

Probate Section Report
by
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The probate section continues to meet on a monthly basis. Following is a summary of items discussed during the November meeting.

Monica Brasington announced that she and Shannon Miller recently relocated their office to 1204 NW 69th Terrace, Gainesville, Florida 32605, in an office complex just north of the Red Lobster restaurant. Monica indicated that their recent open house was a huge success, with many members of the local bar attending.

The subject of the acceptance by lawyers of credit cards from clients was briefly discussed. An initial poll of the group revealed that many still do not provide this service to their clients. Your author reported that he recently switched to the Florida Bar endorsed provider, Affinipay, fka Affiniscape, after a less than totally satisfying experience with the QuickBooks/Intuit provider. Affinipay charges a 2.19% commission for electronic transactions. There is no "swiping" machine involved. The client's credit card number is simply entered on Affinipay's website. There is an additional \$5.00 per month "statement" fee per account. There are no "setup" or other fees. Affinipay's customer service department has been very helpful in removing unwarranted charges from monthly

statements, which should be closely monitored to ensure that only the proper amounts are taken from your account.

The meeting next proceeded to a discussion of the operation of the new confidentiality rule. Pete Enwall reported that he recently tried to comply with the rule by filing a Notice of Confidentiality in connection with the filing of a death certificate in a probate case. Pete reported that the clerk's office responded by saying the Notice need not be filed in such cases, because the clerk will not redact a death certificate. Monica Brasington suggested an alternative approach that seems to be working: she simply redacts the social security number and cause of death before filing the death certificate and doesn't bother with the Notice. Another suggestion was made regarding bank and brokerage account numbers on a probate Inventory. The confidentiality issue can be dealt with by including only the last four digits of the account number. It was also suggested that a similar method could be utilized for bank and brokerage account numbers on an Order of Summary Administration: use only the last four digits in the body of the Order, and include the entire account number in a cover letter to the bank or brokerage company when transmitting the Order.

The meeting also discussed the issue of the federal government's treatment of confidentiality of social security numbers of deceased persons. Wharton Cole reported that the

Social Security Administration makes the social security numbers of all deceased persons available to the public on its website, ssa.gov. Apparently, if you have the person's name, address and date of birth, this is a search engine entitled "social security death index" which will reveal the decedent's social security number.

An interesting and comprehensive new proposed ethics opinion, Proposed Advisory Opinion 10-3, dated September 24, 2010, has been published by the Florida Bar, dealing with the ethical obligations of a lawyer regarding a deceased client. It is recommended that all practitioners review this new opinion. The gist of the opinion is that, as a general rule, when requested by other lawyers, heirs-at-law; will beneficiaries; or personal representatives, a lawyer for a deceased client should not usually reveal any information, except such as will "serve the client's interest". No disclosure should be made if the client specifically prohibited disclosure. Disclosure is freely allowed if the client has previously consented. Monica Brasington indicated that her firm has a form for consent which is presented to the client at the time the client executes his or her estate planning documents. A copy of this form was circulated to probate section members via email following the meeting.

Richard White reported on the current activities of the RPPTL Section. One item they are working on is a possible new statute which would provide that in the event of a divorce, a prior designation of a spouse as a beneficiary on a life insurance policy would become invalid (we have a similar statute invalidating the prior designation of a spouse as a beneficiary in a will). Query: Would such a statute do much good, considering most life insurance policies are promulgated by companies domiciled in other states, and provide that interpretation of the policy is governed by the law of a state other than Florida? Presumably, we will hear more on this issue in the months to come, as the 2011 legislative session draws near. Also in the RPPTL Section's legislative pipeline is a possible new statute dealing with "enhanced" estates, whereby creditors would potentially be able to reach jointly owned assets to satisfy the debts of a decedent.

The probate section continues to meet on the second Wednesday of each month in the fourth floor meeting room in the civil courthouse. All interest persons are invited to attend.