

Probate Section Report  
by  
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The probate section has continued to meet over the summer months. In no particular order, here is a review of what has occurred during the May, June and July meetings.

Judy Paul has left her position with Rick Knellinger's office and has opened her own law office. Her new address is 5745 SW 75th Street, #363, Gainesville, Florida 32608 and her phone number is 352-872-5912. Best wishes to Judy for a successful solo practice. After more years than can be counted, Bruce Hoffman sold his office building on South Main Street and moved to 3400 NW 13th Street, next to the Holbrook Travel building. Michelle Farkas has joined Howard Rosenblatt's office, replacing Marilyn Belo, who is now practicing from her home. Lauren Richardson has returned to Gainesville and replaces Judy Paul at Rick Knellinger's office.

Peter Ward raised an interesting issue, as follows: When a decedent is not survived by a spouse, is an adult child of a decedent who has been omitted from decedent's will entitled to make a claim for exempt property pursuant to Section 732.402, Florida Statutes, where the exempt assets have not otherwise been devised by the will? Although none in the section could recall this precise issue coming up in the past so as to provide

a clear precedent, it was thought by some in the section that such a claim would likely be recognized as valid by the court. Also discussed was the related issue of whether the personal representative should be serving a notice of administration on decedent's adult children in cases where there is no surviving spouse and the children are not named in the will. Considering the recent revisions to the notice of administration form, the answer would appear to be yes.

A considerable amount of time was devoted to discussing recent legislation affecting practitioners in the probate, trust and estate planning areas. House Bill 325 was signed by the governor on June 21, 2011 and provides in Section 14 that it shall take effect upon becoming a law (except where otherwise stated) and applies to all cases and proceedings whether filed before or after the effective date.

Section 1 of HB 325 creates a new provision in the Evidence Code, Florida Statute 90.5021, which recognizes that the attorney-client privilege (F.S. 90.502) applies as between a lawyer and a client acting in a fiduciary role (personal representative; trustee; administrator ad litem; curator; guardian; guardian ad litem; conservator; and an attorney-in-fact).

Section 2 of HB 325 becomes effective on October 1, 2011 and amends Florida Statute 732.102 - spouse's share of intestate estate. Under the new law, if decedent's children are all also the children of the surviving spouse, the surviving spouse is entitled to receive 100 percent of the estate (as opposed to the first \$60,000 and one-half of the balance). Provided, however, that the surviving spouse's share is limited to one-half of the estate if the surviving spouse has additional children from a prior relationship. Likewise, if decedent had children who are not also the children of the surviving spouse, the surviving spouse's share of the estate is limited to one-half.

Section 8 of HB 325 amends Florida Statute 733.212 - notice of administration. The notice must now contain a statement that the new attorney-client privilege contained in Florida Statute 90.5021 applies to communications between the personal representative and the attorney for the personal representative.

Section 11 of HB 325 amends Florida Statute 736.0813 - trustee's duty to inform and account. The initial notice to be sent by a trustee to qualified beneficiaries must also contain the statement regarding application of the new attorney-client privilege.

Practitioners are advised to refer to HB 325 in its entirety to familiarize themselves with the remaining provisions

of this new law. The bill can be accessed from the website "sunshine online". Go to the House section of the website and enter HB 325-2011 in the search engine.

SB 670, effective October 1, 2011, contains a major rewrite of Chapter 709, Florida Statutes (powers of attorney and powers of appointment), which has been named the "Florida Power of Attorney Act". The Power of Attorney Committee of the RPPTL Section of the Bar has published a "White Paper" on the new law. Readers are welcome to send me an email if they would like a copy. Following is a very brief summary of some of the high points of the new law. SB 670 is required reading for practitioners in this area.

Under the new law, a grant of general power is no longer valid. All powers must be specifically enumerated. In addition, the following powers require a separate signature or initials: (1) create an inter vivos trust; (2) amend, modify, revoke or terminate an inter vivos trust previously established by the principal, but only where the trust provides for amendment by an agent; (3) make a gift; (4) create or change rights of survivorship; (5) create or change a beneficiary designation; (6) waive the principal's right to take as a beneficiary under a joint and survivor annuity; and (7) disclaim any property or a power of appointment.

Section 10 of SB 670 eliminates the so-called "springing power of attorney", except for those validly executed prior to October 1, 2011. After October 1, 2011, any power of attorney which provides that it is effective at a future date is invalid.

Section 13 of SB 670 allows for the designation of "co-agents". Either agent may act alone, except if the power of attorney specifies to the contrary. If the co-agents are not authorized to act independently, they may nevertheless agree to appoint one of their number to act alone for purposes of banking transactions. This section also allows for the designation of successor agents to serve in the event the original agent dies, resigns, becomes incapacitated, is not qualified to serve or declines to serve.

Section 19 of SB 670 imposes liability upon an agent for damages and attorney's fees for violation of the Florida Power of Attorney Act.

SB 670 is lengthy and very detailed. A close reading of the entire law is a prerequisite to preparation of any power of attorney subsequent to September 30, 2011.

The probate section continues to meet on the second Wednesday of each month in the fourth floor meeting room in the civil courthouse at 4:30 p.m. All interested persons are invited to attend. Send an email to [lciesla@larryciesla-law.com](mailto:lciesla@larryciesla-law.com)

if you would like to be added to the email list for meeting notices.

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