallas, Texas and March 31, 1995, Houston, Texas; State Bar of Texas - Guardianship Institute, January 12, 1996, Houston, Texas and January 19, 1996, Dallas, Texas;

New Horizons in Elder Law and Medicaid Issues, PESI, January 18, 1996, Dallas, Texas and January 19, 1996, Houston, Texas; Wills & Probate Institute, Southwest Legal Foundation, May 2-3, 1996, Dallas Texas.

Elderlaw Planning for Longterm Care for your Elderly Client - Medicare, State Bar of Texas, September 28-29, 1995, Houston, Texas

Texas Medicaid Law & Practice, 19th Annual General Practice Institute, Baylor University, April 12, 1996, Waco, Texas; State Bar of Texas – 14th Annual Advance Tax Law Course, September 18-20, 1996 - Houston, Texas.

Administration of Supplemental Needs Trusts, State Bar of Texas, Elder Law Institute 1996, Oct. 3, 1996 - Houston & Oct. 18, 1996, Dallas; Tarrant County Probate Bar Association, November 7, 1996, Fort Worth.

Elder Law and Medicaid Issues in Texas, PESI, May 1, 1997, Dallas and May 2, 1997, Houston.

Evaluating Long Term Care Insurance, Houston Bar Association 1997 Elder Law Institute, Houston.

Medicare Basics, University of Texas Law School, June 19-20, 1997, Houston and Austin, Texas

Financing Long Term Care in Texas, NBI, November 11, 1997, Houston, Texas, Pi-Yi Mayo, Attorney (Presenter) and Clyde Farrell, Attorney (Author)

Medicare Health Maintenance Organizations, South Texas Law Review, Houston, Dec. 1997

Advanced Medicaid Planning, State Bar of Texas, February 12, 1998, Dallas, Texas, and February 26, 1998, Houston, Texas.

Avoiding Guardianship, State Bar of Texas, Feb. 13, 1998, Dallas, and Feb 27, 1998, Houston

Fibromyalgia and Disability: An Attorney's View, The Fibromyalgia Assoc. of Houston, Inc., 1998.

The Landscape of Elder Law, University of Texas School of Law, June 4-5, 1998, Austin & Dallas.

Medicaid and Longterm Care, Guardianships & Ad Litem in the Probate Courts Certification Course and Elder Law, May 7, 1999, South Texas School of Law, Houston, Texas

Handling Medicare Administrative Hearings, National Academy of Elder Law Attorneys, Inc., San Diego, CA, May 19-23, 1999.

The Big Four: SSI, SSD, Medicare and Medicaid, Intermediate Estate Planning, Guardianship and Elder Law Conference, Galveston, TX, Aug. 26, 27, 1999, University of Texas School of Law

Initial Estate Considerations: Guardianships, Medical Lien Recovery Issues, Professional Education Systems, Inc., Sept. 16, 17, 1999, Las Vegas, NV, Intermediate Estate Planning, Guardianship and Elder Law Conference

Initial Estate Considerations: Guardianships, Medical Lien Recovery Issues, Professional Education Systems, Inc., Jan. 12, 2000, Houston, TX; Jan. 13, 2000, Dallas, TX; Jan. 14, 2000, San Antonio, Tx.

Intermediate Estate Planning, Guardianship and Elder Law Conference, University of Texas School of Law, Galveston, Tx, August 17,18, 2000.

Nursing Home Discharges, State Bar of Texas Elder Law Course and Guardianship Program, Houston, TX, December 7, 8, 2000

Estate Considerations: Medical Lien Recovery Issues; Texas Nursing Home Negligence Conference, Professional Education Systems, Inc., Jan. 24, 2001, Houston, TX, Jan. 25, 2001, Dallas, TX , Jan. 26, 2001, Austin, TX

Family Law on the Front Lines: Family Law and Government Benefits; University of Texas

School of Law; April 26, 27, 2001; Galveston, Texas

Public Benefits Seminar - The Florida Bar CLE Committee and Elder Law Section, April 13, Miami, Florida

Elder Law Overview - State Bar College 'Summer School' Sun, Surf & CLE, July 26-28, 2001 Galveston, Texas

New Ways To Get Paid - Intermediate Estate Planning, Guardianship and Elder Law Conference; August 16 - 17 2001, Galveston, Texas

Medicare- Building Your Practice: Case and Client Development: Tracks To The Future,2001 Advanced Elder Law Institute November 1-4, 2001, St. Louis, Missouri

Estate Considerations: Medical Lien Recovery Issues - Nursing Home Negligence- Professional Education Systems, Inc., Jan. 16, 2002, Houston, TX; Jan. 17, 2002, Austin, TX; Jan. 18, 2002, Dallas, TX.

Families of Children with Disabilities - Merrill Lynch Seminar, Feb. 7, 2002, Houston, TX.

Resident's Rights - State Bar of Texas Elder Law Course - March 22, 2002 - Austin, TX

Medicare Basics - National Academy of Elder Law Attorney's, Inc. - April 17th & 18th, 2002, Baltimore, Maryland

Elder Law 2002 - General Practice Institute - Baylor Law School, May 10, 2002 - Waco, TX

Long Term Care: Qualifying for Public Assistance -Midland Business and Estate Council, Midland, Texas, December 10, 2002

Wills & Probate Institute - Supplemental Needs Trusts - Houston Bar Association, South Texas College of Law, Houston, Texas, January 23, 2003

Court Created Trust Seminar - Texas Bankers Association, Specific Distributions Under Special Needs Trusts; February 13, 2003 - Dallas, Texas.

Long Term Care; Qualifying for Public Assistance - Wednesday Tax Forum, Houston Club, Houston, Texas; February 18, 2003.

Special Distributions for Supplemental Needs Trusts - Elderlaw Seminar, Marriott Suites-Market Center, Dallas, Texas; March 8, 9, 10, 2003

Medicare and Social Security Disability (what do you get and how do you get it?) - Elderlaw Course, State Bar of Texas. Dallas, Texas; March 14, 2003.

Planning with Special Needs Trusts in Texas - National Business Institute, Dallas, Texas;

March 18, 2003.

Practical Medicare and Medicaid Skills in Texas - Half Moon, Houston, Texas, March 28, 2003

Medicare Liens - Texas Wesleyan University School of Law, Dallas, Texas, April 4, 2003.

Long Term Elder Care for Yourself and Your Parents - Center for American and International Law, Plano, Texas, May 1-2, 2003

Social Security Benefits - What do you get and how do you get it? - South Texas College of Law, Houston, Texas May 7, 8, 9, 2003

Long Term Care Insurance - University of Texas School of Law, Galveston, Texas, July 24, 2003 and at the 5th Annual Intermediate Estate Planning, Guardianship and Elder Law Conference, Galveston, Texas, August 14-15, 2003.

Long Term Elder Care - Qualifying for Public Assistance, Social Security Benefits, and Medicare Basics - University of Texas School of Law, 51st Annual Taxation Conference, Austin, Texas, October 1-3, 2003.

Planning With Special Needs Trust in Texas - Corpus Christi Estate Planning Council, Corpus Christi, Texas, October 16, 2003.

Long Term Elder Care - Qualifying for Public Assistance, Social Security Benefits, and Medicare Basics - Accounting Continuing Professional Education Network - Dallas, Texas, October 22, 2003.

Medicare Basics - National Academy of Elder Law Attorneys, Dallas, Texas, November 14- November 16, 2003.

Long Term Care - Qualifying for Public Assistance - Houston CPA Tax Expo, Houston, Texas, January 12, 2004.

Social Security Disability - Texas Bar Association Guardianship & Elder Law Conference, Austin, Texas, April 1 and April 2, 2004

Long Term Care: Qualifying for Public Assistance and Planning with Special Needs Trust - Financial Planning Association, Dallas, Texas, May 7, 2004.

Social Security Disability and Social Security Benefits - Wills and Probate Institute, Dallas, Texas, May 13 and 14, 2004 and Houston, Texas May 20 and 21, 2004.

Medicare Benefits 2004 - Intermediate Estate Planning, Guardianship and Elder Law

Conference,

August 12 - 13, 2004, Galveston, Texas.

Understanding Medicare Benefits 2004 - Practical Medicare and Medicaid Skills in Texas ,
Houston, Texas, August 20, 2004

Understanding Medicare Benefits 2004 - NAHO 2004 Conference, Fort Worth, Texas,
October 17-20, 2004.

Understanding Medicare Benefits 2004 - National Business Institute, Houston, Texas,
November 1q, 2004.

Long Term Care: Qualifying For Public Assistance - Houston CPA Society, Houston, Texas,
January 25, 2005.

Medicare Benefits 2004 - 9th Annual Building Blocks of Wills, Estates, and Probate, State
Bar of Texas Live Satellite Program, Dallas, Texas, January 21, 2005

Special Needs Trust in Texas - University of Texas School of Law, Austin, Texas, February
9, 2005.

Primer on Elder Law - Houston Bar Association, Houston, Texas, February 10, 2005

Medicare Benefits 2005 and Medicare Part D 2005 - Practical Medicare and Medicaid Skills
in Texas, Houston, Texas, March 31, 2005.

Medicare Benefits 2005 and Medicare Part D -State Bar of Texas Elder law Course,
Houston, Texas, April 14, 2005.

9th Annual Florida Bar Public Benefits Seminar, April 15, 2005, at Tampa, Florida

What the Elder Law Attorney Said To the Family Law Attorney, Marriage Dissolution
Conference, Galveston, Texas, April 22, 2005.

Medicare Part D - Texas NAELA, State Bar of Texas, Austin, Texas, June 28, 2005

Medicare Part D - Intermediate Estate Planning, Guardianship and Elder Law Conference,
Galveston, Texas; August 11 - 12, 2005.

Medicare Part D - 2005 Annual Meeting and Conference of the Texas NAELA, Dallas,
Texas, October 29, 2005.

Planning with Special Needs Trusts in Texas and Special Needs Trust in Texas - Texas Trial
Lawyers Association, Addison, Texas, November 30, 2005

Medicare Part D, 2005 - Medicaid and Elder Law Issues in Texas for Lorman Education Services, Houston, Texas, December 8, 2005

Medicare Part D, 2005 - By Area Satellite Group of Houston CPA Society, League City, Texas, January 26, 2006.

Drafting A Special Needs Trust in Texas - 2006 Special Needs Trust Conference, Austin, Texas, January 18, 2006.

Medicare Part D, 2005 and Planning With Special Needs Trust in Texas - 7th Annual Building Blocks of Wills, Estates and Probate Course, January 20, 2006.

Medicare Part D - 2006 - FPA Houston, Houston, Texas, March 6, 2006.

Planning With Special Needs Trusts in Texas and Drafting a Special Needs Trust - Advanced Medical Malpractice, San Antonio, Texas, March 16-17, 2006.

Social Security Benefits and Social Security Disability for 2006 - Wills and Probate Institute, Houston, and Dallas, Texas, May 11 and 12 and 18 and 19, 2006.

Special Needs Planning, Medicare, and Medicaid - Estate and Business Strategies for Northwest Mutual, Houston, Texas, June 13, 2006.

Medicare Part D - CPE Family Conference, Galveston, Texas, June 23, 2006.

Medicare Part D and Long Term Care Insurance - CLE Live Webcast, Dallas, Texas, July 13 and 14, 2006.

8th Annual Intermediate Estate Planning, Guardianship, and Elder Law Conference - Galveston, Texas, August 10 and 11, 2006.

Medicaid and Long Term Care Planning after the Deficit Reduction Act - PESI, Dallas, Texas, October 4, 2006.

Handling Medicare Appeals: The Almost Perfect Case - Paramount Symposium, Galveston, Texas, October 28, 2006.

Medicare Part D - State Bar of Texas Webcast - Austin, Texas, November 15, 2006.

Medicare Set-Asides - 2007 Special Needs Trust Conference - Austin, Texas February 15-16, 2007.

2007 Advanced Elder Law - Houston, Texas, March 8, 2007.

Baylor Law School - Elder Law Update, Waco, Texas, April 20, 2007.

Medicare Facts and Questions, presented at the 9th Annual Estate Planning, Guardianship
and

Elder Law Conference - Galveston, Texas, August 9 and 10, 2007.

One Other Issue to Remember Before Approving A Settlement, Houston Bar Association Civil Court Ad Litem Conference- Houston, Texas, December 7, 2007.

Medicare Facts and Questions, State Bar of Texas 9th Annual Building Blocks of Wills, Estates and Probate- Austin, Texas, January 8, 2008.

Long Term Care: Qualifying for Public Assistance, Southeast Texas Society of CPAs- Beaumont, Texas, January 15, 2008.

Structured Settlements and Special Needs Trusts, National Structured Settlement Trade Association Regional Convention- Austin, Texas, January 17, 2008.

When Good Trusts Go Bad, University of Texas School of Law 2008 Special Needs Trusts Conference- Austin, Texas, January 31, 2008.

Responding to Estate Recovery When There is No Estate, State Bar of Texas Advanced Elder Law Course- Dallas, Texas, March 6, 2008.

Structured Settlements and Special Needs Trusts, Texas Guardianship Association Spring Conference- Corpus Christi, Texas, April 22, 2008.

Medicare Set-Asides, Stetson University College of Law Annual Fundamentals of Special Needs Trusts Administration-Clearwater Beach, Florida, April 24-25, 2008.

Medicaid Estate Recovery/Medicare Set Asides, Midland Memorial Foundation Estate Planning Seminar- Midland, Texas, May 8, 2008.

10th Annual Intermediate Estate Planning, Guardianship, and Elder Law Conference - Galveston, Texas, August 14 and 15, 2008.

Medicare Set-Asides, Special Needs Alliance and Stetson Special Needs Trusts Basics - Clearwater, Florida, October 16-17, 2008.

Medicare Set-Asides, State Bar Medicaid Webcast - Austin, Texas, November 5, 2008.

Special Needs Trusts and Child Support Payments, University of Texas School of Law 2009 Parent/Child Relationship Conference, Austin, Texas January 29, 2009.

Veteran's Pension Benefits, State Bar Building Blocks-Austin, Texas, January 9, 2009.

Structured Settlements and the DRA, University of Texas School of Law Special Needs Trust Conference, Austin, Texas, February 19, 2009.

Qualified Settlement Funds/Structured Settlements, State Bar Evaluating, Negotiating, Proving and Collecting Damages and Attorneys' Fees, Dallas, Texas, February 20, 2009.

Veteran's Pension Benefits, State Bar Advanced Elderlaw and Guardianship Course, Houston, Texas, March 5-6, 2009.

Public Benefits: What They Are & Who Can Receive Them, Associate Judges Family Law Conference, Austin, Texas, July 6-8, 2009.

Medicare & Medicaid Liens/Qualified Settlement Funds, Texas State Bar Advanced Personal Injury Course, Dallas, Texas, July 15-17, 2009.

[Return to Top](#)

TABLE OF CONTENTS

I. SUPPORT FOR A MINOR DISABLED CHILD 1

II. CONSIDERATION OF SCHEDULE 1

III. QUALIFICATION FOR SUPPORT OF ADULT DISABLED CHILDREN 2

IV. WHO MAY SEEK SUPPORT FOR AN ADULT CHILD? 2

V. PROCEDURE FOR SEEKING SUPPORT FOR AN ADULT CHILD 2

VI. AMOUNT OF SUPPORT AFTER AGE 18..... 2

VII. PUBLIC BENEFITS FOR THE DISABLED..... 3

 A. SSI Eligibility..... 4

 1. Income Limits 4

 2. Resource Limits 4

VIII. CHILD SUPPORT PAYMENTS AND THE AFFECT ON SSI/MEDICAID ELIGIBILITY 4

IX. SPECIAL NEEDS TRUSTS..... 6

X. PROOF OF DISABILITY 7

XI. SPOUSAL MAINTENANCE AS SUPPORT FOR THE DISABLED ADULT CHILD 8

XII. ANNUITIES AS SUPPORT FOR THE DISABLED ADULT CHILD 9

XIII. LIFE INSURANCE 9

XIV. MEDICAL SUPPORT 9

XV. CONCLUSION..... 10

CHILD SUPPORT FOR CHILDREN WITH DISABILITIES

Typically child support is a finite obligation that will end upon the later of the child's eighteenth birthday or graduation from high school. Some children, however, will require support beyond their eighteenth birthday. The focus of this article is on providing for the support of disabled children. This article does not address the resolution of other rights and duties of parents of a disabled child other than support. Support of adult children requires an understanding to the interplay of child support and various benefits available to disabled adults. The calculation of support for adult disabled children is also calculated differently than support for typical minors.

I. SUPPORT FOR A MINOR DISABLED CHILD

The child support guidelines are presumed to be in the best interest of the child. Texas Family Code, Section 154.122(a). The court may, however, determine that the application of the guidelines would be unjust or inappropriate under the circumstances. Section 154.122(b). In making such a determination the court should consider all relevant factors. Section 154.123 (b). The Family Code provides an inclusive, but not exclusive list of such factors. *Id.* Some of the factors that would likely apply include:

- (1) the age and needs of the child;
- (2) the ability of the parents to contribute to the support of the child
- (3) any financial resources available for the support of the child;
- (4) the amount of time of possession of and access to a child;
- (6) child care expenses incurred by either party in order to maintain gainful employment;
- (12) provision for health care insurance and payment of uninsured medical expenses;
- (13) special or extraordinary educational, health care, or other expense of the parties or of the child;
- (17) any other reason consistent with the best interest of the child, taking into consideration the circumstances of the parents.

Id. A special needs child might require care and supervision that might make it difficult for the caretaking parent to work outside of the home. Alternatively, the cost of specially trained child care might be significantly more than typical daycare. Some families might be able to have the child qualify for Supplemental Security Income from the Social Security Administration and other governmental benefits. If so, the Family Code indicates that those benefits should be considered. While it would be appropriate to consider such benefits, as discussed below, any type of off-set would not be appropriate. Another way to address some of the extra expense of the child might be to divide the uninsured expenses in a disproportionate manner. If that is done, there should be some consideration on the anticipated impact on the obligor's disposable income. This would allow for more support if there are medical needs that will likely dissipate over time. Many special needs children will have needs for educational and therapeutic interventions that may not be covered by insurance and are arguably not medical expenses. An obligor could be ordered to pay some portion of such expenses directly or ordered to pay additional support due to such expenses.

In many cases involving special needs children it will be possible to establish that the needs of the child justify a variance from the child support guidelines. To prepare such a case, the lawyer for the obligee, should prepare a detailed budget for the needs of the child. Special attention should be given to issues of anticipated changes that will result from a divorce and changes that may take place in the future as the need of the child evolve. If one represents an obligor and it is believed that the needs of the child will change and less support will be needed in the future, then the order should be fashioned to attempt to address these concerns, without placing the burden on the obligor to return to court to modify the order based on a change in circumstances.

II. CONSIDERATION OF SCHEDULE

In many cases the obligor of support may not be meaningfully involved in the special needs child's life. This seems to occur more often in cases with special needs children than in cases with typical children. The demands of parenting a special needs child are often significantly more difficult than the burdens of parenting typical children. Some people are not capable of meeting these demands. Additionally, the needs of some special needs children might impact their ability to travel back and forth between their parents households. If a child spends all or the vast majority of their time with only one parent, then this should be considered by the court in determining the amount of support

A situation where the child is exclusively or nearly exclusively in one home will have an economic impact. This will impair one parent's ability to develop a career while the other parent will not be so impaired. This will mean that one parent will need help in alleviating the pressure of constant caretaking while the other parent will not. This will mean that one parent will be bearing the costs of caretaking and transporting the child to get services. The law recognizes that there is a financial impact on the parent who has to care for a typical child. The costs for caring of a special needs child is significantly higher.

III. QUALIFICATION FOR SUPPORT OF ADULT DISABLED CHILDREN

The Court has authority to order support of a child for an indefinite period of time if the court finds that:

- (1) the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support; and
- (2) the disability exists, or the cause of the disability is known to exist, on or before the 18th birthday of the child.

Texas Family Code, Section 154.302(a). The suit may be filed regardless of the age of the child. Texas Family Code, Section 154.305 (a)(1). A suit for support of an adult disabled child may be filed after the child's 18th birthday.

IV. WHO MAY SEEK SUPPORT FOR AN ADULT CHILD?

A parent, a person having physical custody or guardianship of the child or the child may have standing to seek support after age 18. Section 154.303(a). If the child is seeking support directly they must be at least 18 years old, not have a mental disability, and be determined by the court to be capable of handling their financial affairs. Id. The right to seek support may not be assigned or transferred, except to a Title IV-D agency. Section 154.303(b).

As discussed below, support payments made directly to the adult child or to a parent or guardian may jeopardize benefits available to the adult child. To minimize the impact on benefits the common practice is to create a Special Needs Trust to receive and disburse the support of an adult child. The Special Needs Trust is a common vehicle used to protect a disabled individual's entitlement to benefits and resources.

V. PROCEDURE FOR SEEKING SUPPORT FOR AN ADULT CHILD

The suit may be brought as an independent cause or be brought with other claims or remedies under the Family Code. Section 154.305. If there is a court of continuing, exclusive jurisdiction then the suit may be filed as a modification as provided in Chapter 156. Id. If there is no court of continuing, exclusive jurisdiction, then the claim may be filed as an original suit affecting the parent-child relationship. Id.

An order for support of an adult child may be modified or enforced as any other order for child support. Section 154.307.

The Family Code provisions for support of an adult child are not exclusive. Section 154.308. The provisions for support of an adult child do not affect the rights and remedies of a parent, person other than a parent or governmental or private entity under any other law. Id. Nor do they affect a parent's right to contract for the support of a disabled child.

The timing of seeking support for an adult child is an important consideration. Disabilities range significantly. In many instances it will be impossible to determine whether a young child will need substantial care and personal supervision beyond their 18th birthday. In such a case it might not be possible to seek indefinite support at the time that child support is established in the original suit affecting the parent-child relationship of the minor child. In other instances, it is a virtual certainty that the child will need support for the balance of their life. If the child has a mental or physical disability that is known at the time of the original suit, the person who will be that child's primary caretaker should at least seek a finding that the disability exists and that the child might require support as an adult. Remember that the care of a disabled child will likely limit the caretaker's career and earning potential, which may impair their ability to seek legal services to obtain support when the child becomes an adult. At the time of the original suit, if it is a divorce, the resources of both parents are available for the costs of the suit. The finding of the existence of the disability will protect the child and the caretaking parent from an argument that the disability did not exist prior to the child's 18th birthday. If the court orders that the support obligation is indefinite, the obligor can always seek a modification to have the court determine that the support is no longer necessary because the child is capable of self support.

VI. AMOUNT OF SUPPORT AFTER AGE 18

One or both parents of an adult disabled child may be ordered to pay support for the child. Section 154.302 (a). In determining the amount of support to be paid after a child's 18th birthday the Court shall give special consideration to:

- (1) any existing or future needs of the adult child directly related to the adult child's mental or physical disability and the substantial care and personal supervision directly required by or related to that disability;
- (2) whether the parent pays for or will pay for the care or supervision of the adult child or provides or will provide substantial care or personal supervision of the adult child;
- (3) the financial resources available to both parents for the support, care, and supervision of the adult child; and
- (4) any other financial resources or other resources or programs available for the support, care and supervision of the adult child.

Section 154.306. While the child support guidelines are not specifically listed for consideration they are not excluded and would likely be a part of the court's consideration of the financial resources available to the parents.

VII. PUBLIC BENEFITS FOR THE DISABLED

Health care costs account for a surprisingly large slice of the United States economic pie. Each year health-related spending increases and these cost increases have a significant effect on families, businesses, and government programs. The rising cost of health care makes insurance less affordable for individuals, families, and businesses—contributing to the over 45 million Americans who are uninsured. Public programs, including Medicare, Medicaid, and the State Children's Health Insurance Program (CHIP), pay for 46 percent of health spending.

With such a large portion of health care expenses being paid by the government, it is important to know the basic program requirements and the benefits granted to someone under each program. Public programs provide health insurance coverage to people who are considered too poor to afford the full cost of coverage on their own. Medicaid also covers many children and individuals with disabilities who may not be able to afford or find private coverage to meet their needs. Eligibility for these programs is generally restricted to people in families with incomes at or below specific poverty levels. The cost of health insurance, however, has risen substantially faster than the increase in the federal poverty level. For people whose income just exceeds the eligibility standards for public coverage, the share of family income required to pay for private health insurance increases substantially.

Medicaid is the nation's primary health coverage program for low-income and high-need populations.

Established in 1965, the program has gradually expanded. Medicaid has multiple and diverse roles in today's health care system providing health coverage to people with disabilities, long-term care coverage and financing, and assistance to low-income Medicare beneficiaries. Medicaid is jointly funded by the federal and state governments and coverage varies slightly from state to state.

Medicaid covers 60 million low-income Americans—including nearly 30 million low-income children and 8 million non-elderly people with disabilities. The program provides a broad range of services with limited costs to those who meet the eligibility requirements. For all practical purposes, it is the only State-sponsored "insurance" plan for long-term institutional care. Although their names are confusingly alike, Medicaid and Medicare are quite different programs. All retirees who receive Social Security benefits also receive Medicare as their health insurance. Medicare is an "entitlement" program. Medicaid, on the other hand, is a form of welfare—to be eligible for Medicaid, you must be "impoverished" under the program's guidelines.

Also, unlike Medicare, which is a program completely overseen by the federal government, Medicaid is a joint program between the federal and state governments. Each state operates its own Medicaid system, but this system must conform to federal guidelines in order for the state to receive federal funds, which pays for approximately half of the state's Medicaid costs. This complicates matters because Medicaid eligibility rules are somewhat different from state to state and these rules are constantly changing.

Supplemental Security Income (SSI) is the basic federal safety net for the elderly, blind and disabled, providing them with a minimum guaranteed income. Effective January 1, 2010, the maximum federal SSI benefit is \$674.00 per month for an individual and \$1,011.00 for a couple. This amount changes annually. Although the Social Security Administration (SSA) administers the program, eligibility for SSI benefits is based on financial need and age or disability, unlike Social Security benefits, which are based on how long a person has worked or how much a person has paid into the Social Security system. The financial eligibility requirements for SSI, however, are quite stringent. If a person is seeking SSI benefits because he or she is disabled, the person must also meet the program's criteria for determining disability.

The idea of the SSI program is to provide a floor income level. If a person is receiving income from another source, his or her SSI benefit will be cut dollar-for-dollar. In addition, the SSA deems food and shelter a person receives from another source to be "in kind" income. As a result, actual payment amounts vary depending on income, living arrangements, and other

factors. While the SSI program's benefits are meager, in Texas, SSI recipients are also automatically eligible to receive Medicaid, which can pay for hospital stays, doctor bills, prescription drugs, nursing home care, and other health costs. SSI recipients may also be eligible for food stamps.

A. SSI Eligibility

To be eligible for SSI, a person must meet certain requirements. First, a person must be either age 65 or older or blind or disabled. A person must be a U.S. citizen or a long-time resident who meets certain strict requirements. In addition, SSI has income and asset limits.

1. Income Limits

The amount of income a person can earn and still qualify for SSI differs from state to state. In Texas, the income limit for eligibility is the same as the maximum federal benefit—\$674.00 a month for an individual and \$1,011.00 for a couple. If a person's income falls below these thresholds, he or she is eligible for benefits. That person's benefit will be the difference between his or her income and the maximum federal benefit. For instance, if a person's income is \$400.00 per month, and the SSI benefit for a single person is \$674.00 per month, that person will receive an SSI check of \$274.00 per month.

At some level, it may not seem worth the trouble to apply and stay eligible for SSI, but as mentioned above, the ancillary benefits, especially Medicaid, make it worthwhile to maintain SSI even if the financial payment only amounts to a few dollars per month.

In determining whether a person's income is low enough to qualify for benefits, the SSA counts the money a person earns from wages or from self-employment, as well as any investment income, pensions, annuities, gifts, rents and interest. Social Security and Veterans pension are also considered income. However, the SSA does not count the first \$20.00 per month a person receives from most income. The first \$65.00 per month of wages or self-employment are also excluded.

2. Resource Limits

A person can have no more than \$2,000.00 in countable resources (\$3,000.00 for a married couple living together) to be eligible for SSI. Countable resources include bank accounts, investments, real estate (other than a primary residence), and personal property. Also included is any money or property that a person holds jointly with someone else. The SSA determines how much the applicant's partial ownership is worth and counts that as a resource.

Certain property is not counted for determining SSI eligibility. First, an applicant's home and the land

on which it is located is not countable—regardless of value. Personal and household goods are excluded as well as one vehicle of any value so long as it is used for transportation for the applicant or a member of the applicant's family. Pre-need burial plans and burial plots are also excluded from countable assets.

SSI benefits provide a monthly stream of income to any eligible person. Although that income may seem nominal, an SSI recipient is automatically eligible for the healthcare benefits associated with Medicaid. This benefit is one of great value to anyone with low income and high healthcare costs.

VIII. CHILD SUPPORT PAYMENTS AND THE AFFECT ON SSI/MEDICAID ELIGIBILITY

The financial consequences of a divorce can greatly affect the medical situation of any party who is receiving public health benefits. Although this discussion is not comprehensive, it serves as a foundation for how a divorce can dramatically interfere with one's eligibility for valuable public programs.

The division of property and transfer of property for spousal or child support pursuant to divorce are covered by state law. The SSI program's and Medicaid program's ownership and deeming principals only apply after the legal division or transfer. This is an important factor to consider prior to finalizing any division or support orders. Important public benefits issues arise when property is liquidated into cash or an eligible individual receives the other spouse's countable property, such as a retirement account. In these instances, a divorce can greatly influence a person's eligibility for these programs.

Divorce also brings up the complex issue of the division and transfer of qualified and non-qualified retirement accounts. Not only must public benefits consequences be considered, but the beneficiary must also consider tax issues relating to the transfer. Although the tax consequences of this type of transfer are beyond the scope of this paper, it is vital to consider these consequences prior making any transfers. For public benefit purposes, the transfer of a spouse's IRA can be accomplished in two ways: transfer the IRA share directly from the healthy spouse into an IRA account in the disabled individual's self-settled SNT, or transfer the IRA first to an IRA account in the name of the disabled recipient, who then rolls over the funds into an IRA account created by the Trustee of the beneficiary's self settled SNT.

In calculating child support, a divorce settlement agreement often provides specific details regarding how each parent will share in the financial responsibility for the child's care and education until the time the child reaches the age of majority or finishes high school. In the case of a child with special needs, however, state statutes and case law may

continue the support obligation of both the custodial and non-custodial parent for the lifetime of the child. Even if a state does not have a formal requirement of this type, the non-custodial parent often agrees to pay a monthly sum to the custodial parent or to a trust for the benefit of the adult child with a disability. Discussions or negotiations about payments to a trust for the special needs of a child who will never be adequately self-supporting may even help to settle a divorce case.

Unfortunately, child support payments may end up reducing or eliminating the child's SSI benefit. In Texas, loss of SSI also causes loss of Medicaid, which provides the child's medical coverage, including important drug therapy and home or institutional services that help the child and the custodial parent. Because many programs for individuals with disabilities are only available to individuals who have Medicaid eligibility, preserving this eligibility does more than just keep medical coverage in place. If Medicaid is lost, the custodial parent may feel he or she won the so-called "battle" but lost the "war." The post-divorce child support that was intended to benefit the child and custodial parent thus may result in unintended, detrimental consequences.

Divorce attorneys do not always know how child support payments made directly to a custodial parent interact with "means-tested" government benefit programs like SSI and Medicaid, or that these unintended consequences can be avoided with a few careful steps. This section addresses how child support payments for a child of any age with special needs should be handled in order to maintain existing or future eligibility for SSI and Medicaid for the child.

Child support is defined by the SSI program as in-kind or cash payments to a child or a child's legal representative or custodian to meet the child's needs for food and shelter. Child support can be court ordered or voluntary (POMS SI 00830.420 A.1). When the custodial parent is the person who is receiving SSI benefits, any child support payments received by that parent for the support of his or her child will not be counted as income to that parent, nor is that income deemed from the child to the eligible parent. For SSI eligibility, the child support payment is considered to be the child's income and is countable to the child as long as the parent and child live in the same household. These payments are considered unearned income to the child. For Medicaid purposes, in many states, child support is considered income to the entire family unit. This could potentially affect the Medicaid eligibility of all family members.

When a parent makes child support payments directly to a child or custodial parent for the benefit of a child under the age of 18, one-third of the payment amount is excluded as countable income for SSI and Medicaid purposes. (This exclusion only occurs as long as the support payments are for an individual who

meets the definition of a "child" under SSI rules. A child is defined as an individual who is neither married nor head of a household and under age 18, or under age 22 and a student regularly attending school or college or training that is designed to prepare the individual for a job. POMS SI 00501.010.) Once a child no longer meets the "child" definition, the one-third exclusion no longer applies.

For example, a father pays child support in the amount of \$300 per month to the custodial mother for the benefit of their 10 year old child. The first 1/3 of the support payment each month is excluded as earned income. In addition, the rules allow for the first \$20 of unearned income each month to be excluded. Thus the child's unearned income each month is \$180 ($300 \times 2/3 - 20 = 180$). The federal benefit rate for 2010 is \$674 for an individual. Thus, the child's monthly benefit would be reduced by \$180 and the child would receive \$494 in SSI benefits each month, plus the child support payment of \$300 for a total amount of \$794.

For a child age 18 or older, however, one hundred percent minus \$20.00 of the child support payment counts as a reduction against SSI. For example, the \$674 in SSI payment before child support for a child age 18 will be reduced by \$280 ($\300 minus $\$20$) to \$394 SSI, plus \$300 in child support for a total amount of \$694.

Child support payments can also be paid as in-kind support and maintenance (ISM). Child support payments in the form of food or shelter would qualify as ISM. If support payments are in the form of ISM, the SSI benefit reduction is only reduced by one third of the federal benefit rate. The federal benefit rate for 2010 is \$674. This may be an advantage rather than paying cash in any case where the support payments are quite large. For example, a father pays the rent for the custodial mother and their 10 year old child, rather than making cash payments directly to the mother. The father pays the landlord \$1,200 per month. SSI deems the child's share of the support payment each month as \$600. If that support were paid directly to the mother, the child's unearned income would be \$380 ($600 \times 2/3 - 20$). The child would receive \$294 in SSI benefits each month. However, because this amount is received as ISM, it only reduces the SSI benefit by one third of the federal benefit rate, or \$224.67, and the child receives \$449.33 in SSI benefits. This is a great advantage of making child support payments as ISM rather than direct cash payments.

The amount of a child's SSI payment also depends upon several other factors, including the age of the child, the living arrangements in the household, whether the custodial parent is charging rent for the child's living at home, the amount of any earned income from a child's employment, and any income from the custodial parent that is deemed to the child for SSI eligibility. If a child is receiving a reduction for

any of these other factors, even a small amount of child support can easily eliminate his or her monthly SSI benefit completely—and any Medicaid benefits along with it.

IX. SPECIAL NEEDS TRUSTS

A special needs trust is designed to hold the assets of a person receiving public benefits, in particular, needs-based benefits such as Supplemental Security Income (SSI) and Medicaid. The assets held in trust can be used to enhance the beneficiary's care and quality of life while the individual maintains eligibility for public benefits. There are two basic types of special needs trusts: those created by someone other than the beneficiary, such as a trust created for a special needs child under a parent's estate plan, called a "third party trust;" and another type referred to as a "self-settled trust." Self-settled trusts, sometimes referred to as "d4A" or "d4C" trusts are permitted under Federal law and are created by or on the behalf of an individual with special needs using the beneficiary's own funds. These "self-settled" trusts must be created and funded prior to the beneficiary's 65th birthday and they require the state Medicaid agency to be reimbursed for any benefits paid on behalf of the beneficiary out of funds remaining in the trust at the beneficiary's death.

The SSI and Medicaid programs provide only limited guidance for the use of special needs trusts (SNT) in the realm of divorce. While the SSI program is a federal program, the program relies on state law to determine family member relationships and support obligations; thus, differences occur from state to state. Resolving Medicaid issues can be even more complex because individual states have authority to make eligibility rules. This results in a wide range of interpretations of federal law. Nevertheless, special needs trusts can be an important part of family "separation" planning. Special needs trusts can be used to shelter spousal support, child support, and property divisions in a way that protects public benefits.

Like other resource ownership matters involving public benefits, an irrevocable special needs trust is a great receptacle for divisions and transfers of property ownership. Because transfers of property and property division in the context of a divorce or support order are considered a legal right of the individual receiving property, any transfers of divided marital property into an SNT would be considered "self-settled" and would require a payback provision in favor of the State Medicaid program.

Valuable government benefits can be protected if the divorce decree directs the non-custodial parent to make child support payments to a special needs trust for the sole benefit of a child. Alternatively, an irrevocable assignment by the custodial parent of the

child support into a special needs trust may also work. This special needs trust must be carefully drafted. If the trust is correctly drafted and the support payments are properly assigned or ordered into the trust, then the support payments will not displace the monthly SSI payments and will, consequently, preserve Medicaid eligibility.

Consider this example of the benefits of ordering the payment to a special needs trust: a 13-year-old daughter is eligible for \$400.00 per month of SSI benefits, and thus, also receiving Texas Medicaid. The divorce decree orders the non-custodial parent to pay \$650.00 per month in child support paid directly to the custodial parent. Because the Social Security regulations exclude one-third (1/3) of the child support payment from countable income, \$433.00 counts for SSI eligibility determination. When the \$433 is applied against the SSI payment of \$400, the first \$20.00 is ignored, but the remaining \$413 completely displaces the monthly SSI payment. This will cause the child to completely lose SSI benefits and, as a result, Medicaid benefits. The custodial parent who anticipated having the \$650 child support each month in addition to the \$400 SSI and Medicaid benefits is now faced with a very grim reality.

If instead the divorce decree required the non-custodial parent to make the \$650 payment directly to the daughter's special needs trust, she would also be receiving the \$450 of SSI. The non-custodial parent would not be any worse off under this arrangement and the daughter and the custodial parent could have much more assistance. The additional costs to create the SNT and carefully craft the divorce agreement will be quickly recouped by maintaining SSI and Medicaid eligibility. In this example, if the daughter was 18, and even if she was eligible for the maximum SSI amount of \$674, the \$650 of child support directly to her parent would offset almost the entire SSI check.

Child support payments can be court ordered to be paid into a Special Needs Trust. This has the effect of converting cash payments by the absent parent into in-kind distributions from the SNT. Such ISM payments would be subject to the one-third reduction (224.67 in 2010) without regard to the actual value of payments. Once the court assigns child support to a SNT, the support payments will not directly count as income to the child, whether as a minor or a disabled adult. The SNT to which child support payments are made should be a "self-settled" trust because SSA presumes that the right to receive child support payments is a legal property right belonging to the beneficiary. Therefore, the trust must meet the requirements of 42 U.S.C. 1396(p) (d)(4)(A) or 42 U.S.C. 1396(p) (d)(4)(c). The assignment must be an irrevocable court order to the extent that the child or child's legal representative may not unilaterally terminate the assignment or have direct access to the income.

It is far better to address these issues during the divorce process, rather than being forced to address them after SSI has been reduced or lost do to child support payments. After the parents agree upon, or the court determines, the monthly contribution by the non-custodial parent for the child with special needs, the divorce attorneys involved should contact an attorney with experience drafting special needs trusts. This type of special needs trust differs greatly from any other type of estate planning trust. Among other features, this trust must provide that Medicaid is paid back at the death of the trust beneficiary from any amount remaining in the trust.

The divorce decree should direct the non-custodial parent to make a monthly payment for the child's "special needs" each month to the Trustee of the Special Needs Trust. The SNT attorney should follow-up the trust funding with a report to the appropriate government agencies to ensure that the trust is accepted as an exempt asset for eligibility purposes.

In determining the amount of child support that a non-custodial parent should pay each month, section 154.306 of the Family Code provides that the court can consider the resources or programs available for the support, care, and supervision of the child. However, it is important for attorneys and courts, when fashioning the child support order, to avoid structuring the child support in terms that reduce the required payment each month by the amount of SSI or other cash benefits received on the child's behalf. Instead, the divorce decree should state a specific amount that will be paid each month and avoid the offset calculation. Using this offset calculation will cause massive confusion and frequent trips to court.

The following example illustrates the consequences of tying the child support amount directly to the SSI amount. Consider the case of a disabled son on SSI who recently became a child of divorce. The parents' divorce decree stipulated a dollar-for-dollar offset between SSI and child support. As the child's needs increased, his mother, the custodial parent, went back to court and was awarded a large increase in child support from the child's father. As required under SSI regulations, his mother promptly reported the new child support amount to SSI, which will cause a reduction in SSI benefits. The lesser amount of SSI then increased the father's child support obligation, which caused a further reduction in SSI, and another increase in the monthly child support payment. The downward, then upward, spiral will never cease until the SSI payment is completely eliminated. In order to avoid this cycle, the parties should have agreed to a specific dollar amount—not directly tied to the SSI payment— and required that the child's father pay that amount to a special needs trust.

Each divorce case affecting a child with a disability is unique and must be considered in light of

specific facts of the case as they apply to the federal SSI regulations and the state Medicaid regulations. Nevertheless, it is important to have a basic understand of these issues and to investigate them thoroughly. Many attorneys and judges are not aware that SSI is a "means-tested" program and are unsure of how child support payments can negatively impact eligibility for this important program. Thus, it is important to consult with an attorney who is experienced in public benefits and special needs trusts.

X. PROOF OF DISABILITY

As stated above the Court has authority to order support of a child for an indefinite period of time if the court finds that:

- (1) the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support; and
- (2) the disability exists, or the cause of the disability is known to exist, on or before the 18th birthday of the child.

Texas Family Code, Section 154.302(a). Many children that a parent would seek support for as an adult child will have already begun if not completed the process of establishing the child's disability for Social Security Disability benefits. For Social Security Disability "[t]he law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." CFR 20 Section 404.1505. The Code of Federal Regulations goes on to explain that "to meet this definition a person must have a severe impairment(s) that makes one unable to do past relevant work or any other substantial gainful work that exists in the national economy." *Id.* There are different qualifications for individuals who are statutorily blind. *Id.* A person who meets the definition of disabled for Social Security purposes would at least have met the "not capable of self support" prong of the Texas Family Code definition for an adult disabled child. The prong of the Texas Family Code regarding requiring "substantial care and personal supervision" is not a requirement for determining disability, but often the evidence of the inability to "do any substantial gainful activity" is going to also be evidence of the need for substantial care and personal supervision.

The lawyer who will be attempting to prove that an adult child is in need of continuing support should meet with the experts that were used to establish the

disability of the child for Social Security Disability, if such experts are involved. These experts will have likely performed testing to establish that the child is disabled. It is important to review the experts' records and make sure that everything is in an admissible for trial. The lawyer should educate the expert about the standards to determine disability under the Family Code and make sure that the expert is prepared to testify regarding how the symptoms of the subject child fit with the Family Code definition of disability.

If the child has not been evaluated for disability for Social Security Disability, then the child's treating doctors, therapists and teachers are all likely witnesses to establish the child's future need for care and supervision, as well as the child's ability to self support. Therapists and teachers develop very close bonds with these children and are excellent witnesses in these cases. These are people that typically have a long relationship with the child and have spent many hours with the child. Due to the duration and depth of these individuals' relationships with the children they work with, they are able to explain to the court the needs of such a child in a manner that is much more powerful than the testimony of a tester and evaluator, who has spent very little time with the child.

At least one Court has found that a parent alone is an adequate witness to establish the disability of a adult child. IIO J.L.F. 2002 WL 1625572 (Tex.App.-San Antonio). The mother, seeking continuing support for her adult disabled child did not offer any expert testimony regarding the child's medical condition. The mother did, however, testify regarding the child's condition. In J.L.F. the San Antonio Court found that a mother was in the best position to testify about the needs of her child when the child lived with the Mother and she was her conservator.

The J.L.F. case is noteworthy for another reason. The child involved had a particular vision problem that required frequent medical visits and therapy. The child was, however, attending college and had qualified for a scholarship. From the opinion there appears to be very little evidence that the child required supervision or that she was not capable of self support. Nevertheless, the court found that the child required present and future substantial care and ordered child support to continue until she was 21 years of age. The Mother had not applied for Social Security Disability benefits for the child.

If possible make a day in the life video. It is very hard for judges to understand what it is like to be the caregiver for a special needs child, unless the judge has personal experience. Each child is different. Often the potential obligor has a very different view of the needs of the child. If there is a disparity in the evidence, then a video can be a very powerful piece of evidence. Have the client with the help of family or friends play the video.

Every judge understands that a typical child will live at home until they graduate high school. They understand the needs that the typical child will have until graduation. The judge will not necessarily have a clear understanding of what the future of the adult disabled child will be. The parents' opinions regarding that future might be remarkably different. One parent might believe that it is best for the child and everyone involved for the child to live outside of their parent's home. Depending on the level of functioning of the disabled child the child might have their own opinion regarding their future. If the child will be living outside of either parents home, in a living arrangement that is covered by government entitlements, then that child's needs will be remarkably different from those of a child who is being cared for in a home or a private facility that is not covered by Medicaid. Obviously, a potential obligor might have an economic incentive to favor one future arrangement over another, but often these matters are much more complicated. If you represent the parent who wants the child cared for in a manner that involves significant costs which are not covered by government entitlements, you need then to be prepared to put on your best case in order to convince the court that in considering all of the factors, the needs of the child require one or both parents to pay support, even if there exists an alternative which is remarkably less expensive for the family.

XI. SPOUSAL MAINTENANCE AS SUPPORT FOR THE DISABLED ADULT CHILD

One way to establish eligibility for spousal maintenance is that the obligee is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability which makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home. Texas Family Code Section 8.05. It would only be possible to seek this form of support at the time of the divorce of the parents of the disabled child. *Id.* The standard for establishing the disability of the child is the same under Chapter 8 as it is under subchapter F of Chapter 154, but the parent seeking spousal support would have to also establish that due to the needs of the child, the parent is not able to be employed outside of the home.

Typically spousal maintenance cannot be ordered for a period of over three years. The duration of the support ordered because of the disability of a child may continue as long as the disability continues. Section 8.054. The court may order periodic review of the spousal maintenance order on the request of either party or the court's own motion, to determine whether the child's disability continues to render the parent unable to work. *Id.* The continuation of spousal support in this circumstance is also subject to a motion to modify under Section 8.057. *Id.*

Contractual alimony is also a possible source for support of an adult disabled child. Like spousal maintenance, contractual alimony would not jeopardize the child's eligibility for benefits. The down side to contractual alimony for the obligor would be that it is not subject to modification by the trial court because it is contractual. Contractual provisions could be included to provide for arbitration of the modification or suspension of the contractual alimony. This type of provision is important given that the child's need for care may be life long, but the obligor's circumstances might change in a way that impacts the obligor's ability to pay, such as retirement or disability of the obligor.

Spousal support or contractual alimony paid to the parent of a minor child will be deemed income of the child and will likely result in the child not being eligible for SSI. To the contrary, spousal support or contractual alimony paid directly to the parent of an adult child are not deemed to be income of the adult child. Since the support payments are not income of the child they would not interfere with the child's entitlement to SSI payments and other benefits that are dependent on qualification for SSI.

XII. ANNUITIES AS SUPPORT FOR THE DISABLED ADULT CHILD

Structured settlement or an annuity is another option for support of the adult child. The structured settlement could be paid to a special needs trust for the benefit of the adult child. Such an option would require a large outlay by the obligor up front to purchase an annuity to pay the future support. The Family Code provides for a lump sum payment or annuity purchase as a method for the payment of child support. Section 154.003. An annuity that was payable for the life of the adult disabled child would protect the child and the obligor. The child would be insured support for their lifetime provided that the life insurance company is able to pay the obligation. The odds are better that the insurance company will be able to honor the contractual obligation, than the parent will be able to continue to support the child for the remainder of the child's life. This option also protects the obligor from events that reduce the obligor's income and/or resources.

XIII. LIFE INSURANCE

Life Insurance may be ordered by the court to provide for the payment of a child support obligation after the obligor's death. Section 154.016. This provision is specifically available to insure an obligation for the support of an adult disabled child. Section 154.015(b)(3). The amount of required life insurance may be quite large. To determine the amount needed the lawyer should consult with an actuary. The actuary should be listed as a testifying

expert and ought to prepare a report estimating the amount of life insurance needed. It is also important, if possible, to determine the cost of such a policy in advance of the trial. The policy should be adequate to provide an annuity for the estimated life of the disabled adult child. The insurance could potentially be of a diminishing amount. Typically term policies are adequate to insure this liability because a typical child will graduate from high school very near their 18th birthday, and a term policy that will be in place until the child is 20 should be more than adequate. An adult disabled child might live a fairly long life and will likely survive his parents. In such a case permanent life insurance should be ordered so that the policy can be maintained late into the obligor's life.

If an annuity were purchased to pay for the child support then life insurance would be unnecessary.

XIV. MEDICAL SUPPORT

Typical provision for medical support may be inadequate to address a special needs child's medical support. As parents of children with special needs children are aware, insurance companies do not like to pay for the needs of children with special needs and have developed many methods to deny coverage. Additionally, parents of children with special needs often explore alternative medical interventions. Additionally, special needs children often require various therapeutic interventions that may or may not be covered. Doctors that specialize in the treatment of certain special needs children often do not have relationships with insurance providers and may not be covered or will only be covered in a very limited way. The form book language for medical support requires agreement or compliance with the insurance requirements or the parent who incurs the medical expense is responsible for the cost.

Often in typical cases parents disagree about treatment plans. For example some parents embrace psychological therapy and others do not. Many children have symptoms of Attention Deficit Disorder and/or Hyperactivity Disorder. These children may qualify as special needs. The parents of these children may not agree about treatment plans, school interventions and other therapies. While these children's disabilities might not be as significant as other children who might need support for life they may have medical support decisions. As the parent of an autistic son we have spent a great deal on medical and therapeutic interventions that were not covered by insurance.

Just because a parent complies with insurance company requirements, does not guarantee coverage. This author is aware of a family that agreed for their child to have a general anesthesia procedure to have his teeth cleaned and various other treatments that he was not capable of enduring while conscious. The

insurance company approved and paid for the procedure. Months later, the mother was informed that the insurance company had performed an audit and the company was denying coverage. She was told to expect to be billed by the hospital directly. She could not afford the procedure without coverage.

To the extent possible if the child is participating in treatments and interventions that are not covered or are only partially covered by insurance, then provide that they will continue unless the parents agree otherwise. If one of the parents is clearly the one parent that is involved in the treatment plan for the child, it is important to consider giving that parent exclusive decision making, after meaningful consultation. It is also important to rework the standard form book language to give that parent the ability to make medical decisions even if they are not going to be fully covered without having to pay all of the expense, unless they are able to get the agreement of the other parent.

XV. CONCLUSION

With careful planning and the help of an attorney trained in the use of SNT, support can be maximized for the disabled child without putting at risk crucial governmental benefits for the child.