RPPTL CURLEY PROBATE & TRUST CASE LAW UPDATE
(October 2026)

October 2, 2026

- Amendments to Probate rules 5.171 and 5.205, 2026 WL 2945225 (Fla. 2026) – Rule 5.205 (Filing Evidence of Death) is amended to confirm consistency with Florida Statutes § 731.103 when filing evidence of death and to clarify deadlines for filing evidence of death (i.e. within 3 months of publishing notice to creditors in a formal, domiciliary administration). These changes are effective January 1, 2027.
  - Probate Rule Amendments
- Amendments to Probate Rules 5.015, 5.630 and 5.648, 2026 WL 2945419 (Fla. 2026) – Rule 5.630 (Guardianship Petition for Approval of Acts) is amended to require petitioner to disclose whether there are any conflicts of interest associated with the proposed action. Rule 5.630(a)(3) is also amended to require "support for the price and terms" when requesting approval for a sale, mortgage, or contract. Rule 5.648 (Emergency Temporary Guardian) is amended to require service of the Petition for ETG by an elisor. These changes are effective January 1, 2027.
  - Guardianship, Probate Rules Amendments, Service of ETG
- Amendments to Rules of Civil Procedure 1.310 and 1.351, 2026 WL 2945705 (Fla. 2026) – The Court declined to adopt a proposed amendment to Rule 1.310 (Depositions on Oral Examination) which would have required documents produced at a deposition duces tecum to be produced only at the deposition absent agreement of the parties and deponent. Rule 1.351 is amended to require objections to production to be stated with specificity. These changes are effective January 1, 2027.
  - Civil Rules Amendments, Depositions, Duces Tecum

October 9, 2026

- *Baker, Donelson, Bearman, Caldwell & Berkowitz PC v. Bedeschi America, Inc.*, 2026 WL 2931329 (4th DCA 2026) – Boca Raton client sued its out-of-state law firm and attorney for legal malpractice arising from their handling of a Texas construction dispute and arbitration. Client's declaration stated the attorney gave legal advice in Florida, including during two visits to Client's headquarters, and that Client relied on it. The attorney admitted the Florida contacts but swore they were general status meetings and not the source of any alleged malpractice. Without holding an evidentiary hearing, the trial court denied the motion to dismiss for lack of personal jurisdiction. The 4th DCA reversed. There was no general jurisdiction under § 48.193(2) because the firm (Tennessee) and the attorney (Alabama) are not "at home" in Florida. Section 48.193(1)(a)6.a. did not apply either, because Client's losses were purely economic. Under the long-arm statute, communications into Florida can amount to a tortious act there, but only if the claim arises from them. Because the sworn submissions conflicted on that point, the case was remanded for a limited evidentiary hearing.
  - Personal Jurisdiction, Long-Arm Statute
- *Florida Insurance Guaranty Ass'n, Inc. v. Restore All, LLC*, 2026 WL 2931173 (4th DCA 2026) – Assignee (Restore All) sued Southern Fidelity for breach of contract over unpaid repairs. Southern Fidelity became insolvent and the case was stayed. The county court lifted the stay and substituted FIGA as defendant. FIGA's counsel filed a notice of appearance. The

court later entered a default on its own initiative, with no application for default ever filed or served, and then entered a default final judgment. The 4th DCA reversed and found both the default and the final judgment void. Under Rule 1.500(b), a party that has filed or served "any document," including a notice of appearance, must be served with notice of the application for default. "Self-executing" default language in a court order does not satisfy the rule.

- Default, Rule Civil Procedure 1.500(b), Notice of Appearance

❖ *Baron v. Baron*, 2026 WL 2931276 (4th DCA 2026) – Former Wife appealed the final judgment of dissolution of marriage. She argued the trial court denied her due process by giving the trial one day instead of the five days she requested. The 4th DCA affirmed. The length of a proceeding is within the trial court's discretion, and the opportunity to be heard does not mean unlimited time. Time allotted must be reasonable in light of the *Woodham v. Roy* factors, including number of witnesses, amount of evidence, and complexity of the issues. The court also noted that a party who does not proffer the excluded testimony fails to preserve the issue.

- Due Process, Trial Time Limits

October 16, 2026

❖ *Walters v. Agency for Health Care Administration*, 2026 WL 3011957 (3d DCA 2026) – Decedent died intestate in 2017, and her only estate asset was a cooperative unit. The trial court denied the heir/PR's petition to declare the co-op homestead. After the 3rd DCA affirmed, the Legislature amended § 719.103(25), effective July 1, 2021, to provide that an interest in a cooperative unit is an interest in real property. On remand, the PR argued that the amendment applied retroactively, and the trial court disagreed. The 3rd DCA affirmed holding that the July 1, 2021 legislation did not apply retroactively. Treating co-ops as homestead affects substantive rights: it expands the forced-sale protection of owners and heirs at creditors' expense and limits owners' freedom to devise. That triggers the presumption against retroactivity.

- Homestead, Cooperative Unit, Retroactivity

❖ *MEB Loan Trust VI v. Isaacs*, 2026 WL 3012330 (3d DCA 2026) – Lender filed a foreclosure against a co-owner who had already been adjudicated totally incapacitated and had a court appointed guardian. The guardian answered in his official capacity and later moved to dismiss the ward arguing that the lender's failure to move to substitute the guardian within 90 days required dismissal under Rule 1.260. The trial court dismissed the ward on grounds that the guardian was the property party. The 3rd DCA reversed holding an incapacitated ward who holds record title remains an indispensable defendant in a foreclosure suit. The guardianship did not divest the ward of ownership; it only empowered the guardian to defend on his behalf. Suing the ward without referring to the guardianship was at most a misnomer.

- "[T]he better practice would have been … naming him as: "Albert Isaacs, a ward, by Adrian Delancy, as guardian of the property."
- Indispensable Party, Ward, Rule 1.260

❖ *In re: Amendments to Florida Probate Rules – 2026 Legislation*, 2026 WL 3082872 (Fla. 2026) – Florida Supreme Court adopted amendments to Rules 5.122 and 5.905. Rule 5.122 now requires the court to determine the amount of a curator's bond, if any. Notice of a curator's appointment must be given both to the person apparently entitled to letters and to other interested persons. The exception is where giving notice to others would delay the appointment

and there is significant danger that estate property will be wasted, destroyed, or removed beyond the court's jurisdiction.
- ➢ Curators, Rule 5.122

October 23, 2026

- ❖ *Krassan v. Reich Family Limited Partnership*, 2026 WL 3068579 (Fla. 4th DCA 2026) – A family partnership, a Nevada limited partnership whose limited partners were three Florida trusts, sued Appellant, the president of the general partner and co-trustee of the trusts, alleging self-dealing and unauthorized transfers of partnership assets. The partnership agreement designated Nevada as the exclusive venue for any action brought in connection with the agreement. The trial court denied Appellants' motion to dismiss, finding that every count except the one expressly alleging a breach of the agreement existed independently of it. The 4th DCA reversed, holding that a claim falls within a forum selection clause when there is a nexus between the dispute and the contract. The remaining counts incorporated the same allegations, involved the same transactions, and required reference to Appellant's authority under the agreement and the rights and obligations it established.
  - ➢ Forum Selection Clause, Venue, Family Limited Partnership

October 30, 2026

- ❖ *E.M.A. v. Estate of Dorman*, 2026 WL 3148525 (3d DCA 2026) – Mother, on behalf of her minor child, petitioned to determine the homestead status of the decedent's Golden Beach property, alleging the decedent intended to devise it to a trust for the child. The child was conceived under a sperm donor agreement naming Mother as the sole intended parent. The probate court found the decedent was neither the legal nor biological father, and alternatively that the property was not homestead. Mother appealed only the paternity finding. Affirmed, because the unchallenged, independent homestead determination supports the judgment, making any paternity error harmless. The appeal of the orders denying the post-judgment motions to vacate and reconsider was dismissed. Under Probate Rule 5.010, the Civil Rules apply only as the Probate Rules provide, so Rule 1.540 is not available in a non-adversary probate proceeding.
  - ➢ Homestead, Independent Grounds, Rule 1.540, Non-Adversary Proceeding
- ❖ *Gulf South REO, LLC v. Garrett*, 2026 WL 3178716 (6th DCA 2026) – The trial court dismissed the complaint with prejudice finding the statute of limitations barred the claims. Appellant sought to amend but the trial court denied. Reversed. No responsive pleading had been served and Plaintiff had not previously amended. Plaintiff therefore had an absolute right to amend once as a matter of course under Rule 1.190(a), even if the amendment would be futile. A motion to dismiss is not a pleading.
  - ➢ Amendment, Dismissal with Prejudice
- ❖ *Rivera-Wagner v. Wagner*, 2026 WL 3179099 (6th DCA 2026) – A non-attorney Trustee, appearing pro se for the trust, sought certiorari review of two orders. One required her to retain counsel for the trust, and the other struck her pro se filings. Trustee argued the trust instrument prohibited attorney representation of the trust. Petition dismissed. A non-attorney trustee cannot represent a trust in court proceedings because doing so is the unauthorized practice of law and the trust terms cannot alter this.

- Trustee, Pro Se, Unauthorized Practice of Law

Obligatory Joke: My dad insisted onions are the only food that can make you cry…. So I threw a coconut at his head.