

PROBATE SECTION REPORT

By: Larry E. Ciesla

The probate section continued to meet during the summer months. Following is a summary of matters discussed at the August meeting. The meeting began with a discussion of the status of the new power of attorney law. The Real Property Probate and Trust Law Section of the Florida Bar (usually referred to as the RPPTL or Reptile Section) has undertaken a substantial rewrite of Chapter 709, Florida Statutes. I believe there was some effort to have it considered during the last legislative session, however, for whatever reason, it was not passed. It is anticipated it will be passed next year. Copies of this extensive bill are available from my office.

The meeting next proceeded to a discussion of the newly enacted local rule #3.0954 of the Eighth Judicial Circuit regarding residential mortgage foreclosure procedure, the full title of which is: Administrative Order for Case Management of Residential Mortgage Foreclosure Cases and Mandatory Referral of Mortgage Foreclosure Cases Involving Homestead Residences to Mediation. This 83-page order is a must read for all practitioners handling residential foreclosures, whether on the plaintiff or defendant side. The order addresses many of the problems previously encountered in defending these suits, such as who owns the note and who has the authority to make decisions regarding reinstatement of the note on a compromise basis. Some of the high points are as follows. Plaintiff must pay an additional fee of \$400.00 at the time of filing suit to help fund this new program. If the foreclosure involves a homestead, an additional fee of \$350.00 is also required. A new form must be filed indicating who owns the note; whether it involves a residential property; whether it is a homestead; and the name of a representative of the plaintiff with settlement authority. For homesteads, mediation is mandatory within 90 days of filing suit. Plaintiff may not be granted a summary judgment until after the mediation has occurred. Plaintiff must bring a representative with settlement authority to mediation. A staff attorney, Jennifer Jones, has been assigned to work on these cases. In addition, it is my understanding that Paul Silverman has been named as a special master to work on these cases.

Jay Donohoe then explained the workings of a little-known group named Seniors vs Crime, for which Jay is a volunteer. This is a not for profit Florida corporation which bills itself as a project of the Attorney General's Office. The group has an office in the Alachua County Sheriff's complex on Hawthorne Road. They are open 11:00 am to 3:00 pm, Wednesdays and Thursdays. It is staffed by volunteers. They try to help seniors who have been victimized by, in most cases, financial scams. They will typically contact the alleged wrongdoer and try to persuade him/her/it to make things right with the "victim". If they are unable to do so, they refer the "victim" to other resources, such as law enforcement or Three Rivers. Their phone number is 367-4023. Jay indicated that the term "seniors" is very broadly defined and there is no strict age limit for seeking their services. As an example of their good work, I know of a case where Jay's group successfully persuaded a person to return a substantial amount of funds which were alleged to have been improperly removed from a so-called joint bank account owned by a senior. There is no cost for their help. The ongoing issue of e-filing for probate cases locally was then discussed. The Supreme Court recently approved e-filing and the clerks of court and court administration people have been working out the details. Buddy Irby indicated to me that he expects the program will

go live early next year. When implemented, e-filing will be optional. Mr. Irby stated that as initially proposed, the program would have required hundreds of different input items, such that it was unlikely that anyone would choose e-filing. The program has since been modified so that only a few inputs are required, making it much more user friendly.

It was reported that the Chief Judge is working on updating the list of approved doctors for service on the examining committee for incapacity cases. It is anticipated that a new administrative order in this regard will be forthcoming. Any psychiatrist wishing to be on the list should contact staff attorney Amy Tully.

Finally, Amy Tully reports that the current assignments for staff attorneys are as follows: Bridget Baker---Alachua County guardianships; Amy Tully--Alachua County probates; Troy Patten--Baker, Bradford and Union Counties; and Jennifer Kerkhoff--Levy and Gilchrist Counties. The probate section continues to meet on the second Wednesday of each month at 4:30 pm in the fourth floor meeting room of the civil courthouse. Contact me if you wish to be added to the email list for meeting announcements.