The Elder Law Advocate

"Serving Florida's Elder Law Practitioners"



Featuring:

- Gratitude for our ELS leadership
- Kudos and recognition to our ELS annual award recipients
- PACE – An underutilized planning option
- When a family isn't the best choice – professional fiduciaries in estate planning
- Protecting vulnerable residents – Best practices in Florida Medicaid asset compliance

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The Elder Law Advocate

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ON THE COVER

St. Marks Sunset
By Randy Traynor

8/2026

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Submit Articles

The deadline for the WINTER 2027 EDITION IS OCTOBER 15, 2026. 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 Outgoing Chair

by Shannon M. Miller

A reflection on two years of service

As I conclude my term as chair of the Elder Law Section, I find myself reflecting on a journey that began before I felt entirely ready.

My hope had been to spend a year observing—learning where the section needed more attention, where it needed less, and how I could best serve. Instead, circumstances called for immediate action, and I stepped into leadership with what I have often come to appreciate as a beginner's mind: curiosity, openness, and a willingness to learn while doing.

Over the past two years, our section has accomplished meaningful work together. We strengthened engagement and advocacy with The Florida Bar, advanced legislation designed to help protect vulnerable seniors from scammers and exploiters (first in the nation), and celebrated both the Florida Elder Law Symposium and the section's 35th anniversary. These efforts were never about a single leader; they were about building a stronger foundation for those who would follow.

One of the greatest lessons of leadership is learning how to leave your fingerprints without leaving a mark—to contribute, guide, and serve while ensuring the organization remains larger than any one person. Success is not measured by what we hold onto, but by what we prepare others to carry forward.

I am excited by the leadership emerging within our section. New ideas, renewed educational opportunities, and experiences that celebrate Florida's unique heritage (can you say Springs and Equestrian extravaganza) are creating fresh opportunities for connection and growth. As we enter another legislative session, the Elder Law Section remains a trusted voice for policymakers seeking guidance on issues affecting Florida's seniors. Are we ready to finally tackle death without protracted suffering in Florida? This remains to be seen.

As I move into my role as past chair, I do so with gratitude and optimism. The ship is moving in the right direction. Our section is strong, our future is bright, and our commitment to serving older adults and their families remains unwavering.

Thank you for the privilege of serving alongside you. I cannot wait to see what comes next.

> Success is not measured by what we hold onto, but by what we prepare others to carry forward.

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, 2026; February 1, 2027; and June 1, 2027. 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.



Message From the Incoming Chair

by Amy J. Fanzlaw

Our moment to lead, together

A few months ago, I met with a couple who told me they wanted to "get their documents in order." However, as the conversation unfolded, it became clear that what they were really seeking was peace of mind—confidence that the spouse with a recent dementia diagnosis could remain safely at home, that their adult special needs child would be protected when they were no longer around, and that dignity would be preserved. That moment was a reminder that an elder law practice is never just technical. It is deeply human.

It is with that perspective—and with great honor—that I begin my service as chair of the Elder Law Section of The Florida Bar.

At the heart of our work is something both simple and extraordinary: we help preserve dignity. Every plan we draft, every client we counsel, and every solution we craft reflects a deeper purpose: supporting individuals and families at some of the most important and often most vulnerable moments in their lives. It is a privilege we share and a responsibility we carry.

We do so positioned on a remarkable foundation. The Elder Law Section has been built through decades of leadership, dedication, and vision. I am deeply grateful for the work of Shannon Miller and the other leaders who have come before us, shaping the section into what it is today. As we move forward, we do so with a shared commitment to build upon that legacy with integrity, purpose, and a continued commitment to excellence.

As Dave Matthews wrote, "Turns out not where but who you're with that really matters." In many ways, that sentiment reflects the strength of our section. It is not just the work we do but the people with whom we do it—colleagues who share a commitment to service, professionalism, and compassion—who define who we are.

Looking ahead, our priorities are clear: to deliver high-quality CLE programming and to meaningfully engage our members. In an ever-evolving field, our strength depends on our ability to learn from one another, to stay at the forefront of legal developments, and to elevate the quality of what we offer as a section. Engagement in this process is essential. Our section thrives not only because of its leadership but because of the energy, ideas, and participation of its members.

We have an exciting year ahead. I hope you will join us for the Annual Section Retreat, held this year at the World Equestrian Center, October 15–18, 2026, when we'll relax and recharge in an extraordinary setting in the heart of Florida. Of course, we are also looking forward to the 2027 Florida Elder Law Symposium, January 14–16, 2027, our flagship CLE event that showcases the depth and innovation within our section. These in-person gatherings are more than opportunities to earn CLE credit; they are opportunities to build relationships, exchange ideas, and strengthen the community that supports our work.

Your involvement is key. Whether by attending a committee meeting, volunteering for a special project, or sharing your expertise as a speaker at a CLE program, your participation matters. **New voices are not only welcome—they are essential.** Our growth as a section depends on the diversity of experiences and perspectives that each member brings, and we are committed to creating space for more members to contribute and lead.

I encourage you to take that step. Attend a meeting. Raise your hand. Share your expertise. Mentor someone newer to the practice or allow yourself to be mentored. In doing so, you help strengthen not only the section but the future of the elder law profession.

And that matters, because in the end, our work is not only about the law—it is about people. It is about ensuring dignity, advocating for those who need us, and making a meaningful and lasting difference in the lives of others.

This is our moment to lead, together. I invite you to be part of it.

Shannon Miller passes the gavel to Amy Fanzlaw



The Elder Law Section has built a reputation for its skilled and passionate leadership. After a two-year commitment as chair of the Elder Law Section, Shannon Miller passed the virtual gavel to Amy Fanzlaw during the section's annual meeting, conducted via Zoom.

Shannon's impactful leadership has not gone without recognition. The grace with which she led the section, the strength in her belief that stronger together is better than apart, and the unwavering passion she provided have been appreciated and celebrated.



As Amy transitions to chair of the Elder Law Section, the members and leadership offer a warm welcome. We are ready for Amy to take the helm and guide the section with her leadership and skill.

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

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PACE: An Underutilized Planning Option

by Jason Neufeld

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

As Florida elder law attorneys, we spend a great deal of time helping clients navigate the Medicaid long-term care system. We are comfortable discussing the Institutional Care Program and waivers for Home and Community-Based Services. Yet often overlooked is one program that may be extremely valuable for the right client: the Program of All-Inclusive Care for the Elderly (PACE).

PACE is not simply adult day care or transportation to a senior center. PACE is a comprehensive Medicare and Medicaid program designed to help frail seniors remain in the community when they would otherwise be at risk of nursing home placement. For Florida elder law attorneys, it should be viewed as another long-term care planning tool: one that can sometimes solve problems that the waiver cannot solve quickly enough.

At its core, PACE is a managed, interdisciplinary model of care. The participant receives coordinated medical, social, therapeutic, restorative, and supportive services through the PACE organization. The PACE team typically includes physicians, nurses, therapists, social workers, transportation staff, home care coordinators, nutrition professionals, and others who meet to determine what services the participant needs. This interdisciplinary team, or IDT, is central to the program.

Eligibility generally requires that the individual be at least 55 years old, live in a PACE service area, be determined to need a nursing facility level of care, and be able to live safely in the community with PACE services. This last requirement is important. PACE is designed to keep people out of nursing homes when appropriate; it is not intended for someone who cannot safely remain in a community setting.

One of the most important points for attorneys to understand is that PACE functions as its own insurance entity. For many participants, PACE becomes the source of Medicare- and Medicaid-covered services. This means the PACE physician generally serves as the gatekeeper, similar to an HMO primary care physician. Some clients will resist the idea of changing doctors or using PACE-contracted specialists. But this structure can also be a benefit. In a fragmented health care system, PACE offers centralized care coordination, medication management, transportation, therapies, and communication among providers.

For Medicaid-eligible participants, one of the most attractive features is cost. Covered services may be provided with no premium, deductible, or co-pay. These can include physician care, specialist care through contracted providers, prescriptions, therapies, transportation, meals, social services, personal care, and other approved services. For families juggling home care bills, medications, transportation, and caregiver burnout, this can be a meaningful alternative.

PACE also should not be understood as available only to seniors living in private homes. A participant may reside in a PACE-approved assisted living facility. However, this is where attorneys must be careful. Like the Medicaid waiver, PACE does not pay assisted living room and board. It may cover the participant's level-of-care services, subject to approval by the interdisciplinary team and the PACE organization's relationship with the facility. Unlike the Medicaid waiver, an assisted living facility's participation in Medicaid does not automatically mean it has a contract with PACE. Also, PACE seems to routinely pay approximately $200 less per month, compared to waiver, toward the level of care cost.

Another common misconception involves senior adult day care center attendance. Historically, some families objected to PACE because they believed the participant had to attend the PACE center frequently, even when the participant was reluctant. Since COVID, many programs have become more flexible. Attendance at the center is encouraged and will be required for initial assessments, periodic reassessments, clinic visits, therapy, or other services. But PACE should not be dismissed merely because a client says, "I do not want to go to adult day care." Many participants who initially resist attendance become more comfortable once they visit. Attorneys should encourage clients to tour the center and meet the staff before deciding that PACE is not a fit.

Home care is another area where PACE may surprise practitioners. Services are individualized per the IDT. If the PACE participant cannot regularly go to the center, they can still be approved for home care hours. PACE won't provide unlimited care or overnight care. But, if the client's primary goal is to remain at home, PACE may still be worth exploring.

PACE can also be useful as a bridge. Some clients may privately pay for PACE while Medicaid eligibility is pending. This can be expensive, but in some cases it may be less expensive and better coordinated than cobbling together private-duty home care, transportation, therapies, and medical management separately. Elder law attorneys should at least know this option exists, particularly when a client needs services immediately. Co-pays for those who are not yet Medicaid eligible can be $4,500 to $5,000/month (roughly the same as eight hours a day of private home care, five days a week, assuming $30/hour).

Importantly, a client may be enrolled in PACE while remaining on the Medicaid waiver waitlist, although the client cannot receive PACE and waiver services simultaneously. If the client's waiver slot later becomes available, the family can compare options and, if appropriate, disenroll from PACE and transition to the waiver.

For complex Medicaid cases, coordination is essential. If the case involves spend-down planning, pooled trusts, personal services contracts, qualified income trusts, promissory notes, or other legal work, the attorney should complete the planning before the Medicaid application is submitted and communicate clearly with the PACE team.

PACE is not right for every client. The provider network, geographic service area, center model, physician structure, assisted living contracts, and timing issues all matter. But for the right Florida client, PACE can provide a powerful combination of medical care, home support, transportation, therapies, medications, socialization, and care coordination.

In a system where waiver waitlists, caregiver exhaustion, and fragmented medical care remain constant challenges, PACE deserves a more prominent place in our Medicaid planning consultations.

Special thank you to Beth Prather, Esq., and Mary Poster, the Hope PACE community liaison, for their contributions in preparation for this article.



***Jason Neufeld, Esq.**, is board certified in elder law and the managing partner of Elder Needs Law, PLLC, with offices in Aventura, Plantation, Boca Raton, and Spring Hill, Florida. He provides additional educational materials at www.elderneedslaw.com and youtube.com/@elderneedslaw.*



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Protecting vulnerable residents: Best practices in Florida Medicaid asset compliance

by Z. Felicia Jordan
on behalf of the Abuse, Neglect, & Exploitation Committee

Disability Rights Florida (DRF) is the federally mandated Protection and Advocacy (P&A) organization for individuals with disabilities in Florida. P&As are federally mandated within every state and territory in the United States to advocate for the rights and well-being of individuals with disabilities.



As an attorney for DRF, I have experience with investigating and litigating cases involving people of all ages and abilities—from grade school through advanced age—as well as the intersection of many different areas of law. In my current role as DRF's director of the Social Security Representative Payee Program, I have investigated countless cases of abuse, exploitation, and fraud involving long-term care residents. This experience gives me a unique perspective on a wide range of elder law issues. In this article, I will highlight a few lessons learned on Medicaid spend downs—both best practices and cautionary examples.

Medicaid spend-down practices

Florida's Medicaid rules impose strict asset limits for long-term care benefit eligibility, generally $2,000 for an individual and $3,000 for a married couple. *See* F. A.C. Rule 65A-1.716(5).

For elder law practitioners, helping clients lawfully and strategically spend down assets while shielding them from predatory actors is among the most consequential services we provide. Permissible expenditures can include prepaid and irrevocable funeral contracts, primary home improvements (for exempt properties), the payment of outstanding medical bills, and the purchase of a vehicle for personal use.

Legal fees for estate planning—including Medicaid planning itself—are also recognized and appropriate expenditures. However, practitioners should document their fee agreements meticulously, as Agency for Health Care Administration (AHCA) reviewers scrutinize payments made to professionals close in time to an application.

The Medicaid spend down is not a "one and done" solution. Eligibility is assessed on an ongoing basis for beneficiaries, and any source of income can at some point pose a challenge. Some long-term care residents receive, but do not spend their monthly personal needs allowance (PNA). PNA deposits left to accrue can jeopardize a resident's Medicaid eligibility, leaving facilities in the risky position of managing residents' assets.

The regulatory framework governing asset management varies significantly across settings. For example, skilled nursing facilities (SNFs) are prohibited from receiving funds beyond the established costs of care and are required to maintain separate trust accounts for resident funds like monthly personal needs allowances. *See* 42 C.F.R. Part 483; *see also* F.A.C. Rule 59A-4. However, the cost-sharing structure is less restrictive for assisted living facilities (ALFs) with Medicaid waiver residents, where the residents (and the facilities) retain considerably more financial autonomy.

Cautionary examples: Schemes that constitute fraud

Fake health care proxy contracts

One problematic spend-down scheme seen in both SNFs and ALFs involves the creation of fraudulent "personal care contracts" or "health care proxy service agreements" purported to be compensation agreements between the resident and a third party. These documents are often backdated, and the cost of service is inflated to justify large asset transfers for spend-down purposes. Additional investigation into these cases normally reveals no evidence of services rendered or sufficient details to be considered an arm's-length transaction.

Legitimate personal service contracts require prospective execution, reasonable and documented compensation, and evidence of actual services. Absent these elements, the transfer is treated as a disqualifying gift for Medicaid purposes. *See Thomas v. Fla. Dep't of Children & Families*, 707 So.2d 954 (Fla. 4th DCA 1998).

Under Florida Statute section 765.401, a health care proxy may be designated when a resident lacks capacity and has not executed an advance care directive. However, Chapter 765 does not address—or even appear to contemplate—the issue of compensation for health care or surrogates (in cases with previously executed advance care directives).

Negotiating large checks without resident benefit

Another recurring and problematic practice seen particularly in SNFs involves the fraudulent use of a durable power of attorney, frequently by individuals with no discernible relationship to the resident. Here the alleged agent negotiates checks drawn from the resident's account that are made payable to either themselves or a third party, once again, without evidence of any corresponding benefit from said payment flowing to the resident.

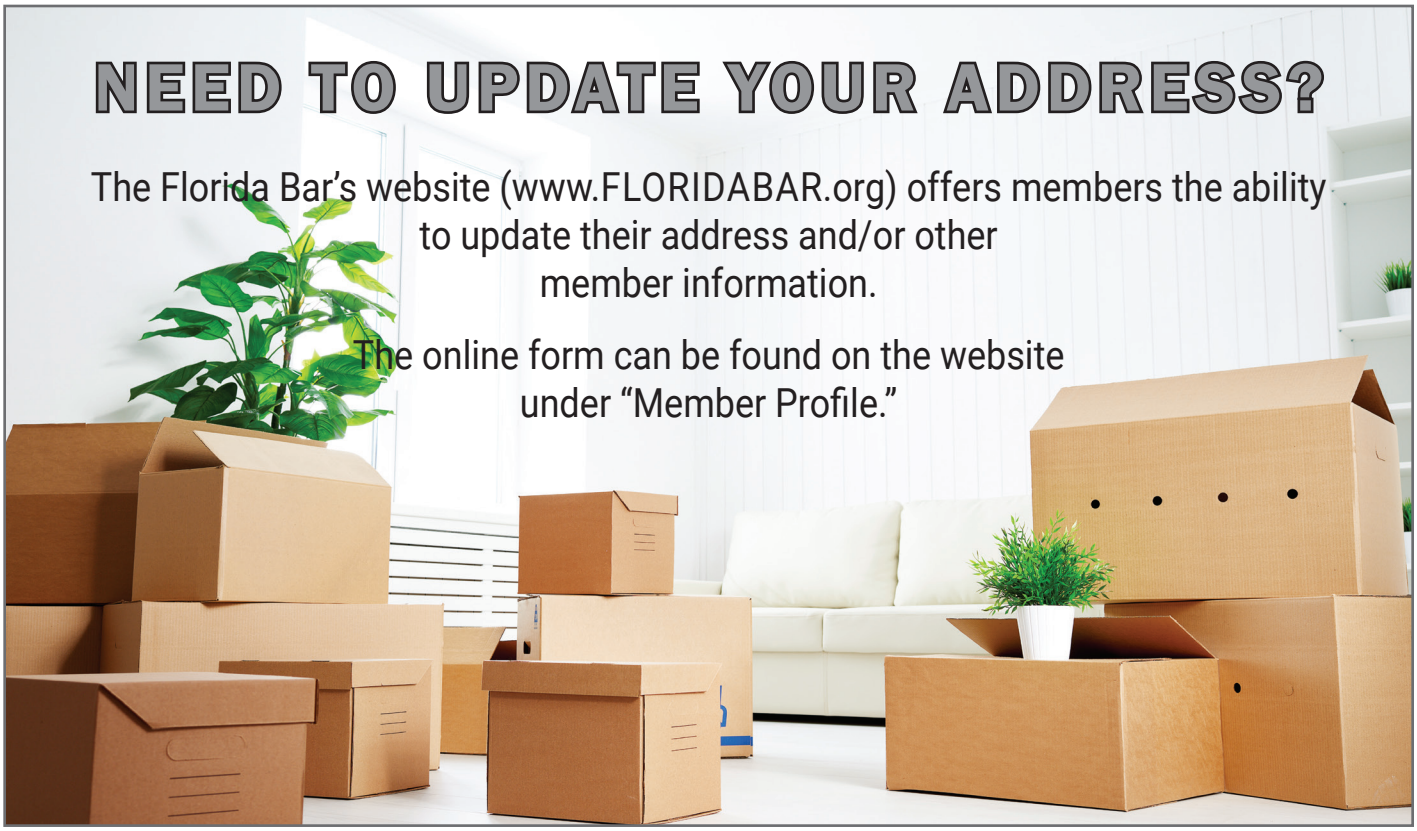
These two scenarios constitute exploitation under Florida law and expose the facilities and third parties to criminal liability. *See* Fla. Stat. § 825.103 (1). However, both practices occur with some regularity across the state.

Conclusion

Elder law practitioners play a role in helping to weed out predatory actors by ensuring our clients adhere to best practices, including conducting thorough financial histories, regularly verifying Medicaid eligibility, and documenting all spend-down expenditures with supporting receipts and evidence.



Z. Felicia Jordan *serves as a director with Disability Rights Florida. Her public interest and disability law experience includes several years working representing individuals with disabilities. Ms. Jordan works on the Social Security Representative team for Disability Rights Florida.*



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Capitol Update

by Brian Fogerst

Legislature approves 2026–27 budget

The 2026 Legislative Session began on January 13 and was scheduled to end on Friday, March 13. As reported in the previous Capitol Update, the House and Senate finished policy issues by the end of session but did not adopt the budget and pass budget-related legislation. So, just like in 2025, the House and Senate returned to Tallahassee for a special session in May to finalize the differences between the two budgets—and approved the final state budget on May 26.

The total budget appropriates $114.5 billion, less than the total budget for the 2025–26 fiscal year ($115.1 billion). The proposed budget also includes nearly $150 million of state debt. The governor signed the budget on June 29 and noted that the budget for each of the last four years was less than the previous year's budget. Using the line-item budget authority, the governor vetoed more than $800 million in spending.

Budget overview

The following is an overview of the budget approved by the Legislature:

Health and Human Services appropriations

Total budget: $49.2 billion; 30,723 positions

Major Issues

Agency for Health Care Administration

Total: $38.0 billion; 1,563.50 positions

- Rural Health Transformation Program – $209.9 million; 14 positions
- Medicaid Provider Rate Increases – $205.9 million
- Graduate Medical Education – $13.5 million
- Enhanced Provider Network Audits – $10.8 million

Agency for Persons with Disabilities

Total: $1.3 billion; 2,709 positions

- Pre-Enrollment to Waiver – $10 million
- iBudget Provider Rate Increase – $22.8 million
- Developmental Disability Centers – $27.5 million
- Operating Cost Increases for Resident Services at Forensic Facilities – $0.7 million
- Room and Board for Developmentally Disabled Category Increase – $0.5 million
- iConnect System – $35.1 million

Department of Children and Families

Total: $4.8 billion; 12,496 positions

- Child Welfare Services – $69.0 million
- Foster Care Room and Board Rate Increase – $12.6 million
- Adoption Assistance Subsidies – $24.9 million
- Foster and Family Support Grant Program – $5.0 million
- Step Into Success Program Statewide Expansion – $3.4 million, 9 positions
- Foster Parent and Guardian ad Litem Recruitment Campaign – $1 million
- Child Welfare Information Systems – $7.0 million
- State and Community-Based Mental Health/Substance Use Prevention – $47.9 million
- State Mental Health Treatment Facilities Forensic Bed Expansion and Patient Safety Improvements – $19.2 million
- Community Mental Health Residential Forensic Treatment Beds – $9.9 million
- Integrated Residential Treatment Beds for Women – $4.8 million
- Central Receiving Facilities – $7.0 million
- Public Benefit Eligibility Determination Improvements – $27.3 million
- Florida System (ACCESS) – $51.2 million
- Domestic Violence Services – $9.9 million
- Financial Accountability and Compliance – $5 million

continued, next page

Capitol Update . . .
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Department of Elder Affairs

Total: $513.4 million; 425 positions

- 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 – $7.5 million
- Increased Resources for the Office of Public Guardians – $4.4 million
- Comprehensive Assessment and Review for Long-Term Services Staff Wage Increases – $0.4 million
- Information Technology – $6.6 million

Department of Health

Total: $4.1 billion; 12,018 positions

- AIDS Drug Assistance Program (ADAP) – $75 million
- Cancer Care and Research – $20.2 million
- Doula Support for Healthy Births Pilot Program – $0.7 million
- Neurofibromatosis Disease Grant Program – $5 million
- Uterine Fibroid Research Database – $1.0 million
- Swimming Lesson Voucher Program – $0.7 million
- Food and Product Safety Testing Initiative – $2 million
- Newborn Screening Additional Testing – $5.2 million
- Rural Emergency Medical Services System – $1 million

Source: Senate Appropriation Summary

Property taxes

Immediately following the budget special session, Governor DeSantis called the Legislature into another special session to address his property tax proposal, which requires approval by 60% of the voters in November.

The following is a summary of the property tax proposal that will appear on November's general election ballot:

- Reduces the amount of annual growth that is allowed for assessments of non-homestead residential and non-residential real property from 10% to 5%.
- Provides to persons who maintained permanent residence as of December 31, 2026, and have established or will establish homestead, the following property tax exemption from *non-school ad valorem* levies:
  - ◊ Beginning on January 1, 2027, up to $150,000 of the assessed value.
  - ◊ Beginning on January 1, 2028, up to $250,000 of the assessed value. This amount is adjusted annually for positive inflation growth beginning January 1, 2029.
- Provides to persons who maintain permanent residence on or after January 1, 2027, and establish homestead the following exemption from non-school ad valorem levies:
  - ◊ Beginning January 1, 2027, up to $50,000 of assessed value. The exemption value is adjusted annually for positive inflation growth beginning January 1, 2028.
  - ◊ Beginning with the fifth year of the exemption, such persons may be exempted up to the amount of the exemption available to persons who maintained homestead on or before December 31, 2026.
  - ◊ Beginning on or after January 1, 2030, allows a county or municipality to determine by a two-thirds vote of the membership of the governing body if a reduction to the five-year requirement is warranted for a critical local need.
- Requires the Legislature to prescribe a uniform procedure for counties and municipalities to increase the amount of assessed value exempt from taxes.
- Allows special districts to increase, by referendum, the amount of assessed value exempt from taxes. Special districts may adjust the exemption amount annually for positive inflation growth.
- Prescribes the uses of ad valorem tax revenue levied by counties and municipalities to only include expenditures to:
  - ◊ Provide for public safety, including law enforcement, fire service, and emergency medical service;
  - ◊ Provide funding for education and public schools;
  - ◊ Finance or refinance infrastructure, including expenditures on road and bridge construction and maintenance and stormwater control;
  - ◊ Finance or refinance natural resource projects, including flood control measures;
  - ◊ Issue local bonds for uses consistent with this paragraph and to make debt service payments for existing obligations;
  - ◊ Meet obligations for retirement benefits of local government employees; or
  - ◊ Be used for the operations and administration of county constitutional officers, boards of county commissioners, and municipalities,

as well as expenditures approved by those officers and governing bodies, except as otherwise prohibited by general law.

Source: Senate Bill Summary/Session 2026F

Elections

Nationally, several states have redrawn their congressional districts. As such, *before* the budget special session, Governor DeSantis called a special session to redraw the state's congressional districts, which may increase Republican representation in the U.S. Congress after the 2026 Election.

In the Legislature, one senator was reelected without opposition, and 19 House members were also reelected without opposition. One incumbent, Central Florida Republican Representative Paula Stark, reportedly did not qualify by the deadline, although the candidate is disputing that. Another Republican incumbent, Representative Susan Plascencia, also announced prior to the end of qualifying that she would not run for reelection due to a family health issue.

In the race for governor, Congressman Byron Donalds, former House Speaker Paul Renner, Lt. Gov. Jay Collins, and conservative activist James Fishback qualified on the Republican side. Based upon public polling, Donalds is the front-runner after receiving an endorsement from President Donald Trump.

On the Democratic side is former U.S. Rep. David Jolly, who selected Gwen Graham as his running mate; she's a former U.S. congresswoman, Democratic candidate for governor in 2016, and daughter of former U.S. Senator and Governor Bob Graham. Current Orange County Mayor Jerry Demmings previously announced he was suspending his campaign due to a prostate cancer diagnosis.

A full post-election report will be provided in a subsequent Capitol Update.

Looking ahead to 2027

After the November General Election, the House and Senate will return to Tallahassee on November 20 for an organizational session. Senator Jim Boyd (R-Manatee County) will be sworn in as Senate president and Representative Sam Garrison (R-Clay County) will be sworn in as House speaker. In early December, new committee chairs and committee members will be announced in preparation for the 2027 Session. Committee meetings will begin in January with the session beginning in March.

And . . . the governor has indicated that he may call another special session—post election—to implement the property tax proposal *if* approved by the voters in November.

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 such, we want and 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.

***Brian Jogerst**, Tom Griffin, and Alex Anderson are partners at The Griffin Group, a Tallahassee-based governmental consulting firm with more than 40 years' experience lobbying on health care and legal related 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.*



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Congratulations to our 2026 award recipients!



Charlotte Brayer Public Service Award

Victoria Heuler

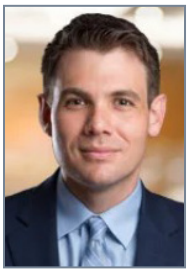
Victoria Heuler is the perfect recipient of the Charlotte Brayer Award. "You will become prosperous only if you are trying to give away more than you receive." – Charlotte Brayer. Victoria epitomizes this concept. She serves when asked. She delivers more than expected. And she needs no accolades. She is a spirit of service, and the section will miss her constant presence at meetings and directing leadership because her guiding principles and efforts are to serve others and leave things better than we found them. – Shannon Miller, ELS Chair, 2024–26



Member of the Year

Kandace Rudd

Kandace Rudd has been awarded the Member of the Year Award in recognition of her outstanding professionalism, leadership, and commitment to the Elder Law Section. This year she has valiantly led the Legislative Committee. Prior to that she was vice chair and then chair of the Medicaid Committee. This board certified elder law attorney has served in various other leadership positions and was a Class XI – Florida Bar Wm. Reece Smith, Jr. Leadership Academy Fellow. Finally, her commitment to issues affecting the elderly and those with special needs is evidenced by her volunteer work with Alzheimer Project: Education Conference Committee, Big Bend Hospice: Community Advance Care Planning Encouragement Task Force, Parkinson's Outreach Association board member, Big Bend Dementia Care and Cure Initiative, and Capital Coalition on Aging. We are truly blessed to have her! – Heidi M. Brown, ELS Treasurer



Exceptional Service Award

Kevin Albaum

Kevin Albaum is a guy who gets things done. In addition to being a graduating Fellow and serving on the Elder Law Board Certification Committee, he is active in his local bars for the city of Lakeland and Polk county. This past year he served on the Section's Annual Symposium Committee and was responsible for planning the 35th Anniversary Gala, which was a huge success. This year he continues to serve on the 2027 Section Annual Symposium and is an incoming co-chair for the CLE Committee. If there were such an award he would certainly be candidate for the Section member with the "most fun spouse" award for his wife Nina. – Travis Finchum, ELS Administrative Vice Chair



Exceptional Service Award

Randy Bryan

Randy Bryan was honored with the Exceptional Service Award in recognition of his years of outstanding service and dedication to the Section. A board certified elder law attorney and past chair of the Elder Law Section, Randy has generously shared his time and expertise through countless CLE presentations, mentorship, and advocacy on behalf of our members. He has been an invaluable resource this year with working with the Department of Children and Families to address ongoing issues affecting elder law practitioners and the older adults and individuals with disabilities we serve. We are grateful for Randy's continued commitment to the Elder Law Section and congratulate him on this well-deserved recognition. – Danielle Faller, ELS Substantive Vice Chair

continued, next page



Exceptional Service Award

Nicollette Gonzalez

Nicollette Gonzalez is the chair of the Membership Committee and has been serving in this position since 2024. She spearheaded the section's open house this past year and organized a welcoming committee at the section's 2026 Symposium that provided the conference with a warmth and inclusiveness that was excellent to see. And last but certainly not least, she is currently putting together the no stupid questions program, which will provide education and value to our existing members and is certain to attract new members as well. – Debra Slater, ELS Administrative Vice Chair



Lifetime Achievement Award

Len Mondschein

Throughout his career, Len Mondschein has led by example, challenging us all to give of our time and talents as selflessly as he has. The leadership positions he has held and the milestones he has achieved throughout his career are numerous, evidencing that he knows the value of giving back to the community and that he understands that through mutual challenge, support, and engagement, we elevate one another and raise the standard for all. As iron sharpens iron, he challenges each of us to strive for excellence. For these reasons, Len Mondschein is the 2026 recipient of the Lifetime Achievement Award. – Amy Fanzlaw, ELS Chair, 2026–27

Section News

Mark your calendar



Elder Law Section
Executive Council Meeting
September 17, 2026
12noon – 2pm
Zoom

Elder Law Section
Fall Retreat
October 15 – 18, 2026
World Equestrian Center
Ocala, Florida

Elder Law Section
Executive Council Meeting
& Budget Review
November 12, 2026
12noon – 1pm
Zoom

Elder Law Section
Executive Council Meeting
January 2027 – Date & Time TBD
Live at the 2027 Florida Elder Law Symposium

ELS presents CLE on combating elder financial exploitation

On June 18, 2026, the Elder Law Section presented a CLE during the annual Florida Bar Convention entitled "Combating Elder Financial Exploitation: Legal Tools, Law Enforcement, and Litigation." The four-hour CLE was presented before a packed room and included a discussion by Iris Collins Cruz on the problem of how elder financial exploitation begins, followed by Prosecutor Jack Campbell and Kandace Rudd who addressed elder exploitation from a law enforcement perspective. Genna Fasullo LaPeer then presented on the intersection between guardianship, vulnerable adult injunctions, and stopping the scammers, followed by a discussion about litigating elder financial exploitation cases from Jill Ginsberg joined by Iris Collins Cruz of Palm Beach County Legal Aid.



Iris Collins Cruz discusses how elder financial exploitation begins.

If you missed the live presentation and are interested in this CLE, it will be available online for purchase on The Florida Bar Member Portal under the CLE Course Catalog.



Prosecutor Jack Campbell and Kandace Rudd provide a law enforcement perspective on elder exploitation.



Genna Fasullo LaPeer discusses the intersection between guardianship, vulnerable adult injunctions, and stopping the scammers.



Iris Colins Cruz and Jill Ginsberg present on litigating elder exploitation cases.

Elder Law Section Executive Committee

CHAIR

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

CHAIR-ELECT

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

ADMINISTRATIVE VICE CHAIR

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

SUBSTANTIVE VICE CHAIR

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

TREASURER

Heidi M. Brown
Dentons Cohen & Grigsby PC, Naples
239/444-1850
heidi.brown@dentons.com

SECRETARY

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

IMMEDIATE PAST CHAIR

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

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 2026-2027.

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.**



Committees keep you current on practice issues

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

ADMINISTRATIVE DIVISION

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Heidi M. Brown
Dentons Cohen & Grigsby PC, Naples
239/444-1850
heidi.brown@dentons.com

CONTINUING LEGAL EDUCATION

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

Co-Chair
Kevin R. Albaum
Clark, Campbell, Lancaster, Workman PA, Lakeland
863/647-5337
kalbaum@clarkcampbell-law.com

MENTORING/MEMBERSHIP/NEWER PRACTITIONER

Chair
Nicollette Gonzalez
Office of the Public Guardian, Davie
954/862-3655
ngonzalez@stu.edu

PUBLICATIONS

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

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

Katie Gosche
Tampa
813/770-9539
goschekatie@gmail.com

ETHICS

Chair
Max J. Solomon
Heuler, Wakeman, Solomon Law Group PLLC, Tallahassee
850/421-2400
max@hwelderlaw.com

GUARDIANSHIP

Co-Chairs
Jeannette Mora
Estate & Elder Law Counsel PA, Orlando
407/610-5595
jeanette@eelclaw.com

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

LEGISLATIVE

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

MEDICAID/GOVERNMENT BENEFITS

Co-Chairs
Eduardo J. Mordujovich
Mordujovich Law PLLC, Gainesville
352/554-6060
eddie@mordujovichlaw.com

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

SPECIAL NEEDS TRUST

Chair
Melissa Lader Barnhardt
Gina Nguyen PA, Miami
305/670-9400
melissa@nguyen-law.com

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Committees. . .
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VETERANS BENEFITS

Chair
Heidi F. Friedman
Friedman Elder Law Department, Coconut Creek
954/866-1055
hfriedman@elderlawdept.com

SPECIAL COMMITTEES

BYLAWS

Chair
Jason A. Waddell
Pensacola
850/434-8500
jason@waddell.law

CERTIFICATION

(Appointed through The Florida Bar)
Chair
Beth K. Roland
Orlando
407/610-5595
beth@eelclaw.com

DISABILITY LAW

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

FELLOWS PROGRAM

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

Enrique Zamora
Zamora, Hillman & Villavicencio, Coconut Grove
305/285-0285
ezamora@zhvlaw.com

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

SPONSORSHIP

Chair
Heidi M. Brown
Dentons Cohen & Grigsby PC, Naples
239/444-1850
heidi.brown@dentons.com

STRATEGIC PLANNING

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

TECHNOLOGY

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

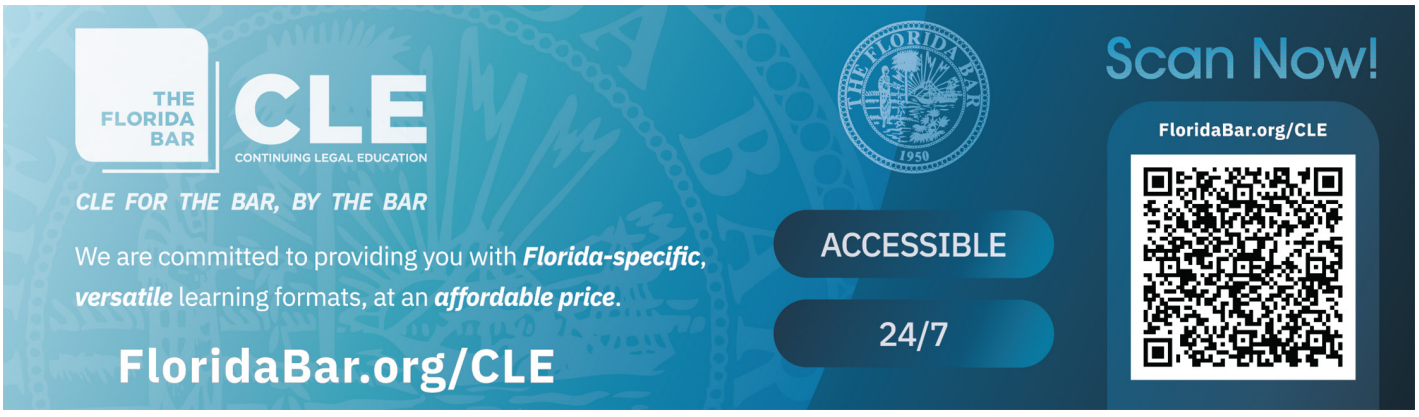
Amy L. McGarry
Amy McGarry Law Office PL, Cape Coral
239/945-3883
amy@amymcgarrylaw.com

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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

Visit https://eldersection.org/calendar/ for committee meetings information.



Spotlight on the next generation: A student interview

by Jamy Barreau

submitted on behalf of the Inclusion, Diversity, & Engagement Committee

When Shatyra "Ty" Noel was nine years old, she joked with her mother that she wanted to be a judge because "they get paid to sit down all day." What began as a childhood joke eventually evolved into a calling grounded in service, advocacy, and faith. Today, as a student at the Dwayne O. Andreas Barry University School of Law, Ty is charting a path toward a career dedicated to helping others, particularly those whose voices often go unheard.

Growing up in Orlando's Paramore neighborhood, Ty understands firsthand the challenges that can accompany limited resources. Throughout law school, she relied on public transportation, often spending two hours on a bus to reach campus despite living only 30 minutes away. Rather than discouraging her, those experiences strengthened her resolve to serve individuals facing similar barriers.

Ty's passion for advocacy is deeply personal. Inspired by her mother, who uses a walker, she became increasingly aware of the ways society can overlook or dismiss older adults. Witnessing her mother encounter disrespect because of a mobility aid opened her eyes to the dignity and equity issues many seniors face every day.

That passion grew even stronger after taking wills, trusts, and estates with Professor Jonathon Keene, whom she first met during orientation. Their mentor-mentee relationship helped Ty realize that protecting the rights of older adults extends far beyond traditional elder law. She believes issues affecting seniors intersect with nearly every area of legal practice, including criminal law, housing, health care, and public benefits.



Shatyra "Ty" Noel

Dwayne O. Andreas Barry University School of Law | Class of 2026

Today, Ty serves as a certified legal intern with the Public Defender's Office for Florida's Ninth Judicial Circuit. The experience has confirmed her desire to pursue a career in public defense after graduation. She hopes to use her advocacy skills to ensure that all clients, including elderly individuals who interact with the criminal justice system, are treated with compassion, dignity, and respect.

Ty has also made a lasting impact on her law school community through leadership and service. As president of the Barry Branch of the NAACP, she has worked to create a welcoming environment where students feel seen and supported. She is quick to credit her fellow NAACP executive board members and members for helping strengthen the organization's presence on campus and fostering a culture of belonging.

Her commitment to improving student life is evident in another lasting contribution to Barry. After experiencing the challenges of commuting with heavy books and materials, Ty approached the administration about installing student lockers. Rather than simply approving the proposal, the administration invited her to help shape the project. Seeing the lockers become a reality reinforced her belief that meaningful change often begins with speaking up.

As a first-generation law student, Ty admits there were moments when she questioned whether she truly belonged in law school. The encouragement of mentors, professors, and family members helped carry her forward. Today, she hopes her journey inspires others from similar backgrounds to pursue their ambitions with confidence.

For Ty, legacy is not measured by titles or accomplishments alone. It is measured by the opportunities created for others.

"A legacy is going to be left regardless," she said. "Make sure you leave a good one. Greatness was left here before us. It is up to us to pick up the slack and add to it."

The words that continue to guide her journey are simple but powerful: *"Faith only works when you work too"* (James 2:14–26).



***Jamy Barreau, Esq., LL.M.**, is an estate planning and probate attorney in Port St. Lucie, Florida, and the founder of Barreau Legal, PLLC. Through his legal practice, teaching, and bar service, he is dedicated to promoting access to justice and encouraging future lawyers to pursue careers serving Florida's aging population.*



Practice Management

by Audrey Ehrhardt

AI, automation, and legal technology: What every Florida elder law attorney should know

If you're feeling overwhelmed right now, surrounded by the constant discussion on artificial intelligence (AI) in the legal world, you're not alone.

Depending on the day, AI is either being presented as the greatest innovation in legal practice since email or the beginning of the end of the profession as we know it. As is often the case with all evolving innovations in technology, the truth lies somewhere in the middle.

One of the biggest challenges facing attorneys today may also begin with the *terminology* itself. As legal technology continues to evolve, I see that the terms *legal technology*, *legal technology automation*, and *artificial intelligence* are frequently used interchangeably. They should not be. There are too many nuances and too many differences to bulk these important practice management tools into one overly broad heading. Instead, we need to educate ourselves so we understand the distinctions between each of these terms as it applies to our needs, our practice needs, and as is required under our duty of competence.

This baseline understanding, so we are all rowing in the same multi-layered direction, is one of the most important first steps a law firm can take before considering any AI initiative.

Let's begin with legal technology. Legal technology is, simply put, the software systems we use to operate our law firms. From practice management platforms and document management systems to drafting software and client relationship management tools to billing programs and communication platforms, these are a start of the LegalTech Stack that fall within this category. Your ecosystem of chosen tools can help you organize information, manage matters, advocate successfully for your clients, and create consistency throughout the client journey.

Next, we turn to legal technology automation. Automation builds upon legal technology. Automation allows your software to perform repetitive tasks based upon predefined rules. If a prospective client:

- Submits a form on your website;
- Automatically receives an email;
- Is added to your PNC database;
- Receives appointment reminders; and
- Your legal team is triggered to take intake steps for your prospective client—That is automation at work.

Let me clear here. With automation, the system is not making decisions; it is simply following your instructions for your practice that have been intentionally designed by you.

Artificial intelligence is something different. AI is capable of analyzing information, identifying patterns, generating content, summarizing data, and assisting with decision-making. Unlike automation, AI is not merely following a set of predetermined instructions. Instead, it generates responses based upon the information and context it receives.

This distinction matters because many law firms are racing to adopt AI tools without first evaluating whether their underlying practice area systems are prepared to support them. Unfortunately, AI does not magically solve operational problems. In many cases, it simply accelerates them.

After years of helping law firms implement technology, improve workflows, and build scalable systems, one lesson remains remarkably consistent: *Technology rarely fixes chaos. More often, it helps chaos move faster.* In other words, if your intake process is inconsistent, your data is incomplete, your workflows are undocumented, or your team lacks clear procedures, introducing AI may amplify those challenges rather than eliminate them. If you are wondering where to start right now, the answer is

simple. Before asking what AI can do for your firm, ask: *Is my firm is ready for AI?*

Your practice readiness extends beyond operations. It also includes change management considerations, ethics, and professional responsibility. While Florida attorneys are governed by the Rules Regulating The Florida Bar, the ABA's guidance on technology competence and the ethical use of emerging technologies offers valuable insight as well. There is no question that we, as attorneys, remain responsible for the accuracy of our work product, the protection of client confidentiality, proper supervision, and compliance under our professional obligations. AI may be a tool, but it is not the lawyer.

The future of elder law will undoubtedly include artificial intelligence. The law firms that benefit most, however, will not be the ones that adopt it the fastest. They will be the ones that adopt it thoughtfully, strategically, and responsibly. In other words, before you ask AI to help run your law firm, make sure your law firm is ready to run AI. If you need help, have questions, or want to brainstorm on this evolving and exciting topic, I look forward to discussing it with you!

***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.*

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Tips & Tales

by Kara Evans

The notary public seal: A seal worth scrutinizing

The tale: You have been working with a client for several weeks, preparing a trust, a last will and testament, a durable power of attorney, health care documents, and deeds. The client is unable to come to the office for signing and asks you to send the documents to them with signing instructions. You do so, along with instructions that point out when a notary can act as a witness and when they must not. You have done this in the past with satisfactory results. Your client returns the signed documents, and your staff submits the deed to be recorded. The clerk rejects the deed because the notary seal is unreadable.

The tip: When a client comes to your office to execute documents, you are in control of ensuring the legal process to properly execute each document is followed. When you forward documents to clients with instructions for execution, you lose that control. We assume that each notary public has been properly educated to notarize a document and will perform the duties of their office accordingly. However, over the past few months, I have seen documents where a notary acted as the notary and also as a witness whose signature needed to be acknowledged, thereby notarizing their own signature. I have seen documents that contain the notary seal without the notary's signature and other documents containing the signature without the seal. I have seen documents where the stamp is only partially legible and the commission number is obscured or missing. And while it is embarrassing to have a document rejected by the clerk for recording purposes, it can be devastating to realize a document is not valid after the death of a client.

When a notary public notarizes a signature, Florida Statute 117.05(4)(a) through (i) directs that the jurat or certificate of acknowledgment must contain the following:

- The venue (State of Florida, County of _____)
- Whether signed under oath or acknowledgment (sworn or acknowledged)
- Whether the signer appeared physically or by electronic means (means of ☐ physical presence or ☐ online notarization)
- The date
- The signer's name
- The type of identification produced (either based on personal knowledge or satisfactory evidence specified in section 117.05 (5)(a) and (b))
- The notary's signature
- The notary's printed name below the signature (can be typed, printed, stamped)
- The notary's seal

Some of the above requirements are impossible to ascertain from merely looking at the document. By example, did the notary actually take the oath of the person signing? If "personally known" or "satisfactory evidence" is checked in the certificate or jurat, you cannot know if that statement actually meets the definitions set out in the statute.

This does not mean you cannot exercise due diligence in reviewing the document and the notarization certificate or jurat. You can certainly review them to ensure the notary seal is clear and readable and the seal contains the name of the notary public, the date of expiration of the commission of the notary public, and the commission number. The review should also ensure the notary public actually signed the document, his/her name is printed below the signature, venue and date are stated, and the proper boxes (physical presence, etc.) are checked. It is important to make sure that the type and form of identification are noted in the certificate or jurat by the notary. Florida Statute 117.05 (5)(b)2 a–j provides the guidelines to ensure the form of identification is authorized by the statute as fulfilling the identification requirement.

This type of thorough review and assessment will save your office embarrassment and ensure the validity of the legal documents even if the clients are unable to sign their documents under your supervision.

***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.*



Tax Tips

by Michael A. Lampert

IRS & TIGTA

The Internal Revenue Service (IRS) has what can be referred to as its internal affairs division, TIGTA or the Treasury Inspector General for Tax Administration.

Established in January 1999 to provide independent oversight of IRS activities, the division provides audit investigations and evaluates services. Although part of the Department of the Treasury, TIGTA reports to the treasury secretary and to Congress. The division is independent from all other IRS offices and bureaus within the Treasury.

TIGTA investigates IRS employee misconduct and external attempts to corrupt or threaten IRS employees. Yes, the division has special agents—cops—with an overarching goal of preventing and reducing wasted funds and advising and promoting economic efficiency in tax law administration.

What gets reported to TIGTA? Generally, it concerns alleged IRS employee misconduct or threats against the IRS and its workforce. The TIGTA hotline is 1-800-366-4484. The online submission website is being updated; hopefully by the time this article is published, the website will be fully functional.

If the issue is about tax avoidance schemes, preparer fraud, or other tax law violations, there are "regular" IRS reporting forms. These include:

- Form 3949-A to report alleged tax law violations by individuals or businesses
- Form 14157 & 14157-A to report tax return preparer fraud or misconduct
- Form 14242 to report suspected abusive tax avoidance schemes and to prevent loss
- Form 13909 to report misconduct or wrongdoing by a tax-exempt organization
- Form 14039 to report identity theft

So, what sort of things did TIGTA report on over the last year or so?

Unidentified taxpayer payments

From Fiscal Years 2022 to 2024, the IRS received approximately $3.2 billion in unidentified payments and successfully approved $2.3 billion (70%). While some were subsequently resolved, over $200 million remains unresolved.

Practice tip: Be careful to clearly designate all payments to the IRS with the taxpayer's ID number/social security number as well as the tax period/tax form. Be especially careful when funds are remitted without an ID number, such as from FIRPTA (Foreign Investment in Real Property Tax Act) withholding (when the foreign seller does not have an ID number). It can take a year or more to resolve the payment application.

IRS backdating penalty approvals

Certain IRS penalties require supervisors' approval prior to assessment (being written in the book of "you owe.") Not only did TIGTA discover cases with improper approvals, but it also found that the IRS backdated approvals and even misrepresented that fact to the U.S. Tax Court.

Author's comment: Could you imagine if we did that?

Disclosure of collection activities on joint (married persons) accounts

With the large number of divorces, including "gray" divorces, there is a significant amount of tax debt owed jointly and severally by the now divorced spouses. While there are procedures that can be used to separate the joint tax liability, the IRS is required, upon request of former spouses, to provide information regarding whether the IRS has attempted to collect the liability due from the other former spouse, the general nature of the collections activity, and the amount collected. TIGTA found in a large number of cases that this not only was not done, but that many employees and supervisors were not properly aware of these rules.

Practice tip: When defending taxpayer clients from IRS collections resulting from a joint tax debt from a former spouse, it is helpful to know not only what has been paid but also what is being paid by a former spouse.

IRS inaccurately reported short wait times

The IRS has published statements regarding their call site service that are misleading at best. For example, for the 2024 tax year filing season (in calendar year 2025), the IRS reported a level of service of 88% with a three-minute

continued, next page

average wait time. 88% means that 12% did not receive service, a bad enough result. Yet a more accurate number, using a more realistic set of phone numbers that taxpayers actually called, showed that callers experienced wait times that ranged from 17 to 19 minutes, and a level of service ranging from 92% in January 2024 to 48% in June 2024.

That is a significant number of taxpayers who could not get their calls answered regardless of length of time on hold. While the IRS is increasingly pushing for online communication, many IRS notices still encourage calling. In addition, some of our senior and most vulnerable clients have little ability to navigate online sites. To make matters worse, the IRS lost approximately 26% of its workforce in the first part of 2025 and is now trying to backfill thousands of positions.

What else did they find?

- TIGTA is again calling for regulation of unenrolled tax preparers (tax preparers who are not attorneys, CPAs, or enrolled agents).
- Lack of proper equipment and expectations for new hires. (TIGTA noted a failure on the IRS's part to provide laptops to new hires, which resulted in employees who could not work or complete the necessary training, etc.)
- Issues with the IRS trying to stop issuing paper checks and challenges with the confirming letter CP53E. The phone number on the letter about paper checks is not the best number to request a paper check! There are also issues with unbanked taxpayers.

Practice tip: With Medicaid clients, be alert to tax refunds, whether issued electronically or by paper check. The refund could unexpectedly put the client over the asset limit.

***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.*





Case Law

by Tazara M. C. Fields

Summary of Selected Case Law

Advocacy groups and family members cannot intervene in a guardianship case solely to unseal confidential records for research. Public advocacy, as a generalized public interest, does not constitute the extraordinary circumstances required for post-judgment intervention, nor does it establish the substantial good cause needed to override statutory confidentiality protections under Florida law.

In re Guardianship of Schiavo, 2026 Fla. App. LEXIS 2663, 2026 WL 942855 (Fla. 2DCA 2026) (2D2025-0671)

Issue: Can advocacy groups and family members intervene in a guardianship case concluded over 20 years ago to unseal confidential records for research and public advocacy?

Answer: No. The Second District Court of Appeal in *In re Guardianship of Schiavo* determined that post-judgment intervention in closed guardianship cases require extraordinary circumstances and that the movants' desire for public advocacy and research does not amount to good cause sufficient to override statutory confidentiality protections.

Theresa ("Terri") Schiavo passed away in 2005 following historic and extensive litigation over the removal of life-prolonging procedures. More than 20 years after the guardianship proceedings concluded, a public advocacy group—the Terri Schiavo Life & Hope Network—alongside the ward's brother, Bobby Schindler, filed a motion to intervene in the long-closed case. Their objective was to unseal confidential guardianship records shielded by section 744.3701, Florida Statutes, and use them for research and public advocacy. The ward's mother, Mary Schindler, who was an original party to the initial litigation, later joined the motion. Notably, the movants offered no explanation for waiting nearly two decades to request the records.

The trial court denied both the motion to intervene and the motion to unseal, ruling that a desire for research and advocacy amounted to a generalized public interest, which is legally insufficient to establish "good cause" or to override statutory privacy protections.

The Second District Court of Appeal affirmed the denial. The appellate court emphasized that post-judgment intervention is an extraordinary, highly disfavored remedy. Ultimately, the court held that the movants failed to demonstrate the rare, extraordinary circumstances required to intervene in a closed case and that a generalized public interest does not constitute the substantial reason necessary to breach statutory confidentiality protections.

A deceased ward's mother and successor guardian possesses standing, as both the successor guardian and an individual who stands to inherit under Florida intestacy laws, entitling her to fully participate in the closing of the guardianship.

Ash v. Ash, 2026 Fla. App. 2052, 2026 WL 758993 (Fla. 3DCA 2026)

Issue: Does an individual who stands to inherit under Florida's intestacy laws and who is successor guardian have legal standing to receive statutory notice and to object to the final accounting, reimbursement petitions, and discharge of the guardian of the property during the closing of a guardianship?

Answer: Yes. The Third District Court of Appeal reversed the trial court and determined that the deceased ward's mother, who had previously been found to be an interested person and who stood to inherit under Florida's intestacy laws, was entitled to statutory notice and had the right to object before approval of reimbursement petitions and the discharge of the guardian.

This dispute arose following the death of Aaron Ash, a ward who had received a medical malpractice settlement after sustaining catastrophic birth injuries. Grove Bank & Trust served as the guardian of the ward's property, while the ward's father, Hyman Ash, was appointed plenary guardian following his divorce from the ward's mother, Patricia Ash. In 2019, Patricia Ash successfully petitioned to be designated an "interested person" in the guardianship—a ruling that went unappealed—and she was later appointed as the ward's successor guardian.

Following the ward's death in 2022, probate proceedings began, and a curator was appointed to manage the estate. Meanwhile, Hyman Ash filed petitions

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within the guardianship case seeking historical financial reimbursements for his time as guardian, and Grove Bank & Trust petitioned for final discharge and approval of its final accounting. Patricia Ash objected to both requests and filed a complaint for accounting and damages against Hyman Ash and his living trust.

The trial court dismissed her objections, ruling that she lacked standing to participate in winding up the guardianship estate, and subsequently discharged the guardian of the property. Patricia Ash appealed, arguing that her status as successor guardian, mother, and potential intestate heir entitled her to notice and to the right to object.

The Second District Court of Appeal reversed the trial court's orders. The appellate court held that because Patricia Ash had long been legally recognized as an interested person, she was statutorily entitled to notice and possessed full legal standing to participate in the guardianship's closing proceedings. The case was remanded for further proceedings.

Practice tip: When a ward passes away, do not assume that only the personal representative or curator of the newly opened probate estate has standing to challenge the final administration of the guardianship. Under Florida law, previously established "interested persons" may retain standing and notice rights that must be respected during the process of closing the guardianship.

The doctrine of administrative finality bars a second application for benefits when the subsequent filing fails to present new material evidence or a significant change in circumstances that addresses the specific grounds for the original denial.

N.H. v. Agency for Persons with Disabilities, 2026 Fla. App. LEXIS 1685, 2026 WL 601876 (Fla. 3DCA 2026)

Issue: Does the doctrine of administrative finality bar an applicant's second request for Medicaid waiver services when both the initial and subsequent applications are denied for failing to prove the developmental disabilities manifested before age 18 and where the applicant's new evidence fails to address that critical manifestation requirement or to demonstrate a significant change in circumstances?

Answer: Yes. The Third District Court of Appeal determined that the doctrine of administrative finality bars a second application for benefits because the additional evidence did not address the critical manifestation requirement, and thus, there was no significant change in circumstances that existed to warrant reconsideration of the prior denial.

Born in 1996, N.H. sought enrollment in Florida's iBudget Waiver Program, a Medicaid-funded system providing home and community-based services to individuals with developmental disabilities administered through the Agency for Persons with Disabilities (APD). In March 2019, she applied for services under the categories of autism and intellectual disability. APD denied her application, finding that she failed to meet a core requirement of Florida law: proving that her disabilities manifested before she turned 18. N.H. appealed the denial, but an administrative hearing officer affirmed APD's decision; N.H. did not seek judicial review.

Nearly five years later, in May 2024, N.H. submitted a second application for the exact same services under the identical eligibility requirements. APD denied the application on the same grounds. Although N.H. appealed the second denial and submitted a new clinical report and physician's note, neither document provided evidence that her disabilities had manifested before age 18.

During the second administrative appeal, APD moved to dismiss the case based on the doctrine of administrative finality, which prevents individuals from repeatedly litigating the same agency decisions unless there is a significant change in circumstances or there is new material evidence. The hearing officer granted the dismissal, concluding that the core issue was identical to the 2019 proceeding and had already been fully litigated.

The Third District Court of Appeal affirmed the dismissal. The appellate court held that because N.H. sought identical relief and failed to satisfy the same statutory element both times, her new evidence did not demonstrate the significant change in circumstances required to overcome administrative finality.

Practice tip: When assisting a client with a subsequent application for government benefits, Medicaid waivers (such as Florida's iBudget program), or administrative relief following a prior final denial, an attorney must do more than simply submit fresh documentation. One must explicitly frame the new evidence as a material change in circumstances or substantial discovery of previously unavailable data. If the new evidence fails to address the specific statutory element that caused the initial rejection, the agency may successfully invoke administrative finality to dismiss the appeal without ever reaching a hearing on the merits.

Tazara M. C. Fields, Esq.*, is a second-generation elder law attorney at The Sketchley Law Firm. A "true Nole," she holds two undergraduate degrees and a J.D. from Florida State University. Her practice focuses on guardianship litigation and administration, probate, estate planning, special needs planning, and long-term care planning.*



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