



The Ultimate Guide

for Choosing a
Special Needs Trust Attorney

#BestLife



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VEST ULTIMATE GUIDES
for Navigating Life with Special Needs

The Ultimate Guide for Choosing a Special Needs Trust Attorney

Beware the "Sometimes Special Needs" Attorney

Choosing the right attorney to help you establish a Special Needs Trust and plan for your child's future is a critically important decision.

After all, your child's lifetime care, financial security, and well-being will depend on the plans you make now with your Special Needs Trust ("SNT"). With so much at stake, you must make sure that your attorney has the skills and experience necessary to help you create a truly effective SNT.

Moreover, you want to find someone who is easy to work with as the years go by. This is going to be a long-term relationship, and you want to make sure you truly enjoy working with your attorney.

Nowhere is proper trust planning more important than when creating a trust for a child with special needs. Innocuous drafting errors or failure to anticipate and thoroughly plan for complex transitions can cause devastating impacts for your child's future after you're gone.

I have found that parents are happy to pay reasonable fees for a great attorney who can help them create the ultimate SNT, but your expectations must be very high from the outset to make sure you are receiving quality representation.

→ This article will break down the 5 essential qualifications you should be looking for in your search for a special needs trust attorney.

Plus, we're going to share our "Special Needs Attorney Quiz" – 20 questions that every special needs attorney should be able to answer. If they can't, then they're probably not the right attorney for you.

#1. AFFABILITY AND EMPATHY

OK, this is actually a "two-fer" qualification, but as you will see, these personality traits go hand in hand. While **experience** (#2 on our list) is an essential "*provable*" factor, I consider **affability/empathy** the most important "*feeling*" factors in your attorney selection.

Do you like this person? Is her/his heart in the right place? Does she treat you with respect? Does he take time to listen to you and truly understand your concerns?

Or does the attorney just launch into a monologue describing their impressive credentials and how they're going to solve all of the difficult legal obstacles you are facing?

→ **Empathy is “the capacity to understand what another person is experiencing from within the other person’s frame of reference, i.e., the capacity to place oneself in another’s shoes.”**

This is where you really need to trust your own judgment. It should be obvious within 1 or 2 minutes after first meeting the attorney whether she or he truly understands where you are coming from as a special needs parent.

You need to rely on your internal alarm system to steer you away from an attorney who does not click with you. Trust your gut here. If this is not someone you really like, then no matter the experience and legal skills; this is not someone for you.

→ **Your attorney should be friendly, but you are not there to find a new fishing buddy or wine club pal. An experienced attorney does not hesitate to be blunt about your ultimate demise**

You need an attorney who will get right to the point and "tell it as it is." Someone who will give you useful, real-world advice to solve the unique problems you face as a special needs parent.



A pleasant, empathetic, and supportive demeanor are truly significant. And having a kind sense of humor would certainly help!

#2: EXPERIENCE

When it comes to special needs planning, deep experience is essential.

That might seem obvious, but you have to be careful here. As in all professions, it takes thousands of hours and many years of focus to truly become a master of your trade. You certainly don't want to work with an attorney who is going to be "learning on the job" with your child's special needs trust.

Over the past 20 years of my special needs law practice, I've come across the work-product of many estate planning attorneys who really should have never been drafting a special needs trust at all. Unfortunately, the mistakes they make can have dire consequences.

Post-death repair of special needs trusts is complicated, will often require court intervention, may result in loss of public benefits for your child, and will certainly be costly and stressful for all concerned.

The reality is that many attorneys simply lack the experience to properly plan for the multitude of complex scenarios that will unfold in the life of a child who has special needs. Depending on your child's age, we're talking about a special needs trust plan that needs to last and be effective for as long as 80-90 years!

Unless your attorney has deep experience in working with special needs families, it's going to be virtually impossible for that attorney to accurately anticipate and plan for the many transitions and contingencies that will occur over your child's lifetime.

→ A good rule of thumb in the experience qualification would be to make sure your attorney has at least 10 years experience in both drafting special needs trusts and handling conservatorships (adult guardianship) for young adults with special needs.

#3. SPECIALIZATION

Is the attorney a "sometimes special needs" attorney? This is a subset of #2 - Experience. Your attorney should be focused exclusively on planning for families with special needs.

Beware the attorney who is a generalist, and whose website lists "special needs trusts" on a laundry list of general legal services they offer.

Now, of course, there will be a lot of estate planning attorneys who are going to tell you that they are experts at special needs trust planning, but that's to be expected. I'm not saying that attorneys would intentionally misrepresent their qualifications and experience in order to get your business.

Most estate planning attorneys are aware of how special needs trusts work, from a legal standpoint, and they are likely qualified to draft a "legally sufficient" special needs trust.

→ But, as a special needs parent, you and your child need much more than just a legal document. [We talk more about the complexities of planning for life with special needs here.](#)

There are a lot of attorneys out there to choose from, and you should focus on specialization in working with special needs families as a primary factor in making your choice.



Your neighbor's cousin Vinny is probably not a good choice!

#4. REPUTATION

What really matters is not what they say about themselves, but what other people say about your prospective special needs attorney.

This is where you turn to your close circle of friends and other special needs families. Of course, your Facebook groups are a great resource for learning about a special needs attorney that others recommend. You can also ask your child's special education teacher or aide. And you can check with your child's service providers to see if they have any recommendations.

Wherever your source, everyone should be using terms like "awesome" and "fantastic" and "the best ever" and be truly excited when recommending a special need attorney for you.

→ Reputation is right up there with experience in terms of qualifications. But remember, all of these five recommended qualifications should be viewed as a composite.

Your special needs attorney should be able to check all five boxes, and there will be some areas that carry greater weight, depending on the attorney.

And oh yes, there's one more critical qualification...

#5. MUST SPEAK DUTCH



As part of their passage into the special needs world, many parents have read [“Welcome to Holland” by Emily Perl Kingsley](#).

Kingsley's essay describes the excitement of boarding her flight for a long-anticipated trip to Italy (the birth of her child). However, the world changes drastically when her plane unexpectedly lands in Holland (*the birth of her child with disabilities*). I wrote [more about Holland here](#).

I sometimes joke with my clients about how I can speak Dutch. They get the joke when our discussion focuses on their current experiences and obstacles in life with a child who has special needs.

I/DD, IEP, ITP, ABA, SSI, SSDI, FAPE, ADL, IDEA - we could fill ten pages with the specific "Dutch" acronyms and terms that special needs parents must learn.

→ Having a practical understanding of the lexicon of the special needs world is an essential qualification for your special needs attorney.

I've included below ["20 questions to ask your potential special needs attorney,"](#) from which you might choose some currently relevant terms in your life, and weave them into your initial attorney interview.

I hope you find this Guide to be useful in your search for a Special Needs Attorney.
-Michael Pearce, Founder, VestLife

[NEXT PAGE >>](#) 20 Questions

An experienced special needs attorney should be able to answer these questions. If they can't, then they're probably not the right attorney for you.

20 Questions for Your Potential Special Needs Trust Attorney

1. What is a “d4A” Trust, and how many have you drafted?
2. Will our Special Needs Trust be a First Party or Third Party Trust?
3. What is a “Stand Alone” Special Needs Trust, and do you use them?
4. Will our child’s SNT be an “exclusive benefit” trust?
5. Do you create SNTs primarily for children with I/DD?
6. Can our SNT receive survivor benefits on my pension plan?
7. Should our SNT be a beneficiary of my IRA?
8. What is a Trust Protector, and do we need one for our SNT?
9. What is SSI?
10. What is SSDI?
11. What is an IEP?
12. What is an ITP?
13. What is IDEA?
14. What is FAPE?
15. What is ABA?
16. What is ADL?
17. What is SLS?
18. What is the Medicaid Waiver program for people with DD?
19. What is the Medicaid Waiver program for HCBS?
20. What is an “overfunded” SNT?

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