



THE ADVOCATE

An Online Publication of the South Palm Beach County Bar Association

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Message from our President



Welcome to the Winter Edition of the Advocate! Thank you to Editor-In-Chief Holly Gershon and to Seema Patel for Layout and Design of this edition of The Advocate!

I am pleased to report that the South Palm Beach County Bar Association in 2016 welcomed 87 new members and 9 more members so far in 2017. Welcome new members!

I am honored to continue to serve as South Palm Beach County Bar Association's President in this New Year 2017. I welcome all of our members, old and new, to a year filled with promise for our Association.

The New Year started with the rotation of our judiciary. Here at South County, we said goodbye to Judge Moses Baker who has retired, and to Judge David French, who now serves in Division AJ at the Main Court-house in West Palm Beach. We will truly miss them here and we again thank them for their exemplary service to South County's attorneys and litigants.

Thank you to Judge Jeffrey Colbath for his service as Chief Judge of our 15th Judicial Circuit and for his support of our Bar Association. We also congratulate Judge Krista Marx on her upcoming new position as Chief Judge.

We welcome Judge Robert Panse, Judge Luis Delgado, Judge Howard Coates and Magistrate Sara Alijewicz to South County. I was honored to join the legal community in welcoming the 15th Judicial Circuit's newest Judge, the Honorable Luis Delgado, at his investiture on February 3rd. We presented Judge Luis Delgado with a traditional gift on behalf of our Bar Association. We also welcomed the Honorable Dana Santino at her investiture on January 27th, and presented Judge Santino with a gift on behalf of the Bar Association. We wish both Judge Delgado and Judge Santino a long and successful career on the bench!

Congratulations to the Honorable Jeffrey Kuntz on his appointment to the 4th DCA! It was an honor to be invited to attend Judge Kuntz' investiture. Our Bar Association also joined the other local bar associations and co-sponsored Judge Kuntz' investiture reception. We wish Judge Kuntz many years on the bench!

We strive to follow our mission statement to foster a shared commitment to excellence in the law, while enhancing the skills of our members through education, networking and community outreach. We continue to focus on our retreat planning goals of last summer for the good of the Bar. We remain focused on our goals, initiatives and short and long-term planning to improve our Bar by maintaining our membership and bringing in

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Legal Standards for Testamentary Capacity



By Brandon J. Pratt, Esq., CFP

Florida is home to a large population of retirees, and people are living longer and longer. Many people live well into their late 80's and 90's. There is a correlation between age and dementia. Therefore, there is a good chance that someone who wants to sign estate planning documents in their late 80's or 90's has some degree of dementia. It can be confusing as to whether someone who has dementia, has the requisite mental capacity to sign estate planning documents. This is known as "testamentary capacity". In *Raimi v. Furlong*, 702 So. 2d 1273, 1286 (Fla. Dist. Ct. App. 3d Dist. 1997), the Third District Court of Appeal established the standards for a determination of "**testamentary capacity**" and explained the idea of having a "**lucid interval**." It stated the following:

The right to dispose of one's property by will is highly valuable and it is the policy of the law to hold a last will and testament good wherever possible. To execute a valid will, the testator need only have testamentary capacity (that is, be of "sound mind") which has been described as having the ability to mentally understand in a general way (1) the nature and extent of the property to be disposed of, (2) the testator's relation to those who would naturally claim a substantial benefit from his will, and (3) a general understanding of the practical effect of the will as executed. A testator may still have testamentary capacity to execute a valid will even though he may frequently be intoxicated, use narcotics, have an enfeebled mind, failing memory, or vacillating judgment. Moreover, an insane individual or one who exhibits "queer conduct" may execute a valid will as long as it is done during a lucid interval. Indeed, it is only critical that the testator possess testamentary capacity at the time of the execution of the will.

In *Miami Rescue Mission, Inc. v. Roberts*, 943 So. 2d 274 (Fla. Dist. Ct. App. 3d Dist. 2006), the Third District Court of Appeals expanded on holding in *Raimi v. Furlong*, by explaining the concept of an "**insane delusion**." The Third District Court of Appeals stated that:

Where there is an insane delusion in regard to one who is the object of a testator's bounty, which causes him to make a will he would not have made but for that delusion, the will cannot be sustained. An insane delusion has been defined as a spontaneous conception and acceptance as a fact of that which has no real existence except in imagination. The conception must be persistently adhered to against all evidence and reason.

In conclusion, testators have **testamentary capacity** if they have the ability to mentally understand in a general way (1) the nature and extent of the property to be disposed of, (2) the testator's relation to those who would naturally claim a substantial benefit from his will, and (3) a general understanding of the practical effect of the will as executed. Testators can be suffering from some type of mental disability as long as the documents are executed during a **lucid interval** and they are not suffering from an **insane delusion**.