FILE 2807 — December 1, 2023

Proposed opinion recommended by staff NOT APPROVED BY ETHICS COMMISSION. To be considered at public meeting (See attached notice.)

FINANCIAL DISCLOSURE

MEMBER OF THE COMMISSION ON ETHICS DISCLOSING TRUSTS AND SECONDARY SOURCES OF INCOME ON CE FORM 6

To: Laird A. Lile, Commissioner (Naples)

SUMMARY:

A Form 6 filer who is the beneficiary of a trust is not required to disclose their beneficial interest in that trust as an asset when there is a legal instrument that prevents them from selling, borrowing against, or otherwise alienating their beneficial interest. Guidance is also provided regarding the disclosure of a grantor's interest in a particular trust. A Form 6 filer would also be required to disclose eligible clients as secondary sources of income on his CE Form 6, even if disclosing the identities of those clients would violate his duty of confidentiality as an attorney. Referenced are CEO 74-3, CEO 74-69, CEO 76-164, CEO 78-1, CEO 78-37, CEO 78-95, CEO 80-64, CEO 83-3, CEO 87-84, CEO 89-5, CEO 04-8, CEO 12-10, and CEO 14-18.

QUESTION 1:

Is a filer required to disclose his beneficial interest in a trust when the trust has a spendthrift clause that prevents him from borrowing against trust property and income or from otherwise alienating his interest in the trust?

This question is answered in the negative.

You are a recently-appointed Commissioner of the State of Florida Commission on Ethics. As a result of a recent change in the law, the members of the Commission on Ethics will be required to file CE Form 6, "Full and Public Disclosure of Financial Interests," beginning on January 1, 2024. § 112.3144(1)(e), Fla. Stat. (2023); Ch. 2023-049, § 3, Laws of Fla.[1]

You explain that you are the beneficiary of a trust and that the trust has a spendthrift clause. The spendthrift clause operates to prevent you from accessing the trust corpus and from selling or otherwise alienating your beneficial interest or a portion of your beneficial interest. You express difficulty in assigning a value to such an interest given that you have no ability to market it. According to you, the trust instrument empowers the trustee, who is not you, to make distributions to the beneficiaries and, can act to make distributions that satisfy the debts of the beneficiaries. With that background, you ask whether such a beneficial interest in a trust must be disclosed and, if so, how to valuate it.

Article II, Section 8(j)(1), Florida Constitution, requires all Form 6 filers to disclose all assets valued in excess of $1,000. The Commission has consistently opined that, in the contexts of both CE Form 6 and CE Form 1, an asset is anything that can be sold, alienated, or otherwise made available to settle debts. See, e.g., CEO 78-1, CEO 78-95, CEO 87-84, CEO 89-5, CEO 12-10, and CEO 14-18.

We have had but few opportunities to opine on the application of the financial disclosure requirements to various holdings in trusts. We first examined the disclosure of beneficial interests in trusts as assets in CEO 78-1, where we found that a filer's beneficial interest in a testamentary trust was an asset requiring disclosure if its value exceeded the disclosure threshold. In that

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[1] Under this same change in the law, mayors and elected municipal officers also will be required to file CE Form 6, "Full and Public Disclosure of Financial Interests," beginning January 1, 2024.

opinion, we recognized the difficulty the filer might have in valuating the beneficial interest, given "the lack of an established market for such interests," but because the interest was technically marketable, we proposed the filer employ valuation methods in the federal regulations for estate and gift taxation. We confirmed our view that a beneficial interest in a trust is an asset in CEO 83-3, when we examined a filer's interest as a life beneficiary in real property owned by two family trusts. Once again, we advised the filer to apply the applicable guidelines of the Department of the Treasury to valuate the beneficial interest. We have not had the opportunity since then to opine on the disclosure of beneficial interests in trusts.[2]

The situation you present, however, is distinguishable from CEO 78-1 and CEO 83-3. While the interests held by the filers in those opinion requests were difficult to valuate due to a scarcity of buyers and "the lack of an established market for such interests," they were technically marketable. You, on the other hand, are not legally capable of marketing your beneficial interest. According to you, a spendthrift clause in the trust instrument operates to prevent you from alienating your rights to future distributions from the trust. Because you do not have a legal right to sell, borrow against, or otherwise alienate your beneficial interest in the trust, your beneficial interest in the particular trust with the spendthrift clause is not an asset and, therefore, is not subject to disclosure on CE Form 6 as an asset.[3]

The ability of the trustee to make distributions to settle the debts of the beneficiaries will not cause this trust to be your asset for purposes of CE Form 6. The trustee, who acts as a custodian of a trust and in accordance with any instructions provided in the trust instrument, makes these

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[2] Additionally, we have opined on whether other interests in trusts are assets. In CEO 78-37, Question 4, we opined that the grantor of a trust must disclose the trust corpus as an asset where the trust was revocable and she could access and sell the trust corpus at will. In CEO 78-95, however, we found that the corpus of a trust was not an asset of the trustee.

[3] To be clear, it is not the presence of a spendthrift clause, alone, that requires this result, but the fact that the operation of this specific spendthrift clause deprives you of the ability to sell, borrow against, or otherwise alienate his beneficial interest in the trust or a portion of that interest.

determinations alone and we have never said that the assets of another, if used to settle a filer's debts, will be considered to be the filer's assets, though it would very likely be considered to be income to the filer.

The trust with the spendthrift clause, however, may still be subject to disclosure as a primary source of income on your financial disclosure form. You will be required to disclose the trust as a primary source of income if (1) you receive distributions from the trust that constitute "gross income" for purposes of filing your federal income tax return and (2) the amount of gross income you received from the trust exceeds the applicable disclosure threshold, which, in 2024 (for disclosing the 2023 year) is $1,000 for CE Form 6 and $2,500 for CE Form 1.

Question 1 is answered accordingly.

QUESTION 2:

Is a filer who is the grantor of an intentionally defective grantor trust required to disclose the trust as a primary source of income when the filer is responsible for paying income taxes due from income earned from trust property?

This question is answered in as follows.

You inform us that you are the grantor of a different trust. You are not a beneficiary of this other trust. Of note, you explain that the trust is an intentionally defective grantor trust (IDGT). You ask whether you will be required to disclose the trust as a primary source of income if you pay income taxes due from income earned from trust property.

To understand what an intentionally defective grantor trust is, one must understand how income derived from trust property is taxed. In the typical case, a grantor establishes a trust and, when the trust is established such that the grantor no longer retains the power to control or direct the trust's income or assets, the trust, rather than the grantor, is responsible for paying taxes owed on income derived from trust property. When, however, a trust is set up in such a way that the grantor may exhibit control over the trust's income or assets, the Internal Revenue Service (IRS) refers to that as a "grantor trust," which is a designation indicating that the trust is ignored as a separate legal entity and the grantor becomes responsible for income taxes derived from trust property. 26 U.S.C. §§ 671-679. By paying the income taxes of the IDGT, the grantor can enable the trust to retain the income its property had earned, thereby growing the future distributions to the beneficiaries, and because tax payment is not taxed as a gift to the beneficiaries, though it is really for their benefit, it is more efficient for a grantor to pay the trust's income taxes than to gift the same amount of money to the beneficiaries. For that reason, grantors might intentionally establish a trust that fails to protect them from income tax liability (a grantor trust), hence the name "intentionally defective grantor trust."

There are several common defects that grantors might employ in a trust to establish an IDGT. Most commonly, an IDGT can be established if a provision is added to the trust instrument allowing: (1) the grantor or a nonadverse trustee to have the power to add beneficiaries to the trust; (2) a nonadverse party to have the power to appoint trust income or principal during the grantor's lifetime; (3) the grantor or a nonadverse trustee to apply trust income to the payment of premiums for life insurance for the grantor or the grantor's spouse; (4) the grantor to have the right to acquire trust property by substituting assets of equivalent value; or (5) the grantor to have the right to

borrow from the trust without proper interest or security. Michael V. Bourland, *Estate Planning for the Family Business Owner*, CV004 ALI-ABA 21 (July 10 - 12, 2013).

You inform us that, as a grantor, you established an IDGT that has been rendered a grantor trust by the inclusion of a provision in the trust instrument that allows you, as the grantor, to substitute assets of equivalent value from the trust. You explained to Commission staff that this essentially affords you the opportunity, before your demise, to swap high-basis property into the trust for low-basis property—probably cash—to achieve a favorable tax outcome for the beneficiaries. Although the trust instrument grants you the right to perform these asset substitutions, you have not availed yourself of the option and do not plan to use it in the near future; you have included it to create the defect in the trust so that you become responsible for the income tax liability derived from trust property.

To make a proper disclosure of their income, Form 6 filers are required to disclose "each separate source and amount of income which exceeds $1,000." Article II, Section 8(j)(1)b., Florida Constitution. In the instructions for the 2023 CE Form 6,[4] which are promulgated through rulemaking, explain:

> "Income" means the same as "gross income" for federal income tax purposes, even if the income is not actually taxable, such as interest on tax-free bonds. Examples of income include: compensation for services, gross income from business, gains from property dealings, interest, rents, dividends, pensions, IRA distributions, distributive share of partnership gross income, and alimony if it is considered gross income under federal law, but not child support. Where income is derived from a business activity you should report the income to you, as calculated for income tax purposes, rather than the income to the business.

[4] The instructions for the 2023 CE Form 6, which are effective on January 1, 2024, can be viewed at: https://disclosure.floridaethics.gov/2023/form/6/instructions/print (viewed November 20, 2023).

(Emphasis added.) Similarly, in CEO 04-8, we considered the request of a member of the Legislature (Form 6 filer) who sought to report his income where he had declined to accept the salary from his private employment during the days he spent engaged in legislative session and district duties. We informed him that "the correct manner in which to report income on the Form 6 is the same way it is reported it to the IRS, i.e., the gross income actually received, rather than the position's annual salary." (Emphasis added.)

Your scenario, however, is distinguishable from CEO 04-8. In CEO 04-8, the gross income reported to the IRS was representative of the gross income the filer actually received. For you, however, the gross income you will report to the IRS (which will include the tax liability derived from the property of the grantor trust) is not representative of the gross income you actually received. Although you are responsible for the tax liability associated with the gross income of the IDGT as the grantor of a grantor trust, you have not actually received, will not receive, and are not entitled to any of the income earned by the trust.

As we have said before, "[t]he intent of the [f]inancial [d]isclosure [laws] is to make the public aware of instances where a conflict of interest might arise between a public duty and a private business transaction or professional activity." CEO 74-3. We do not see how your disclosure of this IDGT as a primary source of income would serve that purpose, given that it is not, in reality, providing any income to you and you are not entitled to any income from it.

We distinguish the particular IDGT you describe from a typical limited liability company (LLC), the gross income of which passes through to the LLC members for purposes of taxation. While an LLC can retain or disburse to its members the income it earns, the actual income from the IDGT you describe will never enrich you personally.

A review of the different methods of creating a grantor trust makes obvious that some allow the grantor the option of accessing the income, for example, to effectuate interest-free borrowing without security or to purchase life insurance for the grantor and the grantor's spouse. In those instances, where the defect in the IDGT allows the grantor to access the income for which he or she is paying the income tax, the gross income should be disclosed as a primary source of income.[5]

In your situation, where you are not able to access the trust income and where you have no ability to direct the use of the trust's income, we find that you are not required to disclose the gross income associated with this specific IDGT as a primary source of income.

In conclusion, you are not required to disclose the particular IDGT you describe as a primary source of income or as an asset. If you establish other IDGTs and render the trust as a grantor trust by some other method, please contact Commission staff for further ethics guidance.

Question 2 is answered accordingly.

QUESTION 3:

Will a filer who is an attorney be required to disclose the identities of his legal clients as secondary sources of income on a CE Form 6 if such disclosures will place him in violation of the Rules Regulating the Florida Bar?

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[5] Similarly, a review of the methods for creating a grantor trust raises the question as to whether the access to the trust property afforded to the grantor requires the disclosure of the trust property as an asset on CE Form 6. While we cannot making findings as to all the methods by which a grantor trust can be created, and other IDGTs established by other filers might behave differently, we find in your situation that the ability to substitute assets (i.e. the ability essentially to buy trust property with an equivalent value of cash) does not require the disclosure of trust property as an asset. Your situation is distinguishable from CEO 78-37, Question 4, wherein we found that the grantor of a revocable trust was required to disclose trust property as an asset due to her ability revoke the trust to access and sell the trust property. The trust you established is irrevocable and you can only access the trust property if you buy it from the trust. Filers are not required to disclose all the worldly things owned by others that they *could* buy. In other words, the revocable trust could effectively be treated as an extension of the filer's estate due to the ease of revocation, but accessing trust property in the IDGT you established would require you to trade equally-valued consideration. Put another way still, we do not believe it would be accurate to include the trust property of the IDGT in your net worth calculation when the only way you could acquire that property would be to decrease your net worth by an amount equal to what you were acquiring from the trust through an asset swap. From that point of view, it is obvious the trust property in the IDGT are not your assets.

Question 3 is answered as follows.

In your letter of inquiry, you also ask if you must disclose eligible clients of your law firm as secondary sources of income on your CE Form 6, even if such disclosures will place you in violation of Rule 4-1.6(a) of the Rules Regulating the Florida Bar. Before addressing your question, the following discussion is offered to clarify when a secondary source of income must be disclosed.

The requirement to disclose secondary sources of income on a CE Form 6 is found in Article II, Section 8(i)(1) of the Florida Constitution, which states:

> Full and public disclosure of financial interests shall mean filing with the custodian of state records by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of $1,000 and its value together with one of the following:
>
> a. A copy of the person's most recent federal income tax return; or
>
> b. A sworn statement which identifies each separate source and amount of income which exceeds $1,000. The forms for such source disclosure and the rules under which they are to be filed shall be prescribed by the independent commission established in subsection (f), <u>and such rules shall include disclosure of secondary sources of income</u>.

(Emphasis added).[6]

Using this constitutional provision as authority, the Commission adopted Rule 34-8.005(2) of the Florida Administrative Code, which defines the phrase "secondary source of income," and sets out the formula for disclosing such a source on a CE Form 6, as follows:

> A "secondary source of income" shall mean any one customer, client or other source of income which provides in excess of 10% of the total income of a business entity, as shown on that business entity's most recently filed income tax return, during the previous tax year in which a person subject to full and public disclosure of financial interests own

[6] The CE Form 1 ("Statement of Financial Interests" contains a similar requirement to disclose secondary sources of income, but the authority for requiring the disclosure on that particular form comes not from the State Constitution, but from the Florida Statutes. See § 112.3145(3)(b)2, Fla. Stat.

> in excess of five percent (5%) of the business entity's total assets or capital stock and from which such person derived in excess of $1,000.00 income during the previous tax year.

Essentially, for any particular year, if a Form 6 filer owns over 5% of the total assets or stock of a business entity, and received over $1,000 in gross income from that business entity, then he or she must disclose—as a secondary source of income—any customer or client providing 10% or more of the business's gross income during that year. Importantly, this formula does not require a filer to list every customer or client of a business, but only those customers and clients exceeding the reporting threshold. The formula also is included in the instructions to complete the CE Form 6, which are incorporated by reference in Rule 34-8.001(2)a. and Rule 34-8.002(1) of the Florida Administrative Code.

Assuming the filer has an eligible secondary source of income to disclose, the CE Form 6 directs them to identify the secondary source's name, address, and principal business activity.[7] It is this requirement to disclose the identity of the secondary source that is at issue in your inquiry, as you raise concerns that disclosing the identity of clients of your law firm will violate your duty of confidentiality towards those clients under Rule 4-1.6(a) of the Rules Regulating the Florida Bar (the Florida Bar confidentiality rule).

The question of whether an attorney filing a financial disclosure must disclose a legal client as a secondary source of income was raised soon after the Commission's inception, and it was determined—and reiterated in subsequent years—that legal clients exceeding the reporting thresholds qualify as secondary sources and should be disclosed. In CEO 76-164, we found in Questions Two and Three that those legal clients meeting the criteria for disclosure as secondary sources must be disclosed. And in CEO 80-64, we informed a public officer that if a client of his law firm exceeded

[7] Similarly, the CE Form 1 directs the filer to disclose the name, address, and principal business activity of each secondary source of income.

the 10-percent reporting threshold, that client should be disclosed as a secondary source assuming all other criteria were met. While CEO 76-164 and CEO 80-64 were both issued to CE Form 1 filers, the reasoning contained in those opinions applies equally to CE Form 6 filers.

We also have been cognizant of attorney-client privilege, but have found this concept does not justify withholding a client's identity on a Commission form. Attorney-client privilege is a statutory principle, codified in Section 90.502, Florida Statutes, which protects confidential communications made between lawyer and client. CEO 74-69 addressed whether attorney-client privilege allowed a public officer to refrain from disclosing the name of a firm client on a CE Form 2 ("Quarterly Client Disclosure"), which is a separate form created in the financial disclosure statutes. See § 112.3145(6), Fla. Stat. The Commission found disclosing the client's name would not constitute a "breach of [the filer's] ethical obligation of confidentiality to [a] client, since the attorney-client privilege does not attach to the fact of employment nor the identity of the client. Therefore, disclosure of the client's name must be made as required by Section 112.3145[.]" See Silverman v. Turner, 188 So.2d 354 (Fla. 3d DCA 1966) (finding an attorney was not able to assert attorney-client privilege with respect to the identity of a client).

Your inquiry, though, does not concern statutory attorney-client privilege, but whether the disclosure of your client's identity would violate the duty of confidentiality found in Rule 4-1.6(a) of the Rules Regulating the Florida Bar. Rule 4-1.6(a) states "[a] lawyer must not reveal information relating to a client's representation[,] unless the client gives informed consent." The Rule sets out several exceptions, although you indicate none is likely to apply in the disclosure context.

Importantly, statutory attorney-client privilege is related to the duty of confidentiality set out in the Rule, but the concepts are not interchangeable. Attorney-client privilege "protects only communications to and from a lawyer." Coffey-Garcia v. S. Miami Hosp., Inc., 194 So.3d 533, 537

(Fla. 3d DCA 2016). The confidentiality rule, by contrast, has been found by the Professional Ethics Committee of the Florida Bar to be "broader than the attorney-client privilege" and to relate to "*any* information relating to the representation of a client[.]" Florida Bar Professional Ethics Comm. Op. 07-1 (emphasis added); see also Comment to Rule 4-1.6(a), F.A.C. (stating "[t]he confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source").

We have not previously addressed the effect of the confidentiality rule on financial disclosure. That being said, we only have the authority to issue opinions concerning the applicability and interpretation of Part III, Chapter 112, Florida Statutes (the Code of Ethics) and Article II, Section 8, of the State Constitution. § 112.322(3)(a), Fla. Stat. We have no jurisdiction to interpret the Rules Regulating the Florida Bar. Accordingly, whether or not you would be in violation of the duty of confidentiality under Rule 4-1.6(a) were you to reveal the identities of clients as secondary sources on a financial disclosure is beyond our ability to determine, and is a question that should be directed to the Professional Ethics Committee of the Florida Bar.[8]

In Florida Bar Professional Ethics Opinion 77-25, the Professional Ethics Committee was asked whether an attorney would be in violation of his or her duty of confidentiality were he or she to disclose a client's identity on a financial disclosure. The Committee deferred on answering whether the duty of confidentiality automatically extended to a client's identity, indicating that would have to

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[8] Without expressing any opinion concerning the applicability of the Rule to the identity of a client, we note this question appears unsettled. Compare Abdool v. Bondi, 141 So.3d 529, 553-554 (Fla. 2014) ("[w]hile the duty of confidentiality is broad, it does not protect all information regarding a client. Rather, an attorney may generally disclose the identity of a client or the generalities of a conflict without disclosing confidential information or violating the duty of confidentiality"); with Fla. Bar Professional Ethics Comm. Op. 93-5 ("the [C]ommittee has opined that a client's identity may be confidential" under Rule 4-1.6); Florida Bar Professional Ethics Comm. Op. 77-25 ("[t]he answer to whether or not the sole fact of the identity of a client (as compared to other information received from a client or otherwise gained from a lawyer's professional relationship with a client) is a 'confidence' or 'secret' [] may be different in varying circumstances[,] and can only be decided on a case by case basis").

be determined on a case by case basis. However, the Committee went on to find that, in matters where the duty was applicable, the attorney would have to make a choice, stating:

> [W]e believe that in instances where client identity is of a confidential or secret nature, the lawyer who is a public official and subject to the financial disclosure laws as interpreted under the foregoing assumption has a choice to make of the type indicated below in order to accommodate the foregoing ethical concerns. His choice in those instances [is] between whether he will continue as a lawyer for the client or as a public official. If he is to continue being a public official, he must either find a way (e.g., by client consent) to remove the fact of client identity from the category of a confidence or secret or he must refuse or withdraw from the representation in such manner that the confidence or secret will not be revealed. On the other side of the coin, if the lawyer is to continue being the client's lawyer and if client identity is to remain a confidence or secret, he should not continue being a public officer.

We cite that language solely to indicate how the Florida Bar has viewed this issue in the past, although we encourage you to clarify your duty of confidentiality by inquiring of the Florida Bar whether its opinion has changed since issuing Opinion 77-25, and whether it can provide you with a definitive answer regarding whether Rule 4-1.6(a) applies to a client's identity.

For our purposes, we find only that if a client of your law practice exceeds the reporting threshold for secondary sources of income during the disclosure period under the formula previously discussed, the financial disclosure laws require you to disclose that client—and that client's identity—on a CE Form 6, regardless of whether your duty of confidentiality as an attorney covers that client's identity. We also note with agreement the Committee's admonition in Opinion 77-25 that adherence to Rule 4-1.6(a) does not excuse or relieve you of your responsibility, as a public officer, to comply with the financial disclosure laws. As Opinion 77-25 states, "the Code [of Professional Responsibility] does not sanction a lawyer's violation of the law."

Question 3 is answered accordingly.

AL/sjz/ks

cc: Laird A. Lile

Zuilkowski, Steven

From: Laird A. Lile, Esq. <llile@lairdalile.com>
Sent: Monday, November 20, 2023 2:58 PM
To: Zuilkowski, Steven
Subject: Request for Opinions

I am requesting the following opinions from Florida Commission on Ethics regarding disclosure required on Form 6.

1. Does the requirement to disclose assets and liabilities include an interest in an irrevocable trust ("Irrevocable Trust") of which the filer and others are beneficiaries and the filer has a power of appointment which excludes appointment to creditors of the filer and which includes a spendthrift provision when the trustee, who is not the filer, has discretion to make or not make distributions to one or more of the beneficiaries (including the filer)?

By way of explanation, a filer may be one of multiple beneficiaries of an Irrevocable Trust for estate planning purposes. The trustee, who is not the filer, may have discretion to distribute, or not, to one or more beneficiaries of the trust. When exercising this discretion, the trustee (who is not the filer) may make a distribution that satisfies a debt of the filer.

Because the filer is not the trustee who makes decisions regarding distributions, the filer should not need to disclose the assets and liabilities of the Irrevocable Trust even though a distribution from the Irrevocable Trust could be made to satisfy a debt of the filer.

2. Does the requirement to disclose income include gross income for federal income tax purposes from assets in an irrevocable trust ("Intentionally Defective Grantor Trust") of which the filer is not a beneficiary when the income is taxable to the filer as a result of the grantor trust rules found in Internal Revenue Code (I.R.C.) sections 671 to 677, including the right to reacquire the trust corpus by substituting other property of an equivalent value in I.R.C. §675(4)(C) ("Swap Power")?

By way of further explanation, a filer may establish an Intentionally Defective Grantor Trust in connection with certain estate planning. The result of this planning is typically to remove assets from the filer's estate for estate tax purposes while causing the filer to remain responsible for federal income tax on the income received by the trustee of the Intentionally Defective Grantor Trust. To achieve these important tax objectives, the filer is not a beneficiary of the Intentionally Defective Grantor Trust and retains certain rights, including the Swap Power.

Because the filer is not a beneficiary of the Intentionally Defective Grantor Trust, the filer should not need to disclose the income of the Intentionally Defective Grantor Trust even though the income is reportable by the filer for federal income tax purposes.

3. Does the requirement to disclose assets and liabilities include an interest in an irrevocable trust ("Intentionally Defective Grantor Trust") of which the filer is not a beneficiary even if the filer holds a power provided for in Internal Revenue Code §675(4)(C) to reacquire the trust corpus by substituting other property of an equivalent value ("Swap Power")?

By way of further explanation, a filer may establish an Intentionally Defective Grantor Trust in connection with certain estate planning. The result of this planning is typically to remove assets from the filer's estate for estate tax purposes while causing the filer to remain responsible for federal income tax on the income received by the trustee of the Intentionally Defective Grantor Trust. To achieve these important tax objectives, the filer is not a beneficiary of the Intentionally Defective Grantor Trust and retains certain rights, including the Swap Power.

Because the filer is neither the trustee nor a beneficiary of the Intentionally Defective Grantor Trust, the filer should not need to disclose the assets and liabilities of the Intentionally Defective Grantor Trust even though the filer can acquire the assets of the Defective Grantor Trust by exercise of the Swap Power which require assets of equivalent value to be transferred to the trustee of the Defective Grantor Trust.

4. Does the requirement to disclose secondary sources of income when the filer receives more than $1,000 in gross income from an entity in which the filer owns more than 5% through which the filer practices law for a client from whom the fees exceed 10% of the entity's gross income when the disclosure would violate the filer's obligations as a member of The Florida Bar.

By way of explanation, Rule 4-1.6 of the Rules Regulating The Florida Bar prohibit a member of The Florida Bar from revealing information related to a client's representation except in certain situations, none of which would likely apply.

Because of the filer's obligations as a member of The Florida Bar, the filer should not be required to make a disclosure that would create a violation of the Rules Regulating The Florida Bar.

Thank you for your consideration.

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