

Checklist for Attorneys

Should Settlement Planning Be Considered?

Question 1: What benefits does your client receive? Please check all those that apply.

<u>Entitlement Benefits:</u>	<u>Needs Based Benefits:</u>
Social Security Retirement <input type="checkbox"/>	Supplemental Security Income (max limit per month is \$910.72 as of July 1, 2018) <input type="checkbox"/>
Social Security Disability <input type="checkbox"/>	Medi-Cal <input type="checkbox"/>
Social Security Disabled Adult Child <input type="checkbox"/>	IHSS (In Home Support Services) <input type="checkbox"/>
Medicare <input type="checkbox"/>	Section 8/HUD housing <input type="checkbox"/>
Alta Regional Center <input type="checkbox"/>	Food stamps (SNAP) <input type="checkbox"/>
	Veteran's Disability Pension <input type="checkbox"/>
	Veteran's Aid and Attendance <input type="checkbox"/>



If yes to **ONLY** the entitlement benefits listed above, your client will be entitled to keep these benefits even after a settlement. No settlement planning to protect these benefits is necessary.

If yes to **ANY** of these benefits, your client needs to consider settlement planning. Go to Question 2.

Question 2: What is your client's disability/disabilities? Check all of those that apply.

- Disability occurred prior to the age of 22
- Disability occurred prior to the age of 26
- Substance abuse issues
- Physical or mental impairment that will last 12 months or longer (or could soon lead to death) that prevents your client from engaging in substantial gainful employment (working to earn \$1,180 a month)
- Development disability
- Mental Illness
- No known disability, but on needs based benefits
- Blindness



If your client is disabled, your client should consider settlement planning. Even if your client is not "disabled" per Social Security's definition, we can create a plan to keep them on needs based benefits.

Question 3: What is the age of your client with a disability?

- Under 65, consider special needs trusts 65 and over, consider pooled trusts

Question 4: Does your client have legal capacity? Yes No

- If no, then is there an existing:
- Conservatorship
 - Power of Attorney in effect
 - Trusted family member alive, well and willing to help?

If your client has capacity, under current law, your client is able to engage in his or her own settlement planning, including the creation of a special needs trust for his or her own benefit. If your client does not have capacity, a family member can utilize the court to protect your client's settlement and keep the client on needs based public benefits. Also, a conservatorship may become necessary.

Question 5: What is the amount of assets being received by the injured person?

- Less than \$15,000.00 (can consider ABLE account or spend down)
- Between \$15,000.00 and \$250,000.00 (consider special needs trusts, pooled trusts, spend downs, gifting depending on disability)
- Over \$250,000.00 (consider special needs trusts with a Medicare Set Aside)

Question 6: What is the person's current living situation?

- Living independently in home or apartment Living in a group home
- Living with assistance in home or apartment Institutionalized

Settlement planning may be beneficial here to ensure that the settlement proceeds keep your client safe and in the living situation that works best for him or her.

Question 7: What is the person's working ability?

- Has not ever worked and/or unlikely to work Working but modest earnings
- Likely to return to work in the future May be able to work with career change

If your client receives no needs based public benefits, but your client is unlikely to work again in the future, your client may qualify for future benefits and should be instructed to apply for benefits. Settlement planning should be considered for all clients who cannot work or are only capable of earning a modest living.