

The Elder Law Advocate

"Serving Florida's Elder Law Practitioners"

Featuring:

- Striking the balance: Improving incapacity proceedings to prevent exploitation and overreach
- Through the looking glass: How VBMS access changed the way I practice VA law
- 2025 Elder Law Section award recipients
- Florida's newest board certified elder law attorneys
- Modifying personal service contracts

Vol. XXXII, No. 3 • Fall 2025
eldersection.org



The Elder Law Advocate

Established 1991

A publication of the Elder Law Section of The Florida Bar

Officers

Shannon M. Miller, Melbourne
Chair

Amy J. Fanzlaw, Boca Raton
Chair-Elect

Debra J. Slater, Coral Springs
Vice Chair, Administrative

Travis D. Finchum, Clearwater
Vice Chair, Substantive

Danielle R. Faller, Brandon
Treasurer

Heidi M. Brown, Fort Myers
Secretary

Editorial Team

Genny Bernstein, West Palm Beach
Editor

Susan Trainor, Tallahassee
Copy Editor

Emily Young, Tallahassee
Program Administrator

Jack Holland, Tallahassee
Design

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

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



ON THE COVER
Florida White-Tailed Deer
Randy Traynor Photography

9/2025

Contents

Message From the Chair: What is your Dharma? 3

Striking the balance: Improving incapacity proceedings to prevent exploitation and overreach 4

Through the looking glass: How VBMS access changed the way I practice VA law 6

Capitol Update: Highlights of Session 2025 8

From the Joint Task Force for the Elderly & Disabled: Help build a database of Medicaid application problems 11

Congratulations to our 2025 award recipients! 12

Celebrating Florida's newest board certified elder law attorneys 14

Elder Law Section Executive Committee 15

Mark your calendar 15

Committees keep you current 16

Practice Management: When everything is a priority in your practice, how do you know where to start? 18

Tips & Tales: Modifying personal service contracts 19

Tax Tips: Top 5 IRS letters elder law clients may receive; What they are & what to do 20

Submit Articles

The deadline for the WINTER 2026 EDITION IS OCTOBER 15, 2025. Articles on any topic of interest to the practice of elder law should be submitted via email as an attachment in MS Word format to Genny Bernstein at gbernstein@jonesfoster.com, or call Emily Young at 850/561-5650 for additional information.



Message From the Chair

by Shannon M. Miller

What is your Dharma?

What brings you joy? What were you born to share with the world? What makes you feel fulfilled? Is it your job? The work you do in your community? A hobby? Your family?

These are just some of the questions we'll explore together at this year's **Annual Retreat in Sedona**. We're excited to welcome **Irene De Jesus**, who will share her journey to discovering her Dharma. We'll also engage in meaningful exercises to help you uncover—or deepen—your own purpose. This retreat is about broadening your perspective on what life means to you and how you can bring more meaning into your daily existence. We're dreaming big this year!

Speaking of dreaming big, we did just that with our **"Stop the Scammers" exploitation injunction bill**—and it paid off. The legislation became law on **July 1, 2025**, marking a huge win. Thanks also to the leadership of **Palm Beach County Assistant State Attorney Stacey Ibarra**, her team, local Legal Aid, law enforcement, and elder law attorneys in the Palm Beach area who are now joining forces to combat the rise in crypto exploitation and scams.

This was an *unintended but powerful outcome* of our legislation, and we're excited to see its broader impact. These scams are no longer just targeting seniors. The increasing sophistication of digital scams is becoming one of the greatest challenges of our time. Protect yourself—and help your clients do the same—by understanding how to limit the sale of personal information on the dark web.

We closed out FY 2025 with a heartfelt **awards presentation** honoring outstanding members and legislators. (See page 12 for a full list of honorees.) It was a moving reminder of the dedication and impact of our Elder Law Section.

It's been a productive and transformative year. We've sparked new interest among younger practitioners who are seeking a more meaningful path in law. The **growth of Life Care Planning** continues to offer elder law attorneys more income potential, flexibility, and job satisfaction.

As I conclude the first year of my two-year term as chair of the Elder Law Section, I won't be slowing down. I'm also honored to be stepping into the role of **president of the Life Care Planning Law Firms Association in 2027**. My goal is to continue expanding life care planning to better serve seniors, their families, and the attorneys who help them. Stay tuned.

We're also thrilled to welcome **Heidi Brown** to our leadership team this year. Her expertise, hard work, and dedication will be a huge asset to our section. We're lucky to have her. Most of the Executive Committee will continue in their roles, with some moving up to the next level. We're back on track with leadership and excited for what 2025 and 2026 will bring.

Amy Fanzlaw is bringing fresh ideas to what was formerly known as the Annual Update, now reimagined as the **2026 Annual Florida Elder Law Symposium**. We'll also be celebrating **35 years as a Section** with a special gala honoring our past chairs and the history of the section. Expect an elevated experience and a powerful celebration of all we've accomplished together.

I may be biased, but I truly believe we are the little section that could … and *did*. And still *does*. Here's to another year of growth, innovation, and purpose—with all of you.

Namaste,

Shannon

Striking the balance: Improving incapacity proceedings to prevent exploitation and overreach

by Elsa Van Gorp Rene

submitted on behalf of the Abuse, Neglect, & Exploitation Committee

As an elder law attorney, I know Florida's incapacity and guardianship proceedings can serve as vital interventions in cases of severe and even life-threatening exploitation. But as a former public defender, I am acutely aware of the gravity of removing a person's rights—an issue at the heart of incapacity proceedings. And since restoration proceedings are often cursory and unfairly place the burden of proof upon the vulnerable person, restoring rights is frequently unattainable.

Floridians deserve a better system—one that offers meaningful tools to protect vulnerable community members from exploitation and isolation while safeguarding against the overly broad removal of their rights. Too often, incapacity cases are rushed and reduced to procedural formalities, even though fundamental rights, dignity, and safety are at stake. The requirement to consider less restrictive alternatives is often impractical, as such documents are often the product of undue influence and may legitimize an exploiter's control.

Due to logistical challenges, heavy caseloads, or inadequate compensation that presupposes a finding of incapacity, counsel for the alleged incapacitated person (AIP) may fail to diligently and vigorously advocate for the rights and wishes of their client. Conversely, some attorneys zealously advance the AIP's stated wishes, even when those wishes are likely the result of undue influence, coaching, and isolation by the exploiter—further perpetuating the harm.

In suspected exploitation cases, courts should be empowered to appoint a neutral professional to investigate and advocate for the AIP's needs, similar to the role of a guardian ad litem in juvenile dependency cases. While vulnerable adults raise different legal considerations than youth, they would likewise benefit from a neutral third party that could better protect the AIP, reveal their true wishes, and promote more holistic outcomes.

Chapter 744 allows for the appointment of court monitors, but most judges interpret the specific use of terms like "guardian" and "ward" in relevant statutes to limit the use of court monitors to only *after* an adjudication of incapacity and rejection of less restrictive alternatives to guardianship. *See* Fla. Stat. §§ 744.107 and 744.1075.

But it is often before adjudication—when the AIP is still isolated and unprotected—that intervention is most needed.

Although an emergency temporary guardian (ETG) may be appointed pre-adjudication, courts frequently find the requisite standard of "imminent danger" is unmet. If, for example, the AIP is technically receiving adequate medical care while being exploited, the court may find no imminent danger exists—despite the irreparable effects of ongoing exploitation and isolation. *See* Fla. Stat. § 744.3031. Even when appointed, the ETG may lack neutrality or proper training, or may be hesitant to meaningfully disrupt the status quo prior to adjudication.

In some cases, simply removing the AIP from the undue influence and restoring social connections with friends and family may render guardianship unnecessary, even if the AIP's health or cognition does not improve. A more balanced guardianship process that emphasizes interventions aimed at disrupting exploitation and supporting the AIP's well-being would better serve vulnerable adults while reducing overly restrictive outcomes.

These proceedings have profound and long-lasting consequences. Our system needs stronger advocacy, earlier neutral oversight, and enhanced safeguards to protect vulnerable adults while preserving their participation and autonomy.



Elsa Van Gorp Rene *is an associate at Kluger, Kaplan, Silverman, Katzen & Levine, PL, where she focuses on probate, trust, and guardianship litigation. She previously represented heirs, beneficiaries, fiduciaries, and other interested parties in complex probate, guardianship, and elder abuse matters at prominent litigation firms in Miami.*



Through the looking glass: How VBMS access changed the way I Practice VA law

by Heidi F. Friedman

submitted on behalf of the Medicaid/Public Benefits/VA Committee

It all started with a missing date. One of my clients—a surviving spouse in her late 80s—was waiting on Aid and Attendance benefits so she could stay in the assisted living facility she called home. We submitted the application, everything looked complete, and then … silence. Weeks turned into months. When we finally got an update, the holdup was a single overlooked date on one form.

That delay could have cost her the benefit entirely. In fact, we genuinely feared she might not survive long enough to receive the approval. And despite making my clients promise to stay alive until their VA benefits are approved (yes, I say this to them), the combination of long processing times and not knowing where an application stands can be incredibly frustrating—especially for families making difficult care decisions in real time.

I've been VA-accredited for years, but didn't know that access to the Veterans Benefits Management System (VBMS) existed until October 2023. When I found out that attorneys could request read-only access to the VA's internal claims portal, I immediately reached out to the VBMSPTPOA inbox. You might think that getting access would be a well-oiled, step-by-step process (it is the VA, after all). Spoiler alert: it's not. It took three emails, a few choice subject lines, and the subtle art of being a polite pest before I was finally connected to Steven Sanders, a personnel security specialist with the Veterans Benefits Administration. Thankfully, persistence is a skill I've developed over the years—especially when dealing with agencies where "soon" can mean anywhere from 10 minutes to 10 months.

Steven sent me a detailed list of steps to get started. These included submitting an updated OF-306, scheduling fingerprinting through the federal AI Scheduler portal (which felt vaguely like trying to book concert tickets for Adele), and completing a background investigation through the eApp system. The catch? You only have five business days



to complete each step—or risk starting over. I submitted my paperwork in May 2024 and began working through the rest of the process, which included hours of VA training videos that reminded me why coffee was invented.

Once I finally gained access and logged into VBMS for the first time, I couldn't believe I had gone so long without it. Suddenly, I could see exactly what the VA sees: what's been uploaded, and what's missing. I've caught incomplete records within days and provided families with updates, without calling the 800 number and hearing hold music that hasn't changed since 1993.

In one case, a client's daughter called me in a panic, convinced her mom's claim had disappeared into a black hole. I was able to log into VBMS and tell her the claim had been approved five days earlier—the notice just hadn't arrived yet. That moment of relief is something I couldn't have delivered before.

VBMS access has also helped me serve the facilities I work with, giving them better timelines and helping them plan for residents who depend on these benefits to stay where they are.

So, if you're accredited with the VA and helping veterans or surviving spouses, take my advice: be persistent, be patient, and get VBMS access. It's not just a nice tool to have—it's essential. The system may not always be intuitive, but with a little nudging (and maybe a sense of humor), you'll get there.

For me, it took one missing date to push me toward something that forever changed how I advocate for our veterans and their spouses.



***Heidi F. Friedman, Esq.**, is a board-certified elder law attorney and VA-accredited representative with VBMS access. She focuses her practice on helping veterans and surviving spouses access long-term care benefits through careful legal and financial planning.*







Capitol Update

by Brian Fogerst

Highlights of Session 2025

The 2025 Legislative Session began on March 4 and was scheduled to end on Friday, May 2. However, the Legislature did not adopt the budget prior to May 2 and approved a series of extended sessions to address the budget differences.

By way of background, at the end of the Regular Session, more than $4 billion separated the House and Senate budgets. In addition, the House approved a reduction in the sales tax from 6% to 5.25%. On the final day of the Regular Session, an agreement on the tax package was announced that would have set the stage for an agreement on the final state budget funding level. However, a week later the tax package agreement unraveled—and prevented a budget agreement.

The Legislature ultimately adopted the budget on Monday, June 16, which took effect on July 1. The budget for this fiscal year is approximately $3.5 billion smaller than the budget for the last fiscal year and is less than a $115.6 billion plan the governor proposed in early February.

Budget items of interest

Health and Human Services appropriations

Total budget: $47.6 billion; 30,991 positions

Agency for Health Care Administration

- Fully fund Florida's Medicaid and KidCare Programs - $35.6 billion
- Medicaid Provider Rate Increases - $279.6 million
  - » Federally Qualified Health Centers and Rural Health Clinics - $15.4 million
  - » Prescribed Pediatric Extended Care Centers - $12.6 million
  - » Nursing Home Quality Incentive Program - $246.7 million
  - » Targeted Case Management - $5 million
- Individuals with Developmental Disabilities Pilot Program - $44.2 million
- Graduate Medical Education - $38.1 million
- Program for All-inclusive Care of the Elderly (PACE) - $16.8 million
- Audits for Nursing Homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) - $1 million
- Federal Reporting for Adult Behavioral Health and Child Core Set - $0.9 million
- Florida Health Care Connections (FX) - $143.2 million

Agency for Persons with Disabilities

- Enhanced Funding and Services for Developmental Disability Centers - $13.7 million
- Information Technology - $6 million
- iBudget Waiver Algorithm Study - $1 million
- Fixed Capital Outlay for People with Developmental Disabilities - $1.2 million

Department of Children and Families

- Support Core Child Welfare Programs - $40.3 million
  - » Adoption and Guardianship Assistance Subsidies - $27.4 million
  - » Extended Foster Care - $5.3 million
  - » Therapeutic Safe Foster Home Pilot - $3 million
  - » Foster Care Board Rate Cost of Living Adjustment - $1.6 million
  - » Free Online Child Care Provider Coursework & Licensing Exam - $3 million
- Transfer Children's Advocacy Centers from Department of Legal Affairs - $5 million
- Community-Based Mental Health/Substance Use Prevention Initiatives - $36 million
- Integrated Behavioral Health Residential Treatment Beds - $10 million
  - » Central Receiving Facilities - $6.2 million
  - » Criminal Justice Mental Health/Substance Abuse Reinvestment Grant - $6 million
  - » Managing Entity Financial System Upgrade and Audits - $11.1 million
  - » 988 Behavioral Health and Veterans Crisis Support Lines - $2.7 million
- Opioid Prevention, Treatment, and Recovery Efforts - $201.5 million
- Florida System and Child Welfare Information System Modernization - $46.3 million

Department of Elder Affairs

- Alzheimer's Disease Initiative - Frail Elders Waiting for Services - $3 million
- Serve Additional Clients in the Community Care for the Elderly (CCE) and Home Care for the Elderly (HCE) Programs - $10.5 million
- Increased Resources for Aging and Disability Resource Centers - $1.0 million
- Information Technology Projects - $3.1 million

Department of Health

- Pediatric Cancer Research - Cancer Connect Collaborative Incubator - $30 million
- Increased Funding for the Mary Brogan Breast and Cervical Cancer Early Detection Program - $1.8 million
- Increased Funding for Healthy Start Coalitions - $3.4 million

Source: Senate Appropriations Post Session Report

Legislative Session facts

Bills filed: 1,982

Amendments: 1,906

Votes: 2,913

Enrolled bills: 254 (passed both the House and Senate)

Source: LobbyTools, as of May 2, 2025

2025 issues

The Legislative Committee, led by Michelle Kenney and Travis Finchum, along with the ELS committees actively reviewed more than 50 bills for the 2025 Session. The following is a brief summary of key issues (for copies of any bills discussed, please go to www.flsenate.gov or www.myfloridahouse.gov):

Stop the Scammers/Substitute Service – Senate Bill 106 by Senator Jonathan Martin and House Bill 97 by Representative Kevin Steele addressed serving exploiters who hid behind internet or apps to avoid detection, identification, and prosecution. By way of background, during the 2018 Legislative Session, the Legislature adopted the Exploitation Injunction statute (sponsored by then Representative Colleen Burton and Senator Kathleen Passidomo). Under the terms of the 2018 law—which was the first in the nation—if a vulnerable adult is financially exploited, a family member or the exploited person can go directly to the clerk of the court to file an injunction to freeze their assets. Working with the attorney general, in 2021, the law was improved by adding terms to criminalize undue influence, to disinherit exploiters, and to make the process more accessible by allowing agents under DPOA to file the petition.

Elder Law understands the financial exploitation industry is becoming more aggressive and sophisticated in their methods to exploit victims and continues working with legislators and key partners to find ways to shut down the exploitation.

The legislation was adopted without a no vote in any chamber and permits serving the alleged exploiters via the same communication style the respondent used to correspond with the victim, such as Whatsapp or Facebook. Once served in this manner, the respondent would have 30 days to appear to assert the nonexploitive nature of the transaction. Governor DeSantis signed this bill into law on Friday, June 20, and it took effect July 1.

Elder Law gratefully thanks Senator Jonathon Martin and Representative Kevin Steele for sponsoring this bill and for working with the Elder Law Section to protect Florida's senior and vulnerable adults.

Thank you to Shannon Miller and Kandace Rudd for testifying before the House and Senate committees.

Electronic Monitoring/Granny Cams – Senate Bill 64 by Senator Ileana Garcia and House Bill 223 by Representative Susan Plasencia allowed electronic monitoring devices in long-term care facilities. Under the terms of the bill, the electronic monitoring devices had to be in a fixed position video or audio recording device (the camera cannot rotate in the room). Consent was required by all residents in a shared room, and the Agency for Health Care Administration (AHCA) was required to adopt uniform consent forms.

The bills did not receive a committee hearing in the House or Senate but are expected to return for the 2026 Session.

Patient Directed Medical Orders – Senate Bill 556 by Senator Ana Maria Rodriguez and House Bill 353 by Representative Susan Plasencia addressed patient-directed medical orders, including telehealth provisions and requirements for withholding or withdrawing life-prolonging procedures.

The House bill received one hearing to address concerns by stakeholders but did not receive a committee hearing in the Senate. The bills are expected to be filed again for the 2026 Session.

Virtual Currency Kiosk Businesses/Crypto ATMs – Senate Bill 292 by Senator Colleen Burton and House Bill 319 by Representative Tom Fabricio regulated virtual currency kiosk businesses. Elder Law was concerned that "scammers" are using bitcoin ATMs to steal money—especially targeting seniors and vulnerable adults who are depositing large sums of money into the unregulated crypto ATMs without any proof that the deposit was made or any daily limit on the amount deposited.

The bills did not pass this session but are expected to return for the 2026 Session.

Recovery of Damages for Medical Negligence Resulting in Death – House Bill 6017 by Representative Dana Trabulsy (Senate Bill 734 by Senator Clay Yarborough) was approved by the Legislature. The bill expanded the application of the Florida Wrongful Death Act by *repealing* exceptions that prohibit certain parents and children of a deceased patient who dies due to medical negligence from

continued, next page

recovering *noneconomic damages*. In addition, if a wrongful death occurs because of medical negligence, a decedent's adult children may recover noneconomic damages if there is no surviving spouse and provides that the parents of an adult decedent may recover noneconomic damages if there is no surviving spouse or surviving minor or adult children.

An amendment was defeated in the Senate—by one vote—to include caps on noneconomic damages to address concerns by the health care communities that the bill would lead to increased medical malpractice rates.

Governor DeSantis vetoed the bill, so the changes will not take effect.

Curators of Estates – House Bill 417 by Rep. Randy Maggard and Senate Bill 520 by Senator Danny Burgess expanded the role of curators in probate proceedings. Elder Law had concerns with the bill, which had not been adopted by all committees prior to the final committee hearings—normally dooming the bill for the current session. However, late in session, an amendment was drafted—with Elder Law's concerns addressed—to include the issue in Senate Bill 262, which was a trust bill (*see below*). In the end the amendment was not offered, but the issue will return for the 2026 Session. The late amendment effort is another reason Elder Law remains on alert throughout the session and must quickly review/address last-minute amendments.

Trusts – Senate Bill 262 by Senator Lori Berman was approved by the Legislature. The bill clarified existing law relating to trust decanting and a former trustee's liability and successor trustees' responsibilities. Governor DeSantis signed the bill into law on Friday, June 20.

Your help is STILL needed

As stated in previous articles and discussed at Elder Law meetings, the Legislative Committee reviews legislation and amendments prior to and during session. As noted above on the curators bill, amendments can be filed at the last minute requiring a quick and thorough review and modifications.

As such, we need your help.

If you want to participate on a substantive committee or review/comment on the bills that are filed, please contact the leadership of the ELS Legislative Committee:

Kandace Rudd
kandace@mclawgroup.com

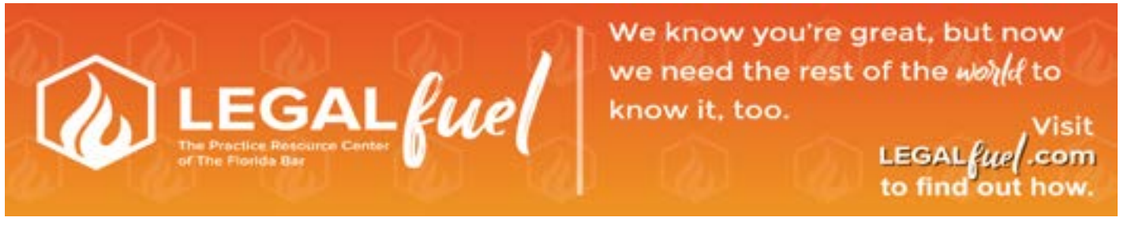
Travis Finchum
travis@specialneedslawyers.com

The Legislative Committee meets biweekly during the legislative committee weeks and *every* Friday at 8:00 a.m. during session to discuss issues reviewed by the ELS substantive committees.

We have enjoyed success on legislative issues by working with legislators and providing feedback to them as well as by testifying at committee hearings. It is imperative that we continue to have thorough and timely responses available during the Interim Committee Weeks and Legislative Session as meeting notices leave minimal time to respond. We are grateful for the grass-roots support we have received and for the difference it makes when working with legislators.

You can also help by meeting with your local legislators and being a local resource to them. If you do not know your legislator, we remain willing to facilitate an introduction with the legislator and/or their staff. Continued relationship-building with legislators, the state's policy makers, is a critical component of our advocacy efforts because the local relationships and outreach to legislators from trusted sources helps Elder Law be a trusted voice and improves our advocacy efforts.

Brian Jogerst *and Tom Griffin are partners at The Griffin Group, a Tallahassee-based governmental consulting firm with more than 40 years' experience lobbying on health care and related legal issues. The Griffin Group is under contract with the Academy of Florida Elder Law Attorneys and the Elder Law Section of The Florida Bar for lobbying and governmental relations services in the State Capitol.*



From the Joint Task Force for the Elderly & Disabled: Help build a database of Medicaid application problems

Elder law practitioners assisting their clients with Medicaid qualification have reported ongoing challenges in the Medicaid application process that arise in many different situations. As a result, the Joint Public Policy Task Force for the Elderly & Disabled (comprising both ELS and AFELA leadership) has initiated dialogue with the Florida Department of Elder Affairs and the Florida Department of Children & Families. A recent meeting arranged by task force lobbyists Brian Jogerst and Greg Black was held in Tallahassee with representatives of both DOEA and DCF, attended by task force members Emma Hemness, David Jacoby, Mike Jorgensen, and volunteer Angela Warren. This meeting was similar to prior meetings wherein the two departments requested examples of the issues we are experiencing. The task force believes we need to be prepared at all times to provide specific instances of any breakdowns in the application process.

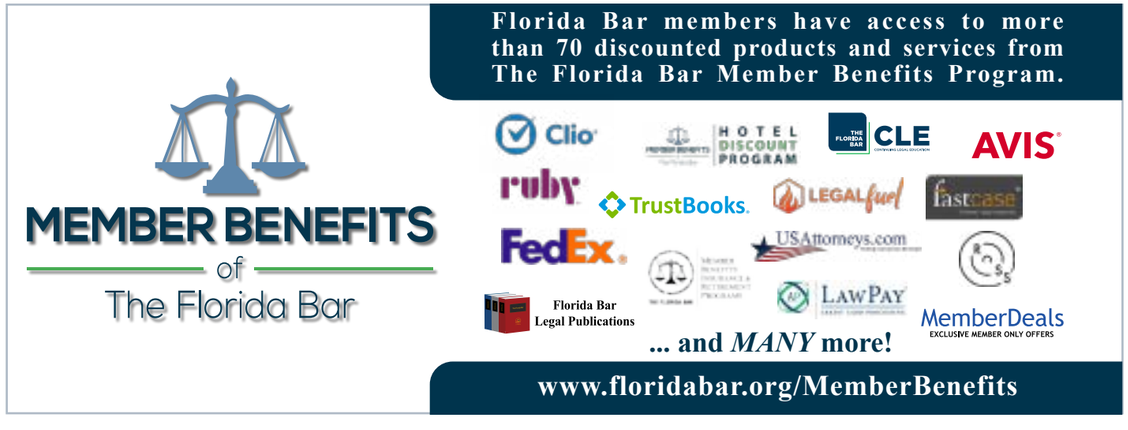
In a continued effort to monitor and track ongoing challenges encountered in Medicaid case matters, we require your assistance in building a database of specific examples. Task force members Britton Swank and Jason Waddell have created the Medicaid Application Problems – Tracking Sheet. An interactive form is available to complete online. Please share this form with your staff members and encourage them to record issues encountered in the Medicaid application process as they occur. Once you or your staff members submit the form, it will be sent to the task force's database.

Pssst ... Don't forget to use the Medicaid Tracker to report issues with the Medicaid application process. Use the link or the QR code on this page to access it.

When we see a trend developing, we can raise the issue. This effort will be successful only if everyone participates. This information will enable the task force to continue meaningful dialogue with DOEA and DCF as we work toward solutions to these challenges, assisting both your practice and the clients for whom you advocate.

Access the online form by clicking the link or the QR code:

https://bit.ly/medicaid-tracking



Congratulations to our 2025 award recipients!

Charlotte Brayer Public Service Award



Travis Finchum

Travis Finchum is this year's recipient of the Charlotte Brayer Public Service Award. Travis's commitment to the communities we serve and to the section is boundless. He has spent countless hours, really years, both behind the scenes and on the front lines. He is always where he is needed. He supports, does not waver in his commitment, and he achieves results again and again. Travis embodies those characteristics that lend themselves to his success, both as a wonderful friend, attorney, and champion for the vulnerable population: loyalty, generosity, a fierce sense of humor, and he *always* shows up! One example of his unassuming, get-it-done nature is a recent discussion I had with a professional guardian about a ward who was running out of funds in their guardian pooled trust subaccount. The guardian told me he had spoken with Travis about options, and Travis said his foundation is covering the shortfall. When I asked Travis about this and thanked him on behalf of the ward, he said, nonchalantly, "No problem, we do it for lots of folks to help them out." Of course he does. His service is immeasurable because we do not even know all the things he does since he doesn't always tell us. For all he does for the section … for all he does for the communities he serves … it was such a pleasure and an honor to present the Charlotte Brayer Public Service Award to Travis, our rock, not to mention an extraordinary chicken dad, and the clear choice to receive this year's award. – Debra J. Slater, ELS Substantive Vice Chair

Member of the Year



Rima Nathan

Rima Nathan received our Member of the Year Award for her outstanding energy, collaboration, and dedication to The Florida Bar's Elder Law Section and its future. In her role as director of the Claude Pepper Elder Law Clinic at the Florida State University College of Law, Rima dedicates herself to teaching her students the value of hands-on services to the aging community and a commitment to legal and social outreach to seniors, particularly low-income and rural seniors. Rima works tirelessly to help her students immerse themselves in the Elder Law Section's activities, including having her students become free section members and participate in the section's annual and interim continuing legal education programs. As if this advocacy to nurture elder law students who may one day become elder law attorneys was not enough, Rima also created and runs the FSU Elder Law Moot Court competition, now in its third year. The moot court competition has increased the visibility of Florida elder law and aging issues nationwide and even internationally. One of Rima's strengths is her energy and eagerness to collaborate with as many individuals and groups as possible to increase her elder law clinic's outreach and to enhance the learning experience for her students. Rima has made elder law a subject many more students are interested in and has increased the potential for more young elder law attorneys, a commitment by Rima that will continue to benefit our state. Thank you, Rima, and keep up the great work. – Victoria E. Heuler, ELS Immediate Past Chair

Legislators of the Year



Senator Jonathan Martin



Representative Kevin Steele

Special thank you to our Elder Law Section Legislators of the Year, Senator Jonathan Martin and Representative Kevin Steele. Senator Martin and Representative Steele strongly supported the "Stop the Scammers" legislation, which unanimously passed the Legislature and was signed into law by Governor DeSantis. Senator Martin and Representative Steele ensured that scammers could not hide behind internet apps or paywalls to prey upon and exploit our vulnerable adults. First elected to the Senate in 2022, Senator Martin is an attorney from Lee County and chairs the Senate Criminal Justice Committee. He also served as an assistant state attorney, 20th Judicial Circuit and is a past president of the Hendry-Glades Bar Association. A successful businessman, Representative Kevin Steele was elected to the House of Representatives in 2022, lives in Hudson, and represents part of Pasco County and serves on the House Health and Human Services Committee, the House Health Care Budget Subcommittee, and the House Insurance and Banking Subcommittee. – Travis Finchum, ELS Treasurer

Exceptional Service Award



Heidi Brown

One of the Exceptional Service Awards this year is presented to Heidi Brown, a person who exhibits an extraordinary amount of grit, humility, and grace. Heidi has a passion for the Elder Law Section, and it shows in everything she does. Over the years, Heidi has worked in several different capacities for the section, happily doing whatever job was needed, all for the long-term benefit of the section, and she never let the difficulty of the task deter her. In her past leadership roles, she found a way to unite a committee's polarizing views on a difficult subject and formulate a workable solution. This past year, she chaired one of the most important section committees—Sponsorship—and even though she had no prior experience in fundraising, she excelled, increasing the section's sponsorship dollars five-fold within 12 months. The section has benefitted immensely from her unselfish contributions. – Amy Fanzlaw, ELS Chair-Elect

Exceptional Service Award



Heather Samuels

Heather Samuels once again has been a shooting star for the Elder Law Section. In addition to caring for a growing young family, Heather took on several roles this year behind the scenes to assist the growth of our section and evolution into the world of fun and expansion among a younger and newer crowd of elder law attorneys. Heather is one of the leaders of the "brat pack" of up-and-coming rising stars in our section. She is the CLE chair, but also served on several committees, including the Annual Update Committee, which produce an outstanding array of new engagement and fun-filled action. One of her biggest accomplishments was the Essentials day where she helped combine veteran Elder Law Section members' expertise with newer practitioners to create a mentoring experience for everyone. She also launched our first trivia night and recruited Jason Waddell to be our fantastic host. Heather is the kind of leader that doesn't need accolades but deserves them. Thank you, Heather, for all you do behind the scenes and for dedicating so many countless hours to service of our section. – Shannon M. Miller, ELS Chair

Lifetime Achievement Award



Jason Waddell

We are proud to announce that Jason Waddell is the recipient of this year's Lifetime Achievement Award, recognizing a career marked by extraordinary service, leadership, and dedication to the Elder Law Section as well as the elder law community. Jason has played a foundational role in shaping our organization—helping draft our new bylaws, organizing countless CLEs, and assisting with the development of our new website. And let's not forget his fierce dedication to our budget—Jason is the only person we know who reads every line item like it's a bestselling thriller. His professional accomplishments are numerous, including Elder Law Section's Member of the Year, the Charlotte Brayer Public Service Award, The Florida Bar President's Pro Bono Award, and serving as our section chair from 2018–2019. Yet it is his humor and lightheartedness that truly define him—from emceeing trivia night at our annual event to bringing levity to board meetings. A big congratulations to Jason Waddell on receiving the Elder Law Section's Lifetime Achievement Award—and for achieving the well-deserved "Triple Crown" of our section! – Danielle Faller, ELS Treasurer

Fellows Program Graduate



Sylvana Rosende

Sylvana Rosende has successfully completed the Elder Law Section Fellowship Program of The Florida Bar, marking a significant milestone in her dedication to serving Florida's elder community. She is the managing partner of Rosende Paul, where she continues to focus her practice on elder law, probate, and guardianship matters. Throughout the fellowship, Sylvana demonstrated a deep commitment to community-focused advocacy, consistently working to support and protect vulnerable populations. Her passion for helping others continues to be the driving force behind her legal work and professional service. – Chanté Jones, ELS Inclusion, Diversity, & Engagement Committee Chair

Elder Law Section Executive Committee

CHAIR

Shannon M. Miller
The Miller Elder Law Firm, Gainesville
352/379-1900
shannon@millerelderlawfirm.com

CHAIR-ELECT

Amy J. Fanzlaw
Osborne & Osborne PA, Boca Raton
561/395-1000
ajf@osbornepa.com

ADMINISTRATIVE VICE CHAIR

Debra J. Slater
Slater & Small PLLC, Coral Springs
954/753-4388
dslater@slater-small.com

SUBSTANTIVE VICE CHAIR

Travis D. Finchum
Special Needs Lawyers PA, Clearwater
727/443-7898
travis@specialneedslawyers.com

Danielle R. Faller
Hemness Faller Elder Law, Brandon
813/661-5297
danielle@hemnesslaw.com

SECRETARY

Heidi M. Brown
Osterhout & McKinney PA, Fort Myers
239/939-4888
heidib@omplaw.com

IMMEDIATE PAST CHAIR

Victoria E. Heuler
Heuler, Wakeman,
Solomon Law Group PLLC, Tallahassee
850/421-2400
victoria@hwelderlaw.com

TREASURER

Please Join Us in Celebrating
Florida's Newest Board Certified
Elder Law Attorneys

Effective June 1, 2025

Jeanette Mora – Winter Park
Christian Fahrig – Orlando
Jason Neufeld – Aventura
Kaitlin Stolz – Melbourne
Stephanie Villavicencio – Miami

Board certification recognizes attorneys who have demonstrated special knowledge, skill, professionalism, and ethics in their practice area. It is the highest level of recognition offered by The Florida Bar.

THE FLORIDA BAR
ELDER LAW SECTION

LEARN MORE ABOUT BOARD CERTIFICATION AT ELDERSECTION.ORG.

Section News



Committees keep you current on practice issues

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

ADMINISTRATIVE DIVISION

BUDGET

Chair
Danielle R. Faller
Hemness Faller Elder Law
Brandon
813/661-5297
danielle@hemnesslaw.com

CONTINUING LEGAL EDUCATION

Chair
Heather Boyer Samuels
Samuels Wood PLLC, Boca Raton
561/864-3371
heather@samuelswood.com

MENTORING/MEMBERSHIP/NEWER PRACTITIONER

Chair
Nicollette Gonzalez
Slater & Slater PLLC,
Pembroke Pines
954/437-4603
ngonzalez@slater-small.com

PUBLICATIONS

Chair
Genny Bernstein
Jones Foster PA, West Palm Beach
561/650-0469
gbernstein@jonesfoster.com

STRATEGIC PLANNING

Chair
Collett P. Small
Slater & Small PLLC, Pembroke Pines
954/437-4603
csmall@slater-small.com

SUBSTANTIVE DIVISION

ABUSE, NEGLECT, & EXPLOITATION

Co-Chairs
Ellen L. Cheek
Bay Area Legal Services Inc.,
Tampa
813/232-1343, ext. 121
echeek@bals.org;
ANEcommittee@gmail.com

Karen C. Murillo
AARP, Florida, Tallahassee
850/577-5163
kmurillo@aarp.org;
ANEcommittee@gmail.com

ESTATE PLANNING & ADVANCE DIRECTIVES, PROBATE

Co-Chairs
Alan J. Reinfeld
Reinfeld & Cabrera PA, Coral Springs
954/334-1520
ajr@lawrct.com

Katie Gosche
Generation Trust Law Group, Tampa
813/286-1700
katie@gentrustlaw.com

ETHICS

Chair
Cassandra Jelincic
Shutts and Bowen LLP,
West Palm Beach
561/835-8500
cjelincic@shutts.com

GUARDIANSHIP

Chair
Michelle R. Kenney
GAPS Legal PLLC, Sunrise
954/372-7569
michelle@gapsattorneys.com

LEGISLATIVE

Chair
Kandace E. Rudd
Waldoch & McConnaughhay PA,
Tallahassee
850/385-1246
kandace@mclawgroup.com

MEDICAID/PUBLIC BENEFITS/VA

Chair
Teresa K. Bowman
Teresa K. Bowman PA, Sarasota
941/735-5200
tkbowman@tkbowmanpa.com

SPECIAL NEEDS TRUST

Chair
Kole J. Long
Special Needs Lawyer PA,
Clearwater
727/443-7898
kole@specialneedslawyer.com

SPECIAL COMMITTEES

BYLAWS

Chair
Jason A. Waddell
Waddell & Waddell PA, Pensacola
850/434-8500
jason@waddelllaw.com

CERTIFICATION

(Appointed through The Florida Bar)
Chair
Debra J. Slater
Slater & Slater PLLC, Coral Springs
954/753-4388
dslater@slater-small.com

DISABILITY LAW

Chair
Jack M. Rosenkranz
Rosenkranz Law Firm, Tampa
813/223-4195
jack@law4elders.com;
adm@law4elders.com

FELLOWS PROGRAM

Co-Chairs
Lisa C. McCrystal
Wharton Law Group PA, Oviedo
407/365-7193
lisa@whartonlawgroup.com

Cara C. Singeltary
Hunt Law Firm PA, Leesburg
352/365-2262
cara@huntlawpa.com

INCLUSION, DIVERSITY, & ENGAGEMENT

Chair
Chanté Jones
AARP, Florida, Tallahassee
850/272-0551
cejjones@aarp.org

LAW SCHOOL LIAISON

Co-Chairs
Enrique D. Zamora
Zamora, Hillman & Villavicencio,
Coconut Grove
305/285-0285
edzamora@zhvlaw.com

Rima S. Nathan
Rima Nathan, Tallahassee
850/644-7472
rnathan@law.fsu.edu

LITIGATION

Chair
Lisa C. McCrystal
Wharton Law Group PA, Oviedo
407/365-7193
lisa@whartonlawgroup.com

PAST CHAIRS

Chair
Victoria E. Heuler
Heuler, Wakeman, Solomon Law
Group PLLC, Tallahassee
850/421-2400
victoria@hwelderlaw.com

PUBLIC RELATIONS

Chair
Shannon Miller
The Miller Elder Law Firm,
Gainesville
352/379-1900
shannon@millerelderlawfirm.com

SPONSORSHIP

Chair
Heidi M. Brown
Osterhout & McKinney PA,
Fort Myers
239/939-4888
heidib@omplaw.com

TECHNOLOGY

Chair
Amy L. McGarry
Amy McGarry Law Office PL,
Cape Coral
239/945-3883
amy@amymcgarrylaw.com

UNLICENSED PRACTICE OF LAW

Co-Chairs
John R. Frazier
Pippen Law Group PLLC, Largo
727/586-3306
john@attypip.com

Leonard E. Mondschein
The Elder Law Center of Mondschein,
Miami
305/274-0955
lenlaw1@aol.com

FOR UP TO DATE COMMMITTEE MEETING INFORMATION VISIT OUR WEBSITE AT:

https://eldersection.org/calendar/

Call for papers – Florida Bar Journal

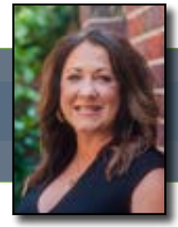
Emily Young is the contact person for publications for the Executive Council of the Elder Law Section. Please email eyoung@floridabar.org for information on submitting elder law articles to The Florida Bar Journal for 2024-2025.

A summary of the requirements follows:

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

Review is usually completed in six weeks.





Practice Management

by Audrey Ehrhardt

When everything is a priority in your practice, how do you know where to start?

We have all been there. That Monday morning when you open your inbox, glance at your calendar, and think, *am I juggling or am I actually underwater?* There is just so much to do you know deep down that even if you had a month, without interruptions, it wouldn't all be done. And it all needs to be done, most likely yesterday.

Yet, we know that if everything is a priority, then nothing is. So how do you choose the next right move when your practice is asking for 12 things at once?

First, take a breath with me. You can build the practice you dreamed about when you first hung your shingle. You can feel proud of your days again. You can manage the urgent *without* sacrificing the important. What you need is a simple, repeatable way to decide what comes first, then a rhythm that moves the whole firm forward every single week.

Let's discuss a Priority Compass. When the world feels loud, I use my five-step Priority Compass that cuts through the noise.

Read this slowly. Let it settle. Then use it today.



1. **Revenue now.** What action will bring in or protect cash this week? Think signed engagements, paid retainers, reconciled trust, timely billing, clear collections, and quick client green lights.
2. **Risk and ethics.** What action protects clients as well as you and your license? Think statutes, court dates, compliance tasks, trust accounting, conflicts, and any matter where delay could harm a client.
3. **Reputation and promise.** What action preserves the promise your firm makes? Think callbacks, drafted documents ready when you said they would be, and honest updates that reset expectations before anyone needs to ask.
4. **Relief from bottlenecks.** What action frees your team to move? Think decisions they are waiting for such as review, approvals, signatures, passwords, template access, or a five-minute answer that unlocks five hours of progress for someone else.
5. **Results for your future.** What action builds capacity? Think playbooks, automation, training, better intake, cleaner dashboards, and insightful performance reports that make sense. These are the forever moves that give you time next month, and the rest of your career.

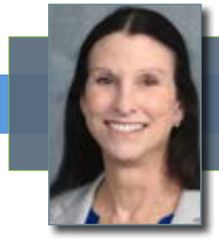
Let's be honest, you don't need a bigger to-do list. You need a truer filter. I can tell you from experience that my Priority Compass is that filter. Use it to quiet the swirl, choose the next right move, and keep your promise to your clients and to yourself.

Here's your cadence: *Start with what funds the work or protects the client. Keep your word. Free your team. Build capacity.* Repeat weekly until it feels natural.

Because the practice you envisioned isn't a finish line; it's a rhythm you create on purpose. If you begin today with one decision in each of the first three categories, you'll feel the floor under your feet again by close of business.

Here's to your success!

***Audrey Ehrhardt, Esq., CBC**, builds successful law firms and corporations across the country. A former Florida elder law attorney, she is the founder of Practice42 LLC, a strategic development firm for attorneys. She focuses her time creating solutions in the four major areas of practice development: business strategy, marketing today, building team, and the administrative ecosystem. Join the conversation at www.practice42.com.*



Tips & Tales

by Kara Evans

Modifying personal service contracts

The tale: About five years ago, Linda hired you to assist with Medicaid planning for her parents. Her parents lived in an assisted living facility, but Linda was spending many hours each week assisting them with doctor's appointments, money management, and overseeing their care. She was hoping she could get additional assistance from Medicaid to help pay the facility's charges. You were able to help her by creating care contracts for each parent, reflecting the amount of time she was spending caring for each of them. The fee was paid up front, in full for both contracts, and both parents qualified for the Statewide Medicaid Managed Care – Long-term Care program that helps pay for assisted living facilities. Fast forward five years, and Linda's father has died. There was a life insurance policy that no one remembered existed. Linda's mother will be receiving a check. Linda has no idea what to do, but she knows she must do something or her mother will lose her benefits.

The tip: You interview Linda to see what, if anything, has changed. It turns out that Linda is still spending many hours caring for her mother. In fact, she is spending the same amount of time caring for her mother that she was spending on care for both parents when the contracts were originally written. She wants to know if you can write another care contract to cover the life insurance proceeds.

A care contract is just that, a contract. You remember from law school (and refresh your recollection by referring to https://www.floridabar.org/public/consumer/tip012/ and https://www.law.cornell.edu/wex/contract), that a contract is simply an agreement between parties. For a contract to be binding, several elements must be present: offer, acceptance, mutuality of assent, consideration, capacity, and legality.

Just as any other contract can be modified, so can a care contract. A modification is intended to adjust the contract terms to take into consideration changes in circumstances. Clearly, both Linda and her mother have had a change in circumstances that warrant an update of their agreement.

Linda actually has two options. She can execute a new care contract to cover the additional hours she is now spending. This new contract should refer to the original contract, stating that additional hours are now necessary. The new contract should be based on her mother's current life expectancy. If the old contract is for 15 hours per week, for 12 years, the new contract might be for an additional six hours per week for seven years. The new contract can also provide for a different hourly rate. After all, costs have increased over the past five years.

Alternatively, she can modify the existing contract so that it covers the additional hours and fees going forward. A modification to a contract is similar to making an amendment to a trust agreement. Refer to the original contract, stating the parties and the date. State the reason for the amendment to the contract and state the new terms, for example: "the parties modify the number of hours provided and the rate to be paid." The modified contract will apply to the remaining time left on the original contract, not a new life expectancy. Keep the modification with the original contract for good record keeping.

Whichever you use, a new contact or a modification of the old one, you will ensure that your client continues to receive the services she needs.

***Kara Evans, Esq.**, is a sole practitioner with offices located in Tampa, Lutz, and Spring Hill, Florida. She is board certified in elder law and concentrates her practice in elder law, wills, trusts, and estates.*

ADVERTISE in The Elder Law Advocate!

The Elder Law Section publishes three issues of *The Elder Law Advocate* per year. The deadlines are October 1, 2025; February 1, 2026; and June 1, 2026. Artwork may be mailed in a print-ready format or sent via email attachment in a .jpg or .tif format for an 8-½ x 11 page.

Call Emily Young, 850/561-5650 for advertising rates and additional information.



Tax Tips

by Michael A. Lampert

Top 5 IRS letters elder law clients may receive What they are & what to do

Our elder law clients regularly receive IRS correspondence, letters, and notices. Having a basic understanding of some of the more common notices is important to better assist our clients and to avoid missing what might be important response and appeal deadlines.

One of the challenges is that, in some cases, our clients are competent. In others, there is a cognitive decline, or the client is recently (or not so recently) deceased. Even when a client is otherwise competent, clients sometimes will not pick up certified letters and simply do not open mail from the IRS.

This article provides an overview of certain IRS communications and some malpractice avoidance tips. It is not a detailed article on handling tax controversy matters.

Responding to notices has become increasingly difficult. The IRS has been short staffed for a long time, yet the population grows. There are usually long holds when you call the number the IRS says to call. And, sometimes, the IRS will simply hang up on you when they do not expect to be able to answer your call. This is called a "courtesy disconnect." Really.

Receiving responses from the IRS to our client's replies to IRS correspondence can take a very long time, even if the reply is acknowledged. We increasingly receive "we need another 60 days to respond" letters from the IRS. And yet, the IRS will send other notices that do not address the client's reply sent to the IRS. Responses to appeals, penalty abatement requests, and other actions are sometimes pending for one to two years; yet clients still receive IRS dunning.

Between January and June 2025, the IRS lost approximately 26% of their workforce. This is a reduction from 102,000 employees to fewer than 76,000. And they were short staffed before. As you read this article, and as you try to address the client's IRS correspondence and the client's frustrations and fears, know that this is the current environment those of us in the tax controversy practice are facing every day.

1. CP2000 – Underreported Income Notice

What it is: The IRS believes there is a mismatch between income reported by third parties (e.g., 1099, SSA-1099) and the client's filed income tax return.

Typical triggers for elders:

- Missed IRA, pension, or Social Security income
- Income reported under a spouse or trust EIN
- Taxpayer confusion about taxability of retirement income

How to address:

- Interview the taxpayer client. Compare the information on the filed income tax return with the IRS notice and the information gleaned from the client.
- Review IRS wage and income transcripts. An IRS Form 4506-T can be used. With a Form 2848 (Power of Attorney and Declaration of Representative) or Form 8821 (Tax Information Authorization), IRS transcripts can be ordered or obtained. In addition, the client can establish an online account at IRS.gov and obtain transcripts.
- Consider responding by the deadline with an amended income tax return, Form 1040-X, or an explanation. Sometimes an amended return is not needed. Sometimes, if the taxpayer agrees with the notice, no action is needed.
- Do not ignore the notice, although a decision needs to be made as to if and how to respond. The IRS will assess additional tax if the notice is unanswered. In some cases, that is fine.

Practice tip: Be careful. There are similar IRS letters. Sometimes very clearly, and sometimes somewhat hidden, are the words "Notice of Deficiency." These Notices of Deficiency have a strict deadline to file suit in U.S. Tax Court. While writing a letter to the IRS (or even calling—if you can get through) might resolve the issue, if the amount is of consequence and disputed, and if you miss the tax court filing deadline (90 days if the client is in the U.S.), the client loses their tax court rights. If you did not warn the client, you have potentially committed malpractice.

Practice tip: Sometimes items were simply omitted from the return, and allowing the IRS to administratively make a revised tax assessment is all that is needed. (And, of course, the client then pays the additional tax, interest, and penalty.) However, sometimes the items were reported, but differently. For example, the client may list a dividend from X brokerage firm while the actual reporting payer was Y company.

Practice tip: Especially with elder clients, these notices may be an alert to potentially missing/undiscovered assets.

Practice tip: Sometimes an item does not result in additional tax, yet the IRS does not know it. For example, a client sells stock at a loss. The IRS sees the reporting of the net proceeds of the stock sale, but, if the sale and basis are not reported, all the IRS sees is the proceeds. The IRS does not see the stock basis. Another common example is the sale of a primary residence. The gain is within the $250,000 (single)/$500,000 (married) gain exclusion, plus the client's basis. Again, if it is not reported, all the IRS sees is the net proceeds. They do not see the basis. They do not see the gain exclusion.

IRS reference: https://www.irs.gov/individuals/understanding-your-cp2000-notice

2. CP14 – Balance Due Notice

What it is: A routine first notice showing the client owes tax, typically with interest and penalties added.

Why elders often receive it:

- Surprise tax bills from IRA distributions or Social Security
- Under-withholding on retirement income
- Missed required minimum distributions (RMDs)
- Missed estimated tax payments

What to do:

- Confirm return accuracy and check for missed withholdings and payments.
- Remember that the timing of engaging with the IRS regarding past due balances is important. Sometimes engaging with the IRS early on is advisable. Sometimes waiting can get a better result for the client.
- Address the client's ability to pay. Depending on the amount of time needed, the client might pay in full, set up an installment agreement (Form 9465), request currently not collectible, or undertake other collection alternatives.
- As with any penalty, sometimes there may be the ability to abate penalties. Absent IRS error, or disaster type relief, rarely will interest be abated. With that said, if the tax and penalties are reduced, the interest is correspondingly reduced.
- See if there are issues with other tax years. Address why the tax was underpaid.

IRS reference: https://www.irs.gov/individuals/understanding-your-cp14-notice

3. LT11 or Letter 1058 – Final Notice of Intent to Levy

What it is: The IRS intends to seize bank accounts, Social Security benefits, or other assets if back taxes aren't resolved. This is often one of the last warning letters before a levy on the client's assets, Social Security benefits, and other assets. In addition, while it could be filed sooner, there is also the risk of the recording of a federal tax lien. This notice is normally sent by certified mail.

Malpractice avoidance tip: The client has 30 days to request a Collections Due Process (CDP) hearing. If an appeal is not going to be timely filed, be sure to advise the client in writing.

Practice tip: In most cases, unless the tax will be paid promptly a CDP hearing should be timely requested (Form 12153).

Practice tip: While it is not expected that an elder lawyer would be filing a CDP hearing appeal for clients, it is critical to be alert to the filing deadline. By filing a timely CDP, the case goes to IRS Appeals for (hopefully) resolution. If the client is not satisfied with the appeals resolution, and if there are proper grounds, a timely suit in U.S. Tax Court can be filed. If you miss this deadline, while the case can usually still be heard by appeals, there are no tax court rights.

Practice tip: While a non-tax lawyer would typically not be filing a CDP appeal for a client, if they do, they should always check the box that if the request is not timely, the taxpayer wants an equivalent hearing. This way if the appeal is not timely, it can usually still be addressed by IRS appeals, but without tax court rights.

Use care in completing and timely filing the CDP request. These appeals can address collections alternatives. These might include currently non-collectible, installment agreements, offers in compromise (which do not work quite the way you see on TV), and other options.

What if the client disagrees with the underlying tax amount?

In *some* cases, the underlying tax can be disputed, even if it is the same tax amount showing on the client's income tax return. And sometimes the penalties also can be appropriately addressed.

As part of an evaluation of a tax controversy case, we often evaluate if bankruptcy is appropriate. Yes, in some cases bankruptcy can discharge taxes.

Practice tip: Filing a CDP tolls the statute of limitations on collections. In some cases, the filing of a CDP could actually hurt a client.

continued, next page

Tax Tips . . . from previous page

Practice tip: These notices can be directed to a client who is now deceased. Sometimes the notice will be directed to the estate of the decedent. An estate can file a CDP. Remember that the fiduciary can be liable for improper distributions.

Practice tip: If signing for the client, make sure you have a valid, properly completed Form 2848 Power of Attorney and Declaration of Representative. If you do not, then you had no authorization to file the CDP, and it may be rejected.

Practice tip: There is another Notice of Intent to Levy: CP504 Notice of Intent to Levy as required by Internal Revenue Code section 6331(d). (504A is for individuals and 504B is for businesses.) This notice also comes via certified mail.

504 notices look bad. But, if you actually read the notice, it primarily addresses offsets of refunds and certain government payments. While the IRS could, in theory, take collections action, the notice itself has very little bite. And any appeal filed (such as a Collections Appeals Program (CAP)) is very limited and not the same as a CDP. While each case is different, often when a 504 notice is received, we get ready for the "real" final notice for which a CDP can be filed. With that said, the 504 notices scare clients, and, as noted above, they come via certified mail.

IRS reference: https://www.irs.gov/individuals/understanding-your-lt11-notice

4. CP59 – IRS believes you didn't file a return

What it is: IRS records show no tax return filed for a specific year.

Key elder triggers:

- Client stopped filing due to retirement—but still had taxable pension or RMDs or other interest or dividends.
- Client was told they did not need to file an income tax return in a prior tax year due to low income. The client did not check the tax return filing threshold in the later tax years.
- Death of spouse, particularly when the deceased spouse handled tax filings. Remember that in the year of a spouse's death, the surviving spouse can still file a joint income tax return, should the surviving spouse choose to do so (provided they did not remarry in the same year of their spouse's death).
- Client did not need to file, but sold a home or other asset that triggered a filing requirement, even if no tax is due.

Action steps:

- Usually, but not always, file the missing return promptly, even if no tax is due.
- Remember that if you are contacting the IRS for information, you need Form 8821 (Tax Information Authorization), or if representing the client, you need Form 2848 (Power of Attorney and Designation of Representative).
- If the client is deceased, look to see if the estate is filing the final income tax return. Sometimes, the estate will file a fiduciary income tax return and forget to file a final return for the decedent. Sometimes the estate will file a final income tax return and not consider filing a fiduciary income tax return.

IRS reference: https://www,irs.gov/individuals/understanding-your-cp59-notice

5. Letter 6475 or 6419 – Economic impact payments (stimulus checks)

What it is: Summarizes stimulus (EIP) or advanced child tax credit payments for reconciliation on tax returns.

Confusion points:

- Clients may have received payments via prepaid cards or mail, and have not reported them.
- Surviving spouses mistakenly claim deceased spouse's EIP.
- Family members or other fiduciaries file returns without verifying stimulus amounts.
- Sometimes a bad tax preparer has the client claim a credit that the client was not entitled to receive.

Action steps:

- Review the income tax return (Form 1040) against the IRS letter.
- Review IRS account transcript if client lost the EIP or other letter (and sometimes even if they did not lose the letter).
- In some cases, an amended income tax return should be filed, for example, if wrong credits are claimed. Sometimes the IRS will simply make the adjustment, much like the underreported letter discussed above.

IRS reference: https://www.irs.gov/newsroom /irs-letters-remind-taxpayers-of-advance-child-tax-credit-payments-and-third-economic-impact-payments

Special considerations for elder clients

Clients with cognitive decline:

- Misreading or ignoring notices is common.
- Use Form 2848 or Form 8821 to obtain information/gain access.
- Arrange for mail to be received and reviewed. Remember that even if there is an IRS POA (Form 2848) or IRS Tax Information Authorization (Form 8821) on file with the IRS, sometimes the fiduciary or practitioner does not receive the correspondence. Sometimes it is an IRS issue. Sometimes it is a postal service issue.

Deceased clients:

- Notices often continue to be sent.
- File IRS Form 56 to notify of fiduciary responsibility. This is also useful for guardianship and other clients with declining abilities, etc.
- Do not forget the final income tax return, if needed. IRS Publication 559 addresses final return filing.

Clients with POA:

- While the IRS should accept general powers of attorney with proper tax language, it often does not. In part, it is because they do not really fit into the IRS's Centralized Authorization File (CAF) where authorizations are monitored. Sometimes the POA should be sent with Form 56 along with IRS Form 2848 (or Form 8821).
- Use Form 2848 (IRS Power of Attorney and Declaration of Representative) or Form 8821 (Tax Information Authorization) as appropriate.
- Consider advising the client's family, in advance, to sign Form 2848 while the client is competent.

Attorney best practices & malpractice avoidance

- Reviewing IRS transcripts is often advisable. The proper client interview is also helpful.
- Do not assume clients received prior IRS mail—they may have moved or discarded it. Ask if the client has changed addresses since the last income tax return was filed. It is common for IRS correspondence to be sent to a prior address.
- Be careful not to handle tax controversy matters if you are not equipped to do so. The purpose of this article is to provide general guidance and also to alert the elder law practitioners as to deadlines and forms.
- Remember: Some notices like LT11 – Notice of Intent to Levy and the Notice of Deficiency, have strict deadlines affecting rights to appeal and tax court rights. Notify your clients in writing regarding all deadlines.
- Know when to refer to tax counsel, even for a consultation.

Citations

- IRS Notice Lookup: https://www.irs.gov/individuals/understanding-your-irs-notice-or-letter
- IRS Form 2848: https://www.irs.gov/forms-pubs/about-form-2848
- IRS Pub. 559: Survivors, Executors and Administrators
- IRS Pub. 915: Social Security and Equivalent Railroad Retirement Benefits

Practice tip for all: Remember state (and local) income tax issues. For example, if a recent Florida transplant has unreported income federally for a period while the client resided in another state, the client may well also owe taxes to that jurisdiction. Even if the client is a Florida resident, they may have income that is situs and taxable in another jurisdiction. Some states and local governments are very aggressive in pursuing unpaid taxes.

Practice tip: Remember that Form 2848 (POA) of a client ends at death, as do other powers of attorney. You need to obtain a new POA, along with a Form 56 (Notice Concerning Fiduciary Relationship), if necessary, to submit to the IRS.

Practice tip: Remember that if you submit an IRS POA Form 2848, it will remove prior POAs unless the old POA is submitted with the new one.

Practice tip: Practice IRS POA hygiene. Periodically review the 2848 and 8821 filings with the IRS and withdraw them when they are no longer needed, or when you no longer represent the client.

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

Visit the Elder Law Section on Facebook

We are happy to announce that the Elder Law Section has created a Facebook page. The page will help promote upcoming section events as well as provide valuable information related to the field of elder law.

Part of the section's mission is to "cultivate and promote professionalism, expertise, and knowledge in the practice of law regarding issues affecting the elderly and persons with special needs…" We see this Facebook page as a way of helping to promote information needed by our members.

We need your help. Please take a few moments and "Like" the section's page. You can search on Facebook for "Elder Law Section of The Florida Bar" or visit *facebook.com/FloridaBarElderLawSection/*.

If you have any suggestions or would like to help with this social media campaign, please contact:

Amy L. McGarry
239/945-3883
amy@amymcgarrylaw.com

THE FLORIDA BAR
ELDER LAW SECTION

The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300

PRSRT-STD
U.S. POSTAGE
PAID
TALLAHASSEE, FL
Permit No. 43

Thank you to our section sponsors!

We extend our thanks to WealthCounsel and Guardian Trust for their ongoing support as our section sponsors.

Their support allows the section to continue to provide cutting-edge legal training, advocacy support, and great events like the Annual Update and Hot Topics. Both organizations have long supported the ELS; however, this level of support exhibits a higher commitment to the section's mission and its members. We hope our ELS members will **take time to thank them** for their support!

WealthCounsel

GUARDIAN TRUST
EST. 2002