

Paine v. Sullivan: The case against remote document drafting.



I use the modern communication technology to provide prompt service for you. In-person meetings are also essential to properly serve your needs. This need for the estate planning attorney to meet with the client is illustrated in *Paine v. Sullivan*, the case of a 92 year old dementia patient who signed will documents. The documents were mailed to the client, and then signed and witnessed in the presence of employees at the client's bank. The result: costly litigation still going on in the Massachusetts Probate and Appeals Courts.

>> [Read case summary.](#)

>> [Read the July, 2011 Appeals Court case decision.](#)

>> [Summary of Probate Court trial testimony.](#)

>> [How an elder law attorney prepares a will document, with ways to protect the interests of clients in difficult health situations.](#)

Elder Law Attorneys Advocate for Pooled Trust Equity.



The National Academy of Elder Law Attorneys has joined the Senior Citizens Law Center and AARP in a case involving supplemental needs funds for nursing home residents. >>

[Portal to PACER to read docket and briefs](#) in the Eighth Circuit Court of Appeals.

At issue: whether Medicaid law, 42 U.S.C. §1396(d)(4)(C), sets an age limit for transfers to pooled trusts. A federal judge in North Dakota held that people over age 65 cannot transfer money to a pooled trust without incurring a Medicaid penalty. He based his decision on a July, 2008 [Chicago Regional State Letter on Pool Trusts](#) from CMS to Medicaid administrators in the upper Midwest. A [similar letter was circulated in New England in May, 2008](#), but pooled trusts have continued to provide an alternative to total impoverishment for Massachusetts nursing home residents.

Elder Law Attorneys are supporting the appeal of the North Dakota district court decision that provided a concise history of trusts and Medicaid eligibility, but fell short on support for its ruling on the main issue. CMS has never issued regulations on pooled trusts, so the judge gave "substantial deference to an agency's interpretation of its own regulations" (the 2008 CMS letter). Hoping the parties would go home, the judge concluded with an admonishment: "The insanity associated with the pursuit of litigation in state and federal court - over merely \$19,000 - boggles the mind of any reasonable person." >> [Read district court opinion.](#)

There is always something we can do to help avoid total impoverishment for a nursing home resident who needs Medicaid coverage. A pooled trust may be part of the solution. >> See: [Ways you can use a Supplemental Needs Trust to make life better for a nursing home resident](#), and a [Comparison chart for Pooled Trusts in Massachusetts](#).

[Supplemental Needs Trusts and pooled trusts are also an option for people under age 65.](#)



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