



The Elder Law Advocate

"Serving Florida's Elder Law Practitioners"

Inside:

Statutorily required committee members' reports are subject to hearsay objections

***Negotiated rulemaking update:
Changes for residents and facilities may be coming soon***

***Two out of three reports and you're out—But should you be?
A revisit of §744.331(4)***

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The Elder Law Advocate

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Statements or expressions of opinion or comments appearing herein are those of the contributors and not of The Florida Bar or the section.

The Elder Law Advocate will be glad to run corrections the issue following the error.



COVER ART

*Mountain goats at Garden Wall in
Glacier National Park*

Photo by Pamela M. Burdick

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The deadline for the SPRING ISSUE is March 1, 2013. Articles on any topic of interest to the practice of elder law should be submitted via email as an attachment in MS Word format to Stephanie M. Villavicencio at svillavicencio@zhlaw.net, or call Arlee Colman at 800/342-8060, ext. 5625, for additional information.

Advertise in *The Advocate*

The Elder Law Section publishes three issues of The Elder Law Advocate per year. The deadlines are March 1, July 2 and November 1. Artwork may be mailed in a print-ready format or sent via email attachment in a .jpg or .tif format for an 8-½ x 11 page.

Advertising rates per issue are:	Full Page	\$750
	Half Page	\$500
	Quarter Page	\$250

The newsletter is mailed to section members, Florida law libraries and various state agencies. Circulation is approximately 1,900 in the state of Florida.

Interested parties, please contact Arlee Colman at acolman@flabar.org or 850/561-5625.

Get the most out of your membership

A lot has happened since I became chair of the Elder Law Section in June 2012. We created and are beginning to implement a long-range plan. The section is in the process of submitting its formal request to change the section's name to the Elder and Disability Law Section, as approved by the ELS Executive Council in 2009. The section has revamped its annual certification review course and is holding an annual update. The section held its retreat in Glacier National Park (photos and article later in this issue). We are preparing for a public hearing being held by The Florida Bar on the unlicensed practice of law as it relates to the services used by elderly clients. All this is in addition to the regular work of the section.

As part of the long-range plan, the Executive Council conducted the first-ever Elder Law Section member survey. The member survey was sent via email to every section member in October 2012. The results uncovered some fascinating issues within our membership.

Expect communication from the section's leadership

The first issue the member survey revealed is that our members do not receive as much information about the section and its committees, events and advocacy as they would like. To resolve this, the section's leadership has developed a plan to communicate with members regularly through e-blasts. These e-blasts will inform members of benefits available to them, upcoming events, mentoring calls, deadlines, additions to the website, significant committee updates, award application deadlines, the section's advocacy efforts and committee and leadership vacancies.

To receive these e-blasts, members must have a current email on file with The Florida Bar Elder Law Section. Now is a good time for members to

log on to The Florida Bar's website to update or add a current, working email to their Bar profile. Not only will members stay up-to-date with section matters, but they will also be able to comply with the new rules that require court documents to be served on the parties via email. (A summary of these new rules is available on the members' only pages of the section's website.)



Twyla L. Sketchley

Message from the chair

Use of the section's website

The second issue the member survey revealed is the lack of use of the section's website, www.eldersection.org. Many of our members were unaware of the website or how to access the members' only areas of the site.

The public portions of the website include a current list of all major section events, contacts for the section's leadership and contact information for the section's administrator, Arlee Colman. On the committees page is a list of all section committees, contact information for the committees' leadership and a schedule of committee meetings throughout the year. Under "Resources," members can find commonly used websites for elder law attorneys and their clients as well as a list of free CLEs on practice management available through The Florida Bar.

The members only pages of the website include back issues of *The*

Advocate, a list of long-term care partnership resources and a committee page for every substantive and administrative committee of the section. In addition to general committee information, these pages include information, forms and other resources available only to the section's members.

Over the past few months, Collett Small, our website committee chair, and I have worked hard to update the website, keep it current and solicit feedback from our members about the content they want to see. While the member survey provided some suggestions, we invite members to spend a few minutes touring the site and giving us feedback for improvement. If members have not yet requested their website login and password, go to www.eldersection.org and, on the home page, click on the "request a username and password" link in the middle column under "Members Area."

Participate in the section's advocacy, education and substantive work

A third issue raised by the member survey was the lack of knowledge members have about the significant advocacy, education efforts and substantive work the section does throughout the year. Not only do section members volunteer their time, knowledge and expertise to produce some of the highest quality CLEs available through The Florida Bar, they also spend a great deal of effort advocating for and educating elder law attorneys and clients.

The section has several substantive committees, each of which is assigned a topic of law within elder law. Those committees meet regularly to review and analyze current issues in a particular area, produce educational materials for committee members and the general member-

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Message from the chair

from preceding page

ship and create plans to disseminate that information.

Throughout the year, these committees review and update the section's legislative positions and review and advocate for or against proposed legislation in accordance with the adopted positions. The committees also review and analyze changes in administrative rules, caselaw and statutes at the federal and state levels. When significant changes are made, the committee charged with monitoring an affected area develops a plan to inform members of changes and to advocate for or against proposed changes.

In addition to these tasks, the committees work with organizations throughout the Bar and the state to educate consumers, do pro bono work and educate state agency personnel and law enforcement on various is-

ssues specific to elder law. Committee representatives are also required to attend executive council meetings, provide reports to The Florida Bar, submit materials for CLEs, find mentors for the section's mentoring calls, contribute articles to *The Advocate* and provide updates and resources for the section's website.

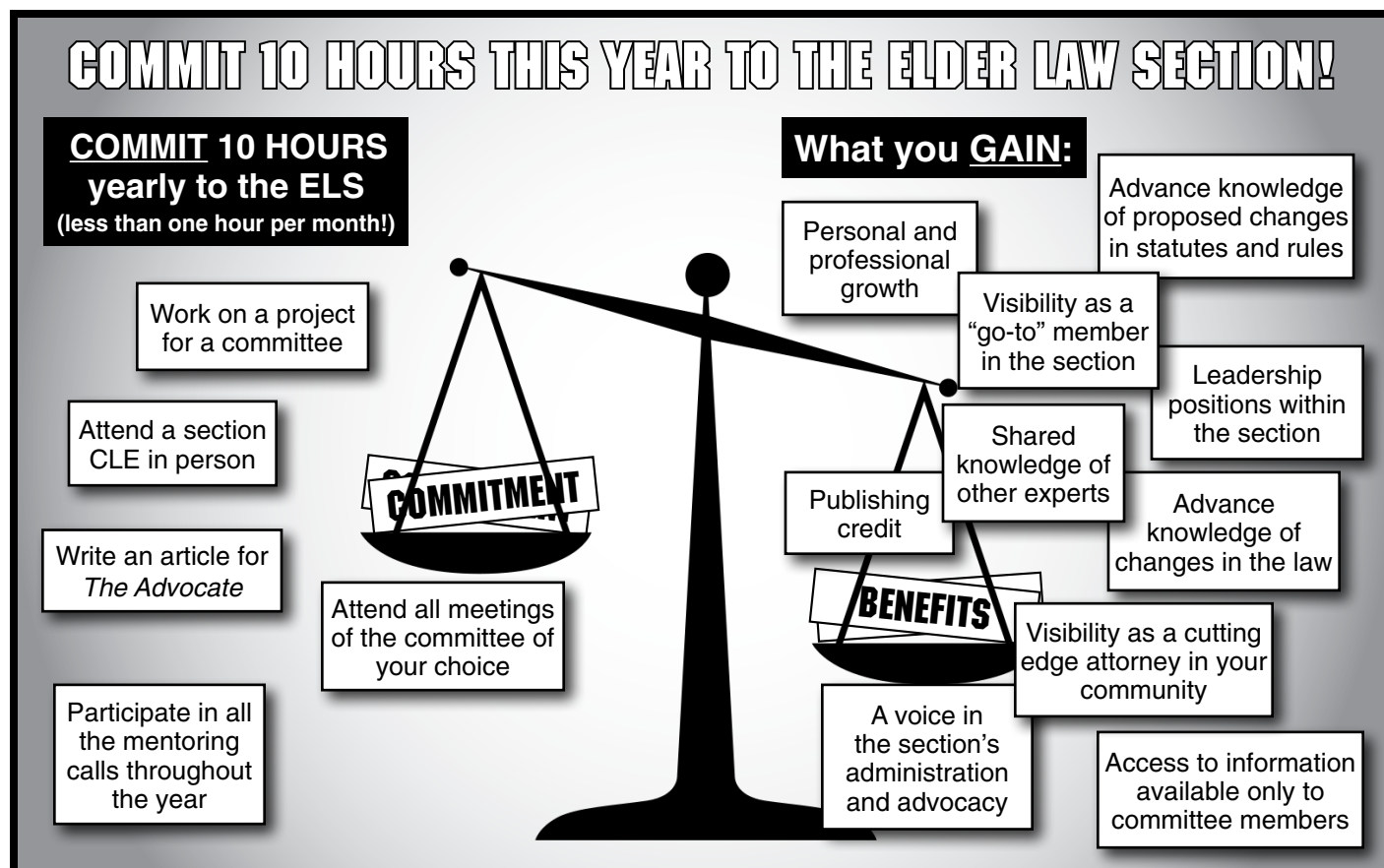
The committees are always looking for volunteers. There is no requirement that members be "experts" in any particular area to join the corresponding substantive committee, only that they are willing to participate, ask questions and work together with other committee members to produce the best possible work product they can. Expertise will come with participation.

To maintain the high quality of education and advocacy, our committees need everyone to be involved. To join a committee, simply go to the section's website, www.eldersection.org, review the committees listed on the committees' page and find one that interests

you. To see what the committee has done in the past year, log on to the members' only area of the website and review past issues of *The Advocate*, where all committees publish periodic reports on projects. Email the committee chair and let him or her know you would like to volunteer and want to join the next meeting. If members have any difficulty joining a committee, they can contact me and I will connect them with the committee chair.

Get on the section's leadership track

The member survey also revealed that many members are unaware of how to become involved in section matters and get on what might be called the "section leadership track." While the section has no formal "leadership track," we are always searching for new talent and asking members to join committees and take on leadership roles. Members of the section are encouraged to become as



involved as they want and to move as far up the “leadership track” as they wish, whether that means becoming a committee chair or the section chair.

To get started on the “leadership track,” use the section’s 10 Hour Rule. This year, the section is encouraging all members to commit to spending 10 hours involved with section matters. This can mean attending a section CLE, participating in all the free mentoring calls throughout the year, attending all the committee meetings for a committee, writing an article for *The Advocate* or volunteering to complete a portion of a project for a committee. Once a member becomes a part of the process, it is hard to deny

the benefits that actively participating members receive.

The more a member becomes involved, the more the member gets to know about the section and the more the section gets to know him or her. The member develops expertise and becomes a recognized presence in section matters. As members participate, they are asked to do more, including serving as committee chairs and liaisons or heading up advocacy projects. In time, if the member wishes, he or she will be asked to take on more leadership roles within the section’s administration.

Admittedly, this process takes time. Many of us spend years involved in

section matters before becoming section leaders. I was active with the section for more than 10 years before becoming section chair in June. And had I never become a section leader, the benefits still outweigh the time I spent. I was mentored and befriended by six past chairs, as well as by innumerable experts throughout the section, and participated in countless projects and advocacy campaigns that have changed the landscape of Florida elder law. If you hesitate to get involved or think there isn’t a place for you in our section’s activities, I invite you to call me. Together we will find a place where you are needed.

Message from the chair-elect: **Interesting times ...**

John S. Clardy III



My deadline for this message fell before the Mayan calendar ended Dec. 21, 2012. Since you are reading this, we can now look ahead to the many challenges and opportunities

that we elder law attorneys and our clients will face in the coming year.

I look forward to continuing to serve the Elder Law Section. My involvement in the section has greatly increased my knowledge and proficiency in the practice of elder law. But working with and getting to know the other elder law attorneys who are actively involved in the section has been the best reward.

As the old Chinese curse goes, “May you live in interesting times.” Well, we certainly do. On the elder law front, 2013 will not be boring. Issues ranging from Medicaid managed care and the impacts of the Affordable Care Act on Florida’s health care system

to legislative proposals stemming from entitlement reform and the ever-tightening state and federal budgets will be front and center.

To keep up with these changes, the year begins with the section’s three-day CLE, Essentials of Elder Law and the Elder Law Annual Update and Review Course, in Orlando. Your section is working hard to provide you with comprehensive programs on timely topics with up-to-date information.

Also coming in the first half of the year will be mandatory e-filing. Just as we are getting the hang of e-service, another change to our everyday practice looms. As the details of this process are finalized, the section will update members, especially as it affects the guardianship and probate practice areas.

A major concern of many elder law attorneys is the pending transition of Florida’s \$21 billion Medicaid program to for-profit managed care organizations. As advocates for the elderly and the disabled, our skills and efforts

are needed more than ever. There are many unanswered questions, and the section will continue to make the voices of elder law attorneys and their clients heard.

Other questions we likely will face this year: How will the Affordable Care Act affect our practice? What changes are in store for the elderly and those with special needs as the Medicare, Medicaid and VA programs are reformed on the federal level? How will Florida protect its most frail and vulnerable residents?

However these questions get answered, the Elder Law Section will continue to be there for its members and the clients they serve. But the section is only as strong as there are members willing to step up and support the section. I encourage you to become involved in the section’s committees on the issues that matter to you most. This year will provide many opportunities for you to serve the section and to promote the practice of elder law.

Interesting times, indeed.

Health Care Reform:

Legal and Ethical Questions About Where We Go From Here

February 4, 2013 • 8:15 a.m. – 4:30 p.m.
FSU Alumni Center • Tallahassee, Fla.

On June 28, 2012, the Supreme Court of the United States held in *National Federation of Independent Business v. Sebelius* that the 2010 Patient Protection and Affordable Care Act is a constitutionally valid exercise of Congress's taxing and spending power. This holding, rather than definitively settling all issues pertaining to health care financing and delivery in the United States, instead raises or leaves open a wide variety of still controversial legal, ethical, financial, political and organizational questions about the future of health care in this country.

Expert and experienced speakers representing an array of disciplines and perspectives will help the audience identify and grapple with the most important legal and ethical challenges awaiting them as American society seeks to implement the PPACA or alternatives to it.

Accreditation

The Medical Educational Council of Pensacola designates this live activity for a maximum of six (6) AMA PRA Category 1 Credits TM. Physicians should only claim credit commensurate with the extent of their participation in the activity.

Applications for six credit hours have been submitted for attorneys (including ethics), nurses, social workers, psychologists and medical librarians.

Course Tuition

Tuition is free but registration is still required for Florida Bioethics Network members. All other professionals register by Jan. 25, 2013, for \$60 or after Jan. 25 for \$80. Registration on the date of the conference will be \$90. FSU College of Medicine and College of Law students may attend for free, but please register by Jan. 25. After Jan. 30, registration will be accepted only if space is available and will not include lunch.

For further information or a registration brochure, email Julie Jordan at julie.jordan@med.fsu.edu or call 850/645-9473.

St. Thomas University ELS holds first elder law symposium

The St. Thomas University Elder Law Society was established in August 2012. The organization was created to promote awareness among students of the practice of elder law through educational sessions and networking opportunities for all members of the elder law community. The Elder Law Society has provided St. Thomas School of Law with informational sessions on continuing education in elder law and board certification, has participated in nursing home pro bono projects and has hosted several networking events, including the first annual St. Thomas University Elder Law Symposium.

The inaugural St. Thomas University Elder Law Symposium was a great success. Guest speakers shared their various perspectives on the practice of elder law. Lewis S. Kimler, general magistrate for the Eleventh Judicial Circuit, provided "A View from the Bench." Dr. Mark J. Wolff, K.M., a law professor at St. Thomas, spoke on "Bridging the Gap Between Law School and Practicing Elder Law." An alumnus of the law school, David Mangiero, Esq., spoke on "The Realities of Practicing Elder Law."

In attendance were St. Thomas University School of Law students, faculty and administration; students from Florida International University School of Law; practicing elder law attorneys from Miami-Dade and Broward counties; and Judge Maria M. Korvick, Judge Celeste H. Muir, Judge Arthur L. Rothenberg and Judge Lawrence A. Schwartz, members of the Miami-Dade County probate judiciary.



Members of the St. Thomas School of Law Executive Board join faculty advisor Enrique Zamora during the Elder Law Symposium (l-r: Andrea Villate, secretary; Sarah Rothenberg, vice president; Enrique Zamora, Esq., faculty advisor; Leynee Cruz, president; Nadia Metroka, community liaison; and Jaquetta Johnson, treasurer).

Statutorily required committee members' reports are subject to hearsay objections

by Alex Cuello

"Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members."¹ "Each member of the examining committee must submit a report within 15 days of appointment."² The examining committee reports are statutorily required, and a copy "must be served on the petitioner and on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition."³ An essential, but not necessarily exclusive, element used in making a decision concerning capacity is the written results of the comprehensive examination required to be conducted by each of the committee members.⁴ This leaves no doubt that the statutorily required examining committee members' reports are material to the factual determination of capacity. However, this is not sufficient, without the live testimony of the examining members, to overrule a hearsay objection to the admission of the examining committee members' reports.⁵

In the case of *Shen v. Parkes*, 37 Fla. L. Weekly D2559a (Fla. 4th DCA 2012), a plenary guardianship was sought over Shen. During the adjudicatory hearing on the petition to determine capacity, Shen asserted a hearsay objection to the proffer of the examining committee reports. The court overruled the objection notwithstanding that none of the committee members were called to testify. In overruling the trial court's admission of the committee members' reports with no live testimony, the Fourth DCA held that "[e]ven if it could be said that the guardianship statute permits the court to consider the comprehensive examination portion of the reports in the face of a hearsay objection, the statute does not reference the court's consideration of the remainder of the reports, which includes the diagnosis, prognosis, recommended treat-

ment, evaluation of right and finding of incapacity and need for limited or plenary guardianship."⁶

Notwithstanding the fact that the committee members' reports are statutorily required in adjudicating incapacity, the rules of evidence in civil actions are applicable.⁷ And although there are two hearsay exceptions that may arguably apply, namely Records of Regularly Conducted Business Activity⁸ and Public Records and Reports⁹, neither has been recognized for admission of the statutorily required committee members' reports over a hearsay objection. The Records of Regularly Conducted Business Activity exception to the hearsay rule requires that evidence in the form of an opinion or a diagnosis be proffered through direct testimony of the person whose opinion is being admitted into evidence.¹⁰ The Public Records and Reports hearsay exception provides for admission of reports on "... matters observed pursuant to duty imposed by law as to matters which there was a duty to report"¹¹ It would seem this exception provides for the admission of court-appointed committee members' reports. However, in *Lee v. Dep't. of Health and Rehabilitative Services*, 698 So.2d 1194 (Fla. 1997), the Florida Supreme Court held that in applying the Public Records and Report hearsay exception, reports containing evaluations by public officials, without the direct testimony of a witness with personal knowledge of the facts, are inadmissible hearsay.¹²

The filing of a statutorily required report does not place the report in evidence.¹³ This is because "[e]ven when hearsay can be considered over objection, hearsay ... is not deemed competent, substantial evidence sufficient to support a factual finding."¹⁴ In order for the report to be admitted into evidence, Florida law requires di-

rect testimony from the person whose opinion or diagnosis is recorded and who has actual knowledge of the facts.



Alex Cuello, Esq., the principal shareholder of the Law Office of Alex Cuello PA in Miami, has been admitted to practice law in Florida since 1996. He received his B.A. from Florida Inter-

national University, law degree from St. Thomas University and Master of Laws degree in elder law from Stetson University. His practice focuses on elder law, with an emphasis in the areas of probate administration and litigation, guardianship administration and litigation, estate planning, Medicaid planning and Social Security Disability claims. He is board certified by The Florida Bar as a specialist in elder law, serves on the Executive Council of the Elder Law Section, teaches the court-approved Professional Guardian and Family Guardianship courses and is AV rated by Martindale-Hubbel. You may contact Mr. Cuello at 305/669-1078 or ac440@bellsouth.net.

Endnotes:

- 1 §744.331(3)(a), Fla. Stat.
- 2 *Id.*, (d).
- 3 *Id.*, (h).
- 4 *Id.*, (f).
- 5 *Shen v. Parkes*, 37 Fla. L. Weekly D2559a (Fla. 4th DCA 2012).
- 6 *Id.*
- 7 *Id.*
- 8 §90.803(6)(a), Fla. Stat.
- 9 §90.803(8), Fla. Stat.
- 10 §90.803(6)(b), Fla. Stat.
- 11 §90.803(8), Fla. Stat.
- 12 *Arce v. The Wackenhut Corp.*, 40 So.3d 812 (Fla. 2010).
- 13 *Scaringe v. Herrick*, 711 So. 2d 204 (Fla. 2d DCA 1998).
- 14 *G.T. v. Dep't of Children & Family Services*, 935 So. 2d 1245 (Fla. 1st DCA 2006).

COMMITTEE REPORTS

Guardianship Committee

Sponsored by Wells Fargo

Carolyn Landon and Melissa Barnhardt, co-chairs

The Guardianship Committee met in September and discussed the status of the Right to Bear Arms legislation that was approved by the Executive Council of the Elder Law Section. The legislation has been submitted to The Florida Bar and is being sent to other sections for comment. The committee also discussed the RPPTL Section's ad hoc committee that has been charged with a two-year project to look at overhauling the guardianship statutes. Enrique Zamora and Charlie Robinson are representing the ELS on the ad hoc committee. Finally, the Guardianship Committee discussed the recent case that upheld the requirement of a dismissal of a petition to determine incapacity if the majority of reports do not find incapacity. The RPPTL Section took the position that it would propose a legislative change to make the dismissal mandatory if the reports are unanimous. The Guardianship Committee agreed that the ELS would not take a different position on the issue, but instead created a subcommittee to analyze the examining committee reports further and to propose changes to make them more comprehensive if needed.

Residents' Rights Committee

Laurie E. Ohall and Aubrey Posey, co-chairs

The Residents' Rights Committee has been working on compiling a list of issues regarding assisted living facilities that lack legislation. Our goal is to propose legislation to address these issues, some of which were identified and detailed by *The Miami Herald's* "Neglected to Death" series

published in spring/summer 2011.

The committee meets once a month via telephone conference on the second Thursday of the month at 4 p.m., and we welcome any new members or guests who wish to participate. Dial 888/376-5050 and enter PIN 8484257103#. You will be put on hold until the chair joins the call.

Please feel free to email the co-chairs, Laurie E. Ohall (lohall@ohalllaw.com) and Aubrey Posey (aubreyposey@hotmail.com), if you have any questions or would like to join the committee.

Rules Change Liaison

Heather Boyer Samuels

New Rules

Revised Opinions – SC11-399 and SC10-2101 (Revised Opinions, Oct. 18, 2012)

These revised opinions continue the Supreme Court's efforts to address e-filing and email service, and although they do not make any substantial changes, they are of note to elder law practitioners because they further define the parties that are subject to the new requirements, provide additional instruction to the clerks and continue to revamp the rules to conform to the new electronic filing systems and procedures. The new rules, effective Dec. 1, 2012, also redefine the official court file as the electronic file and have a solution to the issue of what happens to wills and codicils filed with the court.

The e-filing portal still does NOT serve other parties. You must serve other parties in accordance with the email service rules.

Rules of Judicial Administration 2.520 (Documents) and 2.525 (Electronic Filing)

This section has been changed to clarify and set out the clerk's role in converting documents filed in paper form to electronic format, and to set forth specific guidelines for electronic

filing to be observed by the clerks.

The court lists the exceptions for documents that are permitted to be filed in "non-electronic" format (such as documents filed in open court, those filed by governmental or public agencies and those filed by self-represented litigants); however, even those are to be converted to electronic documents by the clerk.

This section does away with the requirement that any document electronically filed must also be paper filed. In addition, if a party permitted to paper file a document that can be electronically captured sends it in with a stamped, self-addressed envelope, the clerk can return that paper original to the party. If not, after the document is electronically captured, the clerk is permitted to recycle it.

Rules of Judicial Administration 2.516 (Service of Pleadings and Documents)

This is the rule that provides that all documents required or permitted to be served on another party must be served by email, with few exceptions. Those who are not represented by an attorney may designate an email address for service if they wish; however, pro se litigants are not required to use email service. Documents served by formal notice or required to be served in the manner provided for service of formal notice are not required to comply with rule 2.516.

Email service has been mandatory as of Sept. 1, 2012, in civil, probate, small claims, family law and appellate divisions.

Email service requirements as apply in proceedings according to the Florida Mental Health Act (Baker Act) will not be mandatory until Oct. 1, 2013.

Florida Probate New Rule 5.043 (Deposit of Wills and Codicils)

This new rule provides that "any original, executed will or codicil that is deposited with the clerk must be

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retained by the clerk in its original form for twenty years, regardless of whether the will or codicil was 'permanently recorded' under amended Rule of Judicial Administration 2.430."

The practical effect of this seems to be that even though the will or codicil will be electronically maintained, it will also be maintained in paper format for 20 years by the clerk, NOT by the lawyers, as had been contemplated.

Updated deadline for e-filing

These new electronic filing requirements will become effective in the civil, probate, small claims and family law divisions of the trial courts and appeals in these cases on Apr. 1, 2013, pursuant to RJA 2.525.

New e-filing requirements as apply in proceedings according to the Florida Mental Health Act (Baker Act) will not be mandatory until Oct. 1, 2013.

Please note that those parties excused from e-filing under amended RJA 2.525(d) and attorneys excused from email service under RJA 2.516 are not required to file electronically, although they are permitted to do so.

Pending Rules

Proposed Ethics Advisory Opinion 12-2

The Professional Ethics Committee is taking comments on a Proposed Ethics Advisory Opinion regarding "whether lawyers may permit supervised nonlawyers to use the lawyer's access credentials for filing documents with a court using the E-Portal." The conclusion of the proposed opinion is that staff may use the lawyer's credentials to e-file since it is a lawyer's responsibility to supervise his or her staff. The certification to documents proposed by the Florida Courts Technology Commission states that a document to be e-filed utilizing the portal contains a statement or a required check box that the attorney filing or directing filing of the documents certifies that it does not contain confidential information protected by the RJA.

The full text of the proposed opinion is available on The Florida Bar's website.

Mark your calendar!

JANUARY 18-19, 2013

Elder Law Annual Update and Review
Reunion Resort, Orlando

FEBRUARY 4, 2013

8:15 a.m. – 4:30 p.m.

Health Care Reform:

Legal and Ethical Questions About Where We Go From Here
FSU Alumni Center, Tallahassee

APRIL 17-19, 2013

**Teaming Up Against Elder
Financial Exploitation**

**Florida Crime Prevention Training
Institute & The Florida Bar's Elder Law Section Committee on
Elder Abuse,
Neglect & Exploitation**
*Embassy Suites Orlando North
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LRS

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Or download an application from The Florida Bar's web site at www.FloridaBar.org.

Committees keep you current on practice issues

Contact the committee chairs to join one (or more) today!

Monitoring new developments in the practice of elder law is one of the section's primary functions. The section communicates these developments through the newsletter and roundtable discussions, which generally are held prior to board meetings. Each committee makes a presentation at these roundtable discussions, and members then join in an informal discussion of practice tips and concerns.

Committee membership varies from experienced practitioners to novices. There is no limitation on membership, and members can join simply by contacting the committee chair or the section chair. Be sure to check the section's website at www.eldersection.org for continued updates and developments.

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For Your Practice

Law office management: Going paperless

The proper management of clients' information, records, pleadings and related documents is the cornerstone of every legal practice. In the age of digital storage and data management software, many practitioners are wondering whether going "paperless" is the right choice for their business. In an effort to understand the many queries that arise when considering how and when to turn to digitized document storage, the following questions have been posed to some elder law practitioners who have firsthand experience with the transition:

When should an office decide to become paperless, and how long should it take to transition fully?

The decision to transition to a paperless office is different for everyone. In 2011, we decided to start conserving physical space within our office and began with scanning files retroactively. On Jan. 1, 2012, our office policy was to have fully scanned digital copies for all files moving forward. However, because some of the attorneys in our firm preferred hard documents, oftentimes a physical file was kept until termination of the case. Nevertheless, I always retain an original hard copy of estate planning documents that I've drafted for clients.

Our office went paperless because our county had instituted a requirement of e-filing and e-service. Other counties were also setting deadlines for the same requirements. We anticipated that our office would eventually have to be completely digitized. It took approximately two years to transition to a fully paperless office, including retroactive files. There are some documents that we didn't shred, such as original estate planning documents and original deeds.

How has your work productivity

changed? Can you quantify the cost versus the benefit?

I'm not sure whether productivity has changed much. Although looking for documents that we've previously scanned is a bit easier, it can take longer if a document wasn't properly scanned. The margin of error in my office is higher for files that were scanned prior to Jan. 1, 2012, because these files were scanned in bulk. They were not properly separated into segments such as pleadings or correspondence. Now we've learned how to organize and manage our documents.

The time spent by myself and my staff was reduced from five hours to nearly one hour of work. We saved time and money. All of our files are at our fingertips—we no longer need to shuffle through papers or volumes of files. However, with any large change in an office setting, this process has been one of trial and error.

Have you discovered any disadvantages?

Certainly. If a document is incorrectly scanned and then shredded, you have to recreate the document. The greater difficulty lies where the document is from a third party. It's embarrassing to ask them to recreate or resend the document that you received. Unfortunately, I've also found that it's easier to send the wrong documents to a certain party. For example, email addresses get confused, and mistakes are more probable using a paperless system. Documents can be mislabeled as a notice or correspondence when they may be something different.

I don't think the cost has really changed. I can be more efficient in that I can work remotely from home or elsewhere. Also, if the court in your county is not currently up-to-date

with paperless filings, you may need a physical copy for hearings.

What methods did you employ when you decided to go paperless?

We trained our office to be prepared for a six-month probationary period in which we were going to become entirely paperless. Several tutorials were given to educate the support staff on the proper methods and time-saver tools. In addition, email reminders were given so that when the starting date arrived, everyone would be ready and in compliance with our new policy. Every individual was given a unique task. For example, incoming mail would come to our receptionist, and she or he was responsible for scanning the items into the system.

We don't employ software for our organization. Our office is fairly small in size, and we don't need an additional program outside of our personal computer system. I believe that the choice of how to organize documents depends on the size of the office.

We employed a new program, much like many law office management software programs, that controls billing, forms, correspondence, contacts, office management, client information, vendors and pleadings. This effectively eliminated any other office management program that we used. We also employ a disposal service company to assist us with shredding and disposing our documents.

We have a business that picks up our scanned documents and shreds them for a monthly flat rate based on the average volume of our load.

What are some tips you can give other practitioners who are interested in having a paperless office?

You need to plan and prepare your
continued, next page



For Your Practice

Going paperless *from preceding page*

staff members to use the software, scanners and shredders, and to save documents. They need to be familiar with the software or method of digitizing a document. You may find it necessary to purchase software for

document management to optimize your time. Many programs can also detect anyone who misuses your e-documents by keeping track of the work completed on a file and who in the office works on a particular case.

Does the size of a law office affect your decision to go paperless?

Yes. An office must research meth-

ods or programs that can assist in that particular office's needs. Some offices may not find it advantageous to go paperless.

I believe that medium to large firms will mostly benefit, but small offices can also increase productivity in going paperless. However, size shouldn't matter when considering the future requirements of e-service and e-filing.

The ABCs of elder law

ADL – Activities of Daily Living
AHCA – Agency for Health Care Administration
AIP – Alleged Incapacitated Person
ALE – Assisted Living for the Elderly
ALF – Assisted Living Facility
APD – Agency for Persons with Disability
CARES – Comprehensive Assessment and Review for Long-Term Care Services
CELA – Certified Elder Law Attorney
CMS – Center for Medicare and Medicaid Services
CS – Community Spouse
CSA – Community Spouse Allowance
CSRA – Community Spouse Resource Allowance
DCAF – Department of Children And Family
DD – Developmental Disabilities
DMRT – District Medical Review Team
DOAH – Division of Administrative Hearings
DOR – Department Of Revenue
DPOA – Durable Power Of Attorney
EGTRRA – Economic Growth and Tax Relief Reconciliation Act
ESS – Emergency Status System
ETG – Emergency Temporary Guardianship
FMV – Fair Market Value

GAL – Guardian Ad Litem
HCBS – Home and Community Based Service programs
HCDA – Home Care for the Disabled Adult
HCS – Health Care Surrogate
HECM – Home Equity Conversion Mortgage
HIPAA – Health Insurance Portability and Accountability Act
ICP – Institutional Care Program
ILIT – Irrevocable Life Insurance Trust
IS – Institutional Spouse
ISNT – Irrevocable Special Needs Trust
ITF – In Trust For
JTROS – Joint Tenant with Right Of Survivorship
LB Deed – Lady Bird Deed
LOC – Level Of Care
LTC – Long-Term Care
LWT – Last Will and Testament
MCO – Managed Care Organization
MHC – Mental Health Care
MLR – Medical Loss Ratio
MMMIA – Minimum Monthly Maintenance Income Allowance
NGL – National Guardian Life
PCA – Per Curiam Affirmed
PMI – Private Mortgage Insurance
POD – Payable On Death

POMS – Program Operations Manual System
PR – Personal Representative
PSC – Personal Service Contract
QCD – Quit Claim Deed
QIT – Qualified Income Trust
QMB – Qualified Medicare Beneficiary
RLT – Revocable Living Trust
RMD – Required Minimum Distribution
SNF – Skilled Nursing Facility
SNT – Special Needs Trust
SSI – Supplemental Security Income
TBE – Tenants By the Entirety
TF – Task Force
TIC – Tenants In Common
TOD – Transferable On Death
UME – Unreimbursed Medical Expenses
UPL – Unauthorized Practice of Law
VA – Veteran's Affairs
Veteran's AA – Veteran's Aid and Attendance
VG – Voluntary Guardianship
VSO – Veterans Service Organization

Compiled by Tracy M. Wynter, Floyd, Sammons & Spanjers PA, 1556 Sixth Street SE, Winter Haven, FL 33880-4509, tracy@winterhavenlegal.com, 863/293-3801, 863/294-0976 (fax)

Two out of three reports and you're out— But should you be? *A revisit of §744.331(4)*

by Enrique Zamora



In 2003, the Florida Legislature created a Guardianship Task Force to examine guardianship and incapacity and to recommend specific statutory changes. I was appointed to represent the Elder Law Section as a member of the task force. During the next two years, the task force convened throughout the state to elicit testimony from the public on guardianship issues and how the process could be improved.

It was during those two years that I came up with what I thought at the time was a good idea. I considered the legislative intent of Chapter 744: “to make available the least restrictive alternative form of guardianship” and “that adjudicating a person incapacitated deprives such person of all of his or her civil and legal rights. Such deprivation *may be unnecessary*” (emphasis added).¹ Therefore, I believed the task force should make every effort to avoid said deprivation of civil and legal rights whenever possible. I thought if two members of the examining committee opined that the alleged incapacitated person (AIP) did not need a guardianship, then the petition should be dismissed. The idea was presented to the task force, and it was recommended as one of several statutory changes in the final report. The rest, as they say, is history. Section 744.331(4) was born and titled Dismissal of Petition. This section provides that if a majority (i.e., two out of three) of the examining committee members concludes that the AIP is not incapacitated in any respect, the court *shall* dismiss the petition (emphasis added).²

It has been argued that this section deprives the judge of his or her ability to determine the capacity or lack thereof of an AIP by directing the judge to dismiss the petition to determine incapacity without considering all the evidence available.³ The reality is that by requiring the judge to dismiss the petition, this section runs afoul of 744.331(3)(f), which states “the comprehensive report should be an essential element, *but not necessarily the only element* in making a capacity and guardianship decision” (emphasis added).⁴ I submit that by requiring a judge to dismiss a petition to determine incapacity based solely on the report of two members of the examining committee, it creates a situation where the judge must use said reports as the *only evidence* in making a capacity decision.

One must recall that the standard of evidence required for a finding of incapacity must be clear and convincing.⁵ Is the opinion of two members of the examining committee stating that the AIP is not incapacitated in any respect enough to rise to the level of clear and convincing? The clear and convincing answer is: perhaps!

Let’s turn to caselaw for some guidance. Unfortunately, the amount of caselaw on this subject is not abundant. I found three cases where this particular statute was discussed, and they were all decided after the statute was enacted. The most recent decision comes from the Fourth District Court of Appeal. The Honorable Judge Mark Speiser of the 17th Judicial Circuit was reversed when he ruled that the requirement to dismiss a petition to determine incapacity based on two reports of the examining committee members was unconstitutional because “as worded [it] results in the abdication of judicial authority

to the individuals of the examining committee, and it removes the right of the court to make appropriate decisions for the benefit of the alleged incapacitated person.”⁶ The district court of appeal did not agree with Judge Speiser’s ruling and decided the statute is clear on its face. Once two members of the examining committee report there is no incapacity, the dismissal of the petition is a ministerial act.

Let’s assume the AIP is having a “lucid moment” when he or she is being examined by one or more of the examining committee members. It is well settled law that, at that moment, the AIP could have executed a valid will, assuming all other requirements are met, but does it mean he or she has capacity? Incapacity is not necessarily a full-time condition. Assume that the examining committee member(s) did not conduct the examination in accordance with the requirements of Chapter 744. Should the petitioner be allowed to challenge the reports of the examining committee? There is at least one case that indicates the report cannot be challenged. However, a motion to strike the report could constitute the appropriate remedy.⁷ It appears from the plain language of the statute that once the two reports recommend against having a guardianship, the judge *must* dismiss the petition, no challenges allowed; at least two cases in two different district courts of appeal have so ruled. Did the Guardianship Task Force consider the possibility of challenging the reports once they were filed? I was there, and I don’t remember there being any such discussions.

In light of these findings, I find I can easily embark on a detailed discussion of what constitutes clear
continued, next page

Two out of three
from preceding page

and convincing evidence. I could also discuss due process as it relates to the AIP. However, I limit this discussion to the following: If the position is taken that the report of two examining committee members recommending no guardianship constitutes clear and convincing evidence of the capacity of the AIP, then, as previously stated, the reports become the *only element* in deciding the case. I submit that this argument is in direct conflict with the

requirement of §744.331(3)(f).

With arrival of the year 2013, a new task force has been convened by the Real Property, Probate and Trust Law Section of The Florida Bar to review and revise Chapter 744. Once again, I am a member of the task force representing the Elder Law Section, and perhaps the time has come to revisit the rule.

Enrique Zamora is a partner with the firm of Zamora & Hillman, with offices in Coconut Grove. His practice focuses in elder law with an emphasis in the areas of probate administration and litigation, guardianship

administration and litigation, trusts administration and litigation and estate planning. He is an adjunct professor at St. Thomas University School of Law, where he teaches elder law.

Endnotes:

- 1 §744.1012, Fla. Stat. (1997).
- 2 §744.331(4), Fla. Stat. (2007).
- 3 *Rothman v. Rothman*, 93 So. 3d 1052 (Fla. 4th DCA 2012).
- 4 §744.331(3)(f), Fla. Stat. (2007).
- 5 §744.331(6), Fla. Stat. (2007).
- 6 *Rothman*, 93 so. 3d at 1053 (discussing and referring to the trial court's finding of unconstitutionality).
- 7 *Levine v. Levine*, 4 So. 3d 730 (Fla. 4th DCA 2009).

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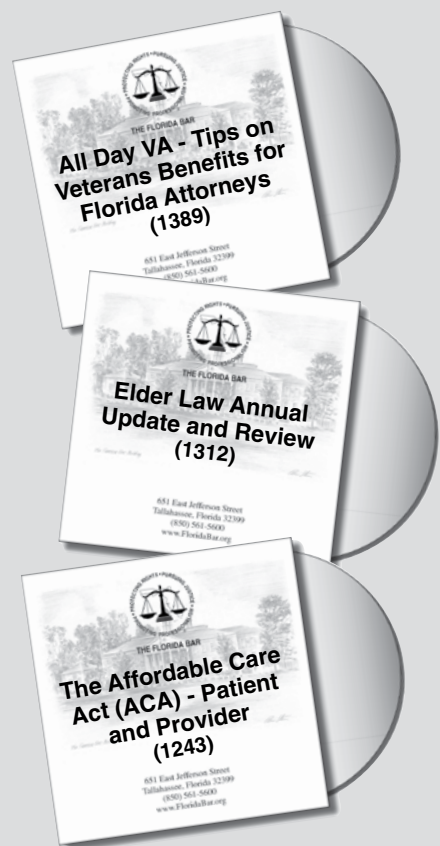
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2012 Elder Law Section Retreat

Marmots and glaciers and bears, oh my!

by Twyla Sketchley

From Aug. 7, 2012, through Aug. 13, 2012, the Elder Law Section held its annual retreat in Glacier National Park in Montana. Section members and their families traveled to Big Sky Country to learn a little about elder law and a lot about one of our nation's treasures. CLEs were a combination of recorded programs that participants listened to while traveling to and from Montana and in the evening in the absence of television and internet in retreat rooms. Live CLE sessions were held outdoors in the crisp morning air, with hot coffee in abundance.

The retreat began on the western side of Glacier Park on the banks of Lake McDonald. On the first morning, Emma and Jay Hemness hosted a safety demonstration where participants learned how to avoid encounters with bears and other cute, albeit wild, animals that enjoy tasting salty tourists. Participants learned the importance of pepper spray and how to use it, when to run from a bear, how to assume a fetal position during a bear attack and what to do if a member of the group is injured while hiking.

While staying at Lake McDonald, participants discussed professionalism and diversity in elder law, stress and practice management and the right to die issue in Montana. Several attendees organized a yoga class on the shore of Lake McDonald. After morning CLEs, groups explored Glacier National Park by car, by bus or on foot. Several members took the historic Red Bus Tour, an open air tour on the oldest tour buses in the United States. Others hiked to amazing spots like Hidden Lake just over the Continental Divide, Avalanche Lake, Grinnell Glacier Overlook and the Garden Wall.

On Aug. 10, the Retreat Cookout was held at Glacier Resort, where everyone ate steak, the children swam in the resort's pool and participants



A view of the trail from the top

hiked a short distance to the resort's waterfall. After the cookout, participants drove around the edge of the park across Marias Pass on the Continental Divide to Many Glacier on the eastern side of Glacier National Park.

One of the most stunning manmade features of Glacier National Park is Many Glacier Lodge located on the shore of Swift Current Lake. The lodge was built to withstand driving winds and approximately 300 feet of snow each winter. The lodge is home to a photo exhibit showcasing the glaciers over the past 60 to 70 years. Based on amateur and professional photos of the world famous glaciers in Glacier National Park, it is anticipated that all the glaciers will be gone in the next 8 to 10 years.

After CLEs on creating pet trusts and hiring and firing employees, many participants and their families went on hikes and boat rides to explore the eastern side of the park. While at Many Glacier, several participants hiked to Iceberg Lake. Iceberg Lake is a nearly freezing lake sitting

in a "bowl" created by centuries of glaciers moving down the mountains. The lake holds massive chunks of ice and provides a stunning view for an afternoon picnic. Some of the braver participants even went for a "polar bear" dip in the lake.

Across the United States/Canadian border is Glacier National Park's Canadian sister park, Waterton Park. Retreat attendees took an organized trip to Waterton Park Canada. While in Waterton, attendees spent the day hiking to Goat Haunt. One of the more interesting parts of the day was the lessons some attendees learned about the rigorous interrogations necessary to cross the border back into the United States.

On the last night, the children who attended the retreat made s'mores and talked about their experiences. A couple commented on the beauty of the surroundings and the bear sightings. Others laughed about how funny their parents were as they groaned and moaned every time they got out of their chairs. All said they had a great time, even though they had spent six days without cell phone service or the ability to text.

While all attendees saw bears and other wildlife, some had closer encounters than others. One of the most

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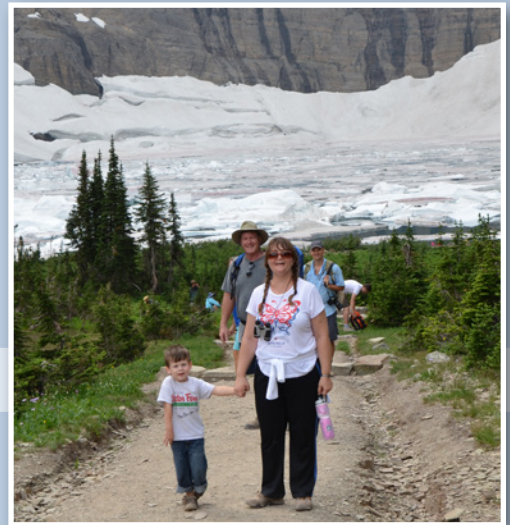
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Section Retreat Glacier National Park Montana August 7 - 14 , 2012



Retreat attendees enjoy a picnic on the shore of Iceberg Lake.



Three-year-old Vonn Draper leads Twyla Sketchley, ELS chair, and other attendees back to camp from Iceberg Lake.



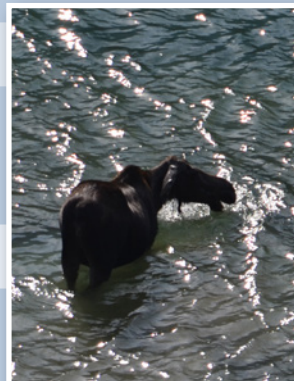
Pictured are all retreat attendees and their families, except Jay Hemness, who graciously volunteered to take the photo.



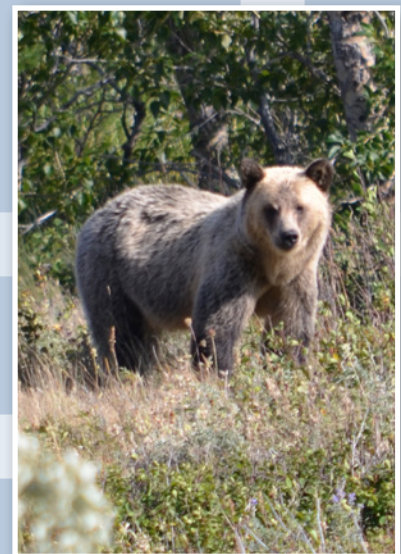
Christopher Burdick on top of the Continental Divide above Hidden Lake



Close encounters of the grizzly kind



Moose bathing



A grizzly bear keeps an eye on retreat attendees.



Waterton International Peace Park



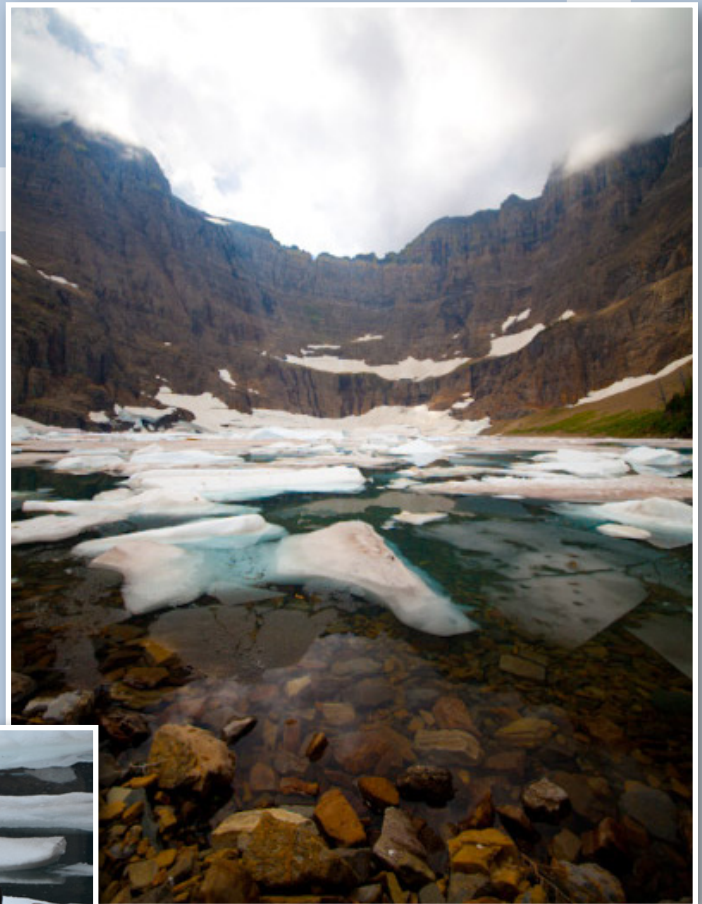
Florida Bar board certified attorneys gather for a photo during a cookout at the Elder Law Section Retreat at Glacier National Park in Montana (l-r: Steve Kotler, Peggy Hoyt, Ailish O'Connor, Emma Hemness, Travis Finchum, Twyla Sketchley, Jill Burzynski and John Clardy).



Above: Nick Weilhammer tries "iceberg surfing" in Iceberg Lake. (Photo by Twyla Sketchley)



Left: John Clardy holds the board certification flag while iceberg surfing in Iceberg Lake.



Iceberg Lake



Jay Hemness and Christopher Burdick take a "polar bear" swim in Iceberg Lake.

Unless otherwise noted, photos are by Pamela Burdick, Nick Weilhammer or Emma Hemness

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Section Retreat

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memorable bear sightings was the mother grizzly bear with three cubs that roamed around Many Glacier Lodge and Swift Current Motor Inn, where the attendees stayed. Due to the harsh climate, scarcity of food and competition from other bears, it is rare to see a mother with three surviving cubs.

At the Chair's Breakfast on the final morning of the retreat, attendees shared their favorite moments of the trip:

Carol Martin, who flew in from Illinois, enjoyed a side trip she took with the section chair to Hungry Horse Dam, but said her favorite moment was seeing a baby bear walking along the road.

Jill Burzynski, chair of the section's Financial Products Committee, said her favorite part of the trip was canoeing on Lake McDonald in a red canoe.

Jay Hemness, who carried 3-year-old Vonn Draper on part of the Goat Haunt hike, said that was his favorite moment because Vonn wanted to help the "sick" trees. The sick trees Vonn referred to were the snags that remained from a past forest fire.

Peggy Hoyt laughed as she recounted her favorite part of the trip: The first ferry from Goat Haunt leaving Emma Hemness as she tried to stop it fearing she would be left behind, not realizing there was another ferry a few minutes later. Peggy politely waived at Emma as the ferry pulled away. (Needless to say, this was not Emma's favorite moment.)

John Clardy, chair-elect of the section, said the retreat was one of his favorite section events because it was not only attended by section members, but also by spouses, parents and children, making the trip a family affair and one that families could recreate in 25 years.

Nick Weilhammer, whose hobby is

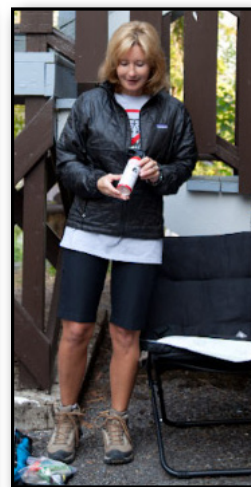
photography, said his trek to Grinnell Glacier Overlook was breathtaking, and given that Grinnell Glacier will likely disappear in the next decade, it was worth the hard, day-long hike.

My favorite part of the trip was watching tired hikers like me in Many Glacier struggling to get up after sitting for an hour to eat dinner.

The trip was also special because attendees shared local craft-brewed beer they discovered in the surrounding communities as they traveled to the retreat, shared photographs of their adventures each morning and in the evening gathered to recount the adventures of the day. It was an opportunity for members to get to know one another and to get to know families. The combination of natural beauty, unique educational format, family-friendly atmosphere and adventure made this a once-in-a-lifetime experience that will go down as one of the section's most unique events.



A beautiful field of beargrass



Emma Hemness demonstrates the safe use of pepper spray.



Hazardous beauty



Retreat attendees, led by Jay Hemness, stop for a break on the hike to Iceberg Lake.

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Negotiated rulemaking update: **Changes for residents and facilities** **may be coming soon**

Submitted by Aubrey Posey on behalf of the Residents' Rights Committee

Following last year's series "Neglected to Death" by the *The Miami Herald*¹ detailing abuses and regulatory failures in Florida's assisted living facilities (ALFs), Gov. Rick Scott and the Legislature promised reform. The 2012 legislative session ended without any agreement on changes to statutes regulating ALFs. Governor Scott agreed to extend the ALF Workgroup, and the Department of Elder Affairs, in consultation with the Agency for Health Care Administration, the Department of Children and Families and the Department of Health, entered into negotiated rulemaking.

The Assisted Living Facility Negotiated Rulemaking Committee, composed of governmental agency representatives and providers, was tasked with reviewing existing rules in Chapter 58A-5, Florida Administrative Code, and "suggesting changes to ensure safe, quality service and care for residents of assisted living facilities."² It met throughout the summer, issuing a final report on Aug. 14, 2012. According to the committee's final summary report, "[It] had to keep in mind that although safety and security are paramount, overly burdensome regulations could serve as a barrier to potential providers or drive current providers out of the market. It is important to have a variety of options to make aging-in-place available to Floridians."

Based on this goal, the recommendations from the committee primarily addressed additional training requirements for administrators and managers, increasing the CORE training requirement to 56 hours rather than the currently required 26 hours, adding additional topics to the curriculum and increasing continuing education requirements to 18 hours every two years. Although the committee considered increasing the required 75 percent competency score on the test that administrators take following completion of CORE training, it did not recommend any increase.

Because many of the concerns raised in "Neglected to Death" focused on ALFs' failures to address the needs of their residents with mental health issues, the committee proposed several changes impacting ALFs with limited mental health licenses, including

requiring an ALF to document all efforts it takes to avoid an involuntary mental health examination under Chapter 393, Florida Statutes, and requiring a facility to ensure that all residents requiring services are referred for appropriate community services. A resident's refusal of services would require written documentation, and staff members required to complete limited mental health training would be required to take a competency exam and earn a 75 percent score to pass. Currently no examination is required.

Because the committee was constrained by existing statutes, it recommended certain statutory changes, such as specifically requiring facilities to obtain a limited mental health license before admitting *any* residents classified as limited mental health residents.³ It also recommended that statutes be amended to require ALF administrators to be licensed or credentialed, as nursing home administrators are.

The Department of Elder Affairs was expected to publish a Notice of Proposed Rules in mid-October for hearings to be held in November and December; however, as of Nov. 1, nothing had been published in the Florida Administrative Weekly.⁴ Following the publication of the Notice of Proposed Rules, hearings will be scheduled where public comment may be made. Until then, the status quo remains. No changes have been made to laws and regulations to address the issues outlined in "Neglected to Death."

Endnotes:

1 *Neglected to Death*, <http://www.miamiherald.com/1688> (last visited Nov. 1, 2012).

2 Summary Report of the Assisted Living Facility Negotiated Rulemaking Committee, http://www.elderaffairs.state.fl.us/doea/alf_rulemaking/ALF_Negotiated_Rulemaking_Committee_Summary_Report.pdf, (last visited Nov. 1, 2012).

3 See Sect. 429.075, Fla. Stat. (2012) (requiring that staff members with direct contact with mental health residents complete the training requirements within six months of obtaining an LMH license).

4 See James Call, *Panel finishes its work on new regulations for ALFs*, Aug. 7, 2012, <http://www.thefloridacurrent.com/article.cfm?id=28814232> (last visited Nov. 1, 2012).

Tax tips for elder lawyers

Revoking a Form 56 - Notice of fiduciary relationship

A couple of months ago, a question was posed on the elder law listserv about revoking a Form 56 filing. It was an interesting question and one that I had not even thought of when I wrote the Form 56 article in the tax tips column of *The Elder Law Advocate*, Vol. XIX, No. 2, Summer 2011. I posed this question to an IRS senior stakeholder representative (interesting title, I know). Her response:

I found some additional information on the matter of terminating a fiduciary relationship using Form 56. IRS is aware of the discrepancy regarding not having a box on the form for terminating Form 56 and is working with counsel to resolve it. Apparently neither the IRS Code nor regulations mention termination. Currently the fiduciaries are either using an old Form 56 to terminate or are just writing "terminate" across a copy of the original form and providing a current signature and date, or are writing a letter to request the relationship be terminated. Revised instructions should clarify the process when they are published. I hope this helps. I am sorry there is not a better solution at this time.

So, the matter is not resolved, but the IRS is working on it. If anyone encounters any difficulties with how the IRS handles your attempt to revoke the Form 56, please let me know and I will pass it along.

Some common IRS misconceptions

Recently I read an internet blog regarding the IRS that very simply addressed items that, while obvious to tax attorneys, are often not obvious to other attorneys, accountants and their clients. I have modified it and hope it is helpful.

- A revenue officer (RO) collects unpaid taxes. A revenue agent (RA) audits. There are other IRS employees that do similar tasks, but these are the two main ones. When your clients say they have received an IRS communication, find out the sender's title.
- An RO's badge is a card. ROs do not carry a gun, and they cannot arrest you. They can refer you to criminal investigation.

**TAX
TIPS**

by Michael A.
Lampert



- If an IRS representative does show up with a badge, he or she is an IRS special agent. These agents are federal cops with guns and arrest powers. Far too often the client (or the attorney/accountant) unknowingly talks him or herself (or the client) into jail by saying too much or the wrong thing.
- ROs have significant power, but it is not unlimited. They are not evaluated on how much they collect, but on how they close cases. Generally speaking, they initially try to contact the taxpayer in person, which can be a real shock to the client.
- ROs (and RAs) can be reasonable and even friendly. Unfortunately, this may cause taxpayers to cooperate so much that they make it worse for themselves.
- The IRS does not email taxpayers. There are occasional exceptions during, for example, an ongoing tax matter for which other contact has been well established. If your

client receives an email from the "IRS," it is virtually certain to be fraudulent.

- The filing of a federal tax lien by the IRS is a public record. Your clients will be inundated not only with mail solicitations, but also by phone calls from people offering to resolve their tax problems. Unfortunately it can be very easy to impersonate an IRS official. If your clients have a federal tax lien filed against them, the mail and phone solicitations offering to "solve their tax problems" can be relentless. Some of the written solicitations look strikingly like official IRS communications.

Surprising income tax result when cashing life insurance

Typically, when surrendering a life insurance policy, income is determined by subtracting the premium paid from the cash received. However, as can be seen in *Brown v. Comm*, 110 AFTR 2d 2012 (CA7 09/11/2012), this is not always the case.

If some of the life insurance coverage was previously surrendered, this reduces the policy investment in the policy. In addition, if some of the dividends earned on the policy purchased additional coverage, this also reduces the investment. Likewise, if the cash value reduced a policy loan, the policy loan amount is added to the amount of cash received. Be very careful when considering the possible tax result when a life insurance policy is surrendered. There may be unexpected gains subject to income tax.

Michael A. Lampert, Esq., is a board certified tax lawyer and chair of The Florida Bar Tax Section. He regularly handles federal and state tax controversy matters, as well as exempt organizations and estate planning and administration.

1040, 1041 and 706s: What probate attorneys need to know about tax returns

The tale:

You are representing the personal representative of an estate. He calls you to find out what his accountant is talking about. He knows a tax return must be filed, but there is confusion about why and which one. The accountant has told him to ask you. What do you answer?

The tip:

A personal representative has a duty to file several different types of returns. It is important that you have enough of an understanding of these returns to advise your personal representative, even if it is just to go find a better informed accountant!

The 1040

Form 1040 is the U.S. Individual Income Tax Return. The decedent will be required to file a 1040 for the year of death. Even if your decedent died in April, he or she will file a return for the short year of Jan. 1 to Apr. 30. Since most individuals are cash basis taxpayers, the amount included on this return will be income that was actually or constructively received, and the deductions that can be taken will be for expenses actually paid. If no personal representative will be appointed and your decedent is due a refund, the person filing the return will have to file a Form 1310 Statement of Person Claiming Refund Due a Deceased Taxpayer. This could apply if you are assisting a client with a summary administration.

The 1041

Form 1041 is the U.S. Income Tax Return for Estates and Trusts. A trust and an estate are separate taxable entities and require separate federal tax ID numbers. Both file a Form 1041. A trust or a decedent's estate figures its gross income in much the same manner as an individual. Most deductions

and credits allowed to individuals are also allowed to estates and trusts. However, there is one major distinction. A trust or a decedent's estate is allowed an income distribution deduction for distributions to beneficiaries. The income distribution deduction determines the amount of any distributions taxed to the beneficiaries. Because of this, the trust or the estate is like a pass-through entity, and the beneficiaries' taxable share of the

Tips & Tales

by
Kara Evans



distribution is shown on a Schedule K-1. This income deduction is known as distributable net income or DNI.

Internal Revenue Code Section 645 permits the executor of the decedent's probate estate and the trustee of the decedent's revocable trust to have the trust taxed as part of the probate estate. This section can be used to allow a trust to have a fiscal year rather than have a Dec. 31 year end. Why does this matter? A beneficiary reports income from the estate on his or her 1040 in the year in which the estate's taxable year ends. So, if a distribution is made in February 2012, but the tax year of the estate ends Jan. 31, 2013, the K-1 showing the distribution will be received and used by the beneficiary to report the income on that beneficiary's 2013 tax return, which is not due until Apr. 15, 2014.

The 706

Form 706 is the U.S. Estate (and Generation-Skipping Transfer) Tax

Return. This is the return your personal representative must file if the decedent has an estate that will be subject to federal estate tax. The federal estate tax is a tax on the decedent's right to transfer property at death. It consists of an accounting of everything the decedent owned or had certain interests in at the date of death. The fair market value of these items is used, not necessarily what was paid for them or what their values were when they were acquired. The total of all of these items is the "gross estate." The includible property may consist of cash and securities, real estate, insurance, trusts, annuities, business interests and other assets.

Once the gross estate is ascertained, certain deductions (and in special circumstances, reductions to value) are allowed in arriving at the "taxable estate." These deductions may include mortgages and other debts, estate administration expenses, property that passes to surviving spouses and qualified charities. The value of some operating business interests or farms may be reduced for estates that qualify.

After the net amount is computed, the value of lifetime taxable gifts (beginning with gifts made in 1977) is added to this number and the tax is computed. The tax is then reduced by the available unified credit. The unified credit on the basic exclusion amount for 2012 is \$1,772,800 (exempting \$5,120,000 from tax). But on Dec. 31, 2012, the Bush tax credits are expected to expire. If they do, the unified exclusion will be \$345,800, exempting only \$1 million from tax.

You should be able to identify these issues and communicate them to personal representatives so you can be sure they carry out all their responsibilities.

Summary of selected caselaw

by Diane Zuckerman

Will contest/pleading

Dominic Pasquale, Jr., individually, and Anthony Pasquale, individually, Appellants, v. Jack L. Loving et al, 82 So. 3d. 1205 (4th DCA March 2012)

A notice of administration of the estate of Mary N. Porter (the decedent) was served on the Pasquale brothers, which admitted a 2005 will to probate. In response, the brothers filed a four-count complaint, alleging undue influence and lack of capacity.

The facts reflected that in 1991, the decedent executed a will leaving substantial gifts to the Pasquale brothers and in 1999 executed an irrevocable trust benefitting the brothers and another individual known as George Jimenez. The complaint alleged that, between the years of 1991 and 2007, the decedent executed 13 trust amendments and codicils, the result of which revoked the gifts to the brothers and also reflected a diminishing value of the decedent's assets. The 2005 will incorporated the 1999 trust by reference, and therefore the court noted the Pasquales had to challenge both.

The Pasquales alleged Jimenez and appellees Habayeb and Stewart began in 2000 to exert undue influence over the decedent, causing her to change her testamentary estate plan. The appellants asserted that all estate plan documents executed by Porter after 2000 were null and void, and they sought to have the 1999 trust reinstituted. The 2005 will read in pertinent part:

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated October 26, 1999, as amended or hereafter amended (the Existing Trust), as Trustee ... The residue should be added to and become a part of the Existing Trust ...

In reversing the trial court, the appellate court reasoned that the Pasquales would have to exhaust their remedies in the probate court before an independent claim could be pursued. The appellate court found that the complaint "while not a model of clarity" sufficiently constituted a will contest and was, therefore, wrongly dismissed in the lower court. In support, the court cited to Fla. Prob. R. 5.020 for the proposition that no defect in a complaint should impair substantive rights and to Fla. Prob. R 5.270 for the proposition that allows for a revocation of probate.

The court found that Count I of the complaint challenged the validity of testamentary instruments executed after the year 2000, Count II alleged lack of testamentary capacity to amend her estate plan and Count III alleged undue influence, and therefore was properly pleaded and sufficient to state a cause of action to contest the will.

The court reversed the dismissal and remanded for further proceedings, but expressed no opinion on the merits.

Obviously the ruling was based on procedure, relying on the general proposition that pleadings should be liberally construed and not be a basis to hinder substantive rights.

Jurisdiction

Marcia Beekhuis, as Trustee of Irene Morris Revocable Trust, Appellant, v. Steven Morris, Appellee, 89 So. 2d. 1114 (June, 2012)

This case arises from an appeal of a non-final order granting emergency motion to appoint a court monitor and to enjoin the trustee from sale of the ward's home and a request for immediate injunction. The appellant, Marcia Beekhuis, argued that the probate court did not have jurisdiction of trust assets. The Fourth District agreed and reversed the trial court's

decision.

The trust at issue in the case was the Irene Morris Revocable Trust. Irene Morris was the mother of appellant Beekhuis and appellee Steven Morris.

Before her death, Irene Morris was legally determined to be incapacitated, and Steven Morris was appointed guardian of the person and property. Upon becoming guardian, Steven Morris filed several motions in the guardianship, seeking to have his sister Marcia Beekhuis removed as trustee of her mother's trust and for her to release trust assets. Beekhuis argued that the guardianship court lacked jurisdiction over the trustee and trust property. Irene Morris's home was a trust asset. As trustee, Beekhuis planned to sell her mother's home.

In an attempt to prevent this, Steven Morris then filed an emergency motion to appoint a court monitor and to enjoin the trustee from sale of the ward's home and a request for immediate injunction. The probate judge, without notice or hearing, signed the ex-parte order prohibiting Beekhuis from selling the home and ordering her to convey trust assets to Steven Morris.

The appeal followed. Beekhuis argued that the probate court lacked jurisdiction over the trust and the trustee, stating that she did not appear or file anything in her capacity as trustee to subject her as trustee to the court's jurisdiction, but rather she appeared in her individual capacity. She relied on *Chaffin v. Overstreet* 982 So. 2d. 11 (Fla. 5th DCA 2008), which held that appearing in a probate court in one capacity does not subject that party in a separate capacity to the jurisdiction of the court.

The Fourth DCA concluded that it was error for the probate court to assert jurisdiction over the trust property.

Construction of testamentary instrument/ambiguity

Miami Children's Hospital Foundation Inc., Appellant, v. Estate of Elaine B. Hillman, Miami Care Foundation Inc., and Anthony Wolfe, Appellees, 4D11-2153 (Fla. 4th DCA 2012)

The issue in this case is whether the intended beneficiary was Miami Children's Hospital Foundation Inc. (MCHF) or Miami Care Foundation Inc. (Miami Care). Elaine Hillman died July 13, 2007. She had both a pour-over will and a trust. The will was dated Apr. 27, 2004, in which she left the residue to the trustee under a trust agreement dated Aug. 29, 1991, and the first amendment to her trust was signed on Apr. 27, 2004.

A petition for administration was filed on Aug. 16, 2007. On Sept. 17, 2010, both MCHF and Miami Care were sent a notice of final accounting and petition for discharge. In response, Miami Care, joined by Dr. Anthony Wolfe, objected to the final accounting and petition for discharge, and stated they believed they were to be the intended beneficiary. Thereafter, the personal representative of the estate filed a petition to determine beneficiary, alleging that both MCHF and Miami Care, joined by Dr. Anthony Wolfe, claimed to be Hillman's intended beneficiary.

The bequest in the trust read in pertinent part as follows:

Twenty-five percent (25%) to Miami Children's Hospital Foundation, Cranial/Facial Foundation located at 3000 S.W. 62nd Ave., Miami, Fla. ATT: Dr. Anthony Wolfe.

In response to the petition to determine beneficiary, MCHF contended that Miami Children's Hospital, at all times, was supported by MCHF and offered cranial/facial services. MCHF further contended that Miami Care did not even exist when the trust and the amend-

ments were executed.

The trial court concluded that Hillman's intent was to have Wolfe control the assets, and therefore the trust language was ambiguous. At the time of the hearing, Wolfe was the head of Miami Care. Therefore, the court ruled that Miami Care was the intended beneficiary.

On appeal, MCHF argued that the trial court erred because there was no ambiguity, and it was clear on its face that MCHF was the intended beneficiary and that Miami Care could not have been the intended beneficiary because it was not in existence at the time the trust was executed.

The Fourth District reversed and remanded to the trial court with a directive to vacate the order determining Miami Care was the intended beneficiary and to enter an order determining MCHF was the proper beneficiary.

The ruling was based on the general principle that a court can only look beyond the four corners of the testamentary instrument if the language is ambiguous or there is an inaccuracy. Only then can a court admit extrinsic evidence with respect to the ambiguity or mistake. The court reasoned that, when construing a will or a trust, words should be given their ordinary and plain meaning. The appellate court believed that the intent

to have MCHF benefit was clear and unambiguous.

The take-home message here is a reminder that a charitable institution, many of which have similar names, should be described as completely and accurately as possible to avoid litigation. This is an unusual case because the charity appeared to have been correctly identified in the trust, and the charity ultimately prevailed, though only after expensive litigation.

Life insurance proceeds/availability to creditors/important practice implications

Kevin A. Morey, as Personal Representative of the Estate of Carlton W. Morey, Jr., and as Trustee of the amended and restated revocable Trust of Carlton W. Morey, Jr., dated October 1, 2004, Appellant, v. Everbank and Air Craun Inc., Appellees, Case No. 1D11-1401 (1st DCA 2012)

This case addresses the issue whether and under what circumstances the proceeds of a life insurance policy are subject to creditor claims against an estate. Here, the settler, Carlton W. Morey, Jr., had created a revocable trust and named the trust as a beneficiary of one of his

continued, next page

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life insurance policies. His brother, the trustee, filed a petition requesting an order determining that the life insurance proceeds were exempt from the estate and its creditors. The trial court found the life insurance proceeds were subject to the creditors' claims.

In affirming the decision of the trial judge, the First District cited to Section 733.808(1), which provides that death benefits may be made payable to the trustee under a trust agreement in existence at the time of death, but also stating in relevant part:

The death benefits shall be held and disposed of by the trustee in accordance with the terms of the trust as they appear in writing on the date of death of the insured, employee, or annuitant, owner or participant.

Therefore, whether creditors can reach the proceeds of a life insurance made payable to a trust depends on the trust's language.

Thus, the court looked at the language of Morey's trust at the date of his death. In concluding that the creditors could reach the life insurance proceeds, the trial court found that it was undisputed that the life insurance beneficiary was the trust and specifically relied on Article V of

the trust which read:

ARTICLE V DISPOSITION OF TRUST BALANCE SUBSEQUENT TO THE DEATH OF THE SETTLOR

Upon the death of Settlor ... the Trustee shall pay over and distribute the trust estate as the same shall then consist as follows:

The Trustee shall pay to the domiciliary personal Representative of the Settlor's estate from time to time such sum or sums as such Personal Representative may certify to be required to pay the Settlor's death obligations, and such other obligations required to be paid under Florida law ...

Another trust provision provided that the trustee shall pay the settlor's enforceable debts.

On appeal, the trustee appellant conceded that Fla. Stat. Sect. 733.808(1) provided some support for the trial court's ruling, but argued that Fla. Stat. Sect. 222.13(1) creates a conflict and should also be considered. That section reads:

Whenever any person residing in the state shall die leaving insurance on his or her life, the said insurance shall inure exclusively to the benefit of the person for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of creditors of the insured unless the insurance policy or a valid assignment thereof provides

otherwise. Notwithstanding the foregoing, whenever the insurance, by designation or otherwise, is payable to the insured or to the insured's estate or to his or her executors, administrators, or assigns, the insurance proceeds shall become a part of the insured's estate for all purposes and shall be administered by the personal representative of the estate of the insured in accordance with the probate laws of the state in like manner as other assets of the insured's estate.

Rather than creating a conflict, the First District concluded that although Fla. Stat. Sect. 222.13(1) allows an exemption from creditors' reach of life insurance proceeds, it also allows for a waiver of that exemption.

The court reasoned that an insurance policy is a contract, and the right to choose a beneficiary is part of the freedom to contract. It concluded that the settlor decedent had waived the exemption provided in Fla. Stat. Sect. 222.13(1) by the language of the trust agreement, which provided for the payment of "death obligations."

This case provides a cautionary tale to estate planners. If the settlor, grantor, testator does not intend the life insurance to be available to pay creditors, he or she should either not designate his or her trust or estate as the beneficiary, or in the alternative, exclude the payment of debts language that Morey had in his trust agreement.

Call for papers – *Florida Bar Journal*

Twyla Sketchley is the contact person for publications for the Executive Council of the Elder Law Section. Please email Twyla at twyla@sketchleylaw.com for information on submitting elder law articles to The Florida Bar Journal for 2012-2013.

A summary of the requirements follows:

- Articles submitted for possible publication should be MS Word documents formatted for 8½ x 11 inch paper, double-spaced with one-inch margins. Only completed articles will be considered (no outlines or abstracts).
- Citations should be consistent with the Uniform System of Citation. Endnotes must be concise and placed at the end of the article. Excessive endnotes are discouraged.
- Lead articles may not be longer than 12 pages, including endnotes.

Review is usually completed in six weeks.

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REFUND POLICY: A \$25 service fee applies to all requests for refunds. Requests must be in writing and postmarked no later than two business days following the live course presentation or receipt of product. Registration fees are non-transferrable, unless transferred to a colleague registering at the same price paid. Registrants who do not notify The Florida Bar by 5:00 p.m., Jan. 10, 2013 that they will be unable to attend the seminar, will have an additional \$80 retained. Persons attending under the policy of fee waivers will be required to pay \$40, \$80, \$120.

SCHEDULE – DAY 1

Essentials of Elder Law

COURSE CLASSIFICATION:

INTERMEDIATE LEVEL

Live Presentation:

Thursday, January 17, 2013

Course No. 1537R

7:50 a.m. – 8:15 a.m.	Late Registration – Continental Breakfast
8:15 a.m. – 8:20 a.m.	Welcome and Announcements <i>John Clardy, Crystal River</i> <i>Brandon Arkin, Palm Beach Garden</i>
8:20 a.m. – 9:00 a.m.	Ethics <i>Ed Boyer, Sarasota</i>
9:00 a.m. – 9:40 a.m.	Elder Abuse <i>Preston Mighdoll, West Palm Beach</i>
9:40 a.m. – 10:30 a.m.	Guardianship <i>Alex Cuello, Miami</i>
10:30 a.m. – 10:40 a.m.	Break
10:40 a.m. – 11:30 p.m.	Pre-Mortem Legal Planning (Property) <i>Genny Bernstein, Palm Beach Gardens</i>
11:00 a.m.-12:20 p.m.	Health Care Decision-Making <i>Enrique Zamora, Miami</i>
12:20 p.m. – 1:20 p.m.	Lunch
1:20 p.m. – 2:00 p.m.	Social Security Benefits <i>David Lillesand, Clearwater</i>
2:00 p.m. – 2:40 p.m.	Special Needs Trusts <i>David Lillesand, Clearwater</i>
2:40 p.m. – 2:50 p.m.	Break
2:50 p.m. – 3:40 p.m.	Veteran's Benefits <i>Valerie Peterson, Eugene, Oregon</i>
3:40 p.m. – 4:40 p.m.	Medicare/Medicaid <i>Rebecca Bell, Port Richey</i>
4:40 p.m. – 5:20 p.m.	Financial Products <i>Jill Burzynski, Naples</i>
6:00 p.m. – 7:30 p.m.	Executive Council Meeting

CLE CREDITS

CLER PROGRAM

(Max. Credit: 9.5 hours)
General: 9.5 hours Ethics: 1.0

CERTIFICATION PROGRAM

(Max. Credit: 7.0 hours)
Elder Law: 7.0 hours
Wills, Trusts & Estates: 7.0 hours

SCHEDULE – DAYS 2 & 3

Elder Law Annual Update and Review

COURSE CLASSIFICATION: ADVANCED LEVEL

Live Presentation: Friday and Saturday, January 18–19, 2013

Course No. 1537R

The Elder Law Annual Update and Review Course is a comprehensive review course covering the key practice areas lawyers need to know in order to work with and plan for elderly and special needs clientele. In addition, the course will cover the recent changes practitioners need to know and will discuss the common legal and ethical pitfalls arising from working with the elderly and those with special needs. For attorneys preparing to take the Elder Law Board Certification exam, the course includes special components designed to provide invaluable tips and assistance in preparing for the exam.

FRIDAY, JANUARY 18

7:50 a.m. – 8:15 a.m.

Late Registration and Continental Breakfast

8:15 a.m. – 8:20 a.m.

Welcome and Announcements

John Clardy, Crystal River

8:20 a.m. – 9:00 a.m.

The New Health Care Insurance Law

Scott Solkoff, Delray Beach

9:00 a.m. – 9:50 a.m.

Medicaid Part 1 - Planning and Strategies

Emma Hemness, Brandon

9:50 a.m. – 10:20 a.m.

Medicaid Part 2 - Case Law and Administrative Updates

Rebecca Bell, Port Richey

10:20 a.m. – 10:30 a.m. **Break**

10:30 a.m. – 11:20 a.m.

VA Part 1 - Retirement and Survivor Benefits

Valerie Peterson, Eugene, Oregon

11:20 a.m. – 11:50 a.m.

VA Part 2 - Ethical Issues Updates and Planning Strategies

Jack Rosenkranz, Tampa

11:50 a.m. – 12:20 p.m.

Nursing Home/Assisted Living Facility Torts

Dean Leboeuf, Tallahassee

12:20 p.m. – 1:20 p.m.

Lunch – Task Force Update

1:20 p.m. – 2:00 p.m.

Social Security Issues for the Advanced Elder Law Attorney

David Lillesand, Clearwater

2:00 p.m. – 2:30 p.m.

Special Needs Trust

Lauchlin Waldoch, Tallahassee

2:30 p.m. – 3:00 p.m.

Administrative Advocacy

Nancy Wright, Gainesville

3:00 p.m. – 3:10 p.m. **Break**

3:10 p.m. – 3:40 p.m.

Residents Right (Nursing Home and ALF)

John Griffin, Sarasota

3:40 p.m. – 4:10 p.m.

Age/Disability Discrimination

Michael Spellman, Tallahassee

4:10 p.m. – 4:40 p.m.

Ethics in the Electronic Age

Twyla Sketchley, Tallahassee

5:00 p.m. – 6:30 p.m.

Certification Review Boot Camp for Test Takers

SATURDAY, JANUARY 19

7:50 a.m. – 8:20 a.m.

Late Registration and Continental Breakfast

8:20 a.m. – 9:00 a.m.

Guardianship and Incapacity Part 1

Alex Cuello, Miami

9:00 a.m. – 9:30 a.m.

Guardianship and Incapacity Part 2

Victoria Heuler, Tallahassee

9:30 a.m. – 10:00 a.m.

Florida's New Power of Attorney Law

Howard Krooks, Boca Raton

10:00 a.m. – 10:10 a.m. **Break**

10:10 a.m. – 10:50 a.m.

Pre Mortem Legal Planning Part 1 Drafting Health Care Advanced Directives

Enrique Zamora, Miami

10:50 a.m. – 11:20 a.m.

Pre Mortem Legal Planning Part 2 Tax Issues

Steve Kotler, Naples

11:20 a.m. – 12:00 noon

Litigation for Elder Law Attorneys

Gerald Hemness, Brandon

12:00 noon – 1:10 p.m.

Lunch

1:10 p.m. – 2:00 p.m.

Trust Administration and Updates

David Carlisle, Miami

2:00 p.m. – 2:50 p.m.

Probate Homestead Elective Share and Updates

Steven Quinnell, Pensacola

2:50 p.m. – 3:00 p.m. **Break**

3:00 p.m. – 3:40 p.m.

Representing Fiduciaries

Rep Deloach, Seminole

3:40 p.m. – 4:20 p.m.

Financial Products: LTC Insurance, Annuities & Reverse Mortgages

Jill Burzynski, Naples

CLE CREDITS

CLER PROGRAM

(Max. Credit: 16.0 hours)

General: 16.0 hours

Ethics: 1.0

CERTIFICATION PROGRAM

(Max. Credit: 16.0 hours)

Elder Law: 16.0 hours

Real Estate Law: 1.0 hour

Tax Law: 0.50 hour

Wills, Trusts & Estates: 1.5 hours

Seminar credit may be applied to satisfy CLER / Certification requirements in the amounts specified above, not to exceed the maximum credit. See the CLE link at www.floridabar.org for more information.

Prior to your CLER reporting date (located on the mailing label of your Florida Bar News or available in your CLE record on-line) you will be sent a Reporting Affidavit if you have not completed your required hours (must be returned by your CLER reporting date).

REGISTRATION

Essentials of Elder Law ~ and ~ Elder Law Annual Update and Review Course

ONE LOCATION: (345) REUNION RESORT, REUNION, FL (JANUARY 17-19, 2013)

TO REGISTER OR ORDER AUDIO CD / DVD OR COURSE BOOKS BY MAIL, SEND THIS FORM TO: The Florida Bar, Order Entry Department, 651 E. Jefferson Street, Tallahassee, FL 32399-2300 with a check in the appropriate amount payable to The Florida Bar or credit card information filled in below. If you have questions, call 850/561-5831. ON-SITE REGISTRATION, ADD \$25.00. **On-site registration is by check only.**

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***E-mail address required to transmit electronic course materials and only used for this order. AJC: Course No. 1439R / 1537R / 1579R**

ELECTRONIC COURSE MATERIAL NOTICE: Florida Bar CLE Courses feature electronic course materials for all live presentations, live webcasts, webinars, teleseminars, audio CDs and video DVDs. This searchable electronic material can be downloaded and printed and is available via e-mail several days in advance of the live presentation or thereafter for purchased products. Effective July 1, 2010.

REGISTRATION FEE (CHECK ONE):	*** DISCOUNT *** #1537 + #1439 (Not available online)	"Essentials" (Jan. 17 only) Course #1537	"Update & Review" (2 days- Jan. 18 & 19) Course #1439
Member of the Elder Law Section	<input type="checkbox"/> \$570	<input type="checkbox"/> \$195	<input type="checkbox"/> \$450
Non-section member	<input type="checkbox"/> \$670	<input type="checkbox"/> \$245	<input type="checkbox"/> \$500
Full-time law college faculty or full-time law student	<input type="checkbox"/> \$358	<input type="checkbox"/> \$143	<input type="checkbox"/> \$290
Paralegal (Not eligible for online registration)	<input type="checkbox"/> \$358	<input type="checkbox"/> \$143	<input type="checkbox"/> \$290
Persons attending under the policy of fee waivers	<input type="checkbox"/> \$120	<input type="checkbox"/> \$40	<input type="checkbox"/> \$80

Members of The Florida Bar who are Supreme Court, Federal, DCA, circuit judges, county judges, magistrates, judges of compensation claims, full-time administrative law judges, and court appointed hearing officers, or full-time legal aid attorneys for programs directly related to their client practice are eligible upon written request and personal use only, complimentary admission to any live CLE Committee sponsored course. Not applicable to webcast. (We reserve the right to verify employment.)

METHOD OF PAYMENT (CHECK ONE):

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☐ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

☐ Enclosed is my separate check in the amount of \$50 to join the Elder Law Section. Membership expires June 30, 2013.

COURSE BOOK — AUDIO CD — ON-LINE — PUBLICATIONS

Private recording of this program is not permitted. **Delivery time is 4 to 6 weeks after 01/19/13. TO ORDER AUDIO CD OR COURSE BOOKS**, fill out the order form above, including a street address for delivery. **Please add sales tax. Tax exempt entities must pay the non-section member price.** Those eligible for the above mentioned fee waiver may order a complimentary audio CD in lieu of live attendance upon written request and for personal use only.

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COURSE #	COURSE BOOK	AUDIO CD — Section Member (includes electronic course materials)	AUDIO CD — NON-Section Member (includes electronic course materials)	(NOTE: Certification/ CLER credit is not awarded for the purchase of the course book only.)
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Related Florida Bar Publications can be found at <http://www.lexisnexis.com/flabar/>

Fair Hearings Reported

The Elder Law Section is proud to introduce the new indexed and searchable **Fair Hearings Reported**

This project was made possible, in part, by the generous “Platinum” sponsorship of

The Center for Special Needs Trust Administration, Inc.

The project is designed to index the most current reports from DCF and then work backward through the previous years until the entire database is indexed and searchable. Sample indexes:

Nursing Home Discharge

Needs Cannot Be Met by the Facility

Health Improved; No Longer Needs Service

Facility Ceases to Operate

Faulty Notice

Medicaid Denials

Burden of Proof

Excess Assets/Resources

Determining Asset Value

Information Insufficient to Establish Eligibility

Failure to Properly Fund QIT

Medicaid Overpayment

Failure to Report

Collection Procedures

Register for an annual subscription with the form on the back page. You will be sent a password and can begin your search the same day! For more information, contact Arlee J. Colman at acolman@flabar.org or 850/561-5625.

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FAIR HEARINGS REPORTED

The Florida Bar Elder Law Section is proud to announce a new project – Indexing of the Fair Hearing Reports online. This project is sponsored by The Center for Special Needs Trust Administration Inc., www.sntcenter.org, 877/766-5331. Indexing will begin to appear online as the project proceeds until completion.

The reports are posted on the section's website at www.eldersection.org and are available to subscribers.

ANNUAL SUBSCRIPTION: \$150 (#8060050)

Fair Hearings Reported

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