

**PROPOSED REPORT OF THE JUDICIAL COUNCIL
PROBATE LAW ADVISORY COMMITTEE ON
2007 SENATE BILL NO. 32**

The Judicial Council was requested to review SB 32 relating to medical and other care and services assistance repayment and discretionary trusts. In addition to being assigned to the Judicial Council for study, Senate Bill 32 was assigned to the Special Committee on the Judiciary for interim study. The Judicial Council assigned the study of the bill to the Judicial Council Probate Law Advisory Committee (PLAC).

As passed by the Senate, Senate Bill No. 32 proposed amendments to K.S.A. 2006 Supp 39-709(e)(3) to clarify that resources from a trust executed on or after July 1, 2004, would be considered an available resource in determining eligibility of a trust beneficiary for medical assistance unless the trust is funded more than nominally from resources of a person who owed no duty of support and who intended the trust to be supplemental to public assistance. The amendments struck the requirement of K.S.A. 39-709(e) that “the intent that the trust be supplemental to public assistance be contemporaneous” and struck the requirement that language in the trust make specific reference to “medicaid, medical assistance or title XIX of the Social Security Act.” K.S.A. 2006 Supp. 39-709 (e) was also amended to add a new subsection (5) which provided, “Any trust created before July 1, 2004, can be amended if such amendment is permitted by the Kansas Uniform Trust Code.”

On August 27, 2007, the PLAC’s staff attended hearings held by the Special Committee on the Judiciary and heard testimony from Eric Anderson, an attorney in private practice in Salina, and Reid Stacey, Senior Medicaid Counsel for the Kansas Health Policy Authority. Staff reported to the PLAC on the testimony and provided the PLAC with copies of Mr. Anderson’s written testimony, Mr. Stacey’s written testimony and a copy of the written testimony of Molly M. Wood, a practicing attorney from Lawrence.

Mr. Anderson and Mr. Stacey were invited to attend the September 19, 2007, meeting of the PLAC to discuss Senate Bill 32. The Committee was prepared to hear a discussion of their differences, but when they appeared they had reached a compromise on those differences and jointly proposed that K.S.A. 2006 Supp. 39-709(e)(3) be amended to read as follows:

(3)(A) Resources from trusts shall be considered when determining eligibility of a trust beneficiary for medical assistance. Medical assistance is to be secondary to all resources, including trusts, that may be available to an applicant or recipient of medical assistance.

(B) If a trust has discretionary language, the trust shall be considered to be an available resource to the extent, using the full extent of discretion, the trustee may make any of the income or principal available to the applicant or recipient of medical assistance. Any such discretionary trust shall be considered an available resource unless:

(1) At the time of creation or amendment of the trust, the trust contains specific language that states an intent by the settlor that the trust is to be supplemental to public assistance; and

(2) the trust is funded exclusively from resources of a person who, at the time of creation of the trust, such funding, owed no duty of support to the applicant or recipient, or is funded not more than nominally from resources of a person while that person owed a duty of support to the applicant or beneficiary.

~~(2) the trust contains specific contemporaneous language that states an intent that the trust be supplemental to public assistance and the trust makes specific reference to medicaid, medical assistance or title XIX of the social security act.~~

The PLAC reviewed the proposed amendment and agreed to report to the Legislature that it supports the compromise.