

**THE SUPERIOR COURT OF WASHINGTON STATE FOR THE COUNTY OF KING**

In the Trust of: \_\_\_\_\_ ) Case No.  
\_\_\_\_\_ )  
\_\_\_\_\_ ) ORDER DIRECTING CREATION OF TRUST  
\_\_\_\_\_ )  
\_\_\_\_\_ ) ( Clerk's Action Required – pg 4)

The following persons appeared at the hearing:

Petitioner: \_\_\_\_\_ Petitioner's Counsel: \_\_\_\_\_  
Respondent: \_\_\_\_\_ Respondent's Counsel: \_\_\_\_\_  
GAL/SGAL: \_\_\_\_\_ GAL/SGAL's Counsel: \_\_\_\_\_  
Trustee: \_\_\_\_\_ Trustee's Counsel: \_\_\_\_\_  
Parent: \_\_\_\_\_ Parent's Counsel: \_\_\_\_\_  
Other: \_\_\_\_\_ Other's Counsel: \_\_\_\_\_

The court has received and considered requests for relief pertaining to the creation of a court-declared trust. *The court having reviewed the file, now enters the following:*

**FINDINGS OF FACT**

- 1.  The Beneficiary is one who qualifies under federal law for the transfer of assets into a Special Needs Trust, which will preserve the assets, estate or expectancy of the Beneficiary and allow them to remain available for the benefit of the Beneficiary, irrespective of receipt of state or federal needs-based benefits, OR  
 The Beneficiary is a minor who qualifies under state law for the transfer of assets into a Settlement Trust, which will preserve the assets, estate or expectancy of the Beneficiary in addition to or as an alternative to the appointment of a Guardian of the Estate.
- 2. The purpose of creating a Trust for the Beneficiary shall be to conserve the assets which would otherwise be available to the Beneficiary, but which without being held in Trust would disqualify the Beneficiary from state or Federal benefits, be subject to the creditors of the Beneficiary, or be otherwise be distributed in a unprotected manner or

be subject anticipation, encumbrance or expenditure other than for which the Trust was created.

3. The court has carefully considered the alternative means of protecting the estate and finds that the creation or approval of a Trust is the means best suited to the specific needs of this Beneficiary in this proceeding.

*Wherefore having entered Findings of Fact, the Court now enters the following:*

### **CONCLUSIONS OF LAW**

1. The Court, in its discretion, is authorized by SPR 98.16W and RCW Chapters 11.88, 11.92 and 11.96A to create a trust for the benefit of a minor or adult incapacitated person. The court may authorize a Settlement Trust upon a finding of legal incapacity; or a Special Needs Trust with or without a finding of disability or incapacity pursuant to state and federal law providing for the preservation of a person's assets, estate, or expectancy as an estate planning tool or a less intrusive alternative to the appointment of a Guardian of the Estate.
2. In directing the creation of or approving a Settlement Trust or Special Needs Trust, the Court has the authority and responsibility to determine the provisions of the Trust and the continuing responsibility to supervise it, such as to insure that the purposes for which the trust was created are continuing to be served, that a Trust is the best and most appropriate method to achieve those purposes, and that the estate and interests of the Beneficiary are protected at all times.
3. The provisions of the Trust document shall be designed to maximize the protection of the Trust estate; while minimizing the intrusion into the affairs of the Beneficiary, consistent with the purposes for which the Trust was established.

*Wherefore having entered Conclusions of Law, the Court now enters the following:*

### **ORDER OF THE COURT**

1. **Direction to Create of Trust:** A court-created Settlement or Special Needs Trust shall be declared or approved by the court for the benefit of \_\_\_\_\_.
2. **Person Appointed to Draft Trust and Fee Limit:** The court finds that each of \_\_\_\_\_ or \_\_\_\_\_, are independent and have no other office or role in this proceeding, hence no actual or apparent conflict of interest. The first one available shall be authorized and directed to draft a Trust document to effect this order. The Trust shall include the terms and conditions set forth herein, and with all provisions necessary to comply with and consistent with the requirements of state and federal law. The drafter shall submit a sworn Declaration of

Fees for services herein, and shall receive a fee in such amount as the court deems reasonable, but in any case not exceeding \$\_\_\_\_\_ for fees and \$150 for costs. The fee application shall be submitted for review at the time the draft of the Trust is presented for review. The source of the funds for payment of the fees and costs of the drafter shall be: \_\_\_\_\_.

3. **Trust Provisions:** The Trust document shall contain the following provisions:

- a. Designation of Trustee/Co-Trustees: \_\_\_\_\_
- b. Allocation of Fiduciary Responsibility, If More Than One Trustee: \_\_\_\_\_
- c. Description of Investment Authority (and/or Limitations): \_\_\_\_\_
- d. Fees of Trustee: May be paid as incurred, but subject to review and approval by the court not later than as a part of the next annual accounting.
- e. The Alternate or Successor Trustee: Shall be selected by the court at a hearing upon notice to all interested parties.
- f. Use of Trust Advisory Committee or Registered Representative: Not applicable.
- g. Duration of Trust: \_\_\_\_\_
- h. Provision for Transfer of Assets on Death of Beneficiary: (1) Payment of administrative and legal expenses, claims against the estate, and reimbursement to the State as required by law; (2) According to the Last Will and Testament of the Beneficiary, (3) according the exercise of a special power of attorney contained in the Will, consistent with state and federal requirements; (4) according to the laws of Intestacy of the State of Washington, (5) \_\_\_\_\_
- i. Frequency of Accountings: Annually, to include a 12-month period.
- j. Form of Accounting: As provided in RCW Chapters 11.88, 11.92.; the provisions of the Trustees Accounting Act are waived.
- k. Fiscal Year of Trust: \_\_\_\_\_ to \_\_\_\_\_
- l. Reports to Be Filed with the Court and Noted for Review: Not later than 90 days from the close of the Fiscal Year.
- m. Persons Entitled to Receive Copies of Accounting: The Beneficiary; Guardian or legal representative of Beneficiary, if any; residuary beneficiaries of the Trust.
- n. Authority of Trustee to Retain Counsel: The Trustee may retain counsel to assist in the administration of the Trust without further order; provided that court approval shall first be sought to enter into settlements, initiate litigation; or provide estate planning services for the Beneficiary.
- o. Authority of Trustee to Make Gifts: The Trustee shall make no gift from a Special Needs Trust whatsoever; and shall make no gifts from any other type of Trust except as specifically authorized in advance by the court, upon notice to all interested parties.
- p. Court Designated to Supervise Trust: This court, until the court at a hearing upon notice to all interested parties enters an order terminating the Trust or transferring the jurisdiction to another court.

q. Power to Amend Trust: Reserved to the court, which may amend the Trust document upon petition or its own motion at a hearing upon notice to all interested parties.

r. Other: \_\_\_\_\_

4. **Order Approving Trust:** The Order approving the Trust document shall provide:

a. Initial Amount of Bond for (Each) Trustee: \$ \_\_\_\_\_

b. Amount of Funds to be Deposited in a Blocked Financial Account: \$ \_\_\_\_\_

c. Fiscal Reporting Year for Trust: with Report Due within 90 Days of Year End.

d. Filing of Trust Document with the Court: A duplicate original of the Trust document shall be filed in a separate legal proceeding and probate cause number with this court, unless this subject proceeding is captioned solely in the name of the Beneficiary.

5. **Hearing to Approve Trust:** The Trust document shall be submitted to the court for review, with court's working copies provided at least 7 days in advance, at a hearing:

noted to occur within sixty (45) days of entry of this order, OR,

at the hour of \_\_\_\_\_ am on \_\_\_\_\_, \_\_\_\_\_, in the Ex Parte & Probate Department of this court.

**Signed in open court this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.**

\_\_\_\_\_  
Judge/Court Commissioner

**Presented by:**

\_\_\_\_\_ **WSBA#:** \_\_\_\_\_

**Copies of this Order Mailed/E-Mailed/Faxed on the above date to:**

Petitioner, or through counsel, if any

Respondent, or through counsel, if any

GAL/SGAL, or through counsel, if any

Person Selected to draft Trust

Trustee nominee, or through counsel, if any

Parent/Other parties present, or through counsel, if any