

Judicial Education 60 CJE/ CLE credit minutes for Judges and Attorneys

Date of first offering: February 2, 2023

Delivery Method: Live interactive webinar

NSSTA Program Title: Ethics, Fairness and Responsibilities for Judges when hearing cases on transfer of structured settlement payment rights.

Program Relevancy: This judicial education program will impart knowledge and increase judicial understanding regarding their role and responsibility in connection with hearings involving the transfer of structured settlement payment rights. This course deals primarily with the professional responsibility and ethical obligations of judges when rendering a decision so as to protect structured settlement payees from unscrupulous operators.

Program Objectives:

- 1.) Demonstrate the benefits of a Structured Settlement
- 2.) Identify Structured Settlement Protection Acts and legislation in South Carolina
- 3.) Discuss the responsibility of judges in connection with Structured Settlement Protection Acts (SSPAs)
- 4.) Examine the information required so judges can properly evaluate the factoring petition.

1.) Introduction – The Anatomy of a Structure

20 General CJE/CLE minutes

Presenter: John McCulloch, J.D.

12:00pm – 12:20pm

- a. What is a structured settlement and how does one arise?
 - i. Who does a structure protect?
 - ii. Why a structure and not a cash settlement?
 - iii. What is the purpose of a structure?
 - iv. Improvement of structured settlement rates.

- b. Who are the players involved in a structure?
 - i. What is the role of the insurance company issuer?
 - ii. How do structures differ from other SPIAs?
- c. What is NSSTA/Who are we?

2.) Factoring

20 General CJE/CLE minutes

Presenter: Susan Stauss, Esq.

12:20pm – 12:40pm

- a. A brief history of the industry, how did we get here?
- b. SSPA's, generally
- c. South Carolina Structured Settlement Protection Act, S.C. Code Ann. § 15-50-20 et seq. - introduction
- d. How do courts handle transfer petitions? What can and can't Judges do regarding the viability of the transfer.
 - i. What should judges look for in transfer petitions?
 - ii. What have other courts/states told us about judicial inquiry into transfers?
 - iii. What is the purpose of an in-person hearing?
 - 1. Who are the interested Parties by statute?
 - 2. Who are you seeing at the hearing?
 - 3. Who are you not seeing, and why?
 - iv. What do we need to ask of the payees?
 - v. Transfer companies? Owners/issuers?
 - vi. What does best interest mean?

3.) Ethical Considerations for Judges

20 General CJE/CLE minutes

Presenter: Sandra Jones, Esq.

12:40pm – 1:00pm

The South Carolina Code of Judicial Conduct are canons of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Code should not be interpreted to impinge upon the essential independence of judges in making judicial decisions. This section of the program will provide a discussion on the Judicial Enforcement of the South Carolina SSPA.

- b. South Carolina Code of Judicial Conduct – Professional Responsibility. What is a judge’s role in the transfer of payment process?
 - i. Canon 3: Impartiality and Diligence - Are judges legally obliged to assist the payees appearing before their court when decisions are being made regarding transfer of all or some of their periodic payments?
 - ii. Broad judicial discretion - We will discuss judges’ ethical responsibility to protect structured settlement payees from unscrupulous operators.
- c. What are the ethical considerations as it relates to ensuring judges possess information reasonably adequate to make an informed decision on the request to transfer payment rights.
 - i. What concerns have your fellow judges raised?
 - ii. What have other states done legislatively?
 - iii. What conditions can the judge impose upon the proposed transfer to ensure it is just and proper under the facts and circumstances and in accordance with established principles of law.

- iv. Does the judge have an obligation to ensure the payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer?
- v. Has the judge considered whether the transfer is in the best interest of the payee and the payee's dependents?
- vi. What are the ethical considerations a judge must consider when they are routinely deprived of key information about the people selling their payments, including medical records and court filings that might provide insight about their cognitive ability or mental competency?
- vii. What are the professional responsibilities a judge should consider in order to protect people from their own poor choices?

In closing, the law provides that to sell your future structured settlement payments, you need to comply with both state and federal law. These laws are in place to protect the payee.

In 2001, Congress enacted the Victims of Terrorism Relief Act, which includes a provision relating to structured settlement factoring transactions (26 U.S.C. § 5891). This provision imposes a high excise tax on structured settlement factoring transactions unless the transactions are “approved in advance in a qualified order.” The Act defines a qualified order and requires that the order be issued “under the authority of an applicable State statute by an applicable State Court.” Since then, all fifty states and the District of Columbia have enacted state statutes setting forth the procedures for court approval of structured settlement factoring transactions.

Q&A

Program conclusion