



Elder Law Section

EXECUTIVE COUNCIL AGENDA

Loews Portofino Bay Hotel – Orlando, Venetian II Meeting Room

Thursday, January 12, 2017

6:00 p.m. – 8:00 p.m.

Dialing Instructions

Dial: (888) 376-5050

Pin Number: 9124571035#

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|--|---|--------------------|
| I. Call to Order - Welcome | Ellen Morris, Chair | |
| II. Approval of Minutes | Carolyn Landon, Secretary | (Exhibit A) |
| III. Chair's Report | Ellen Morris, Chair | |
| IV. Past Chairs Report | David Hook, Immediate Past Chair | (Exhibit B) |
| V. Chair Elect Report | Collett Small, Chair-elect | (Exhibit C) |
| VI. Treasurer's Report | Steve Hitchcock, Treasurer | (Exhibit D) |
| VII. Substantive Divisions | Jason Waddell, Vice Chair | |
| (Committees in bold to give oral presentations) | | |
| a. Exploitation and Abuse Committee | Erika Dine/ David Weintraub | |
| b. Estate Planning & Probate Committee | Horacio Sosa/ Amy Collins | |
| c. Guardianship Committee | Victoria Heuler/ Debra Slater | (Exhibit E) |
| d. Legislative Committee | William Johnson/ Scott Selis | |
| e. Medicaid /Government Benefits Committee | John Clardy/ Heidi Brown | (Exhibit F) |
| f. Special Needs Trust Committee | Travis Finchum/ Howie Krooks | (Exhibit G) |
| g. UPL Special Committee | John Frazier/Leonard Mondschein | |
| h. Financial Products Special Committee | Jill Ginsberg | |
| i. Veterans Benefits Committee | Javier Centonzio/ Elizabeth Money maker | |
| j. Mentoring Special Committee | Stephanie Villavicencio | |
| VIII. Administrative Division | Scott Selis, Vice Chair | |
| (Committees in bold to give oral presentations) | | |
| a. CLE Committee | Sam Boone | (Exhibit H) |
| b. Newsletter | Kristina Tilson | |

- c. Council of Sections Report
- d. Certification Special Committee
- e. **Law School Liaison Special Committee**
- f. Web Page Report
- g. Sponsorship Special Committee
- h. Membership Special Committee
- i. Budget Committee

Ellen Morris
Ed Boyer (Bar Committee)
Enrique Zamora/Alex Cuello
David Hook (see Exhibit B)
Jason Waddell
Donna McMillan
Steve Hitchcock

IX. Board of Governors Report

Sandy Diamond (16-17 Liaison)

X. Liaison Reports

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

Twyla Sketchley
Scott Greenberg/David Hook
Charlie Robinson/Marjorie Wolasky
Howard Krooks
Ellen Morris/Sam Boone

XI. New Business

XII. Adjournment



Elder Law Section
EXECUTIVE COUNCIL AGENDA
Omni Amelia Island Plantation Resort
Thursday, October 27, 2016
5:00 p.m. – 7:00 p.m.

I. Call to Order - Welcome Ellen Morris, Chair

Meeting called to order at 5:15 p.m. by Ellen Morris.

Ms. Morris began by welcoming everyone in attendance to the meeting.

In attendance: Ellen Morris, Chair; Collett Small, Chair-Elect; Scott Selis, Vice Chair; Javier Centonzo, John Clardy, Kara Evans, John Frazier, Jill Ginsberg, Matthew Rheingans, Evett Simmons, CLE Committee Chair; Matthew Thibaut, Enrique Zamora

Bar Staff: Christopher Hargrett

No call-in capabilities for this meeting.

II. Approval of Minutes Carolyn Landon, Secretary (**Exhibit A**)

Minutes from June 17, 2017 Executive Council meeting approved unanimously.

III. Chair's Report Ellen Morris, Chair

Ellen discussed the state of the Section, in which financials show that the Section has over \$130,000 in its fund balance. In addition, Ellen mentioned that the Special Needs Trust CLE in June was a great event and that the next CLE at The Florida Bar's Annual Convention will be a Veterans Affairs Benefits CLE as well as a Guardianship CLE webinar. The goal is to put on more substantive CLEs. Enrique Zamora mentioned that the Real Property Probate Trust Law Section (RPPTL) is planning to hold a Guardianship seminar as well.

Ellen continued and mentioned that the Section is in the process of composing a positioning statement to present to Justice Jorge Labarga regarding upcoming legislation.

IV. Past Chairs Report David Hook, Immediate Past Chair (**Exhibit B**)

David Hook was unable to attend, but asked that Chris Hargrett present the proposal for updating the Section website. Proposal was presented to the Council for approval. A motion was made and then

passed with a unanimous vote.

In addition, Steven Hitchcock was unable to attend and asked Chris to present the budget amendment proposal to cover the cost of updating the website. The original amount in the Public Info & Website budget line is \$3,000, and the amendment would be to move an additional \$5,000 from the operating reserve to the website budget. A motion was made and the budget amendment was approved.

V. Chair Elect Report

Collett Small, Chair-elect

Collett Small discussed the Essentials of Elder Law and Annual Update programs, which will take place in January. A Save the Date would be sent to the entire Section on Friday, October 28, 2016 at 8:00 a.m. Collett reviewed The Florida Bar's Diversity & Inclusion Committee and its initiatives. In addition, Collett wants to work with Enrique, Co-Law School Liaison, to connect with the law schools in Florida. Collett stated that she held a conference call with Steve Hitchcock and Chris Hargrett to go over the CLE Planning Forms and that the Guardianship Committee oversees coming up with speaking points for the webinar.

Enrique and John Clardy both suggested offering scholarships to law students in exchange for articles for the newsletter and other opportunities to serve in the Section.

A question was asked if law students were able to join the Section for free. Chris responded that according to the Section bylaws it appears that law students are considered affiliate members and that all affiliate members pay the annual membership fee. Chris then explained that the Executive Council decides how many affiliate members can join the Section. Ellen recommended that the bylaws be amended to allow an unlimited number of affiliate members and that law students will pay an annual membership fee of \$25. A motion was made and passed unanimously.

Ellen briefly paused from the agenda and asked that everyone introduce themselves. Everyone introduced themselves including Matthew Thiabaut who said that he joined the Elder Law Section because Ellen came to a Leadership Academy program a year ago, and spoke to the audience about the Section.

Ellen proceeded with the agenda.

VI. Treasurer's Report

Steve Hitchcock, Treasurer (**Exhibit C**)

See minutes from the Past Chair Report section.

VII. Substantive Divisions

Jason Waddell, Vice Chair

Jason Waddell was unable to attend, but Ellen turned the time over to the Committee Chairs in attendance to give their report.

(Committees in bold to give oral presentations)

- a. **Exploitation and Abuse Committee**
- b. Estate Planning & Probate Committee

Erika Dine/ David Weintraub
Horacio Sosa/ Amy Collins (Exhibit D)

- c. Guardianship Committee
- d. Legislative Committee

Victoria Heuler/ Debra Slater
William Johnson/ Scott Selis

Scott Selis reported that the Legislative Committee strived to assist the task force to raise funds for the legislation and POLST meeting and that Bill Johnson was doing a great job.

- e. Medicaid /Government Benefits Committee John Clardy/ Heidi Brown

John Clardy stated that he and Heidi were working on getting their new committee members involved.

- f. **Special Needs Trust Committee**

Travis Finchum/ Howie Krooks

Ellen reported for Travis Finchum and Howard Krooks that the Committee is evaluating legislation for Special Needs Trust and is working on the Workers' Compensation Planning, which is expected to be held in August 2017.

- g. **UPL Special Committee**

John Frazier/ Leonard Mondschein (Exhibit E)

John Frazier reported that he participated in a webinar and that he wrote an article that was published regarding UPL. According to John F., there were over 20 UPL complaints filed in Florida, but the Bar has taken no action on them. John F. mentioned that litigation maybe moving forward on UPL, but Leonard Mondschein would have more information.

Collett asked John F. if the company Coastal Income Properties was on the UPL list of complaints that were filed. She mentioned that there is a board-certified attorney with this company, but John F. was unsure.

- h. Financial Products Special Committee

Jill Ginsberg (**Exhibit F**)

Jill Ginsberg state that she is still working hard. Matthew Thibaut recently joined this Committee.

- i. Veterans Benefits Committee

Javier Centonzo/ Elizabeth Moneymaker

Javier Centonzo reported that him and Elizabeth Moneymaker are working on the VA Benefits CLE in June 2017, which will be held at the Bar's Annual Convention. They are working on getting people involved.

- j. Mentoring Special Committee

Stephanie Villavicencio (**Exhibit G**)

Stephanie Villavicencio sent in her report, which Ellen covered briefly. The focus is on getting the new admitted members to be more involved by joining a committee. In addition, Stephanie is striving to work with the law schools to get them involved.

VIII. Administrative Division

Scott Selis, Vice Chair

Scott covered the various Committees he oversees as Administrative Division Vice Chair.

(Committees in bold to give oral presentations)

- a. **CLE Committee** **Sam Boone**
- b. Newsletter Kristina Tilson (**Exhibit H**)

Scott reported that Kristina is moving the deadline for the Spring issue to February 1 due to prior engagements. Scott iterated the need for articles from the substantive committee chairs and others. He mentioned that the articles do not have to be law review articles.

- c. Council of Sections Report Ellen Morris
- d. Certification Special Committee Ed Boyer (Bar Committee)
- e. **Law School Liaison Special Committee** **Enrique Zamora/Alex Cuello**

Enrique reported that the next symposium will be in March 2017 and that he will give a specific date by next week. Enrique is reaching out to all law schools. In addition, Alex Cuello will be a professor at St. Thomas Law School. In regards to the newsletter, Enrique sends a letter to each law school dean and sends a hard copy of the Advocate.

- f. Web Page Report David Hook (see Exhibit B)
- g. Sponsorship Special Committee Jason Waddell
- h. Membership Special Committee Donna McMillan (**Exhibit I**)

Scott mentioned that Donna McMillan is holding a conference call for anyone who wants to join the Section and provide them with the necessary information. Donna has reached out to FSGA, which posts the guardianship standard. Scott suggested we sit down with FSGA to address Section's concerns and to build an affiliate. It was reported that an Elder Law Section table was not at the last FSGA conference.

Ellen asked Scott to contact Victoria Heuler and discuss the concerns about FSGA first. FSGA is a trade organization to ensure that their members are still working, however, the Section's views often do not align with FSGA.

- i. Budget Committee **Steve Hitchcock**

IX. Board of Governors Report Sandy Diamond (16-17 Liaison)

X. Liaison Reports

- a. AFELA Report Matt Rheingans

Matt Rheingans reported that new board members were brought on: David Jacoby, Sam Boone, and Britton Swack is the treasurer. Matt discussed briefly the amicus brief by Scott Solkoff, who submitted an appeal. AFELA voted not to support the brief. The Un-Program CLE will be held at the Orlando Hyatt Hotel the first week in December.

- b. FSGA Report Scott Greenberg/David Hook
- c. RPPTL Report Charlie Robinson/Marjorie Wolasky
- d. NAELA Report Howard Krooks
- e. Task Force Update Ellen Morris/Sam Boone

XI. New Business

- a. Website

XII. Adjournment

Ellen mentioned that the Executive Committee agreed not to support the amicus brief of Scott Solkoff as well and to possibly have a webinar for an amicus brief.

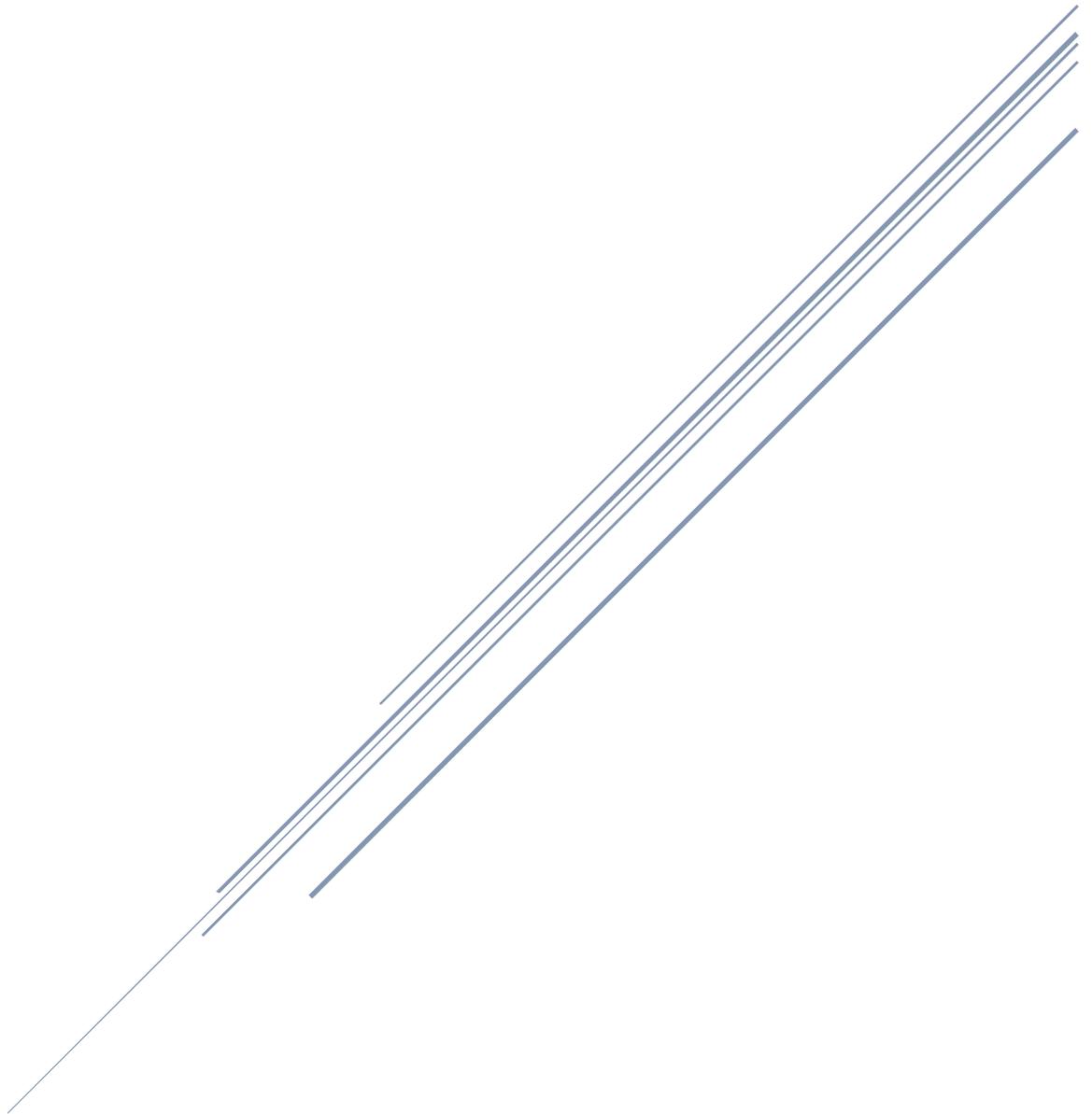
Collett referenced that next year's Retreat will be in Jamaica. Either the first week of October or November.

Ellen thanked everyone in attendance.

Meeting adjournment at 6:40 p.m.

ELDER LAW SECTION

Website Content Document



Homepage Content

(Left Column):

Upcoming Events

January 12-14, 2017

[Essentials of Elder Law](#)

[Elder Law Annual Update and Hot Topics](#)

March 10, 2017

[Elder Law Certification Exam](#)

(Middle Column):

Members Area

[Click here to access members area](#)

Join Our Section

Membership to The Florida Bar Elder Law Section is open to any licensed attorney interested in the legal issues of the elderly in Florida.

PROFESSIONAL GUARDIANS CAN NOW JOIN AS AFFILIATES!

[Bylaws of the Elder Law Section \[PDF\]](#)

[Elder Law Section Financial Operations. \[PDF\]](#)

Member Benefits

- Seminars on Elder Law Issues
- The Advocate-Section Magazine (3 per year)
- Free mentoring call every other month with CLE

- Speaking opportunities
- Publishing opportunities
- DCF Fair Hearing Subscriptions
- Committee Leadership Opportunities
- On-line membership directory
- Printed FL Board Certified Elder Law Attorney Directory
- Legislative & Administrative Advocacy

[Join Now](#)

The Advocate

The section provides a newsletter -- *The Advocate* -- published three times a year. Members are encouraged to submit articles to contribute to the publication.

- [Fall 2016 Edition](#)

Elder Law Section Legislative Positions

[Legislative Positions](#)

Standards of Conduct and Removal Procedures

[Procedures for Removal from the Florida Bar Elder Law Section](#)

[FLORIDA BAR ELDER LAW SECTION STANDARDS OF CONDUCT](#)

(Right Column):

SAVE THE DATE

Florida Bar Elder Law Section, Aging Life Care Association Florida Chapter, the Office of Attorney General Pam Bondi and Stetson University College of Law proudly present:

A Day in the Life of an Exploitation Report

Friday, September 30, 2016

Live program and webcast

This full-day CLE will cover the How, What and Where of a Financial Exploitation Investigation:

- How is the initial abuse complaint handled by the Department of Children and Families hotline?

- What does the Adult Protective Services Investigation do to investigate the case?
- Where does the case go after the investigation?
- How are these cases prosecuted civilly and criminally?

[Register Now](#)

Tampa Law Center
1700 N. Tampa Street
Tampa, Florida 33602

**For more information
call 727-562-7898**

The Academy of Florida Elder Law Attorneys presents Elder Concert: A multidisciplinary Elder Care Conference September 16, 2016 at Florida Atlantic University, Boca Raton CLE available

For more information please visit <http://elderconcert.org>

[Fair Hearings Reported](#)

We offer members a subscription to reported fair hearings regarding ICP Medicaid from the Department of Children and Families.

[Fair Hearing Log-in](#)

Thank you to our sponsors

Resources Content

Frequently Used Links

The following is a list of websites and internet resources relevant to the area of elder law and free to the public. Following these links will take you to web pages and web sites maintained and managed by state or federal government agencies and private entities not associated with The Florida Bar Elder Law Section. The content on the websites is not verified or monitored by the Elder Law Section.

- [Judicial Feedback Form \(Trial\)](#)
- [Judicial Feedback Form \(Appellate\)](#)
- [Judicial Evaluation Committee Envelope](#)
- [ELS Legislative Positions](#)
- [DCF Memo Changes its Position on Filing Incapacity](#)
- [FL Statutes](#)
- [FL Admin Code](#)
- [FL ESS Manual](#)
- [FLcourts.org](#)
- [Fed Statutes](#)
- [Code of Federal Regulation](#)
- [Soc. Sec. POMs](#)
- [Medicare.gov](#)
- [ACCESS \(FL Medicaid online app\)](#)
- [PCIP.gov](#)
- [AFELA](#)
- [FSGA](#)
- [Long Term Care Ombudsman](#)
- [Florida CHAIN](#)
- [Statewide Public Guardian Office](#)
- [Florida Legal Services](#)
- [Florida AARP](#)
- [FL Bar Journal](#)

- [FL Bar News](#)

Dept. of Children and Families Fair Hearings Reported

The Elder Law Section offers members a subscription to reported fair hearings regarding ICP Medicaid from the Department of Children and Families. Also included are policy clarification correspondence copied to the Elder Law Section. The reports are e-mailed to subscribers and posted on the Section website at eldersection.org. Download the subscription form to gain access this valuable resource!

[Login or Subscribe.](#)

Free Practice Management CLEs from The Florida Bar Law Office Management Assistance Service

The Florida Bar's Law Office Management Assistance Service (LOMAS) offers a variety of resources to assist attorneys in starting and managing a law firm, including free, downloadable CLEs. Below is a list of links to the LOMAS free practice management CLEs.

- [ABC's of Starting & Managing Your Law Practice](#) 2.5 CLE
- [Building Business in a Down Economy](#) 2.5 CLE (1 Ethics)
- [Building the Small Firm Marketing Program: From Planning to Ethical, Effective Action](#) 2.5 CLE (2.5 Ethics)
- [Developing a Business Plan for the Start-up Law Firm](#) 1.5 CLE
- [Foreclosure Litigation in Florida](#) 4.5 CLE (1 Ethics)
- [Law Firm Financial Management for the Non-Financial Professional](#) 2 CLE
- [Lawyer as Employer](#) 3 CLE (2 Ethics)
- [Maintaining a TRUSTworthy Trust Account](#) 1 CLE (1 ethics)
- [Managing Business Risk in the Law Firm](#) 2 CLE (.5 ethics)
- [New Rule 2.420 Seminar](#) 2 CLE
- [New Rule 2.526: Digital Accessibility of Documents Electronically Transmitted to Florida Courts](#) 1 CLE
- [Professional Liability Insurance: Everything You Need to Ask](#) 2 CLE (1 ethics)
- [Technology Planning for the New Law Practice](#) 2 CLE
- [The Americans with Disabilities Act: How to Protect Your Deaf, Hard of Hearing or Deaf/Blind Client \(and Yourself\)](#) .5 CLE (.5 ethics)

Awards Content

Section Awards

At the 2016 Elder Law Section Awards Reception, the following awards were presented:

- **Charlotte Brayer Award for Outstanding Public Service to Jason A. Waddell of Waddell & Waddell, P.A. in Pensacola, FL.**
- **Members of the Year Awards to Scott A. Selis of Chimento Selis Dwyer, P.L. in Palm Coast, FL and William A. Johnson of William A. Johnson, P.A. in Melbourne, FL.**
- **Life Time Achievement Award to David J. Lillesand of Lillesand & Associates, P.A. in Clearwater, FL.**
- **Special Recognition Awards to Stephanie M. Villavicencio, Editor of the Advocate, and to Arlee J. Colman, Program Administrator to the Elder Law Section.**

Florida Bar Awards

The Justice Harry Lee Anstead Award for Florida Bar Certified Lawyer of the Year

The Justice Harry Lee Anstead Award is presented annually by the chair of The Florida Bar's Board of Legal Specialization & Education to a Florida board certified lawyer or judge. The award recognizes exemplary professionalism, excellence, character and commitment to The Florida Bar's certification program and to the practice of law.

The criteria for the award are as follows:

- Board certified attorney or judge.
- Substantial and positive influence on professionalism locally, statewide or nationally either through exemplary professional behavior during a career at law serving as a role model for others, or notable projects or activities advancing professionalism (e.g., extraordinary mentoring, extensive service on Bar professionalism committees, leadership within the Bar, etc.). Age or number of years as an attorney shall not necessarily qualify or disqualify a nominee.
- Positive influence on or advancement of Florida Bar board certification through mentoring of attorneys or law school students, faculty service for certification review courses or certification-related CLE courses, or service on a Florida Bar certification committee or the Board of Legal Specialization and Education.
- Florida Bar member in good standing with no record of Florida Bar disciplinary action.
- Solid reputation for professionalism and character.
- A history of teaching, mentoring, or providing an outstanding example for younger lawyers.

Award for Excellence In the Promotion of Board Certification

The Florida Bar Board of Legal Specialization and Education has established an annual award for Excellence in the Promotion of Board Certification. The award recognizes excellence and creativity by a Florida Bar board certified lawyer or a law firm in advancing the public's knowledge of and appreciation for legal board certification.

Accepted entries may include newsletters, brochures, news stories, speeches, PowerPoint presentations, mementoes, special events, and print, radio and television advertisements that raise awareness about board certification for lawyers in Florida.

The criteria for the award are as follows:

- Materials should be distinctive and related to the promotion of board certification: graphics, slogans, special events, advertising, etc.
- Materials, if subject to Florida Bar advertising rules, must have been approved by The Florida Bar Standing Committee on Advertising.
- Candidates must be board-certified attorneys or law firms that employ board-certified attorneys.

Section Contacts Content

The Florida Bar Elder Law Section cannot answer any legal questions, offer suggestions, provide legal advice, or offer a specific referral to an elder law attorney. For assistance please contact an elder law attorney in your community. To locate an attorney, use the search tool at the top of this page.

For Membership:

Christopher Hargrett, The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5625
E-mail: chargrett@floridabar.org

Elder Law Executive Committee 2016-2017

Ellen S. Morris
Chair
Elder Law Associates PA
7284 W Palmetto Park Rd Ste 101
Boca Raton, FL 33433-3406
emorris@elderlawassociates.com

Collett P. Small
Chair-Elect
Law Offices of Collett P. Small, P.A.
2400 N. University Drive, Suite 209
Pembroke Pines, FL 33024
csmall@small-collinslaw.com

Jason Waddell
Substantive Vice Chair
Waddell & Waddell, P.A.
1108 N 12th Ave # A
Pensacola, FL 32501-3308
jason@ourfamilyattorney.com

Scott A. Selis
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145 City Pl Ste 301
Palm Coast, FL 32164-2481
SSelis@PalmCoastLaw.com

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Immediate Past Chair
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4918 Floramar Terrace
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courtservice@elderlawcenter.com

Steven E. Hitchcock
Treasurer
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901 Chestnut St Ste D
Clearwater, FL 33765-5618
hitchcocklawyer@gmail.com

Carolyn Landon

Secretary

5707 S Dixie Hwy Ste B

West Palm Beach, FL 33405-3693

carolyn@landonlaw.net

Events Content

[Upcoming Events](#)

January 12, 2017 - Essentials of Elder Law (Course No. 2327)

Loews Portofino Bay Hotel at Universal Orlando
5601 Universal Blvd
Orlando, FL 32819
(407) 503-1000

[*Make Your Hotel Reservation*](#)

[*CLE Brochure*](#)

January 13 - 14, 2017 - Elder Law Annual Update and Hot Topics (Course No. 2328)

Loews Portofino Bay Hotel at Universal Orlando
5601 Universal Blvd
Orlando, FL 32819
(407) 503-1000

[*Make Your Hotel Reservation*](#)

[*CLE Brochure*](#)

March 10, 2017 - Elder Law Certification Exam

Tampa Hilton Westshore Hotel
2225 N. Lois Avenue
Tampa, FL 33607
(813) 877-6688

[*Elder Law Certification Exam*](#)

Note: There are no alternative dates or make-up exams.

Certification Staff Liaison Contact

Laurinda Babers
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300
(850) 561-5697
lbabers@flabar.org

Members Page Content

[Access Members Area](#)

[Click here to view Members Area](#)

[Committee Chair Login](#)

Login Form

Membership

Membership to The Florida Bar Elder Law Section is open to any licensed attorney interested in the legal issues of the elderly in Florida. Membership to the Florida Bar Elder Law Section also is open to law students interested in elder law.

Florida Bar member dues plus \$50 Annually - Please contact Christopher Hargrett, Program Administrator for more information. Member benefits include subscription to The Elder Law Advocate and opportunity to subscribe to online Medicaid Fair Hearing Reports.

The Elder Law Section exists to:

- Cultivate and promote professionalism, expertise, and knowledge in the practice of law regarding issues affecting the elderly and persons with special needs;
- Advocate on behalf of its members; and
- Perform such other activities as may be necessary and appropriate to fulfill this mission statement.

Christopher Hargrett, The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5625
E-mail: chargrett@floridabar.org

[Membership Application](#) (.pdf)

[Student Application](#) (.pdf)

[Professional Guardianship Application](#) (.pdf)

Committees Content

The Section encourages members to spend ten (10) hours a year engaged in Section activities including committee activities. The following is a list of the Elder Law Section's Committees and information about each committee. If you are interested in joining a committee contact the Chair or Co-Chair of the particular committee you are interested in and you will be informed of the next conf. call meeting. For more specific information including meeting schedules, conference call-in instructions and committee materials, visit the committee's page in the Members Section. [Click here to login](#)

[\(Administrative Division\)](#)

[The Advocate/Newsletter \(Publications\)](#)

The publications committee shall be responsible for furnishing articles for publication in Florida Bar publications; for publishing and distribution of a section newsletter; and for publishing and distribution of written materials to the public, including the section website.

To advertise in The Advocate, [click here](#)

Chair:

Kristina M. Tilson

2655 S Le Jeune Rd Ste 700-J

Coral Gables, FL 33134-5832

United States

Office: 786-597-3565

E-Mail: ktilson@langerlawpa.com

[Continuing Legal Education \(CLE\)](#)

The CLE committee shall be responsible for arranging legal seminars and similar programs for the education of attorneys in the field of elder law.

Meetings: TBA

Chair:

Sam W. Boone, Jr.

4545 NW 8th Ave Ste A

Gainesville, FL 32605-4522

Office: 352-374-8308

Fax: 352-375-2283

E-Mail: sboone@boonelaw.com

Co-Chair:

Marjorie Wolasky

9400 S. Dadeland Blvd., PH 4

Miami, FL 33156

Phone: 305-670-7005

Email: mwolasky@wolasky.com

Budget

The budget committee shall be composed of the treasurer, the chair, and the chair-elect. The committee shall prepare proposed budgets and any amendments for submission to vote of the executive council.

To become an Elder Law Section Sponsor, [click here](#)

To advertise in The Advocate, [click here](#)

Chair:

Steven E. Hitchcock Hitchcock Law Group

901 Chestnut St Ste D

Clearwater, FL 33756-5618

Office: 727-223-3644

Fax: 727-223-3479

E-Mail: hitchcocklawyer@gmail.com

(Budget Committee Members

Steven E. Hitchcock, Chair

Ellen Morris

Collett Small

Sam Boone

David Hook

Carolyn Landon

Jason Waddell

Marjorie Wolasky)

Membership

The membership committee shall be responsible for making recommendations to the executive council on affiliate membership; the membership directory; and any other functions assigned by the chair of the section.

Meetings: None currently scheduled.

Chair:

Donna R. McMillan

McCarthy Summers et. al.

2400 SE Federal Hwy Fl 4

Stuart, FL 34994-4556

Office: 772-286-1700

E-Mail: drm@mccarthysummers.com

Mentoring

The mentoring committee shall develop a mentoring program for section members, including but not limited to educational opportunities, mentor relationship development, and mentoring opportunities. The Mentoring Committee holds a mentoring call with CLE every other month over lunch with an expert in a particular area of elder law and members can ask questions of the expert. The call is free to all section members. For more information on the calls and the schedule watch for Section E-blasts announcing the calls or visit the Mentoring Committee page in the Members Section.

Meetings: TBA

Chair:

Stephanie M. Villavicencio

Zamora, Hillman & Villavicencio

3006 Aviation Ave Ste 4C

Coconut Grove, FL 33133-3866

United States

Office: 305-285-0285

Fax: 305-285-3285

E-Mail: svillavicencio@zhlaw.net

(Substantive Division)

Abuse, Neglect & Exploitation

The exploitation and abuse committee shall identify sources of crime and abuse against elder citizens, identify the appropriate respondent with respect to such sources and what the response should be, determine whether appropriate actions are being taken and assess what legislative, agency, or other means may be necessary to enhance the assistance available to elderly victims of crime and abuse. The committee shall also review, study, and recommend legislative, agency, and other action to address the legal issues relating to age discrimination.

Meetings: First Thursday of each month at 12:00

Co-Chair:

Erika Dine

Dine & Moneymaker, PLLC

1101 6th Ave W Ste 218

Bradenton, FL 34205-7744

Office: 941-746-3900

Fax: 941-240-2132

E-Mail: erika@dinelaw.com

Co-Chair:

David A. Weintraub

7805 SW 6th Ct

Plantation, FL 33324-3203

Office: 954-693-7577

Fax: 954-693-7578

E-Mail: daw@stockbrokerlitigation.com

Estate Planning and Advance Directives Committee, Probate

The estate planning and advance directives committee shall review, evaluate, assist, and provide planning strategies to the elderly and practitioners regarding estate planning alternatives. In addition, the committee shall study and make proposals regarding health care advance directives.

Meeting Times: Quarterly meetings will be held on the following dates: January 14, 2016, and May 19, 2016. The meetings will be from 8:30 to 9:30 a.m.

Co-Chair:

Horacio Sosa

2924 Davie Rd, Ste 102

Davie, FL 33314

Office: 954-532-9447

Fax: 954-337-3819

Email: hsosa@sosalegal.com

Co-Chair:

Amy M. Collins

1709 Hermitage Blvd., Ste. 102

Tallahassee FL, 32308

Office: 850.385.1246

Fax: 850.681.7074

Email: Amy@mclawgroup.com

Ethics

The ethics committee shall review, study, and recommend legislative, agency, and other action to address ethical issues that arise in the legal and other professions, including proposing codes of ethics in dealing with elderly persons for various professions.

Meetings: Third Wednesday of each month at 8:30 am

Attendance Policy for Meetings: NONE

Chair:

Steven E. Hitchcock

Hitchcock Law Group

901 Chestnut St Ste D

Clearwater, FL 33756-5618

Office: 727-223-3644

Fax: 727-223-3479

Email: hitchcocklawyer@gmail.com

(Ethics Committee Members

Steven Hitchcock, Chair

Rebecca Morgan

Roberta Flowers

Aubrey Posey

Laurie O'Hall

Richard Milstein

Lauchlin Waldoch

Horacio Sosa

Mark Shalloway

Linda Chamberlain

Alex Cuello
Odella Goldberg)

Guardianship

The guardianship committee shall review, study, and recommend legislative, agency, and other action to address the problems arising under the Florida guardianship statute and how better to implement the Florida Legislature's goals as stated therein.

Sponsored By:

www.wellsfargo.com/theprivatebank/

Meetings: Second and fourth Wednesday each month at 12:00

Co-Chair:

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Office: 850-421-2400
Fax: 850-421-2403
Email: victoria@hwelderlaw.com

Co-Chair:

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Fax: 954-753-4399
Email: dslater@slaterlawfl.com

(Guardianship Committee Members

Victoria Heuler, Co-Chair
Debra Slater, Co-Chair
Ellie Schwarz
Jay Kauffman
Ellen Morris
Steve Hitchcock
Mike Jorgensen
Maria Michaels
David Crane
Collette Small
Karen Campbell
Justin Diner (law student)
Mitzi Motsinger
Holly M. O'Neill

Stephanie Villavicencio
David Hook
John Clardy
Twyla Sketchley
Joan Nelson-Hook
Brandon Arkin
Nina Chepp
Sarah Caldwell
Alison Meyer (law student graduate)
Jaclyn Stark (law student graduate)
Julia Garrett (law student)
Katherine Corlett (law student)
Gina Nguyen)

Legislative

The legislative committee shall from time to time study and make recommendations to the executive council regarding requests for the section to adopt a legislative position, study and make recommendations to the executive council about legislative positions made by other sections,

individuals or entities and to disseminate news and opinions of proposed or enacted legislation on elder law matters among the various committees of the section.

Meetings: Every other Friday at 8:30 a.m. through 1/1/2016. Every Friday through the end of session.

Co-Chair:

Scott Selis
Chiumento Selis Dwyer, P.L.
145 City PI Ste 301
Palm Coast, Florida 321642481
United States
Phone: 386.4458900 16
Fax: 866.4373223
E-Mail: SSelis@PalmCoastLaw.com

Co-Chair:

William Johnson
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Melbourne, Florida 329407600
Phone: 321-253-1667

(Legislative Committee Members

William Johnson, Co-Chair
Scott Selis, Co-Chair
Tom Bachelor
John Clardy
All Substantive Chairs are members of the Legislative Committee)

Medicaid/Government Benefits

The Medicaid and government benefits committee shall study and make proposals regarding the availability of and eligibility for Medicaid and other government benefits.

Sponsored By:

www.epicelderlaw.com

Meetings: First Tuesday of every month from 8:30 to 9:30 a.m.

Co-chair:

John S. Clardy, III Clardy Law Firm, PA
243 NE 7th St
Crystal River, FL 34428-3517
Phone: 352-795-2946
Fax: 352-795-2821
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Co-chair:

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[Click here for Member List](#)

Special Needs Trust

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Co-Chair:

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Fax: 561-750-4069
E-Mail: hkrooks@elderlawassociates.com

Veterans (VA) Benefits

The Veterans benefits committee shall alert members to benefits available to Veterans, available care settings for Veterans and to provide educational programs for our members regarding various benefits and their respective eligibility rules.

Meetings: 6 lunch and learn CLE meetings. It is planned that an hour and half program will allow for a proper presentation and questions. These meetings will take place in the Tampa Bay Area, Orlando, Ft. Myers, Jacksonville, Boca Raton and Sarasota. They will be held in the months of September, October, November, February, March and April.

Co-Chair:

Javier Centonzo
Weylie Centonzo, PLLC
8240 118th Ave Ste 300
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Fax: 727-490-8712
E-Mail: jac@wclawfl.com

Co-Chair:

Elizabeth D. Moneymaker
Dine Law: Dine, Pino & Moneymaker
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Fax: 941-240-2132
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(Special Committees)

Certification

Chair:

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Broad & Cassel
1 N Clematis St Ste 500
West Palm Beach, FL 33401-5552
Office: 561-832-3300
Fax: 561-655-1109
E-Mail: honeill@broadandcassel.com

Financial Products

The financial products committee shall review, study, and recommend consumer and attorney education as well as legislative, agency, and other action to address financial products, sales of inappropriate investments, sales techniques used to sell in appropriate investments to Florida's elderly, and how to evaluate common financial products sold to and purchased by Florida elders.

Meetings: 3rd Friday of every month at 2 p.m.

Chair:

Jill Ginsberg

401 E Las Olas Blvd, Ste 1400

Fort Lauderdale, FL 33301

Phone: 954-332-2310

Office: 954-827-0440

Email: jill@ginsbergshulman.com

Law School Liaison

The law school liaison is responsible for developing relationships with law schools throughout Florida.

Meetings: TBA

Co-Chair:

Enrique Zamora

3006 Aviation Ave Ste 4C

Coconut Grove, Florida 331333866

Phone: 305-285-0285

E-Mail: ezamora@zhlaw.net

Co-Chair:

Alex Cuello

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Fax: 850-434-0971

E-Mail: jason@ourfamilyattorney.com

Unlicensed Practice of Law (UPL)

The unlicensed practice of law committee shall review, study, and recommend, Bar rules, legislative, agency, and other action to address issues that arise with regard to unlicensed practice of law.

Meetings: Third Tuesday of each month at 4 pm

Co-Chair:

John Frazier

John R. Frazier Jd, Llm, PLC/Jos. Pippen PL

10225 Ulmerton Rd # 11

Largo, Florida 337713538

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Fax: 727.5866276

E-Mail: John@attypip.com

Co-Chair:

Leonard E. Mondschein

The Elder Law Center of Mondschein

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Miami, FL 33176-1595

Phone: 305-274-0955

Fax: 305-596-0832

E-Mail: lenlaw1@aol.com

Website

The website/technology committee shall review and maintain an up-to-date website that is useful to members. It shall also review and make recommendations to the executive council regarding additional technology and social media the section should be using to reach out to and educate section members and consumers on issues related to elder law.

If you would like to have an update made to the website please email Jana McConnaughay.

Chair:

David A. Hook

The Hook Law Group

4918 Floramar Ter

New Port Richey, FL 34652-3300

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Fax: 727-848-0602

E-Mail: dhookesq@elderlawcenter.com

Certification Content

Board certification recognizes attorneys' **special knowledge, skills and proficiency** in various areas of law and **professionalism and ethics** in practice.

[Board Certified Elder Law Attorneys Directory](#)

Florida Bar Definition of Elder Law: "Elder law" means legal issues involving health and personal care planning, including: advance directives; lifetime planning; family issues; fiduciary representation; capacity; guardianship; power of attorney; financial planning; public benefits and insurance; resident rights in long-term care facilities; housing opportunities and financing; employment and retirement matters; income, estate, and gift tax matters; estate planning; probate; nursing home claims; age or disability discrimination and grandparents' rights. The specialization encompasses all aspects of planning for aging, illness, and incapacity. Elder law clients are predominantly seniors, and the specialization requires a practitioner to be particularly sensitive to the legal issues impacting these clients.

[Summary of Requirements to Become Board Certified in Elder Law](#)

For more information on Board Certification or Recertification visit [Elder Law Certification](#)

Member Area Content

2012 Member Survey

[2012 Survey Results](#)

Committee Pages

- [View Committee Pages](#)
- [Administrative Committee Pages](#) (requires administrative access)
- [Elder Law Section Student Members](#)

Thank You to Our Sponsors

Elder Law Advocate

Images and Titles of PDF's

Section Bylaws

View and download [Elder Law Section Bylaws](#).

Important News

No important news.

Fair Hearing Reports

[Subscribe to Fair Hearing Report](#)

In order to subscribe and access the Online Fair Hearing Reports, you must be a Member of the Florida Bar Elder Law Section. Membership to The Florida Bar Elder Law Section is open to any licensed attorney interested in the legal issues of the elderly in Florida.

[Download Membership Form](#)

[Download Fair Hearing Subscription Form](#)

Long Term Care Partnership Information

- [Admin Matrix](#)
- [Compact for Long Term Care Case Study](#)
- [Compact Flow Chart](#)
- [Title 4 Compact For Long Term Care](#)

- [Howard and Andy](#)
- [New York Long-Term Care Brokers, Ltd. Letter](#)
- [Scoring Report 2006](#)
- [The New York State Compact for Long-Term Care](#)
- [A Compact to Solve New York's Long Term Care Crisis](#)
- [The NY State Care COMPACT - Northeast Elder Law Symposium](#)
- [Compact Memo](#)
- [George Washington University Long Term Care Program](#)
- [National Clearinghouse for Long Term Care](#)
- [Understand the Compact for Long Term Care](#)
- [A Compact to Solve New York's Long Term Care Crisis](#)

View and download [Long Term Care Partnerships Regulations](#).

Elder Section Committees

(From Members Area)

[Abuse, Neglect & Exploitation](#)

The exploitation and abuse committee shall identify sources of crime and abuse against elder citizens, identify the appropriate respondent with respect to such sources and what the response should be, determine whether appropriate actions are being taken and assess what legislative, agency, or other means may be necessary to enhance the assistance available to elderly victims of crime and abuse. The committee shall also review, study, and recommend legislative, agency, and other action to address the legal issues relating to age discrimination.

Meetings: We will hold monthly telephone conferences on the first Thursday of every month at 11:00 a.m. cst/12:00 p.m. Eastern except December and January. There is no meeting in December. We would like a face to face meeting in January 2015 at the Annual Update.

Links

- [2016 A Day in the Life of an Exploitation Report CLE](#)

Documents

- [2016 A Day in the Life of an Exploitation Report](#)

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Co-Chair

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E-Mail: daw@stockbrokerlitigation.com

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Matthew Thibaut mthibaut@ciklinlubitz.com

Marilyn (Lynn) Belo lynn@mcbelolaw.com

Ada Aviles-Yaeger ada@adafloridalaw.com

Cathy Lerman clerman@lermanfirm.com

Katina Pantazis katinap@lawkppa.com

[Advocate/Newsletter Editorial Board \(Publications\)](#)

The publications committee shall be responsible for furnishing articles for publication in Florida Bar publications; for publishing and distribution of a section newsletter; and for publishing and distribution of written materials to the public, including the section website.

2012-2013 Deadlines for Advocate submissions: July 1, 2013, November 1, 2013, March 1, 2014

Links

- [Advertise in the Advocate](#)

Documents

- [10 Tips For Writing A Worthy Article](#)

Chairs

Chair

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Stephanie Villavicencio

Len Mondschein

Twyla Sketchley

Jana McConnaughay

Every Committee assigns a representative to the Editorial Board

Budget

The budget committee shall be composed of the treasurer, the chair, and the chair-elect. The committee shall prepare proposed budgets and any amendments for submission to vote of the executive council.

Links

- [To become an Elder Law Section Sponsor](#)
- [To advertise in The Advocate](#)

Chairs

Chair

Ellen S. Morris, Section Treasurer

7000 W Palmetto Park Rd Ste 205

Boca Raton FL, FL 33433-3430

Phone: 561-750-3850

Fax:

E-Mail: emorris@elderlawassociates.com

Members

Ellen Morris, Treasurer

Twyla Sketchley, Chair

John Clardy, Chair-Elect

Jana McConnaughay, Administrative Chair

Continuing Legal Education

The CLE committee shall be responsible for arranging legal seminars and similar programs for the education of attorneys in the field of elder law.

Documents

- [How to Attend A CLE Seminar](#)

Chairs

Co-Chair

Sam Boone

4545 SW 8th Ave, Suite A

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Fax: 352-375-2283

E-Mail: sboone@boonelaw.com

Co-Chair

Marjorie Wolasky

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E-Mail: MWolasky@Wolasky.com

Members

Katina Pantazis katinap@lawkppa.com

Continuing Legal Education (CLE)

The CLE committee shall be responsible for arranging legal seminars and similar programs for the education of attorneys in the field of elder law.

Meetings: TBA

Chairs

Chair

Philip Weinstein

7542 Pebble Shores Terrace

Lake Worth FL, FL 33467

Phone: 954-899-1551, 1(888) 404-1899

Fax: 1(800) 619-5167

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Scott A. Selis

- Administrative Vice Chair -

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Palm Coast, FL 32164-2481

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Jason A. Waddell

- Substantive Vice Chair -

Waddell & Waddell, P.A.

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David A. Hook

- Immediate Past Chair -

The Hook Law Group

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new Port Richey, FL 34652-3300

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Steven E. Hitchcock
- Treasurer -
Hitchcock Law Group
901 Chestnut St Ste D
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hitchcocklawyer@gmail.com

Carolyn Landon
- Secretary -
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West Palm Beach, FL 33405-3693
carolyn@landonlaw.net

Estate Planning and Advance Directives Committee, Probate

The estate planning and advance directives committee shall review, evaluate, assist, and provide planning strategies to the elderly and practitioners regarding estate planning alternatives. In addition, the committee shall study and make proposals regarding health care advance directives.

Meetings: For the balance of 2013 - 2014 committee meetings will be on February 11, April 8, June 10, 2014, or on an "as needed" basis as dictated by the Legislature's activities. Thank you.

Documents

- [Tax Issues for Elder Law Attorneys, Dec 2013, Lampert](#)

Chairs

Co-chair

Stephen Kotler

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Naples Florida, Florida 34108
Phone: 239 325 2333
Fax: 239 325 1853
E-Mail: skotler@kotlerpl.com

Co-chair

Mike Jorgensen

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Jacksonville Florida, Florida 32204
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Randy C. Bryan, J.D., B.C.S.
Board Certified by the Florida Bar in
Elder Law and
Wills, Trusts and Estates
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Odella Goldberg
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Melissa Williams melissa@finleywilliamsllaw.com

Ada Aviles-Yaeger ada@adafloridalaw.com

A. Stephen Kotler skotler@kotlerpl.com

Cathy Lerman clerman@lermanfirm.com

Katina Pantazis katinap@lawkppa.com

Alan Reinfeld ajreinfeld@mypersonalattorneys.com

Ethics

The ethics committee shall review, study, and recommend legislative, agency, and other action to address ethical issues that arise in the legal and other professions, including proposing codes of ethics in dealing with elderly persons for various professions.

Meetings: Third Thursday of each month at 4:00 p.m.

Attendance Policy for Meetings: NONE

2012-2013 Goals: 1) Create working group with other bar sections related to proposed changes to Rule 4-1.14; 2) Present Ethics opinion request; and, 3) Determine if drafting Canons is possible/desired.

Chairs

Chair

Steven Hitchcock

901 Chestnut St Ste C

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Phone: 727.4437898

Fax: 727.6310970

E-Mail: Steve@specialneedslawyers.com

Members

Steven Hitchcock, Chair

Rebecca Morgan

Roberta Flowers

Aubrey Posey

Laurie O'Hall

Richard Milstein

Lauchlin Waldoch

Horacio Sosa

Mark Shalloway

Linda Chamberlain

Alex Cuello

Odelia Goldberg

Financial Products

The financial products committee shall review, study, and recommend consumer and attorney education as well as legislative, agency, and other action to address financial products, sales of inappropriate investments, sales techniques used to sell in appropriate investments to Florida's elderly, and how to evaluate common financial products sold to and purchased by Florida elders.

Meetings: last Tues of the Month-September through May. Call Jill Ginsberg at 954-332-2310 if you would like to attend.

Chairs

Chair

Jill Burzynski

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Naples FL, FL 341025451

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Vice-Chair

Greg Martoccio

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Members

Jill Ginsberg
Greg Martoccio
Matt Thibaut
John Thomas Cardillo
Carrie Leontitsis
Frank Leontitsis
Daniel Burzynski
David Weintraub
Scott Ilgenfritz
Steve Stolz

Guardianship

The guardianship committee shall review, study, and recommend legislative, agency, and other action to address the problems arising under the Florida guardianship statute and how better to implement the Florida Legislature's goals as stated therein.

Meetings: 2d and 4th Wednesday of each month at 12 noon.

Links

- [Sponsor - Wells Fargo](#)
- [OPPG RULE WRITTEN COMMENTS](#)

Documents

- [Proposed New Chapter 745 Guardianship Code](#)
- [RPPTL Legislative draft bill POLST](#)
- [RPPTL Legislative draft bill divorce](#)
- [RPPTL Legislative draft bill 744.441](#)
- [OPPG Notice of Proposed rule October 2106](#)
- [Draft OPPG rule 58M-2.009](#)

- [Proposed OPPG disciplinary chart](#)
- [Section's official comments to OPPG draft rule](#)
- [RPPTL White Paper Shen v. Parks](#)
- [FSC gship work group talking points](#)

Chairs

Co-Chair

Victoria Heuler

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Members

Victoria E. Heuler, Co-Chair

Debra J. Slater, Co-Chair

Carolyn Landon

Melissa Barnhardt

Ellie Schwarz

Jay Kauffman

Ellen Morris

Steve Hitchcock

Mike Jorgensen

Maria Michaels

David Crane

Collette Small

Karen Campbell

Justin Diner (law student)

Mitzi Motsinger

Holly M. O'Neill

Stephanie Villavicencio

David Hook

John Clardy
Twyla Sketchley
Joan Nelson-Hook
Nina Chepp
Sarah Caldwell
Alison Meyer (law student graduate)
Julia Garrett (law student)
Katherine Corlett (law student)
Gina Nguyen
Beth Waddell
Donna McMillan
Michelle Hollister
Erika Dine
Gerald "Jay" Hemness
Tom Jones
Silvia Ibanez
Lizzie Johnson
Jared Loucel
Evet Simmons
Tiesha Taylor
Marilyn (Lynn) Belo
Noelle Melanson
Michelle Hollister
Melissa Williams
Ada Aviles-Yaeger
Helen McGeoch
Alan Reinfeld
Samah Abukhodeir
Spiro Verras

Law School Liaison

The law school liaison is responsible for developing relationships with law schools throughout Florida.
Meetings: TBA

Documents

- [Law Student Member List](#)

Chairs

Co-Chair

Enrique Zamora

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Co-Chair

Alex Cuello

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Members

Silvia Ibanez ssibanez@attorney-cpa.com

Katina Pantazis katinap@lawkppa.com

Legislative

The legislative committee shall from time to time study and make recommendations to the executive council regarding requests for the section to adopt a legislative position, study and make recommendations to the executive council about legislative positions made by other sections, individuals or entities and to disseminate news and opinions of proposed or enacted legislation on elder law matters among the various committees of the section.

Meetings: Once a month on a Monday afternoon at 4:00 p.m. Eastern. During the Florida Legislative Session the Legislative Committee meets weekly. Dates: TBA

Links

- [The Florida Senate](#)
- [The Florida House of Representatives](#)

Documents

- [Florida Bar Legislative Position Request Form](#)

Chairs

Co-Chair

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Members

Scott Selis, Chair

Tom Bachelor

John Clardy

Twyla Sketchley

Michelle Hollister michelle@michellehollister.com

Ada Aviles-Yaeger ada@adafloridalaw.com

Cathy Lerman clerman@lermanfirm.com

Katina Pantazis katinap@lawkppa.com

Alan Reinfeld ajreinfeld@mypersonalattorneys.com

All Substantive Chairs are members of the Legislative Committee

[Medicaid/Government Benefits](#)

The Medicaid and government benefits committee shall study and make proposals regarding the availability of and eligibility for Medicaid and other government benefits.

Meetings: Held the first and third Tuesday of every month at 12:00 p.m. Eastern, except during the Florida Legislative Session. Meetings are held every Tuesday at 12:00 p.m. Eastern during the Florida Legislative Session.

Contact John Clardy at (352)795-2946 or clardy@tampabay.rr.com to join the Committee

Links

- [Click here for Member List](#)

Documents

- [Public Records Request Part 1](#)
- [Public Records Request Part 2](#)
- [Public Records Request Part 3](#)
- [Public Records Request Part 4](#)
- [UMED 2016 materials](#)
- [Creditor's Rights Expanded Talking Points](#)

- [RPPTL Creditor's Rights White Paper](#)

Chairs

Co-Chair

John Clardy

PO Box 2410

Crystal River FL, FL 34423

Phone: (352)795-2946

Fax: (352)795-2821

E-Mail: clardy@tampabay.rr.com

Co-Chair

Heidi Brown

3783 Seago Ln

Fort Myers FL, FL 33901

Phone: (239)939-4888

Fax: (239)277-0601

E-Mail: heidib@omplaw.com

Membership

The membership committee shall be responsible for making recommendations to the executive council on affiliate membership; the membership directory; and any other functions assigned by the chair of the section.

Meetings: None currently scheduled.

Chairs

Chair

Alex Cuello

5975 Sunset Dr Ste 801

Miami FL, FL 331435174

Phone: 305.6691078

Fax: 305.6691079

E-Mail: ac440@bellsouth.net

Mentoring

MENTORING COMMITTEE MISSION STATEMENT

The purpose of the Elder Law Section Mentoring Committee is to provide mentoring services for our newer members, by matching them with seasoned (often Board Certified) attorneys who will guide and assist mentees in their professional development. The committee also provides educational resources, including but not limited to, peer based study groups and bi-monthly CLE approved conference calls on

matters of interest to our members.

STUDY GROUP

The Mentoring Committee Study Group has been formed with 15 initial members. Please send the Chair an email (contact below), if you would like to join.

TRICKS OF THE TRADE CALLS

The Elder Law Mentoring Committee hosts the Tricks of the Trade teleconferences on a bi-monthly basis. Each teleconference focuses on a different area of Elder Law for approximately 1 hour. The teleconferences are geared toward professional development for newer Elder Law attorneys, but all members of the Elder Law Section are welcome to participate. The calls are free and offer 1.0 hour of CLE credit.

CLE credit for the upcoming call will be announced during the call and emailed thereafter to all attendees.

Tricks of the Trade Call dates for 2016/2017:

10/13/16

12/8/16

2/9/17

4/13/17

6/8/17

Links

- [January 14, 2016 Elder Law Essentials Seminar](#)
- [January 15-16, 2016 Elder Law Update and Hot Topics](#)

Documents

- [ABCs of Elder Law \(Common Acronyms\)](#)
- [How to Train for the Certification Exam](#)
- [What Elder Law Attorneys Need to Know About Working with Non-Attorney Medicaid Companies \(Leonard E. Mondschein\)](#)
- [The Unlicensed Practice of Law in Medicaid Planning: A Fresh Look at an Old Problem \(John R. Frazier, JD, LLM, MBA\)](#)
- [Roadmap to Leadership in the ELS](#)
- [Florida Bar Advisory Opinion No. SC14-211- Medicaid Planning Activities by Nonlawyers](#)
- [Special Needs Trusts PowerPoint](#)
- [The Baker Act Explained](#)
- [Baker Act Overview](#)

- [5 Things I Wish I Had Known in My First Year of Practice](#)
- [The ABCs and 123s of SNTs](#)
- [Nursing Home Litigation TOT call June 2015](#)
- [Fundamentals of Medicaid Planning TOT 4/9/15](#)
- [Florida SCT final advisory opinion on Medicaid UPL](#)
- [VA Benefits as Income re Medicaid federal case law](#)
- [VA Benefits as Income re Medicaid NJ DCT Brief](#)
- [VA Benefits for Elder Law Attys](#)
- [VA Benefits as Income 11th Circuit Brief](#)
- [Medicare Set Asides - White Paper by Jason Lazarus](#)
- [Continued Care Issues with Special Needs Trusts](#)

Chairs

Chair

Stephanie Villavicencio

3006 Aviation Avenue, PH-4C

Coconut Grove FL, FL 33133

Phone: 305-285-0285

Fax: 305-285-3285

E-Mail: svillavicencio@zhlaw.net

Special Needs Trust

The special needs trust committee shall study, review, evaluate, assist, and provide planning strategies for the use of special needs trusts to assist the elderly and persons with disabilities. They shall also review, study and recommend legislative, agency, and other action to address issues that arise in the drafting and administration of special needs trusts.

Sponsored by:

Tammy Blackburn

Director of Development

Family Network on Disabilities

T :(727) 523-1130 F :(727) 523-8687

tblackburn@fndusa.org

Meetings: TBA

Links

- [Sponsored by: Family Network on Disabilities](#)

Chairs

Co-Chair

Travis Finchum

901 Chestnut St Ste C
Clearwater FL, FL 33756
Phone: (727)443-7898
Fax: (727)631.0970
E-Mail: Travis@SpecialNeedsLawyers.com

Co-Chair

David Lillesand

901 Chestnut St Ste C
Clearwater FL, FL 33756
Phone: (727)330-7895
Fax: (727)631-0970
E-Mail: David@LillesandLaw.com

Sponsorship

Chair:

Jason A. Waddell
Waddell & Waddell, P.A.
1108 N 12th Ave # A
Pensacola, FL 32501-3308
Phone: 850-434-8500
Fax: 850-434-0971
E-Mail: jason@ourfamilyattorney.com

Unlicensed Practice of Law (UPL)

The unlicensed practice of law committee shall review, study, and recommend, bar rules, legislative, agency, and other action to address issues that arise with regard to unlicensed practice of law.

Meetings: TBA

2012- 2013 Projects: Working to obtain Florida Bar ethics opinion on unlicensed practice of law by non-lawyer Medicaid planners.

Links

- [The Cost of Remaining Silent About the Unlicensed Practice of Law](#)

Documents

- [FL Bar Letter From UPL Counsel 6 25 2012](#)
- [UPL CLE Outline 3 22 12](#)
- [Why Is It Best To Use An Attorney for Medicaid Planning](#)
- [UPL Committee Report 1 8 2013](#)
- [UPL Committee Report September 2012](#)
- [The Unlicensed Practice of Law - Article](#)
- [Cease and Desist Order - Sonja Kobrin VIP Management, Inc](#)
- [The UPL CLE Exhibit 3 22 12](#)
- [St. Petersburg Times - Fake Lawyer Article](#)
- [DPA - What You Should Know About UPL \(for SNFs etc.\)](#)

Chairs

Co-Chair

John Frazier

10225 Ulmerton Rd # 11

Largo FL, FL 337713538

Phone: 727.5863306 104

Fax: 727.5866276

E-Mail: John@attypip.com

Co-Chair

Leonard Mondschein

10691 N. Kendall Drive, Suite 205

Miami Florida, Florida 33176

Phone: 305-274-0955

Fax: 305-596-0832

E-Mail: Lenlaw1@aol.com

Veterans (VA) Benefits

The Veterans benefits committee shall alert members to benefits available to Veterans, available care settings for Veterans and to provide educational programs for our members regarding various benefits and their respective eligibility rules.

Website

The website/technology committee shall review and maintain an up-to-date website that is useful to members. It shall also review and make recommendations to the executive council regarding additional technology and social media the section should be using to reach out to and educate section members and consumers on issues related to elder law.

If you would like to have an update made to the website, please email Collett Small.

Chairs

Chair

Collett Small

2400 N University Dr Ste 209

Pembroke Pines FL, FL 330243629

Phone: 954.4374603

Fax: 954.4374686

E-Mail: csmall@small-collinslaw.com

SAVE THE DATE

2017
RETREAT
JAMAICA

THE FLORIDA BAR
ELDER LAW SECTION

WHEN

THURSDAY, OCTOBER 5, 2017

WHERE

HALF MOON RESORT
MONTEGO BAY, JAMAICA

WHAT

RETREAT FOR
ELDER LAW ATTORNEYS

ENDS

SUNDAY, OCTOBER 8, 2017

THE FLORIDA BAR
Elder Law Section
For the Five Months Ending Wednesday, November 30, 2016

	<u>Budget</u>	<u>Variance</u>	<u>Actual</u>	<u>Variance</u>	<u>Prior Year</u>
Revenue					
Transfer In					
Fee Revenue	\$ 83,000	\$ (2,250)	\$ 80,750	\$ (800)	\$ 81,550
Event Revenue	\$ 35,000	\$ (12,124)	\$ 22,876	\$ 381	\$ 22,495
Other Operating Revenue	\$ 6,250	\$ (5,575)	\$ 675	\$ (4,725)	\$ 5,400
Non-Operating Revenue	\$ 4,193	\$ (932)	\$ 3,261	\$ 5,982	\$ (2,721)
Total Revenue	\$ 128,443	\$ (20,881)	\$ 107,562	\$ 838	\$ 106,724
Expenses					
Staffing Expenses		\$ -		\$ -	\$ -
Office Expenses	\$ 4,410	\$ (1,355)	\$ 5,765	\$ (3,713)	\$ 2,051
Contract Services	\$ 1,100	\$ (1,772)	\$ 2,872	\$ (2,671)	\$ 201
Travel	\$ 5,564	\$ 3,098	\$ 2,466	\$ (2,008)	\$ 458
Other Expenses	\$ 29,018	\$ 26,463	\$ 2,555	\$ 1,498	\$ 4,053
Transfer Out	\$ 300	\$ 300		\$ 300	\$ 300
Admin and Internal Services	\$ 40,350	\$ 10,113	\$ 30,237	\$ 3,886	\$ 34,123
Total Expenses	\$ 80,742	\$ 36,847	\$ 43,895	\$ (2,708)	\$ 41,187
Net Income	\$ 47,701	\$ 15,966	\$ 63,667	\$ (1,870)	\$ 65,537
Ending Fund Balance FY15-16			\$ 130,461		
Net Income			\$ 63,667		
Current Fund Balance FY16-17			\$ 194,128		

Guardianship Committee Report
January 9, 2017
Victoria Heuler and Debra Slater, co-chairs

The Guardianship Committee meets by telephone at 12:00 noon on the second and fourth Wednesday of every month. We have a strong committee of approximately 40 people and increasingly good attendance at our bi-monthly meetings. Our committee members have been terrific at stepping up on short notice when we have been asked to respond to the needs of our Section and our client base.

2016 was a busy year and 2017 appears to be no different! Here is what we have been doing since the last Legislative session:

1. Office of Public and Professional Guardian (OPPG) rule development: The OPPG has published its final rule and we were involved all along the way in the rule development process. We provided much input to the OPPG director and staff about issues we had with the rule and, although the director was affable and appreciated our input, the rule remains problematic. The rule attempts to establish mandates for professional guardians beyond the statutory dictates for guardianship in chapter 744 and is in many respects vague and subject to wide interpretation, thus setting a trap for all professional guardians. A rule challenge was filed by professional guardian and attorney Darby Jones through her Tallahassee attorney, Sarah Butters. Darby and Sarah are very active in RPPTL and Sarah is the RPPTL Legislative Chair. The rule challenge is pending as of this writing, but Sarah and the OPPG director are negotiating new language that Sarah says will remediate many of the litigant's concerns, but not all. Sarah queried whether some of the rule challenge may still move forward. She is keeping me informed. **See attachment.**
2. With the genesis of the OPPG rule and the issues it presents for professional guardians, this Committee is planning a **webinar** for the Spring, preferably early April 2017, for anyone who wants to learn about the administrative law process and how to defend professional guardians who are complained against under the new rule and/or against whom OPPG attempts to take administrative action that impacts the guardian's good standing and licensure, as well as education about how to implement a possible rule challenge. Planning is underway and the thought is that the webinar will be a few hours long, include materials, and be broken up into two shorter webinars, each a different day to allow practitioners to partake without as much impact on a particular day.
3. Given all of the attention on guardians and guardianship over the past few years, the Florida Supreme Court convened a Guardianship Workgroup that will be working the next two years on evaluating issues within the court system regarding wards and guardianship, including implementation of less restrictive alternatives. Our Committee member and Public Guardian, Karen Campbell, is on the working group and our Committee crafted Talking Points to present to working group members around the state for their consideration as they proceed with their tasks. **See attachments.**

4. Our Committee prepared an article for National Caregivers Month and submitted it to the Huffington Post for publication. The article was to highlight caregivers and indirectly rebut a prior Huffington Post article that assailed professional guardians as a form of human traffickers. I am not aware that the article was actually published, but Al Rothstein may have updated information about that. **See attachment.**
5. Our Committee has analyzed the first guardianship bill for the 2017 session, which is SB 172 filed by Senator (!) Kathleen Passidomo. Senator Passidomo is a good friend to the Elder Law Section and we have worked closely with her over the past several years regarding legislation affecting our Section and clients when she was a state Representative. She is now a Senator and has already expressed her desire to hear our concerns over her bill and her willingness to work with us to work out any issues we have. Our Committee will vote at our meeting on January 11th whether to recommend support of this bill, remain neutral, or work to defeat. From early Committee communications, it appears that we will vote to support this bill and it has sensible and necessary amendments to existing guardianship law. We will also vote whether to add language to 744.3215(2)(a), Florida Statutes, that requires prior court approval for a ward to enter into a marriage contract if the ward retains the right to marry, but the right to contract has been delegated to a guardian. The statute does not currently contain the word “prior” and this leads to potential exploitation and litigation if a ward marries and then later attempts (or the spouse does) to have the marriage ratified by the court after-the-fact. If we vote positively (which all indications are that we will as a Committee), then we will ask the Section through the Legislative Committee (and with the very important input from Brian Jogerst, our lobbyist) whether we would be on good ground to ask Senator Passidomo to allow a friendly amendment to her bill to add this language to 744.3215(2)(a).
6. We have also started to review the not-so-secret-but-secret new Chapter 745 (to replace chapter 744) that is being crafted by RPPTL member David Brennen. That is on a longer track for review since we are advised that RPPTL will not be seeking to have that overhaul brought before the Legislature in 2017.
7. Given all the unfortunate press and mis-information regarding professional guardians that exists lately, our committee was asked to create a “facts v myths” document regarding professional guardians that could be used when discussing professional guardians with various legislators as a way to educate them in an easy to use fact sheet. This document was drafted and discussed with the committee and is in its final form but has not yet been approved by the committee. Upon completion it will be available for use.
8. Otherwise, during our Committee meetings, we discuss various guardianship issues that arise and help each other problem-solve, particularly when we have disparities in incapacity and guardianship processes that differ around the state.

Respectfully submitted – Victoria and Deb.

Talking Points for discussion with members of the Florida Supreme
Court Guardianship Workgroup

(edited by Rebecca Berg)

The use of least restrictive alternatives that address specific functional limitations:

- The elder law section is in favor of the following:
 - Exploring the concept of supportive decision making in Florida and how that can assist the AIPs/Wards in participating in decisions that affect them.
 - Ensuring that the Courts fully examine the AIP's healthcare surrogates, durable powers of attorney and trusts prior to appointing a guardian to determine which functional limitations of the AIP can be addressed by their agent if documents are viable (and appropriate).
 - Using other available options to limit the guardianship parameters (i.e., Rep Payee for Social Security, Rep Payee for VA, etc.).

Determinations of incapacity and restoration of capacity:

- The elder law section is in favor of the following:
 - Reevaluation and changes to the Examining Committee, such as its structure, members' education requirements, parameters of evaluations, standards and procedures for visits/evaluations and written reports.

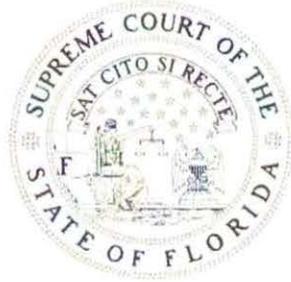
Assessment and assignment of costs associated with guardianship administration:

- The elder law section does NOT favor and does NOT support the following:
 - Capping hourly rates for attorneys who represent AIP/Ward and/or guardians. There is no support for this given that fees are not capped in any other disciplines.
- The elder law section is in favor of the following:
 - Judges determining hourly rates for the attorneys representing AIP/Ward and guardian based on the attorney's qualifications, education, competence and experience on a case by case basis.
 - Judges holding case management conferences within 45 days of the filing of the Petition to Determine Incapacity to determine the attorney's qualifications, education, competence and experience in each matter and to set the hourly rates.

Training opportunities available to judges and court staff:

- The elder law section is in favor of the following:
 - Probate/Guardianship judiciary be required to attend no fewer than three

- (3) seminars focusing on guardianship related issues (intermediate level);
- A closer relationship between the Probate/Guardianship Bench and Bar. The Probate/Guardianship Judges should hold luncheon conferences with Probate/Guardianship Bar every two months to facilitate open conversation regarding the practice and issues with same.
- The Court having the power to remove and/or restrict any attorney from appearing on behalf of the AIP/Ward who is not knowledgeable and experienced in the area of guardianship.



Supreme Court of Florida

FOR IMMEDIATE RELEASE 10/24/2016

Contact: Craig Waters, Director of Public Information

Florida Supreme Court

(850) 414-7641

Workgroup to Focus on Guardianship Issues in Florida's Courts

TALLAHASSEE – Few decisions are more challenging to a judge than removing a person's rights because they are no longer capable of making decisions independently, Florida Chief Justice Jorge Labarga said Monday. Caseloads are increasing in number and complexity and have convinced him to create a workgroup to study guardianships in the court system with a goal of improving accountability to better protect vulnerable people – children, adults with developmental and mental disabilities, and the elderly.

“As Florida grows and ages, we can expect more and more cases dealing with guardianship issues to come into our courts,” Labarga said. “As judges, we are committed to protecting the rights of individuals involved in these matters and doing everything in our power to ensure their safety, security, and well-being.”

Florida's guardianship system exists to assist and protect an individual who is judged by a court to be unable to make decisions for himself or herself. When appointed by the court, guardians can make decisions about an individual's care, finances, or property on their behalf.

On Friday, Labarga established the Guardianship Workgroup under the Court's [Judicial Management Council](#), the group that advises the chief justice and the Supreme Court on long-range issues confronting Florida's judiciary. Three JMC members will be appointed to serve on the workgroup, including Judge Olin Shinholser who has been a member of the JMC since 2012 and will serve as chair of the workgroup. Shinholser has served the judiciary in the 10th Judicial Circuit for over 26 years. His knowledge and experience will guide the workgroup.

“There is often tension, clash and/or conflict between the needs, interests and desires of the ward and those of the guardian, caregivers and families of the ward,” Shinholser said. “The system must be sensitive that it fairly and adequately assists, protects and safeguards the rights and welfare of the ward

while allowing the necessary tools to those providing and supervising the care of the ward. Comments and complaints from various stakeholders are indicative that we need to take a closer look at whether the rules and procedures in place accomplish the balance needed.”

The workgroup will examine judicial procedures and best practices pertaining to guardianship to ensure that courts are best protecting the person, property, and rights of individuals who have been judged to be incapacitated and persons who may have diminished capacity to function independently.

In the last two legislative sessions, state lawmakers passed laws addressing guardianship concerns. The state’s regulation and oversight of guardians was increased and measures designed to curb abuses enacted.

“This is an appropriate time to re-evaluate our system and determine if the courts are doing everything possible to meet the needs of everyone involved,” Labarga said.

The workgroup will focus on the following issues:

- the use of least restrictive alternatives that address specific functional limitations;
- determinations of incapacity;
- restoration of capacity;
- the assessment and assignment of costs associated with guardianship administration;
- post adjudicatory proceedings and responsibilities related to guardianship, including the rights guaranteed by Florida law; and
- training opportunities available to judges and court staff.

The workgroup will provide the Supreme Court with a report evaluating guardianship practices and recommending ways to enhance the guardianship process. An interim report is due to the Court by October 2017 and a final report is due to the Court by September 2018.

Additional workgroup members include:

- Judge Robert Lee, Broward County, Ft. Lauderdale (JMC Member)
- Judge Michelle Morley, 5th Circuit, Bushnell
- Judge Peter Dearing, 4th Circuit, Jacksonville
- Judge Maria Korvick, 11th Circuit, Miami
- Mr. Jason Nelson, Office of Public and Professional Guardians, Florida Department of Elder Affairs, Tallahassee
- Mr. Laird Lile, J.D., Lile & Hayes, PLLC, Naples (JMC Member)
- Mr. Andrew Sasso, J.D., Macfarlane Ferguson & McMullen, Clearwater
- Ms. Karen Campbell, J.D., North Florida Office of Public Guardian, Tallahassee
- Ms. Vicki Alkire, CPHQ, LHCRM, MG, CMC, Viable Alternatives, Inc., Sarasota

“Further evaluating guardianship practices supports the branch’s goal of ensuring that court procedures and operations are easily understandable and user friendly and supports our mission to protect rights and liberties of all,” Shinholser said. “It’s imperative we stay proactive in this area and provide real solutions to emerging issues.”

For more information about guardianship in Florida’s court system visit the Court Improvement web page at www.flcourts.org or to learn about the Florida Supreme Court, www.floridasupremecourt.org.



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

JORGE LABARGA
CHIEF JUSTICE
BARBARA J. PARIENTE
R. FRED LEWIS
PEGGY A. QUINCE
CHARLES T. CANADY
RICKY POLSTON
JAMES E.C. PERRY
JUSTICES

JOHN A. TOMASINO
CLERK OF COURT

SILVESTER DAWSON
MARSHAL

October 21, 2016

The Honorable Michelle T. Morley
Circuit Judge, Fifth Judicial Circuit
Sumter County Courthouse
215 E. McCollum Ave.
Bushnell, Florida 33513

Dear Judge Morley:

Thank you for agreeing to serve as a member of the Guardianship Workgroup, which will operate under the auspices of the Judicial Management Council. The Workgroup will examine judicial procedures and best practices pertaining to guardianships to ensure that Florida state courts are protecting the wellbeing of persons adjudicated to be incapacitated and persons alleged to have diminished capacity. I am confident the Workgroup's efforts will help advance the mission of the branch and ensure that guardians are acting professionally to promote the welfare of those whose affairs they are managing.

A two-year term of membership is anticipated, from October 2016 through September 2018. Staff from the Office of the State Courts Administrator will be in touch soon to assess your availability for upcoming conference calls and in-person Workgroup meetings. Should you have any questions in the meantime, please contact Andrew Johns, Chief of Strategic Planning, at (850) 487-9999.

Sincerely,

A handwritten signature in cursive script that reads "Jorge Labarga".

Jorge Labarga

JL/AQJ/dgh

Caregivers, Guardians Perform Invaluable Service in the Face of Adversity

by Marilyn A. Cangro Belo, Esq and Jared I. Lopez Loucel, Esq.

on behalf of the Academy of Florida Elder Law Attorneys and the Florida Joint Public Policy Task Force for the Elderly and Disabled

November is "National Family Caregiver Month" offering us the opportunity to recognize those who care for loved ones. Caregiving taxes the body, mind and spirit. Their roles often include food preparation, medications management, household cleaning, driving the person to appointments, and assistance with dressing, bathing and toileting. I remember when I was young watching my mother lovingly perform these duties for her aging mother and father. In the end, to my mother's distress, both needed more care than she could provide, especially while working and raising four young boys.

The need for family caregivers will only increase. The Department of Health and Human Services estimates a 36% hike in our elderly population this decade, to 55 million people in 2020. However, limitations necessitating a caregiver's services not only make the work more difficult but also create frustration with the person they are caring for. Someone with dementia may be prone to severe mood swings which may cause them to become physically agitated and strike at the person helping them. Verbal abuse is also common. Both of my grandparents suffered from dementia and I saw the toll that took on my mother.

In an ideal world, all elders would be able to "age in place", that is, remain in their homes and receive care from loving and attentive family members. However, family caregivers juggle elder care, child care and often a career or job outside the home.

As a society, we have not sufficiently recognized their efforts. Hopefully the new administration will consider offering tax credits or caregiver IRAs.

What about the "orphan elders," those who do not have family to provide care, perhaps because of divorce, family mobility or dysfunction. The number of persons in this group is projected to increase as the number of elders grows.

Who will care for these orphan elders? We can hope some will address their situation and put a plan in place. While they are able, they should identify surrogate decision makers whom they can trust and decide how they want to receive care they might need. States like Florida give deference to an incapacitated person's pre-incapacity decisions, typically in a will or power of attorney. But what happens if no plan is made? Too often our human nature leads us to choose to cruise down the River of Denial rather than the more challenging trip to an attorney, accountant or geriatric practice/care manager to address the reality of our circumstances.

Failure to have a care plan is a choice which may result in another party, like a probate court, being obliged to create one. If the court finds the person is incapable of caring for themselves, the only option available may be guardianship.

Guardianship law evolved from the legal theory of "parens patrie" or the state stepping in to care for the vulnerable. Courts appoint guardians to assist the ward (incapacitated person). In my state of Florida, the law presumes that the family may be in the best position to care for the ward, but when no one in the family is eligible, available or willing to serve the court will appoint a professional guardian. The judges in the counties in which I have appeared in guardianship matters meticulously seek to protect the ward's welfare. Guardians are required to participate in training, they file reports informing the court about the ward's physical well being and the status of their property.

Recent news has contained alleged instances of financial exploitation by professional guardians. There are good and bad in all professions, but the vast majority are devoted to their clients and patients and there is no evidence to suggest a majority of guardians are bad actors.

It has been my experience that the overwhelming majority of guardians are laser focused on the best interests of their wards. Often they leave their families or personal matters to attend to a ward in crisis. They sit with their wards as they are transitioning from this life. They take verbal and even physical abuse from someone who is no longer in control of their actions and has no other family interested, willing or able to be involved.

When the ward no longer has funds to pay, the professional guardian cannot simply walk away. Many believe deeply, beyond the oath they have taken, they have an obligation to provide care for that vulnerable person. Professional guardians often pay from their own funds to provide for their wards' needs. Ask any professional guardian how many of their wards they serve without compensation or reimbursement. The answer may surprise you.

Even when National Guardianship Month is over, let's continue to show gratitude for all those who provide care and comfort for the vulnerable and lonely, as my mother did. But, if we cannot be surrounded by family or friends, it is good to know there are professionals who demonstrate the best in human nature by the compassion they show to strangers. At any time anyone of us may be dependent on the kindness and generosity of another.

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DARBY JONES

Petitioner,

vs.

DOAH Case No. _____

**STATE OF FLORIDA,
DEPARTMENT OF ELDER AFFAIRS**

Respondent.

_____ /

**PETITION FOR ADMINISTRATIVE DETERMINATION
OF INVALIDITY OF A PROPOSED RULE**

Petitioner, DARBY JONES (herein "Petitioner"), by and through undersigned counsel, and pursuant to Section 120.56, Florida Statutes, hereby requests an administrative determination of the invalidity of a rule proposed by the State of Florida, Department of Elder Affairs. As grounds for this Petition, Petitioner states:

I. Identification of Parties

1. The name and address of the affected agency is the State of Florida, Department of Elder Affairs (the "Department"), 4040 Esplanade Way Tallahassee, Florida 32399-7000. The Department is the primary state agency responsible for regulating Public and Professional Guardians. The Department is an agency subject to the Administrative Procedure Act ("APA").

2. The name and address of Petitioner is DARBY JONES, c/o Sarah Butters, Esq., Holland & Knight LLP, 315 S. Calhoun Street, Suite 600, Tallahassee, Florida 32301.

II. Identification of Challenged Proposed Rule

3. The subject of this Petition are Proposed Rule 58M-2.001 Professional Guardian Registration and Credit Investigation; Proposed Rule 58M-2.009 Standards of Practice; and Proposed Rule 58M-2.011 Disciplinary Action and Guidelines (collectively, the “Proposed Rule”), which were collectively published in the *Florida Administrative Register* on October 18, 2016. A copy of the Notice of Proposed Rule including the full text of the Proposed Rule is attached as Exhibit “A.”

4. The final public hearing was held on November 9, 2016.

5. The stated purpose of the Proposed Rule is “to implement statutory changes to Parts I and II of Ch. 744, F.S., and to the Department’s oversight of public and professional guardians.”

6. Undersigned counsel has previously submitted comments to the Department and based on representations made by the Department, it is anticipated that the Department is going to make further changes to the Proposed Rule and publish the required Notice of Change. Notwithstanding, this petition is being filed in order to preserve all rights under the APA. To the extent that the Department publishes a substantially modified rule, Petitioner may request leave to amend this Petition accordingly.

III. Explanation of How the Petitioner's Substantial Interests Will Be Affected

7. Petitioner is a Florida licensed and actively practicing professional guardian in the State of Florida, who is subject to the regulations in the Proposed Rule.

8. Because the purpose of the rule is to implement statutory changes to Parts I and II of Chapter 744, Florida Statutes, and to the Department's oversight of public and professional guardians, the Petitioner's practice will be affected by the Proposed Rule.

9. If the Proposed Rule is adopted, Petitioner will be substantially affected in that there will be confusion and inconsistency between requirements of Chapter 744 of the Florida Statutes and the Proposed Rule, rendering Petitioner unable to comply with her obligations under both the statutes and the rule.

10. Accordingly, Petitioner has standing to institute this rule challenge.

IV. Facts Demonstrating the Invalidity of the Proposed Rule

11. As noted above, the stated purpose of the Proposed Rule is for the Department to implement statutory changes to Parts I and II of Ch. 744, F.S., and to the Department's oversight of public and professional guardians.

12. The statutory provision cited by the Department as rulemaking authority and the law being implemented by the Proposed Rule are Sections 744.201(17), 744.2001(2)(b), 744.2002, 744.2002(6), 744.2003, 744.3135(5)(b), and 744.20041 of the Florida Statutes.

13. As currently drafted, however, the Proposed Rule constitutes an invalid exercise of delegated legislative authority, as that term is defined in §120.52(8) of the Florida Statutes because it: (a) enlarges, modifies and contravenes Sections 744.201(17), 744.2001(2)(b), 744.2002, 744.2002(6), 744.2003, 744.3135(5)(b), and 744.20041 of the Florida Statutes, as well as Chapter 744; (b) is arbitrary and capricious; and (c) is vague and fails to establish adequate standards for agency decisions. Each of these categories is addressed separately below.

*The Proposed Rule Enlarges, Modifies and Contravenes
The Specific Provisions of Law Implemented*

14. As noted, the Proposed Rule purports to implement Sections 744.201(17), 744.2001(20)(b), 744.2002, 744.2002(6), 744.2003, 744.3135(5)(b), and 744.20041 of the Florida Statutes. The Proposed Rule is an invalid exercise of delegated legislative authority because it enlarges, modifies and contravenes those statutes in the following ways:

A. Professional Guardian Registration and Credit Investigation: The Proposed Rule 58M-2.001 at Subsections (2), (5)(b), and (7) can be read to require that all employees of a professional guardian must register. This contravenes Florida Statute Section 744.3135, which only requires employees with a fiduciary responsibility to the ward to register.

B. Approval of Guardian Fees: While it is the practice of many guardians to obtain approval for their fees prior to taking those fees, Florida Statute Section 744.108 does not explicitly require pre-approval. Accordingly, the Proposed Rule 58M-2.009 at Subsection (2)(f) enlarges, modifies and contravenes the statute in that it places a higher burden on guardians than does the statute.

C. Duty to Notify Court if Ward Regains Capacity: The Proposed Rule requires a guardian to notify the court of any change in the capacity of a ward that warrants a restriction on the guardian's authority. *See*, Proposed Rule 58M-2.009 at Subsection (2)(g) and (20)(b)(1). This is inconsistent, however, with Florida Statute Section 744.361(13)(e), which only requires the guardian to notify the court if he/she "believes" the ward has regained capacity. Thus, the Proposed Rule enlarges, modifies and contravenes the statute and this Proposed Rule, as currently drafted, could confuse the standards that govern guardians. In addition, the standard in the statute is be more appropriate because it is based on the guardian's belief rather than

requiring a guardian to absolutely know the ward's medical status, which the ward's medical doctors may not even agree upon.

D. Informed Consent/Decision Making: The Proposed Rule 58M-2.009 at Subsection (7)(c) requires informed consent for "each decision" made by a professional guardian. This is not required by Florida law, and most decisions, including administrative decisions, do not require informed consent, which is impractical. In addition, Subsections (14)(d) and (e) of the Proposed Rule seek to impose additional substantive duties and are inconsistent with a guardian's duties under Chapter 744, including Section 744.361. Specifically, Subsection 14(e) of the Proposed Rule requires the ward to consider "consequences to others." A guardian is a fiduciary and owes the utmost duty of care and loyalty *to the ward*, not others. The guardian's action must be governed by what is in the ward's best interest regardless of what consequences may come to others.

Further, Subsection 14(b) of the Proposed Rule requires all medical care to be provided. The guardian cannot always ensure that the ward has all care required. The ward may not have the financial resources necessary to comply with this requirement. For example, the ward may benefit from physical therapy, but if the ward is on Medicare, the law limits the amount of the therapy the ward is entitled to receive. Thus, the guardian cannot provide "all medical care;" the guardian can only ensure appropriate and available medical care.

Finally, Subsection 14(c) of the Proposed Rule requires the guardian to disclose information to third parties that is protected health care information under the federal HIPAA laws. Thus, the Proposed Rule is putting the guardian in jeopardy of violating federal health care privacy laws.

E. Substituted Judgment and Best Interest: The Proposed Rule 58M-2.009 at Subsections (7)(e) on substituted judgment and (7)(f) on best interest are terms that have been defined and used in Florida statutes and case law and there is still a tension between the two competing standards. As such, the Proposed Rules enlarges, modifies and contravenes the statutes in that it seeks to impose the standards on guardians that do not current exist. Prevailing Florida law should apply.

F. Involuntary Placement: Proposed Rule 58M-2.009 at Subsection (12)(a)(1)(d) appears to impose a standard for involuntary placement of a ward. Involuntary placement is considered an extraordinary measure under Florida Statutes Sections 744.3215 and 744.3725, and as such, requires court review and a higher burden of proof and necessity than the Proposed Rule contemplates. Accordingly, any reference in the Proposed Rule regarding involuntary placement must comply with the standards and procedures in the statutes, which required a court order and higher burden of proof. Further, the statutes also require an attorney be appointed for the ward before the Court can order involuntary placement.

G. Guardianship Plans: The Proposed Rule 58M-2.009 at Subsection (13)(b) and (17)(a)(3), addressing guardianship plans, contravenes the statutory requirements concerning plans for a guardianship of the person. *See*, Sections 744.363 and 744.3675, Florida Statutes. For instance, the statutes do not require a budget. To the extent the Proposed Rule seeks to impose additional duties on guardians, this Proposed Rule contravenes the statute. Moreover, from a practical perspective, budgets are not always necessary depending on the particular circumstances of a ward.

H. Lawsuits: The Proposed Rule 58M-2.009 at Subsection (17)(h) imposes a duty on a professional guardian with respect to actions related to lawsuit where the Ward is a party.

The Proposed Rule contravenes Florida law, which requires prior court approval for a guardian to institute or defend a lawsuits on behalf of the Ward. *See*, Florida Statue §744.441(11).

I. Income and assets under control of the ward: The Proposed Rule 58M-2.009 at Subsection 17(f) assumes all of a ward's right with respect to property have been taken away. A ward could have retained control of all or part of their income and assets. The guardian should not be required to have liability for income and assets not under the guardian's control. The law does not require this level of responsibility and therefore the Proposed Rule cannot impose a higher standard particular in light of the fact that the court would most probably not allow for fees for an action not contemplated by the law.

J. Wills: The Proposed Rule 58M-2.009 at Subsection (17)(o) imposes a duty that is outside of a guardian's purview. Wills deal with post-death disposition of property and should not be included in a guardian's duties. Further, the ward's testamentary estate planning is irrelevant to a guardian's administration of the guardianship during the ward's life time.

K. Accountings: The Proposed Rule 58M-2.009 at Subsection (13)(b)(13) requires that a guardian document any expense in excess of \$1,000. This requirement contravenes a guardian's accounting requirements under Florida Statute Section 744.3678, which requires a guardian to obtain a receipt or proof of payment for all expenditures, regardless of size, Further, the Proposed Rule is arbitrary as noted in paragraph 15(C) below.

L. Relationship Between Ward and Guardian: The Proposed Rule 58M-2.009 at Subsection (4)(c) requires that the guardian maintain contact with the ward's family and friends regarding "significant occurrences" that affect a ward. This requirement infringes on a ward's privacy rights. Further, the language in the Proposed Rule contravenes existing law in that it

creates a substantive, new duty for the guardian to keep certain family members and “friends” informed.

The Proposed Rule also requires the guardian to “encourage and support” contact with family and friends unless the contact rises to the level of abuse. This contravenes Florida Statute Section 744.361(13)(b), which does not require that the contact reach the level of “abuse” before the guardian may restrict contact. Instead, Florida Statute Section 744.361(13)(b) permits visitation between family and friends “unless the guardian believes that such contact may cause harm to the ward.” Thus, this provision of the Proposed Rule is in contravention of the law (and could subject the guardian to sanction or removal by the court by permitted visitation when the statute would restrict it).

Further, Proposed Rule 58M-2.009 at Subsection (4)(d) creates a notification requirement for the disposition of a ward’s assets. This section is duplicative of Florida Statute Section 744.441 and is also contrary to Florida Statute Section 744.447(2) (sale without notice of perishable items), in that the statute defines the procedure for disposition of a ward’s assets and who must be notified. Specifically, the statute requires notification of interested parties “who have filed a request for copies,” while the Proposed Rule requires notification to interested parties without any limitation language.

*The Proposed Rule Arbitrarily and Capriciously Fails to Account
for Varying Circumstances*

15. The following provisions of the Proposed Rule are an invalid exercise of delegated legislative authority because they are arbitrary and capricious for the following reasons:

A. Definition of “abuse”: The definition of “abuse” in Proposed Rule 58M-2.009 at Subsection (1)(a)(4) is arbitrary and should be expanded for several reasons. First, there is no

reason to limit abuse to just caregivers and family members. This definition should be broader to include anyone guilty of abuse to more accurately reflect the real world. *See*, Florida Statute Section 825.102. Second, the term “neglect” in subsection (1)(a)(5) references “abuse”. Accordingly, abuse should not be limited to just caregivers or family members given that a guardian can be guilty of neglect if he/she allows anyone to abuse the ward.

B. Self-reliance of a Ward: The Proposed Rule 58M-2.009 at Subsection (9)(b) includes language requiring the guardian to maximize self-reliance and independence. This is an almost impossible standard to fulfill and unrealistic to impose on a guardian. It would be more appropriate to require them to encourage participation, which is a more ascertainable standard.

While we recognize the importance of including the ward in the making decisions process; however, there are occasions when doing so is neither feasible nor appropriate. For example, on occasion a hospital will petition to have a guardian appointed for a patient who is non-responsive or in a coma and has no family or friends to make decisions for them. A professional guardian is usually appointed. In these cases, it is not possible to discuss the ward’s care with the ward or ask the ward what he or she would want. Likewise, there are times when it may be counter-productive to discuss matters with the ward due to the ward’s diagnosis (i.e. paranoia or schizophrenia).

C. Documentation: The Proposed Rule 58M-2.009 at Subsection (13)(b)(13) requires that a guardian document any expense in excess of \$1,000. This requirement is overly burdensome and the utility of it is not clear. To the extent the guardian is utilizing the ward’s funds based on the goals/desires of the ward, even if less than \$1,000, the guardian is accountable for these expenses at the time of the guardian’s annual accounting. Further,

expanding a guardian's accounting requirements in this manner would be inconsistent with Florida Law, as noted in paragraph 14(K) above.

The Proposed Rule is Vague

16. The Proposed Rule is an invalid exercise of delegated legislative authority because it is vague in the following instances:

A. Use of the term “applicant”: Use of the terms “registrant,” “applicant,” and “relevant person” to describe the person applying for registration as a guardian is confusing given that different sections of the Proposed Rule use different terms to mean the same person. For consistency, all terms referring to the person applying for registration as guardian should use the term “applicant.”

B. Delineating Between a Guardian of the Person and a Guardian of the Property: In many sections, the term “guardian” does not delineate between a guardian of the person versus a guardian of the property. Differentiating between which rules applies to which type of guardian will properly communicate the requirements for each type of guardianship.

C. Relationship Between Ward and Guardian: The Proposed Rule 58M-2.009 at Subsection (3)(a) prohibits “personal relationships” between guardians and their wards and the ward's family unless the ward and guardian are family members or they had a relationship prior to appointment of the guardian. This prohibition, while well meaning, is problematic in that it is vague. What types of personal relationships are prohibited? Is having dinner prohibited? In addition, it is not narrowly tailored to protect the ward and in fact could hurt a ward. Friendly relationships should not be prohibited – it is the exploitation of those relationships for personal gain that should be the problem. Accordingly, Subsection (3)(a) is vague.

Further, Proposed Rule 58M-2.009 at Subsection (4) and (4)(a) requires guardians to promote social interactions and meaningful relationships for a ward. The words “promote” and “meaningful” are vague and would be very difficult for a guardian to abide by (and thus unfair to enforce as vague).

VI. Applicable Statutes, Rules, and Policies that Require Reversal

17. The Proposed Rule should be invalidated pursuant to Sections 120.52(8), 120.54, 120.56, and Chapter 744 of the Florida Statutes.

VII. Disputed Issues of Material Fact or Law

18. The disputed issues of material fact or law include the following:

- a. Whether the Proposed Rule enlarges, modifies, or contravenes Chapter 744, Florida Statutes.
- b. Whether the Proposed Rule is arbitrary or capricious.
- c. Whether the Proposed Rule is vague.

VIII. Demand for Relief

WHEREFORE, Petitioner respectfully request that:

22. A hearing be conducted in accordance with Section 120.56, 120.569 and 120.57(1), Florida Statutes.

23. The Administrative Law Judge determine that the Proposed Rule constitutes an invalid exercise of delegated legislative authority.

24. The Administrative Law Judge award to Petitioner reasonable costs and attorney's fees pursuant to Section 120.595(2), Florida Statutes.

25. Petitioner be granted such other relief as may be deemed appropriate.

Respectfully submitted this 21st day of November, 2016.

Holland & Knight LLP

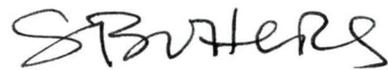


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Counsel for Darby Jones, Petitioner

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing was furnished by fax to Agency Clerk, Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, Florida 32399-1550, 850-921-6847; and that a true and correct copy was furnished by e-mail to Stefan Grow, General Counsel, State of Florida, Department of Elder Affairs 4040 Esplanade Way, Tallahassee, Florida 32399-7000; grows@elderaffairs.org, all on this 21st day of November, 2016.



Sarah S. Butters

Section II
Proposed Rules

DEPARTMENT OF ELDER AFFAIRS

Statewide Public Guardianship Office

RULE NOS.:	RULE TITLES:
58M-2.001	Professional Guardian Registration
58M-2.009	Standards of Practice
58M-2.011	Disciplinary Action and Guidelines

PURPOSE AND EFFECT: The purpose of the proposed rulemaking is to implement statutory changes to Parts I and II of Ch. 744, F.S., and to the Department’s oversight of public and professional guardians.

SUMMARY: The rulemaking establishes standards of practice, disciplinary guidelines, and credit investigation procedures for public and professional guardians as well as implements revisions of rules as needed based on legislative changes.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION: The Agency has determined that this will have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has been prepared by the Agency.

The main economic impact of the proposed rule is likely generated through the rule’s requirement that professional guardians receive court approval of their guardianship fees and through the rule’s record keeping requirements. A full copy of the Statement of Estimated Regulatory Costs can be obtained online at http://elderaffairs.state.fl.us/doea/oppg_rulemaking.php

The Agency has determined that the proposed rule is expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Through the preparation of a SERC, the Department has determined that proposed rule 58M-2.009, Florida Administrative Code, concerning standards of practice for professional guardians, will have a significant regulatory impact on small businesses and is likely to increase regulatory costs in excess of \$1,000,000 within the first five years of implementation.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 744.2001(2)(b), 744.2002(6), 744.3135(5)(b), 744.20041 FS.

LAW IMPLEMENTED: 744.102(17), 744.2001(2)(b), 744.2002, 744.2003, 744.20041 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: November 9, 2016, 9:30 a.m. – 12:30 p.m.
PLACE: Florida Department of Elder Affairs, 4040 Esplanade Way, Room 301, Tallahassee, Florida 32399

To participate in the rule workshop by telephone please call: 1(888)670-3525 participation code: 5964230985

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Jason Nelson at Department of Elder Affairs, Office of Public and Professional Guardians, 4040 Esplanade Way, Tallahassee, FL 32399; email: nelsonj@elderaffairs.org; telephone: (850)414-2113. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice). THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Jason Nelson at Department of Elder Affairs, Office of Public and Professional Guardians, 4040 Esplanade Way, Tallahassee, FL 32399; email: nelsonj@elderaffairs.org; telephone: (850)414-2113

THE FULL TEXT OF THE PROPOSED RULE IS:

58M-2.001 Professional Guardian Registration and Credit Investigation.

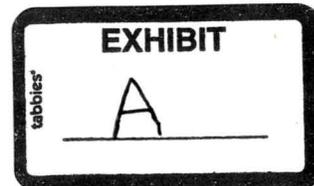
Applicants must score a minimum of 75% on the Professional Guardian Competency Examination or must receive a waiver from the Department of Elder Affairs’ Office of Public and Professional Guardians (OPPG)Statewide Public Guardianship Office (SPGO) before the application for registration will be considered.

(1) Definitions. As used in this rule, the term:

(a) “Adverse credit history information” means the following:

1. Personal bankruptcy within the previous year.
2. Bankruptcy within the previous year of any organization based on events that occurred while the relevant person was a control person.
3. Outstanding tax lien or other governmental lien.
4. Outstanding judgment based upon grounds of fraud, embezzlement, misrepresentation, or deceit.
5. Open collection account or charged-off account that remains unpaid, except accounts related solely to unpaid medical expenses.
6. Foreclosure on personally owned property within the last 5 years.

(b) “Charged-off” means an account that has been identified by the creditor as an uncollectable debt.



~~(2)(4)~~ Persons who are required to register with the OPPG Department of Elder Affairs' Statewide Public Guardianship Office (SPGO) as a professional guardian must complete the Professional Guardian Registration Form, DOEA/OPPG SPGO Form 001, ~~XXXX 2016 March 2008~~, which is incorporated herein by reference and may be obtained from the Office of Public and Professional Guardians Statewide Public Guardianship Office, Department of Elder Affairs, 4040 Esplanade Way, Tallahassee, Florida 32399-7000, or at <http://elderaffairs.state.fl.us/english/public.html>. The Professional Guardian Employee Registration Form, DOEA/OPPG SPGO Form 002, ~~XXX 2016 March 2008~~ which is incorporated herein by reference and may be obtained from the OPPG SPGO or at <http://elderaffairs.state.fl.us/english/public.html> must also be completed and submitted for all Professional Guardian Employees.

~~(3)(2)~~ The registration form shall be signed by the registrant or corporate officer if the registrant is a corporation.

~~(4)(3)~~ The completed registration form shall be filed with the OPPG Statewide Public Guardianship Office, by hand-delivery or mail. Facsimile submissions will not be accepted.

~~(5)(4)~~ The following items must either accompany the registration form or must be on file with the OPPG SPGO, for the registration to be deemed complete:

(a) A complete credit report, including all pages, from a nationally recognized credit agency. A nationally recognized credit agency shall mean a credit agency that obtains credit information both within and outside the State of Florida; validates, updates, and maintains the accuracy of credit information obtained. The report must reflect the financial responsibility of the registrant and provide full, accurate, current, and complete information regarding payment history and credit rating.

(b) Criminal history record for guardians as specified in Section 744.3135, F.S.;

(c) Documentation of bonding as required under Section 744.1085, F.S.;

~~(6)(5)~~ For the initial registration, the applicant must submit proof of completion of the required training, as well as, proof of competency by evidence of satisfactory completion of the Department of Elder Affairs approved examination unless waived in accordance with Section 744.1085(8), F.S. For annual renewals, proof of receipt of the minimum continuing education requirements must be submitted, if not on file.

~~(7)(6)~~ A registration fee of thirty-five dollars (\$35) for each professional guardian in the form of a personal check, money order, or cashier's check made payable to the Statewide Public Guardianship Office must be submitted with the registration form.

(8) Adverse Credit History Information. If an applicant's credit report or responses to the registration application contains adverse credit history information, the OPPG will notify the applicant in writing of the specific items constituting adverse credit history information. The notification will also inform the applicant of the:

(a) Opportunity to explain the circumstances surrounding the specific items and provide any other relevant information that the applicant wishes the OPPG to consider surrounding the specific items;

(b) Documents that the OPPG requires in order to complete its review of the specific items. The requested documents provided by the applicant must be legible.

If the documents requested above cannot be obtained, the applicant shall submit evidence of that fact in order for the registration application to be deemed complete. Evidence that documents cannot be obtained shall consist of a written statement from the agency's or creditor's records custodian that is written on the agency's or creditor's letterhead; indicates that the agency or the creditor does not have any record of such matter or that the record was lost, damaged, or destroyed, or cannot otherwise be produced and provide a statement as to why the record cannot be produced; and is signed by the agency's or creditor's records custodian.

(9) Procedure for Reviewing Adverse Credit History Information.

(a) When deciding whether to approve an application for registration as a professional guardian, the OPPG must make a determination regarding whether the applicant has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the OPPG's determination that the applicant will not violate any of the provisions of Chapter 744, Florida Statutes. In making this determination, the OPPG will consider the following information:

1. The Applicant's entire credit history as reflected in the credit report.

2. The information provided by the applicant under subsection (8).

3. The responses contained in the registration application.

4. The previous licensing history with the OPPG including whether the relevant person was named in any regulatory action by the OPPG.

5. Other information that reflects upon an applicant's character, general fitness, or financial responsibility.

6. The time and context of the information available and any pattern of behavior the information may demonstrate.

(b) Based on the totality of the circumstances as developed under paragraph (a), the OPPG will make a determination as to whether the applicant has demonstrated that he or she possesses the character, general fitness, and financial responsibility to warrant the OPPG's determination that the applicant will not violate any of the provisions of Chapter 744, F.S.

(10)(7)(a) The registration period begins the day the registration is approved by the OPPG SPGO and ends on the registrant's bond anniversary date. For multi year bonds, the annual registration expiration date will be determined by the day and month that the bond expires.

(b) The OPPG SPGO will prorate the registration fee up to 50% for initial registrants whose bond will expire in less than 6 months.

(11)(8) Annual Renewals: A completed DOEA/OPPG SPGO Form 001 for annual renewal of a registration shall be submitted to OPPG SPGO at least 30 days prior to the expiration date of the current registration to ensure that a lapse in registration does not occur. Registrants may request expedited processing for an additional fee. A schedule of those expedited fees is provided on DOEA/SPGO Form 001. All fees must be received with the completed registration form prior to the registration being processed by the OPPG SPGO.

(12)(9) If a professional guardian hires an employee with assigned fiduciary responsibilities during the registration period, the professional guardian shall submit an amended DOEA/OPPG SPGO Form 001 that includes the new employee information to the OPPG SPGO for approval prior to the employee assuming any fiduciary responsibilities.

Rulemaking Authority 744.2002(6) 744.1083(6), 744.3135(5)(b) FS. Law Implemented 744.102(17), 744.2002 744.1083, 744.2003 744.1085, 744.3135 FS. History--New 5-4-03, Amended 12-12-05, 3-17-08, _____.

58M-2.009 Standards of Practice.

(1) DEFINITIONS

(a) In addition to the terms defined in Chapter 744, F.S., the following definitions are applicable in this rule:

1. "Interested Person" means a person identified as an interested person in a guardianship proceeding. The meaning as it relates to particular wards, may vary from time to time and must be determined the Court according to the particular matter involved.

2. "Family" or "Family Member" means a person or persons who are:

a. A relative of an individual within the third degree by blood or marriage, or

b. The stepparent of a minor if the stepparent is currently married to the parent of the minor and is not a party in a pending dissolution, separate maintenance, domestic violence, or other civil or criminal proceeding in any court of competent

jurisdiction involving one or both of the minor's parents as an adverse party.

3. "Friend" means a person whom an individual knows and with whom the individual has a bond of mutual affection.

4. "Abuse" means any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a Ward's physical, mental, or emotional health. Abuse includes acts and omissions.

5. "Neglect" means the failure or omission on the part of a caregiver or guardian to provide the care, supervision, and services necessary to maintain the physical and mental health of a Ward, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of the Ward. The term "neglect" also means the failure of a caregiver or guardian to make a reasonable effort to protect a Ward from abuse, neglect, or exploitation by others.

6. "Exploitation" means:

a. Knowingly obtaining or using, or endeavoring to obtain or use, a Ward's funds, assets, or property with the intent to temporarily or permanently deprive the Ward of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the Ward, or

b. Breach of a fiduciary duty to a Ward by the Ward's guardian which results in an unauthorized appropriation, sale, or transfer of property, or

c. Intentionally or negligently failing to effectively use a Ward's income and assets for the necessities required for that Ward's support and maintenance, by the Ward's guardian.

7. "Significant Occurrence" means an eventuality, event, incident, affair, episode, milestone, transaction, proceeding, business, concern, circumstance, particular; fact, matter of fact, phenomenon; happenstance, goings-on; adventure, happening; accident, or, casualty that affects a Ward.

(2) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP TO THE COURT.

(a) Professional Guardians shall know the extent of the powers and the limitations of authority granted to them by the court and all their decisions and actions shall be consistent with court orders. Any action taken by a Professional Guardian pursuant to a court order shall not be deemed to be violation of this rule.

(b) Professional Guardians shall obtain court authorization for actions that are subject to court approval.

(c) Professional Guardians shall clarify with the court any questions about the meaning of orders or directions from the court before taking action based on the orders or directions.

(d) Professional Guardians shall seek assistance as needed to fulfill responsibilities to the Wards under their guardianship.

(c) All payments to Professional Guardians from the assets of a Ward shall be submitted to the court for prior approval and shall follow the requirements of Section 744.108, F.S.

(f) Professional Guardians shall submit reports regarding the status of their Wards to the court as ordered by the court and required by Chapter 744, F.S.

(g) Professional Guardians shall notify the court of any change in the capacity of a Ward that warrants a restriction of the Professional Guardian's authority within a reasonable period of time under the circumstances.

(3) THE PROFESSIONAL GUARDIAN'S PROFESSIONAL RELATIONSHIP WITH THE WARD.

(a) Professional Guardians shall avoid personal relationships with Wards under their guardianship, their Ward's family, or their Ward's friends, unless the Professional Guardian is a family member, or unless such a relationship existed before the appointment of the Professional Guardian.

(b) Professional Guardians may not engage in sexual relations with a Ward under their guardianship, unless the Professional Guardian is the Ward's spouse or the sexual relationship existed before the appointment of the Professional Guardian.

(4) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP WITH FAMILY MEMBERS AND FRIENDS OF THE WARD. Professional Guardians shall promote social interactions and meaningful relationships consistent with the preferences of the Wards under their guardianship.

(a) Professional Guardians shall make reasonable efforts to encourage and support their Wards maintaining contact with family and friends, as defined by those Wards, unless such contact will subject the Wards to abuse as defined in Section 415.102, F.S.

(b) Professional Guardians may not interfere with their Ward's established relationships, unless necessary to protect them from abuse as defined in Section 415.102, F.S.

(c) Professional Guardians must maintain communication with their Wards' families and friends regarding significant occurrences that affect the Wards when that communication would benefit Wards.

(d) When disposing of a Ward's assets, a Professional Guardian must notify interested persons and give them the opportunity, with court approval, to obtain the Ward's assets (particularly those with sentimental value).

(e) Professional Guardians shall keep interested persons advised of any pertinent medical issues or decisions when ordered to do so by the Court.

(5) THE PROFESSIONAL GUARDIAN'S RELATIONSHIP WITH OTHER PROFESSIONALS AND PROVIDERS OF SERVICES TO THE WARD. Professional Guardians shall treat all professionals and service providers

with courtesy and respect and shall strive to enhance cooperation between all parties on behalf of their Wards.

(a) Professional Guardians who are not family members of their Wards may not provide any services other than guardianship services to those Wards except in an emergency. Professional Guardians shall coordinate and monitor services needed by Wards to ensure that Wards are receiving the appropriate care and treatment.

(b) Professional Guardians shall make a good faith effort to cooperate with other surrogate decision-makers for Wards. These include, where applicable, any other guardians, agents under a power of attorney, health care proxies, trustees, U.S. Department of Veterans' Affairs fiduciaries, and representative payees.

(6) INFORMED CONSENT.

(a) Decisions that Professional Guardians make on behalf of their Wards under guardianship shall be based on the principle of Informed Consent.

(b) Informed Consent is a decision maker's agreement to a particular course of action based on a full disclosure of the facts needed to make the decision intelligently.

(c) To have Informed Consent, a decision maker must have adequate information on the issue, must be able to take voluntary action, and must not be coerced.

(d) Professional Guardians stand in the place of Wards and are entitled to the same information and freedom of choice as a Ward would have received if the Ward were not under guardianship.

(e) In evaluating each requested decision, Professional Guardians shall do the following:

1. Have a clear understanding of the issue for which informed consent is being sought,

2. Have a clear understanding of the options, expected outcomes, risks and benefits of each alternative,

3. Determine the conditions that necessitate treatment or action,

4. Maximize the participation of Wards in understanding the facts and directing a decision, to the extent possible,

5. Determine whether a Ward has previously stated preferences in regard to a decision of this nature,

6. Determine why this decision needs to be made now rather than later,

7. Determine what will happen if a decision is made to take no action,

8. Determine what the least restrictive alternative is for the situation,

9. Obtain a second medical or professional opinion, if necessary,

10. Obtain information or input from a Ward's family and from other professionals; and,

11. Obtain written documentation of all reports relevant to each decision.

(7) STANDARDS FOR DECISION-MAKING.

(a) Professional Guardians shall assist and encourage Wards to act on their own behalf and to participate in decisions.

(b) Professional Guardians shall, consistent with court orders and state statutes, exercise authority only as necessitated by the limitations of the Ward.

(c) Each decision made by a Professional Guardian shall be an informed decision based on the principle of Informed Consent as set forth in subsection (6).

(d) Professional Guardians shall identify and advocate for the goals, needs, and preferences of their Wards.

1. Professional Guardians shall ask their Wards what they want.

2. If a Ward has difficulty expressing what he or she wants, his or her Professional Guardian shall, to the extent possible, help the Ward express his or her goals, needs, and preferences.

3. When a Ward, even with assistance, cannot express his or her goals and preferences, Professional Guardians shall seek input from others familiar with the Ward to determine what the Ward may have wanted.

4. To the extent that a Ward's goals and preferences have been made known to a Professional Guardian, the Professional Guardian shall honor those goals or preferences, except when following the Ward's goals and preferences would cause significant impairment to a Ward's physical, mental, or emotional health.

(e) Substituted Judgment.

1. Substituted Judgment is a principle of decision-making which requires the guardian to consider the decision their Ward would have made when the Ward had capacity and use that as the guiding force in any surrogate decision a guardian makes.

2. Substituted Judgment shall be used when making decisions on behalf of a ward except when following the Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health, or when a Professional Guardian cannot establish a Ward's goals and preferences even with support.

(f) Best Interest.

1. Best Interest is the principle of decision-making that should be used only when a Ward has never had capacity, when a Ward's goals and preferences cannot be ascertained even with support, or when following a Ward's wishes would cause significant impairment to a Ward's physical, mental, or emotional health or his or her property.

2. The Best Interest principle requires a guardian to consider the least restrictive course of action to provide for the needs of a Ward.

3. The Best Interest principle requires guardians to consider a Ward's past practice and evaluate evidence of his or her choices.

4. The Best Interest principle requires the course of action that maximizes what is best for a Ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of the Ward.

(8) LEAST RESTRICTIVE ALTERNATIVE.

(a) When making a decision, Professional Guardians shall carefully evaluate the alternatives that are available and choose the one that best meets the personal and financial goals, needs, and preferences of Wards under their guardianship, while placing the least restrictions on their Wards' freedoms, rights, and ability to control their environments.

(b) Professional Guardians shall weigh the risks and benefits of each decision and develop a balance between maximizing the independence and self-determination of Wards and maintaining Wards' dignity, protection, and safety.

(c) Professional Guardians shall make individualized decisions. The least restrictive alternative for one Ward might not be the least restrictive alternative for another Ward.

(d) The following guidelines apply in the determination of the least restrictive alternative:

1. Professional Guardians shall become familiar with the available options for residence, care, medical treatment, vocational training, and education for their wards.

2. Professional Guardians shall strive to know their Wards' goals and preferences.

3. Professional Guardians shall consider assessments of their Wards' needs as determined by specialists. This may include an independent assessment of a Ward's functional ability, health status, and care needs.

(9) SELF-DETERMINATION OF THE WARD.

(a) Professional Guardians shall provide Wards under their guardianship with every opportunity to exercise those individual rights that the Ward might be capable of exercising as they relate to the personal and financial needs of the Ward.

(b) Professional Guardians shall maximize the self-reliance and independence of their Wards.

(c) Professional Guardians shall encourage their Wards to participate, to the maximum extent of their Wards' abilities, in all decisions that affect him or her, to act on his or her own behalf in all matters in which the Ward is able to do so, and to develop or regain his or her own capacity to the maximum extent possible.

(d) The Professional Guardian shall, whenever possible, seek to ensure that the Ward leads the planning process. If the Ward is unable to lead the process, the Professional Guardian shall, whenever possible, seek their participation.

(10) THE PROFESSIONAL GUARDIAN'S DUTIES REGARDING DIVERSITY AND PERSONAL PREFERENCES OF THE WARD.

(a) Professional Guardians shall determine the extent to which Wards under guardianship identify with particular ethnic, religious, and cultural values. To determine these values, Professional Guardians shall consider the following:

1. The Ward's attitudes regarding illness, pain, and suffering.
2. The Ward's attitudes regarding death and dying.
3. The Ward's views regarding quality of life issues.
4. The Ward's views regarding societal roles and relationships, and,
5. The Ward's attitudes regarding funeral and burial customs.

(b) Professional Guardians shall respect Wards' right to interpersonal relationships and sexual expression. Professional Guardians shall take steps to ensure that a Ward's sexual expression is consensual, that Wards are not victimized, and that an environment conducive to this expression in privacy is provided.

1. Professional Guardians shall ensure that Wards have information necessary to permit sexual expression to the extent a Ward desires and to the extent a Ward possesses the capacity to consent to the specific activity.

2. Professional Guardians shall take reasonable measures to protect the health and well-being of Wards.

(11) CONFIDENTIALITY.

(a) Professional Guardians shall keep the affairs of Wards under guardianship confidential.

(b) Professional Guardians shall respect Wards' privacy and dignity, especially when the disclosure of information is necessary.

(c) Disclosure of information shall be limited to what is necessary and relevant to the issue being addressed.

(d) Professional Guardians shall assist Wards in communicating with third parties unless the disclosure will substantially harm the Ward.

(e) Professional Guardians shall refuse to disclose information about a Ward where disclosure would be detrimental to the well-being of the Ward or would subject the Ward's estate to undue risk.

(12) DUTIES OF THE PROFESSIONAL GUARDIAN OF THE PERSON.

(a) Professional Guardians who are appointed to be guardians of the person shall have the following duties and obligations to Wards under guardianship; unless decision making authority has not been delegated to the Professional Guardian or the letters of guardianship provides otherwise:

1. To see that Wards are living in the most appropriate environment that addresses each Ward's goals, needs, and

preferences subject to limitations of his or her financial resources and availability of government benefits.

a. Professional Guardians must prioritize home or other community-based settings, when not inconsistent with a Ward's goals and preferences.

b. Professional Guardians shall authorize moving Wards to a more restrictive environment only after evaluating other medical and health care options and making an independent determination that the move is the least restrictive alternative at the time, fulfills the current needs of a Ward, and serves the overall best interest of a Ward.

c. Professional Guardians shall consider the proximity of the setting to those people and activities that are important to Wards when choosing a residential setting.

d. When Professional Guardians consider involuntary or long-term placement of a Ward in an institutional setting, the bases of the decision shall be to minimize the risk of significant impairment to a Ward's physical, mental, or emotional health, to obtain the most appropriate placement possible, and to secure the best treatment for the Ward.

2. To ensure that provision is made for the support, care, comfort, health, and maintenance of Wards.

3. To make reasonable efforts to secure for Wards medical, psychological, therapeutic, and social services, training, education, and social and vocational opportunities that are appropriate and that will maximize Wards' potential for self-reliance and independence.

4. To keep the personal information of Wards confidential, except when it is necessary to disclose such personal information for the best interests of a Ward.

5. To adhere to the requirements of subsection (17) Duties of the Professional Guardian of the Property and subsection (18) Professional Guardian of the Property: Initial and Ongoing Responsibilities, to the extent that the Professional Guardian of a Ward has been authorized by the court to manage a Ward's property.

6. To petition the court for limitation or termination of the guardianship when a Ward no longer meets the standard pursuant to which the guardianship was imposed, or when there is an effective alternative available, and

7. To report to the Office of Public and Professional Guardians, the Department of Children and Families' Adult Protective Services Unit and local law enforcement incidents of abuse, neglect and/or exploitation as defined by state statutes within a reasonable period of time under the circumstances.

(13) INITIAL AND ONGOING RESPONSIBILITIES

(a) With the proper authority, Professional Guardians shall take the following initial steps after appointment as a guardian:

1. Professional Guardians shall address all issues of Wards under guardianship that require immediate action.

2. Professional Guardians shall meet with Wards as soon after the appointment as is feasible. At the first meeting, Professional Guardians shall:

- a. Communicate to the Ward the role of the Professional Guardian,
- b. Explain the rights retained by the Ward,
- c. Assess the Ward's physical and social situation,
- d. Assess the Ward's educational, vocational, and recreational needs,
- e. Obtain the Ward's preferences,
- f. Assess the support systems available to the Ward; and,
- g. Attempt to gather any missing necessary information regarding the Ward.

3. After the first meeting with the Ward, the Professional Guardian shall notify relevant agencies and individuals of the appointment of a Professional Guardian, and shall complete the intake process by gathering information and ensuring that certain evaluations are completed, if appropriate. The Professional Guardian shall:

- a. Obtain an evaluation of the Ward's condition, treatment, and functional status from the Ward's treating physician or appropriate specialist, if a comprehensive medical evaluation was not completed as part of the petitioning process, or has not been done within the past year,
- b. Obtain a psychological evaluation, if appropriate.
- c. Obtain an inventory of advance directives. Such statements of intent would include, but are not limited to, powers of attorney, living wills, organ donation statements, and statements by the person recorded in medical charts.
- d. Establish contact with and develop a regular pattern of communication with the Professional Guardian of the property or any other fiduciary for the Ward.

(b) Professional Guardians shall develop and implement a written guardianship plan setting forth short-term and long-term objectives for meeting the goals, needs, and preferences of the Ward.

1. The plan must address medical, psychiatric, social, vocational, educational, training, residential, and recreational goals, needs, and preferences of the Ward.

2. If the Professional Guardian is appointed as guardian of the property, the plan must also address whether the Ward's finances and budget are in line with the services the Ward needs, and are flexible enough to deal with the changing status of the Ward.

3. Short-term goals must reflect the first year of guardianship, and long-term goals must reflect the time after the first year.

4. The plan must be updated no less often than annually.

(c) The Professional Guardian shall maintain a separate file for each Ward. The file must include, at a minimum, the following information and documents:

1. The Ward's name, date of birth, address, telephone number, Social Security number, medical coverage, physician, diagnoses, medications, and allergies to medications,

2. All legal documents involving the Ward,

3. Advance directives,

4. A list of key contacts,

5. A list of service providers, contact information, a description of services provided to the person, and progress/status reports,

6. A list of all over-the-counter and prescribed medications the Ward is taking, the dosage, the reason why it is taken, and the name of the doctor prescribing the medication,

7. Documentation of all client and collateral contacts, including the date, time, and activity,

8. Progress notes that reflect contacts made and work done regarding the Ward,

9. The initial guardianship plan and annual plans,

10. The initial inventory and annual accountings, if required,

11. Assessments regarding the Ward's past and present medical, psychological, and social functioning,

12. Documentation of the Ward's known values, lifestyle preferences, and known wishes regarding medical and other care and service,

13. Documentation of any goals or preferences expressed by the Ward that have been made known to the Professional Guardian and would require the expenditure of the Ward's assets in excess of \$1,000, and the date, time, location and individuals present when the goal or preference was expressed by the Ward; and,

(d) Professional Guardians shall visit Wards at least quarterly each year.

1. Professional Guardians shall assess the Ward's physical appearance and condition, the appropriateness of the Ward's current living situation, and the continuation of existing services while taking into consideration all aspects of social, psychological, educational, direct services, and health and personal needs as well as the need for any additional services.

2. Professional Guardians shall maintain substantive communication with service providers, caregivers, and others attending to Wards.

3. Professional Guardians shall participate in all care or planning conferences concerning the residential, educational, vocational, or rehabilitation program of Wards within the rights delegated to the professional guardian by the Court.

4. Professional Guardians shall regularly examine all services and all charts, notes, logs, evaluations, and other documents regarding Wards at the place of residence and at any program site to ascertain that the care plan is being properly followed.

5. Professional Guardians shall advocate on behalf of the Ward. Professional Guardians shall assess the overall quality of services provided to Wards, using accepted regulations and care standards as guidelines, and seeking remedies when care is found to be deficient.

6. Professional Guardians shall monitor the residential setting on an ongoing basis and take any necessary action when the setting does not meet the Ward's current goals, needs, and preferences, including but not limited to:

a. Evaluating the plan.

b. Enforcing residents' rights, legal, and civil rights, and,

c. Ensuring quality of care and appropriateness of the setting in light of the feelings and attitudes of the Ward.

(e) Professional Guardians shall fully identify, examine, and continue to seek information regarding options that will fulfill the Ward's goals, needs, and preferences.

1. Professional Guardians shall take full advantage of professional assistance in identifying all available options for long term services and support.

2. Sources of professional assistance include, but are not limited to Area Agencies on Aging, Centers for Independent Living, protection and advocacy agencies, Long Term Care Ombudsmen, Developmental Disabilities Councils, Aging and Disability Resource Centers, and community mental health agencies.

(14) DECISION-MAKING CONCERNING MEDICAL TREATMENT.

(a) Professional Guardians shall promote, monitor, and maintain the health and well-being of Wards under guardianship.

(b) Professional Guardians shall ensure that all medical care for Wards is appropriately provided and that Wards are treated with dignity.

(c) Professional Guardians shall ensure that Wards receive appropriate health care.

(d) Professional Guardians, in making health care decisions or seeking court approval for such decisions, shall:

1. Maximize the participation of Wards,

2. Acquire a clear understanding of the medical facts,

3. Acquire a clear understanding of the health care options and the risks and benefits of each option; and,

4. Encourage and support Wards in understanding the facts and directing a decision.

(e) Professional Guardians shall use the substituted judgment standard with respect to a health care decision, unless a Professional Guardian cannot determine a Ward's prior wishes.

(f) Professional Guardians shall determine whether a ward, before the appointment of a Professional Guardian, executed any advance directives, such as powers of attorney, living wills, organ donation statements and statements by a Ward recorded

in medical charts. On finding such documents, Professional Guardians shall inform the court and other interested parties of the existing health care documents.

(g) To the extent a Ward cannot participate in the decision making process, a Professional Guardian shall act in accordance with the Ward's prior general statements, actions, values, and preferences to the extent the Professional Guardian actually knows or should know of them.

(h) If a Ward's preferences are unknown and unascertainable, a Professional Guardian shall act in accordance with reasonable information received from professionals and persons who demonstrate sufficient interest in the Ward's welfare to determine the Ward's best interests, which determination shall include consideration of consequences for others that an individual in the Ward's circumstances would consider.

(i) Absent an emergency or a Ward's execution of a living will, durable power of attorney for health care, or other advance directive declaration of intent that clearly indicates a Ward's wishes with respect to a medical intervention, a Professional Guardian who has authority may not grant or deny authorization for a medical intervention until he or she has given careful consideration to the criteria contained in subsections (6) and (7).

(j) In the event of an emergency, a Professional Guardian who has authority to make health care decisions shall grant or deny authorization of emergency medical treatment based on a reasonable assessment of the criteria contained in subsections (6) and (7), within the time allotted by the emergency.

(k) Professional Guardians shall seek a second medical opinion for any medical treatment or intervention that would cause a reasonable person to do so or in circumstances where any medical intervention poses a significant risk to a Ward. Professional Guardians shall obtain a second opinion from a licensed physician.

(l) Professional Guardians shall communicate with the treating medical provider before authorizing or denying any treatment or procedure that has been previously approved.

(m) Professional Guardians shall seek to ensure that appropriate palliative care is incorporated into all health care, unless not in accordance with a Ward's preferences and values.

(15) DECISION-MAKING CONCERNING WITHHOLDING AND WITHDRAWAL OF MEDICAL TREATMENT

(a) There are circumstances in which, with the approval of the court, it is legally and ethically justifiable to consent to the withholding or withdrawal of medical treatment, including artificially provided nutrition and hydration, on behalf of a Ward under guardianship.

(b) If a Ward expressed or currently expresses a preference regarding the withholding or withdrawal of medical treatment,

a Professional Guardian shall follow the wishes of the Ward. If the Ward's current wishes are in conflict with wishes previously expressed when the Ward had capacity, Professional Guardians shall have this ethical dilemma submitted to the court for direction.

(c) When making this decision on behalf of a Ward, Professional Guardians shall gather and document information as outlined in subsection (6) and shall follow subsection (7).

(16) CONFLICT OF INTEREST: ANCILLARY AND SUPPORT SERVICES.

(a) Professional Guardians shall avoid all conflicts of interest and self-dealing, when addressing the needs of Wards under guardianship. A conflict of interest arises where a Professional Guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of a Ward. Self-dealing arises when a Professional Guardian seeks to take advantage of his or her position as a Professional Guardian and acts for his or her own interests rather than for the interests of the Ward.

(b) Guidelines relating to specific ancillary and support service situations include the following:

1. Professional Guardians may not directly provide housing, medical, legal, or other direct services to a Ward. Some direct services may be approved by the court.

a. Professional Guardians shall coordinate and assure the provision of all necessary services to Wards, other than guardianship services, rather than providing those services directly.

b. Professional Guardians shall be independent from all service providers and must challenge inappropriate or poorly delivered services and advocate on behalf of their Wards.

c. An exception to subsection (16) shall apply when a Professional Guardian can demonstrate unique circumstances indicating that no other entity is available to act as guardian, or to provide needed direct services provided that the exception is in the best interest of the Ward. Reasons for the exception must be documented and the court must be notified.

2. When a guardianship program operated by a Professional Guardian is a part of an organization or governmental entity, it shall have independent decision-making authority.

3. A Professional Guardian who is not a family member of the Alleged Incapacitate Person may act as a petitioner for the initial appointment of a guardian only when no other entity is available to act, provided all alternatives have been exhausted.

4. Professional Guardians may not employ their friends or family to provide services for a profit or fee unless no alternative is available and the Professional Guardian discloses this arrangement to the court and the services are provided at the going market rate.

5. Professional Guardians shall neither solicit nor accept incentives from service providers.

6. Professional Guardians shall consider various ancillaries or support service providers and select the providers that best meet the needs of the Ward.

7. Professional Guardians who are attorneys, or employ attorneys, may provide legal services to Wards only when doing so best meets the needs of the Wards and is approved by the court following full disclosure of the conflict of interest. Professional Guardians who are attorneys shall ensure that the services and fees are differentiated and are reasonable. The services and fees are subject to court approval.

8. Professional Guardians may enter into a transaction that may be a conflict of interest only when necessary, or when there is a significant benefit to a Ward under the guardianship, and shall disclose such transactions to the Court and obtain prior court approval.

(17) DUTIES OF THE PROFESSIONAL GUARDIAN OF THE PROPERTY

(a) Professional Guardians who are appointed to be guardians of the property shall have the following duties and obligations to Wards under guardianship; unless decision making authority has not been delegated to the Professional Guardian or the letters of guardianship provides otherwise:

(b) Professional Guardians, as a fiduciary, shall manage the financial affairs of Wards under guardianship in a way that maximizes the dignity, autonomy, and self-determination of the Ward.

(c) When making decisions Professional Guardians shall:

1. Give priority to the goals, needs, and preferences of the Wards; and,

2. Weigh the costs and benefits to the estate.

(d) Professional Guardians shall consider the current wishes, past practices, and evidence of likely choices of their wards. If significant impairment to a Ward's physical, mental, or emotional health would result or there is no evidence of likely choices, Professional Guardians shall consider the best interests of the Ward.

(e) Professional Guardians shall assist and encourage Wards to act on their own behalf and to participate in decisions.

(f) The Professional Guardians shall use reasonable efforts to provide oversight to any income and assets under the control of Wards.

(g) Professional Guardians shall, consistent with court orders and state statutes, exercise authority only as necessitated by the limitations of the Ward.

(h) Professional Guardians shall provide competent management of Wards' property and shall supervise all income and disbursements of the estate.

(i) Professional Guardians shall manage the estate only for the benefit of the Ward or as directed by the Court.

(j) Professional Guardians shall keep estate assets safe by keeping accurate records of all transactions and be able to fully account for all the assets in the estate at the time of the Professional Guardian's appointment by the Court.

(k) Professional Guardians shall keep estate money separate from their personal money.

(l) Professional Guardians shall make claims against others on behalf of the estate when deemed in the best interest of the Ward and shall defend against actions that would result in a loss of estate assets.

(m) Professional Guardians shall apply state law regarding prudent investment practices, including seeking responsible consultation with and delegation to people with appropriate expertise is necessary to manage the estate.

(n) Professional Guardians shall employ Generally Accepted Accounting Principles when managing an estate.

(o) Professional Guardians shall determine if a will exists and obtain a copy to determine how to manage estate assets and property.

(p) Professional Guardians shall report to the Office of Public and Professional Guardians, the Department of Children and Families' Adult Protective Services and local law enforcement incidents of abuse, neglect, and/or exploitation within a reasonable period of time under the circumstances.

(18) PROFESSIONAL GUARDIAN OF THE PROPERTY: INITIAL AND ONGOING RESPONSIBILITIES.

(a) With the proper authority, the initial steps after appointment as Professional Guardian are as follows:

1. Professional Guardians shall address all issues of the estate that require immediate action, which include, but are not limited to, securing all real and personal property, insuring it at current market value, and taking the steps necessary to protect it from damage, destruction, or loss.

a. Professional Guardians shall ascertain the income, assets, and liabilities of the Ward.

b. Professional Guardians shall ascertain the goals, needs, and preferences of the Ward.

c. Professional Guardians shall coordinate and consult with others close to the Ward.

2. Professional Guardians shall meet with Wards under guardianship as soon after the appointment as feasible. At the first meeting, Professional Guardians shall:

a. Communicate to the Ward the role of the Professional Guardian,

b. Outline the rights retained by the Ward and the grievance procedures available,

c. Assess the previously and currently expressed wishes of the Ward and evaluate them based on current acuity, and

d. Attempt to gather from the Ward any necessary information regarding the estate.

3. Professional Guardians shall become educated about the nature of any incapacity, condition, and functional capabilities of the Ward.

4. Professional Guardians shall develop and implement a budget for the management of income and assets that corresponds with the care plan for the Ward and aim to address the goals, needs, and preferences of the Ward. Professional Guardians of the property and the Professional Guardian of the Person (if one exists), or other health care decision-maker, shall communicate regularly and coordinate efforts with regard to the care and budget, as well as other events that might affect the Ward.

a. The budget shall include a listing of all of the Ward's known monthly income and assets. The budget shall also include a listing of all of the Ward's recurring monthly expenses, including but not limited to housing, clothing, medical, health insurance, entertainment, and transportation costs.

b. Professional Guardians shall prioritize the well-being of Wards over the preservation of the estate.

c. Professional Guardians shall maintain the goal of managing, but not necessarily eliminating, risks.

5. Professional Guardians shall assess the feasibility of pursuing all public and insurance benefits for which Wards may be eligible.

6. Professional Guardians shall thoroughly document the management of the estate and the carrying out of any and all duties required by statute or regulation.

7. Professional Guardians shall prepare an inventory of all property for which he or she is responsible. The inventory must list all the assets owned by Wards.

8. All accountings must contain sufficient information to clearly describe all significant transactions affecting administration during the accounting period. All accountings must be complete, accurate, and understandable.

9. Professional Guardians shall oversee the disposition of Wards' assets to qualify Wards for any public benefits program.

10. On the termination of the guardianship or the death of a Ward, Professional Guardians shall facilitate the appropriate closing of the estate and submit a final accounting to the court.

11. Professional Guardians may monitor, provide oversight, or manage the personal allowance of Wards.

12. Professional Guardians shall, when appropriate, open a burial trust account and/or make funeral arrangements for Wards.

(19) PROPERTY MANAGEMENT.

(a) Professional Guardians may not dispose of a Ward's real or personal property without giving notice to interested parties and getting Court approval.

(b) In the absence of evidence of a Ward's views before the appointment of a Professional Guardian, Professional

Guardians, having the proper authority, may not sell, encumber, convey, or otherwise transfer property of a ward, or an interest in that property, unless doing so is in the best interest of the Ward.

(c) In considering whether to dispose of a Ward's property, Professional Guardians shall consider the following:

1. Whether disposing of the property will benefit or improve the life of the Ward.
2. The likelihood that the Ward will need or benefit from the property in the future.
3. The previously expressed or current desires of the Ward with regard to the property.
4. The provisions of the Ward's estate plan as it relates to the property, if any.
5. The tax consequences of the transaction.
6. The impact of the transaction on the Ward's entitlement to public benefits.
7. The condition of the entire estate.
8. The ability of the Ward to maintain the property.
9. The availability and appropriateness of alternatives to the disposition of the property.
10. The likelihood that property may deteriorate or be subject to waste; and.
11. The benefits versus the liability and costs of maintaining the property.

(d) Professional Guardians shall consider the necessity for an independent appraisal of real and personal property.

(e) Professional Guardians shall provide for insurance coverage, as appropriate, for property in the estate.

(20) CONFLICT OF INTEREST; ESTATE, FINANCIAL, AND BUSINESS SERVICES

(a) Professional Guardians shall avoid all conflicts of interest and self-dealing when addressing the needs of Wards under guardianship. Impropriety or conflict of interest arises where a Professional Guardian has some personal or agency interest that can be perceived as self-serving or adverse to the position or best interest of a Ward. Self-dealing arises when the Professional Guardian seeks to take advantage of his or her position as a Professional Guardian and acts for his or her own interests rather than for the interests of a Ward.

(b) Standards relating to specific situations that might create an impropriety or conflict of interest include the following:

1. Professional Guardians shall not commingle personal or program funds with the funds of Wards, except as follows:
 - a. This standard does not prohibit Professional Guardians from consolidating and maintaining Wards' funds in joint accounts with the funds of other Wards.
 - b. If Professional Guardians maintain joint accounts, separate and complete accounting of each Ward's funds shall also be maintained by the Professional Guardian.

c. If the court allows the use of comingled accounts, they should be permitted only where Professional Guardians have available resources to keep accurate records of the exact amount of funds in the account, including allocation of interest and charges attributable to each estate based on the asset level of the Ward.

2. Professional Guardians may not sell, encumber, convey, or otherwise transfer a Ward's real or personal property or any interest in that property to himself or herself, a spouse, a coworker, an employee, a member of the board of the agency or corporate Professional Guardian, an agent, or an attorney, or any corporation or trust in which the Professional Guardian has a substantial beneficial interest.

3. Professional Guardians may not sell or otherwise convey a Ward's property from any of the parties noted in subparagraph (20)(b)2.

4. Professional Guardians may not loan or give money or objects of worth from a Ward's estate unless specific prior approval is obtained from the court.

5. Professional Guardians may not use a Ward's income and assets to support or benefit other individuals directly or indirectly unless specific prior approval is obtained from the court.

6. Professional Guardians may not borrow funds from a Ward.

7. Professional Guardians may not lend funds to a Ward unless there is prior notice of the proposed transaction to interested persons and others as directed by the court or agency administering the Ward's benefits, and the transaction is approved by the court.

8. Professional Guardians may not profit from any transactions made on behalf of a Ward's estate at the expense of the estate, nor may the Professional Guardian compete with the estate, unless prior approval is obtained from the court.

9. Professional Guardians shall not give anything of value associated with a guardianship referral.

(21) TERMINATION AND LIMITATION OF PROFESSIONAL GUARDIANSHIP

(a) Professional Guardians shall assist Wards under guardianship to develop or regain the capacity to manage their personal and financial affairs.

(b) Professional Guardians shall seek termination or limitation of the guardianship in the following circumstances:

1. When a Ward has developed or regained capacity in areas in which he or she was found incapacitated by the court.
2. When less restrictive alternatives exist.
3. When a Ward expresses the desire to challenge the necessity of all or part of the guardianship.
4. When a Ward has died, or
5. When a guardianship no longer benefits the Ward.

Special Needs Trust Committee Report. Below are the minutes from our December Meeting which discusses 3 projects we are working on. One of our sub-committees, the QSNT and Elective Share sub-committee, would like to ask the Executive Council for permission to work on proposed legislation for a future legislative session. The summary of the proposal is attached as appendix A to this report.

Travis Finchum

SNT Committee

Tuesday, December 13, 2016

Present on call: Travis Finchum, Kole Long, David Lillesand, Len Mondschein, Enita Kushi and Blake Hampton

1. Discussed SNT Fairness Act passed and was signed today by President. It is effective immediately.
2. Educational Webinars or Materials for Membership –Travis checked with Chris Hargrett on resources available, and costs, to do webinars. Chris is investigating and will get back to Travis. It was suggested that we could use the webinars for the basics to prepare newer practitioners for a more advanced CLE next summer.
3. Other topics -It was decided to break into smaller groups and take the topics separately. Each small group will meet and discuss what they want to produce: Article, Handouts, Webinar, White Paper, etc.

1. Trigger Trusts - AMY, MELISSA, KOLE

aif@osbornepa.com, melissa.l.barnhardt@wellsfargo.com,
kole@specialneedslawyers.com

2 ABLE with SNT's – STEVE, DAVID, MELISSA

steve@hitchcocklawyer.com; david@lillesandlaw.com;
melissa.l.barnhardt@wellsfargo.com

3. QSNT and ELECTIVE SHARE– BLAKE, TRAVIS, ENITA, HOWIE, ROBERT MORGAN

bhampton@hamptonelderlaw.com; travis@specialneedslawyers.com;
enita@kushilawfirm.com; hkrooks@elderlawassociates.com; rmorgan@bmaelderlaw.com

Committee calls are at 5 PM

Tuesday, Dec. 13 at 5:00 PM

Tuesday, Jan. 10 at 5:00 PM

Tuesday, Feb. 14 at 5:00 PM

Tuesday, Mar. 14 at 5:00 PM

Tuesday, Apr. 11 at 5:00 PM

Tuesday, May 9 at 5:00 PM

Dialing instructions:

Dial **(712) 832-8310**

Enter **Access Code 484207#**

Thank you.

Travis and Howie

Exhibit A

Look at whether we want to pursue legislation changing QSNT statute – 732.2025 (8) in the following potential ways:

1. Carve out QSNT from definitions section into own Part of 732.
2. Allow for “ineligible family trustees” upon approval of surviving spouse (or their agent) with or without approval of the court.
3. Either waive \$100,000 threshold requiring court approval to approve a QSNT,

OR

- a. require all QSNT’s to be court approved,

OR

- b. Only require court approval of QSNT when ineligible family trustee is controlling QSNT

4. Clean up language that says established “before or after a decedent’s death” by removing “before or” from phrase.

The Current Statute:

(8) “Qualifying special needs trust” or “supplemental needs trust” means a trust established for an ill or disabled surviving spouse with court approval before or after a decedent’s death, if, commencing on the decedent’s death:

(a) The income and principal are distributable to or for the benefit of the spouse for life in the discretion of one or more trustees less than half of whom are ineligible family trustees. For purposes of this paragraph, ineligible family trustees include the decedent’s grandparents and any descendants of the decedent’s grandparents who are not also descendants of the surviving spouse; and

(b) During the spouse’s life, no person other than the spouse has the power to distribute income or principal to anyone other than the spouse.

The requirement for court approval shall not apply if the aggregate value of all property in all qualifying special needs trusts for the spouse is less than \$100,000. For purposes of this subsection, value is determined on the “applicable valuation date” as defined in s.

[732.2095](#)(1)(a).

(1) EXCLUSIONS.—Section 732.2035 does not apply to:

(g) Property held in a qualifying special needs trust on the date of the decedent’s death.

732.2075 Sources from which elective share payable; abatement.—

(e) Property held for the benefit of the surviving spouse in a qualifying special needs trust.

(3) If, after the application of subsections (1) and (2), the elective share amount is not fully satisfied, the additional amount due to the surviving spouse shall be determined and satisfied as follows:

(a) The remaining unsatisfied balance shall be satisfied from property described in paragraphs (1)(a) and (b) which passes or which has passed in a trust in which the surviving spouse has a beneficial interest, other than an elective share trust or a qualified special needs trust.

732.2095 Valuation of property used to satisfy elective share.—

2. In the case of property held in a qualifying special needs trust on the date of the decedent's death, the date of the decedent's death.

(c) If the surviving spouse is a beneficiary of a trust, or portion of a trust, which meets the requirements of a qualifying special needs trust, the value of the principal of the trust, or trust portion, on the applicable valuation date.

(d) If the surviving spouse has an interest in a trust that does not meet the requirements of either an elective share trust or a qualifying special needs trust, the value of the spouse's interest is the transfer tax value of the interest on the applicable valuation date; however, the aggregate value of all of the spouse's interests in the trust shall not exceed one-half of the value of the trust principal on the applicable valuation date.

Florida Bar Elder Law Section

CLE COMMITTEE REPORT

by: Sam W. Boone, Jr., and Marjorie Wolasky Co-Chairs
January 12, 2017

Marjorie Wolasky and I welcome Danielle Faller to committee. Danielle is in the process of preparing a master calendar of all Elder Law related CLEs to assist the Executive Committee in setting dates for CLE events going forward.

Javier Centonzio and the VA Committee are preparing a VA CLE for the annual meeting June 23, 2017 in Boca. More details will be available soon. We will ask Chris to send a “save the date” message when costs and times are finalized.

The Guardianship Committee is considering a CLE on the administrative procedures act and process to sharpen our tools in our advocacy toolbox when we are asked to represent professional guardians when they get a complaint against them at OPG. We hope to have this available prior to the RPPTL Guardianship CLE on April 28, 2017 and are expecting further input from the Guardianship Committee shortly. We anticipate a webinar only presentation.

There will be a CLE program at the ELS Annual Retreat October 5-8 in Jamaica – a topic has not yet been determined.