

# THE SKETCHLEY LAW FIRM, P. A.

Providing Compassionate Support & Guidance Through Elder Law & Guardianship

## SUMMARY OF CHANGES FOR SENIORS IN 2008

January 2009

Seniors saw important changes to their legal rights in 2008.

### Grandparents' Rights

Florida continues to grapple with grandparents' rights. The Florida Supreme Court reversed a court's ruling that prevented an adoption to ensure grandparents' involvement in the child's life when the petitioning prospective adoptive parents were fit. Another court ruled that a grandfather has no constitutional right to the appointment of counsel in dependency proceedings, even where he had been the "de facto" parent for most of the child's life.

### Medicaid

Florida implemented many cost-cutting measures to the Medicaid program, including the elimination of programs. The Legislature did extend the repeal date for the Home and Community-Based Waiver Program for Persons with Alzheimer's disease. Medicaid applicants also saw the importance of making DCF adhere to eligibility guidelines.

### Guardianship

Guardianship can be expensive. Cases in 2008 dealt with fees and costs, including who should pay the fees of the examining committee when the ward has capacity—the Ward. DCF also determined it can and will file petitions for incapacity in adult protective service proceedings.

### Powers of Attorney (POA)

Courts addressed the scope of the authority granted in a POA and how and when a principal is bound, demonstrating a

need for concise and careful drafting when drafting these documents.

### Rights of Residents in Facilities

Residents' rights litigation involved proper resident discharge procedures, including when discharge was necessary for the safety of other residents. The legality of arbitration provisions in admission contracts was another litigated issue.

### Wills and Trusts

Courts examined when a trustee can reform a trust agreement, as well as where trust administration can be challenged—a concern for settlors/grantors of trusts who live in more than one state.

Cases on wills highlighted the importance of distinguishing between types of devises (such as general and specific), and the impact of these devises on a spouse's probate rights and who can appear in probate court.

### Abuse of the Elderly

Legislation made the penalties for abusing the elderly even tougher. Civil and criminal cases emphasized the need to have experienced counsel representing the elderly in such cases.

Ms. Sketchley will be speaking about these developments at the Florida Bar's New York City Conference in 2009.

*If you would like to arrange for one of our attorneys to speak to your group or organization about this topic, please contact Tracy Rouse at (850) 894-0152. Past newsletters can be found at [www.sketchleylaw.com](http://www.sketchleylaw.com).*



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