

Probate Section Report

by

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The probate section continues to meet on a monthly basis on the second Wednesday of each month starting at 4:30 p.m. in the fourth floor meeting room in the civil courthouse in Gainesville. Following are issues of interest discussed at recent meetings.

Shannon Miller has provided the leadership in creating a new task force to deal with cases of financial exploitation of the elderly. The initial meeting was held on July 11, 2012 at Bill Cervone's office. Jeanne Singer indicated her willingness to act as the initial point person at the state attorney's office for practitioners to contact when a financial exploitation case is discovered. Michael Becker will also be providing assistance. Efforts are underway to establish law enforcement point persons at GPD and ASO. Particular emphasis was placed during the meeting on Section 709.2114, Florida Statutes, which imposes a fiduciary duty upon the holder of a power of attorney to act solely in the best interest of the principal; together with Section 825.103(1)(c), Florida Statutes, which makes it a felony for the holder of a power of attorney to breach the foregoing fiduciary duty. It is the goal of the task force to provide a mechanism to facilitate increased criminal prosecution of perpetrators of financial abuse of the elderly, as these cases have historically enjoyed a very low profile with local law enforcement. Shannon has compiled an email list for the group and anyone interested in participating should send their email address to me or to Shannon.

Service by email is on the way. According to the Supreme Court of Florida's second corrected opinion issued 06/21/12(www.floridasupremecourt.org/decisions/2012/sc10-2101.pdf), the new e-service rules become effective on

09/01/12. In summary, new Rule 2.516, Florida Rules of Judicial Administration, provides that all documents, with limited exception, must now be served by email. Immediately upon appearing in a case, a lawyer must file a notice designating his or her primary email address. Documents must be emailed in accord with the following procedure. The document to be served is attached to the email in PDF format. The email must contain the subject line "SERVICE OF COURT DOCUMENT", in all capital letters, followed by the case number. The body of the email must identify the court; the case number; the name of the first party on each side; the title of the document being served; and the sender's name and phone number. Emails may not exceed 5 megabytes in size. The Rule also gives the court the authority to serve copies of orders by email.

A discussion was held regarding a little-known provision contained in Section 222.25(4), Florida Statutes, provides that a \$4,000.0 personal property exemption may be claimed by an individual not claiming a real property homestead exemption under Section 4, Article X of the State Constitution. New judicial assignments were reviewed. Judge Roundtree is now chief judge and will be handling Union County cases; Judge Lott has moved to the criminal division; and Judge McDonald has moved to Levy/Gilchrist duty. Richard White discussed a comprehensive power of attorney form created by a highly regarded Florida practitioner. The document is of interest owing to its comprehensive nature. Tidbits from it could be usefully incorporated into practitioners' current power of attorney forms. If you would like to review a copy, please contact my office. Various opinions were offered on the issue of the advisability of having a client with an existing valid power of attorney execute a new power of attorney which comports with the new law. Section 709.2106(2), Florida Statutes, specifically provides that an "old" power of attorney continues to be valid under the new law. Significant advantages of executing

a new power of attorney include the new bank and broker friendly provisions contained in Section 709.2208, Florida Statutes; and the provisions allowing for multiple and successor attorneys-in-fact contained in Section 709.2111, Florida Statutes. Peter Ward pointed out another advantage of having a client sign a new power of attorney is that when faced with a power of attorney executed many years ago, a bank will sometimes take the position that it is not required to honor the power of attorney due to its being "stale". All in all, it was thought that in most cases signing a new power of attorney would be in the client's best interest. It was pointed out that a CD-ROM entitled, "Annual Survey of Florida Law", which is good for 10 CLE credits, can be checked out from the mediation office in the civil courthouse and kept for up to four weeks. Virginia Griffis pointed out that the original language of the recently revised Section 732.102, Florida Statutes, Spouse's share of intestate estate, provided that it applies to all cases pending or commenced on or after 10/01/11. A 2012 glitch bill changed this to read that it applies to all decedents dying on or after 10/01/11.

Judge Hulslander continues to hold ex-parte time every Wednesday from 8:30 - 9:30 am. Staff Attorney Nadine David has resigned. Jennifer Kerkhoff is now handling Alachua County probates and Erin Hunt is handling Alachua County guardianships. Monica Brasington led a discussion regarding a new type of long-term care insurance policy now available in Florida, known as a Partnership Policy. Pursuant to new medicaid rules, if an individual owns one of these policies and then needs to become medicaid eligible to pay for nursing home care, instead of the traditional \$2,000.00 limit, the individual may retain an amount of cash equal to

the lifetime benefit stated in the policy for long-term care. Details are available at www.completelongtermcare.com/states/florida.

Richard White initiated a discussion regarding the need for practitioners to counsel with their estate planning clients on the issue of digital asset estate planning. This issue was the subject of a presentation made to a RPPTL Section meeting held in March 2011. Please contact my office if you would like a copy of the written material presented at this meeting. Richard suggested that at a minimum, the client should provide access to all of his or her passwords to at least one other person.

Wharton Cole announced that he has gone into semi-retirement and is no longer partners with John Haswell. Wharton is now working out of his home. Virginia Griffis announced that Kevin Daly left the Scruggs Carmichael firm and is likewise working from home. Virginia further indicated that Jim Larche has also left the firm. Jim is now sharing space with Pete Enwall.

Peter Ward raised an issue regarding the wording of the provision in a trust which sets forth the method for determining the compensation to be paid to the trustee. Frequently this provision states that the fee will be determined by applying the regularly published fee schedule for a local institutional trustee's services. There could be a problem in a case involving a small trust, as institutional trustees typically require a minimum size of

\$500,000.00 - \$1,000,000.00 and there is no fee schedule available for a trust containing less than \$500,000.00. Peter suggests including language establishing a minimum trustee's fee, for example, \$5,000.00 per year, so as to avoid the foregoing problem.

Several practitioners indicated that they subscribe to the very popular and informative Florida Probate & Trust Litigation Blog published by Juan C. Antunez. Important appellate decisions; new statutes; and other matters of interest to probate, trust and guardianship practitioners are discussed at the rate of approximately one per week. To sign up, go to flprobatelitigation.com and look for the "subscribe" box on the lower left side of the homepage.

Please contact my office if you are interested in being added to the email list for notice of monthly probate meetings.