

What to Ask Your Special Needs Trust Attorney

A consultation prep checklist from a fellow special needs parent

If you're reading this, you've probably been putting this off because it feels overwhelming. That's normal. Hiring an SNT attorney is expensive, emotional, and often once-in-a-lifetime — and the stakes are real. A well-drafted trust protects your child's SSI and Medicaid for the next twenty years. A poorly drafted one can quietly disqualify them.

This checklist exists so you can walk into the meeting knowing what to ask, and leave knowing what to decide. Bring it with you. Write in the answers. You'll be glad you did.

— Randy Smith, father of an autistic adult son and creator of specialneedstrustbystate.com

⚠ Before your meeting — do no harm. Do NOT transfer assets to your child, change a beneficiary designation to name your child directly, or sign paperwork you don't understand. Even well-meaning moves right now (gifting cash, adding your child to a bank account, naming them on life insurance) can disqualify them from SSI and Medicaid for months. When in doubt, wait for the attorney's guidance.

Before the meeting — what to bring

- Your child's birth certificate and Social Security card
- Current benefits paperwork (SSI award letter, Medicaid card, waiver enrollment, ABLE account statement)
- A rough estimate of assets you intend to pass on (house, retirement accounts, life insurance, investments)
- Names, ages, and locations of siblings and other family members who may inherit
- Your current estate plan, if you have one (will, trust, POA, healthcare directive)
- A short written description of your child's abilities, daily life, and support needs
- Relevant family context (divorces, estrangements, second marriages, complicated dynamics)
- This checklist, with your top three questions circled

Before the meeting — what to decide

- Rough idea of who might serve as trustee (family member, professional, bank, or combination)
- Whether grandparents or other relatives plan to contribute to the trust now or in their will
- Whether you want the attorney to also draft (or update) your own will, POA, and healthcare directive
- Your honest budget range — so you can speak up if a quote is far outside it

Cost reality check: In most states, expect a **third-party SNT** to run **\$2,000–\$6,000** (stand-alone) or \$3,500–\$8,000 as part of a full estate plan. A **first-party SNT** (self-settled, often funded by a settlement or back-pay) typically runs **\$3,500–\$8,000**. Pooled trust joinder agreements are usually \$500–\$2,000. If a quote is dramatically outside these ranges, ask why — there may be a good reason, or there may not.

Questions about their experience

1. How many special needs trusts have you drafted in the last 12 months?

Good: 20+ per year, with a mix of 1st-party and 3rd-party · **Caution:** Under 10 per year · **Walk away:** "I mostly do general estate planning."

2. What percentage of your practice is special needs planning vs. general estate planning?

Good: 50%+ special needs focus · **Caution:** 25–50% · **Walk away:** "Under 10% — I handle all kinds of trusts."

3. Are you a member of the Special Needs Alliance (SNA), Academy of Special Needs Planners (ASNP), or NAELA? Are you a CELA?

Good: Member of at least one; CELA (Certified Elder Law Attorney) is a strong plus · **Caution:** No credentials, but can point to 100+ SNTs drafted · **Walk away:** Can't name any of these organizations.

4. Have you drafted a first-party (self-settled) SNT in the last year? How often do you refer families to a pooled trust?

Good: "Yes, and I refer families to pooled trusts when that's the right fit — even though I don't earn a fee for that." · **Walk away:** "I never recommend pooled trusts." (Conflict of interest — pooled trusts are the right answer for many families.)

5. How often do you interact with SSA claims reps or state Medicaid eligibility workers?

Good: Regularly — they have relationships at the local SSA office and know the state Medicaid trust-review process · **Caution:** "Rarely, but I know the rules."

6. How do you stay current on rule changes (ABLE age expansion to 46, SECURE Act 2.0, SSA POMS updates)?

Good: Specific CLE programs, list-serves, national conferences, newsletters · **Walk away:** Vague or dismissive answer.

Questions about fees

7. Is your fee flat or hourly? If flat, what exactly is included? If hourly, what total range do most families land in?

Good: Clear flat fee with itemized inclusions, or honest hourly range · **Walk away:** "It depends — hard to say." You should leave the first meeting knowing the total range.

8. Are wrap-around documents (will, POA, healthcare directive, HIPAA release) included, or billed separately?

Good: Bundled package with a clear "here's everything you get" list.

9. What will it cost to amend the trust later — e.g., change trustees, update beneficiaries, react to a rule change?

10. Do you require a full retainer up front, or offer a payment plan? Do you carry malpractice insurance?

Good: Transparent payment terms; yes to malpractice insurance.

Questions about your state's rules

11. What's specific about an SNT in my state that most general estate-planning attorneys miss?

Good: Names specific state-level rules (statutes, Medicaid handbook sections, local case law). · **Walk away:** "Nothing really — it's the same everywhere."

12. How does my state's Medicaid program treat first-party vs. third-party SNT assets during eligibility review?

13. Does my state file estate-recovery claims against a first-party SNT remainder? What about a pooled trust remainder?

14. Are you familiar with my state's ABLE account program, and how to coordinate it with the trust?

Good: Knows the state's plan, current contribution limits, and how ABLE dovetails with SNT distributions.

Questions about what happens after the trust is drafted

15. Who do you recommend as trustee — family, professional, bank? Does your firm offer trustee services, and at what fee?

Good: Walks you through trade-offs honestly; transparent about whether their firm would profit from trustee services.

16. How do I actually *fund* the trust (life insurance, retirement beneficiary designations, will language), and will you help with those steps?

Good: Understands that most SNTs are created now and funded at death. Reviews beneficiary designations and coordinates with your will.

17. If grandparents or other relatives want to leave money to the trust, will you provide the right language for their estate documents?

18. Will you help me draft a Letter of Intent or explain how one should accompany the trust?

Good: Brings up the Letter of Intent *without being asked*. The LOI is the narrative that tells the trustee who your child is and how to care for them.

19. What's your timeline from engagement to signed trust? What's your response time when I email or call?

Good: Signed trust in 4–8 weeks; response time in 1–2 business days · **Caution:** 3+ months or vague response-time answers.

20. What's your continuity plan? If you retire or change firms, what happens to my file and the attorney-client relationship?

Green flags — what a good SNT attorney looks like

- ✓ **They ask about your child.** Abilities, daily life, diagnoses, what matters to them. A good SNT is built around a specific person, not a template.
- ✓ **They bring up the Letter of Intent without being asked.** This is the single clearest signal you're dealing with a real SNT attorney.
- ✓ **They explain Medicaid payback clearly.** The difference between first-party (payback required) and third-party (no payback) trusts should be crystal clear within the first few minutes.
- ✓ **They recommend coordinating with your existing estate plan.** The SNT doesn't live in isolation — it connects to your will, POA, beneficiary designations, and life insurance.
- ✓ **They say "I don't know, let me check" when appropriate.** The rules change. Humility is a good sign.
- ✓ **They ask about family dynamics.** Divorces, estrangements, blended families — these affect trustee choice and distribution planning.
- ✓ **They describe what happens at your child's death.** Remainder beneficiaries, payback, trust termination — they walk you through it without being asked.
- ✓ **They mention pooled trusts as an option.** Not because they're pushing you to one, but because they want you to understand the full menu.
- ✓ **The initial consultation runs 45–60 minutes.** Shorter usually means they aren't learning enough about your family to draft a trust worth the money.

Warning signs — keep looking if you see these

- ⚠ **"I do wills, trusts, and special needs — they're all the same."** They aren't. Generic estate-planning attorneys draft SNTs every year that quietly disqualify beneficiaries from SSI.
- ⚠ **No clear answer on fees.** You should leave the first meeting knowing the total range, not guessing.
- ⚠ **Can't name SNA, ASNP, or NAELA membership or equivalent credential.** Not a hard dealbreaker, but most experienced SNT attorneys belong to at least one.
- ⚠ **Rushing you.** A real SNT consultation runs 45–60 minutes. If you're out in 20, they aren't learning enough to draft a trust worth the money.
- ⚠ **No mention of the Letter of Intent or how the trust gets funded.** A trust without a funding plan is a document that protects nothing.
- ⚠ **"You need to sign today or your child will lose benefits."** False urgency. Real emergencies exist (imminent settlement, hospitalization), but most planning is not time-critical. Pressure to sign immediately is a red flag.
- ⚠ **Refuses to consider a pooled trust.** For many families, especially with smaller trust amounts, a pooled trust is the better answer. An attorney who won't consider it has a conflict of interest.
- ⚠ **Won't provide a written engagement letter.** Every professional engagement should be in writing.
- ⚠ **Can't explain what happens at your child's death.** If they can't walk you through the remainder and any payback, they haven't thought the trust through.

Attorney Comparison Worksheet

After meeting 2–3 attorneys, use this to decide.

There's no wrong answer in meeting more than one attorney. Most good SNT attorneys expect it. Score each on a 1–10 scale or simply yes/no, then compare.

Criterion	Attorney A	Attorney B	Attorney C
Attorney name & firm			
Years focused on SNT / elder law			
SNTs drafted in last 12 months			
Credentials (SNA / ASNP / NAELA / CELA)			
Total package cost (trust + wrap-around docs)			
What's included vs. billed separately			
Timeline to signed trust			
Explained things clearly (1–10)			
Asked good questions about my family (1–10)			
Seemed knowledgeable about my state (1–10)			
Brought up Letter of Intent? (Y / N)			
Willing to recommend pooled trust if appropriate? (Y / N)			
Any red flags observed			
Would I feel comfortable calling them in 5 years? (Y / N)			
Overall fit (1–10)			

Trust your instinct on overall fit. You'll be working with this person for a long time. The "best on paper" attorney isn't always the right one for your family. If two candidates score similarly, pick the one you'd rather call at 10 p.m. during a benefits crisis.

