

Social Security
A primer for Attorneys
By Tracy Tyson Miller

Social Security benefits fall into two categories: benefits you draw based upon your or another worker's Social Security taxes; and benefits you draw as a result, in part, of indigence. Paying Social Security taxes on your earnings and that of your business and household employees is crucial. It protects your ability to draw disability and retirement benefits; it protects your spouses' ability to draw benefits as a widowed spouse; it allows your children and your children's other parent to draw benefits if you die; and most importantly, if you have a child who becomes disabled before the age of 22, it allows your child to potentially draw benefits on your account.

In addition to being personally valuable, Social Security benefits issues touch issues in other areas of law.

Criminal Defense Attorneys

If you have a client going to jail for over 30 days or being kept in a mental facility pending a determination as to the ability to stand trial, that person is ineligible to receive Social Security benefits for each month that he or she is being maintained in such a facility, although auxiliary beneficiaries may still be paid. If a person continues to receive benefits, an overpayment will likely be charged. Advise him to let SSA know, in writing, that he is in a state facility. If a person is in jail for over 12 months, he will need to reapply. The prison may have a liaison that can help him reapply prior to release. Anyone who becomes disabled as a result of committing a felony may not apply for disability benefits based upon that disability. Legitimate exceptions exist, so this 'rule' should not deter a person from applying for benefits; however, the rule should encourage him to seek counsel prior to spilling every detail of the disability-causing felony to SSA.

Estate Planning Attorneys

If an estate or trust beneficiary is receiving SSI (welfare) benefits, the receipt of any additional sums will jeopardize his ability to receive cash, and more significantly in Florida, Medicaid. Consider setting up a Special Needs Trust or a Pooled Trust to preserve eligibility for SSI/Medicaid. If a parent expresses concern about an adult child's inability to care for himself, consider whether that child might be a candidate for Social Security Disability benefits on the child's own record, or possibly under a parent's earning record.

Personal Injury Attorneys

Any client who will not be able to return to work within 12 months should apply for Social Security Disability benefits. Ask your clients if they are receiving any benefits from SSA. If your client might be eligible to receive or is receiving SSI benefits, talk to a

Social Security attorney about how to structure and spend down the settlement or whether a trust attorney should be bought in to set up a Special Needs Trust. If you don't know what those terms mean, call a Social Security attorney.

Wrongful death claims, the spouse, the children and possibly the step children of a deceased individual who was insured under the Social Security Act may become entitled to survivor benefits, depending on a number of complex factors. Stepchild benefits can be tricky, but these benefits should be pursued if the decedent was financially supporting the children. Call SSA as soon as possible; retroactive benefits are limited by application date.

Family Law Attorneys

Clients who are close to being married ten years should consider delaying final judgment until after the ten year anniversary in order to protect their ability to draw divorced spouse benefits. If you have a non-custodial parent who is receiving disability benefits, you may be able to offset his child support obligation with benefits paid directly to the custodial parent for the use and benefit of the children. Consider getting unpaid support reduced to a judgment. Presenting the judgment to SSA when the debtor spouse begins receiving Social Security benefits can result in a significant portion of the check being sent to the judgment holder.

Worker's Compensation Attorneys

Make sure that your clients have access to and keep information about worker's compensation benefit checks paid to them as well as their official settlement documents. Social Security cannot process payments without these documents, which are used to determine if there will be an offset. Lack of documentation regularly causes delays of 6-8 months. When documentation is presented promptly, the lengthy delays are only those one normally sees with SSA.

Bankruptcy Attorneys

A United States Supreme Court case issued in December 2005 allows the U.S. Government to withhold Social Security benefits to repay student loans. Debtors should have this information when addressing issues surrounding outstanding student loan debts.

All Attorneys

Pay your own Social Security taxes. If you have a spouse who is working part time or earns a limited income while pursuing a hobby, consider filing a tax return for that income. If you have a spouse working in your office, pay that spouse, file a tax return and pay taxes on those earnings. Do not pay household help under the table; you are not helping that employee. People at lower income levels are less likely to have skills that transfer to other work if they become disabled. Failing to pay Social Security taxes on their earnings will limit their ability and the ability of their dependents to draw benefits to

which they and their dependents are entitled. And, I am fairly confident it is illegal although I do not profess to know much about criminal law.

Social Security is an extremely complex area of practice. It is difficult for anyone to qualify for disability benefits, so you really want to help yourself, your spouse or your employees, household or otherwise, purchase a private disability policy. It should be one that does not require a person to be disabled under Social Security rules in order to qualify.

Tracy Tyson Miller has limited her practice to Social Security claims for over ten years. She can be reached at tracytysonmiller@bellsouth.net or through this website.