

Subject: Re: [RPPTL members] RPPTL Section -
Date: Friday, March 20, 2020 at 4:41:11 PM Eastern Daylight Time
From: members-bounces@lists.flabarrpptl.org on behalf of RPPTL Members
To: members@lists.flabarrpptl.org
Attachments: image001.png, ATT00001.txt

Sent on behalf of the RPPTL Section Leadership:

This email is the first being sent to the entire RPPTL Section since the COVID-19 crisis began. There are numerous state and local emergency orders and governmental proclamations that are being issued, and everything is certainly moving at warp speed. The RPPTL Section will do its best to provide updates on matters that would affect RPPTL Section members in large measure, but we cannot provide any guarantee that we will be able to notify you about the issuance of orders or proclamations or that we will be able to cover particular subject matter areas. We will do our best, rest assured.

The RPPTL Section has received a number of calls and emails about yesterday's Florida Supreme Court Order (see attached) suspending the physical presence requirement for notaries to administer oaths for purposes of testimony at depositions, hearings, trials and Family Law Forms. Many have asked whether this effectively now permits remote notarization of estate planning documents, notwithstanding the 2019 legislation's delayed July 1, 2020 effective date. While the FSC Order could be clearer, here are our collective thoughts:

1. The remote notarization legislation went into effect January 1, 2020 for transactional documents generally, but the effective date for estate planning documents was delayed until July 1, 2020. So you can use remote notarization for transactional documents now, rather than meeting people in person.
2. The FSC Order suspends the physical presence requirements for notaries administering oath, but it appears to apply to testimony at depositions and hearings and is not necessarily applicable for execution of documents generally (save for the explicit exception for Family Law Forms). Thus, we do not think that the FSC Order applies to estate planning documents. But even if we are wrong, remember that notaries are not required for wills or trusts – witnesses are. The notary is surplus for self-proof purposes. Thus, see #3 below.
3. Even if remote notarization of estate planning documents were permitted under the FSC Order, it does not excuse the physical presence of witnesses, so you cannot use remote notarization as a substitute for witnesses for wills, trust, DPOAs and other documents that need witnesses.

In summary: you shouldn't rely on the FSC Order as authorizing remote notarization of estate planning documents (and it certainly does not authorize remote witnessing). You need to continue to use traditional physical presence witnessing and notarization through July 1, 2020.

DISCLAIMER: Each lawyer needs to individually review the FSC Order and make his/her own determinations. The foregoing is provided as guidance, but should not be relied upon in any manner as a formal legal position provided to you.

Rob Freedman, Chair, RPPTL Section

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