



EXECUTIVE COUNCIL MEETING
AGENDA

**The Ritz Carlton
Naples, FL**

**Saturday, December 9, 2017
8:00 a.m.**

BRING THIS AGENDA TO THE MEETING

Real Property, Probate and Trust Law Section
Executive Council Meeting
The Ritz Carlton
Naples, FL
December 9, 2017

Agenda

Note: Agenda Items May Be Considered on a Random Basis

- I. **Presiding** — *Andrew M. O'Malley, Chair*
- II. **Attendance** — *Lawrence J. Miller, Secretary*
- III. **Minutes of Previous Meeting** — *Lawrence J. Miller, Secretary*
- Motion to approve the minutes of October meeting of Executive Council held at The Fairmont Copley Plaza, Boston **pp. 10 - 13**
- IV. **Chair's Report** — *Andrew M. O'Malley, Chair*
1. Recognition of Guests
 2. Recognition of General Sponsors and Friends of the Section **p. 31 - 33**
 3. Milestones
 4. Constitution Revision Commission – Michael Gelfand, Liaison
 5. Upcoming Executive Council Meetings **p. 34**
 6. Action Item – consideration of RPPTL Section resolution in memory of Past Chair, Louie N. Adcock, Jr. (presented by Secretary Lawrence J. Miller) **pp. 35 - 37**
- V. **Liaison with Board of Governors Report** — *John Stewart*
- VI. **Chair-Elect's Report** — *Debra L. Boje, Chair-Elect* **p. 38**
- VII. **Treasurer's Report** — *Robert S. Swaine*
- Statement of Current Financial Conditions. **p. 39**
- VIII. **Director of At-Large Members Report** — *S. Katherine Frazier, Director*
- IX. **CLE Seminar Coordination Report** — *Steven H. Mezer (Real Property) and Shane Kelley (Probate & Trust), Co-Chairs* **p. 40**

X. General Standing Division — *Debra L. Boje , General Standing Division Director and Chair-Elect*

Action Item:

1. **Budget Committee** - *Robert S. Swaine – Chair*

Motion to approve the proposed Real Property, Probate and Trust Law Section Budget for fiscal year 2018 – 2019. **pp. 41 - 54**

2. **Homestead Issues Study Committee** – *Jeffrey Gothe, Chair*

Motion to (A) support a proposed amendment to Chapter 732, Florida Statutes, which would provide much needed clarification and guidance regarding the waiver of constitutional homestead protections for surviving spouses; providing language which, when used within a deed, would create a presumption that the spouse signing the deed waived the constitutional restrictions on the devise of homestead; and supplementing existing provisions in Section 732.702, Florida Statutes, which provide for the waiver of spousal rights by written agreement; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position. **pp. 55 - 66**

Information Items:

1. **Ad Hoc Leadership Academy** – *Kris Fernandez and Brian Sparks, Co-Chairs*

Report on William Reese Smith Jr. Leadership Academy application process and qualifications. Applications available December 1, 2017. **pp. 67 - 78**

2. **Amicus Coordination** – *Kenneth Bell, Gerald Cope, Robert Goldman and John Little, Co-Chairs*

Report on Court's ruling in *Rigby v. Bank of New York Mellon* and other amicus developments. **pp. 79 – 85**

3. **Legislation** – *Cary Wright and Sarah Butters, Co-Chairs*

Report on upcoming 2018 Legislative Session.

4. **Liaison with Clerks of Court** – *Laird Lile, Liaison*

Update on Clerks' activities.

5. **Model and Uniform Acts** – *Bruce Stone and Richard Taylor, Co-Chairs*

Update on discussions with the Business Law Section regarding concerns relating to the Uniform Voidable Transfers Act.

6. **Professionalism & Ethics** – *Gwynne A. Young, Chair*

Update on committee's study of the role of an inventory attorney in dealing with will vaults of deceased and disabled attorneys.

XI. Real Property Law Division Report — *Robert S. Freedman, Division Director*

Information Item:

1. Report on RPPTL Section Recommendations to the Joint Attorney-Realtor Committee of The Florida Bar

XI. Probate and Trust Law Division Report – *William T. Hennessey, Director*

Action Items:

1. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process-** *Barry F. Spivey, Chair*

Motion to (A) adopt as a Section legislative position support for a proposed amendment to F.S. Chapter 731 to provide that formal notice as provided in the Florida Probate Rules does not confer *in personam* jurisdiction over persons receiving formal notice; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 86 - 91**

2. **Probate Law and Procedure Committee-** *John C. Moran, Chair*

Motion to (A) adopt as a Section legislative position support for proposed legislation defining “tangible personal property” in the Florida Probate Code to make it clear that tangible personal property, includes, but is not limited to, precious metals in any tangible form, such as bullion and coins; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 92 - 99**

Information Items:

1. **Guardianship, Power of Attorney, and Advance Directives Committee-** *Nicklaus J. Curley, Chair*

Motion to (A) adopt as a Section legislative position support for the creation of a new statutory procedure to allow a guardian to access a bank or brokerage account held as tenants by the entirety for a ward's necessary guardianship expenses, including necessary living expenses, when the spouse of the ward does not agree; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 100 - 106**

2. **Guardianship, Power of Attorney, and Advance Directives Committee-** *Nicklaus J. Curley, Chair*

Motion to (A) adopt as a Section legislative position support for amendment to Florida Statutes, including Florida Statutes § 744.3701, to clarify existing law on the standard for the court's ordering the production of confidential documents in guardianship proceedings and the parties who have the right to access confidential documents without court order; (B) find that such legislative position is within the purview of the RPPTL Section; and (c) expend Section funds in support of the proposed legislative position. **pp. 107 - 110**

3. **Guardianship, Power of Attorney, and Advance Directives Committee-**
Nicklaus J. Curley, Chair

Motion to (A) adopt as a Section legislative position support for amendment to the Florida Statutes to allow dismissal of a Petition to Determine Incapacity only when the three examining committee members unanimously find that a person is not incapacitated and the creation of a new statutory procedure to oppose dismissal in such circumstances; (B) find that such legislative position is within the purview of the RPPTL; and (c) expend Section funds in support of the proposed legislative position. **pp. 111 - 126**

4. **Ad Hoc Estate Planning Conflict of Interest Committee-** *William T. Hennessey, Chair*

Report on Florida Supreme Court amendments to Florida Bar Rule 4-1.8, *effective February 1, 2018*, relating to client gifts to lawyers and lawyers serving as fiduciaries in documents which they draft. **pp. 127 - 138**

XIII. Real Property Law Division Reports — Robert S. Freedman, Director

1. **Attorney-Loan Officer Conference** – Robert G. Stern, Chair; Kristopher E. Fernandez and Wilhelmina F. Kightlinger, Co-Vice Chairs
2. **Commercial Real Estate** – Adele Ilene Stone, Chair; E. Burt Bruton, R. James Robbins, Jr. and Martin D. Schwartz, Co-Vice Chairs
3. **Community Association Law Certification Review Course** – Richard D. DeBoest, II and Sandra Krumbein, Co-Chairs
4. **Condominium and Planned Development** – William P. Sklar, Chair; Kenneth S. Direktor and Alexander B. Dobrev, Co-Vice Chairs
5. **Construction Law** – Scott P. Pence, Chair; Reese J. Henderson, Jr. and Neal A. Sivyer, Co-Vice Chairs
6. **Construction Law Certification Review Course** – Melinda S. Gentile and Deborah B. Mastin, Co-Chairs; Elizabeth B. Ferguson and Gregg E. Hutt, Co-Vice Chairs
7. **Construction Law Institute** – Sanjay Kurian, Chair; Diane S. Perera, Jason J. Quintero and Brian R. Rendzio, Co-Vice Chairs.

8. **Development & Land Use Planning** – Vinette D. Godelia and Julia L. Jennison, Co-Chairs; Colleen C. Sachs, Vice Chair
9. **Insurance & Surety** – Scott P. Pence and W. Cary Wright, Co-Chairs; Frederick R. Dudley and Michael G. Meyer, Co-Vice Chairs
10. **Liaisons with FLTA** – Alan K. McCall and Melissa Jay Murphy, Co-Chairs; James C. Russick, Vice Chair
11. **Real Estate Certification Review Course** – Manuel Farach, Chair; Lynwood F. Arnold, Jr., Martin S. Awerbach and Brian W. Hoffman, Co-Vice Chairs
12. **Real Estate Leasing** – Richard D. Eckhard, Chair; Brenda B. Ezell and Christopher A. Sadjera, Co-Vice Chairs
13. **Real Estate Structures and Taxation** – Michael A. Bedke, Chair; Deborah Boyd, Lloyd Granet and Cristin C. Keane, Co-Vice Chairs
14. **Real Property Finance & Lending** – David R. Brittain, Chair; Bridget Friedman, Richard S. McIver and Robert G. Stern, Co-Vice Chairs
15. **Real Property Litigation** – Marty J. Solomon and Susan K. Spurgeon, Co-Chairs; Manuel Farach, and Michael V. Hargett, Co-Vice Chairs
16. **Real Property Problems Study** – Arthur J. Menor, Chair; Mark A. Brown, Stacy O. Kalmanson, Patricia J. Hancock, Robert S. Swaine and Lee A. Weintraub, Co-Vice Chairs
17. **Residential Real Estate and Industry Liaison** – Salome J. Zikakas, Chair; Louis E. “Trey” Goldman, James Marx and Nicole M. Villarroel, Co-Vice Chairs
18. **Title Insurance and Title Insurance Liaison** – Raul P. Ballaga and Brian W. Hoffman, Co-Chairs; Alan B. Fields, Cynthia A. Riddell and Melissa N. VanSickle, Co-Vice Chairs
19. **Title Issues and Standards** – Christopher W. Smart, Chair; Robert M. Graham, Brian W. Hoffman, Melissa Sloan Scaletta and Karla J. Staker, Co-Vice Chairs

XIV. [Probate and Trust Law Division Committee Reports](#) — *William T. Hennessey, III*
Director

1. **Ad Hoc Guardianship Law Revision Committee** – David Clark Brennan, Chair; Sancha Brennan Whynot, Tattiana Patricia Brenes-Stahl, Nicklaus Joseph Curley and Stacey Beth Rubel, Co-Vice Chairs
2. **Ad Hoc Study Committee on Estate Planning Conflict of Interest** – William Thomas Hennessey III, Chair; Paul Edward Roman, Vice Chair
3. **Ad Hoc Study Committee on Due Process, Jurisdiction & Service of Process** – Barry F. Spivey, Chair; Sean William Kelley and Christopher Quinn Wintter, Co-Vice Chairs

4. **Asset Protection** – George Daniel Karibjanian, Chair; Rick Roy Gans and Brian Michael Malec, Co-Vice-Chairs
5. **Attorney/Trust Officer Liaison Conference** – Tattiana Patricia Brenes-Stahl, Chair; Stacey L. Cole, Co-Vice Chair (Corporate Fiduciary), Laura Kristen Sundberg, Patrick Christopher Emans, Tae K. Bronner, and Gail G. Fagan, Co-Vice Chair
6. **Elective Share Review Committee** – Lauren Young Detzel and Charles Ian Nash, Co-Chairs; Jenna Rubin, Vice-Chair
7. **Estate and Trust Tax Planning** – David James Akins, Chair; Tasha K. Pepper-Dickinson and Robert Logan Lancaster, Co-Vice Chairs
8. **Guardianship, Power of Attorney and Advanced Directives** – Nicklaus Joseph Curley, Chair; Brandon D. Bellew and Darby Jones, Co-Vice Chairs
9. **IRA, Insurance and Employee Benefits** – L. Howard Payne and Richard Amari, Co-Chairs; Charles W. Callahan, III and Alfred J. Stashis, Co-Vice Chairs
10. **Liaisons with ACTEC** – Elaine M. Bucher, Michael David Simon, Bruce Michael Stone, and Diana S.C. Zeydel
11. **Liaisons with Elder Law Section** – Charles F. Robinson and Marjorie Ellen Wolasky
12. **Liaisons with Tax Section** – Lauren Young Detzel, Cristin Keane, William Roy Lane, Jr., Brian Curtis Sparks and Donald Robert Tescher
13. **Principal and Income** – Edward F. Koren and Pamela O. Price, Co-Chairs, Joloyon D. Acosta and Keith Braun, Vice Chair
14. **Probate and Trust Litigation** – Jon Scuderi, Chair; John Richard Caskey, Robert Lee McElroy, IV and James Raymond George Co-Vice Chairs
15. **Probate Law and Procedure** – John Christopher Moran, Chair; Amy Beller, Michael Travis Hayes and Matthew Henry Triggs, Co-Vice Chairs
16. **Trust Law** – Angela McClendon Adams, Chair; Tami Foley Conetta, Jack A. Falk and Mary E. Karr, Co-Vice Chairs
17. **Wills, Trusts and Estates Certification Review Course** – Linda S. Griffin, Chair; Jeffrey Goethe, Rachel Lunsford, and Jerome L. Wolf, Co-Vice Chairs

XV. General Standing Committee Reports — *Debra L. Boje, General Standing Division Director and Chair-Elect*

1. **Florida Bar Leadership Academy** – Brian Sparks and Kris Fernandez, Co-Chairs

2. **Amicus Coordination** – Robert W. Goldman, John W. Little, III, Kenneth B. Bell and Gerald B. Cope, Jr., Co-Chairs
3. **Budget** – Robert Swaine, Chair; Linda Griffin, Tae Kelley Bronner, Robert S. Freedman and Pamela O. Price, Co-Vice Chairs
4. **CLE Seminar Coordination** – Steven Mezer and Shane Kelley, Co-Chairs; Thomas Karr, Silvia Rojas, Alex Hamrick, Theo Kypreos, Hardy L. Roberts, III, (General E-CLE) and Paul Roman (Ethics), Yoshimi O. Smith, Co-Vice Chairs
5. **Convention Coordination** – Dresden Brunner, Chair; Sancha Brennan Whynot and Jon Scuderi, Co-Vice Chairs
6. **Fellows** – Benjamin Diamond, Chair; Joshua Rosenberg, John Costello and Jennifer Bloodworth, Co-Vice Chairs
7. **Florida Electronic Filing & Service** – Rohan Kelley, Chair
8. **Homestead Issues Study** – Jeffrey S. Goethe (Probate & Trust) and J. Michael Swaine (Real Property), Co-Chairs; Melissa Murphy and Charles Nash, Co-Vice Chairs
9. **Legislation** – Sarah Butters (Probate & Trust) and Wm. Cary Wright (Real Property), Co-Chairs; Travis Hayes and Robert Lancaster (Probate & Trust), and Alan B. Fields and Art Menor (Real Property), Co-Vice Chairs
10. **Legislative Update (2017)** – Stacy O. Kalmanson, Chair; Brenda Ezell, Travis Hayes, Thomas Karr, Joshua Rosenberg, Kymberlee Curry Smith, Jennifer S. Tobin and Salome Zikakis, Co-Vice Chairs
11. **Legislative Update (2018)** – Stacy O. Kalmanson, Chair; Brenda Ezell, Travis Hayes, Thomas Karr, Joshua Rosenberg, Kymberlee Curry Smith, Jennifer S. Tobin and Salome Zikakis, Co-Vice Chairs
12. **Liaison with:**
 - a. **American Bar Association (ABA)** – Edward F. Koren, Julius J. Zschau, George Meyer and Robert S. Freedman
 - b. **Clerks of Circuit Court** – Laird A. Lile
 - c. **FLEA / FLSSI** – David C. Brennan and Roland “Chip” Waller
 - d. **Florida Bankers Association** – Mark T. Middlebrook
 - e. **Judiciary** – Judge Linda R. Allan, Judge Jaimie R. Goodman, Judge Hugh D. Hayes, Judge Janis B. Keyser, Judge Maria M. Korvick, Judge Norma S. Lindsey, Judge Celeste H. Muir, Judge Robert Pleus, Jr., Judge Morris Silberman, Judge Mark Speiser, Judge Richard J. Suarez, Judge Patricia V. Thomas, and Judge Jessica J. Ticktin
 - f. **Out of State Members** – Michael P. Stafford, John E. Fitzgerald, Jr., and Nicole Kibert Basler
 - g. **TFB Board of Governors** – John Stewart
 - h. **TFB Business Law Section** – Gwynne A. Young and Manuel Farach
 - i. **TFB CLE Committee** – Robert Swaine

- j. **TFB Council of Sections** –Debra L. Boje and Andrew M. O'Malley
 - k. **TFB Pro Bono Committee** – Tasha K. Pepper-Dickinson
 - l. **TFB Tax Law Section** – Cristen Keane and Brian Malec
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- 13. **Long-Range Planning** – Debra L. Boje, Chair
 - 14. **Meetings Planning** – George J. Meyer, Chair
 - 15. **Information Technology** – Neil Barry Shoter, Chair; William A. Parady, Alexander B. Dobrev, Michael Travis Hayes, Hardy Roberts, Jesse Friedman, Keith S. Kromash, Michael Sneeringer, and Erin Christy, Co-Vice Chairs
 - 16. **Membership and Inclusion** –Brenda Ezell and Jason M. Ellison, Co-Chairs, Annabella Barboza, Phillip A. Baumann, Guy S. Emerich, and Kymberlee Curry Smith, Co-Vice Chairs
 - 17. **Model and Uniform Acts** – Bruce M. Stone and Richard W. Taylor, Co-Chairs
 - 18. **Professionalism and Ethics**-- Gwynne A. Young, Chair; Tasha K. Pepper-Dickinson, Alexander B. Dobrev, and Andrew B. Sasso, Vice Chairs
 - 19. **Publications (ActionLine)** – Jeffrey Alan Baskies and Michael A. Bedke, Co-Chairs (Editors in Chief); W. Cary Wright, Shari Ben Moussa, George D. Karibjanian, Sean M. Lebowitz, Paul Roman and Lee Weintraub, Co-Vice Chairs.
 - 20. **Publications (Florida Bar Journal)** – Jeffrey S. Goethe (Probate & Trust) and Douglas G. Christy (Real Property), Co-Chairs; Brian Sparks (Editorial Board – Probate & Trust), Cindy Basham (Editorial Board – Probate & Trust), Michael A. Bedke (Editorial Board – Real Property), Homer Duvall (Editorial Board – Real Property) and Allison Archbold (Editorial Board), Co-Vice Chairs
 - 21. **Sponsor Coordination** – Wilhelmina F. Kightlinger, Chair; Marsha G. Madorsky, Arlene C. Udick, J. Eric Virgil, J. Michael Swaine, Deborah L. Russell, and Jason Quintero, Co-Vice Chairs
 - 22. **Strategic Planning** – Debra L. Boje and Andrew M. O'Malley, Co-Chairs

XVI. Adjourn: Motion to Adjourn.

MINUTES
OF THE
REAL PROPERTY, PROBATE AND TRUST LAW SECTION
Executive Council
Saturday, October 14, 2017
Boston, Massachusetts

I. **Call to Order - Andrew M. O'Malley, Chair**

Mr. O'Malley called to order the out-of-state meeting of the Executive Council of The Florida Bar's Real Property, Probate and Trust Law Section, at 8:05 a.m. on Saturday, October 14, 2017, in The Fairmont Copley Plaza Hotel. He warmly welcomed members and their guests. He thanked the Section's many sponsors for their generous support.

II. **Attendance – Lawrence J. Miller, Secretary**

In Mr. Miller's stead, Ms. Frazier reminded members that the attendance roster was circulating to be initialed by council members in attendance. The roster showing members in attendance is attached as Addendum "A".

III. **Minutes of Previous Meeting - Lawrence J. Miller, Secretary**

Ms. Frazier moved:

To approve the Minutes of the July 29, 2017 meeting of the Executive Council held at The Breakers, Palm Beach, Florida. (See Agenda pages 9-38)

The Motion was unanimously approved.

IV. **Chair's Report - Andrew M. O'Malley, Chair**

1. **Milestones:**

(a) Mr. O'Malley conveyed birthday wishes to Bill Hennessey.

(b) Mr. O'Malley congratulated Bob Goldman on being nominated as Secretary of ACTEC.

(c) Mr. O'Malley stated that it was with sadness that the Executive Council and the Section remembered Louie Adcock. Mr. Adcock was a former Chair of the Section and a mentor to estate planners throughout Florida. He will be sorely missed. There will be a resolution for Mr. Adcock at the Naples Executive Council meeting.

2. **Constitution Revision Commission**

Mr. O'Malley introduced Michael Gelfand as the appointed liaison to the Constitutional Revision Commission. Mr. Gelfand reported on the following two items that the Section had been asked to comment on dealing with the statement of Basic Rights under the Constitution of the State of Florida: (a) whether it is appropriate to delete the authority of the Florida Legislature to restrict ownership of real property by aliens ineligible for citizenship; and (b) the disability protection provision.

3. **Report of Interim Action of the Executive Committee.**

Mr. O'Malley reported that the Executive Committee approved the request by the Florida Supreme Court Guardianship Task Force to reimburse up to \$7500 in travel expense incurred by task force members attending public hearing.

V. **Liaison with Board of Governor's Report - John Stewart**

In Mr. Stewart's absence, Mr. O'Malley introduced Laird Lile who presented the Board of Governors' report. He thanked the Section for its funding of certain Board of Governor requested items. The Board of Governors are considering a parental leave rule. Mr. Lile reported on the positive impact Josh Doyle was having as the new Executive Director of The Florida Bar. Mr. Lile reported that The Florida Bar is working on standardizing its communications.

VI. **Chair-Elect's Report - Debra L. Boje, Chair-Elect.**

Ms. Boje congratulated Mr. O'Malley on the success of the Boston out-of-state meeting. Ms. Boje reported that she was considering moving the 2018 Section convention meeting to the first weekend in June instead of May. Ms. Boje reported on some of the exciting details for the 2018 out-of-state Executive Council meeting in Italy. Ms. Boje recommended that if people want to participate in activities before or after the Executive Council meeting on September 25, 2018, to consider arriving on September 21, 2018 or stay until October 2, 2018. More information will be available as part of the agenda for the Naples Executive Council meeting.

VII. **Treasurer's Report - Robert S. Swaine**

Mr. Swaine reported that the Section fund balance was high at this moment for timing reasons but that the Budget would be presented at the Executive Council meeting in Naples in December, 2017.

VIII. **Director of At-Large Members Report - S. Katherine Frazier, Director**

At Large Member Director Frazier updated the Council on the No Place Like Home project. Ms. Frazier reported that the project was being evaluated to roll out statewide and that the project had received a Legal Services Corporation grant of over \$300,000 and a \$100,000 grant from the City of Sarasota, Florida. The program is

receiving national recognition and there is an educational Hurricane Irma webinar scheduled for October 17, 2017.

- IX. **CLE Seminar Coordination Report** — Steven H. Mezer (*Real Property*) and Shane Kelley (*Probate & Trust*), *Co-Chairs*

No Report was given.

- X. **General Standing Division** — Debra L. Boje, *General Standing Division Director and Chair-Elect*

Information Items:

(a) Amicus Coordination – Kenneth Bell, Gerald Cope, Robert Goldman and John Little, Co-Chairs

Mr. Goldman reported on the activities of the Amicus Coordination Committee. He explained some of the issues involved in the *Rigby v Bank of New York Mellon* amicus filing involving the question of the standing at inception rule and whether it should be overruled or not. Mr. Goldman also reported on the *Smith v Smith* amicus filing which involved a ward that lost the ability to contract but the retained the right to marry. Mr. Goldman reported that he will keep the Executive Council posted on developments.

(b) Legislation Committee - Sarah Butters and Cary Wright, Co-Chairs

Mr. Wright reported on the upcoming 2018 Legislative Session. On the Probate and Trust side, there are a number of initiatives for which the Executive Council has given comments for other sections of The Florida Bar and legislative staff, but none with bill tracking numbers yet. Mr. Wright then gave the update on multiple legislative initiatives on the Real Property side, including bills relating to lis pendens, open permits, unlawful detainer, ejectment, MRTA, lien law revisions, condo glitch bill, documentary stamp tax exemption for interspousal transfers and multi-parcel identifications.

(c) Liaison with Clerks of Court, Laird A. Lile, Liaison

Mr. Lile reported on the Clerks' activities including the Florida Courts Technology Commission standard for delivery of orders and duties associated with electronic filing as a result of case law.

- XI. **Real Property Law Division Reports** - Robert S. Freedman, *Division Director*

No Report was given.

XII. **Probate and Trust Law Division Report** - *William T. Hennessey, Director*

No Report was given.

XIII. **Adjourn.**

Before asking for a Motion to adjourn the Executive Council meeting, Chairman O'Malley then thanked his wife, Dianne, Whitney Kirk and Mary Ann Obos for all of their meeting preparation efforts. Upon Motion duly made, the Chair adjourned the meeting at 8:50 a.m.

Lawrence J. Miller, Secretary

ATTENDANCE ROSTER
REAL PROPERTY PROBATE & TRUST LAW SECTION
EXECUTIVE COUNCIL MEETINGS
2017-2018

Executive Committee	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
O'Malley, Andrew Marvel Chair	√		√	√			
Boje, Debra Lynn Chair-Elect		√	√				
Hennessey, William Thomas III Probate & Trust Law Div. Director		√	√	√			
Freedman, Robert S., Real Property Law Div. Director	√		√				
Frazier, S. Katherine, Director of At-Large Members	√		√	√			
Miller, Lawrence J. Secretary		√	√				
Swaine, Robert S. Treasurer	√		√	√			
Butters, Sarah S., Legislation Co-Chair (P&T)		√	√				
Cary Wright, Wm. Legislation Co-Chair (RP)	√		√	√			
Kelley, Shane, Legislation CLE Seminar Coordination Co-Chair (P&T)		√	√				
Mezer, Steven H., CLE Seminar Coordination Co-Chair (RP)	√		√				
Goodall, Deborah Packer Immediate Past Chair		√	√	√			

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Acosta, Jolyon Delphin		√	√				
Adams, Angela M.		√	√				
Adcock, Jr., Louie N., Past Chair		√					
Akins, David J.		√	√				
Allan, Honorable Linda Ruth		√					

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Altman, Stuart H.		√	√	√			
Amari, Richard		√	√				
Archbold, J. Allison		√	√				
Arnold, Jr., Lynwood F.		√					
Aron Jerry E. Past Chair	√		√				
Awerbach, Martin S.	√		√				
Bald, Kimberly A.		√	√				
Ballaga, Raul P.	√		√				
Barboza, Annabella	√		√				
Basham, Cindy		√					
Baskies, Jeffrey		√	√				
Battle, Carlos A.		√	√	√			
Baumann, Phillip A.		√	√	√			
Beales, III, Walter R. Past Chair	√		√				
Bedke, Michael A.	√						
Behar, Jacobeli J.		√	√				
Belcher, William F. Past Chair		√	√				
Bell, Kenneth B.	√		√				
Bell, Rebecca Coulter		√	√				
Beller, Amy		√	√				
Bellew, Brandon D.		√	√				
Ben Moussa, Shari D.	√						
Bloodworth, Jennifer J.	√		√				
Bonevac, Judy B.		√	√				

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Bowers, Elizabeth Anne		√	√				
Boyd, Deborah	√						
Braun, Keith Brian		√	√				
Brenes-Stahl, Tattiana P.		√	√				
Brennan, David C. Past Chair		√	√				
Brittain, David R.	√		√				
Bronner, Tae K.,		√					
Brown, Mark A.	√		√				
Brown, Shawn	√		√				
Brunner, S. Dresden		√	√				
Bruton, Jr., Ed Burt	√		√				
Bucher, Elaine M.		√	√				
Butler, Jonathan		√	√				
Callahan, Charles III		√	√				
Carlisle, David R.		√					
Caskey, John R.		√					
Christiansen, Patrick T. Past Chair	√		√	√			
Christy, Douglas G. III	√		√				
Christy, Erin Hope	√		√				
Cohen, Howard Allen	√		√	√			
Cole, John P.		√					
Cole, Stacey L.		√					
Conetta, Tami F.		√	√				
Cope, Jr., Gerald B.	√		√	√			

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Cornett, Jane Louise	√		√				
Costello, T. John, Jr.		√					
Curley, Nick		√	√				
DeBoest II, Richard Dearborn			√				
Detzel, Lauren Y.		√	√				
Diamond, Benjamin F.		√	√				
Diamond, Sandra F. Past Chair		√	√				
Direktor, Kenneth Steven	√						
Dobrev, Alex	√		√				
Dollinger, Jeffrey	√						
Dribin, Michael Past Chair		√	√	√			
Dudley, Frederick R.	√						
Duvall, III, Homer	√		√				
Duz, Ashley Nichole		√	√				
Eckhard, Rick	√						
Ellison, Jason M.	√		√	√			
Emans, Patrick C		√	√				
Emerich, Guy S.		√	√				
Ertl, Christene M.	√		√				
Ezell, Brenda B.	√		√				
Fagan, Gail		√	√	√			
Falk, Jr., Jack A.		√	√				

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Farach, Manuel	√		√				
Faulkner, Debra Ann		√					
Felcoski, Brian J. Past Chair		√	√				
Ferguson, Elizabeth B.							
Fernandez, Kristopher E.	√		√	√			
Fields, Alan B.	√		√				
Fitzgerald, Jr., John E.		√	√				
Flood, Gerard J.		√	√				
Foreman, Michael L.		√	√				
Frazier, Nathan	√		√				
Friedman, Briget	√		√	√			
Friedman, Jesse B.		√	√				
Galler, Jonathan		√	√				
Gans, Richard R.		√	√				
Gelfand, Michael J Past Chair	√		√	√			
Gentile, Melinda S.	√		√				
George, James		√	√				
Godelia, Vinette D.	√		√				
Goethe, Jeffrey S.		√	√				
Goldman, Louis "Trey"	√		√	√			
Goldman, Robert W. Past Chair		√	√	√			
Goodman, Hon. Jaimie Randall							
Graham, Robert M.	√		√				
Granet, Lloyd	√		√				

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Griffin, Linda S.		√	√				
Grimsley, John G. Past Chair		√					
Grosso, Jennifer		√					
Gunther, Eamonn W.		√	√				
Gurgold, Eric		√	√				
Guttmann, III, Louis B Past Chair	√						
Hamrick, Alexander H		√	√				
Hancock, Patricia J.	√		√				
Hargett, Michael Van	√		√				
Hayes, Honorable Hugh D.		√					
Hayes, Michael Travis		√	√				
Hearn, Steven L. Past Chair		√	√				
Henderson, Jr., Reese J.	√		√				
Henderson, III, Thomas N.	√		√				
Heuston, Stephen P.		√	√				
Hipsman, Mitchell Alec		√	√				
Hoffman, Brian W.	√		√				
Hughes, Elizabeth Marie MacDonald		√	√				
Hutt, Gregg Evan	√		√				
Isphording, Roger O. Past Chair		√					
Jennison, Julia Lee	√		√	√			
Johnson, Amber Jade F.		√	√				
Jones, Darby		√					
Jones, Frederick W.	√		√	√			

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Jones, Patricia P.H.	√		√	√			
Judd, Robert B.		√	√				
Kalmanson, Stacy O.	√						
Kangas, Michael Ryan		√	√				
Karibjanian, George		√	√				
Karr, Mary		√	√				
Karr, Thomas M.		√	√				
Kayser, Joan B. Past Chair		√					
Keane, Cristin C.	√						
Kelley, Rohan Past Chair		√	√				
Kelley, Sean W.		√					
Keyser, Hon. Janis Brustares							
Khan, Nishad	√		√				
Kibert, Nicole C.	√						
Kightlinger, Wilhelmina F.	√						
Kinsolving, Ruth Barnes, Past Chair	√						
Koren, Edward F. Past Chair		√					
Korvick, Honorable Maria M.		√	√				
Kotler, Alan Stephen		√	√				
Kromash, Keith S.		√	√				
Krumbein, Sandra Elizabeth	√		√				
Kurian, Sanjay	√		√				
Kypreos, Theodore S.		√	√				
Lancaster, Robert L.		√	√				

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Lane, Jr., William R.		√					
Larson, Roger A.	√		√				
Leathe, Jeremy Paul		√	√				
Lebowitz, Sean M.		√	√				
Leebrick, Brian D.	√		√				
Lile, Laird A. Past Chair		√	√	√			
Lindsey, Honorable Norma S.	√						
Little, III, John W.	√						
Lopez, Sophia A.		√	√				
Lunsford, Rachel Albritton			√				
Madorsky, Marsha G.		√	√				
Malec, Brian		√	√				
Marger, Bruce Past Chair		√					
Marmor, Seth A.		√					
Marshall, III, Stewart A.		√	√				
Marx, James A.		√	√	√			
Mastin, Deborah Bovarnick	√		√				
McCall, Alan K.	√		√				
McElroy, IV, Robert Lee		√					
McIver, Richard		√	√	√			
McRae, Ashley E.	√		√				
Melanson, Noelle		√	√				
Menor, Arthur J.		√	√				
Meyer, George F. Past Chair	√			√			

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Meyer, Michael	√		√				
Middlebrook, Mark T.		√	√	√			
Mize, Patrick		√	√				
Moran, John C.		√	√				
Moule, Rex E.		√					
Muir, Honorable Celeste H.		√	√				
Murphy, Melissa J. Past Chair	√		√				
Nash, Charles I.		√	√				
Neukamm, John B. Past Chair	√			√			
Nguyen, Hung V.		√	√				
Overhoff, Alex	√						
Parady, William A.	√		√				
Payne, L. Howard		√	√				
Pence, Scott P.	√		√	√			
Pepper-Dickinson, Tasha K.		√	√				
Perera, Diane	√						
Pilotte, Frank		√	√	√			
Pleus, Jr., Honorable Robert J.		√					
Pollack, Anne Q.	√		√				
Price, Pamela O.		√	√				
Pyle, Michael A.		√					
Quintero, Jason	√		√				
Redding, John N.	√		√	√			
Renzio, Bryan	√						

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Reynolds, Stephen H.		√					
Riddell, Cynthia	√		√				
Rieman, Alexandra V.		√	√				
Robbins, Jr., R.J.	√		√				
Roberts, III, Hardy L.	√		√	√			
Robinson, Charles F.		√	√				
Rodstein, David William							
Rojas, Silvia B.	√		√				
Rolando, Margaret A. Past Chair	√		√				
Roman, Paul E.		√	√				
Rosenberg, Joshua		√	√				
Rubel, Stacy		√	√				
Rubin, Jenna		√					
Russell, Deborah L.		√	√				
Russick, James C.	√			√			
Rydberg, Marsha G.	√			√			
Sachs, Colleen C.	√		√				
Sajdera, Christopher	√		√				
Sasso, Andrew	√						
Scaletta, Melissa Sloan							
Schafer, Jr., Honorable Walter L.		√					
Schwartz, Martin	√		√				
Schwartz, Robert M.	√		√				
Schwingamer, Jamie Beth		√	√				

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Scriven, Lansing Charles	√		√				
Scuderi, Jon		√	√				
Seaford, Susan	√		√				
Sheets, Sandra G.		√	√	√			
Sherrill, Richard Norton		√	√				
Shoter, Neil B.	√		√				
Silberman, Honorable Morris	√						
Silberstein, David M.		√					
Sivyer, Neal Allen	√		√				
Sklar, William P.	√		√				
Smart, Christopher W.	√		√	√			
Smith, G. Thomas Past Chair	√						
Smith, Kymberlee	√						
Smith, Wilson Past Chair		√					
Smith, Yoshimi O.		√	√				
Sneeringer, Michael Alan		√					
Solomon, Marty James	√		√	√			
Sparks, Brian C.		√	√				
Speiser, Honorable Mark A.		√					
Spivey, Barry F.		√	√				
Spurgeon, Susan K.	√		√				
Stafford, Michael P.		√	√	√			
Staker, Karla J.	√		√				
Stashis, Alfred Joseph			√				

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Stern, Robert G.	√		√				
Stewart, John Mitchel			√				
Stone, Adele I.	√		√	√			
Stone, Bruce M. Past Chair		√					
Suarez, Honorable Richard J.		√					
Sundberg, Laura K.		√	√				
Swaine, Jack Michael Past Chair	√		√	√			
Taylor, Richard W.	√		√				
Tescher, Donald R.		√	√				
Thomas, Honorable Patricia V.		√	√				
Thornton, Kenneth E.			√				
Ticktin, Hon. Jessica Jacqueline							
Tobin, Jennifer S.	√		√				
Triggs, Matthew H.		√	√				
Tschida, Joseph John			√				
Tucker, Kristine L.			√				
Udick, Arlene C.	√		√				
Van Dien, Lisa Barnett			√				
Van Lenten, Jason Paul		√	√				
Van Pelt, Kit E.							
VanSickle, Melissa	√						
Villarroel, Nicole Marie	√		√				
Virgil, Eric		√					
Waller, Roland D. Past Chair	√		√				

Executive Council Members	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Wartenberg, Stephanie Harriet		√	√				
Weintraub, Lee A.	√		√	√			
Wells, Jerry B.		√	√				
White, Jr., Richard M.		√	√				
Whynot, Sancha B.	√		√				
Wilder, Charles D.		√	√				
Williams, Margaret A.	√		√				
Williamson, Julie Ann Past Chair	√		√				
Wintter, Christopher Q.		√	√				
Wohlust, Gary Charles		√	√	√			
Wolasky, Marjorie E.		√	√				
Wolf, Jerome L.		√	√				
Young, Gwynne A.	√		√				
Zeydel, Diana S.C.		√	√				
Zikakis, Salome J.		√	√				
Zschau, Julius J. Past Chair	√		√				

RPPTL Fellows	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Ashton, Amber	√		√				
Coleman, Jami		√	√				
de la Riva, Lian		√	√				
McDermott, Daniel L.		√	√				
Peregrine, Jacqueline J.	√		√				
Santos, Angela		√					
Villavicencio, Stephanie		√					
Work, Scott	√		√				

Legislative Consultants	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Dunbar, Peter M.	√		√	√			
Edenfield, Martha Jane	√		√	√			
Finkbeiner, Brittany	√		√				
Roth, Cari L.	√						

Guests	Division		July 29 Breakers	Oct 14 Boston	Dec 9 Naples	Feb 24 St. Augustine	June 2 St. Pete Beach
	RP	P&T					
Laura Licastro	√		√				
Greg Morler		√	√				
Brad Trushsa		√	√				
Matt Ahearn		√	√				
Stacey Price Trontman		√	√				
Krisuer		√	√				
Sanjiv Patel	√		√				
Travis Finchum		√	√				
Rose LaFermina		√	√	√			
Bonnie Polk		√	√				



Special Thanks to the
GENERAL SPONSORS

Overall Sponsors - Legislative Update & Convention & Spouse Breakfast
Attorneys' Title Fund Services, LLC – Melissa Murphy

Thursday Lunch

Management Planning, Inc. - Roy Meyers

Thursday Night Reception

JP Morgan - Carlos Battle / Alyssa Zebrowsky

&

Old Republic National Title Insurance Company - Jim Russick

Friday Night Reception

Wells Fargo Private Bank - Mark Middlebrook / Johnathan/ Alex Hamrick

&

Westcor Land Title - Renee Bourbeau / Sabine Seidel

Friday Night Dinner

First American Title Insurance Company - Alan McCall / Leonard Prescott IV

Probate Roundtable

SRR (Stout Risius Ross Inc.) - Garry Marshall

Real Property Roundtable

Fidelity National Title Group - Karla Staker

Saturday Lunch

The Florida Bar Foundation – Bruce Blackwell

&

Stewart Title – Laura Licastro

Hospitality Room

Wright Investors' Service – Stephen Soper

RPPTL Meeting App

WFG National Title Insurance Company – Joseph Tschida



Special Thanks to the
FRIENDS OF THE SECTION

American Heart Association Charitable Estate Planning
Arzie C. Stephens

Business Valuation Analysts, LLC – *Tim Bronza*

Corporate Valuation Services, Inc. – *Tony Garvy*

Fiduciary Trust International – *Claudia Reithauser*

Jones Lawry – *Marshall Jones*

North American Title Insurance Company – *Andrew A. Nadal*

Valley National Bank – *Jacquelyn McIntosh*

Valuation Services, Inc. – *Jeff Bae, JD, CVA*

Wilmington Trust, N.A. – *David Fritz*



Special Thanks to the
COMMITTEE SPONSORS

Attorneys' Title Fund Services, LLC – *Melissa Murphy*
Commercial Real Estate Committee

BNY Mellon Wealth Management – *Joan Crain*
Estate and Trust Tax Planning Committee
&
IRA, Insurance and Employee Benefits Committee

Business Valuation Analysts – *Tim Bronza*
Trust Law Committee

Coral Gables Trust – *John Harris*
Probate and Trust Litigation Committee

First American Title Insurance Company – *Alan McCall*
Condominium & Planned Development Committee

First American Title Insurance Company – *Wayne Sobien*
Real Estate Structures and Taxation Committee

Hopping Green & Sams – *Vinette Godelia*
Development and Land Use

Kravit Estate Appraisal – *Bianca Morabito*
Estate and Trust Tax Planning Committee

Life Audit Professionals – *Joe Gitto and Andrea Obey*
IRA, Insurance & Employee Benefits Committee
&
Estate and Trust Tax Planning Committee

Management Planning, Inc. – *Roy Meyers*
Estate & Trust Tax Planning Committee

Northern Trust – *Tami Conetta*
Trust Law Committee

Seaside National Bank and Trust – *H. Wayne Griest*
Commercial Real Estate Committee

RPPTL 2017 - 2018
Executive Council Meeting Schedule
Andrew O'Malley's Year

Limit 1 reservation per registrant, additional rooms will be approved upon special request. Each hotel has a 30 day cancellation policy on all individual room reservations.

Date	Location
February 22 – 25, 2018	<p>Executive Council & Committee Meetings Casa Monica Hotel St. Augustine, FL Room Rate: \$269 Reservation Link: Sold Out – contact Mary Ann Obos at mobos@floridabar.org to be added to the waitlist.</p> <p>Alternative Room Blocks are available at the following hotels:</p> <p>Hilton St. Augustine Room Rate: \$199 for Wednesday, \$259 for Thursday - Sunday Room Block Link: http://group.hilton.com/floridabar</p> <p>Holiday Inn Historic St. Augustine Room Rate: \$169 for Wednesday-Thurs, \$199 for Friday -Sunday Room Block Link: Click Here to link to hotel, or call (877)847-3736, Room Block Code TFB</p> <p>The Collector Room Rate: \$269 Room Block Link: Click Here Code:FLABAR0218</p>
May 31 – June 3 , 2018	<p>Executive Council Meeting & Convention Tradewinds Island Resort on St. Pete Beach St. Pete Beach, FL Room Rate: \$249 Tropical View Hotel Room Rate: \$269* Tropical View One Bedroom Suite: \$319* Reservation Link: TBA</p>

*Subject to availability

RESOLUTION

The Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar Recognizing the Service and Contributions of

LOUIE N. ADCOCK, JR.

Whereas, Louie N. Adcock, Jr. of St. Petersburg, Florida, was a respected and deeply loved member of the Real Property, Probate and Trust Law Section of The Florida Bar who passed away at the age of 86 on October 11, 2017, predeceased by his wife, Mary, in 2016, and is survived by his three children, David, Margaret and Joseph, and seven grandchildren; and

Whereas, Louie received his undergraduate degree in 1952 and law degree in 1956, both from the University of Florida; and

Whereas Louie began his legal career in St. Petersburg, Florida after he was admitted to The Florida Bar in 1956. He practiced with the law firm of Fisher & Sauls, P.A. for 61 years, until his death this year; and

Whereas, Louie had a long and distinguished legal career in St. Petersburg developing expertise in title work and representing lending institutions and later specializing in estate and trust law, the area of practice in which he was ultimately Board Certified by The Florida Bar. Louie was also a Fellow in the American College of Trusts and Estates Counsel; and

Whereas, in his legal practice as a whole, Louie insisted on the highest degree of professionalism in court, with clients, with staff, and with opposing or consulting lawyers. He was a generous mentor to an unending number of lawyers, sharing knowledge, time and his exacting professionalism; and

Whereas, Louie consistently and without fanfare would aid people who had no or little resources, frequently without any interest in remuneration, was a leader in encouraging and engaging in pro bono activities. He was the primary driver of establishing a pro bono clinic through the St. Petersburg Community Law program at a neighborhood community center originally staffed solely by his firm and for which the firm received the Chief Justice's Law Firm Commendation from the Florida Supreme Court in 2000. Louie stood out as an excellent example of what it meant to serve the community and to give back and encouraged all lawyers, within his firm and in the community and state, to follow his lead; and

Whereas, Louie provided enormous benefit to his country through his active and reserve duty in the United States Army retiring after 21 years of service as a Lt. Colonel of the JAG Corps; and

Whereas, Louie gave tremendous amounts of personal time to activities that benefited the legal profession in general and not him personally, including serving as an adjunct professor at Stetson University, College of Law, serving on the Board of Governors of The Florida Bar, as President of the St. Petersburg Bar Association, as a member of the Florida Supreme Court Commission on Professionalism, as a member of The Florida Bar Board of Legal Specialization and Education, as Trustee of the Florida Bar Foundation Endowment Trust, and as President of The Florida Bar Foundation. He also served as Chairman of the Florida Bar Committee on Professionalism and as Chairman of the Real Property Probate and Trust Law Section of The Florida Bar (1992-1993); and

Whereas, Louie contributed endlessly to his community through his work with Boy Scouts of America as a troop and Council leader, and as President of Sertoma Club, Family Service Centers, Visiting Nurses Association, the University of Florida Alumni Association and all Children's Hospital Foundation. He also served as Chairman of the Committee of 100 of Pinellas County and the University of South Florida Campus Advisory Committee, and was a member of the Board of Pinellas County Community Foundation. Louie was member of the vestry and served as Junior Warden of St. Thomas Episcopal Church; and

Whereas, Louie's long-standing and dedicated service to the Real Property, Probate and Trust Law Section of The Florida Bar is appreciated and missed; our aspirations always will be to seek the level of respect he accomplished through his knowledge, expertise, professionalism and humility as a lawyer; and those of us who had the pleasure and honor to serve and socialize with him will warmly remember his extensive and dedicated participation on the Section's Executive Council, his tireless efforts and good humor as chair, and his service as mentor, educator and leader for lawyers in his community and throughout the State of Florida; and

Whereas the Executive Council of the Real Property Probate and Trust Law Section of The Florida Bar recognizes the extraordinary dedication and service that Louie provided during his lifetime to his community, his family and friends, and The Florida Bar, particularly the Real Property, Probate and Trust Law Section, and acknowledges that he will be sorely missed and fondly remembered.

Now, Therefore, be it resolved by the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar that the loss of Louie N. Adcock, Jr. is mourned and that his distinguished service and rich contributions to the practice of law, particularly to the practice of Probate and Trust Law, is respected, appreciated, acknowledged and will be remembered forever.

Unanimously Adopted by the Executive Council of the Real Property,
Probate and Trust Law Section of The Florida Bar in Naples, Florida this 9th day
of December, 2017

Andrew M. O'Malley, Chair
Real Property Probate and Trust Law Section
The Florida Bar

Real Property, Probate & Trust Law Section

2018-2019 Executive Council Meetings

DATES	LOCATIONS
<i>July 25-28, 2018</i>	Executive Council Meeting & Legislative Update The Breakers Palm Beach, Florida Room Rate: \$225/ Deluxe King
<i>September 26-30, 2018</i>	Out of State Executive Council Meeting The Westin Excelsior Rome, Italy (with pre-event in Florence, Italy-TBA) Standard Room: Euro 325.00 Euro (single) Euro 335.00 (double) - includes Breakfast
<i>December 5-9, 2018</i>	Executive Council Meeting Four Seasons Hotel Orlando, Florida Room Rates: Standard Guest Rooms: \$285 (single/double occupancy) Park View Rooms: \$399 (single/double occupancy)
<i>March 13-17, 2019</i>	Executive Council Meeting Omni Resorts Amelia Island Plantation Room Rates: Hotel/Villa Guestrooms \$259 (single/double occupancy) One Bedroom Oceanfront Villa: \$299 (single/double occupancy) Two Bedroom Oceanfront Villa: \$399.00 (single/double occupancy) Three Bedroom Oceanfront Villa: \$459 (single/double occupancy)
<i>May 30 - June 1, 2019</i>	Executive Council Meeting & Convention Opal Sands Resort Clearwater Beach, Florida Room Rate: \$239 Deluxe Gulf Front (single/double occupancy)

NOTE: All Reservations will have strict cancellation policies that will result in forfeiture of deposits and/or payment in full for rooms cancelled. Please carefully review cancellation policies before booking your room. When the link opens up for booking more details will be provided.



RPPTL Financial Summary from Separate Budgets

2017-2018 [July 1 - August 31] YEAR

TO DATE REPORT

General Budget

YTD

Revenue	\$ 802,918
Expenses	\$ 266,730
Net:	\$ 536,188

Attorney Loan Officer

YTD

Revenue	\$ 11,875
Expenses	\$ 10,065
Net:	\$ 1,810

CLI

YTD

Revenue	\$ 5,038
Expenses	\$ 74
Net:	\$ 4,964

Trust Officer Conference

Revenue	\$ 273,766
Expenses	\$ 29,790
Net:	\$ 243,976

Legislative Update

Revenue	\$ 32,057
Expenses	\$ 10,906
Net:	\$ 21,151

Convention

Revenue	\$ -
Expenses	\$ 36
Net:	\$ (36)

Roll-up Summary (Total)

Revenue:	\$ 1,125,654
Expenses	\$ 317,601
Net Operations	\$ 808,053

Beginning Fund Balance:	\$ 1,684,323
Current Fund Balance (YTD):	\$ 2,492,376
Projected June 2018 Fund Balance	\$ 1,582,237

RPPTL CALENDAR OF EVENTS

DATE	TITLE	LOCATION	PROGRAM CHAIR
January 10, 2018	AUDIO WEBCAST - PENDING (2588)	Audio Webcast	TBA
February 9-10, 2018	Real Property Certification Review Course (2597)	Lowes Portifino Resort, Orlando	Manny Farach
February 9-10, 2018	Condo Law Certification Review Course (2623)	Lowes Portifino Resort, Orlando	Bill Sklar
February 14, 2018	AUDIO WEBCAST - PENDING (2602)	Audio Webcast	TBA
March 2, 2018	2018 Litigation and Trust Law Symposium (2607)	Tampa	Jon Scuderi/Angela Adams/Tami Conetta/Rich Caskeys
March 8-11, 2018	Construction Law Certification Review Course (2608)	JW Marriott, Orlando	Deborah Mastin
March 9-11, 2018	11th Annual Construction Law Institute (2609)	JW Marriott, Orlando	Sanjay Kurian
March 14, 2018	AUDIO WEBCAST - PENDING (2610)	Audio Webcast	TBA
April 6-7, 2018	Wills, Trusts and Estate Certification (2621)	Hyatt Orlando Airport	Linda Griffin
April 11, 2018	AUDIO WEBCAST - PENDING (2622)	Audio Webcast	TBA
April 20, 2018	Guardianship Law CLE	Stetson University, Tampa	Darby Jones
April 28, 2018	Ins and Outs of Condo Law	Stetson University, Tampa	Bill Sklar
May 9, 2018	AUDIO WEBCAST - PENDING (2635)	Audio Webcast	TBA
June 1, 2018	RPPTL Convention Seminar(2638)	Tradewinds Island Resort, St. Pete Beach, FL	
July 27, 2018	RPPTL Legislative and Case Law Update 2018	The Breakers, Palm Beach, FL	Stacy Kalmanson
August 23-26, 2018	RPPTL Attorney/Trust Officer Liaison Conference	The Breakers, Palm Beach, FL	Tattiana Stahl
August 22-25, 2019	RPPTL Attorney/Trust Officer Liaison Conference	The Breakers, Palm Beach, FL	TBA

Proposed Budget 18-19
Real Property Probate Trust Law Section

Account	13-14 Actual	14-15 Actual	15-16 Actual	16-17 Budget	16-17 Actuals	17-18 Final Budget	18-19 Proposed Budget
SUMMARY							
Beginning Fund Balance	\$ 705,581	\$ 1,004,059	\$ 1,178,726	\$ 1,589,752	\$ 1,477,972	\$ 1,672,390	\$ 1,564,310
Net Operations *	296,526	296,747	141,554	(71,521)	278,158	5,285	(114,900)
Legislative Update	(20,345)	(26,855)	28,094	(45,350)	(34,438)	(49,495)	(37,200)
Convention	35,772	(100,535)	(70,543)	(80,350)	(168,854)	(97,850)	(150,400)
Attorney Trust Officer	(13,486)	5,302	249,512	27,950	(2,328)	76,650	38,700
CLI**			62,409	106,230	121,880	69,830	94,780
Attorney Loan Officer					0		(26,375)
Special Projects***		0	0	(50,500)	0	(112,500)	(35,000)
Ending Fund Balance #	\$ 1,004,059	\$ 1,178,726	\$ 1,589,752	\$ 1,526,711	\$ 1,672,390	\$ 1,564,310	\$ 1,333,915

* Net Operations other than Legis. Update, Convention, Attorney Trust Officer Conf. and CLI beginning in 16-17.

** CLI was previously included in CLE roll up reflected in Net Operations from the General Tab until 2015-2016.

*** Special projects was previously in Net Oper. from the Gen. Tab until 2016-2017. In 16-17 Budget for Spec. Proj. was returned to Gen.

Includes small adjustments for rounding differences

@ The original budget adopted by the section was revised to accommodate the new process developed for charging administrative fees and TFB overhead.

Proposed Budget 18-19
Real Property Probate Trust Law Section

Account	14-15 Actual	15-16 Actual	16-17 Budget	16-17 Actuals	17-18 Final Budget	18-19 Proposed Budget
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RPPTL GENERAL SECTION BUDGET

REVENUE

31431 Dues	596,160	600,600	597,000	612,840	597,000	597,000
31432 Affiliate Dues	4,400	6,020	4,400	5,060	4,400	4,400
31433 Mgmt Fee-Retained TFB	(175,472)	(205,751)	(205,943)	(207,623)	(203,715)	(207,500)
32191 CLE Courses	372,413	352,654	119,800	298,729	210,000	250,000
32293 Section Differential	25,945	25,100	30,000	23,040	25,000	27,000
34704 Actionline Advertisi	20,154	10,404	20,000	7,998	20,000	8,000
35201 Sponsorships	162,064	144,189	180,000	186,363	180,000	180,000
35603 Bd/Council Mtg Regis	183,184	172,434	190,000	134,294	170,000	170,000
38499 Investment Allocatio	(3,295)	(39,741)	25,172	156,798	22,000	22,000
Total Revenue	1,185,553	1,065,909	960,429	1,217,499	1,024,685	1,050,900

EXPENSES

36998 Credit Card Fees	3,893	3,543	3,900	3,159	3,500	6,000
41201 Contract Salaries	0	0	0	0	0	0
51101 Employee Travel	7,841	11,246	8,000	11,851	12,000	12,000
71001 Telephone/Direct	1,101	1,367	1,200	1,847	1,400	2,000
71005 Internet Charges	58	0	150	0	0	0
81411 Promotional Printing	2	21	0	0	0	0
84001 Postage	874	2,061	1,500	1,330	2,000	2,000
84002 Printing Other Outside	632	563	700	0	1,000	1,000
84006 Newsletter	58,557	70,432	64,000	65,256	70,000	115,000
XXXXX Other Cont. Svcs *			26,500	9,538		
84009 Supplies	683	118	700	521	700	700
84010 Photocopying	265	163	300	121	300	300
84015 Officers Conference	1,395	1,671	2,500	0	4,000	4,000

Proposed Budget 18-19
Real Property Probate Trust Law Section

Account	14-15 Actual	15-16 Actual	16-17 Budget	16-17 Actuals	17-18 Final Budget	18-19 Proposed Budget
84016 Scrivener	5,000	0	5,000	0	5,000	10,000
84051 Officers Travel Expe	6,031	4,320	6,000	8,218	10,000	20,000
84054 CLE Speaker Expense	0	74	1,000	2,168	1,000	7,500
84061 Reception	0	0	0	0	0	0
84075 Sponsorship Exp.	400	0	0	0	0	0
84101 Committee Expenses	90,223	66,260	100,000	86,756	100,000	100,000
84102 Public Info & Websit	0	0	0	0	0	0
84106 Realtor Relations	4,150	1,650	4,000	1,150	4,000	4,000
84107 Diversity Initiative	2,991	3,265	12,000	5,086	12,000	12,000
84110 Exhibitor Fees	0	0	0	0	0	0
84111 At Large Member Event	6,188	8,094	3,000	3,490	5,000	6,000
84112 At Large Member Meetings	0	0	5,000		5,000	5,000
84201 Board Or Council Mee	462,896	517,631	505,000	490,751	510,000	550,000
84216 Strategic Planning	0	0	0	0	15,000	15,000
84239 Hospitality Suite	24,245	19,187	30,000	29,821	30,000	35,000
84279 Council Members Handboo	2,124	1,772	3,500	1,564	3,500	3,500
84310 Law School Liaison	3,821	1,800	5,500	3,392	5,500	5,000
84322 Fellowships-Exc Cou	16,083	16,460	20,000	18,199	20,000	20,000
84330 Leadrshp Acad	2,970	4,743	7,000	0	7,000	7,000
84422 Website *	31,734	49,344	74,000	42,377	50,000	75,000
84501 Legislative Consulta	110000	120,000	120,000	130,000	120,000	120,000
84503 Legislative Travel	12,679	10,983	15,000	20,073	15,000	15,000
84524 Memorial Tributes	33	0	500	0	500	500
84701 Council Of Sections	300	300	300	300	300	300
84991 Special Projects	0	3,000	0	0	0	0
84998 Operating Reserve	0	0	0	0	0	0
84999 Miscellaneous	15	1,145	0	0	0	5,000
85064 Service Recognition	5,727	2,974	5,700	6,667	5,700	7,000

Proposed Budget 18-19
Real Property Probate Trust Law Section

Account	14-15 Actual	15-16 Actual	16-17 Budget	16-17 Actuals	17-18 Final Budget	18-19 Proposed Budget
86327 IT Sys Support	0	0	0	0	0	0
86431 Meetings Administrat	6,585	0	0	0	0	0
86543 Graphics & Art	19,298	0	0	0	0	0
88221 Speaker Workshops	0	0	0	0	0	0
88230 Speakers Expense	0	0	0	0	0	0
88239 Speakers Other Exp	0	0	0	0	0	0
88241 Outline Prt-Inhouse	12	0	0	0	0	0
88252 Course Credit Fee	0	0	0	<u>0</u>	0	0
Total Expenses	888,806	924,187	1,031,950	943,636	1,019,400	1,165,800
Net Total	296,747	141,722	(71,521)	273,863	5,285	(114,900)

** 16-17 Budget were increased for the allocations in Special Projects*

Proposed Budget 18-19
Real Property Probate Trust Law Section

Account	14-15 Actual	15-16 Actual	16-17 Budget	16-17 Actuals	17-18 Final Budget	18-19 Proposed Budget
RPPTL - CONVENTION						
REVENUE						
32001 Registrations	45,773	33,617	55,000	58,157	40,000	45,000
35101 Exhibit Fees	7,875	5,850	10,000	6,250	10,000	10,000
35201 Sponsorships	0	0	10,000	(175)	10,000	10,000
36991 Allowances	0	0	0		0	0
Total Revenue	53,648	39,467	75,000	64,232	60,000	65,000
EXPENSES						
36998 Credit Card Fees	898	631	900	1,073	900	2,000
51101 Employee Travel	1,100	418	2,000	1,597	2,500	2,500
61201 Equipment Rental	33,480	10,067	21,000	15,027	21,000	21,000
84001 Postage	46	0	50	305	50	500
84002 Printing	403	389	400	0	400	400
84010 Photocopying	0	0	0	0	0	0
Speaker expense						2,000
84075 Sponsorship Exp.	0	0	0	0	0	0
84115 Entertainment	5,557	219	8,000	14,338	8,000	12,000
86543 Graphics & Art	2,125	0	0	0	0	0
88262 Meeting Meals	110,574	98,286	123,000	200,746	125,000	175,000
Total Expenses	154,183	110,010	155,350	233,086	157,850	215,400
Net Total	(100,535)	(70,543)	(80,350)	(168,854)	(97,850)	(150,400)

Proposed Budget 18-19
Real Property Probate Trust Law Section

Account	14-15 Actual	15-16 Actual	16-17 Budget	16-17 Actual	17-18 Final Budget	18-19 Proposed Budget
RPPTL - LEGISLATIVE UPDATE						
REVENUE						
32001 Registrations	0	0	0		0	0
32006 Live Web Cast	0	0	0		0	0
32010 Legal Span On-line	23,377	30,150	20,000	16,385	20,000	15,000
32205 Compact Disc	23,745	26,625	16,500	36,000	16,500	30,000
32207 DVD	3,875	11,250	4,000		4,000	4,000
32301 Course Materials	1,800	1,300	2,000	1,400	1,000	500
35101 Exhibit Fees	12,750	19,400	12,500	6,100	12,500	14,000
Total Revenue	65,547	88,725	55,000	59,885	54,000	63,500

EXPENSES

36998 Credit Card Fees	477	850	700	647	700	4,000
51101 Employee Travel	954	2,474	2,000	1,962	2,200	2,000
61201 Equipment Rental	12,123	13,597	13,500	10,013	13,500	13,500
75102 1st Class & Misc Mai	8	17	50	9	50	50
75401 Express Mail	420	390	500	464		500
84001 Postage	0	885	0	0	0	0
84002 Printing	0	4	0	0	0	0
84009 Supplies	0	0	150	0	150	150
84010 Photocopying	0	29	50	2	50	50
84012 Registration Support	5,112	4,000	5,200	4,661	5,200	500
84061 Reception	0	659	1,500	660	1,500	1,500
84062 Luncheons	31,622	0	31,500	28,191	31,500	32,000
84253 Sleeping Rooms	0	0	0	0	0	0
84254 Speaker Gifts	1,320	1,514	2,500	1,427	2,500	2,500
84258 Web Services	0	1,495	0	0	1,495	1,500

Proposed Budget 18-19
Real Property Probate Trust Law Section

84999 Miscellaneous	474	0	0	470	500	500
86001 Gen. Admin. Overhead	0	0	1,000	500	1,000	1,000
86432 Time Taping Editing	3,120	3,120	4,000	5,538	4,000	6,000
86532 Advertising News	1,249	824	1,500	824	1,600	1,600
86543 Graphics & Art	1,079	0	0	0	0	0
86623 Registrars	1,188	0	0	0	0	0
88230 Speakers Expense	0	0	0	0	0	0
88231 Speakers Travel	326	252	0	1,216	500	1,300
88233 Speakers Hotel	1,853	1,407	2,000	3,795	2,000	4,000
88239 Speakers Other Exp	265	51	250	0	100	100
88241 Outline Prt-Inhouse	0	0	300	0	300	300
88242 Outside Prt-Contract	9,546	10,774	10,000	13,831	11,000	4,000
88252 Course Credit Fee	0	300	150	150	150	150
88265 Refreshment Breaks	11,577	10,528	13,000	7,745	13,000	11,000
88269 Breakfast	9,059	6,698	10,500	12,219	10,500	12,500
88281 A/V Ctr Dup/Prod	630	763	0	0	0	0
Total Expense	92,402	60,631	100,350	94,323	103,495	100,700
Net Total	(26,855)	28,094	(45,350)	(34,438)	(49,495)	(37,200)

Proposed Budget 18-19
Real Property Probate Trust Law Section

Account	14-15 Actual	15-16 Actual	16-17 Budget	16-17 Actual	17-18 Final Budget	18-19 Proposed Budget
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RPPTL ATTORNEY TRUST OFFICER LIASON CONFERENCE

REVENUE

32001 Registrations	0	314,985	160,700	-65	160,700	150,000
32010 Legal Span On-line	2,399	1,186	0		0	0
32205 Compact Disc	2,605	7,040	3,000	7,040	3,000	3,000
32207 DVD	1,010	1,485	0		0	0
32301 Course Materials	120	840	1,000	3,300	1,000	1,000
35003 Ticket Events	94	32,032	10,000	1,079	10,000	10,000
35101 Exhibit Fees	0	115,900	30,000	400	60,000	40,000
35201 Sponsorships	0	138,100	50,000	-2,550	60,000	60,000
39342 Sec Over Cap-Serv Pr	0	0	0		0	0
Total Revenue	6,228	611,568	254,700	9,204	294,700	264,000

EXPENSES

36998 Credit Card Fees	93	7,955	2,750	796	2,750	8,000
41201 Contract Salaries	0	414	0		0	0
51101 Employee Travel	339	3,058	2,000	0	2,000	3,000
61201 Equipment Rental	0	32,798	15,000		17,000	17,000
75102 1st Class & Misc Mai	3	14	0	3	0	0
75401 Express Mail	34	290	150	99	150	150
81411 Promo Printing	0	119	1,000	0	1,000	1,000
81412 Promotional Mailing	0	0	0		0	0
84001 Postage	0	0	0		0	0
84002 Printing	0	0	0		0	0
84009 Supplies	0	0	0		0	0
84061 Reception	0	0	0		0	0
84062 Luncheons	0	0	0		0	0
84064 Golf Tourn Expenses	0	16,810	8,000	0	8,000	8,000

Proposed Budget 18-19
Real Property Probate Trust Law Section

Account	14-15 Actual	15-16 Actual	16-17 Budget	16-17 Actual	17-18 Final Budget	18-19 Proposed Budget
84999 Miscellaneous	0	75	0	0	0	0
86432 Time Taping Editing	0	3,900	10,000	5,475	5,000	6,000
86532 Advertising News	0	1,648	1,600	0	1,600	1,600
86543 Graphics & Art	0	0	0	0	0	0
86623 Registrars	132	0	0	0	0	0
88230 Speakers Expense	0	0	0	0	0	0
88231 Speakers Travel	0	1,100	4,000	1,235	4,000	4,000
88232 Speakers Meals	0	0	1,100	0	1,100	1,100
88233 Speakers Hotel	0	2,526	3,000	2,904	3,000	3,000
88234 Speaker Honorarium	0	0	0	0	0	0
88239 Speakers Other Exp	0	159	0	0	0	0
88241 Outline Prt-Inhouse	0	7,562	2,000	0	2,000	2,000
88242 Outline Prt - Contract	0	404	2,500	870	2,500	2,500
88252 Course Credit Fee	325	795	750	150	750	750
88260 Meeting Parking	0	15	0	0	0	0
88262 Meeting Meals	0	64,886	32,000	0	32,000	32,000
88263 Meeting Hospitality	0	127,395	85,000	0	85,000	85,000
88265 Refreshment Breaks	0	23,169	21,000	0	15,000	15,000
88269 Breakfast	0	13,331	27,000	0	10,000	10,000
88281 A/V Ctr Dup/Prod	0	280	200	0	200	200
89999 Other Operating Exp	0	3,353	0	0	0	0
86001 Admin. Expenses (All Inc	0	50,000	7,700	0	25,000	25,000
Total Expense	926	362,056	226,750	11,532	218,050	225,300
Net Total	5,302	249,512	27,950	(2,328)	76,650	38,700

This report only contains carry over expenses from the June 2016 event, the 2017 event was postponed until August 2017 - now crossing into next fiscal year.

Proposed Budget 18-19
Real Property Probate Trust Law Section

Account	15-16 Actual	16-17 Budget	16-17 Actual	17-18 Final Budget	18-19 Proposed Budget
RPPTL - CONSTRUCTION LAW INSTITUTE					
REVENUE					
31436 Course Section Diff	(1,740)	0	(1,020)	0	0
32001 Registrations	67,746	94,300	87,820	70,000	80,000
32205 Compact Disc	3,510	9,850	24,835	4,000	15,000
32301 Course Materials	480	950	540	500	500
35003 Ticket Events	2,535	1,300	2,657	1,300	2,000
35201 Sponsorships	175,110	150,000	173,665	170,000	170,000
39999 Miscellaneous	0	800	0	800	800
Total Revenue	247,641	257,200	288,497	246,600	268,300

EXPENSES

36998 Credit Card Fees	2,804	2,500	3,515	2,500	4,000
41201 Contract Salaries	0	0	0	0	0
51101 Employee Travel	1,119	1,350	1,163	1,350	1,500
61201 Equipment Rental	32,093	7,500	0	7,500	0
75102 1st Class & Misc Mai	5	25	6	25	25
75401 Express Mail	28	45	152	45	45
84064 Golf Tourn Expenses	14,262	12,400	17,059	12,400	18,000
84252 A/V Equipment & Tech.	0	16,200	25,802	16,200	22,000
84999 Miscellaneous	169	0	0	0	0
86001 Administrative Exp	23,650	18,500	14,300	25,000	25,000
86432 Time Taping Editing	3,315	2,350	2,836	2,350	3,000
86532 Advertising News	1,249	1,650	2,471	1,650	1,650
88231 Speakers Travel	3,792	4,000	3,017	4,000	4,000
88232 Speakers Meals	797	900	0	900	900
88233 Speakers Hotel	7,163	6,000	8,646	6,000	9,000
88234 Speaker Honorarium	0	1,500	0	1,500	1,000
88239 Speakers Other Exp	384	1,000	0	1,000	1,000

Proposed Budget 18-19
Real Property Probate Trust Law Section

88241 Outline Prt-Inhouse	1,551	850	1,832	850	2,000
88252 Course Credit Fee	150	150	150	150	150
88262 Meeting Meals	34,161	35,000	49,083	35,000	40,000
88263 Meeting Hospitality	42,797	25,000	30,955	43,000	30,000
88265 Refreshment Breaks	13,063	11,200	5,000	12,500	10,000
88281 A/V Ctr Dup/Prod	105	250	0	250	250
8999 Other Operating Exp.	2,575	2,600	630	2,600	0
Total Expense	185,232	150,970	166,617	176,770	173,520
Net Totals	62,409	106,230	121,880	69,830	94,780

Proposed Budget 17-18
Real Property Probate Trust Law Section

Account	17-18 Final Budget	2017 Actuals	18-19 Proposed Budget
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RPPTL ATTORNEY LOAN OFFICER LIASON CONFERENCE

REVENUE

32001 Registrations	17,500	12,625	12,000
32010 Legal Span On-line	0	0	
32205 Compact Disc	0	0	
32207 DVD	0	0	
32301 Course Materials	0	0	
35003 Ticket Events	0	0	
35101 Exhibit Fees	4,000	6,100	5,000
35201 Sponsorships	5,000	5,000	5,000
39342 Sec Over Cap-Serv Pr	0		
Total Revenue	26,500	23,735	22,000

EXPENSES

36998 Credit Card Fees	500	48	500
41201 Contract Salaries	0	0	
51101 Employee Travel	700	1,203	2,000
61201 Equipment Rental	2,000	4,826	5,000
75102 1st Class & Misc Mai	0	0	0
75401 Express Mail	0	0	0
81411 Promo Printing	0	0	0
81412 Promotional Mailing	0	0	0
84001 Postage	0	0	0
84002 Printing	0	15	0
84009 Supplies	0	0	0
84061 Reception	0	0	0
84062 Luncheons	0	0	0
84064 Golf Tourn Expenses	0	0	0

Proposed Budget 17-18
Real Property Probate Trust Law Section

Account	17-18 Final Budget	2017 Actuals	18-19 Proposed Budget
84999 Miscellaneous	0	0	0
86432 Time Taping Editing	0	0	0
86532 Advertising News	0	TBD	0
86543 Graphics & Art	0	0	0
86623 Registrars	0	0	0
88230 Speakers Expense	2,000	TBD	2,000
88231 Speakers Travel	0	0	0
88232 Speakers Meals	0	0	0
88233 Speakers Hotel	0	0	0
88234 Speaker Honorarium	0	0	0
88239 Speakers Other Exp	0	0	0
88241 Outline Prt-Inhouse	0	0	0
88242 Outline Prt - Contract	0	0	0
88252 Course Credit Fee	150	150	150
88260 Meeting Parking	0	0	0
88262 Meeting Meals	23,000	24,092	25,000
88263 Meeting Hospitality	0	0	
88265 Refreshment Breaks	0	0	
88269 Breakfast	0	0	
88281 A/V Ctr Dup/Prod	0	0	
89999 Other Operating Exp	3,725	0	3,725
86001 Admin. Expenses (All Inclusive)	5,000	8,800	10,000
Total Expense	37,075	32,892	48,375
Net Total	(10,575)	(9,157)	(26,375)

Proposed Budget 17-18
Real Property Probate Trust Law Section

Account	14-15 Actual	15-16 Actual	16-17 Budget	16-17 Projected Actual	17-18 Final Budget	18-19 Proposed Budget
RPPTL SPECIAL PROJECTS						
EXPENSES						
84102 Public Info & Website	0	0	24,000		2,500	
84259 IP Issues		0	5,000		5,000	
84265 Marketing Consulting Svcs		0	10,000		10,000	
No Place Like Home Project					10,000	10,000
Special Projects (Technical and Operating)					75,000	25,000
84999 Miscellaneous		0	11,500		10,000	
Total Expense	0	0	50,500		112,500	35,000

The 84102 Public Info. & Website was previously in the General Section Budget, historical information presented here has been deleted from calculations to avoid duplication.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Jeffrey S. Goethe, Co-Chair (Probate & Trust), Homestead Issues Study Committee, a General Standing Committee of the Real Property Probate & Trust Law Section

J. Michael Swaine, Co-Chair (Real Estate), Homestead Issues Study Committee, a General Standing Committee of the Real Property Probate & Trust Law Section

Address 3119 Manatee Avenue West, Bradenton, FL 34205
Telephone: (941) 741-8224, ext. 1323

Position Type Homestead Issues Study Committee, a General Standing Committee of the RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

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J. Michael Swaine, Swaine & Harris, P.A., 425 S Commerce Ave., Sebring, FL 33870-3702, Telephone: 863-385-1549

Sarah Butters, Ausley McMullen, 123 S Calhoun St., Tallahassee, FL 32301-1517, Telephone: (850)-425-5447

Peter M. Dunbar, Dean Mead & Dunbar, 215 S. Monroe St. Suite 815, Tallahassee, FL 32301-1858, Telephone: (850) 999-4100

Martha J. Edenfield, Dean Mead & Dunbar, 215 S. Monroe St. Suite 815, Tallahassee, FL 32301-1858, Telephone: (850) 999-4100

(List name, address and phone number)

Appearances

Before Legislators (SAME)

(List name and phone # of those having face to face contact with Legislators)

**Meetings with
Legislators/staff** (SAME)

(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,
List The Following

N/A

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

X

Support

Oppose

Technical
Assistance

Other _____

Proposed Wording of Position for Official Publication:

To support proposed amendment to Chapter 732, Florida Statutes, to provide much needed clarification and guidance regarding the waiver of constitutional homestead protections for surviving spouses. The statute would provide language which, when used within a deed, would create a presumption that the spouse signing the deed waived the constitutional restrictions on the devise of homestead. This would supplement existing procedures in section 732.702, Fla. Stat., which provides for the waiver of spousal rights by written agreement.

Reasons For Proposed Advocacy:

While Florida probate law provides reasonable certainty regarding the rights of a surviving spouse by restricting the ability of married Florida resident to devise his or her homestead real property at death, the protection can be waived through a written waiver. Recent decisions have created uncertainty about the effect of a deed signed by the surviving spouse during the lifetime of the deceased spouse who died owning homestead real property. The proposed legislation would provide more certainty for the title insurance industry, the courts, and Florida residents by providing language for a waiver to be included within a deed when one spouse intends to waive his or her homestead rights that would otherwise apply upon the death of the other spouse.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

NONE

(Indicate Bar or Name Section)

(Support or Oppose)

(Date)

Others

(May attach list if
more than one)

NONE

(Indicate Bar or Name Section)

(Support or Oppose)

(Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a

legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.

RPPTL WHITE PAPER
HOMESTEAD WAIVERS

I. SUMMARY

Florida Statutes Section 732.702 provides a statutory procedure for waiving spousal rights, including homestead rights, under written contracts, agreements or waivers. This proposal provides a simplified method for a spouse to waive her or his homestead rights in a deed, by adding a new statutory Section 732.7025, to provide a “safe harbor” for the waiver of spousal homestead rights under a deed (with specially drafted language included in the deed). This proposed change relates solely to the waiver of a spouse’s inheritance rights as to homestead and does not concern the waiver of homestead asset protection rights or other spousal inheritance rights (such as elective share). The proposed legislation is a product of study and analysis of the Homestead Issues Study Committee of the Real Property, Probate and Trust Law Section of the Florida Bar. The bill does not have a fiscal impact on state funds.

II. CURRENT SITUATION

The status of the Florida homestead devise restrictions and waivers of such restrictions may be summarized as follows:

A. Constitutional and Statutory Provisions Regarding Restrictions

Section 4(c) of Article X of the Florida Constitution provides:

The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner’s spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

While the Florida Constitution defines when a homestead cannot be devised, Florida Statutes Section 732.401 defines how the homestead vests if it is not devisable or is not validly devised in a manner authorized by Florida law (e.g., if the decedent is survived by a minor child and cannot devise the homestead or is survived by a spouse and no minor child but the decedent does not devise the homestead outright to the decedent’s surviving spouse).

Generally, if not devised as permitted by law, the homestead descends as other intestate property, unless the decedent is survived by a spouse and one or more descendants, in which case the surviving spouse receives a life estate with a vested remainder in the then living descendants, per stirpes; however, there is a 6 month post-death period in which there is a right of election for the surviving spouse to instead take a 50% tenant in common interest with the other 50% passing to the decedent’s then living descendants, per stirpes.

Florida Statutes Section 732.401 provides:

732.401 Descent of homestead.—

(1) If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

(a) The right of election may be exercised:

1. By the surviving spouse; or

2. With the approval of a court having jurisdiction of the real property, by an attorney in fact or guardian of the property of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime.

(b) The election must be made within 6 months after the decedent's death and during the surviving spouse's lifetime. The time for making the election may not be extended except as provided in paragraph (c).

(c) A petition by an attorney in fact or by a guardian of the property of the surviving spouse for approval to make the election must be filed within 6 months after the decedent's death and during the surviving spouse's lifetime. If the petition is timely filed, the time for making the election shall be extended for at least 30 days after the rendition of the order allowing the election.

(d) Once made, the election is irrevocable.

(e) The election shall be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The notice must be in substantially the following form:

ELECTION OF SURVIVING SPOUSE
TO TAKE A ONE-HALF INTEREST OF
DECEDENT'S INTEREST IN
HOMESTEAD PROPERTY

STATE OF
COUNTY OF

1. The decedent, _____, died on _____. On the date of the decedent's death, The decedent was married to _____, who survived the decedent.

2. At the time of the decedent's death, the decedent owned an interest in real property that the affiant believes to be homestead property described in s. 4, Article X of the State Constitution, which real property being in _____ County, Florida, and described as: (description of homestead property).

3. Affiant elects to take one-half of decedent's interest in the homestead as a tenant in common in lieu of a life estate.

4. If affiant is not the surviving spouse, affiant is the surviving spouse's attorney in fact or guardian of the property, and an order has been rendered by a court having jurisdiction of the real property authorizing the undersigned to make this election.

(Affiant)

Sworn to (or affirmed) and subscribed before me this day
of (month), (year), by (affiant)
(Signature of Notary Public-State of Florida)
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification
(Type of Identification Produced)

(3) Unless and until an election is made under subsection (2), expenses relating to the ownership of the homestead shall be allocated between the surviving spouse, as life tenant, and the decedent's descendants, as remaindermen, in accordance with chapter 738. If an election is made, expenses relating to the ownership of the homestead shall be allocated between the surviving spouse and the descendants as tenants in common in proportion to their respective shares, effective as of the date the election is filed for recording.

(4) If the surviving spouse's life estate created in subsection (1) is disclaimed pursuant to chapter 739, the interests of the decedent's descendants may not be divested.

(5) This section does not apply to property that the decedent owned in tenancy by the entireties or in joint tenancy with rights of survivorship.

Florida Statutes Section 731.201(10) defines a "devise" and provides:

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will or trust. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as provided in this code, the will, or the trust.

Florida Statutes Section 732.4015 defines a devise of homestead property and provides as follows:

732.4015 Devise of homestead.—

(1) As provided by the Florida Constitution, the homestead shall not be subject to devise if the owner is survived by a spouse or a minor child or minor children, except that the homestead may be devised to the owner's spouse if there is no minor child or minor children.

(2) For the purposes of subsection (1), the term:

(a) "Owner" includes the grantor of a trust described in s. 733.707(3) that is evidenced by a written instrument which is in existence at the time

of the grantor's death as if the interest held in trust was owned by the grantor.

(b) "Devise" includes a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.

(3) If an interest in homestead has been devised to the surviving spouse as authorized by law and the constitution, and the surviving spouse's interest is disclaimed, the disclaimed interest shall pass in accordance with chapter 739.

Thus, for homestead in a decedent's name or for homestead in a revocable trust, the devise restrictions apply.

B. Statutory Provisions Regarding Homestead Waivers

Florida Statutes Section 732.702 provides a statutory procedure for waiving spousal rights, including homestead rights, under written contracts, agreements or waivers.

Generally, under that statute, a waiver of "all rights" is sufficient to waive all spousal rights in an agreement under the statute. Florida Statutes Section 732.702(2) provides that if the agreement, contract or waiver is executed after marriage, then each spouse must make a fair disclosure to the other of that spouse's estate. No disclosure is required prior to marriage. Florida Statutes Section 732.702(3) provides that no consideration is required for the agreement, contract, or waiver to be valid.

Florida Statutes Section 732.702 provides:

732.702 Waiver of spousal rights.—

(1) The rights of a surviving spouse to an elective share, intestate share, pretermitted share, homestead, exempt property, family allowance, and preference in appointment as personal representative of an intestate estate or any of those rights, may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses. The requirement of witnesses shall be applicable only to contracts, agreements, or waivers signed by Florida residents after the effective date of this law. Any contract, agreement, or waiver executed by a nonresident of Florida, either before or after this law takes effect, is valid in this state if valid when executed under the laws of the state or country where it was executed, whether or not he or she is a Florida resident at the time of death. Unless the waiver provides to the contrary, a waiver of "all rights," or equivalent language, in the property or estate of a present or prospective spouse, or a complete property settlement entered into after, or in anticipation of, separation, dissolution of marriage, or divorce, is a waiver of all rights to elective share, intestate share, pretermitted share, homestead, exempt property, family allowance, and preference in appointment as personal representative of an intestate estate, by the waiving party in the property of the other and a renunciation by the waiving party of all

benefits that would otherwise pass to the waiving party from the other by intestate succession or by the provisions of any will executed before the written contract, agreement, or waiver.

(2) Each spouse shall make a fair disclosure to the other of that spouse's estate if the agreement, contract, or waiver is executed after marriage. No disclosure shall be required for an agreement, contract, or waiver executed before marriage.

(3) No consideration other than the execution of the agreement, contract, or waiver shall be necessary to its validity, whether executed before or after marriage.

Recent case law has highlighted the issue of whether joining in a deed (without any more formal agreement or acknowledgement) constitutes a waiver of homestead rights. The purpose of this new statutory proposal is to clarify how to waive homestead rights in a deed and offer a safe harbor for practitioners and the public.

C. Case Law

The first published case on the issue of whether joining in a deed might constitute a homestead waiver was *Habeeb v. Linder*, 36 Fla. L. Weekly D300 (Fla. 3d DCA 2011) (Feb. 9, 2011). The Third District Court of Appeal initially published an opinion holding that by joining in a deed from one's spouse to that spouse's revocable trust, the joining spouse waived her post-death homestead devise restriction rights. The court reasoned that the use of the word "hereditaments" in the deed constituted a waiver of homestead devise restrictions. Subsequently, however, on May 17, 2011, in a sua sponte Order, the Third District Court of Appeal withdrew the *Habeeb* decision. Thus, because of the withdrawal (and as a result of a settlement of that case which meant a final decision was not pursued), *Habeeb* is not citable precedent.

However, subsequently, Florida's Fourth District Court of Appeal, in *Stone v. Stone*, 157 So. 3d 295 (Fla. 4th DCA 2014), held that a spouse waived her homestead rights by joining in the execution of a deed, conveying her husband's one-half (1/2) interest in a homestead property to a qualified personal residence trust. The *Stone* decision is consistent with the withdrawn opinion in *Habeeb*, that joining in a deed can constitute a waiver, even if the deed contained no special waiver language and even if there was no evidence of a financial disclosure.

After the *Stone* decision, the Fourth District Court of Appeal held that where a deed conveying the wife's interest in a homestead residence to a qualified personal residence trust, without the joinder of the wife's spouse, the wife did not have standing to subsequently challenge the transfer. The court held that only the husband could challenge the transfer. *Lyons v. Lyons*, 155 So. 3d 1179 (Fla. 4th DCA 2014).

Although not expressly addressed in *Habeeb*, *Stone* or *Lyons*, Florida courts have consistently held that waivers of constitutional rights must be made knowingly and intelligently. See *Chames v. DeMayo*, 972 So. 2d 850 (Fla. 2007). Thus, with potentially conflicting case law, future litigation on the issue of whether a deed may constitute a waiver of homestead protections

seems likely. Confusion on this issue may impair efficacious planning and may also impair the process of transferring title to real estate after the owner has died.

It appears likely that in some situations, the facts might warrant a finding that a conveyance by one spouse to the other (or by joining in a conveyance to a trust) includes a waiver of all spousal rights to the homestead residence. In other situations the facts might warrant a finding that executing a deed, in and of itself, might not be considered a knowing and intelligent waiver.

Some Florida attorneys, as well as non-attorneys and out-of-state attorneys preparing deeds, may construe *Lyons* and *Stone* decisions as applicable to all situations in which one spouse conveys to the other spouse. Because those cases were judicial determinations involving specific facts, they cannot be relied upon to find that a deed from one spouse to the other is always a waiver of the alienation and devise restrictions.

Additionally, The Fund Title Notes, Title Note 16.04.14, provides that a pre-nuptial or post-nuptial agreement should not be relied upon without judicial approval to determine a waiver of the restrictions on the devise of homestead. Real estate practitioners cannot rely upon the *Lyons* and *Stone* rulings because they illustrate the need for judicial approval of any purported waiver. The *Stone* and *Lyons* decisions illustrate the need for a judicial determination of both the homestead status at the time of the owner's death and the validity of any purported waiver. The *Lyons* decision added the additional consideration of standing when evaluating the validity of a waiver of a constitutional right.

Therefore, it is believed adopting a statutory "safe harbor" defining the statutory requirements for a waiver of constitutional homestead protections within a deed would provide more certainty for both the citizens of Florida, their planning and litigation attorneys, and the courts.

D. Waiving Homestead Rights Via a Deed

Because ownership interests conveyed by a deed, interests devised by a will or trust, and the owner's personal circumstances can vary significantly at any point in time, Florida's "legal chameleon" (homestead) presents substantial and real difficulties in examining a waiver via deed.¹ Although there is an argument that Warranty and Quitclaim deeds constitute a conveyance of "all rights," it is not clear if there is or should be a distinction in whether either or both may constitute a homestead waiver. Both Warranty deeds and Quitclaim deeds are often

¹ For example, consider a Warranty deed to a one spouse's revocable trust by married Michigan residents. The property later becomes the primary residence of the couple. Is it reasonable to assume that the non-owner spouse understood that the home could be sold without his or her consent, leaving them homeless? Is it reasonable to assume that the non-owner spouse understood that the constitutional devise restrictions would not apply at the owner's death? The result is clearly against public policy, unless there was a knowing and intelligent waiver.

Also, consider a married couple seeking a reverse mortgage. The mortgage broker advises the couple that the wife is too young to qualify for a reverse mortgage, so the title company prepares a deed conveying ownership to the husband. Would the average Floridian understand that they may have no homestead rights upon their spouse's death.

used in estate planning and other circumstances. It is assumed that sometimes spouses signing such deeds intend to waive their homestead rights, sometimes spouses signing such deeds believe they will continue to enjoy the spousal rights (post-death devise restrictions) associated with the homestead real property owned by the other spouse, and sometimes the waiver of constitutional homestead protections is not considered at all.

Therefore, the adoption of a safe harbor rule and express deed waiver language should increase the chances that waivers within a deed are knowing and voluntary and reduce the chances that waivers are made by mistake or due to lack of understanding. The procedures set forth in Section 732.702 will continue to be available as a means for a spouse to waive constitutional homestead protections.

III. EFFECT OF PROPOSED CHANGE

The addition of proposed Section 732.7025 will simplify the process by which a spouse may waive his or her right to inherit homestead property by allowing for a waiver of post-death homestead devise restrictions to be made via a deed, which includes certain safe harbor language.

The new section will create a presumption that the statutory language, or substantially similar language, constitutes an intentional waiver of a specific homestead protection for a married person that would otherwise apply upon the death of the other spouse. It is not the exclusive method for waiving such rights.

The proposed change is to add the following new statute to the Florida Probate Code:

732.7025 Waiver of Constitutional and Spousal Rights by Conveyance -

- (1) If the following or substantially similar language is included in a deed a spouse shall be presumed to have waived that spouse's rights as a surviving spouse with respect to the devise restrictions under Art. X, s. 4(c) of the Florida Constitution:

By joining in this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property in this deed to someone other than me.

- (2) This language shall waive the protection against the owner's creditor claims during the owner's lifetime and after death, and shall not waive the restrictions against alienation by mortgage, sale, gift, or deed without the joinder of the owner's spouse.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state and local governments.

V. DIRECT FISCAL IMPACT ON PRIVATE SECTOR

The proposal will benefit the private sector by providing certainty and predictability for Florida residents and their advisors as they plan for the disposition of constitutionally-protected homestead upon death.

VI. CONSTITUTIONAL ISSUES

It is anticipated that this legislation will not raise constitutional issues. The proposed changes do not conflict with the public policy underlying the constitutional homestead protections. In some instances, the proposed changes will alert Florida residents, persons who later become Florida residents after signing a deed for Florida real property, and their advisors that constitutional protections must be considered when a married person signs a deed.

VII. OTHER INTERESTED PARTIES

Other groups that may have an interest in the legislative proposal include the following:

The Family Law Section of the Florida Bar
The Elder Law Section of the Florida Bar

1 732.7025 Waiver of constitutional and spousal rights by conveyance.

2 If the following or substantially similar language is included in a deed, a
3 spouse shall be presumed to have waived that spouse's rights as a
4 surviving spouse with respect to the devise restrictions under Art. X. s.
5 4(c) of the Florida Constitution:

6 By joining in this deed, I intend to waive homestead rights that
7 would otherwise prevent my spouse from devising the
8 homestead property described in this deed to someone other
9 than me.

10 This language shall not waive the protection against the owner's creditor
11 claims during the owner's lifetime and after death, and shall not waive the
12 restrictions against alienation by mortgage, sale, gift, or deed without the
13 joinder of the owner's spouse.

The Florida Bar Wm. Reece Smith, Jr. Leadership Academy

\$3,500.00 IS AVAILABLE TO 2 RPPTL SECTION MEMBERS!

Interested in participating in The Florida Bar Wm. Reece Smith, Jr. Leadership Academy? Two RPPTL Section scholarships cover out-of-pocket travel and hotel expenses incurred in attending the Leadership Academy up to \$3,500.00.

What Is This?

The Florida Bar will soon begin accepting applications for the 2018 Leadership Academy, a one-year multi-session training program designed to assist a diverse and inclusive group of lawyers in becoming better leaders within our profession while enhancing their leadership skills.

How Does It Work?

In support of the Leadership Academy, the RPPTL Section will select up to 2 active contributing members of a RPPTL Section Committee to apply to the Leadership Academy as the Section's scholarship nominee.

If a RPPTL Section nominee is chosen as an Academy Fellow, the Section will reimburse the participant up to \$3,500 for out of pocket travel and hotel expenses incurred in attending the Leadership Academy. To receive the scholarship, the nominee(s) if chosen by The Florida Bar as a Leadership Academy Fellow must agree to remain actively involved in the RPPTL Section after the conclusion of the Leadership Academy.

A full explanation of the Florida Bar Wm. Reece Smith, Jr. Leadership Academy is available on the Florida Bar's website at <http://www.floridabar.org/leadershipacademy>.

An application form will be posted to the RPPTL website soon. For any questions regarding the RPPTL Section scholarships for The Florida Bar Wm. Reece Smith, Jr. Leadership Academy, or to request an application, contact Kristopher E. Fernandez, (813) 832-6340, kfernandez@kfernandezlaw.com, Brian C. Sparks, (813) 222-8515, brian.sparks@hwlaw.com or Allison Archbold, (941) 957-1900, AArchbold@fergesonskipper.com

**THE FLORIDA BAR WM. REECE SMITH, JR.
LEADERSHIP ACADEMY**

CANDIDATE APPLICATION FORM

PERSONAL INFORMATION

(Select)				(Select)
Title	First	Middle (Select)	Last (Select)	Suffix
Bar Number	Date Admitted	DCA	Circuit	Years in Practice
Record Bar Address				
City		County	State	Zip
Email				
Home Phone		Cell Phone		

DEMOGRAPHIC INFORMATION

(Select)
Gender
(Select)
Ethnicity

CURRENT EMPLOYMENT

Firm/Employer

(Select)

Firm Size

Current Position

Years

Months

Area(s) of Practice

Work Phone

Work Fax

REFERRAL INFORMATION

(Select)

How did you hear about The Florida Bar Leadership Academy?

Referral Name

If nominated, by whom?

FLORIDA BAR SECTION & COMMITTEE STATUS

Current Section Membership(s)

Section	Term	Office Held
(Select)		(Select)
(Select)		(Select)
(Select)		(Select)
(Select)		(Select)
(Select)		(Select)

Current Committee Membership(s)

Committee	Term	Office Held
		(Select)
		(Select)
		(Select)
		(Select)
		(Select)

Past Section Membership(s) and Term(s)

Section	Term	Office Held
(Select)		(Select)
(Select)		(Select)
(Select)		(Select)
(Select)		(Select)
(Select)		(Select)

Past Committee Membership(s) and Term(s)

Committee	Term	Office Held
		(Select)
		(Select)
		(Select)
		(Select)
		(Select)

VOLUNTARY BAR STATUS

Current Voluntary Bar Membership(s)

Voluntary Bar	Term	Office Held
		(Select)
		(Select)
		(Select)
		(Select)
		(Select)

Past Voluntary Bar Membership(s)

Voluntary Bar	Term	Office Held
		(Select)
		(Select)
		(Select)
		(Select)
		(Select)

SCHOLARSHIP INFORMATION

The expenses for the Academy for one year are approximately \$3,400.

Will you be personally responsible for all your Leadership Academy expenses?
Select Yes No

Who will pay for your Leadership Academy expenses?
Select Self Firm

Do you have a financial need for scholarship assistance (ex. your firm will not reimburse expenses)?
Select Yes No

Have you applied to the Wm. Reece Smith, Jr. Leadership Academy before?
Select Yes No

EDUCATION (Include College and Law School information)

University/College	Degree	Graduation Date	Major

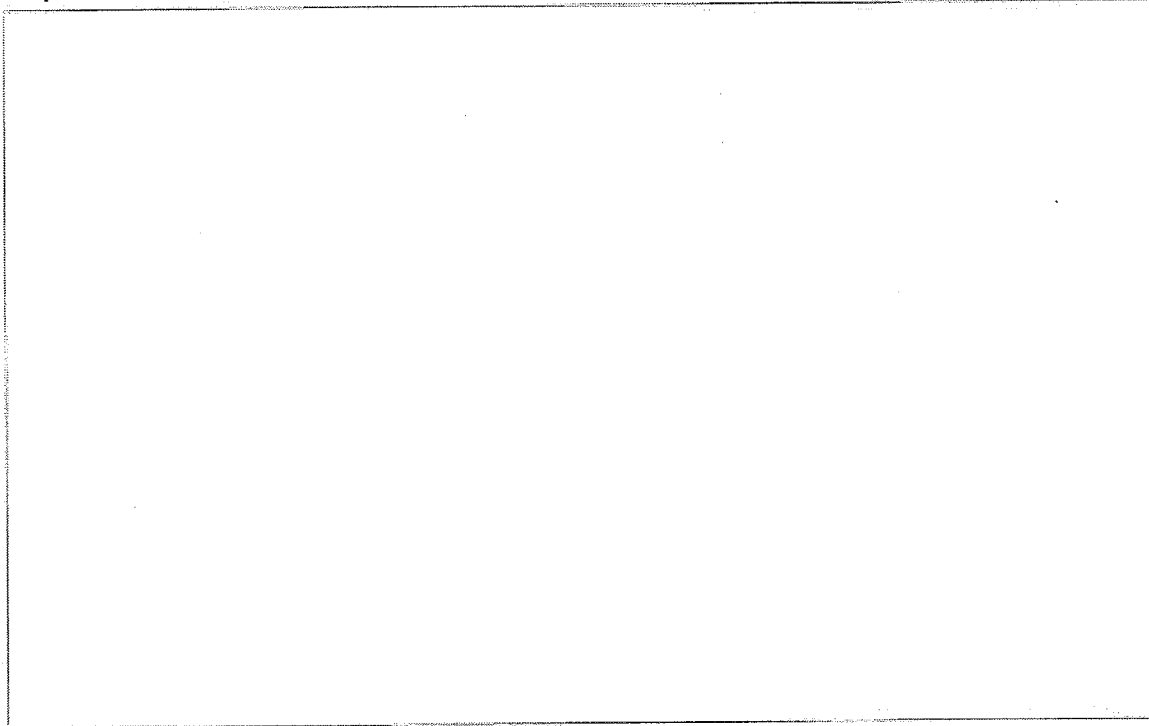
EMPLOYMENT HISTORY

Please provide the following information with respect to all past employment following graduation from college (other than your current position).

Employer & Location	Dates of Employment	Position Upon Leaving


ADDITIONAL ACTIVITIES, LEADERSHIP POSITIONS, HONORS, AWARDS

List any additional activities, board memberships, leadership positions, and/or honors or awards received that you desire to bring to the attention of the Leadership Academy Committee (please limit your response to the area provided):

A large, empty rectangular box with a thin black border, intended for the user to list their activities, memberships, positions, and awards.

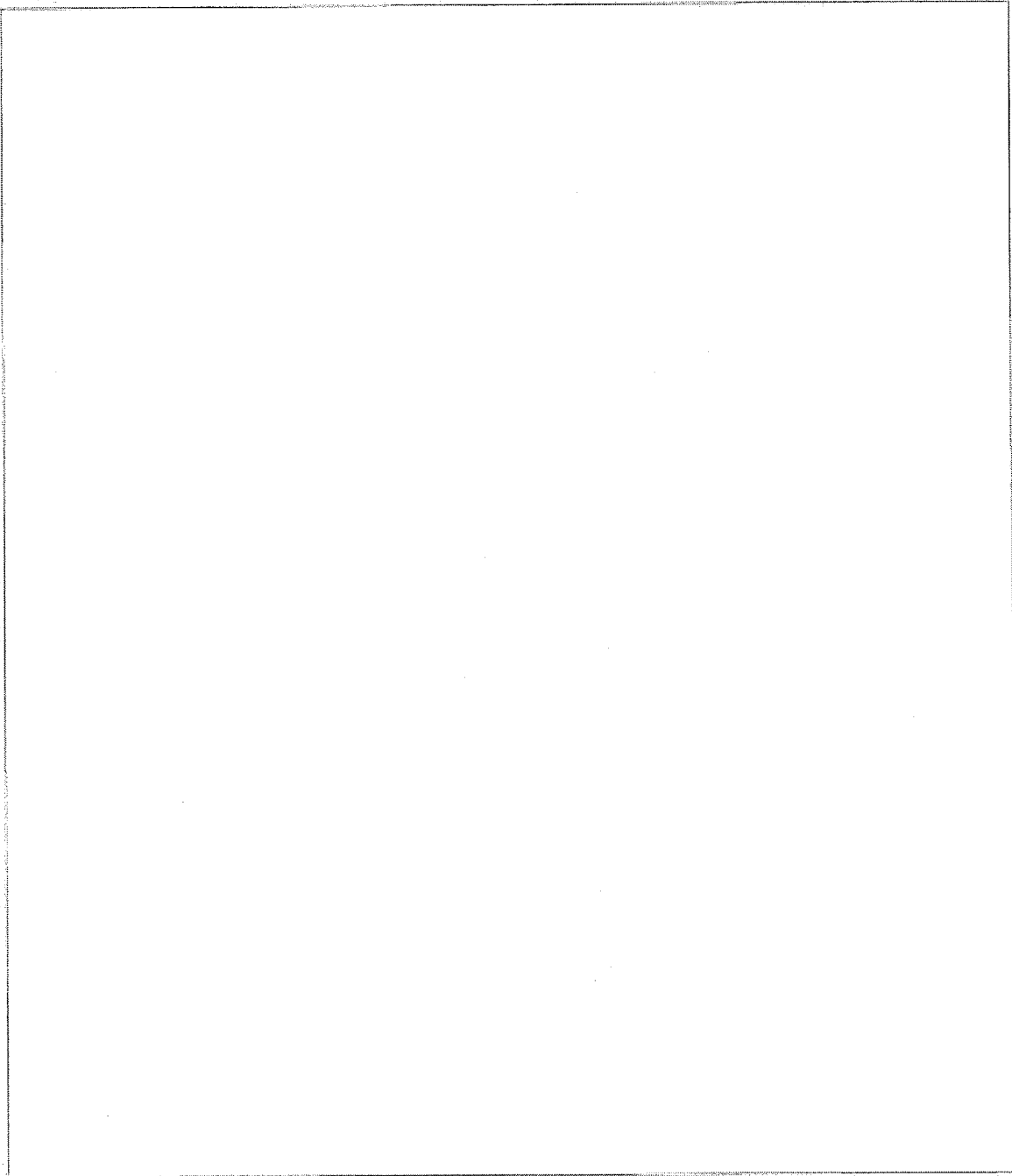
Essay 1 of 2

Please list the qualities you feel are most important for leadership positions in The Florida Bar or similar voluntary bar or related organizations and provide the reasons why they are important (please limit your response to the area provided):



Essay 2 of 2

Please explain why you would like to participate in The Florida Bar Leadership Academy.



REFERENCES

Use this portion of the application to designate two individuals (at least one outside your firm) who will serve as personal references who are knowledgeable about your community service, leadership experience, character, or skills.

Full Name

Organization

Title

Business Phone

Business Email

Full Name

Organization

Title

Business Phone

Business Email

\$3,500.00 IS AVAILABLE TO 2 RPPTL SECTION MEMBERS!



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HOW DOES IT WORK? In support of the Leadership Academy, the RPPTL Section will select up to 2 active contributing members of a RPPTL Section Committee, to apply to the Leadership Academy as the Section's scholarship nominee. If a RPPTL Section nominee is chosen as an Academy Fellow, the Section will reimburse the participant up to \$3,500 for out of pocket travel and hotel expenses incurred in attending the Leadership Academy. To receive the scholarship, the nominee(s) if chosen by The Florida Bar as a Leadership Academy Fellow must agree to remain actively involved in the RPPTL Section after the conclusion of the Leadership Academy.

TIMING? 2018 Leadership Academy applications will be available from The Florida Bar on Thursday, December 1, 2017. To be eligible for the RPPTL Section scholarship(s), potential applicants must submit a COPY of their Leadership Academy application to rpptlapplications@gmail.com by Friday, December 15, 2017 (with a copy to kfernandez@kfernandezlaw.com). The RPPTL Section Leadership Academy Committee will review the applications and then inform the nominee(s) of their selection for the potential scholarship. The nominee(s) must still submit the completed application to The Florida Bar for approval by The Florida Bar Leadership Academy Committee.

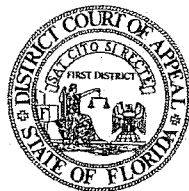
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If you have any questions regarding the RPPTL Section scholarships for The Florida Bar Wm. Reece Smith, Jr. Leadership Academy, please contact Kristopher Fernandez, (813) 832-6340, kfernandez@kfernandezlaw.com or Brian Sparks, (813) 222-8515, brian.sparks@hwhlaw.com; J Allison Archbold, Esq.; (941) 960-8825, JAA@archbold.law



ANDREW O'MALLEY

Chair, Real Property, Probate & Trust Law Section



DISTRICT COURT OF APPEAL
FIRST DISTRICT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA 32399-0950
(850) 488-6151

KRISTINA SAMUELS
CLERK OF THE COURT

(850) 488-6151

November 13, 2017

Hon. Bill Kinsaul, Clerk
Clerk of Circuit Court
300 E. 4th St
P.O. Box 2269
Panama City, FL 32402

RE: Richard M. Rigby

v. Bank of New York Mellon, et al.

Docket No.: 1D16-0665
Lower Tribunal Case No: 10-1313-CA

Dear Mr. Kinsaul,

I have been directed by the court to issue the attached mandate in the above-styled cause. It is enclosed with a certified copy of this Court's opinion.

Yours truly,

Kristina Samuels
Clerk of the Court

KS/jm

Enclosures

c: (letter and mandate only)

Robert Goldman
Michael R. Reiter

Kenneth B. Bell
Thomas E. Bishop

Douglas L. Smith
Timothy D. Padgett

Robert K. Bowen
Jennifer Lima-Smith
Andrea Rachael
Tromberg
Michael J. Henry
Mary Josephine Walter
Jonathan Isaac
Jacobson
C. Early
Sara A. Brubaker

Joseph E. Foster
Carrie Ann Wozniak
Jason F. Joseph
Mark P. Stopa
David Rosenberg
Deborah P. Goodall,
Chairperson
Marissa Maxine Yaker
Richard H. Martin

Michelle Garcia Gilbert
John W. Little III
Robert R. Edwards
Tricia Julie Duthiers
John F. Harkness, Jr.,
Executive Director
Mary Ann Obos
Ari Miller

M A N D A T E

From

**DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT**

To the Honorable Judges of the Circuit Court for Bay County

WHEREAS, in the certain cause filed in this Court styled:

RICHARD M. RIGBY

Case No : 1D16-0665

v.

Lower Tribunal Case No : 10-1313-CA

BANK OF NEW YORK MELLON, ET AL.

The attached opinion was issued on September 18, 2017.

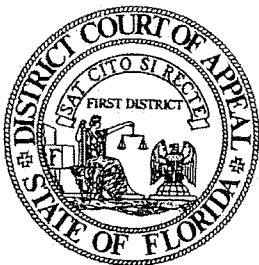
YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with said opinion, the rules of Court, and the laws of the State of Florida.

WITNESS the Honorable Bradford L. Thomas, Chief Judge

of the District Court of Appeal of Florida, First District,

and the Seal of said Court done at Tallahassee, Florida,

on this 13th day of November 2017.



Kristina Samuels

KRISTINA SAMUELS, CLERK

District Court of Appeal of Florida, First District

MANDATE
SUPREME COURT OF FLORIDA

To the Honorable, the Judges of the:

District Court of Appeal, Fourth District

WHEREAS, in that certain cause filed in this Court styled:

GLEND A MARTINEZ SMITH vs. J. ALAN SMITH

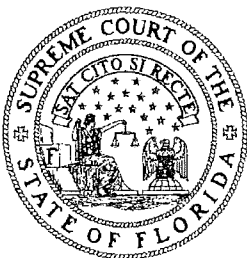
Case No.: **SC16-1312**


Your Case No.: **4D14-1436**

The attached opinion was rendered on: **08/31/2017**

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rule of this Court and the laws of the State of Florida.

WITNESS, The Honorable JORGE LABARGA, Chief Justice of the Supreme Court of Florida and the Seal of said Court at Tallahassee, the Capital, on this 25th day of September 2017.





Clerk of the Supreme Court of Florida

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

November 21, 2017

CASE NO.: 1D16-0665
L.T. No.: 10-1313-CA

Richard M. Rigby

v.

Bank of New York Mellon, et al.

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion filed November 14, 2017, to recall the mandate is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

Served:

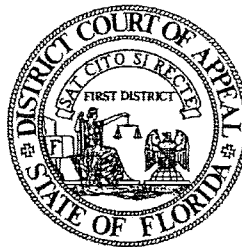
Robert Goldman
Michael R. Reiter
Robert K. Bowen
Jennifer Lima-Smith
Andrea Rachael Tromberg
Michael J. Henry
Mary Josephine Walter
Jonathan Isaac Jacobson
C. Early
Sara A. Brubaker

Kenneth B. Bell
Thomas E. Bishop
Joseph E. Foster
Carrie Ann Wozniak
Jason F. Joseph
Mark P. Stopa
David Rosenberg
Deborah P. Goodall,
Chairperson
Marissa Maxine Yaker
Richard H. Martin

Douglas L. Smith
Timothy D. Padgett
Michelle Garcia Gilbert
John W. Little III
Robert R. Edwards
Tricia Julie Duthiers
John F. Harkness, Jr.,
Executive Director
Mary Ann Obos
Ari Miller

jm


KRISTINA SAMUELS, CLERK



RECEIVED, 11/22/2017 2:02 PM, Kristina Samuels, First District Court of Appeal

IN THE DISTRICT COURT OF APPEAL, FIRST DISTRICT
FOR THE STATE OF FLORIDA

RICHARD M. RIGBY,

Appellant,

DCA NO: 1D16-0665

v.

LOWER TRIBUNAL NO.: 2010-1313CA

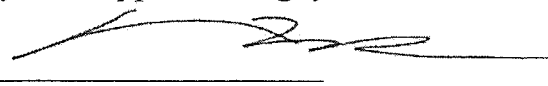
BANK OF NEW YORK MELLON,

Appellee.

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

NOTICE IS HEREBY GIVEN that the Appellant/Defendant Richard M. Rigby [hereinafter "Rigby"], by and through his undersigned counsel, pursuant to Rule 9.120, Fla. R. App. P., invokes the discretionary jurisdiction of the Supreme Court to review the decision of this Court rendered on September 18, 2017 (with timely rehearing denied on October 23, 2017). The decision of this Court is properly reviewed by the Supreme Court and is within its jurisdiction due to express and direct with other decisions of other district courts of appeal and this Court. See Fla. R. App. P. 9.030(a)(2)(A)(iv).

BURKE BLUE
HUTCHISON WALTERS & SMITH, P.A.
Attorneys for Appellant Rigby

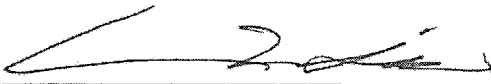
By: 
DOUGLAS L. SMITH, ESQ.

Florida Bar No. 816140
221 McKenzie Avenue
Panama City, FL 32401
(850) 769-1414
FAX (850) 784-0857
Email: dsmith@burkeblue.com
Secondary: jbomar@burkeblue.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic service to Mary J. Walter, Esq., of Liebler, Gonzalez & Portuondo, Courthouse Tower - 25th Floor, 44 West Flagler Street, Miami, FL 33130, at service@lgplaw.com and mjw@lgplaw.com, Jason F. Joseph, Esq., of Gladstone Law Group, P.A., 1499 W. Palmetto Park Road, Suite 300, Boca Raton, FL 33486, at eservice@gladstonelawgroup.com, , and Jonathan Jacobson, Esq., 1499 W. Palmetto Park Road, Suite 300, Boca Raton, FL 33486, at eservice@gladstonelawgroup.com, on this 22nd day of November, 2017.

BURKE BLUE
HUTCHISON WALTERS & SMITH, P.A.
Attorneys for Appellant Rigby

By: 
DOUGLAS L. SMITH, ESQ.
Florida Bar No. 816140
221 McKenzie Avenue
Panama City, FL 32401
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FAX (850) 784-0857
Email: dsmith@burkeblue.com
Secondary: jbomar@burkeblue.com

DLS:11/13/17
FAWPF\DLS\25040 rigby adv bony - appeal -Supreme Court-NOA.wpd

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By BARRY F. SPIVEY, Chair, Ad Hoc Jurisdiction & Service of Process Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date: June 2, 2017).

Address 1515 Ringling Blvd., Ste. 885, Sarasota, FL 34236
Telephone: (941) 840-1991

Position Type RPPTL Section, The Florida Bar
(Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

Barry F. Spivey, Spivey & Fallon, P.A., 1515 Ringling Boulevard, Suite 885, Sarasota, FL 34236 Telephone (941) 840-1991.
Peter M. Dunbar, Dean Mead & Dunbar, 215 S. Monroe St., Ste 815, Tallahassee, Florida 32301, Telephone (850) 999-4100.
Martha J. Edenfield, Dean Mead & Dunbar, 215 S. Monroe St., Ste 815, Tallahassee, Florida 32301, Telephone (850) 999-4100.
Sarah S. Butters, Ausley McMullen, 123 S. Calhoun St., Tallahassee, Florida 32301. Telephone (850) 425-5447.
(List name, address and phone number)

Appearances

Before Legislators (SAME)

(List name and phone # of those having face to face contact with Legislators)

Meetings with

Legislators/staff (SAME)

(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List The Following N/A

(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support _____ Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

“Support the proposed amendment to F.S. Chapter 731 to provide that formal notice as provided in the Florida Probate Rules does not confer in personam jurisdiction over persons receiving formal notice.”

Reasons For Proposed Advocacy:

The proposed statutory change is necessary because several appellate courts in recent years have held that persons deemed “interested persons” under the Probate Rules (because they may reasonably be expected to be affected by the outcome of a particular proceeding) may be subjected to *in personam* jurisdiction upon service by formal notice without any authority in Florida statutes or the Florida Probate Rules. The Committee believes that such personal jurisdiction should be acquired by traditional means rather than service by certified mail or commercial delivery service, and that such formal notice to acquire personal jurisdiction be expressly negated by amendment of section 731.301, Florida Statutes.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position NONE

(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one) NONE

(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

The Florida Bar Elder Law Section SUPPORT EXPECTED

(Name of Group or Organization) (Support, Oppose or No Position)

Florida Justice Association, Inc. NOT YET KNOWN

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.

REAL PROPERTY, PROBATE AND TRUST LAW SECTION OF THE FLORIDA BAR

WHITE PAPER

Proposed amendment of § 731.301 to provide that service of formal notice does not confer in personam jurisdiction over the recipient.

I. SUMMARY

Appellate court opinions in several cases have determined that service by formal notice under the Florida Probate Rules is sufficient for a probate court to acquire *in personam* jurisdiction over persons deemed to be “interested persons” under the Florida Probate Code. There is no authority in statutes or the probate rules suggesting that to be the law, and the Ad Hoc Jurisdiction & Service of Process Committee, although acknowledging that it is possible to provide such authority in a manner that complies with due process, believes that it is preferable to limit the means of acquiring personal jurisdiction to service of summons or other process by traditional means currently allowed by statute or the Florida Rules of Civil Procedure.

II. CURRENT SITUATION

In a series of decisions, the Second District Court of Appeal has held that those who are deemed to be “interested persons” within the meaning of F.S. 731.201(23) (i.e., those who may reasonably be expected to be affected by the outcome of a particular proceeding) may be subjected to personal jurisdiction by the service of formal notice pursuant to F.S. 731.301(2). Payette v. Clark, 559 So.2d 630 (2d DCA 1990); Kountze v. Kountze, 20 So.3d 428 (2d DCA 2009); Hall v. Tungett, 980 So.2d 1289 (2d DCA 2008); Galego v. Robinson, 695 So.2d 443 (2d DCA 1997). The Fourth District Court of Appeal has agreed, at least in cases where law firms or attorneys have rendered legal services to a Florida probate estate, that they are interested persons and that *in personam* jurisdiction (for the purpose of reviewing and potentially ordering refund of fees paid) could be acquired by service of formal notice. Rogers & Wells v. Winston, 662 So.2d 1303 (4th DCA 1995); Simmons v. Est. of Baranowitz, 189 So.3d 819 (4th DCA 2015).

Prior to October 1, 2010, when all of the foregoing cases except Baranowitz were decided, F.S. 731.301(2) read as follows:

(2) Formal notice shall be sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate.

Effective October 1, 2010, the subsection was amended to read as it does today:

(2) *In a probate proceeding*, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the

person's interest in the estate or in the decedent's protected homestead.
[Emphasis added].

By statute, probate proceedings are *in rem*, meaning that the court has jurisdiction over the will, if any, the tangible and intangible assets of the decedent's estate (wherever located), and real estate located in Florida, all without the necessity of any original process. F.S. 731.105; *Also see In re: Estate of Williamson*, 95 So.2d 244 (Fla. 1957). Service by formal notice is one method of complying with due process requirements necessary to invoke the court's *in rem* jurisdiction over those receiving the notice to the extent of their interest in the estate. Even without addition of the phrase, "in a probate proceeding," the statute is easily read to be addressing only a means of notice to persons subject to the court's *in rem* jurisdiction that is calculated to effect due process over those receiving the notice.

Formal notice is not judicial process, and is not the equivalent of a summons. For example, nowhere in the Florida Probate Code does it provide that a default may be entered after service of Formal Notice, as would be the case with judicial process. Formal notice does not support *in personam* jurisdiction because formal notice is not judicial process, is not issued under the seal of the court, nor is it typically served as provided in Chapter 48. If the clerk's seal is not affixed to judicial process, it is void and cannot be used to obtain personal jurisdiction. 12A FLA.JUR2d *Courts and Judges* §§ 53-55 and 61-62. While acknowledging that it is possible to provide such authority in a manner that complies with due process, the Committee believes that it is preferable to limit the means of acquiring personal jurisdiction to service of summons or other judicial process by traditional means currently allowed by statute or the Florida Rules of Civil Procedure. By requiring compliance with the existing procedural rules for acquiring personal jurisdiction, the safeguards that assure actual notice by the person over whom personal jurisdiction is sought are preserved.

Personal jurisdiction is neither contemplated nor required in a majority of adversary proceedings in probate. Of those specific adversary proceedings listed in Probate Rule 5.025(a) that require service of formal notice, only surcharge of a personal representative or guardian requires *in personam* jurisdiction, and those fiduciaries have submitted to the court's personal jurisdiction by instituting or participating in the court proceedings. See *Payette v. Clark*, 559 So.2d 630 (2d DCA 1990) (filing of a petition for administration subjects the personal representative to *in personam* jurisdiction "for all purposes related to the administration").

Thus the formal notice procedure was never intended to be a method of obtaining personal jurisdiction over persons having an interest in the probate estate. *In Re Estate of Black*, 528 So.2d 1316 (Fla. 2d DCA 1988); *In Re Estate of Vernon*, 608 So.2d 510 (Fla. 4th DCA 1992). Formal notice is a method of service of notice to a person subject to the court's *in rem* jurisdiction. It is not a summons or judicial process that confers *in personam* jurisdiction over the recipient.

The notion that any person determined to be an “interested person” can be subjected to personal jurisdiction by service of formal notice is incorrect and can be made clear by the proposed amendment to F.S. 731.301.

III. EFFECT OF PROPOSED CHANGES

The proposed amendment to section 7331.301(2) provides:

In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person receiving formal notice to the extent of the person’s interest in the estate or in the decedent’s protected homestead. Formal notice is not sufficient to invoke the court’s personal jurisdiction over the person receiving notice regardless of the manner in which it is served.

The proposed amendment would change the result in each of the cases cited in the first paragraph of Section II above. In those factual situations it would be necessary for the petitioners to obtain personal jurisdiction over the adverse parties by traditional means such as service of a summons pursuant to Chapter 48, Florida Statutes.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal does not have a direct economic impact on the private sector.

VI. CONSTITUTIONAL ISSUES

There appear to be no constitutional issues raised by this proposal.

VII. OTHER INTERESTED PARTIES

Florida Justice Association, Inc.

1 A bill to be entitled

2 An act relating to personal jurisdiction of probate courts over persons having an interest in
3 an estate; amending s. 731.301, F.S.; providing that in personam jurisdiction over interested
4 persons cannot be acquired by service of formal notice.

5 Be It Enacted by the Legislature of the State of Florida:

6 Section 1. Subsection (2) of section 731.301, Florida Statutes, is amended to read:

7 731.301 Notice

8 (2) In a probate proceeding, formal notice is sufficient to acquire jurisdiction over the person
9 receiving formal notice to the extent of the person's interest in the estate or in the decedent's
10 protected homestead. Formal notice is not sufficient to invoke the court's personal jurisdiction
11 over the person receiving notice regardless of the manner in which it is served.

12
13 Section 2. This act shall take effect upon becoming law and shall apply to formal notice
14 given on or after such date.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By John C. Moran, Chair, Probate Law and Procedure Committee of the Real Property Probate & Trust Law Section

Address Gunster, Yoakley & Stewart, P.A., 777 S. Flagler Drive, Suite 500 East,
West Palm Beach, FL 33401
Telephone: (561) 650-0515; Email: jmoran@gunster.com

Position Type Probate Law and Procedure Committee, RPPTL Section, The Florida Bar
(Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

John C. Moran, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, FL 33401-6194, Telephone: (561) 650-0515, Email:

jmoran@gunster.com

Sarah S. Butters, Ausley McMullen, 123 S. Calhoun St., Tallahassee, FL 32301
Telephone: 850-425-5447, Email: sbutters@ausley.com

Peter M. Dunbar, Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.,
215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850) 999-
4100, Email: pdunbar@deanmead.com

Martha J. Edenfield, Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth,
P.A., 215 S. Monroe Street, Suite 815, Tallahassee, FL 32301, Telephone: (850)
999-4100, Email: medenfield@deanmead.com

Appearances before Legislators

_____ N/A at this time
(List name and phone # of those appearing before House/Senate Committees)

Meetings with Legislators/staff

_____ N/A at this time
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable, List The Following

_____ N/A at this time

(Bill or PCB #)

(Bill or PCB Sponsor)

Indicate Position

Support

Oppose

Technical Assistance

Other

Proposed Wording of Position for Official Publication:

Supports proposed legislation defining “tangible personal property” in the Florida Probate Code to make it clear that tangible personal property includes, but is not limited to, precious metals in any tangible form, such as bullion and coins.

Reasons For Proposed Advocacy:

Florida law is currently unclear as to whether certain types of precious metals, such as bullion and coins, that are regularly held by individuals dying in this State constitute “tangible personal property” (which is subject to devise by a tangible personal property clause in a will or a separate writing) or intangible property (which generally passes in accordance with a residuary clause in a will in absence of other specific direction). The purpose of this amendment is to: i) specify that precious metals in any tangible form, such as bullion and coins that are kept apart from their normal use as legal tender for payment, constitute tangible personal property for purposes of the Florida Probate Code without foreclosing the possibility that other items may also constitute tangible personal property; and ii) create a bright line rule as to the disposition of such items identified in a separate writing that complies with § 732.515, Fla. Stat.

PRIOR POSITIONS TAKEN ON THIS ISSUE
--

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position

None		
(Indicate Bar or Name Section)	(Support or Oppose)	(Date)

Others

(May attach list if more than one)

(Indicate Bar or Name Section)	(Support or Oppose)	(Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

(Name of Group or Organization)	(Support, Oppose or No Position)

(Name of Group or Organization)	(Support, Oppose or No Position)

(Name of Group or Organization)	(Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before

the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (850) 561-5662 or 800-342-8060, extension 5662.

**The Florida Bar
Real Property, Probate and Trust Law Section
Probate Law and Procedure Committee
Coins and Bullion Subcommittee**

WHITE PAPER

Proposed Revision to § 731.201, Florida Statutes

I. SUMMARY

The proposed bill would add a new definition of “tangible personal property” to § 731.201, Fla. Stat. The purpose of this amendment is to: i) specify that precious metals in any tangible form, such as bullion and coins that are kept apart from their normal use as legal tender for payment, constitute tangible personal property for purposes of the Florida Probate Code without foreclosing the possibility that other items may also constitute tangible personal property; and ii) create a bright line rule as to the disposition of such items identified in a separate writing that complies with § 732.515, Fla. Stat.

II. CURRENT SITUATION

The relevant Florida law is unclear as to whether certain types of precious metals, such as coins and bullion, that are regularly held by individuals dying in this State constitute “tangible personal property” (which is subject to devise by a tangible personal property clause in a will or a separate writing) or intangible property (which generally passes in accordance with a residuary clause in a will in absence of other specific direction). Specifically:

- The Florida Probate Code does not specify whether these items are “tangible personal property.”
- No Florida cases specifically address this issue; only a Delaware state case has analyzed § 732.515. *In re Last Will and Testament and Trust Agreement of Moor*, 879 A.2d 648, 649 (Del.Ch. Jun 08, 2005) (court noted that money is not specifically excluded under Section 732.515; did not specifically address coins or bullion).

- There is a lack of consensus among practitioners on this issue.

III. EFFECT OF THE PROPOSED CHANGE

Under the proposed changes to Section 731.201, s. 38, the following definition will be added to the general definitions section of the Florida Probate Code: “Tangible personal property includes, but is not limited to, precious metals in any tangible form, such as bullion or coins kept and acquired for their historical, artistic, collectable, or investment value apart from their normal use as legal tender for payment.”

While the definition does not create a bright line rule of construction for purposes of a tangible personal property clause in a will, the definition serves as indicia that bullion and coins are ordinarily considered tangible personal property in the probate context. As such, the definition may provide clarity in circumstances where the Will does not specify what tangible personal property is and no other evidence of the testator’s intent is apparent.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT - None.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR - None.

VI. CONSTITUTIONAL ISSUES – None.

VII. OTHER INTERESTED PARTIES - None.

VIII. EFFECTIVE DATE – July 1, 2018.

1 A bill to be entitled
2 An act determining whether coins and bullion constitute
3 tangible property; amending ss. 731.201 F.S.
4

5 Be it enacted by the Legislature of the State of Florida:
6

7 Present subsections (38), (39), and (40) of Section 731.201
8 are redesignated as subsections (39), (40), and (41)
9 respectively, and a new subsection (38) is added to that section,
10 to read:

11 731.201 Definitions.

12 Subject to additional definitions in subsequent chapters that are
13 applicable to specific chapters or parts, and unless the context
14 otherwise requires, in this code, in s. 409.9101, and in chapters
15 736, 738, 739, and 744, the term:

16 (38) ~~"Trust" means an expressed trust, private or~~
17 ~~charitable, with additions to it, wherever and however created.~~
18 ~~It also includes a trust created or determined by a judgment or~~
19 ~~decree under which the trust is to be administered in the manner~~
20 ~~of an express trust. "Trust" excludes other constructive trusts,~~
21 ~~and it excludes resulting trusts: conservatorships; custodial~~
22 ~~arrangements pursuant to the Florida Uniform Transfers to Minors~~
23 ~~Act; business trusts providing for certificates to be issued to~~
24 ~~beneficiaries; common trust funds; land trusts under s. 689.071,~~
25 ~~except to the extent provided in s. 689.071(7); trusts created by~~
26 ~~the form of the account or by the deposit agreement at a~~
27 ~~financial institution; voting trusts; security arrangements;~~
28 ~~liquidation trusts; trusts for the primary purpose of paying~~
29 ~~debts, dividends, interest, salaries, wages, profits, pensions,~~
30 ~~or employee benefits of any kind; and any arrangement under which~~
31 ~~a person is nominee or escrowee for another. Tangible personal~~

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 See §710.101 *et seq.*

32 property" includes, but is not limited to, precious metals in any
33 tangible form, such as bullion or coins kept and acquired for
34 their historical, artistic, collectable, or investment value
35 apart from their normal use as legal tender for payment.

36 ~~(39) "Trustee" includes an original, additional, surviving,~~
37 ~~or successor trustee, whether or not appointed or confirmed by~~
38 ~~court. "Trust" means an expressed trust, private or charitable,~~
39 with additions to it, wherever and however created. It also
40 includes a trust created or determined by a judgment or decree
41 under which the trust is to be administered in the manner of an
42 express trust. "Trust" excludes other constructive trusts, and
43 it excludes resulting trusts: conservatorships; custodial
44 arrangements pursuant to the Florida Uniform Transfers to Minors
45 Act; business trusts providing for certificates to be issued to
46 beneficiaries; common trust funds; land trusts under s. 689.071,
47 except to the extent provided in s. 689.071(7); trusts created by
48 the form of the account or by the deposit agreement at a
49 financial institution; voting trusts; security arrangements;
50 liquidation trusts; trusts for the primary purpose of paying
51 debts, dividends, interest, salaries, wages, profits, pensions,
52 or employee benefits of any kind; and any arrangement under which
53 a person is nominee or escrowee for another.

54 ~~(40) "Will" means an instrument, including a codicil,~~
55 ~~executed by a person in the manner prescribed by this code, which~~
56 ~~disposes of the person's property on or after his or her death~~
57 ~~and includes an instrument which merely appoints a personal~~
58 ~~representative or revokes or revises another will. — "Trustee"~~
59 includes an original, additional, surviving, or successor
60 trustee, whether or not appointed or confirmed by court.

61 (41) "Will" means an instrument, including a codicil,
62 executed by a person in the manner prescribed by this code, which

63 disposes of the person's property on or after his or her death
64 and includes an instrument which merely appoints a personal
65 representative or revokes or revises another will.

Page 3 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

¹ See §710.101 *et seq.*

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Nicklaus Curley, Chairman, Guardianship, Power of Attorney, and Advanced Directives Committee of the Real Property Probate & Trust Law Section

Address Nicklaus Curley, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401
Phone: (561) 650-0609

Position Type Real Property, Probate and Trust Law Section, The Florida Bar (Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance **Nicklaus Curley**, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401, Telephone: (561) 650-0609
Sarah Butters, Ausley McMullen, 123 S. Calhoun St., Tallahassee FL 32301, Telephone (850) 425-5447
Peter M. Dunbar, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100
Martha J. Edenfield, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100

Appearances

Before Legislators (SAME)

(List name and phone # of those having face to face contact with Legislators)

Meetings with Legislators/staff (SAME)

(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

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If Applicable,

List The Following N/A

(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support creation of a new statutory procedure to allow a guardian to access a bank or brokerage account held as tenants by the entirety for a ward's necessary guardianship expenses, including necessary living expenses, where the spouse of the ward does not agree.

Reasons For Proposed Advocacy:

Under current law, a guardian of the ward cannot access a financial institution account that is held by the ward and the ward's spouse as tenants by the entirety if the spouse does not consent. The non-incapacitated spouse can block the guardian's access to the entireties account. The proposed revision to Florida Statute § 744.457 will allow the guardian of a ward to request an evidentiary hearing to determine whether access to tenancy by the entirety funds is warranted when the ward's spouse objects to the guardian's request to access the funds. A court could allow access in appropriate circumstances based on the court's determination of the ward's best interests. The guardian could then use these funds to pay necessary guardianship expenses, including the ward's necessary living expenses. Essentially, this is to allow the guardian of an incapacitated ward to do what the ward would be able to do if the ward were not incapacitated.

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position [NONE]
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one) [NONE]
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

 Elder Law Section
(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.

WHITE PAPER
PROPOSED AMENDMENT OF
F.S. SECTION 744.457 CONSIDERING
Romano v. Olshen

A. SUMMARY

This proposal seeks to amend Florida Statute §744.457(1)(a) to allow access to a tenancy by the entirety bank or brokerage account for the necessary expenses of the ward where the spouse of the ward does not agree. The Fourth District Court of Appeal (“Fourth DCA”) in *Romano v. Olshen*, 153 So. 3d 912 (Fla. 4th DCA) pointed out that Florida Statute § 744.457(1)(a) could be used by the non-incapacitated spouse to block the guardian’s access to an entirety (“TBE”) bank or brokerage account for the ward’s necessities. This situation could result in Chapter 744 being used to the ward’s detriment rather than to protect the ward. The Fourth DCA stated that the Legislature should authorize a court to allow access to an entirety bank or brokerage account for necessary guardianship expenses, even if the spouse of the ward does not agree.

The Guardianship, Power of Attorney and Advance Directives Committee of the Real Property, Probate & Trust Law Section of The Florida Bar has studied this issue and recommends that certain amendments to subsection 744.457 be made to provide the ability for the guardian to petition the court for authority to invade a TBE account over the non-incapacitated spouse’s objection (or lack of consent) for the benefit of the ward. The amendment would provide for an evidentiary hearing, after notice to the non-incapacitated spouse. The court could weigh the interests of the ward against the interests of the ward’s spouse to determine whether invasion into the account is necessary and beneficial to the ward after consideration of all relevant factors, and if invasion is permitted, to determine the nature of the invasion. The proposed statutory changes are set out below.

B. CURRENT VERSION OF § 744.457

Florida Statutes § 744.457(1)(a) states, in pertinent part:

All legal or equitable interests in property owned as an estate by the entirety by an incapacitated person for whom a guardian of the property has been appointed may be sold, transferred, conveyed, or mortgaged in accordance with § 744.447, if the spouse who is not incapacitated joins in the sale, transfer, conveyance or mortgage of the property.

The statute, as it is currently written, allows the non-incapacitated spouse to deprive the ward of access to the funds in a TBE account that could be used to cover their necessary living expenses. As the *Romano* Court notes, this situation “seems stunningly unfair to deprive a ward of funds of which he or she is clearly an owner.” *Romano*, 153 So.3d at 921. The current statute

allows the non-incapacitated spouse to use Chapter 744 entirely to the ward's detriment. This violates the public policy to protect the incapacitated ward.

Florida Statutes § 744.457 does not provide a mechanism by which the guardian of a ward may challenge the non-incapacitated spouse's refusal to give consent to the sale, transfer, conveyance or mortgage of any property owned as an estate by the entirety. Nor does Florida Statutes § 744.457 provide for any repercussions to the non-incapacitated spouse for unreasonably withholding his or her consent to the detriment of the ward.

C. EFFECT OF PROPOSED CHANGES TO § 744.457

To permit a more flexible approach and address the issues raised in *Romano*, the Guardianship & Power of Attorney Committee recommends revisions to (1)(a) as follows:

All legal or equitable interests in property owned as an estate by the entirety by an incapacitated person for whom a guardian of the property has been appointed may be sold, transferred, conveyed, or mortgaged in accordance with § 744.447, if the spouse who is not incapacitated joins in the sale, transfer, conveyance or mortgage of the property, ***except as provided in (1)(b) and (c) herein.***

This change will allow the guardian of a ward to request an evidentiary hearing to determine whether access to tenancy by the entirety funds is warranted.

SECTION 744.457(1)(b) and (c)

The Guardianship & Power of Attorney Committee recommends the addition of new sections (1)(b) and (1)(c) as follows:

(1)(b) If the spouse who is not incapacitated refuses to join in the transfer of funds from a bank, brokerage, or other financial institution account held as a tenancy by the entireties, then the guardian may seek access to such account by filing a petition for authorization to act. After notice to interested persons, the court shall hold an evidentiary hearing to consider the petition. Upon approval of the court pursuant to subsection (1)(c), a guardian may transfer some portion of a bank or brokerage account, owned as an estate by the entirety by an incapacitated person and their spouse, to a separate bank or brokerage account for the benefit of the incapacitated person.

(1)(c) The court, in exercising, directing or approving a guardian's exercise of the powers listed in subsection (1)(b), shall consider the best interests of the incapacitated person. Among the factors the court shall consider are:

- (i) *the financial needs of the incapacitated person and the spouse;*
- (ii) *the financial needs of individuals who are dependent on the incapacitated person or the spouse for support;*
- (iii) *the availability of other sources of funds or income to the incapacitated person and the spouse;*
- (iv) *the incapacitated person's and the spouse's eligibility for governmental assistance;*
- (v) *the incapacitated person's and the spouse's life expectancy;*
- (vi) *any other factors the court considers relevant.*

The purpose of the amendments to § 744.457(1) is to allow the incapacitated spouse, through a guardian, to reach funds held in a tenancy by the entirety account to pay for the ward's care and for the administrative expenses of the guardianship. Funds removed by a guardian acting on behalf of an incapacitated spouse would lose tenancy by the entirety creditor protection. The Committee believes that the factors set forth in the proposed version of § 744.457(1)(c), which the Court is required to consider, will thwart unnecessary transfers in amounts exceeding what is actually needed by the ward.

Further, inserting language into the statute that provides for an evidentiary hearing will bring stability to guardianship proceedings, and hopefully reduce potential costs and attorneys' fees that would result from protracted litigation and appeals. Without a statutory mechanism to allow for such a hearing, these issues will be left to the equitable conscience of the court. The likelihood of inconsistent results across Florida would be high, and could cause confusion among practitioners and the courts alike.

D. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal will not have a fiscal impact on state or local governments. To the extent that any impact may be realized, the recommended statutory approach improves judicial economy and efficiency in the Guardianship administration area, thereby reducing the cost and expense incurred by state and local government.

E. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal will not have any direct economic impacts on the private sector.

F. CONSTITUTIONAL ISSUES

There appear to be no constitutional issues raised by this proposal.

G. OTHER INTERESTED PARTIES

None are known at this time.

1 A bill to be entitled

2 An act relating to guardianship; amending s. 744.457, F.S.; to provide a method whereby
3 the guardian of a ward could access a tenancy by the entireties bank or brokerage account for the
4 necessary expenses of the ward where the spouse does not consent, and providing for an
5 effective date.

6
7 Be it enacted by the Legislature of the State of Florida:

8
9 Section 1. Paragraph (a) of subsection (1) of section 744.457, Florida Statutes, is
10 amended, paragraphs (b), (c), and (d) of subsection (1) are redesignated as paragraphs (d), (e),
11 and (f), respectively, and new paragraphs (b) and (c) are added to that subsection to read:

12 744.457 Conveyance of various property rights by guardians of the property.

13 (1)(a) All legal or equitable interests in property owned as an estate by the entirety by an
14 incapacitated person for whom a guardian of the property has been appointed may be sold,
15 transferred, conveyed, or mortgaged in accordance with § 744.447, if the spouse who is not
16 incapacitated joins in the sale, transfer, conveyance or mortgage of the property, except as
17 provided in (1)(b) and (c) herein. When both spouses are incapacitated, the sale, transfer,
18 conveyance, or mortgage shall be by the guardians only. The sale, transfer, conveyance, or
19 mortgage may be accomplished by one instrument or by separate instruments.

20 (b) If the spouse who is not incapacitated refuses to join in the transfer of funds from
21 a bank, brokerage, or other financial institution account held as a tenancy by the entireties, then
22 the guardian may seek access to such account by filing a petition for authorization to act. After
23 notice to interested persons, the court shall hold an evidentiary hearing to consider the petition.
24 Upon approval of the court pursuant to subsection (1)(c), a guardian may transfer some portion

25 of a bank or brokerage account, owned as an estate by the entirety by an incapacitated person and
26 their spouse, to a separate bank or brokerage account for the benefit of the incapacitated person.

27 (c) The court, in exercising, directing or approving a guardian's exercise of the
28 powers listed in subsection (1)(b), shall consider the best interests of the incapacitated person.

29 Among the factors the court shall consider are:

- 30 1. the financial needs of the incapacitated person and the spouse;
- 31 2. the financial needs of individuals who are dependent on the incapacitated
32 person or the spouse for support;
- 33 3. the availability of other sources of funds or income to the incapacitated
34 person and the spouse;
- 35 4. the incapacitated person's and the spouse's eligibility for governmental
36 assistance;
- 37 5. the incapacitated person's and the spouse's life expectancy;
- 38 6. any other factors the court considers relevant.

39 Section 2. This act shall take effect July 1, 2018

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LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Nicklaus Curley, Chairman, Guardianship, Power of Attorney, and Advanced Directives Committee of the Real Property Probate & Trust Law Section

Address Nicklaus Curley, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401
Phone: (561) 650-0609

Position Type Real Property, Probate and Trust Law Section, The Florida Bar (Florida Bar, section, division, committee or both)

CONTACTS

Board & Legislation Committee Appearance

Nicklaus Curley, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401, Telephone: (561) 650-0609
Sarah Butters, Ausley McMullen, 123 S. Calhoun St., Tallahassee FL 32301, Telephone (850) 425-5447
Peter M. Dunbar, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100
Martha J. Edenfield, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100

Appearances

Before Legislators (SAME) _____
(List name and phone # of those having face to face contact with Legislators)

Meetings with Legislators/staff (SAME) _____
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable, List The Following [NONE] _____
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support X Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support amendment to Florida Statutes § 744.3701 to clarify existing law on the standard for the court's ordering the production of confidential documents in guardianship proceedings and the parties who have the right to access confidential documents without court order.

Reasons For Proposed Advocacy:

Florida Statutes § 744.3701(1) currently has a misplaced comma and a misplaced conjunction which may incorrectly be interpreted to mean the Court may order production of confidential documents without a showing of good cause. The proposed bill clarifies existing law by correcting these grammatical errors. The proposal further clarifies the parties who have right to access confidential documents without a prior court order by reformatting the statute to include a sub-section list of the parties.

WHITE PAPER

PROPOSED AMENDMENT OF F.S. SECTION 744.3701(1)

A. SUMMARY

The proposed amendment eliminates a misplaced comma and conjunction from the language of Florida Statutes § 744.3701(1) in order to address a grammatical error and to avoid misinterpretation of the statute.

B. CURRENT SITUATION

The relevant portion of Florida Statute § 744.3701 reads as follows:

“(1) Unless otherwise ordered by the court, upon a showing of good cause, an initial annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim, is subject to inspection only by the court, the clerk or the clerk’s representative, the guardian and the guardian’s attorney, the guardian ad litem with regard to the settlement of the claim, the ward if he or she is at least 14 years of age and has not been determined to be totally incapacitated, the ward’s attorney, the minor if he or she is at least 14 years of age, or the attorney representing the minor with regard to the minor’s claim, or as otherwise provided by this chapter.”

The existing statute improperly places a comma prior to the phrase “upon a showing of good cause” which could incorrectly lend itself to an interpretation that the court may order documents be provided without a showing of good cause.

Additionally, the existing statute reads “or the attorney representing the minor with regard to the minor’s claim, or...”. This is grammatically incorrect as a conjunction should only be used prior to the last item in a list.

C. EFFECT OF PROPOSED CHANGES

The proposed amendment deletes the comma prior to the phrase “upon a showing of good cause” and deletes the word “or” prior to the phrase “attorney representing the minor.” Additionally, the proposed amendment reformats the list into subsections (a)-(i) to improve the readability and clarity of the statute.

D. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

None

E. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

None

F. CONSTITUTIONAL ISSUES

None

G. OTHER INTERESTED PARTIES

None are known at this time.

BILL

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A bill to be entitled

An act relating to confidentiality of guardianship materials; amending s. 744.3701, F.S.; correcting a grammatical error in the statute and separating list into subsections

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 744.3701(1), Florida Statutes, is amended to read:

744.3701. Confidentiality

(1) Unless otherwise ordered by the court~~;~~i upon a showing of good cause, an initial, annual, or final guardianship report or amendment thereto, or a court record relating to the settlement of a claim, is subject to inspection only by:

- (a) the ~~The~~ court~~;~~i
- (b) the ~~The~~ clerk or the clerk's representative~~;~~i
- (c) the ~~The~~ guardian and the guardian's attorney~~;~~i
- (d) the ~~The~~ guardian ad litem with regard to the settlement of the claim~~;~~i
- (e) the ~~The~~ ward if he or she is at least 14 years of age and has not been determined to be totally incapacitated~~;~~i
- (f) the ~~The~~ ward's attorney~~;~~i
- (g) the ~~The~~ minor if he or she is at least 14 years of age~~;~~i
- (h) or the ~~The~~ attorney representing the minor with regard to the minor's claim~~;~~i or
- (i) as ~~As~~ otherwise provided by this chapter.

Section 2. This act shall take effect upon being signed into law.

LEGISLATIVE POSITION GOVERNMENTAL AFFAIRS OFFICE
REQUEST FORM

Date Form Received _____

GENERAL INFORMATION

Submitted By Nicklaus Curley, Chairman, Guardianship, Power of Attorney, and Advanced Directives Committee of the Real Property Probate & Trust Law Section
Address Nicklaus Curley, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401
Phone: (561) 650-0609
Position Type Guardianship, Power of Attorney, and Advanced Directives Committee, RPPTL Section, The Florida Bar

CONTACTS

Board & Legislation Committee Appearance **Nicklaus Curley**, Gunster, 777 South Flagler Drive, Suite 500 East, West Palm Beach, Florida 33401, Telephone: (561) 650-0609
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Martha J. Edenfield, Dean Mead, 215 S. Monroe, St, Ste 815, Tallahassee FL 32301, Telephone (850) 999-4100

Appearances Before Legislators (SAME)

(List name and phone # of those having face to face contact with Legislators)

Meetings with Legislators/staff (SAME)

(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable, List The Following N/A

(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

Support amendment of the current law to allow dismissal of a Petition to Determine Incapacity only when the three examining committee members unanimously find that a person is not incapacitated and the creation of a new statutory procedure to oppose dismissal in such circumstances.

Reasons For Proposed Advocacy:

Under current law, the Court is left without any discretion to hear evidence when a majority of the examining committees makes a finding that a person is not incapacitated. When a majority of examining committee members so find, the Court must dismiss the petition in its entirety. It is believed that the status of the current law violates the separation of powers by forcing the judiciary to dismiss petitions due to the wording of § 744.331. In the case of *Rothman v. Rothman* (93 So 3d 1052), the 4th DCA affirmed that the statute provides no discretion to the Court. While examining committees undertake an important role in our system, often they do not have the resources to undertake an exhaustive research of the alleged incapacitated person's condition. The current statute ignores important information that should be considered by the judiciary regarding the true condition of an alleged incapacitated person. The Court must be allowed to consider such evidence to properly protect vulnerable adults and to make well-reasoned decisions about capacity.

WHITE PAPER

PROPOSED AMENDMENT OF F.S. SECTION 744.331(4) IN LIGHT OF *ROTHMAN v. ROTHMAN*

A. SUMMARY

This proposal seeks the creation of process which would allow the Court to hear extrinsic evidence in the event that there is a unanimous finding that a person has capacity after the filing of reports by the Court appointed examining committee in a Petition to Determine Incapacity. The guardianship process depends on the examination of the alleged incapacitated person (“AIP”) by three court appointed committee members, who each receive a nominal fee and prepare a report to be presented to the court, pursuant to subsection 744.331(3), Florida Statutes. Subsection 744.331(4), Florida Statutes (2015), currently states “If a majority of the examining committee members conclude that the alleged incapacitated person is not incapacitated in any respect, the court shall dismiss the petition.”

In *Rothman v. Rothman*, 93 So 3d 1052 (4th DCA 2012), the lower Court failed to dismiss a Petition to Determine Incapacity even though there was a majority of the examining committee reports which found the AIP to have capacity. A motion to dismiss was filed by the AIP in accordance with Florida Statutes Section 744.331(4). This Motion was denied on the basis that the statute was unconstitutional. Stating that the dismissal of the Petition under these facts was “ministerial,” the 4th DCA overturned the lower court. The holding was especially troubling in this case, because the AIP had already been found incapacitated in another jurisdiction, had a long history of mental illness, and had been fleeced for millions of dollars. Despite such knowledge by the trial court, the holding of *Rothman* took away any discretion that could have been used to allow for extrinsic evidence about the AIP’s condition.

The rights of an AIP to a speedy trial and exit from the guardianship system must be balanced against the public policy of protecting vulnerable adults from exploitation. Under the current system, the pendulum has swung completely in favor of a swift exit from the system by taking away any discretion that the Court has to hear from long time medical professionals, friends, colleagues, or others who can give a more holistic picture of a person’s mental condition and vulnerability. As a result, interested persons can be left without a remedy to protect those who need assistance.

Rothman’s holding supports the legislature’s imposition of its authority on the judiciary by taking away any discretion. Courts generally need to have appropriate discretion to determine whether the particular facts and circumstances of a case should support dismissal of an action. The current law does not allow for that. The infringement by the legislature also creates a conflict between other portions of Chapter 744. On one hand, subsection 744.331(3)(f). states that “the comprehensive examination report shall be an essential element, **but not necessarily the only element**, used in making a capacity and guardianship decision.” *Rothman* ignored this portion of the statute and made the examining committee report, if unanimous in a finding of capacity, as the ONLY dispositive evidence.

In order to address these issues, there should be a mechanism in place allowing for AIP's to quickly exit the system when improperly placed into it, while also allowing interested persons to bring forward extrinsic evidence in cases where the examining reports are believed to be incorrect. Allowing for the quick dismissal, but providing the Court with discretion to deviate from this process in the event that there are pertinent reasons to do so better tracks public policy and the other portions of Chapter 744. The proposed solution will reduce undue burden on the persons finding themselves in inappropriate guardianship proceedings, while preserving a party's ability to bring forward evidence when a timely objection to the dismissal is filed.

The Guardianship, Power of Attorney and Advance Directives Committee of the Real Property, Probate & Trust Law Section of The Florida Bar has studied this issue, believes *Rothman* was correctly decided, but that the applicable statute should be changed. They further recommend that certain amendments to subsection 744.331 be made to allow for interested persons to bring forth evidence of incapacity, while providing AIP's with the ability to quickly end proceedings. This proposal adopts changes to subsection 744.331 to i) change the standard for dismissal from a "majority" standard to "unanimous," ii) institute a new objection time period in the event of unanimous reports finding that a person has capacity, and iii) clarifies and amends the existing legislation for the process of dealing with dismissal of a Petition to Determine Incapacity.

B. CURRENT SITUATION: *ROTHMAN V. ROTHMAN*

The holding in *Rothman* is problematic in that it does not allow the Court any discretion even when there are reasonable concerns that examining committee reports are inaccurate. In cases, like *Rothman*, where there were clear indications that the AIP was incapacitated despite the examining committee reports, the Court should have discretion to allow for extrinsic evidence. Unfortunately, the current form of 744.331(4) has no mechanism to allow this happen.

The appellate court interpreted the statute such that the word "shall" requires dismissal without the ability of the lower tribunal to consider:

- a. The opinion of the third examining committee member;
- b. The opinion(s) of long term treating medical or mental health professionals;
- c. The opinion(s) of informed family members;
- d. The interview of the Alleged Incapacitated Person—who may have made seemingly plausible statements that contained untruths or delusions that were not able to be verified or refuted;
- e. The interview of the Alleged Incapacitated Person who was properly medicated at the time of the examining committee's examination (though is currently and usually medication non-compliant);
- f. The fact that there may be inexperienced or untrained members of the examining committee; and
- g. The effects of denying the Petitioner's right to examine or cross-examine of the contents of the three examining committee reports that may have discrepancies contained within them.

In addition to the above-described practical issues with 744.331(4), there are also concerns with conflicting language among the different portions of 744.331. Subsection 744.331(3)(f) states that "the comprehensive examination report shall be an essential element,

but not necessarily the only element, used in making a capacity and guardianship decision.” *Rothman* ignored this portion of the statute and made the examining committee report, if unanimous in a finding of capacity, as the ONLY dispositive evidence.

C. EFFECT OF PROPOSED CHANGES

Under this proposal, a procedure is created which allows the Court to still dismiss a Petition to Determine Incapacity in the event that there is a unanimous finding by the Court appointed examining committee. At the same time, there are new provisions which provide the Court with discretion to hear extrinsic evidence regarding incapacity if a timely objection to dismissal is filed by an interested person. The use of the “interested person” standard limits those who can file such an objection and is detailed by the 731.201(23) definition “any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved.”

The proposed process respects the rights of those who may find themselves involved in a incapacity case improperly, while also providing support for the public policy of protecting vulnerable adults. The proposed changes provide a dismissal process to those who are being subjected to an unnecessary filing for determination of incapacity, while protecting against erroneous reports filed by the examining committee who may have insufficient expertise or the time to create an extensive report. Since there is a requirement under 744.331(3)(a) that “at least one member be psychiatrist or other physician,” the use of a unanimity of the examining committee reports, as opposed to “majority,” would further protect against the practical concerns of members who obtain bad information or lack the necessary training for a difficult case.

Accordingly, the changes being made to Florida Statute § 744.331 are as follows:

1: § 744.331(4) is revised to change the standard for dismissal of a Petition to Determine Incapacity from a “majority” of the examining committee to a “unanimous” finding that a person has capacity. In addition, the proposed change allows for the timely filing of an objection to the dismissal and a hearing by the Court to consider whether extrinsic evidence should be presented before summary dismissal of the Petition to Determine Incapacity occurs.

D. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal may increase the costs because it decreases the likelihood for automatic dismissal of the Petition to Determine incapacity. However, such increased costs should be limited since it is rare that examining committee reports make findings of capacity and/or that there is a dispute regarding such findings.

E. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal will could increase the fees incurred by persons involved in incapacity proceedings because the proposed change increases the bar/standard for dismissal of a Petition to

Determine Incapacity. At the same time, individuals who could otherwise be taken advantage of as a result of improper reports are likely to be protected by these changes. Such protections will have the likely result of saving assets.

F. CONSTITUTIONAL ISSUES

The holding of *Rothman* is viewed by some as a unconstitutional infringement of the legislature's power on the judiciary by removing any discretion from the Court. The proposed change remedies this situation by placing greater authority within the Court depending on the facts and circumstances.

G. OTHER INTERESTED PARTIES

None are known at this time.

BILL

ORIGINAL

YEAR

1 A bill to be entitled

2 An act relating to guardianships; amending s.
3 744.331(4), F.S. addressing certain holdings in
4 *Rothman v. Rothman*, 93 So 3d, 1052 (4th DCA 2012);
5 clarifying the purposes and applicability of s.
6 744.331(4), F.S.; providing applicability; providing
7 an effective date.

8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection 744.331, Florida Statutes is amended
11 to read:

12 744.331 Procedures to determine incapacity.—

13 (1) Notice of petition to determine incapacity.— Notice of
14 the filing of a petition to determine incapacity and a petition
15 for the appointment of a guardian if any and copies of the
16 petitions must be served on and read to the alleged
17 incapacitated person. The notice and copies of the petitions
18 must also be given to the attorney for the alleged incapacitated
19 person, and served upon all next of kin identified in the
20 petition. The notice must state the time and place of the
21 hearing to inquire into the capacity of the alleged
22 incapacitated person and that an attorney has been appointed to
23 represent the person and that, if she or he is determined to be
24 incapable of exercising certain rights, a guardian will be
25 appointed to exercise those rights on her or his behalf.

26 (2) Attorney for the alleged incapacitated person.--

27 (a) When a court appoints an attorney for an alleged
28 incapacitated person, the court must appoint the office of
29 criminal conflict and civil regional counsel or a private
30 attorney as prescribed in s. 27.511(6). A private attorney must
31 be one who is included in the attorney registry compiled
32 pursuant to s. 27.40. Appointments of private attorneys must be

33 made on a rotating basis, taking into consideration conflicts
34 arising under this chapter.

35 (b) The court shall appoint an attorney for each person
36 alleged to be incapacitated in all cases involving a petition
37 for adjudication of incapacity. The alleged incapacitated person
38 may substitute her or his own attorney for the attorney
39 appointed by the court.

40 (c) Any attorney representing an alleged incapacitated
41 person may not serve as guardian of the alleged incapacitated
42 person or as counsel for the guardian of the alleged
43 incapacitated person or the petitioner.

44 (d) Effective January 1, 2007, an attorney seeking to be
45 appointed by a court for incapacity and guardianship proceedings
46 must have completed a minimum of 8 hours of education in
47 guardianship. A court may waive the initial training requirement
48 for an attorney who has served as a court-appointed attorney in
49 incapacity proceedings or as an attorney of record for guardians
50 for not less than 3 years. The education requirement of this
51 paragraph does not apply to the office of criminal conflict and
52 civil regional counsel until July 1, 2008.

53 (3) Examining committee.--

54 (a) Within 5 days after a petition for determination of
55 incapacity has been filed, the court shall appoint an examining
56 committee consisting of three members. One member must be a
57 psychiatrist or other physician. The remaining members must be
58 either a psychologist, gerontologist, another psychiatrist, or
59 other physician, a registered nurse, nurse practitioner,
60 licensed social worker, a person with an advanced degree in
61 gerontology from an accredited institution of higher education,
62 or other person who by knowledge, skill, experience, training,
63 or education may, in the court's discretion, advise the court in
64 the form of an expert opinion. One of three members of the
65 committee must have knowledge of the type of incapacity alleged

66 in the petition. Unless good cause is shown, the attending or
67 family physician may not be appointed to the committee. If the
68 attending or family physician is available for consultation, the
69 committee must consult with the physician. Members of the
70 examining committee may not be related to or associated with one
71 another, with the petitioner, with counsel for the petitioner or
72 the proposed guardian, or with the person alleged to be totally
73 or partially incapacitated. A member may not be employed by any
74 private or governmental agency that has custody of, or
75 furnishes, services or subsidies, directly or indirectly, to the
76 person or the family of the person alleged to be incapacitated
77 or for whom a guardianship is sought. A petitioner may not serve
78 as a member of the examining committee. Members of the examining
79 committee must be able to communicate, either directly or
80 through an interpreter, in the language that the alleged
81 incapacitated person speaks or to communicate in a medium
82 understandable to the alleged incapacitated person if she or he
83 is able to communicate. The clerk of the court shall send notice
84 of the appointment to each person appointed no later than 3 days
85 after the court's appointment.

86 (b) A person who has been appointed to serve as a member of
87 an examining committee to examine an alleged incapacitated
88 person may not thereafter be appointed as a guardian for the
89 person who was the subject of the examination.

90 (c) Each person appointed to an examining committee must
91 file an affidavit with the court stating that he or she has
92 completed the required courses or will do so no later than 4
93 months after his or her initial appointment. Each year, the
94 chief judge of the circuit must prepare a list of persons
95 qualified to be members of an examining committee.

96 (d) A member of an examining committee must complete a
97 minimum of 4 hours of initial training. The person must complete
98 2 hours of continuing education during each 2-year period after

99 the initial training. The initial training and continuing
100 education program must be developed under the supervision of the
101 Office of Public and Professional Guardians, in consultation
102 with the Florida Conference of Circuit Court Judges; the Elder
103 Law and the Real Property, Probate and Trust Law sections of The
104 Florida Bar; and the Florida State Guardianship Association. The
105 court may waive the initial training requirement for a person
106 who has served for not less than 5 years on examining
107 committees. If a person wishes to obtain his or her continuing
108 education on the Internet or by watching a video course, the
109 person must first obtain the approval of the chief judge before
110 taking an Internet or video course.

111 (e) Each member of the examining committee shall examine
112 the person. Each examining committee member must determine the
113 alleged incapacitated person's ability to exercise those rights
114 specified in s. 744.3215. In addition to the examination, each
115 examining committee member must have access to, and may
116 consider, previous examinations of the person, including, but
117 not limited to, habilitation plans, school records, and
118 psychological and psychosocial reports voluntarily offered for
119 use by the alleged incapacitated person. Each member of the
120 examining committee must file his or her report with the clerk
121 of the court within 15 days after appointment.

122 (f) The examination of the alleged incapacitated person
123 must include a comprehensive examination, a report of which
124 shall be filed by each examining committee member as part of his
125 or her written report. The comprehensive examination report
126 should be an essential element, but not necessarily the only
127 element, used in making a capacity and guardianship decision.
128 The comprehensive examination must include, if indicated:

- 129 1. A physical examination;
- 130 2. A mental health examination; and
- 131 3. A functional assessment.

132 If any of these three aspects of the examination is not
133 indicated or cannot be accomplished for any reason, the written
134 report must explain the reasons for its omission.

135 (g) Each committee member's written report must include:

136 1. To the extent possible, a diagnosis, prognosis, and
137 recommended course of treatment.

138 2. An evaluation of the alleged incapacitated person's
139 ability to retain her or his rights, including, without
140 limitation, the rights to marry; vote; contract; manage or
141 dispose of property; have a driver license; determine her or his
142 residence; consent to medical treatment; and make decisions
143 affecting her or his social environment.

144 3. The results of the comprehensive examination and the
145 committee member's assessment of information provided by the
146 attending or family physician, if any.

147 4. A description of any matters with respect to which the
148 person lacks the capacity to exercise rights, the extent of that
149 incapacity, and the factual basis for the determination that the
150 person lacks that capacity.

151 5. The names of all persons present during the time the
152 committee member conducted his or her examination. If a person
153 other than the person who is the subject of the examination
154 supplies answers posed to the alleged incapacitated person, the
155 report must include the response and the name of the person
156 supplying the answer.

157 6. The signature of the committee member and the date and
158 time the member conducted his or her examination.

159 (h) Within 3 days after receipt of each examining committee
160 member's report, the clerk shall serve the report on the
161 petitioner and the attorney for the alleged incapacitated person
162 by electronic mail delivery or United States mail, and, upon
163 service, shall file a certificate of service in the incapacity
164 proceeding. The petitioner and the attorney for the alleged

165 incapacitated person must be served with all reports at least 10
166 days before the hearing on the petition, unless the reports are
167 not complete, in which case the petitioner and attorney for the
168 alleged incapacitated person may waive the 10 day requirement
169 and consent to the consideration of the report by the court at
170 the adjudicatory hearing. If such service is not timely
171 effectuated, the petitioner or the alleged incapacitated person
172 may move for a continuance of the hearing.

173 (i) The petitioner and the alleged incapacitated person may
174 object to the introduction into evidence of all or any portion
175 of the examining committee members' reports by filing and
176 serving a written objection on the other party no later than 5
177 days before the adjudicatory hearing. The objection must state
178 the basis upon which the challenge to admissibility is made. If
179 an objection is timely filed and served, the court shall apply
180 the rules of evidence in determining the reports' admissibility.
181 For good cause shown, the court may extend the time to file and
182 serve the written objection.

183 (4) DISMISSAL OF PETITION.— If there is a unanimous finding by
184 the examining committee members that the alleged incapacitated
185 person is not incapacitated in any respect, the Court shall
186 dismiss the petition unless a timely objection is filed by an
187 interested person. If an objection is filed, the Court shall
188 hold a hearing to consider evidence concerning the propriety of
189 dismissal or the need for further examination of the alleged
190 incapacitated person. ~~If a majority of the examining committee~~
191 ~~members conclude that the alleged incapacitated person is not~~
192 ~~incapacitated in any respect, the court shall dismiss the~~
193 ~~petition.~~

194 (5) Adjudicatory hearing.--

195 (a) Upon appointment of the examining committee, the court
196 shall set the date upon which the petition will be heard. The

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197 adjudicatory hearing must be conducted at least 10 days, which
198 time period may be waived, but no more than 30 days, after the
199 filing of the last filed report of the examining committee
200 members, unless good cause is shown. The adjudicatory hearing
201 must be conducted at the time and place specified in the notice
202 of hearing and in a manner consistent with due process.

203 (b) The alleged incapacitated person must be present at the
204 adjudicatory hearing, unless waived by the alleged incapacitated
205 person or the person's attorney or unless good cause can be
206 shown for her or his absence. Determination of good cause rests
207 in the sound discretion of the court.

208 (c) In the adjudicatory hearing on a petition alleging
209 incapacity, the partial or total incapacity of the person must
210 be established by clear and convincing evidence.

211 (6) Order determining incapacity.--If, after making findings of
212 fact on the basis of clear and convincing evidence, the court
213 finds that a person is incapacitated with respect to the
214 exercise of a particular right, or all rights, the court shall
215 enter a written order determining such incapacity. In
216 determining incapacity, the court shall consider the person's
217 unique needs and abilities and may only remove those rights that
218 the court finds the person does not have the capacity to
219 exercise. A person is determined to be incapacitated only with
220 respect to those rights specified in the order.

221 (a) The court shall make the following findings:

- 222 1. The exact nature and scope of the person's incapacities;
- 223 2. The exact areas in which the person lacks capacity to make
224 informed decisions about care and treatment services or to meet
225 the essential requirements for her or his physical or mental
226 health or safety;
- 227 3. The specific legal disabilities to which the person is

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228 subject; and

229 4. The specific rights that the person is incapable of
230 exercising.

231 (b) When an order determines that a person is incapable of
232 exercising delegable rights, the court must consider and find
233 whether there is an alternative to guardianship that will
234 sufficiently address the problems of the incapacitated person. A
235 guardian may not be appointed if the court finds there is an
236 alternative to guardianship which will sufficiently address the
237 problems of the incapacitated person. If the court finds there
238 is not an alternative to guardianship that sufficiently
239 addresses the problems of the incapacitated person, a guardian
240 must be appointed to exercise the incapacitated person's
241 delegable rights.

242 (c) In determining that a person is totally incapacitated, the
243 order must contain findings of fact demonstrating that the
244 individual is totally without capacity to care for herself or
245 himself or her or his property.

246 (d) An order adjudicating a person to be incapacitated
247 constitutes proof of such incapacity until further order of the
248 court.

249 (e) After the order determining that the person is
250 incapacitated has been filed with the clerk, it must be served
251 on the incapacitated person. The person is deemed incapacitated
252 only to the extent of the findings of the court. The filing of
253 the order is notice of the incapacity. An incapacitated person
254 retains all rights not specifically removed by the court.

255 (f) Upon the filing of a verified statement by an interested
256 person stating:

257 1. That he or she has a good faith belief that the alleged
258 incapacitated person's trust, trust amendment, or durable power

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259 of attorney is invalid; and

260 2. A reasonable factual basis for that belief, the trust, trust
261 amendment, or durable power of attorney shall not be deemed to
262 be an alternative to the appointment of a guardian. The
263 appointment of a guardian does not limit the court's power to
264 determine that certain authority granted by a durable power of
265 attorney is to remain exercisable by the agent.

266 (7) Fees.--

267 (a) The examining committee and any attorney appointed under
268 subsection (2) are entitled to reasonable fees to be determined
269 by the court.

270 (b) The fees awarded under paragraph (a) shall be paid by the
271 guardian from the property of the ward or, if the ward is
272 indigent, by the state. The state shall have a creditor's claim
273 against the guardianship property for any amounts paid under
274 this section. The state may file its claim within 90 days after
275 the entry of an order awarding attorney ad litem fees. If the
276 state does not file its claim within the 90-day period, the
277 state is thereafter barred from asserting the claim. Upon
278 petition by the state for payment of the claim, the court shall
279 enter an order authorizing immediate payment out of the property
280 of the ward. The state shall keep a record of the payments.

281 (c) If the petition is dismissed or denied:

282 1. The fees of the examining committee shall be paid upon court
283 order as expert witness fees under s. 29.004(6).

284 2. Costs and attorney fees of the proceeding may be assessed
285 against the petitioner if the court finds the petition to have
286 been filed in bad faith. The petitioner shall also reimburse the
287 state courts system for any amounts paid under subparagraph 1.
288 upon such a finding.

289 Section 2. This act shall take effect upon being signed

FLORIDA HOUSE OF REPRESENTATIVES

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290 into law.

WHITE PAPER

PROPOSED AMENDMENT TO RULE 4-1.8(c) OF THE RULES REGULATING THE FLORIDA BAR AND COMMENT

I. SUMMARY

There are many good reasons why a client may wish to appoint their lawyer as a fiduciary. Many commentators have pointed out that often the lawyer who drafts the will or trust is the one best-suited to serve as personal representative or trustee because of their training in issue spotting and analysis, substantive law, communication, conflict resolution, and legal ethics. *See generally* ABA Formal Op. 02-426 (May 31, 2002); Edward D. Spurgeon & Mary Jane Ciccarello, *The Lawyer in Other Fiduciary Roles: Policy and Ethical Considerations*, 62 *Fordham L. Rev.* 1357, 1378-79 (1994). The Comments to Rule 4-1.8(c) of the Florida Rules of Professional Conduct specifically recognize that:

“This rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as personal representative of the client’s estate or to another potentially lucrative position.”

However, this does not mean that a lawyer may solicit such appointments with impunity. The comments to Rule 4-1.8 caution that a lawyer who prepares a document appointing the lawyer or another lawyer in the firm as a fiduciary is subject to the general conflict of interest provisions in Rule 4-1.7 “when there is a significant risk that the lawyer’s interest in obtaining the appointment will materially limit the lawyers independent professional judgment in advising the client concerning the choice of a personal representative or other fiduciary.” *Id.* The comment provides that in “obtaining the client’s informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer’s financial interest in the appointment, as well as the availability of alternative candidates for the position.”

The problem with the current Rule and comment is that it provides little guidance as to when informed consent of the client is required. The comment leaves it to the lawyer to decide when the lawyer’s “independent professional judgment” in advising the client concerning choices of the selecting a fiduciary will be “materially limited” by the potential fees the lawyer will earn. This analysis itself sets up an inherent conflict of interest. The members of the Florida Bar as well as the public would be best served by clear Rules requiring, at least, minimum disclosure to the client when a lawyer or, persons affiliated with the lawyer, including family members, are appointed to serve a fiduciary before a fee can be earned for such services.

Because of the potential for overreaching, some states have enacted statutory safeguards to ensure that the decision by the client to select the lawyer as fiduciary is an informed one. In California, a drafting lawyer who is unrelated to the client is subject to removal unless (1) an independent attorney certifies on a statutory form that the appointment was not the product of fraud or undue influence before the document is executed, or (2) the court finds that it is consistent with the settlor’s intent that the trustee continue to serve and that the appointment was not the product of fraud or undue influence. *Cal. Prob. Code* § 15642(b)(6). The California statutes also limit the amount of compensation that the attorney can receive. California Probate

Code § 10804 specifically provides that “a personal representative who is an attorney shall be entitled to receive the personal representative's compensation as provided in this part, but shall not receive compensation for services as the attorney for the personal representative unless the court specifically approves the right to the compensation in advance and finds that the arrangement is to the advantage, benefit, and best interests of the decedent's estate.”

New York has followed a similar approach requiring the client sign an affidavit acknowledging the alternatives for the appointment of an executor and the nature and extent of the compensation that the lawyer may be entitled to receive. The failure to obtain the affidavit reduces the amount of the executor commissions payable to the lawyer by one-half. *See* NY Surr. Ct. P. R. § 2307-a.

The RPPTL Section has proposed legislation to address this issue in Florida. The proposed legislation provides that a lawyer, or certain people related to, or affiliated with, the lawyer will not be entitled to receive compensation for serving as a fiduciary if the lawyer prepares the instrument making the appointment unless: (a) the lawyer or person appointed is related to the client, or (b) certain disclosures are made to the client before the instrument is signed and confirmed in a writing signed by the client. The proposal does not void the appointment or affect the validity of the instrument. It simply prevents the disqualified person from receiving compensation as a fiduciary. A lawyer can still receive compensation for serving as the attorney for the fiduciary.

Because of the ethical implications involved, the RPPTL Section also believes that a change to the Rules Regulating the Florida Bar is not only appropriate, but necessary. On August 2, 2014, the RPPTL Section adopted a Section Position support for the Proposed Changes to Rule 4-1.8 and the comment attached hereto as Exhibit “A”.

II. CURRENT LAW

Under Florida law, most family members regardless of their residence, other persons who are residents of Florida, including friends, and corporate fiduciaries are all eligible to serve as a personal representative and trustee. There are no special education or certification requirements. The client’s Florida estate planning lawyer is a choice available to the client.

The fees payable to a fiduciary under Florida law can be significant. Florida Statutes § 733.617 set forth a “presumed reasonable fee” for a personal representative. The fee is 3 percent on the \$1 million in estate assets and slides to 1.5 percent on assets over \$10 million. In a large \$100 million estate, the presumed reasonable fee would be \$1,580,000. While trustee fees vary widely, many corporate fiduciaries will charge an annual fee in excess of 1 percent for administering trust assets. Individuals, including attorneys, will oftentimes seek similar fees.

As explained above, a client engaging in estate planning has the option of selecting a family member to serve as the fiduciary. In many instances, the client will choose to appoint spouse or child to serve in a fiduciary position to avoid the fees and costs which would otherwise be payable to a professional fiduciary. The issue of client choice and understanding the options available presents the ethical issue which the proposed Rule change attempts to address.

There is no, per se, statutory or ethical prohibition in Florida on lawyers preparing documents appointing themselves as fiduciaries. However, it is important to document the nature of the disclosure which was made to the client to avoid allegations of overreaching and improper conduct. Former EC 5-6 of The Florida Bar Code of Professional Responsibility provided: "A lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases, where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety".

In the case of Rand v. Giller, 489 So. 2d 796 (Fla. 3d DCA 1986), the court grappled with the difficulties involved when a lawyer fails to confirm the nature of the discussion concerning the selection of a fiduciary in writing. In Rand v. Giller, a beneficiary and co-personal representative of an estate filed an action to remove a lawyer, Mr. Giller, who had prepared a will which nominated himself as personal representative. Mr. Giller had only know the decedent for a "few hours" at the time the will was prepared. Judge Nesbitt, writing for the court, noted that:

Giller testified that he attempted to discourage Mrs. Rosen from appointing him and his law firm as co-personal representative and trustee, but that she indicated a desire that they serve in those capacities. There was no documentary or testimonial evidence to corroborate that fact. *For the benefit of the bar, we strongly suggest that attorneys establish procedures for such cases which allow for evidence, other than the self-serving testimony of the attorney involved, of the care taken to avoid the appearance of impropriety.*

Rand v. Giller, 489 So. 2d at 797, n. 2.

III. EFFECT OF PROPOSED RULE CHANGE

The proposed change to Rule 4-1.8

have proposed that the word substantial be removed from Rule 4-1.8(c) as it relates to solicitation of client gifts and/or the preparation of an instrument leaving a gift to a lawyer. The word substantial creates an ambiguity and unnecessary litigation. Is a client's \$10,000 engagement ring in a \$1,000,000 estate substantial? How about a \$100,000 bequest in a \$100,000,000 estate. Or, if only you let me stay in Key West condo, I'll be better prepared for your trial next month (which was held to be a bar grievance in another state). It is inappropriate for a lawyer to solicit a gift from a client regardless of size and, because of the appearance of impropriety and difficulties of proof, the lawyer should not prepare a document leaving a gift to themselves or their family members (unless of course they are related to the client).

As it relates to the issue of lawyers naming themselves as fiduciaries, we think the comments should treat the appointment as a 4-1.7 conflict which requires consent, confirmed in writing by the client. Under the comments as they exist now, it is up the lawyer to determine whether their professional judgment will be impacted by the fees that they will earn. A lawyer will almost certainly give self-serving testimony on that point if questioned. The fees could be hundreds of thousands of dollars or more. The comments require the lawyer to disclose basic facts—(a) who is eligible to serve, (b) the fact the fiduciary will be entitled to compensations, and (c) the

fiduciary fees would be in addition to lawyer's fees.

These rule changes dovetail with the 2013 legislation and the proposed bill which I forwarded to you yesterday. The proposed Rule change is attached. I have not put together a position paper on this change yet and plan to do so. What process would you like me to follow in raising this issue? Many thanks.

Under Florida law, most family members regardless of their residence, other persons who are residents of Florida, including friends, and corporate fiduciaries are all eligible to serve as a personal representative and trustee. There are no special education or certification requirements. The proposed statutes provides that an attorney, or person related to the attorney, will not be entitled to receive compensation for serving as a fiduciary if the attorney prepared or supervised the execution of the will or trust: (a) unless the attorney or person appointed is related to the client, or (b) the attorney makes the following disclosures to the client in writing before the will or trust is signed:

1. Subject to limited exceptions, a corporate fiduciary or any person, including a spouse, an adult child, a friend, or an attorney, is eligible to serve as a fiduciary;
2. Any person, including an attorney, who serves as a fiduciary is entitled to receive reasonable compensation, and
3. Compensation payable to the fiduciary is in addition to any attorneys' fees payable to the attorney or the attorney's firm for legal services.

The testator must execute a written statement acknowledging that the disclosures were made prior to the execution of the will or trust. The written acknowledgment must be in a separate writing from the will or trust, but it may be annexed to the will or trust. The written acknowledgment may be executed before or after the execution of the will or trust.

The imputed disqualification rules apply. As a consequence, an attorney is deemed to have prepared, or supervised the execution of, a will or trust if the preparation, or supervision of the execution, of the will or trust was performed by an employee or attorney employed by the same firm as the attorney at the time the document was executed.

The term "related" is a defined term in the statute and borrows from the new gifts to lawyers statute in Florida Statutes §732.806. An employee or attorney employed by the same firm as the attorney at the time the will is executed shall be deemed related to the attorney.

The statute applies to all appointments, including nominations as successor or alternate fiduciary, and all powers to appoint exercisable by the attorney if they are used to appoint the attorney.

The statutes do not affect the validity of the instrument and do not disqualify the named fiduciary from serving. Thus, the attorney can serve without a signed acknowledgment. However, the service will be without compensation to the fiduciary.

A form "safe harbor" acknowledgement for the client to sign is provided.

The legislation would take effect on October 1, 2015 and apply to appointments made pursuant to a will or trust which executed or amended on or after its effective date by a resident of the State of Florida.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

This proposal does not have a fiscal impact on state or local governments.

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

The proposal will prevent financial benefits from passing to a lawyer in favor of the innocent beneficiaries. Therefore, no net impact on the private sector is expected.

VI. CONSTITUTIONAL ISSUES

There do not appear to be any constitutional issues that arise as a result of this proposal.

VII. OTHER INTERESTED PARTIES

Florida Banker's Association

Professional Ethics Committee of the Florida Bar

WPB_ACTIVE 5907393.1

“Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

“Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular matter.

“Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording, and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

COMMENT

[No Change]

RULE 4-1.8 CONFLICT OF INTEREST; PROHIBITED AND OTHER TRANSACTIONS

(a) Business Transactions With or Acquiring Interest Adverse to Client. A lawyer ~~shall not~~ is prohibited from entering into a business transaction with a client or knowingly ~~acquire~~ acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client, except a lien granted by law to secure a lawyer’s fee or expenses, unless:

(1) – (3) [No Change]

(b) Using Information to Disadvantage of Client. A lawyer ~~shall not~~ use is prohibited from using information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these rules.

(c) Gifts to Lawyer or Lawyer’s Family. A lawyer ~~shall not~~ is prohibited from soliciting any ~~substantial~~ gift from a client, including a testamentary gift, or ~~prepare~~ preparing on behalf of a client an instrument giving the lawyer or a person

related to the lawyer any ~~substantial~~ gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this subdivision, related persons include a spouse, child, grandchild, parent, grandparent, or other relative with whom the lawyer or the client maintains a close, familial relationship.

(d) Acquiring Literary or Media Rights. Prior to the conclusion of representation of a client, a lawyer ~~shall not make or negotiate~~ is prohibited from making or negotiating an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) Financial Assistance to Client. A lawyer ~~shall not provide~~ is prohibited from providing financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) – (2) [No Change]

(f) Compensation by Third Party. A lawyer ~~shall not accept~~ is prohibited from accepting compensation for representing a client from one other than the client unless:

(1) – (3) [No Change]

(g) Settlement of Claims for Multiple Clients. A lawyer who represents 2 or more clients ~~shall not participate~~ is prohibited from participating in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure ~~shall~~ must include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) Limiting Liability for Malpractice. A lawyer ~~shall not make~~ is prohibited from making an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement. A lawyer ~~shall not settle~~ is prohibited from settling a claim for ~~such~~ liability for malpractice with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in ~~connection therewith~~ making the agreement.

(i) Acquiring Proprietary Interest in Cause of Action. A lawyer ~~shall not acquire~~ is prohibited from acquiring a proprietary interest in the cause of action

or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) – (2) [No Change]

(j) Representation of Insureds. When a lawyer undertakes the defense of an insured other than a governmental entity, at the expense of an insurance company, in regard to an action or claim for personal injury or for property damages, or for death or loss of services resulting from personal injuries based upon tortious conduct, including product liability claims, the Statement of Insured Client's Rights ~~shall~~must be provided to the insured at the commencement of the representation. The lawyer ~~shall~~must sign the statement certifying the date on which the statement was provided to the insured. The lawyer ~~shall~~must keep a copy of the signed statement in the client's file and ~~shall~~must retain a copy of the signed statement for 6 years after the representation is completed. The statement ~~shall~~must be available for inspection at reasonable times by the insured, or by the appropriate disciplinary agency. Nothing in the Statement of Insured Client's Rights ~~shall be deemed to augment~~ or ~~detract~~ from any substantive or ethical duty of a lawyer or affect the extradisciplinary consequences of violating an existing substantive legal or ethical duty; nor ~~shall~~does any matter set forth in the Statement of Insured Client's Rights give rise to an independent cause of action or create any presumption that an existing legal or ethical duty has been breached.

STATEMENT OF INSURED CLIENT'S RIGHTS

An insurance company has selected a lawyer to defend a lawsuit or claim against you. This Statement of Insured Client's Rights is being given to you to assure that you are aware of your rights regarding your legal representation. This disclosure statement highlights many, but not all, of your rights when your legal representation is being provided by the insurance company.

1. [No Change]

2. [No Change]

3. *Directing the Lawyer.* If your policy, like most insurance policies, provides for the insurance company to control the defense of the lawsuit, the lawyer will be taking instructions from the insurance company. Under ~~such~~these policies, the lawyer cannot act solely on your instructions, and at the same time, cannot act contrary to your interests. Your preferences should be communicated to the lawyer.

4. *Litigation Guidelines.* Many insurance companies establish guidelines governing how lawyers are to proceed in defending a claim. Sometimes those guidelines affect the range of actions the lawyer can take and may require authorization of the insurance company before certain actions are undertaken. You are entitled to know the guidelines affecting the extent and level of legal services being provided to you. ~~Upon~~On request, the lawyer or the insurance company should either explain the guidelines to you or provide you with a copy. If the lawyer is denied authorization to provide a service or undertake an action the lawyer believes necessary to your defense, you are entitled to be informed that the insurance company has declined authorization for the service or action.

5. [No Change]

6. [No Change]

7. [No Change]

8. [No Change]

9. [No Change]

10. *Reporting Violations.* If at any time you believe that your lawyer has acted in violation of your rights, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar call (850) 561-5839 or you may access the ~~Bar~~bar at ~~www.FlaBar.org~~www.floridabar.org.

**IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS,
PLEASE ASK FOR AN EXPLANATION.**

CERTIFICATE

The undersigned ~~hereby~~ certifies that this Statement of Insured Client's Rights has been provided to(name of insured/client(s)).....

by(mail/hand delivery)..... at(address of insured/client(s) to which mailed or delivered-) on(date).....

[Signature of ~~Attorney~~Lawyer]

[Print/Type Name]

Florida Bar No.: _____

(k) Imputation of Conflicts. While lawyers are associated in a firm, a prohibition in the foregoing subdivisions (a) through (i) that applies to any one of them ~~shall apply~~ applies to all of them.

COMMENT

Business transactions between client and lawyer

A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property, or financial transaction with a client. The requirements of subdivision (a) must be met even when the transaction is not closely related to the subject matter of the representation. The rule applies to lawyers engaged in the sale of goods or services related to the practice of law. See rule 4-5.7. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by rule 4-1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment for all or part of a fee. In addition, the rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. In ~~such~~ these types of transactions the lawyer has no advantage in dealing with the client, and the restrictions in subdivision (a) are unnecessary and impracticable. Likewise, subdivision (a) does not prohibit a lawyer from acquiring or asserting a lien granted by law to secure the lawyer's fee or expenses.

Subdivision (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Subdivision (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain ~~such~~ advice. Subdivision (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by

the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See terminology (definition of informed consent).

The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of subdivision (a), but also with the requirements of rule 4-1.7. Under that rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. ~~Moreover, the~~ The lawyer also must obtain the client's informed consent. In some cases, ~~the lawyer's interest may be such that rule 4-1.7 will preclude the lawyer from seeking the client's consent to the transaction~~ because of the lawyer's interest.

If the client is independently represented in the transaction, subdivision (a)(2) of this rule is inapplicable, and the subdivision (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as subdivision (a)(1) further requires.

Gifts to lawyers

A lawyer may accept a gift from a client, if the transaction meets general standards of fairness and if the lawyer does not prepare the instrument bestowing the gift. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, subdivision (c) does not prohibit the lawyer from accepting it, although ~~such~~ at the gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a ~~substantial~~ gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in subdivision (c). If effectuation of a ~~substantial~~ gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide and the lawyer should advise the client to seek advice of independent

counsel. Subdivision (c) recognizes an exception where the client is related by blood or marriage to the donee ~~or the gift is not substantial.~~

~~This rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named from serving as personal representative of the client's estate or to in another potentially lucrative fiduciary position in connection with a client's estate planning. A lawyer may prepare a document that appoints the lawyer or a person related to the lawyer to a fiduciary office if the client is properly informed, the appointment does not violate rule 4-1.7, the appointment is not the product of undue influence or improper solicitation by the lawyer, and the client gives informed consent, confirmed in writing. Nevertheless, such appointments will be subject to the general conflict of interest provision in rule 4-1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of a personal representative or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client in writing concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position who is eligible to serve as a fiduciary, that a person who serves as a fiduciary is entitled to compensation, and that the lawyer may be eligible to receive compensation for serving as a fiduciary in addition to any attorneys' fees that the lawyer or the lawyer's firm may earn for serving as a lawyer for the fiduciary.~~

Literary rights

An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Subdivision (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee ~~shall~~will consist of a share in ownership in the property if the arrangement conforms to rule 4-1.5 and subdivision (a) and (i).

Financial assistance

Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because ~~such~~financial assistance gives