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Probate and Guardianship Section
Dade County Bar Association
April 8, 2021

**PROBATE AND GUARDIANSHIP:
TACKLING TAXES AND OTHER TIMELY TIPS**

- I. Taxes in Probate
 - A. Types of taxes
 - 1. Income taxes
 - a. Final return for year of death
 - b. Prior year return, depending on whether filed predeath
 - c. Estate
 - (1) Fiscal year option
 - (2) Warn beneficiaries about K-1s
 - (3) State taxes
 - (a) Maybe not Florida, but what about California
 - (4) Final year for estate - tax never due (well, almost never)
 - d. Trust
 - (1) Decedent as trustee
 - (2) Revocable trust - election to be taxed as part of estate
 - 2. Employment taxes
 - a. Domestic employees
 - 3. Gift taxes
 - 4. Estate taxes
 - a. Based upon gross estate (GE) and adjusted taxable gifts (ATG)
 - b. Required if: GE>Exclusion-ATG
 - (1) Determining gross estate
 - 5. GST Tax Returns - see LairdALile.com/resources/
 - a. Forms 706-GS series

- II. Taxes in Guardianship
 - A. Income taxes
 - 1. Other states
 - B. Gift taxes
 - C. Employment taxes

- III. Responsibility
 - A. Engagement letter
 - B. Monitor even if not responsible

- IV. Florida Tax Forms: DR-312 and 313
 - A. New forms as of January 1, 2021
 - B. Still an “Affidavit”?
 - 1. Title of Forms
 - 2. But “An affidavit is ... a statement in writing under an oath.... An oath is an unequivocal act, before an officer authorized to administer oaths, by which the person knowingly attests to the truth of a statement and assumes the obligations of an oath.” *Graynor Hill Enterprises, Inc. v. Allan Enterprises, LLC*, 113 So.3d 933 (Fla. 5th DCA 2013).

- V. Traditions: Estate Tax Closing Letters
 - A. The petition for discharge shall contain a statement ... that the personal representative has paid or made provision for taxes and expenses of administration...” Probate Rule 5.400(3)
 - B. IRS Manual 4.4.7.3.7 (09-22-2014): Estate Tax Closing Letters: “In all no change and agreed estate tax cases (including those accepted as filed on classification and those closed by survey procedures), a Letter 627, Estate Tax Closing Letter, will be issued. The estate tax group/classification will check the box on Form 3198 in the ‘Letter Instructions’ section to indicate Letter 627 is to be mailed to a specific individual.”
 - C. The Estate Tax Closing Letter does not provide the information required in the probate rules.
 - D. “Paid or made provision for” versus “...not proof that any amount of tax has been paid...”

- VI. Warning: CS/SB 954 would eliminate Florida Statutes 733.6171(2) to (5)
 - A. But see, CS/HB 625

- VII. Bonus #1: The Florida Bar Recommended Best Practices for Remote Court Proceedings
 - A. <https://www.legalfuel.com/the-florida-bar-recommended-best-practices-for-remote-court-proceedings/>

- VIII. Bonus #2: Grammar matters - *Facebook, Inc. v. Duguid*, USSC April 1, 2021
 - A. Series-qualifier canon

- IX. Conclusion



Department of the Treasury
Internal Revenue Service
Cincinnati, OH 45999

LAIRD A LILE
3033 RIVIERA DR STE 104
NAPLES, FL 34103

Date:
10/04/2019
Person to contact:
Charlene E Caudell
Employee ID number:
1000130090
Contact telephone number:
1-866-699-4083
Estate name:

Social security number (SSN):

Date of death:

Estate Tax Closing Document
(Not a bill for tax due)

We've made the following determinations on the estate tax return referenced above:

Net Estate Tax	*\$674,735.02
State Death Tax Credit/Deduction**	*\$0.00
Generation-Skipping Tax	*\$0.00

*These figures don't include any interest and penalties that may be charged.

**This amount represents the State Death Tax Deduction for dates of death after December 31, 2004.

This letter is not a closing agreement under Internal Revenue Code Section 7121. However, it is evidence that the estate tax return either:

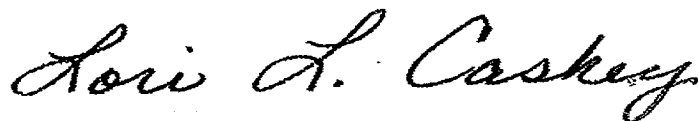
- has been accepted as filed; or
- has been accepted after an adjustment to which you've agreed; or
- has been accepted after an adjustment in the deceased spousal unused exclusion (DSUE) amount.

If the estate elects and qualifies to pay the estate tax in installments under Section 6166, the IRS will contact you to determine whether the estate is required to provide a bond or, alternatively, a special extended lien under Section 6324A, and may request additional financial information to make this determination. The IRS will continue to monitor whether the government's interest is at risk throughout the Section 6166 installment payment period.

This letter is not proof that any amount of tax due has been paid. If you've requested a discharge from personal liability under Section 2204, proof of full payment of the amounts shown above (plus applicable interest and penalties) releases you of personal liability. Under Section 6324, an estate tax lien automatically arises on all property of the estate and is in effect for 10 years from the date of death or until the entire balance is paid, whichever date is earlier.

We won't reopen or examine this return to determine the estate tax liability of the decedent unless you notify us of changes to the return or there is: (i) evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact; (ii) a clearly defined substantial error based upon established Internal Revenue Service position; or (iii) a serious administrative error (see Revenue Procedure 2005-32, which is on page 1206 of Internal Revenue Bulletin 2005-23). However, if the decedent's surviving spouse or the estate of the decedent's surviving spouse claims a DSUE amount available from the decedent based upon a portability election thought to have been made by the estate of the decedent under Section 2010(c)(5)(A), the IRS may examine this return for the sole purpose of determining the DSUE amount available, even in the absence of any of the above-described circumstances.

Sincerely,

A handwritten signature in black ink that reads "Lori L. Caskey". The signature is written in a cursive style with a large, prominent initial "L".

Lori L Caskey
Director, Examination - Cincinnati

The Florida Bar Recommended Best Practices Guide For Remote Court Proceedings
(Updated 02-25-2021)

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The following Recommended Best Practices are designed to provide a guide to all participants, based on currently available technology, to maximize the effectiveness of remote proceedings. They are not intended to relax or supplant the Florida Statutes, the Florida rules of court, local rules of court, administrative orders, individual judges' instructions, the Rules Regulating the Florida Bar (including, without limitation, the Rules of Professional Conduct), or any other substantive or procedural law (collectively, the "Applicable Law, Rules, and Procedures"). All Applicable Law, Rules, and Procedures are intended to prevail, unless expressly stated otherwise.

1. Remote Procedures Applicable to All Proceedings

1.1. Participants must dress and otherwise present professionally, as if they are physically appearing in a courtroom, deposition or mediation, as the circumstances indicate. Participants should notify their court reporter or other technical assistants to follow the same requirements. Participants should conduct remote proceedings in a quiet location where they are free from distractions, with as little ambient noise as possible, and with lighting that allows all participants to clearly see each other. Participants must not operate a motor vehicle while participating in a remote proceeding and should otherwise ensure that their participation does not create a public safety issue.

1.2. Participants in video conferencing proceedings must use a device that allows them to have access to a camera, a speaker, and a microphone. This includes having the necessary device to be able to view any shared documents on the screen of the device, when applicable. Participants must have an adequate Internet connection. A wired Internet connection is preferable over a wireless connection. Participants should ensure that they have working audio and video, know how to mute and unmute, share screens, and are generally familiar with these Best Practices. If any participant does not have access to a device that allows for video conferencing, that participant may attend a remote proceeding by telephone or as otherwise determined by the court.

1.3. Prior to the proceeding, participants should familiarize themselves with the requirements and other operational aspects of the virtual platform being used. If possible, participants should display their full name (and not just a first name, nickname, or phone number) and any party they represent, if applicable.

1.4. At the commencement of a remote proceeding, all participants should identify themselves to the other participants and should also identify any other person present with them, even if that person is off-camera. If another person enters the room with a

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participant during the proceeding, that participant should notify the other participants and identify the person at that time.

1.5. When not speaking or preparing to make timely objections during the proceedings, the parties, lawyers, their clients, and non-testifying witnesses should mute themselves.

1.6. For all court proceedings, the court should provide the link to the virtual platform that is being used. No participant should create either a visual or audio recording of a court proceeding without permission of the court. Except as otherwise provided herein, if a participant desires an official record of the proceeding, the participant should hire a court reporter to appear unless the official record is otherwise preserved as authorized by the court.

1.7. Requests for continuances based solely on a participant's preference to wait until the court event can be conducted in person are disfavored, and will be considered only under extraordinary circumstances. Parties and counsel should make any such requests as early as practicable.

1.8. The court should provide for a breakout room if a lawyer needs to confer with his or her client during the proceeding, or in the event the participants need to discuss a matter off the record.

1.9. All notices of remote proceedings must (i) indicate that the proceeding will occur by video conferencing; (ii) include, if available, the video conferencing details, including links and login information; (iii) state that no party or counsel should appear in person at the proceeding; and (iv) provide instructions for participation by telephone if a self-represented party does not have access to the video conferencing platform that is being used. For security purposes, unique links and login information are preferred.

1.10. Judges may begin all court proceedings with an explanation of the video conferencing procedures, including the process the court will use to designate participants to speak.

1.11. Absent an order of court, upon discovering that a participant has lost audio or video connection, the court, mediator, or the participant conducting the deposition, as the case may be, should immediately stop the proceeding until all participants have a live audio and video connection.

1.12. Participants should act in good faith to assist other participants who are unintentionally experiencing technical issues, including but not limited to failing to activate

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or deactivate the mute function or inadvertently sharing material that is confidential or privileged or otherwise inappropriate for sharing. Participants who observe such instances should alert the court, mediator, or the unaware participant, as appropriate under the circumstances.

2. Remote Procedures Applicable to All Non-Evidentiary Hearings

2.1. Participants should always check the court's procedures and any local orders, but in the absence of anything to the contrary, should email copies of any materials the participant intends to present to the court during the hearing to the court and opposing parties no later than 48 hours in advance of the hearing.

2.2. A court may allow a participant to share case law, documents, photos, or other materials via the screen-sharing mechanism on the video conferencing platform even if not previously submitted. In addition, any participant sharing previously undisclosed authority or evidence should also contemporaneously provide a copy to all participants by email or other electronic means.

3. Remote Procedures Applicable to Evidentiary Hearings

Note: These procedures apply only to the electronic use and admission of documentary, photographic, audiovisual and other evidence reasonably able to be provided and shared electronically.

PREHEARING EVIDENTIARY PROCEDURES

3.1 PREHEARING CONFERENCE

3.1.1. The court may, *sua sponte* or at the request of any party, schedule a prehearing conference in advance of any evidentiary hearings.

3.1.2. At the prehearing conference, the court may advise all parties of the procedures for the hearing. By way of example, the court's procedures may address the handling of sequestration of witnesses, document sharing, and the use of physical evidence.

3.2 DOCUMENT PROCEDURES

3.2.1. At least 7 calendar days in advance of an evidentiary hearing, the parties must exchange exhibit lists that specifically identify by Bates number potential exhibits to be used at the hearing. Within 5 calendar days in advance of the evidentiary hearing, the parties must meet and confer by telephone or video conference to stipulate to as much as practicable regarding authenticity and admissibility and to agree on the format and manner in which evidence will be presented at the hearing.

3.2.2. During the "meet and confer" after the exchange of exhibit lists, the parties shall prepare jointly an index of all exhibits that will be used at the hearing. The movant shall be primarily responsible for preparing this index and for providing the final copy of the index to the court and clerk's office. This index shall also specifically identify what objections exist, if any, to each exhibit and which party is making the objection. The parties shall check the judge's preferences and procedures, as well as any local rules, for the form of the index. A sample index is included as **Appendix A**. The parties shall exchange copies of any proposed exhibits that have not previously been exchanged no later than this meeting, except for exhibits solely to be used for impeachment. All documents shall be pre-marked for identification, and shall be Bates stamped for ease of identification during remote testimony.

3.2.3. At least 2 calendar days before an evidentiary hearing, the parties shall file all evidence sought to be introduced pursuant to instructions provided by the court. The parties shall comply with the judge's preferences and procedures, as well as any local rules, regarding the form for marking exhibits and the means of submitting the exhibits to the court or clerk in advance of the hearing. The parties should seek to file all exhibits jointly, but in the absence of a joint filing, must file unilaterally at least 2 calendar days in advance.

3.2.4. In settings where the court must review a document that is not being admitted as evidence (for example, showing a driver's license to verify identity) the parties need not file the document in advance but may display the document by the camera for the court's review during the hearing.

3.2.5. Document uploading procedures:

A. Once all documents have been indexed and identified, attorneys must contact the judge's judicial assistant to determine the procedure that will be used for providing copies of the documents to the court, either electronically or otherwise.

B. Documents that are uploaded or provided to the court in an electronic format should be named as follows: #___ Ex. [brief description of document]. For example, #1 Ex. contract between John Smith and Susan Jones 09.12.73.

C. Oversized documents and physical evidence, such as an original of a document, that are not capable of being provided electronically to the court and participants will be addressed by the court on a case-by-case basis. Participants should include a description of such evidence on the exhibit index and shall advise the court of the issue in advance of the hearing.

3.3 WITNESS PROCEDURES

3.3.1. At least 10 business days in advance of an evidentiary hearing, the parties shall exchange witness lists that include the witnesses' names and, if known, email addresses and telephone numbers. The parties shall also identify any witness for whom an interpreter or an accommodation under the Americans with Disabilities Act will be required, and include the names of all interpreters on the witness list. Witness lists shall also be filed with the Court without the witnesses' email addresses or phone numbers at least 10 business days in advance of an evidentiary hearing.

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3.3.2. Participants should ensure that witnesses who will lay the predicate for evidence have a copy of the evidence. This can be accomplished either by sharing the document virtually in real time or providing the evidence to the witnesses ahead of time, provided that if the document is provided ahead of time, it must be identical to, and bear the same Bates numbers as the document that is shared virtually during the hearing.

3.3.3. If a witness does not have the technology necessary to participate in the remote hearing, the participant calling that witness should take reasonable measures to assist the witness to participate. The court should address how the witness may participate in the hearing on a case-by-case basis.

3.3.4. Participants should explain to witnesses that, if the rule of sequestration is invoked, the witness will not be able to observe any part of the proceeding outside of his or her testimony, and will either be placed into a virtual waiting room or virtual breakout room or will be “on call” until it is the witness’s turn to testify. If the witness will not be placed in a virtual waiting room or virtual breakout room, the participant should advise the witness to be prepared to immediately participate in the proceeding upon receiving a notification from the participant who is calling the witness.

3.3.5. Participants should ensure their witnesses are aware of the witness testimony protocol discussed and agreed to by counsel or ordered by the court

3.3.6. The witness shall have the appropriate form of identification available to allow for the virtual swearing in of the witness.

Appendix A

Exhibit	Admissibility Status
Example- Plaintiff’s Exhibit 1- Contract	Stipulated into evidence
Example- Plaintiff’s Exhibit 2- Medical Records	Objection by Defendant 1 on the basis of relevancy.

4. Remote Deposition Procedures

The following procedures supplement all Applicable Law, Rules, and Procedures, which shall be followed at all times. This includes, but is not limited to, the prohibition on speaking objections and on contact, including virtual contact, with a witness during the course of a deposition.

4.1. The court reporter may administer the oath or affirmation to the deponent remotely in accordance with the Applicable Law, Rules, and Procedures.

4.2. Participants appearing on the record shall state their appearances clearly for the record, and shall not disable their cameras during the deposition unless there is a break or unless they are necessarily appearing by telephone.

4.3. The deponent shall comply with any request by a participant to show the environment where the deposition is taking place by using the camera on the device being used by the deponent for the deposition.

4.4. The deponent shall not use any virtual background at any time during the deposition.

4.5. All deposition participants shall appear remotely unless the witness requests that the witness's counsel be present in the same physical location as the witness. The witness shall provide written notice to the participants no less than 5 business days prior to the deposition of the witness's intent to have his or her counsel present in the same physical location during the deposition. Upon such notice, any participant may attend the deposition in person or remotely. If the witness and the witness's counsel are in the same room, that witness and counsel must use two video cameras on two different devices and mute one of those devices to allow only one microphone to be used at a time. One video camera shall show the witness and one video camera shall show the witness's counsel.

4.6. In the event that the witness produces documents for the deposition in advance of the deposition, the party calling the witness should produce such

documents to the participants promptly. If documents are produced at the time of the deposition said documents shall be made available to all parties.

4.7. The deposition notice for any remote deposition shall identify the virtual video conference platform. The notice shall also contain a general description of how deposition participants may access the remote deposition.

4.8. The host of the remote deposition will only admit participants entitled to be present under all Applicable Law, Rules, and Procedures. Whenever possible, the host shall secure the deposition with a password or a second method of authentication.

4.9. Remote depositions taken in accordance with these Best Practices may be used at a trial or hearing to the same extent that an in-person deposition may be used at a trial or hearing, and the parties may not object to the use of the video recordings of the remote depositions on the basis that the depositions were taken remotely or through an electronic, Internet-based service.

4.10. The parties will use reasonable efforts to minimize technical disruptions. Notwithstanding the foregoing, in the event that the participants, court reporter, or videographer experience a technical malfunction that disrupts his or her audio or video during the deposition, the affected participant must raise any objection, contemporaneously on the record or as soon thereafter as reasonably possible, as to the portion of the deposition during which the affected participant's participation was impaired. If additional time is needed to complete the deposition due to technical difficulties, the participants must agree to make the deponent whose deposition was interrupted available later that day, if possible, and if not, on another day to conclude the deposition.

4.11. While testifying in the deposition no witness shall engage in any private communication, including but not limited to text messages, electronic mail, or the chat feature in the video conferencing system, while on the record, whether or not a question is pending. Nothing in this paragraph prohibits counsel for the deponent from conferring with the deponent during a break in the deposition, in a "breakout room" or otherwise, nor does it prohibit counsel from communicating with each other by any means during the deposition, or otherwise prevent

counsel for the deponent from conferring with the deponent as permitted by the applicable rules of court.

4.12. The deponent must not turn off his or her microphone while on the record. While on the record, each deponent shall close all documents, emails, browsers, programs and applications on his or her computer or other device, other than the virtual video conference platform. While on the record, the deponent should turn off all electronic devices capable of communication and Internet access other than the ones being used to connect to the remote deposition.

4.13. Any video record shall be made in accordance with all Applicable Law, Rules, and Procedures.

4.14. During breaks in the deposition, the participants may use the breakout room feature provided by the virtual video conference platform, which simulates a live breakout room through video conference. The breakout rooms shall be established and controlled by the host. A conversation in a breakout room shall not be recorded, transcribed, or observed by anyone not specifically authorized by the participants in the specific breakout room.

4.15. Exhibits used during the deposition need not be presented to the deponent and participants in hard copy and may instead be presented electronically. No participant may object to the admissibility of any material on the grounds that the material was presented in electronic form.

4.16. Participants may introduce exhibits electronically during the deposition through the virtual video conference platform's document-sharing technology, by using the screen-sharing technology within the video conferencing platform and by sending the exhibit to the deponent and all participants via email or other electronic means. In the event that the videographer or exhibit technician is charged with introducing exhibits through the virtual video conference platform's document-sharing or screen-sharing technology within the video conferencing platform, such person is prohibited from sharing any exhibit with anyone else unless and until the deposing participant asks that the exhibit be published to the witness and other participants.

5. Remote Mediation Procedures

5.1. All confidentiality protections that apply to mediation shall also apply to any mediation conducted virtually.

5.2. All appearance requirements that apply to mediation shall also apply to any mediation done virtually.

5.3. In order to make sure all parties, counsel, representatives, and other participants are in compliance, all video cameras shall be turned on and all participants, regardless of their location, shall be visible at all times while conferring with the mediator, unless excused by the mediator or by agreement of all of the parties.

5.4. No one, regardless of location, shall record any portion of the mediation or download or save any contents of any chat function of the conferencing platform.

5.5. The mediator should be the host of the virtual mediation and should:

A. Disable the recording functions, if any, in the conferencing platform;

B. Enable a sufficient number of confidential, break-out rooms for participants to caucus;

C. Maintain control of who is admitted to participate in the conference by manual admission (if the platform is equipped with that function);

D. Provide an alternate method of communicating with the mediator, such as by telephone, email, or text, so that a participant who has lost connection to the conference may be re-admitted or continue to participate.

5.6. Anyone who circulates or receives a connection link for a remote mediation conference should safeguard the link, refrain from sharing the link with non-participants, and refrain from posting the link publicly (such as on social media outlets).