VALLEY LAWYER

SEPTEMBER 2013 • $ 4

A Publication of the San Fernando Valley Bar Association

Elder Abuse: Identification and Legal Advocacy

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Understanding Conflicts of Interest in Estate Planning

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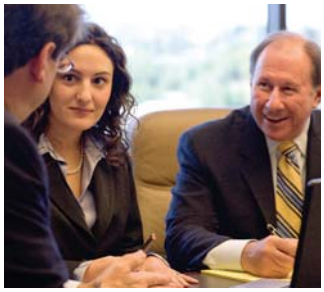

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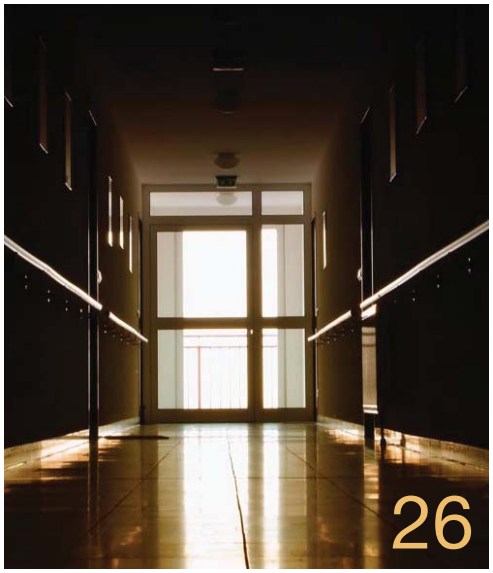

FEATURES

Cover Photo by Robert Reiter

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VALLEY LAWYER

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Good Wishes and Thanks

DAVID GURNICK
SFVBA President
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TIME GOES FAST. IT'S BEEN a year of building our sections, planning events, representing us at the County Bar, collaborating with the Valley Community Legal Foundation, interacting with judges, speaking to the media, working with our board and staff, attending to issues that arose, and always laying groundwork for our future. We tried to deepen our awareness of this community, from meeting at the San Fernando Mission, to hearing from distinguished leaders of the legal community at Board meetings. Throughout the year I heard from and talked with you one-on-one at meetings, court, lunch and elsewhere. We had highlights, like the visit from State Bar President Pat Kelley to one of our Board meetings, and sadness, including the deaths of past Executive Director, Sue Keating, colleagues like John Weiss and family of colleagues.

Like all good things, this SFVBA year is coming to its end. Our new year starts next month. One-year terms as officers are short but that is good for us. They keep us moving forward and bring fresh leaders with new energy. Our Bar Association has a good future with strong leaders coming our way. Adam Grant has already been an enthusiastic, energetic President Elect, taking an especially active role in the mediation program we are developing. Come October we can be proud to call Adam our President. Likewise, the officers who will follow in years ahead—Caryn Sanders, Carol Newman and Kira Masteller—are smart, respected lawyers and leaders in our legal community.

The year was great for our members and our organization. Sections met regularly and we added a few new law sections. Thanks to our section chairs for your hard work which provides the most regular, substantive contact for our members and the SFVBA. Section meetings offer intellectual enrichment, networking opportunities and highlight the expertise of our local lawyers. Special thanks to Hratch Karakachian, Ron Hughes, Mike Kaiser, Nicole Kamm and Steve Peck for your efforts in particular, getting our new sections going strong.

We lawyers of the Valley can be proud of our donation to the Valley Community Legal Foundation, funded by the Attorney Referral Service. I hope this will mark the start of more support for the Foundation. The more we do for the Foundation, the more it can do for our community. Congratulations to Etan Lorant for a great year as Foundation president and thanks for working closely with me and the SFVBA.

The court's financial crunch meant restructuring this year. This was painful, especially for court personnel. Compliments to the court's leadership, Judges David Wesley and Carolyn Kuhl, and all judicial officers for your courage in conducting the restructure. Our governors and legislature seem not to understand the importance of courts to our democracy. Underfunding justice erodes the system. Yet the crunch is not all bad. It forces reevaluation of priorities and new ways to operate better. Restructuring has created opportunities for our Bar Association to help, which we plan to do through a new mediation program. Thanks to members Myer Sankary and Milan Slama for founding and leading this effort.

To those who are no longer with us, those who lost partners, spouses, siblings and children—we are brothers and sisters in the practice of law. My thoughts and prayers and the affection of your colleagues in the legal community have been with you.

Our Board of Trustees—20 leading lawyers of the Valley—has been thoughtful in its deliberations about

what is best for our organization and this community. The board worked hard and actively represented you, our members, in some interesting decisions this year. We expressed the will of the community that the Chatsworth Courthouse be named in honor of Justice Armand Arabian. We amended the bylaws to encourage members to display our logo. And our Board chose to maintain our policy of strict neutrality, refraining from endorsing judicial candidates.

Thanks to my colleagues at the Lewitt Hackman firm, who have been entirely supportive this year. With so many past and future bar leaders, the Lewitt Hackman firm deserves thanks and praise from the SFVBA. And similar thanks and praise to the many other Valley law offices and firms, of all sizes, solo to large. Thank you for your support and involvement in the SFVBA. All we do—providing MCLE, networking, case referrals, *Valley Lawyer* magazine, arbitrating fee disputes, representing you at the State Bar, speaking for and voicing concerns to Judges, and so much more—is possible because of your participation.

Thanks especially to our professional staff, Liz Post, Linda Temkin, Rosie Soto Cohen, Irma Mejia, Lucia Senda and Noemi Vargas. The lawyers of the Valley are fortunate to have you conducting the daily business of our Association, and representing us to colleagues and the public.

Some final wishes for our Bar Association:

- Let's maintain the warm, friendly, welcoming feel of our organization. Let's continue to highlight our members as the leaders and legal experts we are. Let's continue our 87 year tradition of attentiveness and care for our finances and future.
- In our individual work for clients, let's continue providing the quality, attentive, zealous legal representation they are entitled to. We are fortunate to be lawyers and to serve clients. They always deserve our best.
- With each other, let's remain civil and collegial, including in adversary matters. We Valley lawyers are at our best when we are adversaries and colleagues at the same time.
- Let's deepen our understanding of our community, and continue to support the institutions of the Valley—the Valley Community Legal Foundation, UWLA Law School, our courts, government agencies, law enforcement, public defenders and schools. The more we engage with these institutions, the better.

Please stay active, because the San Fernando Valley Bar Association needs you. It's well within your ability to become a leader, an officer, even our President. I urge you to do it. It's a service to your colleagues that you'll enjoy and benefit from. Thank you for letting me serve you as your President.

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Calendar

Probate & Estate Planning Section
Life Insurance Trusts: What Are the Choices?

SEPTEMBER 10
12:00 NOON
MONTEREY AT ENCINO RESTAURANT

Attorney William F. Kruse will discuss ten ways to add flexibility to irrevocable life insurance trusts (ILIT). With recent estate, gift and income tax law changes, now is the best time to review proper preparation, funding and use of irrevocable life insurance trusts. Mr. Kruse will offer drafting suggestions and discuss innovative ideas for the use of the modern ILIT. (1 MCLE Hour)

Small Firm & Sole Practitioner Section
Client Confidentiality

SEPTEMBER 12
12:00 NOON
SFVBA CONFERENCE ROOM

Attorneys Jennifer Price and Lisa Miller will address border searches of lawyer technology and the government's right to invade confidential client materials contained therein despite encryption. (1 MCLE Hour Legal Ethics)

Taxation Law Section
Retirement Plan Problems and Resolutions

SEPTEMBER 17
12:00 NOON
SFVBA CONFERENCE ROOM

Is the piggy bank broken? 401(k), pension and ESOP attorney Sheryl Bayani-Alzona will discuss assisting employers in IRS audits and DOL investigations of pension plans. (1 MCLE Hour)

Workers' Compensation Section
Independent Medical Review

SEPTEMBER 18
12:00 NOON
MONTEREY AT ENCINO RESTAURANT

Attorney David Skaggs of Pacific Compensation Insurance Company will discuss the latest regarding the independent medical review. (1 MCLE Hour)

Employment Law Section
Mixed Motive: *Harris v. City of Santa Monica*

SEPTEMBER 19
12:00 NOON
LEWITT HACKMAN CONFERENCE ROOM
ENCINO

Attorney Linda Hurevitz of Ballard, Rosenberg, Golper & Savitt will discuss mixed motive theory in light of the Supreme Court decision in *Harris v. City of Santa Monica*. Does the ruling change McDonnell-Douglas burden-shifting order of proof? What is the effect on jury instructions? What is the effect on motions for summary judgment? (1 MCLE Hour)

Women Lawyers Section
Attorneys and Addiction

SEPTEMBER 24
12:00 NOON
SFVBA CONFERENCE ROOM

Bruce Turner and Jorga Davis will discuss attorneys and addiction. What are the signs of addiction? What are some preventive measures and what kind of treatment is available? (1 MCLE Hour Prevention of Substance Abuse)

Business Law Section and Litigation Section
Receiverships

SEPTEMBER 25
6:00 PM
SFVBA CONFERENCE ROOM

Attorney Richard Weissman will discuss the latest on receiverships. (1 MCLE Hour)

Bankruptcy Law Section
Hot Tips and Trends Re: Chapter 13

SEPTEMBER 25
12:00 NOON
SFVBA CONFERENCE ROOM

Attorney R. Grace Rodriguez will give an update on Chapter 13 and discuss how best to keep the Chapter 13 Trustee happy. (1 MCLE Hour)

Elder Law Section
How to Use California Department of Health Services To Help Your Case!

SEPTEMBER 26
6:00 PM
SFVBA CONFERENCE ROOM

Tricia West, RN, medical legal consultant, will outline how to get the California Department of Health Services to help support your position and how to use their investigation as "free" discovery. Differences between elder abuse and medical malpractice will also be discussed. (1 MCLE Hour)

UWLA

University of West Los Angeles School of Law
Co-Sponsored by SFVBA Taxation Law Section
How to Obtain and Maintain Tax Exemption

SEPTEMBER 11
6:30 PM
UWLA CHATSWORTH CAMPUS

Attorney Louis E. Michelson introduces the basic corporate requirements for nonprofit organizations, gives an overview of the tax exemption process and introduces the distinctions between public charities and foundations and basic tax compliance requirements. Call (310) 342-5200 to register. (2 MCLE Hours)

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0490, ext. 105 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.

FAMILY LAW ADVOCACY TRAINING (FLAT): TRIAL TECHNIQUE SERIES

SFVBA proudly presents an unprecedented year-long trial advocacy program for family law practitioners of varying experience levels. Featuring instruction and live demonstrations by a panel of experienced family law attorneys, bench officers and expert witnesses from Los Angeles and the San Fernando Valley, each MODULE includes an interactive workshop where participants will personally experience and practice trial techniques guided by the distinguished panelists. The Series will be presented over 9 MODULES:

- Saturday, September 28, 2013 • 9:30 AM—Preparing the Family Law Trial; What Financial Documents We Need and Why We Need Them; Opening Statement (3.5 hours MCLE)
- Monday, September 30, 2013 • 5:30 PM—Direct Examination (1.5 hours MCLE)
- Monday, October 28, 2013 • 5:30 PM—Cross Examination (1.5 hours MCLE)
- Monday, February 24, 2014 • 5:30 PM—Documentary and Physical Evidence (1.5 hours MCLE)
- Monday, March 24, 2014 • 5:30 PM—Examination of Child Custody Evaluator (1.5 hours MCLE)
- Monday, April 28, 2014 • 5:30 PM—Examination of Forensic Accountant I (Support Issues) (1.5 hours MCLE)
- Monday, May 19, 2014 • 5:30 PM—Examination of Forensic Accountant II (Property Issues) (1.5 hours MCLE)
- Monday, June 23, 2014 • 5:30 PM—Minor's Testimony (1.5 hours MCLE)
- Saturday, June 28, 2014 • 9:30 AM—Series Wrap-Up, Evidence and Closing Argument (3.5 hours MCLE)

FLAT's TRIAL TECH MODULE ONE

Saturday, September 28, 2013 • 3.5 Hours MCLE • 9:30 AM
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$90 After September 20; $20 Additional Late Fee Effective September 27

Preparing the Family Law Trial: Theme Development and Presentation; Organizing Witnesses, Evidence and Argument (1 hour)—Judge Michael J. Convey

What Financial Documents We Need and Why We Need Them (1 hour)—Judge Michael J. Convey, Gary J. Weyman and Donald J. Miod, CPA

Opening Statement: Introduction, Demonstration and Attendee Practice and Participation (1.5 hours)—Judge Michael J. Convey, Lisa Helfend Meyer and Mel Goldsman

FLAT's TRIAL TECH MODULE TWO

Monday, September 30, 2013 • 1.5 Hours MCLE
5:30 PM (Dinner included)
Sportsmen's Lodge, Studio City

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Prepaid by September 20
$75 After September 20
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Direct Examination: Introduction, Demonstration and Attendee Practice and Participation—Judge Michelle Williams Court, Judge Andrea Thompson, Lionel Levin and Daniel Davisson

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Bulletin Board

The Bulletin Board is a free forum for members to share trial victories, firm updates, professional and personal accomplishments.

SFVBA's long-time Executive Director **Susan Keating** passed away June 13, 2013. Sue began with the SFVBA as a part-time employee in 1973 when our facilities were a one-room office in Van Nuys. In the mid-1970s, Sue was appointed Executive Director and remained in that position through her retirement in 1993.

According to her son Scott Keating, an attorney in Santa Clarita, Sue coordinated the modernization and development of the SFVBA's lawyer referral service, which became a model for others around the country. For this achievement, Sue received commendations from members of Congress, state legislators, California governors, judges and justices.

In the years before we published *Valley Lawyer* magazine, Sue personally did the layout and edited our monthly newsletter, then known as the "Bar Bulletin." This was a manual task performed before the miracle of desktop publishing technology.

In her years with the bar association, Sue served on committees of many SFVBA members who sought to become bench officers, including several who were elevated to the appellate and California Supreme Court levels. We gratefully acknowledge Sue's many years of service to the SFVBA and mourn her passing.

The SFVBA also lost a long-time member, employment law specialist and mediator, **John D. Weiss**, on July 6, 2013. John was very well loved and respected by his peers. He had recently been presented with the prestigious Joe Posner Award issued by the California Employment Lawyers Association in 2012. He regularly attended MCLE seminars and events at the Bar office where staff was touched by his sweet demeanor and was always happy to see him. John was also a past contributor to *Valley Lawyer*. His last Valley Lawyer article, "Striking Life's Balance," appeared in the October 2010 issue. We are deeply saddened by John's passing and extend our condolences to his family and friends.

Shai Oved was recently recognized as a Certified Bankruptcy Law Specialist by the California State Bar. In addition to his stellar work in the field of bankruptcy law, he also is a strong supporter and active volunteer for Public Counsel's Debtor Assistance Project. Shai can be reached at ssoesq@aol.com.

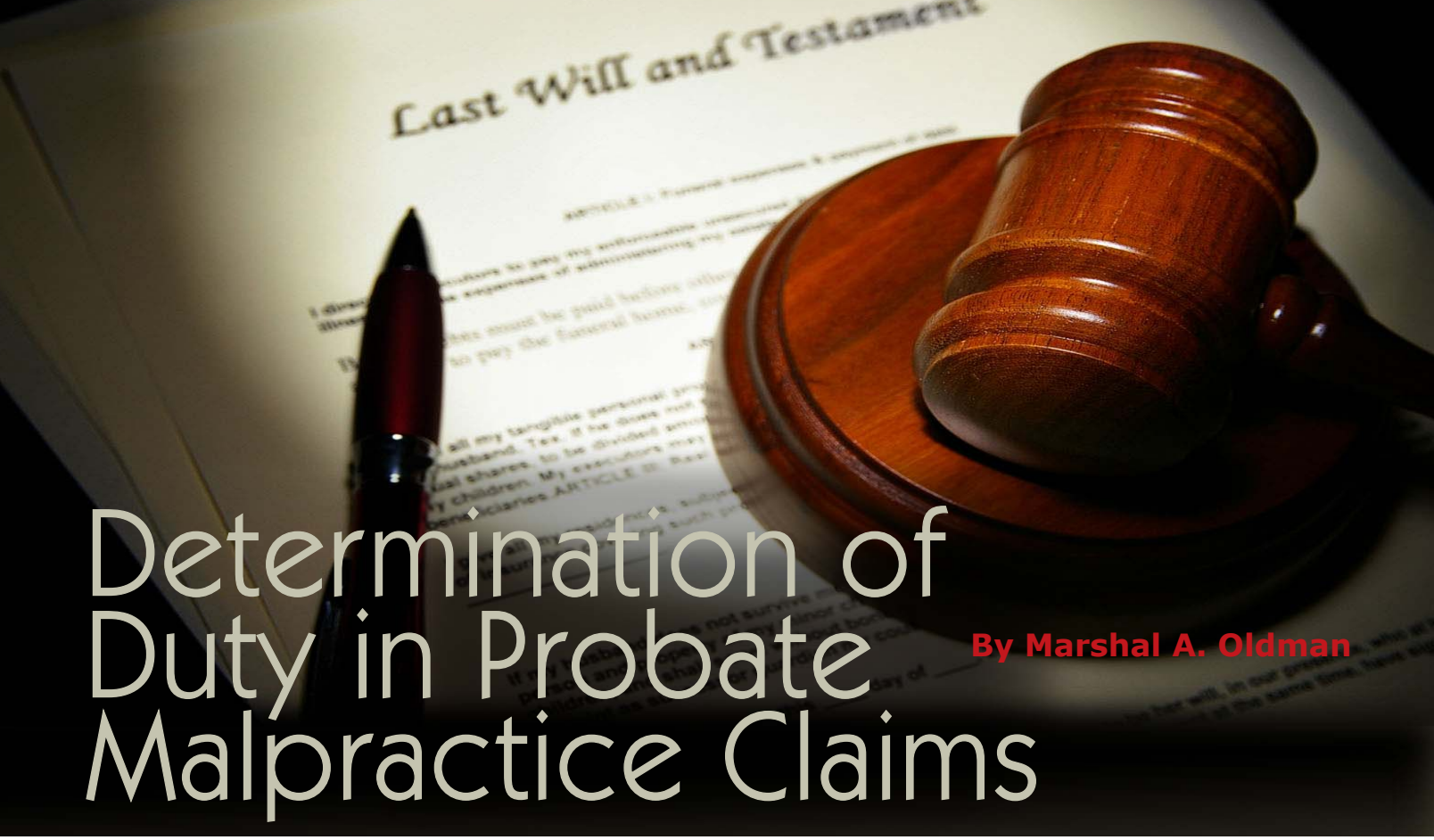
Ron Tasoff was recently appointed as a co-chair of the USCIS District 23 (Los Angeles) Liaison Committee of the Southern California Chapter of the American Immigration Lawyers Association. Ron is available to answer any questions about local USCIS operations and can be reached at ron@tasoff.com.

Email your announcement to editor@sfvba.org. Announcements are due on the fifth of every month for inclusion in the upcoming issue. Late submissions will be printed in the subsequent issue. Limit one announcement per firm per month.

CONSENSUS AD IDEM

In honor of this month's Emmy Awards, *Valley Lawyer* wants to know: Who is the all-time greatest TV lawyer? Vote in our survey and be entered in a drawing for a chance to win dinner and a movie!* Review the options below and check your email for your survey invitation. Not on our email list? Submit your vote to editor@sfvba.org .

*Only current members are eligible to win.



Determination of Duty in Probate Malpractice Claims

By Marshal A. Oldman

COUNSEL, ACTING IN THE ROLE OF AN ESTATE planner, must juggle numerous factors when creating an estate plan. The interrelation of estate taxes, income taxes and property taxes; the complications of blended families where children of different marriages must share interests in an estate; and the difficulties of dealing with surviving spouses and the deceased spouse's children create endless possibilities for disputes. Many estate plans by their nature will leave one or more persons dissatisfied with the benefits being provided. Disputes in trust and estate administration can arise at any time and often involve multiple contending parties in a war of all against all.

The temptation to find an attorney liable for the misery that often accompanies an estate is often overwhelming and inevitably expressed in the form of an action for malpractice.

Since estate planning documents tend to be revocable during the life of a testator or settlor, the statute of limitations often does not begin to accrue until the date of death. The estate planning attorney is often confronted with defending himself in a malpractice action and having to remember what happened years earlier with notes that may simply be inadequate.

In California, duty has been the primary tool used by the courts to determine attorney liability to non-client beneficiaries. The courts have adopted an expansive view of duty, decided as a matter of law and predicated on public policy that balances considerations, including the testator's intent, the effects of the attorney's drafting and potential avenues for recovery.[1] While expansive, counsel's duty on which an action might be based is not limitless. Courts in recent years have found some of these limits and provided some level of comfort to practitioners. The extent of the duty and the recently determined limitations of counsel's duty will be our principal focus.

Fiduciary Duty

Beginning with three major cases from the California Supreme Court, the courts have expanded the scope of duty and employed a multifactor test to expand the existence of duty of attorneys to potential third party beneficiaries in malpractice cases. By relying primarily on public policy considerations, the courts have defined the scope of duty to delineate situations when duty should apply.

When a client plans to execute a will or other testamentary instrument, the attorney must consider a number of factors that may implicate future liability to a non-client, including the testator's express intent, the attorney's primary loyalty to the testator, the beneficiaries named in the instrument, whether the attorney believes the testator should execute the will, and the effect of any language and statutory implications on the named beneficiary. When ambiguity is the result of the testator's communications, the court will not impose a duty for the attorney to do more than give effect to the client's intentions.[2]

Perhaps the biggest factor used to determine whether a duty exists is the burden to the profession.[3] As part of this analysis, the availability of an alternative remedy is a key consideration when the court determines the existence of a duty. In some cases where a document could not be brought in probate, the failure to find a duty would leave the plaintiff without any alternative means of redress. One conern articulated by the courts relating to this factor includes finding a duty to beneficiaries that may conflict with the attorney's primary duty to the client.

Traditional Concept of Duty

In tort, the traditional California rule (and a position still taken by some states) held that privity of contract between the attorney and claimant was required before

a duty can exist. Negligence alone was not sufficient to find an extension of privity. In contract, courts held that beneficiaries could not bring actions as third party beneficiaries because the contract could only expressly benefit the client. This narrow conception of privity provided strict boundaries that limited an attorney's estate planning exposure to malpractice suits. Upon the client's death, no other party had standing to recover damages.[4]

Supreme Court Redefines Duty

The Supreme Court abrogated the rule of privity to find a duty to non-clients under certain conditions in *Biakanja v. Irving*.[5] Here, the defendant was not an attorney but rather a notary who failed to have the will attested. The notary's negligence resulted in the denial of probate and a diminished share of the estate for the plaintiff. Reversing the rule of privity, the court articulated a six factor test resting on public policy concerns to determine that a duty did in fact exist. Without giving weight to any specific factor, the court identified them as "the extent to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, and the policy of preventing future harm."[6]

In *Lucas v. Hamm*, the court examined a case which involved an attorney who negligently drafted a will that violated the rule against perpetuities.[7] The court applied the *Biakanja* factors and found that the attorney had a duty to his client. Given that the defendant was authorized to practice law, the court added a factor to determine whether finding a duty would be an undue burden on the profession.[8] Applying this additional factor, the court held that an affirmative duty to a non-client beneficiary would not pose an undue burden.

The court focused on the attorney's duty to intended beneficiaries expressly identified in a will in *Heyer v. Flaig*.[9] In this case, an attorney failed to advise his client about the effects of a post-testamentary marriage and the statutory consequences of omitting a spouse. The court relied primarily on the certainty and foreseeability aspects of duty in the *Biakanja* test. The court held that as a matter of public policy, an attorney has a duty to intended beneficiaries, given that the attorney undertakes legal services initially for the client but ultimately for the beneficiary of the client's estate.[10]

Duty and the Burden on the Profession

More recently, the courts have focused on the *Lucas* factor (burden on the profession) to limit the scope of duty. In many of the cases, the courts expressed concern that finding a duty would conflict with the attorney's primary duty to the client. In this framework, duty to the client begins to explicitly function as a limit on attorney liability. Where the attorney's loyalty to the testator would be in direct conflict with any duty created towards the beneficiary, usually regarding the testator's intent, the court will be extremely unlikely to find a duty towards the beneficiary.

In *Radovich v. Locke-Paddon*, the court declined to find a duty when the plaintiff claimed that the decedent's attorney negligently failed to cause the execution of a will in which the plaintiff was a beneficiary.[11] The *Radovich* court was especially concerned about duty and its function as a stopgap to limitless liability.[12] Emphasizing the decedent's lack of a clear expression of intent, the court focused on the burden to the profession. It found that the costs of imposing a duty would be too high, especially in cases where the client's death was unlikely to have been contemplated and the possibility of a wavering testator was too great. Instead, the court required "the clearest manifestation of commitment" to find a duty.[13]

In *Moore v. Anderson Zeigler*, the court found that an attorney's duty to a non-client beneficiary to determine testamentary capacity creates too heavy of a professional burden.[14] An affirmative duty could discourage attorneys from drafting wills for fear of having a duty to someone other than the client. In addition, the uncertainty in the courts as to what constitutes lack of testamentary capacity weighed in favor of finding no duty.

Moore looked to several secondary sources to support its rejection of duty linking the professional burden to issues of client loyalty. The *Heyer* court first clearly distinguished between the duties to a client and a non-client beneficiary. "The duty which the attorney owes the beneficiary is separate and distinct from the duty owed the client; so, too, are the remedies for breaches of these duties."[15] Analyzing codes of conduct and other treatises that describe the scope of the attorney-client relationship, the court consistently found that the duty to the client is of utmost importance.[16]

Faced with a similar issue of capacity as in *Moore*, the *Boranian* court strongly echoed this concern regarding duty.[17] The court emphasized that the attorney's primary duty is to the client. The court stated that "the extension of that duty to a third party could improperly compromise the lawyer's primary duty of undivided loyalty by creating an incentive for him to exert pressure on his client to complete her estate planning documents summarily, or by making him the arbiter of a dying client's true intent, the courts simply will not impose that insurmountable burden on the lawyer."[18]

An additional underlying issue affecting the professional burden on duty is the plaintiff's ability to recover. The primary question the courts will ask is whether failure to find a duty in the present case would foreclose recovery when the plaintiff has no alternative legal claims. This reasoning informed the outcomes in *Radovich* and *Moore*, in which the plaintiff in both instances could seek redress in probate proceedings since testamentary intent itself was an issue.[19]

In contrast, *Osornio v. Weingarten* distinguished *Radovich* and *Moore* and held that as a matter of law, an attorney owed a duty to a testator.[20] The court raised the same concerns of burden, loyalty and recovery. Here, the attorney had an affirmative duty to advise the testator to obtain a certificate of independent review where the beneficiary was a caretaker. Because the testator's intentions to provide for the plaintiff were clearly expressed in an executed will, the court found that imposing a duty to an intended beneficiary would not compromise the attorney's loyalty to the testator. In addition, the beneficiary was possibly the only person who could seek recovery for the attorney's negligence.

More recently, cases have examined scenarios in which the courts relied on this factor to determine whether duty exists when a non-client beneficiary claims that she would

have received a larger bequest as per the testator's intent but for the attorney's negligence. This determination also hinges on analysis of undue burden to the profession and exposure to liability from a duty to other beneficiaries under the instrument who stand to lose their shares of the estate.

The court addressed this issue in *Chang v. Lederman*.[21] The court held that the attorney's failure to carry out an intended beneficiary's characterization of the testator's intent did not establish a duty to a non-client. Describing the effect that an affirmative duty would have on the legal profession, the court noted that the implications of finding duty "without requiring an explicit manifestation of the testator's intentions, the existence of a duty—a legal question—would always turn on the resolution of disputed facts and could never be decided as a matter of law."[22] Echoing the *Radovich* court's concerns regarding limitless liability, the court noted that "[e]xpanding the attorney's duty of care to include actual beneficiaries who could have been, but were not, named in a revised estate plan, just like including third parties who could have been, but were not, named in a bequest, would expose attorneys to impossible duties and limitless liability because the interests of such potential beneficiaries are always in conflict."[23]

In *Hall v. Kalfayan*, an attorney failed to have a will drafted prior to his client's death.[24] Here, the plaintiff was a prospective beneficiary who claimed that but for the attorney's delay, he would have been named in the will. The testator was a conservatee. Relying on *Chang*, the court held that because the plaintiff was not named in any testamentary document as a beneficiary and the client expressed no intent to change her existing will, the court declined to find a duty. The issue of client loyalty also contributed to this holding. A decision for the plaintiff would then expose the attorney to malpractice claims from other beneficiaries, which the court considered a precise example militating against the expansion of duty.

Malpractice in the estate planning context is one of the most difficult areas for counsel. Due to the open-ended statute of limitations and the potential liability that may be incurred in favor of beneficiaries unknown to counsel, claims may be brought against an attorney decades after the creation of a document by persons not in existence at the time of representation. Such claims may be viewed in light of current standards as opposed to the standards existing at the time of the service. The attorney's memory concerning the events may no longer exist, and the level of documentation may be very low.

Most of the cases coming down in recent years have focused on the burdens created by expanding the duty of counsel to third parties. Counsel's exposure to malpractice liability is limited to those matters where the testator's intent was clearly expressed but the documents failed to carry out the intention.

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[1] *Moore v. Anderson Zeigler* (2003) 109 Cal.App.4th at 1294.
[2] *Ventura County Humane Society v. Holloway*, 40 Cal.App.3d 897, 906.
[3] *Lucas v. Hamm* (1961) 56 Cal.2d 589.
[4] *Buckley v. Gray* (1895) 110 Cal. 339.
[5] *Biakanja v. Irving* (1958) 49 Cal.2d 647.
[6] *Id.* at 650.
[7] *Lucas v. Hamm,* supra, at 583.
[8] *Id.*at 589.
[9] *Heyer v. Flaig* (1969) 70 Cal.2d 223.
[10] *Id.* at 228-229.
[11] *Radovich v. Locke-Paddon* (1995) 35 Cal.App.4th 946.
[12] "Duty, in the context of negligence analysis, has been said to be 'a shorthand statement of a conclusion, rather than an aid to analysis in itself.... "[D]uty" is not sacrosanct in itself, but only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection.'" *Id.* at 954.
[13] *Id.* at 964.
[14] *Moore v. Anderson Zeigler* (2003) 109 Cal.App.4th 1287.
[15] *Heyer,* 70 Cal.2d at 232-233.
[16] "So paramount is the duty of loyalty, that in this state, the attorney may not institute conservatorship proceedings on a client's behalf without consent, even when the attorney concludes the client is incompetent, because of the prohibition against disclosure of client confidences." *Moore v. Anderson Zeigler,* supra, at 1307 (quoting Cont. Ed. Bar Program Handbook, Mar. 2002, §2.24, p. 82).
[17] *Boranian v. Clark* (2004) 123 Cal.App.4th 1012.
[18] *Id.* at 1019.
[19] "[The plaintiffs] only avenue for redress was via a malpractice action against the negligent attorney. In contrast, beneficiaries disinherited by a will executed by an incompetent testator have a remedy in the probate court." *Moore v. Anderson Zeigler*, supra, at 1300.
[20] *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304.
[21] *Chang v. Lederman*, (2009) 172 Cal.App.4th 67.
[22] *Id.* at 83.
[23] *Id.* at 86.
[24] *Hall v. Kalfayan* (2010) 190 Cal.App.4th 927.

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SAN FERNANDO VALLEY BAR ASSOCIATION

87TH INSTALLATION

Gala and Award Dinner

Installation of SFVBA and VCLF Officers and Trustees

San Fernando Valley Bar Association
President Adam D.H. Grant

Valley Community Legal Foundation of the SFVBA
President Etan Z. Lorant

Saturday, September 28, 2013
Warner Center Marriott
21850 Oxnard Street, Woodland Hills

6:00 PM | Cocktail Reception
7:00 PM | Dinner and Installation Ceremony

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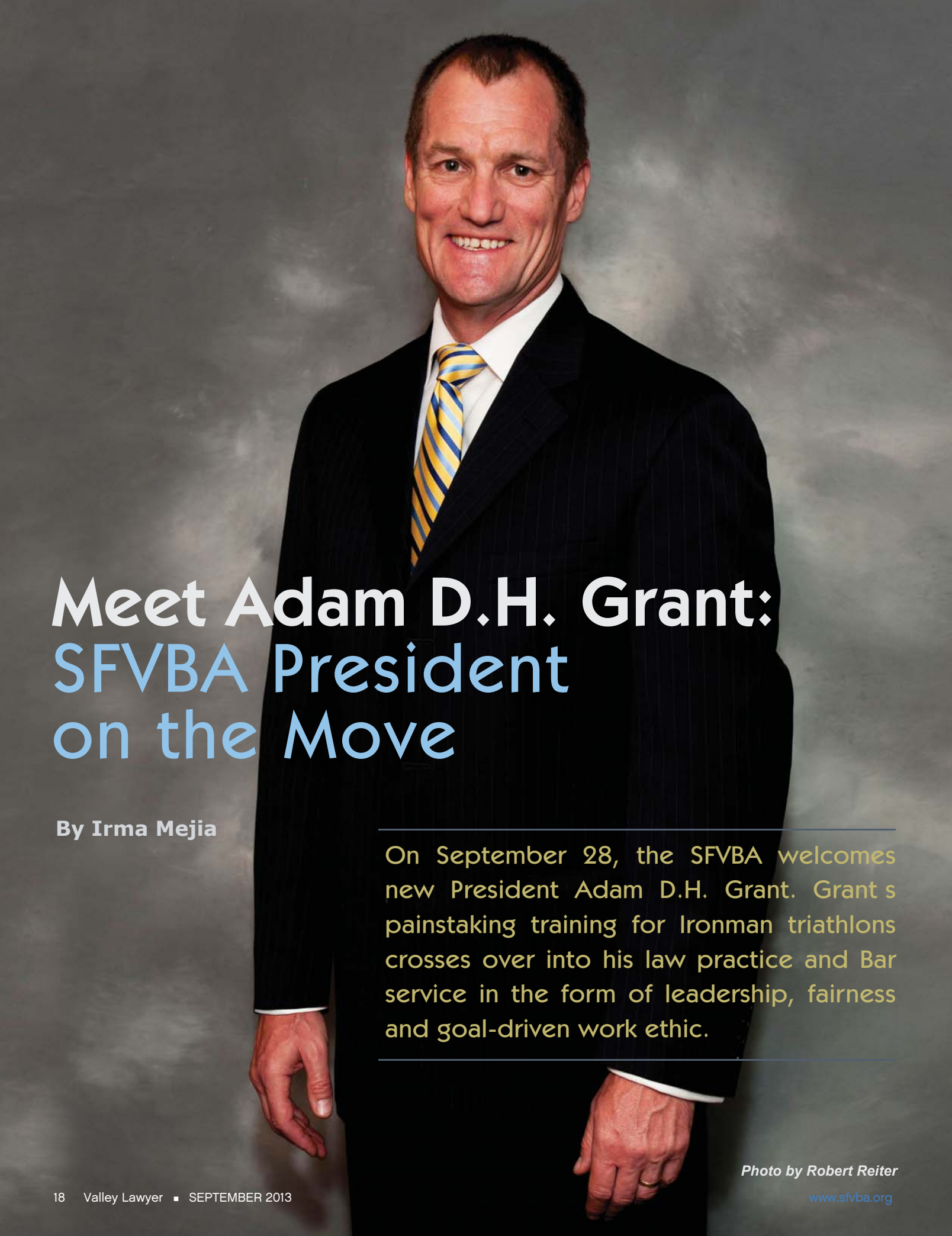


Meet Adam D.H. Grant: SFVBA President on the Move

By Irma Mejia

On September 28, the SFVBA welcomes new President Adam D.H. Grant. Grant s painstaking training for Ironman triathlons crosses over into his law practice and Bar service in the form of leadership, fairness and goal-driven work ethic.

Photo by Robert Reiter

THE SFVBA WILL CELEBRATE THE INSTALLATION of its 87th President, Adam D.H. Grant, on September 28 at the Warner Center Marriott in Woodland Hills. As a past Trustee and past Chair of the Business Law Section, Grant brings to the post years of Bar leadership experience and an impressive record as a business litigator. Grant has practiced law for 22 years and is a partner at Alpert, Barr & Grant, LLP in Encino. His practice has focused on complex business litigation, construction law, real estate and general liability claims. He is also currently taking a lead in the emerging field of privacy and data security in mobile technologies.

Born in Phoenix, Arizona, Grant attended college at the University of California, San Diego where he earned a Bachelor of Arts degree in Political Science. He attended Southwestern Law School in Los Angeles where he graduated with Moot Court honors. As a law student, he served as an extern for Bankruptcy Appellate Judge Barry Russell. Throughout the years, Grant has published several articles on mobile application privacy, litigation procedure and ethics and lectured nationally on mobile privacy and security.

In addition to his service to the SFVBA, Grant has volunteered for various legal aid and Jewish organizations, including the Jewish Federation of Greater Los Angeles. Grant is also a dedicated athlete and regularly competes in marathons and Ironman distance triathlons. As of the date of his installation, Grant will have completed nine Ironman triathlons. His daily athletic training crosses over into his law practice and volunteer service in the form of a high energy, goal-driven work ethic.

It is this vibrant dedication that makes outgoing President, David Gurnick confident in his successor's ability to lead the Bar. "Adam is a can-do, will-do, no-nonsense, strong leader," says Gurnick. "He is smart, insightful and organized. He will bring a style of strength, directness, efficiency and forward motion to our bar association."

SFVBA Executive Director Elizabeth Post also recognizes Grant's uncommon drive and talent. "I have worked with 20 Bar presidents, each with unique personalities and strengths. After working with Adam for the past six years as an officer and trustee, I know he will be one of the Bar's most driven and focused presidents."

SFVBA Director of Public Services, Rosie Soto Cohen, agrees. "Adam is always prepared. He makes sure to read all the necessary reports prior to a meeting and he doesn't like to waste time reviewing redundant information. Our Board will certainly be very efficient under his leadership."

Grant's refreshing leadership style, influenced by years of competitive sports training, has made an impression on many who have worked closely with him. "Adam has a keen sense of fair play. He is able to maneuver between warring parties and strive for that acceptable balance," says SFVBA Director of Education & Events Linda Temkin. "He has a great understanding of team play and what it takes to set reachable goals."

His competitive activities hasn't kept him from forming bonds with his colleagues at the Bar and helping when needed. "What strikes me most about him is his business-oriented management style. He inspired me to draft a workable business plan for the Attorney Referral Service, a project that has made a tremendous impact in the way the ARS is managed," explains Soto Cohen.

Grant shares his successes in the court and on the race course with those who mean the most to him: his wife and three daughters. With his family, busy law practice and rigorous training schedule, Grant has managed to find the work-life balance that often eludes many attorneys. Of his work-life balance, Post says, "I admire that Adam is clear about his priorities, with his family coming above all else." "He certainly models the right work-life balance," notes Temkin. "And possibly because he lives in a houseful of women, he is also a great listener and actively engages you in conversation. He truly appreciates and respects women."

"Hopefully, his dedication to fitness impacts us at the Bar—maybe we can get an office treadmill!" continues Temkin. His energy has already started to rub off on at least one staff member. "Adam has inspired me to train to run my first half marathon this fall," says Post.

Indeed, the entire SFVBA staff looks forward to collaborating with the incoming president on his biggest goal for the year: establishing an Alternative Dispute Resolution (ADR) Center in the Valley to fill the void left by the now defunct Superior Court ADR program. Grant is currently working closely with a talented team of SFVBA members to establish this greatly needed program. Grant further discusses this goal and other issues in a recent conversation with *Valley Lawyer*.

Q: What do you hope to accomplish as SFVBA President this year?

A: As President of the San Fernando Valley Bar Association, I hope to establish a Valley mediation center, a 501(c)(3) organization supported by our bar association. Ideally the center would bring together pro bono and low cost mediators to assist litigants in resolving family law, probate and lower value civil matters.

Q: Why do you believe a Bar-sponsored mediation program is so important?

A: I am passionate about the mediation program because it will provide all litigants, regardless of their financial abilities, access to the courts. A program sponsored by the San Fernando Valley Bar Association will uniquely position the Bar to provide a critical service to the community and demonstrate the high level of commitment by the Valley's lawyers.

Q: In addition to establishing a mediation program, what other ways can the Bar help to ease the impact of the ongoing cuts to court budgets?

A: The Bar can ease the impact of budget cuts by encouraging its attorneys to volunteer as a judge pro

tem or as an on call mediator in the probate or family law courts. They can also volunteer their services at the community legal clinics hosted by the ARS throughout the year.

Q: What do you think the Bar's role in the Valley should be?

A: I believe the Bar's role in the Valley should be to support the community's access to the courts and to provide opportunities for Valley lawyers to seek out and rely on each other for business and support.

Q: Why do you think it is important for attorneys to be involved in their local bar associations?

A: The local bar association is important to all attorneys. It provides new attorneys with a wealth of knowledge and experience, while providing seasoned attorneys with opportunities to connect with colleagues and rely on those colleagues to assist their clients' needs.

Q: What do you view as the biggest challenge facing our Bar?

A: Our biggest challenge is reminding our local attorneys of the value of membership. In our tech-heavy lives, we tend to overlook the importance of face-to-face connections. We must expand our membership by showing other Valley lawyers the Bar's relevance and importance.

Q: Is there a specific area of the Bar, or a particular program, you would like to see improved?

A: I would like to see our Attorney Referral Service expand its reach in the community. And, of course, I'd like to see the establishment of the Valley mediation center.

Q: There have been a lot of discussions over the shaky future of the legal profession. What do you view as the biggest challenge facing the profession?

A: Lawyers play an integral role in the community but the challenge is for attorneys to demonstrate to the community that their work provides value and is reasonable. A significant challenge for attorneys is to keep the way they practice in sync with the ever changing technology to better assist their clients in the manner and mode they are most comfortable.

Q: What made you want to become a lawyer?

A: I learned very early that I had an aptitude for being able to quickly analyze complex matters and explain it in a concise, yet simple manner. I embraced reading, writing and the art of oral argument as early as elementary school. I also remember telling my fourth grade teacher who gave me a "needs improvement" grade for handwriting that when I became an adult, I would only need to sign my name, so it was ok that my handwriting grade was not in line with the other "A's" I received.

Q: How did you end up in your particular area of practice?

A: When I started to practice in 1991, I cut my teeth at an insurance defense firm at which I became a non-equity partner in three years because of the workload I took on. Of the numerous matters I handled, I gravitated toward construction issues and real estate disputes. These matters included more complex and unique issues in a litigation context. More recently, I expanded my practice to include mobile applications and online privacy law, which I recognize as an emerging field of law with the skyrocketing number of mobile phone sales and app downloads. I find this area's nuances extremely exciting.

Q: What advice would you give to a law student or new attorney?

A: Develop a book of business as soon as possible and understand the importance of integrity.

Q: You graduated from law school with moot court honors. Other legal professionals who have been featured in *Valley Lawyer* (most notably Judge Jerold Cohn) have had memorable experiences with moot court. How important do you think that experience is for a law student? What impact did it have in your career?

A: Moot court was an amazing experience for me in law school. I participated in moot court during my first year at Southwestern. As a law student, it is likely the first true piece of legal advocacy you engage in at the start of your career. I remember the first round of moot court I participated in during law school. I was paired up against the editor for the law review. At first I was intimidated, but I put those feelings aside and focused on my argument and how I was going to present my views. After the presentation, I felt that I actually had a real chance to win. After some nervous moments, the judges scored both of us and I won. I continued on to the quarter finals. From that experience, I learned that if I relied on my ability to focus when faced with challenges, I can and will accomplish my goals.

Q: When you're not in the office, what do you do for fun?

A: I have been married to an amazing wife, Joyce, for the past 24 years (actually 32 years of being together as a couple) and I spend endless hours with my three daughters, Jordan, Jenna and Julia. I also am passionate about participating in Ironman distance triathlons, which is the impetus for getting up at four in the morning and training two hours every day before work.

Q: How do you find balance between your work, family and recreational activities?

A: I calendar everything: litigation, workouts, family events and business development. Put it down on a calendar and make it happen.

Q: Do you have a favorite attorney?

A: Atticus Finch in *To Kill a Mockingbird*, a story that has lessons which ring true even today.

Q: What is your favorite book and why?

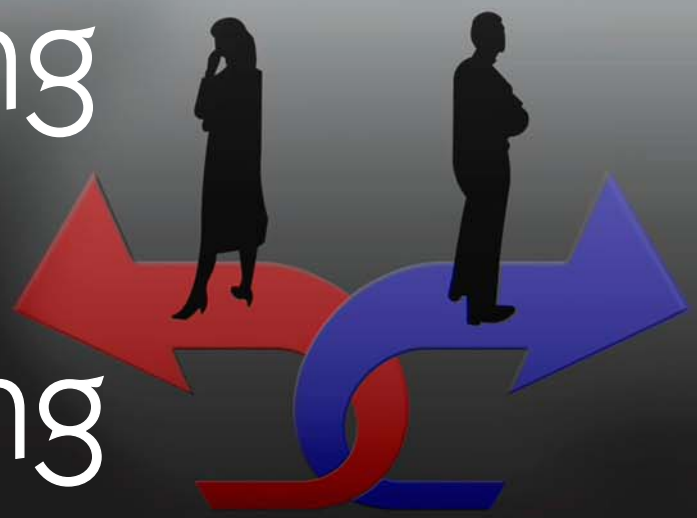
A: *Horton Hears a Who* by Dr. Seuss because is teaches the importance of tolerance, understanding and empathy.

Q: Who do you think is the best TV lawyer of all-time?

A: Hands down, Perry Mason!

Irma Mejia is Editor of *Valley Lawyer* and serves as Publications and Social Media Manager at the San Fernando Valley Bar Association. She also administers the Bar's Mandatory Fee Arbitration Program. She can be reached at editor@sfvba.org.

Understanding the Conflicts of Interest in Estate Planning



By Kira S. Masteller

ESTATE PLANNING ATTORNEYS OFTEN work with entire families. Many times these clients are better served by a single attorney representing their multiple interests, resulting in more economical and better coordinated estate plans because the attorney has a greater overall understanding of the pertinent family and asset considerations. Most married couples or registered domestic partners are jointly represented. Multiple generations of families including parents, siblings, children, grandchildren, cousins, partners and co-habitants who have common interests can also be jointly represented.

A sophisticated tax plan may involve the coordination of several generations of assets, gifts, trusts, business entities, and more. Very often, post-death trust administration requires an attorney to work with a surviving spouse, the children and grandchildren of the parents for whom the attorney originally prepared an estate plan. While many cases are completed without any conflicts, others barely get started without a conflict.

What does the estate planning attorney have to address when considering whether or not to represent a couple, domestic partners, business partners, multiple generations of a family or all of the above? The attorney must determine whether or not such representation involves a concurrent conflict.

Rule 1.7 of the American Bar Association's Model Rules of Professional Conduct (MRPC) calls for an attorney to ensure that the representation of a client does not involve a concurrent conflict of interest. Per the Rule, "a concurrent conflict of interest exists if the representation of one client will be directly adverse to another client or if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, a third person, or by a personal interest of the lawyer."

What Is Materially Limited?

The drafters of the current conflict rule attempt to clearly state that a conflict exists if there is significant risk that the representation of one or more clients will be materially limited by the attorney's other responsibilities. Materially limited conflict includes judgment that is affected by an attorney's interests, duties, connections or responsibilities to another client or a third party.

If a materially limited conflict exists, the attorney may proceed to represent the client if the attorney reasonably believes that he or she will be able to provide competent and diligent representation; the representation is not prohibited by law; the representation does not involve representing opposing parties in the same matter; and each affected client gives informed consent, confirmed in writing. An attorney owes the client services independent of outside influences, to the extent possible. The attorney can work to resolve this issue by communicating with the client and limiting the scope of representation so as to keep out potential material limitations.

Kira S. Masteller is a Shareholder at Lewitt, Hackman, Shapiro, Marshall & Harlan where her practice focuses on estate planning, estate and gift tax planning, and trust and estate administration. Masteller works with individuals, families, businesses and organizations with respect to their personal estate planning, business estate planning, charitable planning and tax planning. She can be reached at kmasteller@lewitthackman.com.

What Is a Significant Risk?

The risk analysis requires the evaluation of the positions and options that the attorney should recommend and advocate for the affected client and then the evaluation of whether an appreciable risk exists that the attorney's ability to pursue those positions and options will be materially restricted. The attorney must evaluate both the likelihood of the conflict ever materializing and the extent to which it will interfere with the attorney's representation. The MPRC defines a "substantial risk" as one that is "significant and plausible," which means more than "a mere possibility of adverse effect." The standard that is intended to apply is an objective "reasonable lawyer" standard, which is based on the facts and circumstances that the attorney knew or should have known at the time of undertaking or continuing the representation.

Applying the Standard in Practice

While spouses are happily planning for the arrival of children or raising the children they already have together, it is very unlikely that that the two clients will become adverse to one another with respect to their estate planning because they have similar goals. They may not always agree on who should be guardian for the children (certainly not their in-laws), a subject upon which they can agree to disagree; however, they usually agree on not distributing funds to children until both spouses have passed, holding funds in trust for children until specified ages, and even on who should manage such funds for the children and the criteria for doing so.

Problems arise when a couple is divorcing or if they are married a second or third time with children from a prior marriage, or similar circumstances. Often a conflict between siblings will rear its ugly head when the surviving parent passes and a trust is to be administered for adult children.

An estate planning attorney who prepared an estate plan for both spouses generally should not represent one spouse during or after a divorce, unless both spouses have consented in writing to such representation after having received full disclosure of the potential conflicts from the attorney. To advise one spouse prior to a divorce in anticipation of filing for divorce would be a concurrent conflict (without full disclosure and the written consent of both spouses).

It is prudent to advise a client couple at the time they are not in conflict that in the event of a divorce, the attorney representing both of them cannot represent one or the other and that each of them would require separate counsel. Even after the divorce is final, the attorney should obtain written consent from both parties in order for the attorney to continue to represent one or the other. Some experienced estate planners regularly represent husbands and wives as separate clients. Such representations should only be undertaken with the informed consent of each client.

A second marriage can be fraught with conflicts between the spouses the moment they enter the attorney's office. Often a prenuptial agreement exists that one spouse may wish to continue to enforce and the other wishes to ignore. One spouse may have four minor children and one spouse may only have one adult child. The combinations of differences and the needs for different planning goals are endless. One spouse may have brought assets to the marriage and desires to continue to keep

her property separate; one spouse may have brought nothing to the marriage, but wants to have all of the spouse's assets divided equally among both sets of children.

In representing parties married more than once, the attorney must, on a case by case basis, evaluate the parties, the assets, the children and the initial apparent challenges and determine whether or not the couple should be represented by only one attorney. Are the desires of this couple more often in disagreement? Could the estate plan later fail when one spouse dies and the other claims he or she was not fairly represented? Will the children of the decedent treat the surviving spouse badly because of the conflict? Or will children be taken advantage of by a surviving spouse? Did tax planning goals of one party and the joint attorney lead to bad planning for the lesser advantaged spouse?

These issues do not exist in every second marriage but must be addressed in advance by the attorney asked to represent such a couple. After determining in advance any existing conflicts, some cases may require that each spouse should have separate representation so that no one is disadvantaged.

Keep in mind that an estate planning attorney working with both spouses can provide an excellent plan addressing these challenging issues. For example, the attorney can advise clients to keep individual property separate and preserve some assets for children and others for a spouse. The attorney can also utilize tax planning techniques such as providing income only for a surviving spouse or utilizing life insurance and retirement assets specifically for a surviving spouse or for children while keeping a family home available for a spouse or children, etc.

Working with the children of married clients after both parents have died can be quite fulfilling for the attorney because he or she is able to communicate and follow through on the parent's wishes and goals for the children while guiding them through the practical legal advice to properly administer an estate. But this will not be the case when one child is a trustee and another child is resentful of such appointment, or if there are unequal shares or rewards for some children and not for others, or the many other ways children will become upset by the choices their parents made. In cases such as these, it is clearly a conflict to represent more than one party.

The attorney who represented the now deceased parents may choose not to represent any of the children, but instead remain available as a witness in the event of litigation between the children. A child may complain that the parent's drafting attorney should not represent the child Trustee who is also a beneficiary because it is a conflict of interest.

In applying the requirements of the MPRC while there may be a decision made by the child Trustee that may be detrimental to that same child as a beneficiary, it is not a conflict of interest to have that one child as the client in the two roles. Both roles must be discussed by the attorney when advising the client so that he or she understands the ramifications as they apply to the Trustee and as they apply to a beneficiary.

When working with multiple generations of clients, there are several ways to prepare for such cases by limiting the scope of the representation and providing clients with specific examples of conflicts that may arise. If forming an entity where parents are gifting assets to children and grandchildren, informed written consent of potential conflicts may not be necessary. However, if an attorney is going to prepare the estate plan for the parents, as well as for each child and his or her spouse, and for each grandchild and his or her spouse, then many potential conflicts could arise including confidentiality issues and varying goals.

An attorney who is consulted by multiple parties with related interests should discuss the implications of a joint representation (or separate representation if the attorney believes separate representation to be appropriate) during the initial consultation. The prospective clients and the attorney should discuss the extent to which material information imparted by either client would be shared with the other and the possibility that the attorney would be required to withdraw if a conflict in their interests developed to the degree that the attorney could not effectively represent each of them. The information may be best understood by the clients if it is discussed with them in person. Examples of potential conflicts provided to them in written form, such as in an engagement letter, may further help a client understand the potential for a conflict.

An attorney must be particularly careful if a client asks the attorney to prepare a will or a trust for someone else that benefits that client, especially if that client is going to pay the cost of the attorney preparing that will or trust. As an example, if George asks attorney to prepare his mother's will that leaves everything to George and George pays for that will, there is a material risk that the representation of both the existing client and the new client will be significantly limited. In this case the attorney must comply with the Model Rules of Professional Conduct and should caution both clients of the possibility that George may be presumed to have exerted undue influence on his mother because George was involved in the procurement of the document.

Terminating representation at the close of the preparation of the initial estate plan and requiring the clients to enter into a new agreement for future work or post death trust administration may assist the attorney with potential representation problems.

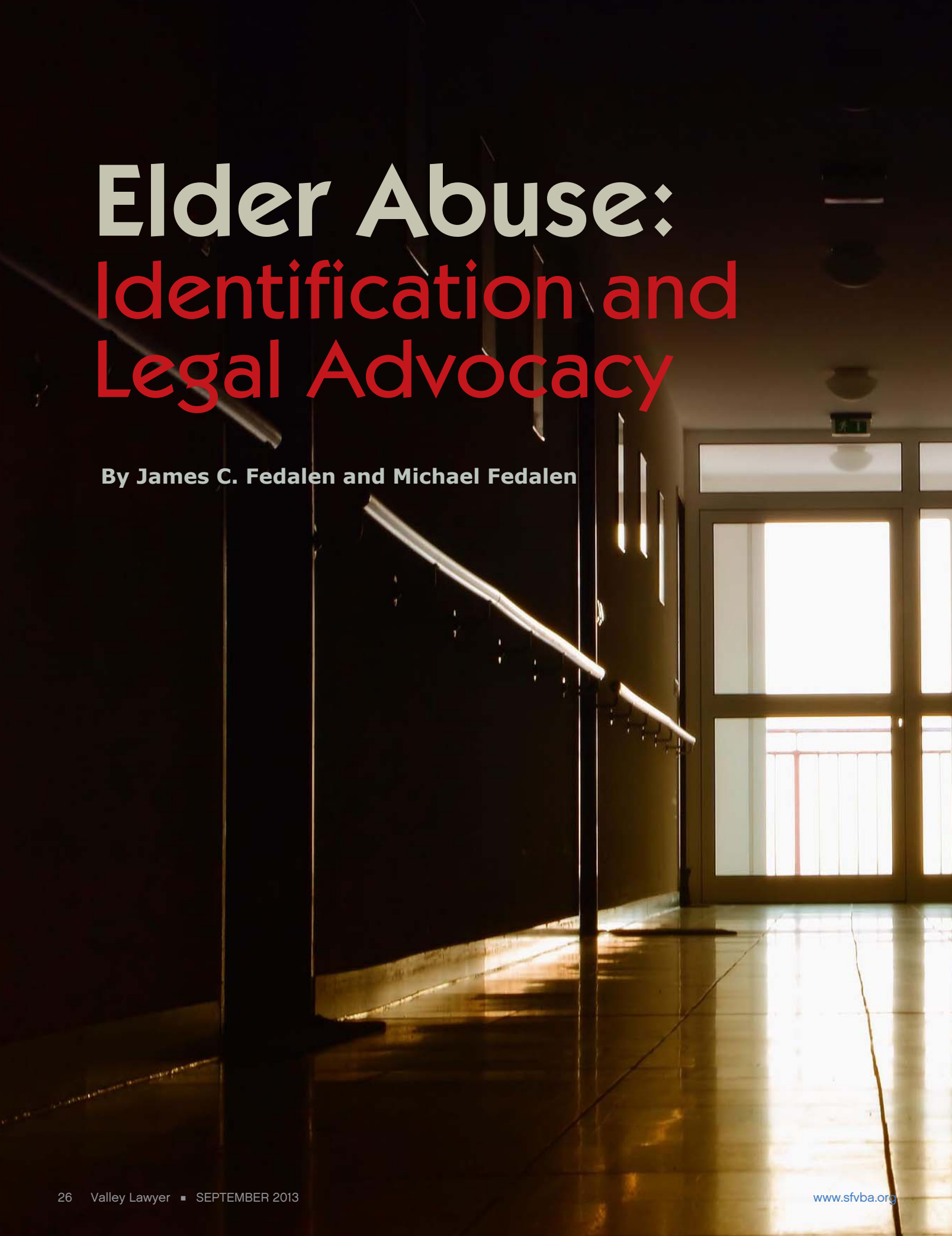
When one spouse dies and the surviving spouse returns to the estate planning attorney with a desire to remove the deceased spouse's children as the beneficiaries, or in some manner keep the deceased spouse's wishes from being followed, is there a conflict of interest? Does the estate planning attorney have a duty to the children of the deceased spouse or a duty to the deceased spouse? Or is the duty solely to the surviving spouse who remains a client?

The "client" in this situation is the surviving spouse, but what about the deceased client's planning? The attorney must consider the potential conflict between the deceased spouse and the surviving spouse, even though the deceased spouse is dead. If there was a termination of the attorney/client relationship at the close of the completion of the estate plan and the prior representation was limited solely to the preparation of the estate plan, there could now be a renewed representation of the surviving spouse with respect to the post death trust administration that did not conflict with the prior client representation.

If there were not a termination of the relationship, or the scope of representation was not limited to the preparation of the estate plan only, the attorney must consider whether there is a significant risk that the representation of the surviving spouse will be materially limited by the attorney's responsibility to the deceased spouse. The attorney could be a future witness in a matter such as this and potentially adverse to the surviving spouse or to the deceased spouse (both of whom are attorney's clients).

An estate planning attorney can represent families effectively even though the possibility of a conflict always lurks in the background. Communicating examples of potential problems using specific detail relevant to each family will aid in properly disclosing the possibilities of conflict to clients, allowing them to give informed consent and to waive the potential conflicts, or ultimately choose to have separate representation.

It is important to remember that the scope of representation can be narrowed and limited by agreement and if, during the course of representation, potential or actual conflicts surface, immediate communication with the clients can help the attorney discern whether or not a materially limited conflict exists and the risks associated with it.



Elder Abuse: Identification and Legal Advocacy

By James C. Fedalen and Michael Fedalen

By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 33.

While much attention is paid to elder abuse in long-term care facilities, twice as many incidents of abuse take place outside of institutional settings. California has enacted protections prohibiting a broad range of exploitative conduct that often is unrecognized as elder abuse. In large part due to a lack of awareness of the scope of conduct that is considered to be elder abuse, it is estimated that only one in fourteen incidents are ever reported.[1]

ABUSE OF THE ELDERLY IS PREVALENT IN California and across the United States. Over 2 million elderly adults in the United States become victims of some form of abuse every year.[2] In California, almost 200,000 elders are subjected to some form of abuse annually.[3] Although around one-third of the cases of abuse occur in nursing homes and other long-term care facilities, the most frequent abusers of the elderly are the spouses and adult children of the victims serving as their caregivers.[4]

Contributing to the problem is a lack of awareness that certain conduct is defined as elder abuse. It is easy to recognize that a bed-ridden geriatric individual kept by nursing home staff in unsanitary conditions for prolonged periods of time constitutes elder abuse but most instances of prohibited elder abuse are less obvious.

While the majority of elder abuse takes place outside of an institutional setting, when it does occur in an institutional setting, it can often be the most severe. It is not surprising that elder abuse occurs frequently in long-term care facilities when reports show that 90% of all U.S. nursing homes have reported staffing levels too low to provide adequate care and one in three California nursing homes are cited annually for deficiencies resulting in actual harm.[5]

Elder Abuse Act

California implemented the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA or Elder Abuse Act) in 1992 to "remedy situations of immediate danger to vulnerable elders and dependent adults."[6] Modified repeatedly since, the EADACPA provides enhanced remedies in order to "enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults."[7]

Prior to the enactment of the EADACPA, it was often difficult for victims of elder abuse to obtain legal assistance. Even when abuse could be proven, remedies were limited by the lack of provable damages to individuals with no income and limited life expectancy. Survivor's remedies were very limited. In effect, this meant that recovery was usually precluded or severely reduced whenever the elderly victim of abuse died before trial. Because the risk of death for victims of elder abuse is three times higher than for non-victims, abusers were often unjustly avoiding liability for their actions in the likely event that the victim were to later die.[8]

The EADACPA, as currently enacted, attempts to address the problem of elder abuse by enacting provisions that create liability for certain defined categories of elder abuse; create classes of mandatory reporters; provide attorney's fees in many instances; and allow the recovery of pain and suffering damages by the survivors of a deceased victim.

Elder Abuse Defined

By defining an "elder" as "any person residing in this state, 65 years of age or older," and then proscribing a wide range of conduct directed towards anyone who falls within that group as "abuse of an elder," the EADACPA prohibits certain conduct directed towards any elder, with no general requirement that the victim lack competence or otherwise be susceptible to abuse.[9] This can lead to allegations of elder abuse under circumstances far removed from the stereotypical case of an infirm elderly person suffering from abuse in a long-term care facility. Financial abuse under the EADACPA, for example, is defined as occurring whenever "a person or entity… [t]akes, secretes, appropriates, obtains or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud."[10]

Taking of the personal property of an elder is deemed intended for a "wrongful use" if, "among other things…the person or entity knew or should have known that this conduct is likely to be harmful to the elder."[11] Given that many people engage in business well past the age of 65, a supportable allegation of unfair acts or fraudulent or deceitful conduct in a commercial context has the potential to implicate the EADACPA when an elderly person claims that he or she was wrongfully deprived of any property right by those actions.

Prohibited conduct under the Elder Abuse Act includes either "[p]hysical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering" or "[t]he deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering" by any person or entity.[12]

Behavior that constitutes physical abuse can be broadly grouped into three categories: assault and battery, sexual abuse, and improper use of physical or psychotropic restraints. Using prescription psychotropic medications in excess of dosages prescribed by a physician, also known as "applying chemical restraints," is one of the more common forms of elder abuse that takes place in institutional elder care settings. Most elderly residents of long-term care facilities are administered psychotropic medication daily, often prescribed solely for the convenience of the staff.[13] Such abuse can also occur outside of institutions.

Neglect includes both the negligent failure of any person having the "care or custody" of an elder to exercise reasonable care, as well as a prohibition of self-neglect, or the failure of an elder to exercise reasonable self care.[14] The neglect provision applies to anybody with the care of an elder, whether or not that person receives compensation for that care. Violating the self-neglect provision does not make the elder personally liable for neglecting their own care, but triggers the EADACPA's mandatory reporting provisions.

Financial Abuse

Financial abuse results in $3 billion dollars being misappropriated from the elderly in the United States every year.[15] Financial abuse ranges from outright fraud and embezzlement by people close to the elderly person, to the provision of imprudent and unnecessary services by businesses. Unlike other types of elder abuse identified in the EADACPA requiring clear and convincing proof before attorney's fees will be awarded, a plaintiff need only prove

financial abuse by a preponderance of the evidence to obtain this enhanced award.[16] In recent years, the refinancing of the homes of elders has led to many allegations of financial abuse.

Financial institutions must take special care to avoid being embroiled in an elder abuse allegation under the Elder Abuse Act's prohibition against assisting in the commission of the financial abuse of an elder.[17] However, banks and financial institutions will not be liable for assisting in elder abuse if they do nothing more than act as the financial institution through which abusive transactions take place. In one case, the Court of Appeals sustained a lower court's decision granting a defendant bank's demurrer to a financial abuse allegation by an elderly customer even though the plaintiff alleged that the bank had assisted in a series of highly irregular transactions with an elderly man who had trouble forming meaningful sentences and was easily confused, including issuing the man a loan at unfavorable terms on a property that the bank soon foreclosed upon.[18] The court did not find that that the bank knew or should have known that the transactions would be harmful to the elderly man, and held that the mandatory reporter statute that applied to the bank did not create a private cause of action for the plaintiff.[19]

Courts interpreting California law typically require a demonstration of actual wrongdoing by an employee of the institution, most often by materially misleading an elderly person as to the terms of the transaction before a financial institution will be deemed to have known that a transaction is likely to be harmful to an elder.[20]

Mandatory Reporters

Mandatory reporters of suspected abuse of elders include anybody who takes "full or intermittent responsibility for the care or custody" of an elderly individual, as well as many employees of elder care institutions, health practitioners, clergy members, adult protective services (APS) employees and law enforcement personnel.[21] In order to encourage the reporting of elder abuse by those with the most access to the elders, the physician-patient and the psychotherapist-patient privileges do not apply to reports made under the EADACPA.[22] When the suspected abuse is financial in nature, "all officers and employees of financial institutions" are also mandatory reporters.[23] Caregivers are mandatory reporters whether or not they receive compensation, so the requirements apply equally to family members of the elderly person as to professional attendants.

Failure to comply with the EADACPA's mandatory reporting requirements does not create a private right of action by the victim against the reporter.[24] Although one of the primary stated purposes of the Elder Abuse Act is to encourage private enforcement of the laws against elder abuse, the failure by any mandatory reporter to report suspected elder abuse is only enforceable by the Attorney General, district attorneys and county counsel.[25] Violations of the duty to report by mandatory reporters is a misdemeanor punishable by up to six months in jail and a $1,000 fine, or up to a year and a $5,000 fine if the victim suffers death or great bodily injury as a result of the abuse.

Proving Elder Abuse

Proving a case of elder abuse is often complicated by the difficulty in obtaining usable evidence of the abuse. The diminished mental capacity of many of the victims, combined with the high frequency of abuse that is committed by the elderly victim's own caregiver, means that the use of expert witness opinions is often the best available option.

The Elder Abuse Act provides enhanced remedies upon a "clear and convincing" showing of recklessness, oppression, fraud or malice in the commission of most forms of elder abuse as an attempt to balance the high costs and obstacles to proving an elder abuse case. Although unsuccessful, there have been recent efforts to lower this standard of proof in cases of physical abuse and neglect to the same "preponderance of the evidence" standard that is already applied in cases of financial abuse as a way to increase enforcement.

Critics of the existing standard of proof would also like to ease the burden of proving employer liability for punitive damages.[26] For an employer to be held liable to pay punitive damages for the acts of an employee under the EADACPA, it is required to show that an employer either had advance knowledge of the employee's unfitness and employed that individual with a conscious disregard for the safety of others, or the employer ratified the abusive conduct of the employee. Because employers will not be liable for elder abuse committed by an employee in the normal course and scope of employment, it is more difficult to hold an employer liable under the EADACPA than it is in a negligence action for employer liability.

Victim Cooperation

A lack of cooperation by the victim into the investigation of suspected abuse frequently complicates investigations and attempts to intervene into cases of elder abuse. Caregivers who abuse the elderly are often able to gain control over the victim by using their position of trust to isolate the individual from their friends and family, and by convincing them that they share a special relationship with the caregiver.

Caregivers also gain influence by emotionally abusing the elderly person under their care with threats of moving the victim to a facility, or of delivering some other form of retaliation, if the elder cooperates with an investigation into the abuse.

When an elderly victim will not cooperate with an investigation into abuse, there is often little that can be done. "Any victim of elder or dependent adult abuse may refuse or withdraw consent at any time" to an investigation by Adult Protective Services or law enforcement.[27] Only if an uncooperative victim is "so incapacitated that he or she cannot legally give or deny consent," and the consent of the conservator has been obtained, is it possible to investigate claims of elder abuse.

Law enforcement may not intervene to stop most forms of financial elder abuse because exerting influence over an elder in order to receive financial benefits is not a crime. If

the conduct in question is alleged to go beyond a violation of the Elder Abuse Act and is also alleged to be a violation of the Penal Code, then consent of the victim is no longer required to proceed with an investigation.[28] Many victim advocates argue that there is a need to create an exception to the requirement of victim cooperation when the abuser is exerting undue influence because there are instances of exploitation that do not meet the statutory elements, depriving the exploited elder of the EADACPA's remedies.

Standing and Survivor's Rights

Despite a declared intention by the California legislature to "enable interested persons to engage attorneys to take up the cause of abused elderly persons," there is no provision in the EADACPA extending standing to "interested persons," as exists in Probate Code §48. Therefore, a suit brought under the EADACPA by the relative of an abused elder who has not been judicially determined as incompetent is likely to be dismissed for a lack of standing. An effect of this is that sometimes a clear case of elder abuse that falls short of a penal code violation goes on without any avenue for relief. Because standing for relatives and beneficiaries has not been extended, often there is little that can be done against the abuser until after the victim has passed away.

Upon the death of the elderly victim, an action alleging elder abuse may be brought by the personal representative of the decedent, or, if the personal representative refuses to commence an action, by the decedent's successors in interest, including residual beneficiaries.[29] As originally enacted, the EADACPA appeared to only extend standing to a decedent's personal representative following the death of an elder. This resulted in a question as to what recourse, if any, could be had by the other beneficiaries when it was the personal representative who was also the one committing the abuse. An appellate court ruling, now codified in an updated version of the EADACPA, held that standing extended to any beneficiaries with a property interest in the deceased's estate when the personal representative was alleged to have been the abuser.[30]

Professional Negligence Compared to Elder Abuse

One of the most contentiously litigated issues surrounding elder abuse is whether a cause of action against a physician will be treated as a case of professional negligence in a medical malpractice action or if the physician will be held to the provisions of the EADACPA, which provides greater remedies for survivors. Physicians are mandatory reporters under the Act but, as discussed above, a violation of the duty to report is only enforceable by the government. When an elderly victim is allegedly abused in a long-term care facility that also provides some medical care, it may be difficult to determine whether the alleged abuser's liability is under the EADACPA standard or the lower professional negligence/medical malpractice standard.

Some defendants have argued that non-custodial medical professionals were specifically excluded from the EADACPA's neglect definition, which applies to "any person having the *care or custody* of an elder."[31] In 2000, the Court of Appeals found that "[w]ithin the Act, two groups of persons who ordinarily assume responsibility for the 'care and custody' of the elderly are identified and defined: health practitioners and care custodians," and held that a medical professional who treats an elderly patient can be held liable under the EADACPA for neglect rather than for medical malpractice.[32]

The court contrasted the "care and custody" language in the EADACPA's neglect provision to the section defining abuse of an elder as, among other things, "deprivation by a care custodian of goods or services that are necessary to avoid physical harm" and determined that the legislature intended that physicians be subject to liability under the Act as someone responsible for the care of an elder.[33]

The dispute over whether alleged elder abuse by healthcare providers can be brought under the EADACPA, or only in a professional negligence action, is primarily over the interpretation of the EADACPA's specific exclusion of liability for the professional negligence of a healthcare provider.[34] Professional negligence actions have statutory limitations on punitive damages, attorney's fees and pain and suffering damages by a decedent that are not applicable to claims of violations of the EADACPA.[35] The statute under which the claim is made can significantly determine the final resolution of the case.

When a plaintiff proves, under the EADACPA, that the defendant has been guilty of "recklessness, oppression,

fraud, or malice in the commission of … abuse," reasonable attorney's fees and costs may be awarded, as opposed to a judgment for professional negligence by a healthcare provider, which has a statutory table of recoverable attorney's fees that limits recovery.[36] Unlike professional negligence, the EADACPA also allows recovery of pain and suffering damages by survivors, subject to the general $250,000 cap on non-economic damages under the Civil Code.[37]

Determining whether a medical professional will be potentially liable under a medical malpractice or an elder abuse standard is often determined by the severity of the alleged behavior. More egregious conduct will violate the Elder Abuse Act, while professional negligence for a healthcare provider rendering professional services is found based on an "overall assessment of what constitutes 'ordinary prudence' in a particular situation."[38] Before a plaintiff may obtain the enhanced remedies under the Elder Abuse Act that are unavailable in a professional negligence action, "a plaintiff must demonstrate by clear and convincing evidence that defendant is guilty of something more than negligence; he or she must show reckless, oppressive, fraudulent, or malicious conduct."[39]

While medical caregivers of the elderly can usually only be liable for abuse under the EADACPA upon a clear and convincing showing of, at a minimum, reckless conduct, long-term care facilities are not similarly shielded solely on the basis that they provide some medical care to the elderly. As defined in the Elder Abuse Act, neglect refers to "the failure of those responsible for attending to the basic needs and comforts of elderly or dependent adults, regardless of their professional standing," covering a different type of conduct altogether than the professional negligence laws.[40]

Professional negligence relates to the inadequate provision of medical services, while EADACPA neglect includes the failure to provide medical care or to maintain the elderly person's hygiene. This means that doctors and medical facilities are not shielded by the exclusion from liability for acts of professional negligence when providing the non-medical services of a care custodian.

Immediate Intervention

The first priority when elder abuse is suspected is to remove the victim from the danger and to prevent any additional abuse. Protective orders enjoining any party from abusing or contacting a victim of elder abuse may be issued upon an ex parte basis or a noticed hearing where "reasonable proof of a past act or acts of abuse of the petitioning elder" is demonstrated.[41] An attachment on the assets of an abuser may also be issued for financial abuse until a judgment by the victim can be obtained.[42]

The Elder Abuse Act applies to protect the almost four million people in California who are 65 and older from a wide range of harmful conduct.[43] As the elderly population grows during the next few decades, elder abuse has the potential to grow into an epidemic if not effectively curtailed. Awareness of the EADACPA's provisions allows legal practitioners to be proactive in addressing potential elder abuse that they may encounter and allows them to better advise clients to prevent abuse from occurring.

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[16] *Wel. & Inst. Code* §15657.5.
[17] Wel. & Inst. Code §15610.30(a)(2).
[18] *Das v. Bank of America*, 186 Cal. App. 4th 727 (2010).
[19] Id. 736.
[20] *Zimmer v. Nawabi* 566 F. Supp. 2d 1025 (2008); *Negrete v. Fid. & Guar. Life Ins. Co.*, 444 F.Supp. 2d 998 (C.D. Cal. 2006).
[21] *Wel. & Inst. Code* §15630.
[22] *Wel. & Inst. Code* §15632.
[23] *Wel. & Inst. Code*§15630.1.
[24] *Zimmer v. Nawabi* (2008) 566 F. Supp. 2d 1025.
[25] *Wel. & Inst. Code* §15630.1(g).
[26] *Wel. & Inst. Code* §15657, §15657.5; Civ. Code §3294(b).
[27] *Wel. & Inst. Code* § 15636.
[28] *Wel. & Inst. Code* §15636(a).
[29] *Wel. & Inst. Code* §15657.3.
[30] Estate of Lowrie (2004) 118 Cal. App. 4th 220.
[31] *Wel. & Inst. Code* §15610.57, emphasis added.
[32] *Mack v. Soung* (2000) 80 Cal. App. 4th 966, 973.
[33] *Mack v. Soung* (2000); Wel. & Inst. Code §§15610.07, 15610.57.
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[36] *Bus. & Prof. Code* §6146.
[37] Cal. Civ. Code §3333.2.
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Test No. 59

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. The majority of elder abuse occurs in assisted living facilities.
   ❑ True ❑ False
2. Elder abuse is often unrecognized due to lack of awareness of what constitutes elder abuse.
   ❑ True ❑ False
3. Enhanced damages under the Elder Abuse and Dependent Adult Civil Protection Act (the "Act") are only available upon proof of elder abuse by clear and convincing evidence.
   ❑ True ❑ False
4. Only disabled Californians age 65 or older are protected by the Act.
   ❑ True ❑ False
5. In investigating claims of elder abuse, physician-patient and psychotherapist-patient privileges do not apply.
   ❑ True ❑ False
6. All officers and employees of banks are mandatory reporters if they suspect financial abuse of an elder.
   ❑ True ❑ False
7. Banks are not liable for financial abuse of an elder when irregular transactions that constitute elder abuse occur through that bank.
   ❑ True ❑ False
8. Only compensated caregivers are mandatory reporters under the Act.
   ❑ True ❑ False
9. A medical professional who commits malpractice can be liable for enhanced damages under the Act.
   ❑ True ❑ False
10. A violation of the duty to report by a mandatory reporter under the Act can subject the reporter to civil damages.
    ❑ True ❑ False
11. An elderly person is far more likely to be abused by a close relative than a professional caregiver.
    ❑ True ❑ False
12. Restraining an elderly person is only prohibited elder abuse when physical force is applied.
    ❑ True ❑ False
13. Elder abuse caused by the negligence of an employee in the ordinary course of business will establish the vicarious liability of the employer for punitive damages.
    ❑ True ❑ False
14. An investigation into elder abuse of an individual with diminished capacity may proceed over the objections of the victim.
    ❑ True ❑ False
15. Financial abuse of the elderly is a crime that law enforcement will intervene to prevent.
    ❑ True ❑ False
16. "Interested persons" may not bring suit against an alleged elder abuser.
    ❑ True ❑ False
17. When the personal representative of a deceased elder abuse victim is alleged to have abused that person, a beneficiary of the deceased's estate has standing under the Act.
    ❑ True ❑ False
18. Damages for pain and suffering from elder abuse may only be awarded to the victim under the Act.
    ❑ True ❑ False
19. A healthcare provider cannot be liable under the Act for professional negligence.
    ❑ True ❑ False
20. Most cases of elder abuse are eventually identified and reported.
    ❑ True ❑ False

MCLE Answer Sheet No. 59

INSTRUCTIONS:
1. Accurately complete this form.
2. Study the MCLE article in this issue.
3. Answer the test questions by marking the appropriate boxes below.
4. Mail this form and the $15 testing fee for SFVBA members (or $25 for non-SFVBA members) to:

   San Fernando Valley Bar Association
   5567 Reseda Boulevard, Suite 200
   Tarzana, CA 91356

METHOD OF PAYMENT:
❑ Check or money order payable to "SFVBA"
❑ Please charge my credit card for $_____.

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Credit Card Number Exp. Date

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Authorized Signature

5. Make a copy of this completed form for your records.
6. Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0490, ext. 105.

Name_____
Law Firm/Organization_____
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Address_____
City_____
State/Zip_____
Email_____
Phone_____
State Bar No._____

ANSWERS:
Mark your answers by checking the appropriate box.
Each question only has one answer.

1.	❑ True	❑ False
2.	❑ True	❑ False
3.	❑ True	❑ False
4.	❑ True	❑ False
5.	❑ True	❑ False
6.	❑ True	❑ False
7.	❑ True	❑ False
8.	❑ True	❑ False
9.	❑ True	❑ False
10.	❑ True	❑ False
11.	❑ True	❑ False
12.	❑ True	❑ False
13.	❑ True	❑ False
14.	❑ True	❑ False
15.	❑ True	❑ False
16.	❑ True	❑ False
17.	❑ True	❑ False
18.	❑ True	❑ False
19.	❑ True	❑ False
20.	❑ True	❑ False

Elder Abuse Litigation: The Basics

By Jody C. Moore

THROUGH THE ELDER AND DEPENDENT Adult Civil Protection Act (EADACPA or Elder Abuse Act), the California legislature recognized that persons aged 65 and older are members of a disadvantaged class worthy of heightened protections.[1]

Lawmakers further recognized that it is an important community responsibility to protect elders from abuse and neglect and enacted EADACPA to address that goal. Specifically, the legislature afforded certain heightened remedies to encourage private enforcement of the laws through litigation. Such remedies include pre-death pain and suffering, attorney's fees and costs and exposure to punitive damages.[2]

Elder Abuse vs. Medical Malpractice

There are three major distinctions between elder abuse claims and traditional malpractice. First, there is a higher standard of proof in elder abuse cases; elder abuse must be proven by clear and convincing evidence. Second, the breach must be reckless, malicious, oppressive or fraudulent. Third, to sue an entity (such as a hospital, nursing home, assisted living, home health, hospice, or medical group), in the absence of direct evidence of corporate misconduct, a party must prove an officer, director or managing agent of the corporation authorized or ratified the misconduct or knowingly employed an unfit employee who engaged in the misconduct.

Available Remedies under EADACPA

In a medical malpractice action against a health care provider, one must prove negligence by a preponderance of the evidence. If a plaintiff proves that a doctor, nurse, hospital or nursing home breaches standard of care, and that the breach caused injury to the plaintiff, the plaintiff is entitled to recover general damages (pain and suffering) and special damages (medical bills, lost earnings, etc.).

To obtain heightened remedies under the Elder Abuse Act, it is necessary to prove something greater than mere negligence.[3] A plaintiff must prove by *clear and convincing evidence* that a defendant has been guilty of recklessness, malice, oppression or fraud in the commission of the abuse.[4] If a plaintiff meets this burden, the plaintiff is entitled to heightened remedies including reasonable attorney's fees and costs and a revival of pre-death pain and suffering. In

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addition, a plaintiff may pursue punitive damages if the jury finds malice, oppression, or fraud.[5]

The legislature intended that EADACPA would be privately enforced by attorneys seeking justice on behalf of abused or neglected elders and afforded these heightened remedies to encourage such enforcement through litigation. The logic behind these remedies is as follows: without the heightened remedies, if the elder dies, the case has no appreciable value. Pre-death pain and suffering typically is not recoverable in a survival action.[6] Also, the elderly typically do not have a claim for loss of earnings or diminished earning capacity because they are retired. With no general damages, and no appreciable special damages, the case may be meritorious but lacks the damages necessary to justify the litigation.

The heightened remedies dramatically change the evaluation of a potential lawsuit, for both attorney and client. The decedent's pre-death pain and suffering is recoverable under Elder Abuse Act.[7] Moreover, the attorney may recover attorney's fees and costs associated with the litigation.[8]

Recklessness, Malice, Oppression or Fraud

Elder abuse is a growing field of law and many plaintiffs' attorneys are motivated to take these kinds of cases based on the allure of the heightened remedies. However, the cases are not easy to prove. Recall, in order to recover general damages if the elder is deceased and attorney's fees, a plaintiff must prove recklessness, malice, oppression or fraud by a standard of clear and convincing evidence. Moreover, to prove punitive damages, one must prove malice, oppression or fraud. A claim against a corporate employer (like a skilled nursing facility) requires a showing of advance knowledge of the unfitness of an employee or authorization or ratification of the wrongful conduct by a managing agent of the corporation.[9]

Given these standards, elder abuse allegations are frequently challenged at the demurrer stage and by motions for summary judgment or adjudication. Therefore, each element must be factually supported in the operative pleading and developed through discovery and depositions. The courts have given us some guidance on what constitutes an adequate showing of elder abuse.

In *Delaney v. Baker* (1999) 20 Cal.4th 23, the plaintiff, Rose Wallien, was an 88-year-old woman admitted to a skilled nursing facility following a fractured ankle. Rose developed multiple bedsores because she was left lying in her own urine and feces for extended periods of time, despite persistent family complaints.[10] The *Delaney* court found that this neglect was attributed to a rapid turnover of nursing staff, staffing shortages, inadequate training of employees and violations of medical monitoring and record keeping that prevented information from being timely transmitted to the physician.

The *Delaney* court also found substantial evidence of reckless neglect for withholding of care in the setting of defendant's knowledge of plaintiff's deteriorating condition and the family's efforts to intervene. The court upheld a verdict of reckless neglect under the Elder Abuse Act based on evidence that the defendants failed, over an extended period of time, to attend to her advanced bedsores and otherwise neglected her in way which contributed to her pain, suffering and eventual death.[11]

In *Sababin v. Superior Court* (2006) 144 Cal.App.4th 81, it was error to sustain a demurrer to an elder abuse cause of action in the face of allegations that the nursing home failed to follow a decedent's care plan and the failure to notify a physician of the need for a treatment order showed a deliberate disregard of the high probability that decedent would suffer injury.

Sababin also establishes that a total absence of care is not required for a care facility to be held liable: "If some care is provided, that will not necessarily absolve a care facility of dependent abuse liability. For example, if a care facility knows it must provide a certain type of care on a daily basis but provides that care sporadically, or is supposed to provide multiple types of care but only provides some of those types of care, withholding of care has occurred. In those cases, the trier of fact must determine whether there is a significant pattern of withholding portions or types of care. A significant pattern is one that involves repeated withholding of care and leads to the conclusion that the

pattern was the result of choice or deliberate indifference."[12]

In *Mack v. Soung* (2000) 80 Cal. App.4th 966, the court held that a claim for reckless neglect was adequately alleged when the defendant doctor knew that the patient needed medical attention yet recklessly failed to provide it. Mack is also helpful to establish that the Act is not limited to "care custodians" but rather applies to anyone who has care or custody of an elder. Thus, doctors can be liable for elder abuse.

All of these principles were recently confirmed in the case of *Winn v. Pioneer Medical Group, Inc.* (May 24, 2013) 216 Cal.App.4th 875. In *Winn*, an 83-year-old patient of the defendant medical group was treated with several doctors for a worsening vascular condition. Defendants failed to refer to her to a vascular specialist, thus withholding the only proper medical treatment for her condition. Defendants demurred twice. The demurrer to the amended complaint was sustained without leave, on the basis that plaintiff failed to provide facts showing reckless denial of care.

The appellate court reversed. The court concluded that a jury could infer reckless neglect based upon the withholding of care by a vascular specialist, particularly because the complaint alleged the doctors were aware that absent the referral, there was a strong probability that the patient would be seriously harmed. Relying in part on *Sababin*, the Winn court acknowledged that "a significant pattern" of withholding care could lead a trier of fact to conclude "the pattern was the result of choice or deliberate indifference."

According to *Winn*, the question of whether misconduct rises to recklessness, malice, oppression or fraud, (as opposed to mere professional negligence) is ultimately a question of fact for the jury.[13] On the facts alleged, the court reasoned that a jury could make multiple inferences, including that the failure to refer to a specialist was merely unreasonable and negligent, or that it demonstrated a deliberate indifference to the patient's urgent medical needs and exposed the patient to an excessive risk. Because both inferences could be made, the order sustaining demurrer was improper.

The Elder Abuse Act provides a valuable layer of consumer protection for our elderly loved ones. Even though the claim has high evidentiary burdens and is time and fact intensive, advocating to make elder care providers more attentive promotes safer nursing homes and medical care and helps ensure vulnerable patients get the services they need and deserve.

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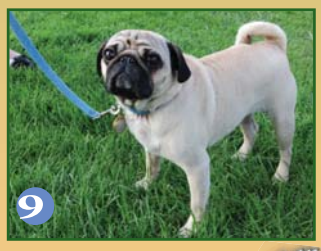
[1] *Welf. & Inst. Code* §15600 et seq.
[2] *Welf. & Inst. Code* §15657.
[3] *Delaney v. Baker* (1999) 20 Cal.4th 23.
[4] *Welf. & Inst. Code* §15657.
[5] *Civil Code* §3294.
[6] *C.C.P.* §377.34.
[7] *Welf. & Inst. Code* §15657(b).
[8] *C.C.P. §377.34.*
[9] *Welf. & Inst. Code* §15657(c).
[10] *Delaney, supra,* at p. 612.
[11] *Delaney, Id,* at p. 622.
[12] *Sababin v. Superior Court* (2006) 144 Cal.App, 4th 81, 90.
[13] *Winn v. Pioneer Medical Group, Inc.* (2013) 216 Cal.App.4th 875. After this article went to print, the California Supreme Court granted a petition for review in this case.

Member Appreciation Summer Reception

Friday, July 19, 2013



1. SFVBA members gather at Los Encinos State Historic Park for the annual Member Appreciation Summer Reception. **2.** Christina Rymsza shows off her SFVBA hat and picnic blanket courtesy of the Attorney Referral Service. **3.** Diamond Sponsor The Leavitt Group sets up a table with information and giveaways. **4.** SFVBA President David Gurnick, Jeff and Suzanne Sommer from NOW Services and SFVBA Member Anthony Rinaldi. **5.** Alex Kasendorf wins one of many prizes raffled off by SFVBA Member Benefit Providers. **6.** Diane Goldman wins a wine package courtesy of NOW Messenger. **7.** Oscar Swinton wins a gift card courtesy of LexisNexis. **8.** Andrea Gale and Joi Jibotian from Atkinson-Baker Court Reporters, the SFVBA's Official Court Reporter Partner and Platinum Sponsor. **9.** SFVBA Pet Section Chair, Buddy, enjoying the sunny day. **10.** Benjamin Jesudasson wins a Cuisinart Ice Cream Maker gift set courtesy of Atkinson-Baker Court Reporters. **11.** Members enjoyed delicious sundaes from Dandy Don's Homemade Ice Cream courtesy of Atkinson-Baker Court Reporters. **12.** Attorney Referral Service Consultant Lucia Senda and Member Services Coordinator Noemi Vargas greet guests at the registration table.

The Challenges of Our Aging Population:

Resolving Disputes Between Aging Parents and Their Families

By Myer J. Sankary

WITH A GROWING AGING population and increased individual longevity, aging adults and their families will face many new uncertain and complex challenges in the years to come. Lawyers will need to be better equipped to understand their aging clients in order to give sound advice about planning not only for their retirement but also for the challenges of longer life and the changing role of their families. It is inevitable that these conditions will produce more conflict but with careful planning, conflict can be minimized. This article addresses problems aging parents often encounter with their offspring, in-laws and other relatives and offers suggestions about dealing with these predictable disputes.[1]

Conflict Hot Spots

As parents age, conflict can arise in the following areas:

- Finances (who controls it, who bears the caregiving costs, etc.)
- Health (medical decisions, hygiene and end-of-life choices)
- Property (inheritance, conservatorship, sale of the parent's properties)
- Independence and safety (e.g., taking away the car keys)
- Living arrangements or caregiving (one sibling shouldering the burden or being controlling).[2]

Other issues that can lead to conflicts include the presence of multiple decision-makers, conflicting personalities, economic and geographic disparities among siblings, old "baggage" and personal commitments. As these issues play out, siblings watch a cherished parent decline or deal with their loss.[3]

Asset Appreciation and Sibling Rivalry

Over the years family wealth can increase significantly (particularly in the value of the family residence that was bought many years ago for less than $100,000 and is now worth $1 million or more). When aging parents have diminished capacity, this increased wealth provides an economic incentive for siblings to compete over how the financial resources should be invested and spent and who should be put in charge of these decisions.

Disputes also arise over which child should become the parent's caregiver since such continued close contact with the parent and the parent's dependency on the caregiver can result in a disproportionate distribution to the child caregiver upon death of the parent. A related issue is when or if an aging parent should be moved to an assisted living facility or nursing home. It is not surprising that the increase in wealth often leads to increased litigation, since the financial rewards can be great if the legal fees don't take a major bite out of the estate.

In mediating disputes over these issues, clients (usually the competing siblings and sometimes the aging parent if still alive and competent) should be asked what they project they will spend in legal fees and costs if they pursue the claims in court? In most of these disputes over family wealth management and care giving, as well as contest to wills and trust, the object is the division of a pie among competing claims. Probate disputes are unique because the parties need to realize that they are dealing with an ice cream pie that is melting before their very eyes—for every hour they spend in litigation with counsel, the pie will diminish. The sooner the dispute can be resolved, the more pie there will be to divide among the family members.[4]

Transfers to Non-Family Members

Increased litigation can also occur when there have been transfers by aging parents during their life and on death to non-family members, including friends, neighbors, caregivers and even strangers.[5] Often this is a result of children and relatives who have had to move to distant communities because of marriage or for better job opportunities that results in separation and loss of family ties with their aging parent, aunt or uncle. The close bonds that once existed fade over time and there is ample opportunity for others to gain the trust and confidence of the aging adult who reaches out to others to avoid isolation and loneliness.

With the increase in property values, there is more incentive to fight over large disparities and disappointed expectations while blaming the new best friend or caregiver for unduly influencing the aging relative to make transfers or estate dispositions that leave family members angry, hurt and frustrated.[6]

The causes of conflict are numerous, but the ones described above are some of the more common patterns that lawyers should consider when advising aging adults about their estate plans or when considering whether to initiate, defend or mediate a dispute involving an aging parent and their family members.

How to Prevent and Resolve Disputes between Aging Relatives and Their Families

The best way to avoid a dispute starts with careful planning and drafting of proper instruments. It is almost impossible to have a bullet-proof plan that no one will contest but an estate planning attorney should start with a thorough understanding of the family dynamics. One must examine the personal interrelationships between each family member. Add to that the relationship with in-laws and grandchildren. Some parents believe their offspring are not responsible with their own financial affairs and therefore cannot trust their children to help them with their finances. Some parents are also burdened by the "boomerang generation" when adult children return to live with their parents.

A Cautionary Tale about Unequal Division of Assets between Siblings

Sylvia, a widow, had two adult children: Rob, an extremely successful litigation partner with a substantial net worth, and Darlene, a school teacher with a modest salary. Both were married with two children each. Rob had no need for his mother's property. Sylvia asked Darlene to move into her Palos Verdes home to take care of her as she became more infirm with age. Darlene and her husband agreed to move in with Sylvia to become mother's caregiver with no objection from Rob. Ten years later Sylvia died at 102, but three years before her death, she went to her estate planning attorney to make one small change in her estate plan—she wanted to give Darlene her home in Palos Verdes because she wanted to show her appreciation for the devotion Darlene showed to her during her declining years and because Darlene had a need as she did not own a home.

Darlene had not been compensated for her services except for the room and board living with her mother. Rob did not contribute to his mother's care since he lived in northern California. At her death, the home was valued at $1.8 million. When Rob received a copy of the trust amendment of which he was unaware, he was outraged. He called his sister to demand one-half of the value of the house. She refused, so he filed a petition to set aside the amendment and demanded that the property be divided equally as provided in an earlier version of the trust. Notwithstanding the testimony of her estate planning attorney that she was competent to make the amendment and she was not influenced by her daughter, Rob claimed that the mother was incompetent to make such a change in her trust and also that she was unduly influenced by Darlene. When the case came to mediation, each party had spent over $50,000 in legal fees to prosecute and defend their position. Because Darlene could not afford to continue to defend against her brother's claim, she finally settled by giving the brother half of the value of the property, requiring that she sell the house.[7]

Could this litigation have been avoided? Perhaps yes, perhaps not. When appropriate, many authorities strongly recommend that parents meet with their children while they are alive to discuss their intentions and desires regarding the disposition of their estate on their death. In this case, because of Rob's strong personality and domineering demeanour, mother probably did not want to discuss her plans with Rob. She felt he would not let her do what she felt was the right thing to do.

Oftentimes elderly parents want to avoid conflict at all costs, even to the extent of telling each child what

that child wants to hear, sending mixed messages that later will result in highly contentious conflicts and litigation. Although a parent may wish to keep harmony among their children while they are alive, they leave it for them to fight it out after he or she dies.

Could Sylvia's attorney have made any recommendations that might have avoided the conflict? Should an attorney recommend that the parent have a conversation with both children about her wishes about dividing her property? When a parent feels that he or she cannot confront a domineering and demanding child alone, the services of a neutral facilitator experienced in estate planning and dispute resolution can be helpful to facilitate the difficult conversation which can avoid future litigation and restore family harmony.[8]

Steps for Advising an Elderly Client about Their Intention to Make or Amend a Will or Trust

Determine whether the client appears to be competent to make or amend a trust, enter into contracts or give consent to health care. Probate Code §§810-813 provides a definition for both capacity and incapacity. Prior to this definition, the courts struggled to determine whether a person was incompetent based on a general vague diagnosis that the elder person had dementia or was generally incompetent. This statute now identifies a list of deficits that impair decision making and provides standards for the courts to determine whether a person was competent to enter into contracts, get married, make a conveyance, execute wills or trusts or give informed consent for medical care.

The estate planning lawyer should also carefully ascertain which standard of competency applies—the ability to make a contract (PC §810) or the ability to make a will (PC §6100.5), which is a much lower threshold. Consider whether *Anderson vs. Hunt* (see endnote 7 below) applies. When in doubt, refer your client to a competent geriatric psychologist or psychiatrist who can evaluate your client's competency and can determine whether the client's decisions are their own or under the undue influence of another.

Determine whether the aging client is under the influence of someone who is using their relationship for personal gain to the detriment of the natural heirs of the testator. Does it appear that the testator is too eager to make the change or is uncertain about it? Question the tone and emotional level of the client's instructions to make the change and ask why? If the answer is "I have not seen my child in a long time" or "I'm angry with him or her," determine what the circumstances are and whether the reason for removing or reducing their inheritance seems justifiable.[9]

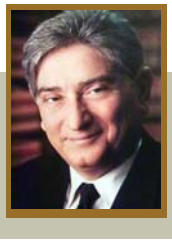
In some cases, lawyers have an ethical quandary. If you believe a client is not competent, you cannot initiate a conservatorship proceeding without your client's consent. Moreover, the lawyer cannot reveal confidential information. But you might discuss with your client the benefits of having a conservator appointed, and sometimes an aging client will agree, although it is rare. As a last resort, you might ask your client to sign a waiver of confidentiality to permit you to talk with a close family member or friend who will be able to assist the aging client. Of course, you should first consider whether the client is sufficiently competent to give a waiver of confidentiality and which test applies for making that determination.[10]

Use Probate Code §6100.5 as a guideline for asking questions regarding the making of a will. Does the client understand the nature of the testamentary act? Does the client understand and recollect the nature and situation of the individual's property? Does the client remember and understand the individual's relations to the living descendants, spouse and parents and those whose interests will be affected by the will? Does the client suffer from a mental disorder with symptoms such as delusions or hallucinations which may affect the way the client disposes of his or her property in a way that the client would not have done but for the delusions or hallucinations?

Surprisingly, some practitioners contend that it is best practice not to keep records of the estate planning attorney's findings and impressions. However, many cases have been settled early because the client's attorney did keep records sufficient to support the attorney's impressions about the client's mental competency at the time the will, trust or amendment was executed and such records and testimony were the only evidence of the client's competency at the critical time of execution. The author's preference from a mediator's perspective (i.e., to help parties settle their disputes) is that the lawyer's observations and records describing what steps he took to determine the client's competency or lack thereof will assist the parties in coming to an agreement and to fulfill the final donative intent of the client.[11]

Our society is faced with a growing aging population with life extending to 90 and beyond. For many, aging is a very difficult and painful process. Yet, with improved health services and growth of wealth for some, aging can be fulfilling and rewarding with time to pursue one's life's dreams and to share these experiences with a spouse, children, grandchildren and even great grandchildren. Aging is not always an easy road, and can be filled with conflict and bewildering complexity.

For lawyers who do estate planning or probate litigation, it is important to keep informed about how their aging clients cope with their challenges, how they make decisions and how they relate to their family, friends and caregivers. Lawyers should also be aware when choosing probate mediators, that the professional neutral should have broad knowledge and experience in these practice areas as well as advanced training, education and experience in resolving disputes between aging adults and their families.



Myer Sankary is a member of the SFVBA Probate & Estate Planning Section, a former SFVBA Trustee and is currently the Chair of the SFVBA Mandatory Fee Arbitration Program. He is the past president of Southern California Mediation Association and has been a full-time mediator with ADR Services, Inc. since 2008. He can be reached at myersankary@gmail.com.

[1] One of the consequences of increased aging is that more cases are filed in probate courts than in the past. In a report by Dept. 11 Judge Steele to the probate Bar on July 31, 2013, he indicated that there were 8,680 probate filings in 2012 with a significant increase of conservatorship filings. The LASC Probate Court is now burdened by an increasing case load with limited resources. The SFVBA has coordinated with the Probate Court to implement a Volunteer Settlement Conference Program commencing August 1, 2013. Visit http://www.lasuperiorcourt.org/Probate/UI/ for more information about this program.

[2] Abrahms, Sally. *Oh, Brother! With Parents Aging, Squabbling Siblings Turn to Elder Mediation.* AARP Bulletin, September 2010.

[3] *Ibid.*

[4] I like this metaphor because it has a visual and mental impact on both the parties and their lawyers and is a truth that most lawyers acknowledge, except when there is an argument that the claimant or respondent expects to recover their legal fees and costs in reliance on some statutory scheme.

[5] In 1993, Probate Code Division 11, Part 3.5, starting at §21350, "Limitations on Transfers to Drafters and Others," and Part 3.7 starting at §21360, "Presumption of Fraud or Undue Influence," became effective to address the increasing problem of transfers made to non-related persons who prepared wills, trusts, and transfer documents or to persons who were defined as "care custodians." Per §21380, such transfers were deemed to be invalid and presumed to be the product of fraud or undue influence. The statute has been amended to allow transfers to long-time friends who have provided caregiving services, but the statute may be amended again.

[6] See "China Goes Beyond Guilt Trips" by Julie Makinen, Los Angeles Times, July 29, 2013. China's new law requires family members attend to the spiritual needs of the elderly and visit them often if they live apart. The law gives parents the right to sue their children if they do not visit their parents and provide support. It is unlikely such a law would gain support in the United States.

[7] In the recent case of *Andersen v. Hunt* (2011) 196 Cal.App.4th 722, the Court of Appeal ruled that a correct reading of §§810-812 requires that the standard for testamentary capacity under §6100.5 be used in determining the decedent's capacity. According to the court, "When determining whether a trustor had capacity to execute a trust amendment that, *in its content and complexity*, closely resembles a will or codicil, we believe it is appropriate to look to section 6100.5 to determine when a person's mental deficits are sufficient to allow a court to conclude that the person lacks the ability 'to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.'" Based on this decision it would appear that the standard for determining Sylvia's capacity to amend the trust to change the disposition of the residence as a gift to Darlene was PC §6100.5, the standard for capacity to make a will. Unfortunately, at the time this case was litigated and settled, *Anderson v Hunt* had not been decided.

[8] A classic book that provides guidance for parties in conversations that are potentially painful with a lot at stake is *Difficult Conversations; How to Discuss What Matters Most* (Penguin, 1999), written by Harvard Law School professors at the Harvard Negotiation Project, Douglas Stone, Bruce Patton and Sheila Heen. This book gives a positive approach to conducting a difficult conversation from a learning perspective, realizing that there are three different levels which are involved—the facts and context of the problem, the feelings and emotions that people have toward the subject and others in the conversation, and understanding that the words communicated also touch upon the identity of the person. The reader may also find it useful to download one or more papers offering useful tools on how to apply the strategies found in Difficult Conversations from these websites: http://www.gobookee.net/difficult-conversations/, and http://www.osu.edu/eminence/assets/files/Handout_Difficult_Conversations.pdf. These articles offer helpful tips on how to prepare for a difficult conversation which lawyers can use to inform their clients about an effective strategy for resolving family disputes or preparing for mediation of a litigated dispute.

[9] See *Capacity and Undue Influence: Assessing, Challenging and Defending* (2010), a Continuing Education of the Bar (CEB) Action Guide.

[10] See Chapter 7 "The Client with Diminished Capacity" of the *Guide to California Rules of Professional Conduct for Estate Planning, Trust and Probate Counsel* (Revised 2008) by the Trusts and Estates Section of the State Bar of California. See also State Bar Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 1989-112: The Duties of Confidentiality and Loyalty to the Client are Sacrosanct.

[11] In Sylvia's case described above, although the estate attorney gave his impressions that during the interview and execution of documents, Sylvia was competent to amend her trust and not unduly influenced by Darlene, it was not sufficient evidence for Rob, the lawyer, to accept. Because his mother amended the trust when she was 99, her son contended that she could not have been competent nor free from Darlene's influence. No doubt Sylvia was influenced by Darlene's kindness, but this would not be considered "undue" influence in most cases. Had *Anderson v Hunt* been decided, Rob's arguments about mother's incompetency might have had less traction.

Valley Community Legal Foundation of the San Fernando Valley Bar Association

VETERANS DAY GOLF TOURNAMENT

Proceeds fund grant and scholarship programs of the VCLF of the SFVBA

MONDAY NOVEMBER 11, 2013

PORTER VALLEY COUNTRY CLUB • NORTHRIDGE

10:00 AM CHECK-IN ⛳ 10:30 AM PUTTING CONTEST ⛳ 11:30 AM SHOTGUN START—
BEST BALL FORMAT PER GROUP ⛳ 5:00 PM AWARDS RECEPTION AND DINNER

GOLFER'S PLAYER PACKAGE

- **$150 "Early Birdie Special"** (Purchase by October 1)
- **$175** (Purchase after October 1)
- **$560 "Early Birdie Foursome Special"** (Purchase by October 1)
- **$600 Foursome** (Purchase after October 1)
- **$150 Sitting/Retired Judges**

Includes green fees, cart, tee gifts, beverages, continental breakfast, luncheon and awards reception and dinner.

FREE GIFT BASKET to each golfer. $275 Value, including one custom built pitching wedge and one hybrid fairway metal custom built courtesy of **WARRIOR CUSTOM GOLF**. (shipping not included).

SPONSORSHIP OPPORTUNITIES*

Eagle Sponsor $5,000
Includes two golf foursome packages, two additional tickets for awards dinner, on-course beverage station with sign, sign at tee, name/logo prominently displayed in promotional material and banner.

Birdie Sponsor $2,500
Includes one golf foursome package, one additional ticket for awards dinner, name/logo included in promotional material and sign at tee.

Hole-in-One Sponsor $1,500
Sponsorship sign will be placed on a par 3 hole on course. May hand out gifts and info to the golfers at sponsored hole. Includes two tickets to the luncheon and awards dinner.

Tee Sponsor $250
By sponsoring a tee/green sign on the course your firm or company can show support for the VCLF's goodworks. May hand out gifts and information to the golfers at sponsored hole. Includes two tickets to luncheon.

OTHER SPONSORSHIP OPPORTUNITIES*

Cocktail Reception Sponsor $2,000
The awards reception will be a fun filled event! We will place sponsorship signs on the bar. Includes two tickets to the luncheon and the awards dinner.

Lunch Sponsor $1,500
Let us announce your generosity in "picking up the tab" for lunch. We will place sponsorship signs at the lunch site and give you a table for you to hand out gifts and information to the golfers. Includes two tickets to the luncheon and awards dinner.

Photo Sponsor - SOLD $1,700

GREG RYNERSON BAIL BONDS

Beverage Station Sponsor $1,500
Golf Cart with cold beverages so you may hand out beverages and your gifts or info to golfers around the course. Two lunch and two dinner tickets. Tee Sign at hole of your choice.

Putting Contest Sponsor $1,000
We'll display a sign at the putting contest showing your support. We'll mention your sponsorship when we announce the winner of the putting contest. Includes two tickets to the luncheon.

Sponsor a Veteran $140 per veteran / $560 per foursome

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Contact (818) 227-0490, ext. 105 or events@sfvba.org for player and sponsorship information.

* All sponsors receive recognition on the VCLF website, in *Valley Lawyer* magazine and acknowledgment at awards dinner.

Sponsor a Veteran for Golf

WILLIAM SPEER
VCLF Golf
Tournament Chairman
bspeeriii@yahoo.com

THE VALLEY COMMUNITY Legal Foundation (VCLF), the charitable arm of the San Fernando Valley Bar Association (SFVBA), will host its Second Annual Veterans Day Golf Tournament on November 11, 2013 at the Porter Valley Country Club.

During last year's tournament, which was hosted by KFI AM's Tim Conway Jr., I played alongside an old friend, Don Tabak. Don is a retired LAPD Detective who is now a private investigator and is currently staring on the new hit TV show *Whodonit*. Don and I are both 21 plus handicappers, meaning that we are just good enough golfers to know our way around the course but still don't know enough to play well. We've played together in a few charity golf tournaments before and looked forward to sharing a favorite beverage from the sponsored drink cart (courtesy of **Hefferman Insurance Brokers**).

As we enjoyed our time on the course and a great lunch at the club house (sponsored by Lewitt Hackman), we realized that we were actually playing decent golf and had a chance to break par (the winner was at 12 under). It came down to the dreaded 18th hole and we needed one more birdie to do the trick. Thanks to a great approach shot from Don (using his last mulligan) and a brilliant 50' twice breaking putt I made… I did it! I finally broke par! I don't care if it was a best ball event. I did it, at least once in my life. I even got to keep a photograph of our foursome to remember this momentous event in a golfer's life (thanks to our photo sponsor **The Law Offices of Marcia L. Kraft**).

At last year's tournament, I made many new friends and visited with many old friends, but it was the veterans in attendance that made the event so special. Eight soldiers from the U.S. Army played in the event; two of them were playing golf for the first time and were still learning the rules at the end of the day. The soldiers were sponsored by various members of the SFVBA.

I was fortunate enough to meet and have a drink (thanks to **Greenberg & Bass**, our cocktail reception sponsor) with Sgt. Jose Perez. Sgt. Perez had just returned from his second tour overseas, which he fondly referred to as "the sandbox." Sgt. Perez said he had such a good time playing golf at Porter Valley. He and his fellow soldiers wanted to say "thank you" to the Valley Community Legal Foundation and the San Fernando Valley Bar Association for honoring them and sponsoring a fun-filled golf outing on Veterans Day.

If you can't attend the tournament, you can still show your gratitude for the men and women in the service by sponsoring a soldier or sailor. Our goal this year is to sponsor at least 24 veterans: eight from the U. S. Army, eight from the U.S. Marine Corp and eight from the U. S. Navy. These sponsorships along with the SFVBA members in attendance will again make this annual charity Veterans Day Golf Tournament a tremendous success.

All profits from the Charity Golf Tournament go to fund grants, scholarships and other worthy charitable endeavors of the VCLF. I will be back this year to honor our veterans and to help raise some much needed money. Come and join us! It will be a fun-filled day with laughter, camaraderie, breakfast, lunch, dinner and a little golf in-between. You never know who you'll see, play golf with, or whose life you'll change by sponsoring a veteran and contributing to a charity that helps children and families. See you there!

New Members

The following applied for membership in June and July 2013 and were approved by the Board of Trustees:

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Kickstarting the Fall Season

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ON SEPTEMBER 12, THE SANTA CLARITA VALLEY Bar Association will welcome author and attorney Charles Rosenberg as the keynote speaker for our second annual "Dinner with the Author" at the Tournament Players Club in Valencia. We hope you will join us for the second installment of what we believe will become a hallmark annual event. The event kicks off at 6:00 p.m. with a cocktail hour, followed by dinner and Mr. Rosenberg's presentation.

Mr. Rosenberg is a Los Angeles based, Harvard-trained lawyer and has long worked in complex business litigation. His current practice focuses on representing start-up companies in the technology area. Rosenberg served as the credited legal script consultant on several television series including *The Paper Chase, L.A. Law, The Practice and Boston Legal.* He was also the full-time, on-air legal analyst for E! Television's coverage of the O.J. Simpson criminal and civil trials. Over the years, he has taught many courses in law and business schools on topics ranging from criminal procedure and copyright to legal strategies for business leaders. Mr. Rosenberg also contributed to the 2009 ABA publication *Lawyers in the Living Room! Law on Television.* Originally self-published, Mr. Rosenberg's first novel *Death on a High Floor: A Legal Thriller* became a bestseller on Amazon.com in 2012. His second novel, a sequel to the first, will be published in 2014.

Tickets for the event are $65 if purchased after August 29 and at the door. A limited number of table sponsorships are available for $500 (includes eight dinner tickets, acknowledgement in the program and one autographed book) and $250 for a half table (includes four tickets, acknowledgement in the program and one autographed book).
Also available are business card-sized advertisements in the program for $50.

For tickets, sponsorships or for more information, contact Sarah at (855)506-9161 or info@scvbar.org. You can also visit our website at www.scvbar.org and look for us on Facebook. This event is open to the general public and we look forward to seeing you there.

Other Santa Clarita Valley Bar Association events coming up include the following:

- October CLE—Brian Koegle of Poole & Shaffery will offer his annual Employment Law Update. Don't miss this popular event!
- November—Our annual installation dinner and awards. Join us in thanking our outgoing 2013 Board and welcoming our incoming 2014 Board and President Amy M. Cohen. Keep an eye on our website for more information on these upcoming programs.
- 2014 is also the Tenth Anniversary of the Santa Clarita Valley Bar Association. Look for more information on that celebration coming soon!

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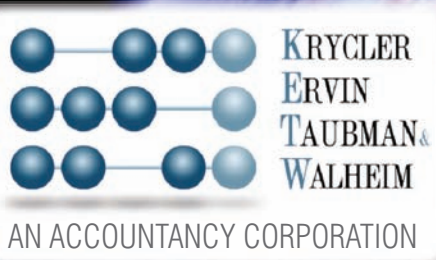

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