

## 30<sup>TH</sup> ANNIVERSARY EVENT BOOSTS PRO BONO SERVICES

PLAN/NJ's 30th Anniversary: A Celebration of Abilities opened hearts and surpassed fundraising goals at the New Jersey Law Center in New Brunswick late last year. The sold-out event and related 30@30 fundraising campaign raised over \$51,000 in support for people with disabilities who take part in PLAN/NJ's pro bono services program.

"Clearly our community understands the great need to provide lifelong support for individuals living with significant disabilities and their families in New Jersey, and we are very grateful," said Samantha Herrick, President of PLAN/NJ's Board of Directors.

Thirty organizations and individuals sponsored the proceedings with contributions made before the biennial event, and more than thirty personal contributors helped 'blow out birthday candles' with donations made during the evening. The New Jersey State Bar Foundation donated the New Jersey Law Center's Wilentz Auditorium for the evening, which celebrated the collective achievements of the disability rights community in New Jersey.

Mercedes Witowsky, Executive Director, New Jersey Council on Developmental Disabilities received the inaugural Fred R. Patterson Parent Advocate Award, named for the first President of PLAN/NJ and conferred by his widow, Rose. C. Vivian Stringer, Head Coach of Women's Basketball for Rutgers University, received the Trailblazer Award from Samantha Herrick, PLAN/NJ President. In her keynote remarks, Coach Stringer spoke of the



inspiration her daughter Nina provides and thanked her caregiver, locent.

Daniel and Carmelita Blackford, Brandon Smith and Joseph Kearns received Life Planning Partner awards from Ellen Nalven, Executive Director and Jason Miller, Director of Social Services. Brandon shared his remarkable gifts and passion as a young classical pianist, performing an excerpt from Beethoven's Moonlight Sonata; Chelsea Palermo, a previous award recipient, showcased her talents in jazz vocal performance along with the Vincent Troyani Trio.

New Jersey Senate President Sweeney, honored as Legislative Advocate of the Year, pointed the accolades back towards PLAN/NJ, commending the organization for thirty years of meritorious service. He delivered a New Jersey Senate Resolution which challenged PLAN/NJ to achieve even greater success and rigor in the years ahead.

For a slideshow and complete list of honorees, visit our website at [www.plannj.org](http://www.plannj.org).

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# SPOTLIGHT on the New Jersey State Bar Foundation

Since 2006, the New Jersey State Bar Foundation has co-sponsored PLAN/NJ's outreach and engagement events which highlight the need for legal and estate planning for the future care of people with psychiatric or developmental disabilities. With their support, PLAN/NJ has presented over 300 seminars and exhibit education sessions, reaching more than 20,700 family members, clients, partners, and human service and related agency staff throughout New Jersey. Training session guideposts help people understand the best ways to honor individuals' preferences, help them maintain personal relationships, and identify and put in place the services they require.

The mission of the New Jersey State Bar Foundation is to foster an increased awareness, appreciation and knowledge of law and the legal system among New Jersey residents; serve as the statewide resource for law-related education for the public; provide opportunities for lawyers to serve the public through the Foundation's programs; and foster professionalism and pride in the profession of law through public service.

Thanks to this long-term supporter, PLAN/NJ

can increase awareness and inform parents, siblings, potential clients, partners, human service and related agency staff of available future planning options for people living with disabilities. We conduct events independently or in partnership with dozens of other national, state and local organizations, and target family members and the human service professionals who serve them. Many sessions are for statewide audiences, while others aim for those which are county-based. Their support means we can build an even broader awareness of the rights and needs of people with disabilities and those who advocate for them, showcasing clients and service partners in our biannual newsletter. The New Jersey State Bar Foundation has also provided the New Jersey Law Center's Wilentz Auditorium as the site of our biennial "Celebration of Abilities" fundraising event.

"From the beginning, our review committee and the board of trustees has embraced your mission. The work that your organization undertakes is unique and uniquely in line with our focus on legal assistance for people with disabilities," said Cynthia A. Pellegrino, Director of Grant Programs and Administration, New Jersey State Bar Foundation.

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# DESIGNATING A SPECIAL NEEDS TRUST AS A BENEFICIARY OF A TRADITIONAL IRA

By Shirley B. Whitenack, Esq. and Regina M. Spielberg, Esq.

Many parents who have a child with special needs know the importance of establishing a third-party special needs trust to protect assets that can provide for their child's special needs without jeopardizing his or her entitlement to means-tested government benefits such as SSI and Medicaid. Drafting and funding a third-party special needs trust with a traditional IRA, however, requires expert adherence to Internal Revenue Service (IRS) codes and regulations.

Importantly, a last will and testament governs only those assets that are not held jointly with right of survivorship or that do not have a beneficiary designation. Therefore, if the IRA names the person with special needs as a beneficiary, that IRA will pass to that person, even if the will directs the IRA assets to be paid to a special needs trust.

Tax-deferred IRAs are subject to "minimum distribution" requirements designed to prevent taxation to be deferred indefinitely. There is a Required Beginning Date (RBD) for taking distributions that is April 1 of the year after the year the owner reaches age 70½, as well as "Required Minimum Distributions" (RMDs) that must be distributed each year beginning with the RBD.

Ideally, people like to defer income taxes on IRAs and allow the IRA to continue to grow tax-free. This is accomplished by "stretching" RMDs over the life expectancy of a "designated beneficiary." When an IRA account holder dies, RMD is calculated based on a number of factors such as whether or not the designated beneficiary is a spouse. If the designated beneficiary is an individual who is not a spouse, RMD depends on whether the account owner died before or after the RBD. If the account owner died before the RBD, RMD is calculated based on the life expectancy of the designated beneficiary unless the five-year rule is elected. If the owner dies after the RBD, RMD is based on the longer of the life expectancy of the designated beneficiary or the deceased owner's life expectancy.

If the beneficiary is not an individual, such as an estate or charity, it cannot qualify as a designated beneficiary and 100% of the IRA must be distributed (and taxed) by December 31 of the year of the fifth anniversary of the owner's death.

A trust may qualify as a designated beneficiary if four requirements are met. The trust must (i) be valid under state law; (ii) be irrevocable or become irrevocable when the IRA owner dies; (iii) have beneficiaries that are all identifiable as individuals; (iv) be provided to the custodian of the IRA by October 31 of the year following the year that the IRA owner died. If a trust, such as a third-party special needs trust, meets the four requirements, the trust beneficiaries are considered the beneficiaries and the RMD may be stretched over the single life expectancy divisor of the oldest trust beneficiary.

A trust that qualifies as a designated beneficiary may be a conduit trust or an accumulation trust. A conduit trust requires the trustee to make RMD payments to the beneficiary annually. Such payments, however, could cause the beneficiary of a third-party special needs trust receiving SSI and/or Medicaid to lose these benefits. An accumulation trust, on the other hand, gives the trustee the discretion to pay the RMDs annually to the beneficiary or to make payments for the benefit of the beneficiary. In this way, the beneficiary's access to means-tested government benefits can be preserved.

An IRA inherited by a person with disabilities might be allowed to transfer to first party special needs trusts without first having to liquidate the account and pay income tax on the entire amount based on private letter rulings by IRS; however, private letter rulings cannot be relied upon as precedent and are expensive to obtain.

In contrast, an IRA owned (not inherited) by a person with disabilities cannot be transferred to a first party special needs trust without having to pay income tax on the entire amount based on another private letter ruling.

## FROM THE EXPERTS

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