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

March 6, 2026

- *Kelly v. Cohen-Saban*, 2026 WL 530619 (Fla. 4th DCA 2026) – Appellant filed a motion for costs under § 57.041 as the prevailing party in the litigation. The motion was filed prior to the judgment being entered and the trial court denied the motion holding it premature. The 4th DCA reversed, holding that § 57.041 only requires the motion be filed "no later than 30 days after filing of the judgment". The statute does not set an earliest date for filing, it only sets a latest point.
  - Costs Motion, Fees Motions, Deadlines

March 13, 2026

- *Bankers Life & Causalty v. Borew*, 2026 WL 617186 (Fla. 4th DCA 2026) – The case involves the trial court's calculation of the amount of fees to be awarded under a contingency fee agreement. The agreement provided that the attorney was to be paid $450 per hour but that it was on contingency that the only recovery would be from court awarded fees. After succeeding at trial, the trial court awarded a 2.5x multiplier and increased the hourly rate to $525. On appeal, the 4th DCA reversed both awards. As to the multiplier, the Appellate Court held that without evidence as to each of the required factors, the Court could not award a multiplier. The appellate court further noted that a multiplier would not be appropriate here even with the required evidence. As to the hourly rate, the 4th DCA held that the court could not usurp the contractually agreed upon rate. Importantly, the Court noted that the fee agreement did not contain an alternative fee recovery clause indicating that the parties anticipate a fee award exceeding the agreed upon amount.
  - Contingency Fee Calculation, Attorneys' Fees
  - Multiplier factors: "(1) whether the relevant market requires a contingency fee multiplier to obtain competent counsel; (2) whether the attorney was able to mitigate the risk of nonpayment in any way; and (3) whether any of the factors set forth in *Rowe* are applicable, especially, the amount involved, the results obtained, and the type of fee arrangement between the attorney and his client."

March 20, 2026

- *Amendments to Florida Bar Professionalism Expectations*, 2026 WL 772809 (Fla. 2026) – The Supreme Court adopted changes to the Florida Bar's Professionalism Expectations. Among others, Expectation 3.11 is revised to provide "A lawyer must not prevent a deponent from answering questions ~~unless~~ except when: a legal privilege applies; necessary to enforce a limitation on evidence directed by the court; or in connection with a motion to terminate or limit the examination of a deponent." Additionally, Expectation 6.10 is revised to provide: "6.10 A lawyer must respond promptly to inquiries and communications from clients ~~and others~~."
  - Professionalism, Ethics, Bar Rules, Florida Bar Professionalism Expectations

- *Digitalbridge Partners, III, LP v. Cariago Technologies, Inc.*, 2026 WL 681021 (Fla. 4th DCA 2026) – The trial court denied a motion to stay the proceeding pending a similar proceeding pending in Miami-Dade County which was the first filed case. The 4th DCA reversed holding that the cases both arise from the same contract and revolve on the same threshold question on the contract's meaning which required the later filed action to be stayed. "When substantially similar actions are pending in different courts, the later-filed action should be stayed absent special circumstances." Even when the parties are different, substantial similarity of the issues is sufficient on its own.
  - Stay, Comity, Primary Case
- *Puleo v. Cohen*, 2026 WL 681785 (Fla. 3d DCA 2026) – The trial court granted summary judgment to the defendants on a claim for fraudulent misrepresentation finding that the plaintiff's reliance on the false representation was not *justifiable*. The 3rd DCA reversed holding that the reliance does not have to be "justified", rather the elements merely require that there was reliance on the misrepresentation.
  - Elements of Fraudulent Misrepresentation: "(1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation induce another to act on it; and (4) consequent injury by the party acting in reliance on the representation."
  - Fraudulent Misrepresentation, justifiable reliance

March 27, 2026

- *Ash v. Ash*, 2026 WL 758993 (Fla. 3d DCA 2026) – Citing FSA § 744.108(6), the 3rd DCA held that a successor guardian is an interested person in proceedings on petitions for fees or expenses relating to the ward's assets, including from time periods prior to the successor guardian's appointment. The 3rd DCA cited the *Hayes* decision as authority that a right to notice or to object gives a party interested person status.
  - Guardianship interested persons, Accountings, Successor fiduciaries
- *Gilbert v. Riley*, 2026 WL 759101 (Fla. 3d DCA 2026) – Appellee filed a Petition for Administration of a 2000 Will as well as petition to reestablish the 2000 Will which had been lost. 7 days later, a 2014 Will was filed in the Probate by Appellant. No objections to the initial petition for administration were filed nor was anything done to stop the administration under the 2000 Will. The estate was administered under the 2000 Will and the Appellee was discharged as Personal Representative after notice to Appellant and without objection. Shortly after the order of discharge, Appellant filed an objection to discharge and petition or subsequent administration arguing the 2014 Will was never considered. Appellant then did not pursue these filings, nor set hearings, for more than seven months. The Court filed an order to progress giving Appellant 20 days to take action on her petitions, which she did not do. The Probate court then denied the Appellant's objection and petition for subsequent administration. The 3rd DCA affirmed the trial court, holding that the Appellant's failure to actively pursue her filings and meet deadlines waived her arguments. The 3rd DCA also noted that the Probate court did not have an obligation to consider the 2014 Will merely because it had been filed and was on the docket, particularly in light of Appellant's failure to pursue available objections and remedies. Fla. Stat. § 733.903.
  - Failure to set hearing, Subsequent Will, Later will, waiver

- *Aaraya Public Adjusting, LLC v. Crucial Claims, Inc.*, 2026 WL XXX (Fla. 2d DCA 2026) – On a motion to compel production, the Court found Appellants objections to have been untimely and thus waived. The Court compelled production of all responsive materials, including privileged materials. The 2nd DCA reversed holding that a waiver by untimely objection does not constitute a waiver of privilege. Privilege objections were not required to be raised until the materials were determined to be otherwise responsive.
  - Privilege, Untimely Objections, Waiver
- *Wal-mart Stores East, L.P. v. Wynn*, 2026 WL 785076 (Fla. 6th DCA 2026) – Despite the trial court not considering prejudice to the parties, the 6th DCA affirmed the court's refusal to allow an expert witness to testify on an opinion that was not disclosed prior to the applicable case management order deadline. The expert had been disclosed, but the specific opinion was only disclosed after the deadline. The 6th recognized divergence with other circuits, noting that under *Binger* the refusal to allow an expert at all requires the court to consider prejudice but the enforcement of the case management order to exclude an undisclosed opinion is not addressed by *Binger*.
  - Expert testimony, Expert Opinions, Case Management Deadlines
- *Crecelius v. Rizzitano*, 2026 WL 555031 (Fla. 6th DCA 2026) – The 6th DCA holds that the *Binger* decision applies only to the failure to disclose an expert witness prior to trial; the *Binger* holding does not govern changes in the testimony of disclosed witnesses, such as new or changed opinions from experts. Further, the opinion states that the trial courts have the authority to strictly enforce case management orders and that the exclusion of an expert, or opinion, that was not disclosed in timely fashion does not require the consideration of prejudice to the parties. The 6th DCA notes numerous times a trial court's authority to strictly enforce case management orders.
  - Expert testimony, Case Management deadlines, strict enforcement
- *Salazar v. Ortiz*, 2026 WL 746796 (Fla. 6th DCA 2026) – Appellant and Appellee jointly purchased a home as a couple. Appellee filed an action for partition and Appellant moved to dismiss and counter-claimed to enforce an oral agreement arguing Appellant agreed to sell her interest in the property to him. Appellant argued that he had been making payments for years and that he was prepared to make full payment on the outstanding amount. The trial court granted a motion for judgment of partition finding that Appellee had the right to partition and, inferentially, finding that Appellant's claim to enforce the written agreement was barred by the statute of frauds. The 6th DCA reversed holding that the trial court granted judgment on the pleadings prior to the pleadings being closed which is not proper under Rule 1.140(c). Additionally, the 6th held that judgment on the pleadings could not take into account Appellant's failure to adduce evidence as evidence is not allowed on judgment on the pleadings, differentiating it from summary judgment. Finally, Appellant's claim may not be barred by statute of frauds if he is able to present evidence of partial performance which is an exception to the need for a writing.
  - Motion for Judgment on the Pleadings, Statute of Frauds, Partial Performance, Partition

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(February 2026)

February 6, 2026

- *Santiago v. Wilmington Trust, N.A.*, 2026 WL 252409 (Fla. 6th DCA 2026) – Summary judgment was granted to Appellee but the order failed to contain the required statement on the record of the Court's basis for summary judgment. The 6th DCA nonetheless affirmed, holding that the required findings can be made in the order or through oral pronouncement at the hearing. Because there was no transcript of the hearing, Appellant was unable to demonstrate that the Court had failed to make an oral pronouncement.
  - Summary Judgment, Required Findings, Oral Ruling

February 13, 2026

- *Pilak v. Reigel*, 2026 WL 317527 (Fla. 5th DCA 2026) – Appellee sought to have a lost will re-established for probate. Appellants initially signed a consent to the lost will petition but subsequently retracted their consent. At trial, no evidence was presented regarding either the will's execution or its location. The only testimony came from a friend of the decedent who was also a beneficiary under the lost document. The trial court admitted the lost will, holding that the presumption of destruction did not apply because there was no evidence that the original will was in the decedent's possession. The trial court further held that the initial consents barred Appellants' objections to the lack of proof of contents. The Fifth DCA reversed, holding that because there was no testimony by a disinterested witness regarding the contents and execution, as required by § 733.207, the lost will could not be admitted as a matter of law. The Court further noted that even if the consents barred objection-a position with which the appellate court did not agree-this did not remove the requirement of disinterested testimony. As to the presumption of destruction, the 5th DCA did not address the issue, finding it moot in light of the insufficient evidence.
  - Lost Will, Disinterested Witnesses
- *Cedrus Ent. v. Jabil, Inc.*, 2026 WL 301835 (Fla. 2d DCA 2026) – Appellant was a guarantor on a payment agreement between Appellee and a third party. The payment agreement contained a venue provision and consent to jurisdiction in Pinellas County, Florida. Appellant did not sign the payment agreement; rather, Appellant signed a one-page joinder and consent indicating that Appellant "joins in and consents" to the agreement. The third party failed to pay, and Appellee brought suit in Florida seeking to enforce the guaranty. Appellant argued that Florida lacked personal jurisdiction and that the case should instead be heard in Delaware. The trial court found proper jurisdiction pursuant to the venue provision, and the Second DCA affirmed. The Court held that by joining and consenting to the underlying payment agreement, Appellant submitted to the venue provision. Additionally, the Court cited § 685.102(1), which provides that a party entering into a choice of law provision designating Florida has minimum contacts under the Florida long-arm statute for purposes of enforcing the contract.
  - Personal Jurisdiction, Venue Clause, Long-arm jurisdiction

February 20, 2026

- *Hannah v. Malkani*, 2026 WL 370276 (Fla. 6th DCA 2026) – The 6th DCA finds that the argument of collateral estoppel was not preserved for appeal because it was first raised on a motion or rehearing of the underlying motion for summary judgment. The Sixth then certified conflict with the 5th DCA *Kawsar v. Alhamdi Grp*. Which held that an argument is preserved by raising it for the first time on rehearing.
  - Preservation of Appellate Issue, Motion for Rehearing
- *Kada 13, LLC v. Georgetown Holdings, Inc.*, 2026 WL 376968 (Fla. 3d DCA 2026) – Husband and wife created a joint, revocable trust naming themselves as cotrustees and sole beneficiaries. The trust wholly owned an LLC that designated the trustee(s) as manager; the LLC owned a heavily mortgaged West Palm Beach property. Both the trust and operating agreement permitted either trustee to act independently. As the marriage deteriorated, husband-without wife's knowledge-transferred the property to the mortgage holder in satisfaction of the loan. Wife challenged the transaction, arguing husband could not act unilaterally and that it constituted a conflict transaction because both spouses personally guaranteed the mortgage. The trial court upheld husband's actions, and the Third DCA affirmed, finding that both governing documents authorized a single trustee to act without the cotrustee's input and that the trust permitted conflict transactions, consistent with § 605.04092(2) of the Florida Revised LLC Act.
  - LLC Managers, Trustees as LLC Managers

February 27, 2026

- *Dorn v. Hatwood*, 2026 WL 467183 (Fla. 4th DCA 2026) – Legal fees incurred in the administration of an estate as a whole cannot be included in a lien on homestead under § 733.608 which is narrowly tailored to allow for a lien to include funds expended to preserve the homestead.
  - Homestead lien, Estate attorneys' fees
- *Hi-Land Properties, LLC v. Gantt*, 2026 WL 467591 (Fla. 4th DCA 2026) – An action for partition, one of the main disputes was whether Appellant owned 75% of the property or only 50%. In the chain of title was a Personal Representative's Release which purported to prove the transfer of the 25% interest to Appellant. Appellee argued, and the trial court held, that the Release was insufficient to prove transfer of title pursuant to the will. Further, the trial court held that because there was not an order approving sale under § 733.613, the conveyance was ineffective. The 4th DCA reversed holding that the transfer was effective and sufficiently proven. A beneficiary's title vests from the date of death and thus a PR is not required to execute a deed conveying property, rather a release is evidence of the distribution from the decedent to the recipient. Additionally, § 733.613 applies only to sales of real property; the statute is inapplicable to a distribution to beneficiary under the will or intestate.
  - PR's Deed, PR's Release, Sale of Real Property
- *Rivera v. Rivera-Chong*, 2026 WL 452013 (Fla. 1st DCA 2026) – Trial court disqualifies counsel for Wife from the entirety of the case without an evidentiary hearing. The basis for the Court's ruling was that counsel is a likely witness at trial to be called by Husband. The 1st DCA reversed, holding that the disqualification was without evidence and overbroad. The appellate court first noted that Rule 4-3.7 only bars a lawyer from acting as an advocate "at a trial in

which the lawyer is likely to be a necessary witness." To disqualify the attorney from the entirety of the case was overbroad. Furthermore, disqualification under 4-3.7 requires evidentiary findings regarding the factors laid out in the rule as to the substance and need for the testimony.

- Lawyer as Witness, Rule 4-3.7

❖ *Chetrit Group, LLC v. Equishares, Inc.*, 2026 WL 452548 (Fla. 3d DCA 2026) – Appellant and Appellee jointly hired a lawyer to assist in the creation of a joint venture agreement. The joint venture agreement was never finalized and a lawsuit was brought. Appellee sought production of communications between the Appellant and the joint lawyer. Appellant argued the communications were not "common interest" because the specific communications were adverse to the Appellee. Trial court ruled that communications between Appellant and its attorney were to be produced as they constituted "common-interest" communications with the lawyer and the Appellee. The Third DCA affirmed, holding that the communications were within the exception of § 90.502(4)(e). "[T]he 'common interest' exception may apply even when the co-clients have interests that are adverse to one another" so long as the communication goes to a common interest relayed to the jointly retained attorney.

- Privilege, Common Interest, Disclosure of privilege

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(January 2026)

January 9, 2026

- *Pascalides v. Artico,* 2025 WL 3769364 (Fla. 3d DCA 2025) – Decedent died with a bank account titled "[Decedent] and/or Gabriela Artico as joint tenants with a right of survivorship." The Estate took the position that this was a convenience account. Appellee Artico claimed a right to the funds as the surviving owner of the account. The trial court granted summary judgment to Appellee determining it was not a convenience account. The 3rd DCA affirmed holding that because there was no evidence this was intended to be a convenience account and the account was titled "as joint tenants with right of survivorship." The appellate court cited § 655.79 which creates a presumption that an account in the name of two or more people is to pass to the survivor upon death. This presumption may only be overcome by proof of fraud, undue influence, or a contrary intent. There is no requirement to demonstrate donative intent to raise the presumption.
  - Joint accounts, Convenience accounts, § 655.80, § 655.79
- *Battaglia v. Battaglia*, 2025 WL 3713143 (Fla. 6th DCA 2025) – Appellant was a cotrustee of the trust. The trial court removed Appellant and awarded damages, in favor of the trust, of over $2 million on the basis that he failed to distribute funds from a family company to the trust. The 6th DCA reversed a portion of the damages holding that the family company still held the disputed funds and thus could still make the distribution. Pursuant to § 736.1002(1), damaegs are limited to the greater of (a) the amount required to restore the value of the trust property or (b) appreciation that would have resulted from proper administration. Because the trust's value was not reduced as a result of the breach, the damages were limited only to the lost income on the funds.
  - Breach of trust damages, Calculation of damages
- *Woodman v. Brickell Mar, LLC*, 2025 WL 3769434 (Fla. 3d DCA 2026) – The trial court dismissed the complaint, Appellant having never filed an answer. The trial court then denied the Appellant's request for attorneys' fees on the basis that the Appellant/Defendant had not filed a demand for fees to put Appellee/Plaintiff on notice. The 3d DCA reversed, holding that when Defendant has not yet filed an answer, there is no waiver of the right to fees. Defendnat is required to either demand fees in the motion to dismiss or within thirty days following dismissal of the action.
  - Dismissal attorneys' fees, Demand for fees

January 16, 2026

- *Amendment to Rules of Civil Procedure*, 2026 WL 111355 (Fla. 2026) – Amendment to Rule 1.350 (b)(2) and (b)(4) to require, respectively, that requests for production and responses to requests for production (i.e., the pleading without any of the documents being produced) be served on all parties in a case. And amendment to rule 1.370(a) to require that requests for admissions and responses to requests for admissions be served on all parties in a case. Effective April 1, 2026.
  - Rules of Civil Procedure

- *Dart v. Dart*, 2026 WL 60931 (Fla. 4th DCA 2026) – A divorce proceeding, the parties entered into an agreed pretrial stipulation that addressed a number of issues including the payment of child support. After trial, the trial court denied retroactive child support despite the agreement. The 4th DCA reversed holding that the parties and Court are bound by an agreed stipulation or order. When the Court enters an order which is agreed to by the parties, the Court is bound to enforce it when it is "clear, positive, definitive and unambiguous."
  - Agreed Orders, Court deviation
- *Shriberg v. Florida Flooring, Inc.*, 2026 WL 60973 (Fla. 4th DCA 2026) – Plaintiffs have new flooring put in their home and subsequently sued claiming defects in the flooring. Prior to bringing suit, plaintiffs transferred the home into a revocable trust of which they were the cotrustees and sole beneficiaries. The trial court dismissed the complaint finding that, because they were not suing "as trustees" they could not maintain the lawsuit. The 4th DCA reversed, holding that a trustee is not required to specifically allege that they were suiing in their trustee capacity under Rule 1.210(a). Additionally, the plaintiffs status as sole beneficiaries gave them another independent basis for standing.
  - Standing, Trustee litigation, Sole Beneficiary standing

January 23, 2026

- *Kapson v. Homeowners Choice Prop. Ins.*, 2026 WL 98050 (Fla. 3d DCA 2026) – Homeowner brought suit against wind insurance company stemming from hurricane damage to the home. At trial, the trial court allowed, over objection, evidence that the Homeowner had previously received payment on his flood insurance from the same hurricane incident on the grounds that it was relevant to the loss being caused by an excluded peril. The 3rd DCA affirmed, holding that the evidence was not violative of Fla. Stat. § 90.408. First, the payment of the flood insurance was not a settlement or compromise because the flood insurance proceeds were paid without dispute in fulfillment of the flood insurance contract. Additionally, the evidence was being allowed not to show liability or value, but rather to show causation.
  - Settlement Communication, § 90.408

January 30, 2026 *No Cases*