



Elder Law Section
EXECUTIVE COUNCIL AGENDA
Loews Portofino Hotel, Orlando
Thursday, January 14, 2016
5:30 p.m. -7:00 p.m.

- I. Call to Order - Welcome** David Hook, Chair
- II. Approval of Minutes** Steve Hitchcock, Secretary
- III. Chair's Report** David Hook, Chair
- IV. Chair Elect Report** Ellen Morris, Chair-elect
- V. Treasurer's Report** Jason Waddell, Treasurer **Exhibit A**
- VI. Substantive Divisions** **Randy Bryan, Vice Chair**
(Committees in bold to give oral presentations)
- a. Exploitation and Abuse Committee Angela Warren/Amy Collins **Exhibit B**
- b. Probate and Estate Planning Committee Steve Kotler/Mike Jorgensen **Exhibit C**
- c. Guardianship Committee Carolyn Landon/Victoria Heuler **Exhibit D**
- d. Ethics Committee Steve Hitchcock
- e. Legislative Committee Scott Selis/William Johnson
- f. Medicaid /Government Benefits Committee Amanda Wolf/Heather Kirson
- h. Special Needs Trust Committee. Travis Finchum **Exhibit E**
- i. UPL Special Committee John Frazier **Exhibit F**
- j. Financial Products Special Committee Jill Burzynski/Marjorie Wolasky **Exhibit G**
- k. Veterans Benefits Committee John Clardy
- l. Mentoring Special Committee Beth Waddell **Exhibit H**
- VII. Administrative Division** **Ellen Morris, Vice Chair**
- a. **CLE Committee** **Sam Boone**
- b. Newsletter Stephanie Villavicencio
- c. Council of Sections Report David Hook
- d. Certification Special Committee Travis Finchum
- e. Law School Liaison Special Committee Enrique Zamora/Alex Cuello
- f. Web Page Report Jana McConaughay
- g. Sponsorship Special Committee Jason Waddell
- h. Membership Special Committee Robert Morgan/Donna McMillan
- VIII. Board of Governors Report** Sandy Diamond
- IX. Liaison Reports**

- a. AFELA Report
- b. FSGA Report
- d. RPPTL Report
- e. NAELA Report
- f. Task Force Update

Cary Moss
Scott Greenberg/David Hook
Charlie Robinson/Marjorie Wolasky
Howard Krooks
Ellen Morris

X. New Business
A. Bylaw Amendment

Exhibit I

XI. Old Business

XII. Adjournment

	December 2015 Actuals	YTD 15-16 Actuals	Budget	Percent Budget
Elder Law				
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31431 Sect Dues	750	82,000	82,500	99.39
31432 Affil Dues	0	450	1,000	45.00
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Total Dues Income Net	750	82,450	83,500	98.74
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32191 CLE Committee Course	1,598	15,411	25,000	61.64
32293 NonSect Mem Cost Dif	200	2,230	5,000	44.60
35201 Sponsorships	7,500	7,500	10,000	75.00
36705 Fair Hearings Forms	0	3,400	1,050	514.29
37701 Newsletter Advertisi	0	0	1,000	0.00
38499 Investment Alloc	-721	-4,903	2,761	-177.58
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Other Income	8,577	25,638	44,811	57.21
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Total Revenues	9,327	108,088	128,311	84.24
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36998 Credit Card Fees	11	51	50	102.00
51101 Employee Travel	0	11	2,081	0.53
71001 Phone/Direct	74	543	660	82.27
71005 Internet Charges	25	304	248	122.58
84001 Postage	2	128	2,000	6.40
84002 Printing	6	92	300	30.67
84006 Newsletter	1,100	5,057	11,000	45.97
84009 Supplies	0	0	250	0.00
84010 Photocopying	0	9	100	9.00
84018 Chairs Special Proj	1,502	1,502	1,500	100.13
84051 Officers Travel Exp	598	598	1,500	39.87
84052 Mtg Travel Exp	1,014	1,472	1,000	147.20
84101 Committee Exp	313	1,509	3,000	50.30
84102 Public Info & Websit	0	1,910	3,000	63.67
84103 Cert Committee Exp	0	1,055	1,500	70.33
84201 Board Or Council Mtg	33	1,222	1,500	81.47
84202 Annual Mtg	0	391	2,500	15.64
84205 Section Service Prog	2,126	2,126	3,500	60.74
84254 Speaker Gifts	0	0	300	0.00
84301 Awards	0	0	1,500	0.00
84407 Fair Hearing Forms	760	1,181	1,000	118.10
84501 Legis Consultant	0	0	27,000	0.00
84503 Legis Travel	0	0	1,000	0.00
84701 Council Of Sections	0	300	300	100.00
84998 Operating Reserve	0	0	7,934	0.00
84999 Miscellaneous	0	38	750	5.07
88263 Mtg Hospitality	6,063	6,063	6,000	101.05
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Total Operating Expenses	13,627	25,562	81,473	31.37
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31433 Section Mgmt Fee	263	28,895	29,225	98.87

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	December 2015 Actuals	YTD 15-16 Actuals	Budget	Percent Budget
Elder Law ~~~~~				
Total TFB Support Services	263	28,895	29,225	98.87
Total Expenses	13,890	54,457	110,698	49.19
Net Operations	-4,563	53,631	17,613	304.50
21001 Fund Balance	0	84,860	92,027	92.21
Total Current Fund Balance	-4,563	138,491	109,640	126.31

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**ABUSE, NEGLECT, and EXPLOITATION  
OF THE ELDERLY  
COMMITTEE REPORT  
JANUARY 2016**

I. The committee is working on developing its major annual event, which is a workshop cosponsored with the Office of the Attorney General, and this year we are bringing in the assistance of Stetson University School of Law to cosponsor and further develop the program. This will be the fifth year we have participated in the joint workshop. The workshop is intended to bring together both criminal and civil law, elder law attorneys who see clients who have been exploited, law enforcement investigators who are on the front lines of investigation, and prosecutors who must carry the cases forward under the law. The date of this year's workshop is still to be determined, but we anticipate it will be a one day program (rather than three days) in either September or October, likely in the Tampa area (hopefully Stetson's Tampa campus). We plan on developing a larger symposium or "summit" for 2017.

The committee continues to assist the Section's legislative committee in the review of proposed or to-be proposed legislation related to abuse, neglect and exploitation. Also, in November, David Weintraub gave the committee an impressive presentation titled "Avoiding the Negligent Referral".

II. Meetings will continue to be held on the first Thursday of every month at 11:00 cst/12:00 est. If you are interested in participating in any of these conference call meetings or joining the ANE Committee please contact Amy Mason Collins, [amy@mclawgroup.com](mailto:amy@mclawgroup.com), or Erika Dine, [erika@dinelaw.com](mailto:erika@dinelaw.com).

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**MEMO**

**PROBATE AND ESTATE PLANNING COMMITTEE OF THE ELDER LAW SECTION**

On September 17, 2015, at 8:30 a.m., attorney Michael Lampert, from West Palm Beach, Florida Bar Board Certified tax lawyer discussed current hot tax topics and ethical issues for elder law attorneys. The presentation included current issues when dealing with the Internal Revenue Service and measures that elder law attorneys can implement when dealing with tax fraud and identity theft. Mr. Lampert encouraged us to be proactive and that we inform our elderly clients of these issues before they may affect them.

On January 14, 2016, at 8:30 am, attorney David Weintraub, from Plantation, will discuss current issues concerning stock broker litigation when the elderly have been scammed.

On May 19, 2016, which is the next scheduled Committee meeting, we plan to have an attorney address an issue that will affect our members when the topic is determined.

In addition, members of this committee have actively participated in other committees, including the legislative committee, of the Elder Law Section of the Florida Bar.

If any members have topic ideas or matters that should be addressed to the Committee, please inform either Horacio Sosa at [hsosa@sosalegal.com](mailto:hsosa@sosalegal.com) or Mike Jorgensen at [mjorgensen@seniorcounselaw.com](mailto:mjorgensen@seniorcounselaw.com).

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## **Guardianship Committee**

**Carolyn Landon and Victoria Heuler, co-chairs**

The Guardianship Committee has been meeting by telephone at 12:00 noon on the second and fourth Wednesday of every month.

We have reviewed both F.S. 409.9131 re Special provisions relating to integrity of the Medicaid program and 744.705(1) Costs of Public Guardian and proposed language for both.

We are currently following SB 232 by Senator Detert and its companion HB 403 by Representative Ahern. We are still neutral on this legislation.

We also reviewed HB 259 regarding creation of 709.2209 regarding a power of attorney for temporary care of a minor child. The committee had no objections to the proposed legislation which is designed as an alternative to DCF custodial involvement in cases where temporary custody changes are needed for minors in dependency cases.

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The Special Needs Trust Committee has been tracking the enactment of Florida ABLE accounts. The IRS published proposed regulations and the State of Florida submitted comments regarding the proposed regulations, which can be found here: <http://www.regulations.gov/#!documentDetail;D=IRS-2015-0030-0097>. Also, Social Security has issued POMS on ABLE accounts. These can be found here: <https://secure.ssa.gov/apps10/poms.nsf/lrx/0501130740>

Additionally, the Office of the Assistant Secretary of Defense published a memo implementing Section 624 of the Howard P. 'Buck' McKeon National Defense Authorization Act for Fiscal Year 2015, Public Law 113-291, which allows for payments of Survivor Benefit Plan Annuities to a Special Needs Trust and thus not adversely impact the survivor's public benefits, including SSI and Medicaid. The memo can be found here:

<http://www.moaa.org/uploadedFiles/Content/Take Action/Top Issues/Spouse and Family/SNTPolicyFinal31Dec15.pdf>

The SNT Committee is planning a midyear CLE on Florida Special Needs Trusts coupled with an existing CLE.

Submitted by Travis Finchum

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**Law Offices of**  
**JOSEPH F. PIPPEN, JR. & ASSOCIATES, PL**  
**ATTORNEYS AND COUNSELORS AT LAW**

Sugar Creek Professional Center  
10225 Ulmerton Road, Building 11 ☉ Largo, Florida 33771 ☉ (727) 586-3306 / FAX: (727) 586-6276  
[www.attypip.com](http://www.attypip.com)

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**ATTORNEYS:**

**JOSEPH F. PIPPEN, JR.**  
**CYNTHIA J. McMILLEN**  
**DENNIS S. MOSES**  
**JOHN R. FRAZIER, LL.M.** -  
Also admitted in Georgia  
**CATHERINE DAY HULT** -  
Also admitted in Illinois  
**ROSALIND D. KEPPLER** -  
Also admitted in Minnesota  
**PATRICK SMITH**  
**JIM LONCARSKI** -  
Also admitted in Michigan

**OFFICES:**

**BRADENTON:**  
(941) 748-0224  
**CLEARWATER:**  
(727) 725-9688  
**CLERMONT:**  
(352) 241-8760  
**HAINES CITY:**  
(863) 422-1370  
**LAKELAND:**  
(863) 422-1370  
**LARGO:**  
(727) 586-3306  
**LEESBURG:**  
(352) 241-8760  
**SEBRING:**  
(863) 402-5696  
**ST. PETERSBURG:**  
(727) 381-6079  
**SUN CITY CENTER:**  
(813) 633-0736  
**TAMPA:**  
(813) 282-7410  
**THE VILLAGES:**  
(352) 347-3191  
**ZEPHYRHILLS:**  
(813) 788-8677

January 11, 2016

**RE: Unlicensed Practice of Law (UPL) Committee Report**

Dear Executive Council:

Following is a summary of activities of the UPL Committee, and requested information regarding the UPL Committee:

- 1) Name of committee:  
Elder Law Section Unlicensed Practice of Law Committee.
- 2) Chair:           John R. Frazier  
                          10225 Ulmerton Rd. #11  
                          Largo, FL 33771
- 3) Number committee members: Ten.
- 4) Number of meetings since last report: Our committee holds a monthly tele-conference on the third Tuesday of every month, at 4:00 PM.
- 5) How frequently the committee is scheduled to meet: See above.
- 6) Summary of accomplishments since last report: Now that the Florida Supreme Court has approved the Medicaid Planning UPL Advisory Opinion, the ELS UPL Committee will continue to increase awareness of potential problems associated with non-attorney Medicaid Planning UPL. A number of UPL investigations into the conduct of non-attorney Medicaid Planners have resulted in the Florida Bar issuing a "Letter of Advice" to the non-attorney Medicaid planners, who have been investigated by the Florida Bar. The "Letters of Advice" issued by the Florida Bar contain a description of the Florida Supreme Court Advisory Opinion, and outline which activities the non-attorney Medicaid planners may permissibly engage in.
- 7) A list of UPL committee goals going forward: A primary goal of the UPL committee is to increase and maintain awareness of the UPL problem, both to attorneys and the public. Since the Florida Bar UPL investigative process is "complaint driven", it is critical for attorneys and their clients to be willing to file UPL complaints, when alleged instances of UPL are encountered. Therefore, it is a primary goal of the UPL committee to encourage and facilitate the filing of UPL complaints with the Florida Bar, under circumstances where the filing of a UPL complaint would be appropriate.
- 8) A list of any legislation the UPL committee is following, analyzing or developing: None.
- 9) Any action needed by the council or other committees: No current action is needed.

If you need further information please contact me at the office at (727) 586-3306 extension 104, or on my cell phone at (813) 431-3193.

Sincerely,

  
JOHN R. FRAZIER, J.D., LL.M.

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## Committee Report from the Financial Services Committee

Marjorie Wolasky and Jill Ginsberg, Co-Chairs

The committee has focused its attention on a new bill adding Section 517.33 to Chapter 517 of the Florida Statutes that will provide a "safe harbor" provision for brokers, dealers, investment advisors and associated persons (hereinafter financial professional) who reasonably believe that a vulnerable adult is the subject of exploitation that has occurred are allowed to contact DCF or OFR to notify them that exploitation is occurring. The bills goes on to say that the financial professional may refuse a request for reimbursement from the account of a vulnerable adult.

David Weintraub, a member of the committee pointed out that this bill is unnecessary as there are Florida Financial Statutes that already cover this issue. The Statue also provides remedies in the case of an unlawful sale. We also felt the bill was too broad, as it talks about financial professionals, but not the advisor affiliated with the exploited adult. Additionally, the bill does not discuss what the notification to DCF or OFR is to say.

At first blush, this looks to protect the exploited. However, a second glance shows that this bill is really to protect the financial professional instead of the affected person. We do not support this bill.

However, this bill has a parallel national bill that will go into effect in 2016 if the regulator adopts same. The Financial Industry Regulatory Authority rolled out a rule proposal that provides for similar solutions to the Florida Bill. Again, we do not necessarily agree that this route will protect the clients.

In the New Year, we are going to look at ways that brokerage houses (and similar institutions) are dealing with the new reality of client aging. For example, Fidelity is rolling out a new program with EverSafe Technology, which monitors client accounts for suspicious activity. We are going to study this program, as well as others, in able to provide the best strategies for the section and ultimately our clients.

## Elder Law Section Mentoring Committee Report

January, 2016

Beth Waddell, Chair

### **Mentor Matching**

Since the committee's last report in July, 2015, we have matched 2 requesting attorneys with Mentors.

### **Tricks of the Trade Calls**

Our August, 2015 TOT call was hosted by VA Committee Chairs, Jack Rosenkranz and Javier Centonzo, on "When are VA Benefits Payments Countable Income under Medicaid?" and "Issue Spotting for Service Connected Benefits". We had 81 attendees. Cost to the Section was \$186.79

Our October, 2015 TOT call was hosted by Adriana Linares, technology consultant to the Florida Bar, on "Understanding Metadata and Ethical Responsibilities with Your Legal Documents". This call was conducted by webinar through Adriana's GoToWebinar service, which offers audio/visual teleconferencing for up to 100 people. We had 59 people attend this webinar. Cost to the section was \$0.

Our December, 2015 TOT call was hosted by Jason Lazarus, attorney and CEO of Synergy Settlement Services, on "What Elder Law Attorneys Need to Know about Medicare Set Asides". We had 32 attendees on this call. Cost to the section was \$80.41 + approximately \$30 to record the call to a CD for future use and reference.

The website is regularly updated with details for upcoming calls and CLE information for previous calls.

Every TOT call in 2015 included general and specialty CLE credit and value added materials for our section members. These materials are available for any-time viewing and downloading on the Mentoring Committee Webpage.

Tricks of the Trade Calls are scheduled for the 2nd Thursday of even numbered months. Calls for 2016 are on the following dates:

2/11/16

4/17/16

6/9/16

8/11/16

10/13/16

12/8/16

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## COMMITTEES

**Section 1. Standing Committees.** The following shall be permanent, standing committees within the section.

(a) *Executive Committee.* There shall be an executive committee, composed of the chair, chair-elect, vice chairs, secretary, treasurer, and immediate past chair of the section, which shall be responsible for the daily operations of the section between the regular or special meetings of the executive council and shall conduct its business from time to time by correspondence, meeting, telephone conference, computer, electronics, or other appropriate means selected by the committee, to the extent authorized by the chair of the section. . The executive committee shall also have the full power and authority to exercise the function of the executive council when and to the extent authorized by the executive council with respect to a specific matter, and on any other matter which the executive committee reasonably determines requires action between meetings of the executive council. All actions of the executive committee shall be subject to ratification by the executive council. The chair of the section shall be chair of the executive committee.

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