The Elder Law Advocate

"Serving Florida's Elder Law Practitioners"



Featuring:

- ELS 35th Gala
- Diversity in guardianship
- Changes to the ABLE account
- Tax tips for tax time

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The Elder Law Advocate

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



ON THE COVER

Roseate Spoonbill
By Randy Traynor

4/2026

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Submit Articles

The deadline for the FALL 2026 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 Chair

by Shannon M. Miller

The beginner's mind

As we come together after the energy and connection of our recent Florida Elder Law Symposium and 35th Anniversary Gala, I've been reflecting on what it means to move forward—both individually and as a section—with intention and openness.

In yoga, there is a concept called beginner's mind. We are invited to show up as if it were our very first practice—curious, open, unattached to outcomes, and free from judgment about what things should look like. It is an invitation to release expectations and remain open to something new, different, or unexpected.

That idea resonates deeply with our work in elder law.

This year, we saw a beautiful example of beginner's mind in action through the leadership of Amy Fanzlaw. With fresh perspective and thoughtful intention, Amy approached the Symposium and Gala as an opportunity to reimagine what these cornerstone events could be—introducing a new name and placing a renewed focus on the voices, expertise, and stories of our speakers. The result was an experience that felt energized, meaningful, and deeply connected to why we do this work.

Many of us bring years—sometimes decades—of experience to our practices. Our knowledge and instincts are invaluable.

We are also lifelong learners.
When we lead with curiosity instead of certainty,
and compassion instead of judgment,
we strengthen not only our advocacy,
but our community.

And yet, when we approach our clients, our colleagues, and our challenges with a beginner's mind, we create space for deeper listening, more thoughtful advocacy, and continued growth. Curiosity allows us to see nuances we might otherwise miss. Openness helps us adapt in a field that is constantly evolving.

The Symposium and Gala reminded us that while we are seasoned professionals, we are also lifelong learners. All you have to do is look at Ira Wiesner, who gave us a window into his beautiful life as an elder law attorney, to see the true benefits of a life of learning. When we lead with curiosity instead of certainty, and compassion instead of judgment, we strengthen not only our advocacy, but our community. That mindset allows innovation to take root while keeping us grounded in the humanity at the heart of elder law.

As we move forward together, I invite you to carry the spirit of beginner's mind into your practices, your committee involvement, your mentorship, and your relationships within this section. There is always more to learn, and always more ways to serve.

Thank you for all that you do for this section and for the clients and families who depend on us.

Namaste,

Shannon

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.

Recent federal changes to ABLE accounts

by Kole J. Long

submitted on behalf of the Special Needs Trust Committee

Achieving a Better Life Experience (ABLE) accounts have long served as a cornerstone planning tool for individuals with disabilities, allowing tax-advantaged savings without jeopardizing eligibility for means-tested benefits such as Supplemental Security Income (SSI) and Medicaid. Recent federal legislation, the ABLE Age Adjustment Act effective in 2026, has significantly expanded the utility of these accounts. For Florida elder law attorneys, these developments warrant renewed attention to ABLE account planning strategies.

Perhaps the most impactful change is the expansion of eligibility criteria. Beginning January 1, 2026, individuals whose disability onset occurred before age 46 (rather than age 26) now qualify for ABLE accounts. This change will substantially increase the pool of eligible beneficiaries, including many clients who acquire disabilities later in life due to illness or injury.

This creates meaningful planning opportunities for middle-aged and older clients who were previously excluded. Attorneys should be prepared to incorporate ABLE accounts into a broader benefits-preservation strategy.

ABLE accounts have also become more powerful funding vehicles. The annual contribution limit is no longer aligned with the federal gift tax exclusion. ABLE accounts, in 2026, now allow contributions up to $20,000 (although, as of the date of this article, the Social Security POMS still lists the contribution limit at $19,000). In addition, under the "ABLE to Work" provisions, employed beneficiaries may contribute **amounts above the $20,000 limit equal to their earned income**, up to an amount equal to the current federal poverty level federal ($15,960 for 2026).

This dual-layer contribution structure is particularly significant. It allows working beneficiaries to accumulate meaningful savings at a faster pace, making ABLE accounts more viable as day-to-day financial management tools rather than merely supplemental accounts.

Despite these enhancements, ABLE accounts remain subject to important limitations, including the $100,000 balance limit for SSI, $500,000 balance limit for state Medicaid programs, and potentially Estate Medicaid recovery upon the passing of the account holder. As such, they should generally be viewed as complementary to rather than replacements for special needs trusts (SNTs).



Kole J. Long *is an associate attorney with the law firm of Special Needs Lawyers PA where he practices elder, probate, guardianship, and special needs trust law. He is board certified as an elder law specialist by The Florida Bar.*

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:

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New column: Perspective in Practice

The Elder Law Advocate is pleased to present a new column, Perspective in Practice, authored by members of the Inclusion, Diversity, & Engagement Committee. Our first contributor is Chanté Jones, chair of the committee, who addresses diversity in guardianship. We look forward to future topics that will cover language barriers, estate planning, disability, cultural competency, and other issues important to the practice of elder law.

The importance of diversity in guardianship practitioners: A call to action

by Chanté Jones

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

The diversity of practitioners in guardianship cases is essential for fair representation, culturally competent care, and improved outcomes for vulnerable populations.

Guardianship cases often play a crucial role in elder law, providing much-needed legal protection for individuals who may not be able to make decisions about their own personal and financial affairs due to age, illness, or disability. The significance of guardianship remains in its ability to prevent exploitation and neglect, offering a structured framework for decision-making when individuals can no longer advocate for themselves. Guardianship-related decisions can deeply impact the quality of life and autonomy of the person involved, making the selection of appropriate guardians and legal representation essential. As the population ages, understanding the intricacies of guardianship becomes increasingly important for practitioners in the field of elder law.

For decades, advocates have raised concerns about the guardianship process and its lack of procedural and substantive protections. For older adults who have faced bias and structural discrimination throughout their lives, such as communities of color and the LGBTQ+ community, the civil rights implications of guardianship are even greater. For the marginalized older adult, a lifetime of systemic racism resulting in disparities in the areas of income, housing and neighborhood conditions, and accessibility to quality of health care, combined with the impact of the aging process, increase various negative outcomes associated with aging. In addition, they are likely to face bias, both structural and implicit, within the larger guardianship system.

The benefits of diversity in guardianship cases

Diverse practitioners bring a wealth of perspectives and insights that enhance their ability to navigate the complexities of guardianship cases. Their varied backgrounds allow them to recognize the need for equity and representation, and they can appreciate the unique values, beliefs, and practices of different racial groups. This understanding fosters a more empathetic approach to client interactions, where practitioners can establish trust with families who may feel marginalized or misunderstood by the legal system.

While racial diversity is crucial, it is equally important to recognize and address other factors of diversity that can significantly impact guardianship cases. The following considerations contribute to a broader understanding of the client population and can enhance the effectiveness of legal practitioners in elder law.

Gender and sexual orientation: Gender identity and sexual orientation are vital aspects of diversity. Practitioners who are sensitive to LGBTQ+ issues can better understand the unique challenges faced by clients within these communities, including familial rejection or discrimination.

Socioeconomic status: Socioeconomic background influences access to resources and decision-making processes.

Disability and neurodiversity: Understanding the experiences of individuals with disabilities or neurodiverse conditions is essential in guardianship cases.

Cultural and ethnic backgrounds: Beyond race, cultural nuances related to ethnicity, traditions, and customs can influence guardianship decisions.

Religious and spiritual beliefs: One's religious or spiritual beliefs or norms can play a significant role in their preferences regarding life, health care, and end-of-life decisions.

Age and generational differences: Age can influence a person's perspective on authority, decision-making, and care preferences.

Language and communication styles: Language proficiency extends past simple communication; it involves understanding cultural communication styles and preferences.

By embracing these dimensions of diversity, practitioners in guardianship and elder law can help create more inclusive environments that recognize a broader spectrum of individual identities within our aging population.



***Chanté Jones, Esq.**, is the chair of the Inclusion, Diversity, & Engagement Committee and the associate state director of advocacy at AARP Florida.*

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Elder Law Section celebrates 35 years of service

In January 1991, the Elder Law Section of The Florida Bar was founded by a small but visionary group of attorneys committed to improving the lives of older adults and individuals with disabilities. Long before "elder law" was a familiar term, these pioneers recognized the need to build a dedicated community of practitioners focused on advocacy, education, and service.

This year marks the 35th anniversary of our section. On January 15, 2026, as part of the Annual Florida Elder Law Symposium, members gathered at the Grand Bohemian Orlando for a Legacy Gala celebrating the community we have built, the clients and families we have served, and the remarkable growth of our section over the past three and a half decades. At this sold-out evening, guests embraced the rich spirit of the 1920s while enjoying signature-themed cocktails, dinner and dancing, a curated slideshow of memories, legacy toasts from members, a photo booth capturing new moments, and a custom anniversary cake.

Thank you to our members for building the strong foundation that makes our bright future possible. Here's to our past, our present, and the future we are building together—cheers to 35 years!

Amy J. Fanzlaw

ELS Chair-Elect/Chair of the 2026 Symposium



Custom signage greets guests as they enter the Roaring 20s-themed Gala.



An elegant place setting awaits each gala attendee.



Every celebration calls for cake!



Founding member Ira Wiesner has the honor of cutting the 35th Anniversary cake.



Leonard Mondshein and wife Mavis Mondschein



David Hook and wife Denise Hook



Emma Hemness and Twyla Sketchley



Collett Small, Ronald Bornstein, Genny Bernstein, Victoria Heuler, Travis Finchum, Kandace Rudd, and Max Solomon



Kevin Albaum, Victoria Heuler, Max Solomon, and Kevin's wife Lauren Albaum



John Clardy, Debra Dandar, Travis Finchum, and Ira Wiesner



Michael Lampert (right) and wife Stacey Lampert



Victoria Heuler, Debra Slater, Collett Small, and Amy Fanzlaw



Danielle Faller, Theresa Bowman, Heidi Brown, Kandace Rudd, and Marina Tsur



Katelyn Todd, Marisa Stidam, and Tazara M. C. Fields



Top: Jason Waddell, John Clardy, Tom Cooper; Middle: Twyla Sketchley ("hiding" behind Travis's and Ellen's hands), Jana McConnaughhay, Travis Finchum, Randy Bryan, Victoria Heuler, and Emma Hemness; Bottom: Ellen Morris and Collett Small



Melissa Williams and Amy Waddell



Adam Owens, Danielle Faller, Shannon Miller, and Victoria Heuler



Scott Solkoff and Jack Rosenkranz



Standing: Ellen Morris, Victoria Heuler, Doreen Solkoff, Scott Solkoff, Amy Waddell, and Jason Waddell; Seated: Stuart Morris, Laura Bryan, Randy Bryan, Leonard Mondshein, and wife Mavis Mondschein



Past chairs of the Elder Law Section sport festive red jackets displaying their term of service.



Marjorie Wolasky, Marina Tsur, and Scott Solkoff



Elder Law Section past chairs

Front: Twyla Sketchley, Collett Small, Ellen Morris, Enrique Zamora, Jana McConnaughhay, Victoria Heuler, Scott Solkoff, Ira Wiesner, and Emma Hemness; Back: John Clardy, David Hook, Leonard Mondshein, Jason Waddell, and Randy Bryan



Heather Samuels, Travis Finchum, and Debra Slater

Scott Solkoff and Jack Rosenkranz



Capitol Update

by Brian Fogerst

The 2026 Legislative Session began on January 13 and was scheduled to end on Friday, March 13.

While the Legislative Session ended (adjourned *sine die*) on March 13, the Legislature did NOT adopt a state budget for the 2026–2027 fiscal year prior to adjournment—and will return to Tallahassee after Passover/Easter to adopt the state budget.

By way of background, the House budget is just over $113.6 billion while the Senate budget is $115 billion. Both are below the budget proposed by Governor DeSantis, which was $118.7 billion.

Before the House and Senate can begin the budget conference process to resolve the differences in their respective budgets, they must agree on the total budget amount ($113.6 billion or $115 billion—or somewhere in between). Once that happens, then each budget subcommittee (including health care, judiciary, education, and transportation) will receive an "allocation," which is the amount each subcommittee has to spend. Then the "back and forth" negotiations will take place to adopt a final state budget.

A budget update will be included in the next Capitol Update with an overview of the state budget.

Key issues

With more than 1,700 bills filed this session, and almost 40 bills reviewed by Elder Law, the following are selected issues of importance from the 2026 Session.

Virtual Currency Kiosk Businesses/ Crypto ATMs – The 2026 Session marked the second session that legislation was filed to create a regulatory framework for crypto ATMs. 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 unregulated crypto ATMs without physical proof the deposit was made *or* any daily limit on the amount deposited. The Legislature passed Senate Bill 198 by Senator Daryl Rouson and House Bill 505 by Representative Michael Owen. The following are key provisions of this legislation:

- Requires virtual currency kiosk businesses to register with the Office of Financial Regulation or be licensed as money transmitters, with registration subject to annual renewal
- Sets daily transaction limits of $2,000 for new customers and $10,000 for existing customers
- Mandates clear disclosures, including a warning about potential fraud, before each virtual currency kiosk transaction
- Requires that customers receive a physical or electronic receipt itemizing transaction details and fees
- Establishes a mandatory refund policy within 72 hours for a customer's first virtual currency transaction if it is determined to be fraudulent

Elder Law is grateful to Senator Rouson and Representative Owen for their persistent advocacy for this bill—and the added protections for vulnerable adults.

Memory Care – The Legislature passed Senate Bill 1404 by Senator Colleen Burton and House Bill 1295 by Representative Sam Greco during the final days of session. This legislation requires the creation of a NEW memory care services license for assisted living facilities providing or advertising specialized dementia care. Elder Law supported the creation of licensure standards for residents in assisted living facilities.

Elder Law thanks Senator Burton and Representative Greco for creating additional standards for residents in assisted living facilities.

Guardianship/Persons Disqualified – House Bill 737 by Representative Adam Botana was adopted by the House, but the companion bill, Senate Bill 960, by Senator Jennifer Bradley did not receive a committee hearing. The legislation would have created an exception to the prohibition on a person with a prior felony conviction from being appointed as a guardian when the person is the ward's parent and 10 years have elapsed since the person completed his or her sentence. While the proponents of the bill stressed the judge would maintain discretion to appoint a guardian, Elder Law was concerned with permitting a convicted felon to serve as a guardian. While the bill did not pass the Legislature, it will return for the 2027 Session.

Curators of Estates – Another bill from 2025 was reintroduced for the 2026 Session—and this year it passed the Legislature. Senate Bill 326 by Senator Danny Burgess and House Bill 131 by Rep. Randy Maggard revises rules for appointing and overseeing curators in estate management, including bond, authority, and reporting requirements. Elder Law had concerns with the bill during the 2025 Session, which were addressed this year. After the changes, Elder Law was neutral on the bill.

Public Insurance Adjusters – Senator Colleen Burton filed Senate Bill 266 and Representative Lauren Melo filed House Bill 427 to expand the ability of insureds,

including vulnerable adults, to cancel or rescind public adjuster contracts, and clarify disciplinary guidelines for public adjusters. Elder Law supported the bill as an additional safeguard to protect vulnerable adults. Each bill received one committee hearing but did not pass this session. This legislation is expected to be filed again in 2027.

Patient-Directed Medical Orders – For the second session, Senator Ana Maria Rodriguez filed Senate Bill 312 and Representative Susan Plasencia filed House Bill 369, designed to address patient-directed medical orders, including telehealth provisions and requirements for withholding or withdrawing life-prolonging procedures. The bills did not get traction in the Legislature for the second year but are likely to return in 2027.

Certificate of Need for Nursing Homes – Prior to session, Representative Mike Redondo filed House Bill 693, which was dubbed the "Big Beautiful Healthcare Frontier Act." The bill addressed a host of federal requirements and policy priorities articulated in the federal "One Big Beautiful Bill Act" by codifying the federal requirements for Medicaid, the Children's Health Insurance Program, and the Supplemental Nutrition Assistance Program. One provision of concern to Elder Law was the deregulation of Certificate of Need for nursing homes. Prior to final passage in the House, the deregulation provision was removed from the bill. With no Senate companion bill, the legislation did not pass in 2026, but other provisions of the bill could be included during the budget special session.

Caller Identification/Spoofing – Prior to session, Representative Kevin Steele sought Elder Law's input on an anti-spoofing legislation. House Bill 1299 by Representative Steele and Senate Bill 1516 by Senator Iliana Garcia would have banned the transmission of misleading or inaccurate caller identification and required telecommunications companies to block or authenticate such calls. Elder Law provided technical advice and supported the bill because of the concern over exploitation of vulnerable adults. While the Senate bill received one committee hearing, the House bill did not receive a committee hearing and so the legislation was not approved by the Legislature. It is likely to return during the 2027 Session.

Looking ahead

Property tax reductions received a great deal of attention prior to session, but the Legislature did not address this issue. Governor DeSantis has discussed calling the Legislature back to Tallahassee this summer for a special session on property taxes. Any changes will require a change to the Florida Constitution, which requires approval by 60% of the voters.

Governor DeSantis has called for a special session for April 20 to redraw Florida's congressional districts. Several states—both red and blue—have redrawn their congressional districts to help secure additional seats in Congress for their respective political parties.

So, as noted, the Legislature will return for three special sessions: budget, property taxes, and congressional redistricting, and some have suggested that additional special sessions could be called forcing the Legislature back to Tallahassee during the election season. Additional updates will be provided in future Capitol Updates.

The next regular Legislative Session will begin in March 2027, with committee meetings in January and February 2027, and Elder Law is already preparing for the 2027 Session.

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 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 bi-weekly 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**, 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 in the State Capitol.*



Practice Management

by Audrey Ehrhardt

Why good people leave, and how to fix it

(Practical hiring and retention tips for elder law attorneys)

Few challenges feel as persistent, or as personal, as hiring and retaining good career employees. Firm owners invest time, energy, and hope into bringing someone new onto their legal team, only to find themselves back in the same position months later: understaffed, overwhelmed, and wondering what went wrong.

The instinctive conclusion? Good help is simply hard to find. In elder law practices across the country, however, the real issue is rarely a lack of capable or committed people. More often, good people leave because the law firm's practice area systems were never designed to support the realities of elder law work. To understand why this disconnect exists, we need to look beyond resumes and into the structure of the practice itself.

First, elder law is a different area of law. It is demanding in ways that are not always visible from the outside and may not be initially relatable to a new hire. Your matters involve vulnerable clients, high emotional stakes for family members, long timelines filled with uncertainty, and complex administrative processes. Your team members often serve as the first point of contact for potential new clients who are navigating fear, grief, and uncertainty. This emotional labor, layered on top of technical casework and case software, requires thoughtful, present support.

Second, law firms are busy ecosystems. Unfortunately, when elder law firms rely on informal training, undocumented workflows, or a "we'll figure it out as we go" approach, the burden of that complexity falls on the people least equipped to carry it alone. Even historic employees struggle when expectations are unclear, systems are inconsistent, and success depends on reading minds rather than following processes.

Over time, capable legal team members don't fail, they burn out. And the same often holds true for the attorney as well.

One of the most common contributors to turnover in elder law firms is role ambiguity. While job descriptions may exist on paper, the daily responsibilities shift constantly based on urgency rather than intention. Your trained team members are asked to fill gaps wherever they appear, often without the authority, tools, or training to do so confidently.

When this happens, it creates a vicious cycle where attorneys remain deeply involved in day-to-day problem-solving of every crisis that comes through the door; planned daily work is not completed and the attorney gets behind, again. Meanwhile, legal team members feel simultaneously overwhelmed and underutilized and confused. The performance issues that arise are not because people are incapable, but because the structure does not allow them to succeed.

There is a silver lining, however, in all the chaos, and it lies in a space where attorneys outshine almost every other career path: problem solving. The path forward for your firm, your team, and you are held within your brain. You know how you want your elder law firm to run, and now the goal must be to take that essential library of wisdom and turn it into the lifeblood of your practice.

Your career employee retention will improve dramatically when your elder law firm defines roles realistically, documents legal service workflows clearly, and builds intentional systems that support consistent decision-making. These operational structures reduce friction, build confidence, and protect both staff and firm owners from unnecessary stress, not to mention they improve the client experience.

Unfortunately, many elder law firms unconsciously hire for heroics. They look for individuals who can "handle anything," "figure it out," "multitask," or "wear many hats." While adaptability is valuable, relying on heroics as a staffing strategy is unsustainable.

Instead, sustainable hiring begins at home. It begins with honesty about capacity. What does the firm truly need right now? Where are the pressure points? Which responsibilities require legal judgment, and which can be systematized or delegated? What can you release so you don't have an early heart attack?

When your hiring is anchored by a systematic plan based on the organizational chart you need rather than desperation and "throwing it at the wall to see if it sticks," new team members are more likely to integrate successfully. They

understand how their work fits into the larger picture and are less likely to feel isolated or overwhelmed. They are more likely to stay for the long term when you show them their three-year plan and not only their three-month plan.

Third, in elder law practices, onboarding is not simply a training phase, it is a form of risk management. When you take the time for proper onboarding, you protect your clients, support your legal team, and preserve your attorney's time and focus. Is training a new hire time consuming? Yes. Is it frustrating at times when you are balancing the realities of work? Yes. Is it worth it to create a career employee who takes off 30 hours a week from your workload, if not the mental load you carry? Yes.

Elder law firms that invest in onboarding often discover that retention improves not because people are trying harder but because the environment finally supports their success. An effective onboarding plan includes documented workflows, realistic timelines, access to the right tools, and regular feedback loops over at least a 90-day window, if not longer. It allows new hires to build confidence gradually rather than being thrown into complexity unprepared.

Ultimately, hiring and retention in elder law firms are not separate challenges; they are reflections of the same underlying question: does the firm have the practice area systems that care for the people who care for its clients? After all, you want your firm to become a place where people can build careers, not just survive jobs.

For elder law attorneys, fixing hiring and retention issues is rarely about finding better people. It is about building a law practice that allows good people to do their best work without burning out, including you. This work takes intention, it takes you, but the payoff is significant: stability, continuity, and a team that grows alongside the firm instead of cycling through it.

***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

How to amend a death certificate

The tale: Over the past two months, several clients have come in complaining about mistakes in their deceased loved one's death certificate. They want to know if you can help them correct it.

The tip: As attorneys, we write a great many documents. We are acutely aware that mistakes happen. Typographical errors, fat fingers, distractions while writing, being rushed. All of these things can lead to inadvertent mistakes. When we make a mistake, it is fairly simple to correct. We write an amendment, prepare a new document, or file a corrected deed. However, a public record document calls for a more formal process.

Chapter 382 of the Florida Statutes governs vital statistics and directs the establishment of an Office of Vital Statistics within the Florida Department of Health for the "uniform and efficient registration, compilation, storage, and preservation of all vital records in the state." The department gathers and examines the information received from physicians, informants, funeral directors, and other persons having knowledge of the facts to compile the information necessary to complete the death certificate. Information on the death certificate includes the social security number, aliases or "also known as" names, place of death, date of death, or the date when the body was found. The certificate also lists the parents' names.

All of this information is gathered from family members, close friends or even acquaintances, and health care providers. Consider how accurately you would be able to provide this information about your cousin's spouse. Do you know their mother's maiden name? You can see how easily mistakes can be made. The question is: How do we fix it?

The Office of Vital Statistics offers a process for correcting mistakes on its website. How involved the process is, and how long it will take, depends on the type of error. Instructions for correcting a death certificate can be found on Form DH670.

Some corrections simply need an affidavit of amendment to be filed. Demographic information such as the county, city, town, or location of death, misspelling of parents' names, or transposition of given names including a misspelling of the decedent's name can all be corrected using Form DH433 Affidavit without further documentation. If any of the above personal information is being corrected and the date of death also needs correction, this form can be used. If only the date of death needs to be corrected, it can be done on Form DH434A (addressed below). Be aware that other than correcting a misspelling or an omission, the department cannot change the name of the surviving spouse without a court order.

Further documentary evidence is required for more substantive changes such as the deceased and their parents' names (other than misspelling), date of birth, and citizenship changes from alien to U.S. citizen. A birth record is the first line of defense, but two documents supporting the correction can be used. Items such as school records, census records (found at the Bureau of the Census for a substantial fee), social security record, passport, military record, driver license, employment records, voting records, medical treatment, insurance, and others are acceptable.

Corrections to the cause of death as well as the date or place of death must be made on an Affidavit of Medical Amendment to Florida Certificate of Death, Form DH434A. This form must be signed by the attending physician or medical examiner, who must provide an explanation for the basis of the amendment.

Whether you file a Form DH433 Affidavit of Amendment to a Florida Certificate of Death or a Form DH434A Affidavit of Medical Amendment to Florida Certificate of Death, you must still file Form DH524 Application for Amendment to Florida Death or Fetal Death Certificate and pay the required fee to receive a copy of the document. Furthermore, if you want a copy of the amended certificate to include the cause of death, you must meet the relationship requirements found in the instructions.

Once corrected, obtaining the certified copy of the corrected death certificate should take only two to three weeks and rush processing is available for a fee. However, the actual correcting of the death certificate, especially a correction in the cause of death, can take six to eight weeks.

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Tax Tips

by Michael A. Lampert

Taxation of litigation

Introduction

Litigation and the related recoveries often create tax consequences that surprise clients and, at times, practitioners. The intuitive assumption—"damages make me whole, so they shouldn't be taxed"—is frequently wrong. The federal income tax treatment of litigation proceeds turns on a mix of statutory rules, judicial doctrines, and administrative interpretations, with outcomes varying dramatically based on the nature of the claim, the characterization of damages, the timing of recovery, and the handling of attorney's fees.

This article provides an overview and discussion of how litigation and the related recoveries are taxed under U.S. federal income tax law.[1] It focuses primarily on plaintiffs, though defense-side considerations are addressed where relevant. The goal is to provide a framework that allows practitioners to analyze almost any litigation recovery and anticipate tax consequences before settlement or judgment and even provide tips on conducting the litigation.

The general rule: Gross income and litigation recoveries

Section 61 of the Internal Revenue Code (IRC) defines gross income broadly as "all income from whatever source derived." Litigation proceeds are presumptively included in gross income unless a specific statutory exclusion applies.

Courts have consistently held that the form of the recovery—settlement vs. judgment, lump sum vs. periodic payments—is not determinative. Instead, the tax treatment depends on what the recovery is intended to replace. This inquiry is formalized through the "origin of the claim" doctrine.

Practice tip: It is not necessary to file suit or to have a court-ordered judgment to obtain a specific tax result. Settlements, with or without litigation, can obtain the same tax result.

Practice tip: Many attorneys, particularly litigation attorneys, will say to their clients "check with your accountant as to the tax results." First, what about tax attorneys?! Second, how the demand is made, litigation is handled, and settlement is structured all may matter in determining how the recovery is taxed.

Origin of the claim doctrine

Core principle

Under the origin of the claim doctrine, the tax treatment of litigation proceeds depends on the nature and character of the underlying claim that gave rise to the recovery, rather than the consequences of the recovery itself.

In other words, one asks: In lieu of what were the damages paid?

Common applications

- Lost wages or profits: Generally taxable as ordinary income
- Damage to capital assets: Often treated as a return of capital up to basis, with any excess taxed as gain
- Personal physical injuries: Potentially excludable under IRC Section 104(a)(2)
- Punitive damages: Generally taxable regardless of the underlying claim

The origin-of-the-claim analysis applies equally to settlements and judgments. Settlement agreements that carefully allocate damages can be highly influential—but not controlling—if the allocation is consistent with the economic substance of the claims.

Section 104(a)(2): Personal physical injury exclusion

Statutory framework

Section 104(a)(2) excludes from gross income damages received "on account of personal physical injuries or physical sickness." Wrongful death falls under this exclusion. This is the most significant exclusion applicable to litigation recoveries, but it is also narrowly construed.

Physical injury requirement

Following statutory amendments, emotional distress alone does not qualify as a physical injury. Emotional distress damages are taxable, except to the extent they reimburse actual medical expenses attributable to emotional distress.

Physical manifestations of emotional distress—such as headaches or insomnia—are generally insufficient unless tied to a demonstrable physical injury or sickness.

Scope of the exclusion

When the exclusion applies, it generally covers:

- Compensatory damages for physical injuries or sickness

- Pain and suffering attributable to physical injury
- Lost wages attributable to time missed due to physical injury

However, the exclusion does not apply to:

- Punitive damages
- Pre- or post-judgment interest

Most health insurance benefits fall under this exclusion.

Note: This was a significant law change from when I first started practicing. Mental distress without some touching (a physical injury or illness) is not enough to avoid income taxation of the recovery.

Employment and employment-related claims

Wage replacement damages

Recoveries for back pay, front pay, severance, or other wage-like damages are taxable as ordinary income and typically subject to employment taxes. These amounts are usually reported on Form W-2.

Note: There may be standard employment withholding on any recovery, which should also be reflected on the W-2 issued to the injured worker.

Emotional distress and discrimination claims

Damages for emotional distress arising from employment discrimination are taxable unless tied to physical injury. Medical expense reimbursement may be excluded to the extent not previously deducted.

Whistleblower and retaliation claims

Certain whistleblower recoveries may qualify for favorable treatment regarding attorney's fees (discussed below), but the underlying damages are generally taxable.

Commercial, business, and contract litigation

Lost profits

Damages representing lost profits are generally taxable as ordinary income, regardless of whether the plaintiff is an individual or a business entity.

Damage to business assets or goodwill

Recoveries for damage to or destruction of business assets are generally treated as a return of capital up to the taxpayer's basis in the asset. Any excess is generally taxable as gain, often capital gain depending on the asset.

Debt-related litigation

Recoveries, or more accurately, settlements involving cancellation of debt, guarantees, or indemnification can implicate cancellation-of-debt income rules, insolvency exclusions, and basis adjustments, requiring careful coordination with other Internal Revenue Code provisions.

Practice tip: While bankruptcy is something often best avoided, in some cases it can lead to a more favorable income tax result.

Punitive damages and interest

Punitive damages

Punitive damages are almost always taxable as ordinary income, even when awarded in connection with physical injury claims. The policy rationale is that punitive damages are intended to punish the defendant rather than compensate the plaintiff.

Interest on judgments

Pre-judgment and post-judgment interest is taxable as ordinary income and must be separately included in gross income.

Attorney's fees and the banks rule

Inclusion of gross recovery

As a general rule, a plaintiff must include the entire amount of a litigation recovery in gross income, even if a portion is paid directly to the attorney under a contingent fee arrangement.

This rule applies because the recovery is treated as income to the plaintiff first, followed by payment of legal fees. In *Commissioner v. Banks*, 543 U.S. 426 (2005), the U.S. Supreme Court held that when a litigation recovery constitutes income, the litigant's income includes the portion of the recovery paid to the attorney as a contingent fee. (Note: The deductibility of the attorney's fees in that specific case at issue was changed in later law; however, the concept still applies.)

Deductibility of attorney's fees

The deductibility of attorney's fees depends on the nature of the claim:

- Above-the-line deductions: Certain employment, civil rights, and whistleblower claims allow an above-the-line deduction for attorney's fees, preventing double taxation.
- Below-the-line deductions: Many other claims result in miscellaneous itemized deductions, which may be limited or disallowed entirely.

Practice tip: This is why sometimes a client may say that they lost money in the litigation recovery. While they might not actually have lost money, assuming a 35% income tax bracket and 40% attorney's fee, if the client is subject to income tax on the full recovery (say $1 million), the attorney's fees are 40% ($400,000). In this example, the income tax on $1 million is $350,000. Therefore, $1 million less $350,000 for income tax and less $400,000 in legal fees leaves $250,000 to the client. There may also be state-level tax, out-of-pocket costs, etc. Even the alternative minimum tax and the impact on Medicare premiums may further erode the net recovery to the recipient.

Practical consequences

In some cases, plaintiffs may owe tax on income they never economically received, creating severe cash-flow problems. This reality should be addressed

continued, next page

during settlement negotiations whenever possible.

Alternative minimum tax (AMT) considerations

AMT overview as applied to litigation recoveries

Although the corporate alternative minimum tax was repealed for most corporations for years beginning after 2017, individual taxpayers remain potentially subject to the individual AMT under Sections 55–59 of the Internal Revenue Code. Litigation recoveries can unexpectedly trigger AMT liability, particularly because certain deductions allowed for regular tax purposes are disallowed or limited for AMT purposes. *See* IRC §§ 55–59.

Attorney's fees and AMT exposure

Historically, one of the most severe alternate minimum tax (AMT) traps for plaintiffs arose where litigation recoveries were included in gross income under *Commissioner v. Banks* (see above), but the related attorney's fees were deductible only as miscellaneous itemized deductions. Miscellaneous itemized deductions are not allowed at all for AMT purposes. *See* IRC § 56(b)(1)(A)(i).

As a result, plaintiffs in certain types of cases (particularly non-employment, non-civil-rights claims) could be subject to AMT on the gross recovery, including the portion paid directly to counsel, even where regular tax deductions were otherwise available.

While the Tax Cuts and Jobs Act eliminated or restricted many miscellaneous itemized deductions for regular tax purposes for 2018–2025 under IRC § 67(g), the AMT disallowance rule in § 56(b) remains relevant for years in which such deductions are otherwise allowable, and for historical analysis and amended returns.

AMT-sensitive types of claims

AMT exposure has been most acute in:

- Commercial litigation recoveries
- Defamation or non-physical personal injury claims
- Certain shareholder or partnership disputes
- Claims that qualify for an above-the-line deduction for attorney's fees under IRC § 62(a)(20) (discrimination, etc.) or (21) (whistleblowers), which generally avoid this AMT distortion because above-the-line deductions are allowed in computing AMT

Planning implications

Where AMT exposure is possible, tax consequences should be modeled before settlement. In some cases, structuring payments across tax years or qualifying claims for § 62 treatment can materially reduce AMT liability.

Practice tip: Why did I spend so much time on the alternate minimum tax when discussing attorney's fees? Because it is a trap. When discussing *net* after-tax settlements to clients, be sure to see if the AMT will impact the net amount.

Timing of income recognition

Cash vs. accrual taxpayers

Most individual plaintiffs are cash-method taxpayers and recognize income when funds are actually or constructively received.

Accrual-method taxpayers may recognize income earlier, depending on when the right to receive payment becomes fixed and determinable.

Practice tip: Some clients assume that because they did not cash the check, open the mail, or pick up the check from their P.O. box that the funds were not received. It is constructively received. If, instead, the client structured the settlement to receive funds in a later tax year, the funds are not constructively received until available in that later tax year.

Structured settlements

Properly structured settlements can defer income recognition, particularly in qualifying physical injury cases. However, improper structuring can forfeit tax benefits.

Reporting and information returns

Forms 1099 and W-2

Defendants and insurers frequently issue Forms 1099-MISC or 1099-NEC reporting the gross amount of the settlement. Employment-related damages may be reported on Form W-2.

Practice tip: Sometimes how the recovery is reported can be negotiated.

Mismatches and disputes

Discrepancies between tax reporting forms and the taxpayer's position are a common audit trigger. Settlement agreements should anticipate and address reporting treatment. For example, the defendant(s) might agree to pay, provided it is to compensate the plaintiff for lost wages, not wanting to admit that a manager physically assaulted the employee worker. This treatment would be taxable to the plaintiff and generally deductible to the paying defendant. Yet, if the recovery was for the physical injury, it is generally not taxable to the plaintiff.

Natural person vs. entity plaintiffs: Key tax differences

The tax treatment of litigation recoveries can differ substantially depending on whether the claimant is a natural person or a taxable entity (such as a corporation, partnership, or disregarded entity).

Individuals (natural persons)

For individuals:

- Recoveries are generally taxed at ordinary income or capital gain rates, depending on the origin of the claim.

- Section 104(a)(2) (the physical injury provision discussed above) applies only to individuals and is most relevant in personal injury cases.
- Individuals may face AMT exposure, particularly where attorney's fees are not deductible above the line.
- Employment-related recoveries may be subject to payroll taxes and withholding.

Corporations

Corporations:

Are generally taxed at a flat federal rate under IRC § 11.

- Are not eligible for exclusions under § 104(a)(2) based on personal injuries, as corporations cannot suffer personal physical injuries or sickness.
- Typically deduct legal fees as ordinary and necessary business expenses under IRC § 162, reducing the impact of the U.S. Supreme Court *Banks* rule.
- Are generally not subject to the individual AMT, though specific minimum tax regimes may apply in limited circumstances.

Partnerships and pass-through entities

For partnerships and S corporations:

- The entity itself is generally not taxed; instead, income flows through to owners under IRC §§ 701–704 (partnerships) or §§ 1366–1367 (S corporations).
- The character of the income from litigation (ordinary vs. capital) generally passes through to owners.
- Attorney's fees are usually deducted at the entity level, reducing the distributive share of income to the entity owners.
- Owners may still face AMT issues depending on the nature of deductions passed through.

Insolvency and bankruptcy considerations

Where the claimant entity or individual is insolvent, recoveries may interact with cancellation-of-debt income rules under IRC § 108, basis adjustments, and bankruptcy exclusions. These rules must be coordinated carefully with the taxation of the recovery itself.

State and local tax considerations

State and local income tax treatment often follows federal principles but may differ in important ways. Practitioners should confirm whether exclusions recognized at the federal level are honored under applicable state, and even local, law.

Estate administration

Much estate litigation involves attempts to obtain what would otherwise be a bequest that would be subject to estate tax if the taxable estate is large enough. Often the estate's attorney's fees are a deductible estate administration expense on Form 706 (estate tax return) or on the estate's income tax return. However, sometimes the parties get creative and try to claim the payment to the "beneficiary" as a payment to a creditor rather than to a beneficiary. They then attempt to take a deduction on the estate tax return. These cases get close scrutiny. Of course, if it is simply fighting for a "proper" beneficiary distribution that would otherwise be a non-income taxable gift from the decedent, the receipt is generally not income taxable.

Planning considerations and best practices

- Analyze tax consequences before finalizing settlement terms.
- Allocate damages explicitly in settlement agreements when supportable.
- Consider structured settlements where appropriate.
- Address attorney's fees explicitly and explore above-the-line deduction eligibility.
- Coordinate tax planning with insolvency, bankruptcy, or basis issues when relevant.

In *Estate of Finnegan v. Comm.*, T.C. Memo. 2024-42 (April 2024), the plaintiffs sued for violations of their civil rights following their arrest for medical negligence and the removal of their children from the home. The plaintiff maintained he had severe PTSD caused by the defendant's actions. After winning their case, they excluded the settlement from their tax returns. The U.S. Tax Court determined that emotional distress typically does not qualify for exclusion and that there must be a direct causal link between the legal action and physical injury or illness. Additionally, it noted that the original lawsuit did not seek damages for PTSD, only compensation for violations of the plaintiff's constitutional rights and the emotional pain caused therefrom.

Practice tip: In settlement negotiations, look at the tax impact on both the plaintiff and the defendant. While it might not seem relevant to an estate planning/elder law practice, one case from years ago is instructive. A manufacturing business was harming an adjacent property owner. The original plan was for the manufacturer defendant to buy the adjacent property from the plaintiff property owner. This would result in capital gain for the recipient (selling) property owner. It would be a non-deductible capitalized item (the purchase of real estate) to the manufacturer defendant. Instead, it was structured so that the manufacturer paid damages each year—essentially an annual easement. The business was able to deduct the payments. The property owner treated the payments as a return of capital/reduction in basis. At the property owner's death, they would receive a basis step-up to fair market value.

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Settlement tax checklist

The following checklist is designed for pre-settlement and settlement-drafting review to identify and mitigate adverse tax consequences in litigation recoveries.

Claim characterization

- ✓ Identify each asserted claim and its origin (wages, profits, capital, physical injury, emotional distress, punitive).
- ✓ Determine whether any portion qualifies for IRC § 104(a)(2) exclusion (personal physical injury or sickness).
- ✓ Segregate punitive damages and interest (always taxable).

Plaintiff status

- ✓ Is the plaintiff a natural person, corporation, partnership, trust, or estate?
- ✓ If an individual, evaluate AMT exposure under IRC §§ 55–59.
- ✓ If an entity, confirm deductibility of legal fees under IRC § 162.

Attorney's fees

- ✓ Determine whether attorney's fees are includible under *Commissioner v. Banks*.
- ✓ Evaluate eligibility for above-the-line deductions under IRC § 62(a)(20) or (21).
- ✓ Model tax on gross recovery vs. net recovery.

Allocation and documentation

- ✓ Allocate settlement proceeds among claims in a manner consistent with facts and pleadings.
- ✓ Ensure allocations are economically supportable and contemporaneously documented.
- ✓ Address tax reporting obligations (Forms 1099-MISC, 1099-NEC, W-2).

Timing and structure

- ✓ Determine proper year of income inclusion under IRC § 451.
- ✓ Consider structured settlements where permitted (*see* IRC § 130).
- ✓ Coordinate with insolvency or bankruptcy issues under IRC § 108, if applicable.

State and ancillary issues

- ✓ Confirm state income tax conformity.
- ✓ Assess impact on deductions, credits, and carryforwards.
- ✓ Coordinate with estate, trust, or probate planning if plaintiff is deceased or incapacitated.

Conclusion

The taxation of litigation recoveries is governed by broad inclusion principles, narrow exclusions, and judicial doctrines that often produce counterintuitive results. Failure to analyze tax consequences before settlement can expose clients—and their advisors—to unnecessary tax liability, AMT exposure, fiduciary risk, and post-settlement disputes. Practitioners who integrate tax analysis into litigation strategy and settlement drafting materially improve outcomes and reduce downstream risk.

Note: ChatGPT was used in the preparation of this article. All citations have been checked.

***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.*

Endnote

[1] All statutory citations are to the Internal Revenue Code unless otherwise noted.



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Case Law

by Tazara M. C. Fields

Thank you, Beth, and welcome, Tazara!

Beth Maykut has faithfully written the Case Law Update for many years, and the time has come for her to pass the torch to a new writer. Thank you, Beth, and best wishes as you take on new responsibilities. We welcome Tazara M. C. Fields as our new Case Law Update author and look forward to the insights she will share with us.

Summary of Selected Case Law

A joint spousal bank account in Florida can be held as a tenancy by the entireties and is exempt from garnishment by a creditor of only one spouse even if the account was originally established by one spouse and later converted to a joint account with the proper designation.

Loumpos v. Bank One, 2025 Fla. LEXIS 2129 (2025)

Issue: Can a bank account that was originally opened by one spouse and later changed to include the other spouse be held as tenancy by the entireties and be exempt from garnishment by a creditor of only one spouse?

Answer: Yes. The Florida Supreme Court overturned *Loumpos v. Bank One*, 329 So.3d 841 Fla. 2d DCA 2024) holding that section 655.79, Florida Statutes, authorizes a joint spousal bank account to be held as tenancy by the entireties even if the account was originally established by one spouse.

The wife had a default judgment entered against her in 2003. She later married her husband. In February 2017, the husband opened a bank account only in his name. A few months later, the wife and husband executed new signature cards stating the account belonged to both spouses as "Ten by Enty" and checked the "Joint Tenants by Entirety" box, but only the husband's wages were deposited into the account. The judgment against the wife was assigned to Dove Investment Corp., who sought to garnish the joint account.

The trial court and the Second District Court of Appeal held that the account could not be a tenancy by the entireties because the unities of time and title were not present. The Second District certified conflict with the Fourth District Court of Appeal's decision in *Versace v. Uruven, LLC*, 348 So.3d 610 (Fla. 4 DCA 2022).

The Florida Supreme Court held that, under the 2008 amendment to section 655.79, Florida Statutes, a presumption is established in favor of tenancy by the entireties for any deposit or account made in the name of two persons who are husband and wife, unless otherwise specified in writing. This presumption is not defeated by the absence of the unities of time and title. The court determined that the statute's language contemplates more than just the initial account opening and applies when an individual account is later converted to a joint spousal account.

The court also found that *Beal Bank, SSB v. Almand & Associates,* 780 So.2d 45 (Fla. 2001), did not control the issue as it was limited to accounts opened and maintained by both spouses and did not address accounts originally opened by one spouse. In addition, the 2008 amendment to section 655.79(1), Florida Statutes, was interpreted to eliminate the common law requirements of the unities of time and title for tenancy by the entireties in bank accounts. The statutory language was found to clearly establish a presumption in favor of tenancy by the entireties for joint spousal accounts, regardless of whether the account was originally opened by one spouse.

Practice tip: Don't feel obligated to close an established account and open a new one to achieve tenancy by the entireties status. Instead, you can simply update the signature cards and explicitly check the "Tenants by the Entirety" box.

Mother of an adult with a developmental disability was disqualified from acting as a guardian advocate due to her felony conviction.

Lafrance v. Guardian Advocacy of Jayden Emile, 401 So.3d 379 (Fla. 4DCA 2025)

Issue: Is a person with a felony conviction disqualified from being appointed as guardian advocate for an adult with a developmental disability under the plain language of section 393.12, Florida Statutes?

Answer: Yes.

The mother filed a petition to be appointed guardian advocate for her adult son with a developmental disability. She did not disclose a felony conviction in the original petition or application. She eventually filed an amended application disclosing the felony to the court. The mother argued that her felony conviction did not disqualify her from being a guardian advocate because, unlike the guardianship statute, the guardian advocacy statute did not specifically address criminal history qualifications. The mother also argued that the trial court had discretion to appoint her as guardian advocate.

The trial court denied the mother's amended application for appointment as guardian advocate and found that under the plain language of section 363.12, Florida Statutes, a guardian advocate must be qualified to act as a guardian and section 744.309(3), Florida Statutes, specifically disqualifies individuals with felony convictions from acting as guardians. The trial court also found that they did not have the discretion to appoint the mother as guardian advocate citing *Beckford v. Beckford*, 368 So.3d 1061 (Fla. 2d DCA 2023).

The Fourth District agreed with the trial court when it determined the appellant was disqualified based on her prior felony conviction, even though section 393.12(1), Florida Statutes, provides no requirements as to who can serve. The Fourth District explained that section 363.12 references the guardianship laws in Chapter 744 multiple times and specifically states: "A guardian advocate for a person with a developmental disability shall be a person or a corporation *qualified to act as guardian*, with the same powers, duties, and responsibilities under chapter 744 or those defined by court order under this section." F.S. 393.12(10). Thus, pursuant to the plain language of the statute, a guardian advocate must be qualified to act as a guardian. Section 744.309 specifically states that felons are disqualified, leaving the court no discretion. The court is to weigh the felony conviction against other factors and determine whether the court, in its discretion, deems the party disqualified.

Practice tip: Be sure that your client discloses all criminal arrests, convictions, and pleas before you file the petition to have them appointed guardian advocate or guardian.

The trial court erred in granting summary judgment for the trustee on the beneficiary's accounting claim because the trustee's "document dump" and unsworn ledgers failed to meet the statutory accounting requirements under the Florida Trust Code and she failed to meet her burden of proving statutory compliance.

Revah v. Revah, 2025 Fla. App. LEXIS 8557 (Fla. 4DCA 2025)

Issue: Does a trustee breach their fiduciary duty by failing to provide statutorily compliant trust accountings?

Answer: Yes. If a trustee does not provide qualified beneficiaries accountings at least annually and on termination of the trust or change of trustee, and in compliance with the statutory requirements in section 736.08135, Florida Statutes, the trustee breaches their fiduciary duty.

This case involves a lengthy and complicated family situation. It culminated in a 90-year-old mother who sued her daughter for failing to provide accountings and for breach of fiduciary duty while serving as a trustee for the trust for which the mother was a qualified beneficiary.

The mother, who was elderly, illiterate, and not proficient in English, claimed she was unaware of the property titling transactions and was kept uninformed about trust issues. In 2022, she requested an accounting from her daughter, the trustee. Her daughter refused and the mother sued. In the midst of litigation, shortly before a summary judgment hearing, the daughter filed two ledgers, each of which began in 2014 or 2015 and showed deposits and withdrawals. She also dumped thousands of pages of third-party financial records on her mother and claimed she had complied with her duty to provide an accounting.

The mother argued that the daughter was required to give annual accountings and they had to be "reasonably understandable" under section 736.08135, Florida Statutes. The document dump and ledgers failed to comply with the statute. The daughter argued that the mother was barred from complaining because the time for the accountings had passed. The trial court agreed with the daughter, and the mother appealed.

The Fourth District Court of Appeal overturned the trial court, holding that a trustee of an irrevocable trust had a statutory duty to provide a trust accounting to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee, pursuant to section 736.0813(1)(d), Florida Statutes, and that those accountings had to comply with the requirements of the statute. In addition, the court held that the trustee's failure to prepare an accounting is, in itself, a breach of fiduciary duty and the burden is on fiduciaries to adequately account for their use of a beneficiary's funds.

Practice tip: If you represent a trustee, be sure they are providing all qualified beneficiaries an annual account in compliance with section 736.08135, Florida Statutes.

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