

Probate Section Report
by
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The October meeting of the probate section was held on October 12, 2011. I wish to thank Peter Ward for chairing the September meeting during my absence. The section also wishes to welcome new members Marilyn Belo, Richard Withers and Lauren Richardson. Marilyn was formerly associated with Howard Rosenblatt's office is now on her own, sharing space with Judy Paul. Richard is an LLM with the firm of Dean Mead. He has been with Dean Mead for four years and recently transferred to Dean Mead's Gainesville office, where he practices estate planning with Jack Bovay and Julie Cook. Lauren Richardson recently joined Rick Knellinger's office. She has previously worked for Clayton Johnston and also had her own private practice. Best wishes to all three new members. The section also wishes to welcome a new staff attorney, Nadine David, who recently assumed responsibility for Alachua County probate cases. Her phone number is 364-6895 and her email is davidn@circuit8.org. Welcome and best wishes to Nadine.

The October meeting began with a discussion led by Jean Sperbeck regarding what documents or portions thereof are and are not "protected" or "confidential" when filed with the clerk of court. Jean circulated a list of 20

categories of confidential records prepared by the Supreme Court of Florida and found in Rule 2.420, Florida Rules of Judicial Administration. Jean then cautioned that in determining whether a particular document is confidential, reference should be made to the underlying statute, not simply to the Supreme Court's list. One specific item discussed was social security numbers (item #3 on the Supreme Court's list). Reference should be made to Section 119.0714, Florida Statutes, which mandates that clerks treat Social Security Numbers as confidential after 01/01/12. Before 01/01/12, redaction can be requested. As a practical alternative, most practitioners have decided to simply redact all or part of a social security number prior to filing a document such as a death certificate or a petition for administration in a probate action. This works fine in Alachua County, but not in all counties. Some clerks, including Pinellas County, are rejecting this self-help tactic and are requiring that the SSN be set out in full, with a separate request for redaction.

The next item discussed was documents filed in incapacity and guardianship cases. As a general rule, documents filed in incapacity and guardianship cases are not protected or confidential, specifically including the examining committee reports. Although records of medicaid

treatment are generally protected, a court mandated evaluation is not considered as treatment, therefore, confidentiality does not apply. Guardianship plans were also discussed. An annual guardianship plan is confidential, including the statutorily required physician's written evaluation, which is by law a part of the annual plan. Jean indicated that problems have been encountered in situations where practitioners fail to file the physician's report simultaneously with the annual plan; rather, they file it separately, with a "Notice of Filing". Jean stated that this is an ongoing problem in that the clerk's system is set up such that when a document is filed with a Notice of Filing attached, the clerk inputs the document as a Notice of Filing, as opposed to whatever the document is substantively. Since a Notice of Filing is not a confidential document, the underlying document, if confidential, is not treated as such by the clerk. Jean stressed that this procedure should not be used with regard to confidential documents, which should be filed on a "stand alone" basis, to ensure that the clerk inputs the document correctly and protect its confidentiality. Accountings filed in guardianships and estates are confidential, but the clerk's audit of an accounting is not. A probate inventory is confidential, but a safe

deposit box inventory is not. If confidentiality is desired for a safe deposit box inventory, it should be attached to the main inventory as an exhibit.

An award was presented by Jean, on behalf of Buddy Irby, to Monica Brasington, recognizing her as having been the first lawyer to take advantage of the availability of efilings. Jean indicated that the trial efilings program for the probate division has been expanded to all circuit civil cases. She also explained the importance of entering data in the specific manner required by the efilings system. For example, the case number must be entered in exactly the following format: 012011CP123456xxxxxx, followed by hitting the tab key. 01 is the county code for Alachua County. 2011 is for the year. CP is for probate. The case number must be six digits in total, followed by six x's. Zeros must be added as needed at the front end of the case number so as to bring the total number of digits to six. Jean also briefly discussed efilings of proposed orders. At this point the clerk's system is not set up to handle electronic orders. Until this issue is resolved, practitioners should do it the old-fashioned way: submit a paper original, with copies and envelopes, although an electronic order may be submitted initially for staff attorney review.

Monica Brasington initiated a discussion regarding a recent addition to the court's checklist of requirements when reviewing a petition for a summary administration, as regards the Florida Agency for Health Care Administration (AHCA)/Florida Medicaid. For decedents over age 55, proof of service of formal notice of the petition upon AHCA's agent, ACS, is now being required. As an alternative, an affidavit from all personas signing the petition stating he/she/they has/have contacted AHCA/ACS and has/have been advised that the decedent was not receiving Florida Medicaid benefits may be filed.

The probate section continues to meet on the second Wednesday of each month at 4:30 p.m. in the fourth floor meeting room in the civil courthouse. All interested practitioners, including paralegals and bank and trust officers, are welcome to attend.