

LIFE, LIBERTY, AND THE LAW



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BACK IN THE SWING OF THINGS

By Robert Hemphill

We hope everyone is comfortably back into their routines after an enjoyable summer and are now looking forward to the holidays. The Cullens have been immersed in some health issues recently — more on that in a subsequent issue of this newsletter — so we thought we'd catch you up on the Hemphills this month.

The Hemphill clan closed out our summer by doing a family vacation road trip “Griswold-style” by renting an SUV in Boston and touring New England.

It was the perfect way to end the summer and transition back to school as we took the girls to see historic sites including Plymouth Rock and Plimoth Plantation, which is a re-creation of a 1627 Pilgrim village.



Upon return from our New England adventure the girls started Kindergarten and First grade at a new school. They have been working diligently and seem to be enjoying the school and making new friends.

I have noticed that several large retailers already have their holiday decorations on display.



I am always amazed at how quickly the weeks seem to pass once Fall arrives. We hope that everyone everyone reading this newsletter is in good health and good spirits. Please enjoy this wonderful time of the year. Before we know it we will be celebrating the arrival of 2019.





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Do You Have What It Takes... To Be A Personal Representative?

By Kim Cullen

In every legal case, one of the threshold issues that must be determined is, “**Who has the right to bring a case?**” In Florida, when someone dies as the result of the negligent act or omission of another person or entity, the Florida Legislature has decided that only the **Personal Representative** of the Estate of the deceased person can bring a claim under the **Florida Wrongful Death Act**.

WHAT IS AN ESTATE, AND WHY IS ONE NECESSARY?

When someone dies in Florida, an Estate is a temporary legal structure that is created in order to administer the deceased person’s affairs through the Probate Court. An Estate might “contain” the deceased person’s bank accounts, personal property, real estate, etc. The Estate might also pay some of the deceased person’s bills, pay the deceased person’s taxes, etc. Many people try to avoid Probate Court before the time of their deaths — and thus the opening of an Estate — by creating Trusts while they are living. The idea is that Trusts can contain directions for how all of the deceased’s business will be taken care of upon his or her death.

When **someone dies as the result of an accident in Florida**, Florida law **REQUIRES** that an Estate be opened on behalf of the deceased person, and that a **Personal Representative** be appointed to represent the Estate. Under Florida law, only the Personal Representative of the Estate of the deceased person can bring a claim for damages under the Florida Wrongful Death Act.

WHO CAN BE PERSONAL REPRESENTATIVE?

Under normal Probate Rules, a Personal Representative can be a person, but can also be a bank, Trust company, or other similar institution. In Florida Wrongful Death cases, the **Personal Representative is usually a member of the deceased person’s family (spouse, parent, or adult child.)** In some situations, the Personal Representative will already be identified in the deceased person’s Will. **When a Personal Representative has not been previously identified by the deceased, it is usually necessary for a family member to step forward.**

The appointment of a Personal Representative is a serious matter. **The Personal Representative must take an oath and swear to perform his or her duties responsibly and for the benefit of the deceased’s Estate and Survivors.** The appointment of a Personal Representative must be approved by a Circuit Court Judge assigned to Probate cases. Judges will typically not approve Personal Representatives who have criminal histories, who have a history of mental illness or mental incompetence, or who otherwise might be unfit to handle such an important job.

WHAT DOES THE PERSONAL REPRESENTATIVE DO?

In a Florida Wrongful Death case, **the Personal Representative is charged with bringing any and all claims** available under the Wrongful Death Act that will benefit the Estate of the deceased, and the Survivors of the deceased. The process for the Personal Representative usually starts with the hiring of a lawyer to assist with bringing the claim.

The Personal Representative will then work with the lawyer to help the lawyer collect as much money as possible for both the Estate and the Survivors. Claims for the Estate of the deceased are usually limited to collecting money for medical and funeral expenses, and well as the deceased’s projected Net Accumulations. Think of **Net Accumulations** as the amount of money the deceased would have saved (not earned), based upon his earnings and savings history, had he not prematurely died.

Personal Representatives are also charged with collecting money for Survivors of the deceased. The Florida Wrongful death can be confusing in terms of identifying who exactly qualifies as a “Survivor” under the facts and circumstances of each case. However, Survivors’ claims usually involve money for loss of financial support that the deceased was providing to the Survivor before her death, and loss of (or replacement of) personal services that the deceased was providing to the Survivor before her death. In addition, some Survivors are also entitled to **emotional pain and suffering** for the loss of their spouse, parent, or child.

At the end of a Wrongful Death claim, the Personal Representative has the responsibility of accepting or rejecting a settlement offer, or being the “face” of the Estate if the case goes to trial. If the case can be resolved, it is the Personal Representative who will be called upon to sign all of the important legal papers to bring the case to a close.

As you can see, Personal Representatives carry a lot of responsibility. However, if the Personal Representative hires the right lawyers to help him or her, the process is very manageable. If you have any questions regarding a potential Florida Wrongful Death case, or how the Wrongful Death statute works, we will be happy to answer them.





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Have You Seen Our New Website (And Phone Number)?

By Kim Cullen

Most consumers these days expect every credible business to have a website. But if you haven't been responsible for setting up a website for a business, you may not realize everything that goes into having a website that is informative, highly functional, and easy to use. Bob and I hope we have hit the sweet spot, and are excited to announce the release of our newly redesigned Cullen & Hemphill website at www.cullen-hemphill.com.



Valuable, Free Information

Bob and I have worked very hard to include substantial amounts of content on the website designed to answer practically any question a consumer might have about our practice areas. (If you have a question that we haven't anticipated and answered, **please** contact us and let us know. We are happy to create new content to answer new questions.)

Our New, Easy To Remember Phone Number

The first thing you might notice on the new website (aside the well-dressed guys on the home page) is our new phone number — **407-644-4444**. Every business wants to have a phone number this is easy to remember and to dial. When the opportunity arose for us to acquire **407-644-4444**, Bob and I just couldn't pass it up. Although our long-time phone number will remain active, you will inevitably be seeing **407-644-4444** on more and more of our office and marketing materials. We want to make it as easy as possible for every reader of this newsletter to know our number by heart, and to share it with friends and family members if the need should arise.

You Can Text Us Now, Too!

Finally, Bob and I are happy to announce a new technology that we are extremely excited about. **Consumers can now send texts to our office directed to our new office phone number - 407-644-4444 !!** Also, we can also now send texts directly from our office to clients and other contacts utilizing our new phone number. This will allow us to send short notes, reminders, and generally stay in closer touch with the people who we serve — our clients!

  **\$50.00 Gift Card Contest!!**  

In order to encourage all of you to **save our new phone number (407-644-4444) into your phones**, and to actually utilize this new technology, Bob and I have decided to put together a little contest. Every person that sends us a text to our new number that says, **"My name is (your name) and Cullen & Hemphill are my favorite lawyers"** will be entered in a drawing for a \$50.00 gift card. We will do the drawing on Halloween day (October 31, 2018), and will text the winner that day. We hope you enjoy the changes!

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101 S. NEW YORK AVE., STE. 205 WINTER PARK, FL 32789 407-254-4901

Cullen & Hemphill, PLC

101 S. New York Ave., Ste. 205

Winter Park, FL 32789

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**"LIFE IS TEN PERCENT WHAT
HAPPENS TO YOU, AND NINETY
PERCENT HOW YOU RESPOND TO IT."
- COACH LOU HOLTZ**



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A Great Dip For Football-Watching Weekends

By Kim Cullen

When I'm sitting around the house on a Saturday or Sunday (or, if I'm lucky, both) afternoon watching football, I tend to get hungry. I'll usually eat anything I can find, but if I can find a healthier choice, I will generally gravitate in this direction. Somehow it makes me feel like a little less of couch potato.

I found this artichoke dip a few years ago. It is probably not all that healthy, but it has artichokes in it, and artichokes seem kind of healthy to me (well, they aren't chicken wings)... Don't worry, you'll love it.



- 2 cans of quartered artichokes
- 2 cups of mayonnaise (officially, Hellmann's, but who knows?)
- 2 or 3 garlic cloves (depending on your taste)
- 2 small cans of green chiles
- 1 small can of pimentos (diced)
- 1 cup of Parmesan cheese
- 1 dash of red pepper flakes (or to taste)
- 1 dash of salt (or to taste)
- 1 dash of pepper (or to taste)

Mix the above list together in an oven-safe bowl. Sprinkle a little more Parmesan cheese on top, and bake at 350 degrees for about 30 minutes (or until the cheese on top starts to bubble.) Serve with Tostitos, crackers, pita chips, or whatever you like.