

HANDLING ELDER ABUSE ISSUES

Primary Assignment Orientation and Elder Abuse Course
San Francisco, California
June 12-14, 2013

LESSON PLAN

TIME	ITEM	SLIDES AND HANDOUTS
	WEDNESDAY, JUNE 12, 2013	
8:45 to 9:15 a.m.	<p>Welcome, Introduction to Course</p> <ol style="list-style-type: none"> 1. Introduce faculty and include small/large court affiliation. Different courts handle issues differently. Elder abuse setting may not be specifically defined. 2. Personal introductions of participants name and court, assignment. 3. List and explain course objectives: <ul style="list-style-type: none"> • Enhance judicial officers' skills and abilities to respond to issues involving physical, emotional and financial abuse of elders • Identify the various forms of abuse of older adults • Identify the different court settings in which elder abuse arises and define the appropriate judicial role for that setting. • Recognize the characteristics of victims and perpetrators • Consider issues of family dynamics in elder abuse cases • Identify the characteristics of aging and the distinctions between normal aging and disease states • Recognize aging issues relating to cognition and memory and recognize vulnerability to abuse • Craft effective restraining orders that preserve the dignity of elders, enhance safety and hold perpetrators accountable 	<p>Slide # 1</p> <p>Slides #2–7</p>

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	<ul style="list-style-type: none"> • Comply with the judicial canons in proceedings involving elders • Lead justice system and community efforts to improve the administration of justice in proceedings involving elder abuse. <ol style="list-style-type: none"> 4. Explain that during the course we will try to debunk both positive and negative stereotypes about aging. Many older people do not have disabilities or impairment. 5. Tell participants that they may interrupt and ask questions as they want to. 6. Explain that staff will be recording all best practices on the flip chart. <p><i>Hon. Sandra Margulies, Team Leader</i></p>	
9:15 to 9:45 a.m.	<p>Overview – Elder Abuse Issues in Various Court Settings</p> <p>Objectives: identify the forms of abuse</p> <p>Justice Margulies will introduce the Norman video case scenario (4 minutes) use the full version and cut after the restaurant scene. Justice Margulies will state that the participants will see a video that will introduce them to a person who has been a victim of elder abuse and that they should be thinking of what you imagine such a victim would be like.</p> <ul style="list-style-type: none"> • Work in small groups –6 minutes • Instructions to small groups: first identify forms of abuse • Report back – 5 minutes • California demographics • Mini lecture on behavioral definition of elder abuse and forms of abuse -- Candace Heisler 15 minutes 	<p>Slide #8</p> <p>(Show video here)</p> <p>Slide # 9</p>

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	<p>Elder Abuse</p> <ul style="list-style-type: none"> • Can be defined in many ways • National Center on Elder Abuse definition: • Physical, sexual, emotional, financial, neglect • On-going relationship between victim/perpetrator where there is an expectation of trust <p>What Is Elder Abuse?</p> <ul style="list-style-type: none"> • “Intentional actions that cause harm or create serious risk of harm, whether or not intended, • To a vulnerable elder by a caregiver or other person who stands in a position of trust to the elder, or failure by a caregiver to satisfy the elder’s basic needs or to protect the elder from harm.” • Bonnie and Wallace (2003) • Conduct may or may not be criminal <p>Limitations of this Definition</p> <ul style="list-style-type: none"> • Excludes • Abuse by strangers • Most frauds and scams • Self neglect • Dependent adults (age 18-64) <p>Where Does Elder Abuse Occur?</p> <ul style="list-style-type: none"> • Private residences within community • Facility settings (4.5 %) <p>Extent of Problem</p> <p>Forms of Abuse</p> <ul style="list-style-type: none"> • Psychological is usually present 	<p>Slide # 10</p> <p>Slides # 11–13</p> <p>Slide # 14</p> <p>Slide # 15</p> <p>Slides # 16–19</p> <p>Slides # 20</p>

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	<ul style="list-style-type: none"> • Often long standing dynamics that have existed throughout the relationship • Organic or age-related psychopathology the exception. <ul style="list-style-type: none"> ◦ Desmarais and Reeves, 2007 <p>Forms of Elder Abuse</p> <ul style="list-style-type: none"> • Physical abuse • Includes domestic violence • Sexual abuse • Neglect by a care provider • Emotional or psychological abuse • Abandonment • Abduction • Financial exploitation <p>Self Neglect</p> <ul style="list-style-type: none"> • Situations in which an older person is no longer willing or able to provide basic care for self. • Type of elder abuse most reported to Adult Protective Services (“APS”) • Often co-occurs with other types of elder abuse • Often an underlying medical condition • Maybe an outcome of earlier victimization <p>Forms of Abuse</p> <ul style="list-style-type: none"> • Often more than one form is present • (Brandl et al., 2007; Heisler, 2007) • One form may be the method to achieve a desired outcome • Abuse or neglect to convince an elder to give up assets • Always consider if financial present • Victims of one form of abuse are at the highest risk for other forms 	Slides # 21–23

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	<p>Impact of Elder Abuse</p> <ul style="list-style-type: none"> • Earlier Morbidity • Devastating medical impact <ul style="list-style-type: none"> ○ Declining functional abilities, progressive dependency, a sense of helplessness, social isolation, and a cycle of worsening stress and psychological decline • Risk of death three times higher than for non victims” (Dong, 2005) <p>Large group discussion – How do elder abuse issues typically arise in your court? Judge Cram-- Flip chart this or do on computer depending on size of class. 5 minutes</p> <ul style="list-style-type: none"> • Teaching points–Judge Cram • In general, elder abuse can be present in: <ul style="list-style-type: none"> ○ Virtually Any Court ○ Criminal ○ Civil ○ Family ○ Probate ○ Juvenile ○ Traffic ○ May not be identified as elder abuse <p>Here are the various types of cases you might see:</p> <ul style="list-style-type: none"> • Criminal Cases • Civil Fraud and Conversion • Domestic Violence • Personal Injury • Medical Malpractice • Breach of Fiduciary Duty 	<p>Slide #24</p> <p>Slide #25</p> <p>Slide #26–28</p>

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9:45 to 10:00 a.m.	<ul style="list-style-type: none"> • Unlawful Detainer • Lawsuits against Facilities • Adult Adoptions • Probate • Conservatorship • Mental Health Commitment • APS Initiated Proceedings • Domestic Relations • Cases Regarding Health Care Decisions For Incapacitated Person • Civil Harassment • Restraining Orders (CPO, DVPA, W & I Code) <p>Please be thinking about how you would develop a process for managing these cases.</p> <p>Break</p>	
10:00 to 10:45 a.m.	<p>1. Comings and Goings Exercise (Candace Heisler)</p> <p>a. Instructions:</p> <p>Staff will hang 6 posters around the room showing the following information (see explanation of colored cards below):</p> <p>(1) Home (you, your partner, your cat) (no cost)</p> <p>(2) DV Shelter (you, no cat) (costs 1 yellow) (Since you have asthma and can't climb stairs, you will have to sleep on the sofa in the living room. You will be asked to move whenever there is a meeting. The house will be full of noisy children. There are no other residents or staff your age.)</p> <p>(3) Apartment (you and your cat) (3 green, 1 yellow for help with cleaning and meals)</p> <p>(4) Nursing Home (you, no cat) (no cost) You are</p>	Slides # 29–31

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	<p>only eligible if you have a long-term condition that requires on-going care.</p> <p>(5) Child's House (you and your cat) (Costs one yellow assistance card)</p> <p>(6) Hotel (you sneak your cat in) (costs two green)</p> <p>The posters will have envelopes attached in which participants must deposit whatever "fare" is indicated on the poster. The fare is as follows:</p> <p>Fare:</p> <p>(1) Green cards = money (financial cost)</p> <p>(2) Yellow cards = goodwill (cost of accepting assistance from friends, family, others)</p> <p><i>The participants will be encouraged to participate actively. However, as this game is about choices, those who have a sense of discomfort can observe. Each participant will randomly be given a different quantity of resources; just as in life each victim has access to varying levels of resources.</i></p> <p>b. Comings and Goings Script</p> <p>Comings and Goings for an Older Woman in a Long-term Relationship</p> <p>You are a 68-year old woman who has been married for 49 years. You are a homemaker who is active in church and enjoys time with your grandchildren. You have lived in your current home for 30 years. You tend a beautiful garden in the backyard and love your 10-year-old cat.</p> <p>To Everyone</p> <p>#1: Every Tuesday you play cards with your friends. This Tuesday as you prepare to leave, your husband starts to yell at you. He is so upset you call your friends and cancel your plans. You are concerned about your husband's increasingly controlling behavior. What do you and your cat do?</p>	

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	<p>To Those at Home</p> <p>#2: A few weeks later you have plans to go to the annual church social. Your husband is not feeling well but you decide to go anyway. He becomes angry, grabs you hard on the arm and pushes you into the living room wall. You think he may have bruised your arm. What do you do?</p> <p>To Those at Home</p> <p>#3: A few months later you go shopping with your husband. He is unhappy because he feels you wasted money on an air purifier that your doctor recommended to help with your asthma. He argues with you on the way to the car and slams your hand in the car door. What do you do?</p> <p>To Those Not at Home</p> <p>#4: You left quickly so you need to buy some new clothes. You find that your husband has canceled your ATM and credit cards. If you want new clothes, it will cost you 1 green card. What do you do?</p> <p>RING BELL "Remember, whenever the bell is rung, you must pay again or move to another location. If you run out of resources, return home for the rest of the exercise."</p> <p>Facilitators need to allow time for participants to make choices about paying again or moving. It often helps during these first few scenes to repeat the choices and the cost.</p> <p>To Those at Home</p> <p>#5: Several months later, your husband is</p>	

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	<p>angry that dinner is not ready precisely at 5 p.m. He pushed you and you fall down the stairs and break two ribs. You go to the hospital. He threatens to take your name off of his company's provided insurance if you don't return home with him. Without insurance, leaving him costs 3 additional green cards out of pocket money so you can get your medication. What do you do?</p> <p>To Everyone</p> <p>#6: You decide to get a divorce but find you have too many resources for free legal help. Do you get an attorney? If yes, it costs you 5 green cards.</p> <p>To Those Not at Home</p> <p>#7: You decide to talk to your pastor. Your pastor reminds you that you made a promise before God to stay in this marriage for better or for worse. What do you do?</p> <p>RING BELL "Remember, whenever the bell is rung, you must pay again or move to another location. If you run out of resources, return home for the rest of the exercise."</p> <p>"Are any of you at the shelter right now from table 1 or 4? If so, raise your hand. Each of you must pay one additional green card because you are Muslim; the shelter does not provide hallal meals so you must purchase your food."</p> <p>To Those at Home</p> <p>#8: You have returned home from the hospital. Your husband now acts thoughtful, caring and supportive. Someone has called adult protective services. A worker comes to the home and offers to help you. She recommends family</p>	

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	<p>counseling and respite care for your husband. Accepting her help costs one yellow card. What do you do?</p> <p>To Those Not at Home</p> <p>#9: Your husband begins to stalk you. You see his car when you are shopping. You find footprints up to your bedroom window. You file for a restraining order.</p> <p>For those at your son's, one night you overhear your daughter-in-law talking to your son about asking you to leave because she is afraid that your husband might hurt your grandchildren. What do you do?</p> <p>“For the rest of this exercise, if you are from table 5, English is a second language for you or you are undocumented.”</p> <p>RING BELL “Remember, whenever the bell is rung, you must pay again or move to another location. If you run out of resources, return home for the rest of the exercise.”</p> <p>For those with an attorney, your attorney has interviewed all the necessary parties and now needs 2 more green cards to file any papers. What do you do?</p> <p>To Those at Home</p> <p>#10: Your husband is angry that you talked to “the government” who is now meddling in your personal business. One Friday night, he takes the shotgun out of the closet, lays it on the kitchen table, starts drinking and threatens to kill you. What do you do?</p>	

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	<p>#11: You hide his gun. He finds it, loads it and comes after you. You call 911. The sheriff comes, removed the bullets from the gun and then home and tells him to settle down. The sheriff tells you that jail is no place for an older man so he will not arrest your husband. What do you do?</p> <p>[Or: Ask Jessica to state in French “If you understand this, step forward and I will give you three green cards.” (If you do this, make sure to debrief the fact that people who speak the language in a given area are privileged in ways that non-English speaking people are not in this country. You can also ask in English afterwards if anyone wants to pay for the translation.)]</p> <p>To Those Not at Home</p> <p>#12: Your son says you can no longer stay with them. The shelter says your time is up and you must leave. What do you do?</p> <p>Note to Facilitator: Put the red CLOSED signs on the posters (with a little masking tape on the back) to remind everyone these options are no longer available throughout the exercise.</p> <p>RING BELL “Remember, whenever the bell is rung, you must pay again or move to another location. If you run out of resources, return home for the rest of the exercise.”</p> <p>To Those at Home</p> <p>#13: At breakfast, you can’t find your cat. Your husband laughs and says, “We are better off without that Popsicle.” Later that morning you find the cat, barely alive, in your freezer. What do you do?</p>	

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	<p>To Those Not at Home</p> <p>#14: The increased stress has taken its toll and your asthma now requires ongoing daily medical assistance from skilled nurses.</p> <p>You cannot stay with relatives or at the shelter.</p> <p>You could move to an apartment and pay 3 more green cards, and 1 more yellow card for medical help, or stay in a hotel for 2 green cards, if you have the resources.</p> <p>You could go to the nursing home, without your cat or husband and get the medical help you need.</p> <p>You could remain at home and have in-home services and your husband's "help."</p> <p>RING BELL "Remember, whenever the bell is rung, you must pay again or move to another location. If you run out of resources, return home for the rest of the exercise."</p> <p>Follow the exercise with time to discuss what participants felt and experienced.</p> <p>c. Debrief (Judge Cram)</p> <p>Faculty will conduct a debrief of the exercise in the large group using the following as guidance (Slide 8):</p> <ul style="list-style-type: none"> • Identify how it felt to maneuver through the different housing options. • Discuss the obstacles identified with each option. • Did anyone try to cheat or steal? Is this seen as a survival strategy? • How does this exercise apply to your role as a judge? 	

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	<ul style="list-style-type: none"> How does the exercise influence your thinking about services that may or may not be available in your community? 	
10:45 to 10:55 a.m.	<p>Mini-lecture on Victim characteristics and Abuse Dynamics</p> <p>Victims–Judge Cram</p> <ul style="list-style-type: none"> No single profile -- all racial, ethnic, socio-economic, and religious backgrounds Abilities along a continuum Some highly dependent on others for care; others are not Women victimized more often than men 72% of physical abuse victims reported to APS are women (NCEA, 1998) Social and other isolation Cannot recoup losses Hesitant to use social service system <p>Mini lecture on perpetrators–Perpetrator Tactics and Motivation Justice Margulies</p> <ul style="list-style-type: none"> Motivations <ul style="list-style-type: none"> Power and control Greed Some sexual predators <p>Who Commits Elder Abuse? [Ask participants here]</p> <ul style="list-style-type: none"> Intimate partners (long-term, new, or late onset) <ul style="list-style-type: none"> Occurs in heterosexual/gay/lesbian relationships Includes dating relationships Adult children and other family members 	<p>Slides # 32–34</p> <p>Slide # 35 Refer to Abuse in Later Life Wheel at TAB 14 (Slide # 36)</p> <p>Slide # 37</p>

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	<ul style="list-style-type: none"> •Caregivers •Persons in positions of authority <p>Perpetrators</p> <ul style="list-style-type: none"> •Known and trusted by the victim •May be dependent on elder •Mental health and/or substance abuse issues co-occur with elder abuse <p>Perpetrator Behaviors</p> <ul style="list-style-type: none"> •Victim reluctance may be an outcome of offender manipulation and other tactics •Perpetrators may portray victims as unreliable, forgetful, or “poor witnesses” to minimize or justify conduct •Courts should consider incorporating procedures to reduce interaction between possible victims and perpetrators 	<p>Slide # 38</p> <p>Slide # 39</p>
10:55–11:05 a.m.	Introduce “Martha” video–Judge Byrd	
11:05–11:15 a.m.	<p>Show “Martha” video (10 minutes)</p> <p>Judge Byrd to introduce activity</p> <p>Large Group Activity:</p> <ul style="list-style-type: none"> • Identify perpetrator tactics • What is the impact of these tactics on the victim? • What is the perpetrator’s motivation? 	Add “Martha” Video
11:15–11:25 a.m.	<p>Debrief–Candace Heisler</p> <p>What About Caregiver Stress?</p>	Slides # 40–42

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	<ul style="list-style-type: none"> • Early theory of elder abuse • Assumes a well-intending, normally competent caregiver • Becomes overwhelmed and lashes out • High stress and low resources results in maltreatment <p>Limitations of Caregiver Stress</p> <ul style="list-style-type: none"> • Not supported by more recent research (pointing to domestic violence) as the primary cause of abuse • Not a legal justification • Identifies the victim as the “problem” • Abuser feels validated • Leaves victim in harms way <p>[Note: :Mention lethality when pets are hurt or threatened]</p>	
11:25– 11:40 a.m.	<p>Family dynamics – Justice Margulies</p> <p>We are now going to revisit Norman, the person depicted in our first video.</p> <p>Set up for Norman II –</p> <p>Since the first clip from Norman, about 2 years have passed. There have been intervening assaults. In the last attack, Norman was severely beaten. He was hospitalized and while there, suffered a stroke. He was transferred from the hospital to a nursing home. He has improved but cannot walk and has some paralysis on one side of his body. A guardian (conservator) has been appointed by the Probate Court. The guardian intends to keep Norman in the nursing home. Norman has been interviewed by the producer of the video and he has said he prefers to be at home. He has been told that his abusive son is not living there any longer.</p> <p>In this clip we will meet Norman’s wife, Evelyn, who is</p>	Slide # 43

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	<p>visiting Norman at the nursing home. She will mention “Chowie” who is the family dog.</p> <p>Play Norman Part 2 (2 minutes)</p> <p>Large Group Activity</p> <ul style="list-style-type: none"> Who are the perpetrators in this family? Did viewing Norman II change your view of the situation or the identity of the perpetrators? What can the court do to enhance Norman’s safety? <p>Teaching points:</p> <p>After having seen Norman I and II, what do you think his feelings are about his sons?</p>	<p>Slide # 44</p> <p>Slide # 45</p>
11:40 a.m.–12 noon	<p>Introduction–Candace Heisler</p> <p>Let’s think about this and play another video clip.</p> <p>Then play video (Lova)</p> <p>Large Group Discussion</p> <ul style="list-style-type: none"> How do these victim sentiments and emotions affect their involvement in court proceedings? What do you expect to see? <p>Faculty will bring out the inherent tension between family allegiance, love, pressures, roles with considerations of safety.</p> <ul style="list-style-type: none"> Look at the victim and perpetrator in the context of a family system Multiple forms of abuse may co-occur Consider if multiple perpetrators <ul style="list-style-type: none"> Impact of psychological abuse <ul style="list-style-type: none"> Manipulation of emotions, including love Create fear Prey on hopes and values 	<p>Slide # 46</p> <p>Slides # 47–52</p>

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	<ul style="list-style-type: none"> – “Trapped” <ul style="list-style-type: none"> • Courts rarely act until physical abuse or financial exploitation <p>May be opportunity to act much sooner by improved fact finding by court, recognizing the dynamics, accommodating the elderly victim. And being familiar with the many laws and remedies available to the court in California.</p>	
12 Noon to 12:45 p.m.	Lunch	
12:45–2:45 p.m.	Judicial Ethics Component Judge Julie Conger	
2:45 to 3:00 p.m.	<p>Leadership Judge Cram</p> <p>Large group activity—10 minutes What can you do as a judge to ensure access to justice for older victims of abuse?</p> <p>Teachback—Court Leadership (5 minutes)</p> <ul style="list-style-type: none"> • Process to identify cases • A dedicated calendar for elder abuse matters <ul style="list-style-type: none"> ○ Criminal and court orders ○ Set time such as 10-11 a.m. ○ Reduce delays ○ Use telephonic hearings when appropriate ○ In criminal cases, use procedures to memorialize testimony early in process ○ Expect it will grow (Fresno experience) <ul style="list-style-type: none"> -Once a month to once a week • Identifying cases 	<p>Slides # 54-55</p> <p>Slides # 56-58</p>

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	<ul style="list-style-type: none"> ○ Clerks throughout the courthouse ○ Probate Department Judicial Officers and Investigators ○ DVTRO and civil harassment judges and commissioners ○ Civil and criminal divisions ○ Juvenile Court ○ “User friendly” procedures <ul style="list-style-type: none"> ▪ “One stop” <ul style="list-style-type: none"> • Can you engage pro bono counsel? • Can you have counsel available to assist elders? • Can you have advocates or peer counselors present and available? ▪ Make the court more informal <ul style="list-style-type: none"> • Reconfigure if necessary ▪ Review forms <ul style="list-style-type: none"> • Multiple formats • Larger fonts • Plain English ▪ Accommodations as needed <ul style="list-style-type: none"> • Computer assisted testimony • Translators and interpreters ▪ Training for <ul style="list-style-type: none"> • Judges (National training, National Council of Juvenile and Family Court Judges, October 2010_ • Court staff • Clerks • Bail Commissioners • Security 	<p>Slide 59</p> <p>Slide 60</p>

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	<ul style="list-style-type: none"> • Model Programs • Promising Practices • Specialized teams 	Slides 61-68
3:00 to 3:15 p.m.	Break	
3:15 to 4:15 p.m.	Component on <i>Crawford</i> —Justice Mark Simons	Case Scenario at Tab 8
4:15 p.m.	Adjourn	

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8:45 a.m. to 9:45 a.m.	Medical issues – Dr. Harry Morgan	Slides # 69-108
9:45-10:45 a.m.	<p>Criminal law issues in elder abuse cases – PC 368, PC 273.5</p> <p>Exercise #1</p> <p>Judge Byrd introduces</p> <p>Dot video clip played</p> <p>5 minutes for group to watch the video</p> <p>What conduct in Dot scenario falls within PC 368?</p> <p>Large group discussion – 5 minutes</p> <p>Staff to scribe</p> <p>Abusive Conduct Judge Byrd Mini Lecture 5 to 10 minutes</p> <p>PC 368</p> <ul style="list-style-type: none"> Physical abuse (threw ashtray, slapped across face, etc. PC 368(b)(1) Neglect by a caregiver for keeping in basement in cold and little food PC 368(b)(1) Psychological/emotional abuse—why don't you just die <p>Unjustified mental suffering</p> <p>Same as above</p> <ul style="list-style-type: none"> False imprisonment PC 368(f) Financial abuse PC 368(d),(e) any person and caretaker "Elder" means any person who is 65 years of age or 	<p>Play Dot video</p> <p>Slides # 109-110</p> <p>Slides # 111-116</p> <p>Refer to PC § 368 at TAB 9</p>

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	<p>older PC 368(g)</p> <p>Caretaker</p> <ul style="list-style-type: none"> Any person who has the care, custody, or control of, or who stands in a position of trust with, an elder... <ul style="list-style-type: none"> Penal Code 368 (i) <p>Dependent adult PC 368 (h)</p> <p>“Mental Suffering”</p> <ul style="list-style-type: none"> “Fear, agitation, confusion, severe depression, or other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder...” Welfare and Institutions 15610.53 <p>What if the parties in our scenario are intimate partners instead of Mother/daughter? What would be different?</p> <p>Large group response</p> <p>Teach back –Candace Heisler</p> <p>PC 273.5 would also apply</p> <p>Situations where both PC 368 and 273.5 are present are not unusual</p> <p>Exercise #2</p> <p>Candace Heisler</p> <p>Relay information about Susan</p> <p>Susan is 38, no crim history, lived with Dot for 3</p>	<p>Slide # 117</p>

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	<p>years since marriage ended and she was involuntarily committed under WIC 5150 following a suicide attempt. Recently, Susan's boyfriend moved in. He has a criminal history including a prior conviction for bar PC 242 five years ago and a PC 148 conviction (interfering with lea), and he has a rifle.</p> <p>Small group discussion</p> <ol style="list-style-type: none"> 1. Do you consider Susan dangerous? Why or why not? <p>Candace Heisler</p> <p>Do exercise in small group and report back. (Chart answers on easel chart) Staff to scribe</p> <p>Mini lecture 10 minutes Candace Heisler</p> <p>Assessing level of dangerousness</p> <p>Little information about risks associated with elder abuse perpetrators except for intimate partner violence</p> <p>Frailty of the victim – less force will inflict greater damage</p> <p>History of dysfunctional relationship between parent and child</p> <p>Presence of alcohol and substance abuse</p> <p>Presence of mental health problems</p> <p>So now let's consider IPV where we do have a bit more research Candy to check relevance of lethality data on abuse in later life other than IPV</p> <ul style="list-style-type: none"> • Consider lethality factors in younger couples <ul style="list-style-type: none"> – J. Campbell research 	<p>Slides # 118-119</p> <p>Slides # 120-122</p> <p>See DOJ Forms at TAB 13</p>

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	<ul style="list-style-type: none"> Threats to kill, access to weapons, increase in frequency and severity, strangulation, forced sex <p>Age does not make someone less dangerous</p> <ul style="list-style-type: none"> Elder perpetrators can seriously injure and kill <p>Dr. Donna Cohen Data</p> <ul style="list-style-type: none"> Homicide-Suicide Cases for over 20 years Most involve elders Perpetrator nearly always the male Firearm usually used Not “mercy killings” or suicide pacts <ul style="list-style-type: none"> Most women were asleep or shot in back of head or body Some had defensive wounds Perpetrators are not demented <p>Exercise #3</p> <p>Judge Byrd</p> <p>Would you grant Susan's request for release on OR or bail? If so, what terms and conditions would you impose. If not, why not?</p> <p>Discuss in large group -- 5 minutes and then 10 minutes on learning points:</p> <ul style="list-style-type: none"> Set appropriate amount of bail, conditions of OR <p>Would you monitor compliance?</p> <p>NB PC 1270.1 and 1269(c) If violent or serious felony or dv or stalking or 422 felony or 136.1 then must give 2 days notice before hearing the motion to release on or or reduced bail.</p> <ul style="list-style-type: none"> Issue a criminal protective order with firearms 	<p>Slides # 123-125</p> <p>Slide # 126</p> <p>Slide # 127</p> <p>Slides #128-</p>

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	<p>restrictions CLETS entry, relinquishment , CRC 4.700</p> <ul style="list-style-type: none"> • How do you specifically tailor the CPO to fit the circumstances (e.g. victim's doctor's office, hairdresser, bridge club, senior center etc.) • Think about continuity of care for the victim if the perpetrator was providing care services, e.g APS, senior services, other family members, community providers (has a report been made to APS?) Can ask the prosecutor <p>These are methods of protecting victims pre-trial. What is required during trial?</p> <p>Evid. Code section 765 general duty to control proceedings</p> <p>Support persons and advocates at interviews and hearings 679.04 (sexual assault) and 679.05 (dv), 868.5 and specifies 368 b,d, or e or 868.8 disability and specifies certain crimes including dv</p> <p>Trial setting preference PC 1048</p> <p>Reduce delay</p> <p>Conditional exam</p> <p>Exercise #4</p> <p>Sentencing considerations – Judge Cram</p> <p>Handout which is an impact statement</p> <p>By Dot</p> <p>Convicted of neglect and financial abuse by a caretaker</p> <p>368(b) (1)</p> <p>And 368 (e)</p> <p>What is your sentence and why?</p> <p>Small groups</p>	<p>131</p> <p>Slide 132</p> <p>Dot Victim Impact Statement Tab 23A</p>

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	<p>Scribe the answers--staff</p> <p>Discuss for 10 minutes at table</p> <p>Debrief--2-3 minutes per group</p> <p>Any effects of realignment</p> <p>Is 368 an aligned offense</p> <p>368(b) is excluded; d, e, and f subject to realignment, what effect if serious or violent felony?</p> <p>186.11 white collar crime enhancement imposed then do go to state prison</p> <p>PC 368(k) appropriate counseling</p> <p>1214 b restitution</p> <p>Identify theft order restitution to monitor credit and repair credit 1202.4</p> <p>When does Penal Code Section 1203.097 apply in an elder abuse situation?</p> <p>Teach back:</p> <ul style="list-style-type: none"> Relationship between the parties (FC 6211) table of consanguinity Conduct of domestic violence Post-conviction CPO 10 year protection order under certain circumstances (stalking) 	<p>Slide # 133</p> <p>Slides # 134-135</p>
10:45 to 11:00 a.m.	Break	
11:00 to Noon	<p>Dr. Harry Morgan</p> <p>Medical II – Issues of Capacity</p> <p>Ms. Cleo documents</p>	Slides # 136-176

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Noon to 12:45 p.m.	Lunch	
12:45 to 1:15 p.m.	Dr. Harry Morgan Medical II, continued – Assessing Capacity	Slides # 136-176, continued

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1:15 to 2:15	<p>Probate and Conservatorship Issues in Elder Abuse Cases</p> <p>Teaching method: Discuss a four-part hypothetical, which builds paragraph by paragraph. Faculty will present each part of the hypothetical, to be followed by small group discussion.</p> <p>13</p> <p>Hypothetical, Part I -- Everything Is Fine -- Justice Margulies</p> <p>Small group questions (5 minutes, report back 5 minutes):</p> <ol style="list-style-type: none"> 1) What additional information would you like to have and how would you get it? 2) Would you appoint an attorney for the conservatee? 3) Would you appoint a conservator? Who? <p>Mini-lecture – Justice Margulies (5 minutes): When do you appoint an attorney for the conservatee?</p> <ul style="list-style-type: none"> • Discretionary appointment of counsel, PC §§ 1470, 1471. The court may appoint counsel for a conservatee or proposed conservatee at the court's discretion, if it would be helpful to resolution of the matter or necessary to protect the person's interests. If the conservatee, proposed conservatee, or a person who lacks or appears to lack capacity requests the appointment of counsel, the court shall appoint counsel in conservatorship proceedings. • Mandatory appointment of counsel, PC § 2356.5 (dementia). In proceedings involving dementia – for instance, where the conservator petitions to have the conservatee placed in a secured residential care facility – the conservatee must be represented by counsel. • New Rule of Court 7.1101, effective 1.1.08, establishes minimum standards for qualification and continuing education for court-appointed attorneys in conservatorship and guardianship - applies to public and private attorneys • The conservatee has an attorney but you learn that one 	<p>Slide # 177</p> <p>Probate and Conservatorship Part I at Tab 23-B</p> <p>Slides # 178-179</p> <p>Slide # 180</p> <p>Slides # 181-182</p>

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	<p>of the kids has hired an attorney for the conservatee, a removal for conflict issue arises. (hiding abuse and control) Is this attorney really representing the conservatee when the attorney has been hired by one of the children? What should the court do?</p> <p>Final Teaching Point: Everything starts out fine.</p>	
2:15 to 3:00 p.m.	<p>Part II -- Ex Parte Communications</p> <p>Participants read Part II of hypothetical</p> <p>Large Group Discussion -- Justice Margulies (5 minutes):</p> <ol style="list-style-type: none"> 1. Is this an ex parte communication? 2. How do you handle it? <p>Mini-lecture: Ex Parte Communications (5 minutes)</p> <ul style="list-style-type: none"> • General ban on ex parte communications: Ex parte communications are generally improper, unless expressly allowed by law or expressly agreed to by the opposing party. Canon 3B(7), Code of Judicial Ethics. • New statutory provisions, effective Jan. 1, 2008: In the absence of a stipulation to the contrary, there shall be no ex parte communications except as permitted or required by law. Prob. Code § 1051(a), (d) (2008), Rule 7.10(b) & (c) (2008), California Rules of Court. • Permissible court action in response to ex parte communications in conservatorship proceedings, Prob. Code § 1051(b), W&I Code § 5372(a), effective Jan. 1, 2008: The court may refer a matter to the court investigator or take other appropriate action in response to an ex parte communication regarding: <ul style="list-style-type: none"> ▪ a fiduciary, as to the fiduciary's performance of his/her duties and responsibilities ▪ a person who is the subject of a conservatorship or guardianship proceeding ▪ appropriate action can include – if resources permit can appoint an attorney immediately for the conservatee even before an investigator goes out 	<p>Probate and Conservatorship Part II at Tab 23C</p> <p>Slide # 183</p> <p>Slide # 184</p> <p>Slides # 185-188</p>

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	<ul style="list-style-type: none"> ▪ Look into how your court investigator's office operates and be careful that you are not inadvertently receiving improper ex parte communications <p>Note that in cow counties some courts have been able to contract with an attorney and support staff or investigator to perform the court investigator function.</p> <ul style="list-style-type: none"> • Full disclosure is usually required. The court may, for good cause, dispense with disclosure if necessary to protect the conservatee from harm. Prob. Code § 1051(b). • <i>Note here the reality in a cow county that you are likely to run into someone who starts talking about a problem.</i> <ul style="list-style-type: none"> – What should the judge do? – What disclosure should be made? – Next time they are in court make the disclosure on the record. • If the communication discloses possible elder or dependent adult abuse, or child abuse, the court may refer the matter to appropriate state or local governmental agencies, including APS, and set a hearing regarding the communication. 	
	<p>Part III - Court Investigator Discovers Potential Elder Abuse.</p> <p>Participants read Part III of hypothetical (2 minutes) Judge Byrd</p> <p>Small group discussion (5 minutes, report back 5 minutes) What steps can the court take to ensure the safety and well-being of the conservatee?</p> <p>Mini-lecture (8 minutes)</p> <ul style="list-style-type: none"> • Highlight the court's unique role and duty in this type of case. • The court may consider the following options to protect the conservatee: 	<p>Probate and Conservatorship Part III at Tab 23D</p> <p>Slides # 189-190</p> <p>Slide # 191</p> <p>Slides # 192-193</p>

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	<ul style="list-style-type: none"> • APS employee/Ombudsman testimony, W&I Code § 10850. In the context of a petition for appointment of a conservator of the person who is receiving aid from a public agency, or in the context of a criminal prosecution under Penal Code § 368, an APS employee or Ombudsman may answer truthfully, when asked if he/she is aware of information regarding the mental capacity of the proposed conservatee or the need for a conservatorship. The court may order an APS employee or Ombudsman to testify about his/her observations: <ul style="list-style-type: none"> ▪ if the APS employee or Ombudsman states that he/she is aware of such information; or ▪ if the court has other independent reason to believe that the APS employee or Ombudsman has information that would facilitate resolution. • Investigator reports; timing of investigations under new law. The court investigator conducts reviews six months and one year after appointment of the conservator, and annually thereafter. Prob. Code § 1850. The investigator must interview relatives, friends, and neighbors. The focus is on placement, quality of care, and finances. The court may order additional reviews at any time, upon the court's own initiative. • Grounds for removal. The court may remove the conservator for: <ul style="list-style-type: none"> – failure to use ordinary care and diligence in the management of the estate – failure to file an inventory or an account within the time allowed by law or by court order – continued failure to perform duties or incapacity to perform duties suitably. – conviction of a felony, whether before or after appointment as guardian or conservator – gross immorality. – having such an interest adverse to the faithful performance of duties that there is an unreasonable risk that the guardian or conservator will fail faithfully to perform duties. – In the case of a guardian of the person or a conservator of the person, acting in violation of any provision of Prob. Code Section 2356 (regarding mental health placement and 	Slides # 194-196

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	<p>treatment)</p> <ul style="list-style-type: none"> – In the case of a conservator of the estate, insolvency or bankruptcy of the conservator. – In any other case in which the court in its discretion determines that removal is in the best interests of the conservatee <ul style="list-style-type: none"> • Appointment of public guardian. The court, on motion of an interested person, or on its own initiative, must order the public guardian to apply for appointment as conservator of the person or of the estate, if in the best interest of the person – for instance, if there is an imminent threat to the person’s health or safety or to the person’s estate. <p>Final teaching point: What appears to be a routine conservatorship proceeding can morph into elder abuse.</p>	
3:00 to 3:15 p.m.	Break	
3:15 to 3:30 p.m.	<p>Part IV: Removal From Personal Residence – Justice Margulies (10 minutes)</p> <p>Participants read Part IV of hypothetical (1 minute)</p> <p>Large group discussion (4 minutes):</p> <ol style="list-style-type: none"> 1) How would you rule? 2) What factors do you take into account? <p>Mini-lecture – moving conservatee, fixing conservatee’s residence, sale of residence (5 minutes)</p> <ul style="list-style-type: none"> • The conservator may establish the residence of the conservatee at any place within this state without the permission of the court, Prob. Code § 2352. The conservator shall select the least restrictive appropriate residence, as described in Prob. Code Section 2352.5, that is available and necessary to meet the needs of the conservatee, and that is in the best interests of the conservatee. • There is a presumption that the personal residence is the least restrictive appropriate residence for the 	<p>Probate and Conservatorship Part IV at Tab 23E</p> <p>Slide # 197</p> <p>Slide # 198</p> <p>Slides # 199-203</p>

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	<p>conservatee, Prob. Code § 2352.5. The least restrictive appropriate living situation should offer the services that the conservatee needs to live as independently as possible.</p> <ul style="list-style-type: none"> • Prob. Code § 2352(e)(3) requires 15 days notice of intent to move from personal residence. Prob Code § 2352(e)(1) requires notice within 30 days of change of residence. • The sale of a conservatee's residence is subject to court supervision and authorization, Prob. Code § 2540. The conservator must discuss the sale with the conservatee. A new inventory and appraisal is required if the last one is more than 6 months old, Prob. Code § 2543. • If the elder wishes to stay in the home and it is possible to keep them there with assistance, all efforts should be made including taking a reverse mortgage. 	
3:30 to 4:15 p.m.	<p>Durable Power of Attorney Justice Margulies</p> <p>Learning objectives:</p> <ul style="list-style-type: none"> • What is a durable power of attorney? • What are its powers? • How can the durable power of attorney come into conflict with a conservatorship proceeding? <p>Mini Lecture -- Learning Points: Durable Power of Attorney --- Characteristics and how if properly done can obviate the need for a conservatorship</p> <ul style="list-style-type: none"> • Power of attorney generally, Probate Code § 4000, et seq. A power of attorney is a written instrument executed by a person with capacity that grants 	<p>Slide # 204</p> <p>Slides # 205-208</p>

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	<p>authority to an attorney-in-fact to act for the principal. § 4022.</p> <ul style="list-style-type: none"> • Durable power of attorney -- definition: power of attorney that satisfies the durability requirements, § 4124, i.e. includes a written provision showing the intent of the principal that authority conferred shall be exercisable notwithstanding principal's subsequent incapacity. It differs from an ordinary power of attorney in that its continued validity is not affected by the principal's incapacity. §§ 4018, 4124. <ol style="list-style-type: none"> 1. Scope of authority: The attorney-in-fact's authority over the principal's affairs can be as specific or as broad as the principal desires. If a power of attorney grants general authority to an attorney-in-fact and is not expressly limited, "the attorney-in-fact has all the authority to act that a person having the capacity to contract may carry out through an attorney-in-fact specifically authorized to take the action." § 4261. 2. Limitation: certain acts affecting disposition of the principal's property cannot be taken by an attorney-in-fact unless expressly authorized by the power of attorney. § 4264 (enumerating acts that require express authorization, e.g. creation, modification, revocation of a trust, making or revoking a gift of principal's personal property). 3. A durable power of attorney and power of attorney for health care together may include virtually all the powers that a conservator has. • Effect of subsequent appointment of conservator or other fiduciary: <ol style="list-style-type: none"> 1. Attorney-in-fact accountable to fiduciary: a later-appointed fiduciary charged with management of principal's property may require the attorney-in-fact to account to the fiduciary as well as to the principal. § 4206(a). 	

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	<p>Subject to court approval, the fiduciary generally has the same power to revoke or amend the DPOA that the principal would have had but for the incapacity. § 4206(a).</p> <p>2. Limitation – California-appointed conservators: a conservator appointed by a California court may revoke or modify a durable power of attorney only if the court in which the conservatorship proceeding is pending has authorized or required the fiduciary to do so. § 4206(b).</p> <ul style="list-style-type: none"> Power may nominate conservator: durable power may also include nomination of conservator, in the event conservatorship proceedings should be later commenced. §§ 1810, 4126. <p>Presents hypo and asks the participants to discuss in small groups the following questions:</p> <p>What issues are raised? What additional information would you like to have? How would you get the information?</p> <p>Report back on this hypothetical.</p> <p>Additional questions raised by the hypo and Issues to mention in the discussion:</p> <ul style="list-style-type: none"> How does the durable power of attorney relate to the conservatorship proceeding? Does the court need to grant the conservatorship petition? When is it necessary and under what circumstances? Are there any capacity issues at the time the durable power of attorney was signed? Is the attorney in fact acting in a way that might be construed as undue influence? 	<p>Refer to Hypo– Maria, Dolores and Sonny at TAB 23F</p> <p>Slide # 209</p> <p>Slide # 210</p>
4:15 p.m.	Adjourn	

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8:45 to 9:30 a.m.	<p>Undue influence and Assessment of Undue Influence</p> <p>Mini Lecture – Candace Heisler</p> <p>What Is Undue Influence?</p> <ul style="list-style-type: none"> • Use of one’s role and power to exploit the trust, dependency and fear of another <ul style="list-style-type: none"> – Singer, 1996; Quinn, 2001 • Exploiters use their power to deceptively gain control over the decision making of another <ul style="list-style-type: none"> – Singer, 1996 • Not a crime but the method to exploit <p>Undue Influence, continued</p> <ul style="list-style-type: none"> • Use of deception, abuse of a trusting relationship, and an array of tactics to take over victim's free will • Pattern of manipulative behaviors <ul style="list-style-type: none"> – “Process not an event” • Victims may have or lack capacity <ul style="list-style-type: none"> – “Susceptibilities” <p><u>Molko v. Holy Spirit Assn.</u>(1988) 46 Cal.3d 1092, 1124</p> <p>“Whether from weakness on one side, or strength on the other, or a combination of the two, undue influence occurs whenever there results that kind of influence or supremacy of one mind over another by which that other is prevented from acting according to his own wish or judgment, and whereby the will of the person is overborne and he is induced to do an act which he would not do, if left to act freely.”</p> <p>Undue Influence</p> <ul style="list-style-type: none"> • More than persuasion or salesmanship • Pattern of tactics similar to domestic violence, 	Slides # 211-225

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	<p>stalking, and grooming in sexual assault</p> <ul style="list-style-type: none"> •Brainwashing •Method to commit financial exploitation (and sexual abuse) • <p>Source: Undue Influence: The Criminal Justice Response (YWCA of Omaha, 2006)</p> <p>Martha Bedford and Larry Thompson</p> <ul style="list-style-type: none"> • Review Fact Pattern • What made Martha Bedford susceptible to undue influence? • What tactics did Larry use to gain control of Martha Bedford's assets? <p>Victims: Vulnerability</p> <ul style="list-style-type: none"> •Lonely •Unsophisticated, uninformed •Ill or cognitively impaired •Drugged, drunk/alcoholic •Fatigued, exhausted, distracted •Frightened •Dependent <p>Perpetrators</p> <ul style="list-style-type: none"> •Opportunists •Career criminals •Fiduciary gained elder's trust/confidence •Caregivers •Family members, trusted friends or others <p>Undue Influence: Common Tactics Show slide on common tactics</p> <p>Undue Influence -- Case Realities</p> <ul style="list-style-type: none"> •UI is difficult to understand and prove 	Hypo at Tab 23G

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	<p>–Concept historically applied in actions regarding wills and property transactions</p> <p>–Concept newly applied to elder abuse</p> <p>–Concept newly applied to criminal law</p> <p>California Laws: Civil Code 1575</p> <ul style="list-style-type: none"> • Undue influence consists <ul style="list-style-type: none"> – In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him; – In taking an unfair advantage of another's weakness of mind; or, – In taking a grossly oppressive and unfair advantage of another's necessities or distress. <p>Civil Code 1567</p> <ul style="list-style-type: none"> • An apparent consent is not real or free when obtained through: <ul style="list-style-type: none"> – Duress; – Menace; – Fraud; – Undue influence; or, – Mistake. <p><u>Odorizzi v. Bloomfield School Dist.</u> (1966) 246 Cal.App.2d 123, 130.</p> <ul style="list-style-type: none"> • “The hallmark of [the Civil Code’s definition of undue influence] is high pressure, a pressure which works on mental, moral, or emotional weakness to such an extent that it <i>approaches the boundaries of coercion</i>. • Misrepresentations of law or fact are not 	<p>[Note: May want to reference pending legislation AB 140 which would redefine undue influence for probate purposes.]</p> <p>Tab 15</p>

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	<p>essential to the charge, for a person's will may be overborne without misrepresentation.</p> <ul style="list-style-type: none"> • By statutory definition, undue influence includes 'taking an unfair advantage of another's weakness of mind, or . . . taking a grossly oppressive and unfair advantage of another's necessities or distress. [Citation.] • A confidential relationship between the parties need not be present when the undue influence involves unfair advantage taken of another's weakness or distress. [Citations.]" <p><u>People v. Brock (2006)</u> 143 Cal. App. 4th 1266</p> <ul style="list-style-type: none"> • Civil standard insufficient for a criminal conviction as guilt may be based on little more than "over persuasion" • Factors which may make a contract voidable or a will ineffective do not, by themselves, justify a criminal conviction. • Criminal conviction requires misrepresentation , duress, or coercion or when the victim has the mental capacity to consent 	
	<p>Assessment of Undue Influence</p> <p>Candace Heisler and Dr. Harry Morgan</p> <p>W&I Code §15610</p>	<p>Slides # 226-232</p> <p>Undue influence wheel at Tab 16</p>

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9:30 to 9:45 a.m.	<p>The Probate Court as Supervising Fiduciary - Judge Cram</p> <p>Mini-lecture (5 minutes):</p> <p>The probate court has a unique role when it supervises fiduciaries. Fiduciaries in probate include guardians, conservators, personal representative and trustees. This notion that the probate court is a super fiduciary is derived from the 5 statutory relationships between fiduciaries and the probate court, which require the court to exercise discretionary supervision of fiduciaries: appointment, instruction, accounts, removal and surcharge.</p> <ol style="list-style-type: none"> 1. Appointment. The probate court may appoint these fiduciaries. See §§ 1514 (guardian), 1830 (conservator), 8400 (personal representative) and 15660(d) (successor trustee). Even where some individuals may have a right to an appointment, the probate court must assess an individual's capacity to perform fiduciary duties, since the probate court may not appoint someone who is removable. 2. Instruction. The probate court may instruct these fiduciaries. See §§ 2403(a), 9611(a), 17200(b)(6). 3. Accounts. Accounts of fiduciaries may be compelled. See §§ 2629, 11050, 17206. 4. Removal. The probate court may remove some of these fiduciaries, sometimes on its own initiative. See Probate Code §§ 2620.2 (removal of conservator for failure to file account, after notice), 2650 (failure to file I&A), 8500(b) (removal of personal representative), 15642 (trustee). 5. Surcharge. The probate court may surcharge these fiduciaries. See Probate Code §§ 2401 (guardians and conservators), 9601 (personal representatives), and 16440 (trustees). 	Slides # 233-235

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	<p>Additionally, in probate there is no right to jury trial – with the exception of a contested petition to establish a conservatorship. See Probate Code §§ 825, 1452, 1827, and 17006. Thus, matters involving fiduciaries are generally tried to the probate court.</p> <p>Recent events have caused the legislature to reinforce the supervisory role of the probate court.</p> <ul style="list-style-type: none"> • In the late 1990s Bonnie Cambalik, the owner of West Coast Conservatorships Inc., and her probate attorney Michael Molloy were convicted of embezzlement from conservatorships in Riverside county. This led to legislation regarding private professional fiduciaries. • After the Los Angeles Times reported on scandals involving private professional fiduciaries, the legislature reacted with the Omnibus Conservatorship and Guardianship Reform Act of 2006, a package of four bills designed to improve the administration of probate conservatorship cases in the trial courts. (AB 1363, SB 1116, SB 1550, and SB 1716). <p>Role of the Court large group exercise</p> <p>Hypothetical Fact Patterns:</p> <ol style="list-style-type: none"> 1. The mother of a dysfunctional family is under a probate conservatorship. The oldest of seven daughters was appointed conservator several years ago. Another daughter moves their mother to her home, fifty miles away and won't allow access to the other siblings. The siblings fight over every detail of their mother's care, including what color to paint the rooms where she resides. <p>What is the role of the judge? What do you do?</p> <ol style="list-style-type: none"> 2. An adult daughter files a request for a restraining order to protect her mother alleging that her step-father, the mother's second husband, is abusing 	<p>Refer to Role of the Court Hypo at TAB 23H</p>

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	<p>her mom. The court perceives at the hearing that the step-father is suffering from dementia.</p> <p>What do you do? To what extent does the judge initiate protective action?</p> <p>Teaching points:</p> <ul style="list-style-type: none"> • Facilitated discussion, pointing out the pros and cons of different approaches • Develop your own comfort zone subject to the code of ethics 	
9:45 to 10:00 a.m.	Break	
10:00-10:05 a.m.	<p>Protective Orders for Elderly and Dependent Adults</p> <p>Judge Cram</p> <p>Learning Objectives for this component:</p> <ul style="list-style-type: none"> ▪ Recognize and understand the dynamics of elder abuse ▪ Identify the restraining order requirements under W & I Code section 15657.03 ▪ Proper orders under W & I Code ▪ Comparisons with Family Code's DVPA ▪ Identify significant differences W & I Code and Family Code's DVPA ▪ Options to filling the gaps 	Slides # 236-238
10:05 – 10:20 a.m.	<p>Judge Cram</p> <p>Present a case study (Martha, Ray, and Betty) that crosses over various procedural settings, contains</p>	<p>Handout at Tab 23I</p> <p>Slides #239-241</p>

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10:20– 10:25 a.m.	<p>allegations of elder abuse, and requests a restraining order.</p> <p>Facilitated discussion in large group:</p> <ul style="list-style-type: none"> ▪ In what procedural settings could this case be seen? ▪ Where would this case be heard in your court? ▪ What additional information do you need to make a decision? <p>Teach back – Staff to scribe</p> <p>Typical court settings:</p> <ul style="list-style-type: none"> ▪ Family Law ▪ Civil Calendar ▪ Probate Calendar ▪ Criminal Court <p>Can be heard in multiple courts</p> <ul style="list-style-type: none"> ▪ DVPA action ▪ Criminal case (CPO) ▪ Probate (part of conservatorship) ▪ Can be spread across courts ▪ Need for coordination to avoid multiple appearances, inconsistent orders <p>Candace Heisler</p> <p>Remember: This may be domestic /family violence</p> <ul style="list-style-type: none"> ▪ Spouse abuse and other ongoing relationships with an expectation of trust ▪ Complex family dynamics ▪ Substance abuse ▪ Mental health ▪ Capacity issues ▪ Differing motivations (“private agendas”) ▪ Years of family dysfunction 	<p>3 minutes to read case</p> <p>Slide # 242</p> <p>Slides # 243-245</p> <p>5 minutes only, cover what group missed</p>

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	FRIDAY JUNE 14, 2013	
	What you see may be the tip of the iceberg!	
10:25– 10:45 a.m	<p>Now let's look at an application and supporting declaration under the W & I Code based on the fact pattern you have read. (Judge Cram)</p> <p>Review Betty's application and supporting declaration in support of issuance of an elder abuse restraining order.</p> <p>Review and discuss in facilitated large group discussion:</p> <ul style="list-style-type: none"> • Who can bring the proceeding? [EARO can be initiated only by elder, conservator, guardian ad litem, or person acting under a power of attorney (POA). The judge should ask to see the POA] • What is an "interested person?"[An interested person can bring an elder abuse civil suit but that's all] • Does Betty meet the definition? • What unique features characterize the statutory scheme? <p>Faculty to chart ideas. (Candace Heisler)</p>	<p>Handout at Tab 23J</p> <p>See W & I Code section 15657.03 and 15600 at Tab 10</p> <p>Slide # 246</p> <p>Slide # 247</p>
10:45– 10:50 a.m	<p>Teach back on the ideas generated in large group discussions. (Judge Cram)</p> <p>Faculty to chart ideas. (Candace Heisler)</p>	
10:50– 11:00 a.m.	<p>Mini lecture Judge Cram</p> <p>Elder Abuse Restraining Orders -- W & I Code 15657.03</p> <ul style="list-style-type: none"> • Ex parte may be issued without notice on showing of past acts of abuse 	Slides #248-256

TIME	ITEM	SLIDES AND HANDOUTS
	FRIDAY JUNE 14, 2013	
	<p>W & I Code 15657.03 (c)</p> <p>Procedural Framework – CCP 527</p> <ul style="list-style-type: none"> • Hearing set in not more than 21 days • May shorten time for service • May reissue for lack of service • Law enforcement to assist with service • Orders go into CLETS • Service of permanent orders may be by mail—only if valid proof of service and relief is the same. If different, RO must be personally served. • Hearing to take precedence <p>Standing – W & I Code 15600 (j)</p> <ul style="list-style-type: none"> • Who can file? • Elder or dependent adult requiring protection • Others? <p>Procedural Issues</p> <ul style="list-style-type: none"> • Confidential Address • Forms may not disclose... <p>Relief</p> <ul style="list-style-type: none"> • Standard injunctive orders available • Including all conduct under the broad definition of abuse, including mental distress • W & I Code 15657.03 (1) • Kick out orders • Except where respondent holds title and plaintiff has no legal or equitable interest... • W & I Code 15657.03 	<p>See Tab 12 for Comparing Available Relief</p>

TIME	ITEM	SLIDES AND HANDOUTS
	FRIDAY JUNE 14, 2013	
	<ul style="list-style-type: none"> Orders enjoining other behavior necessary to effectuate standard orders 	
11:00– 11:05 a.m.	<p>We are now going to see what happens at the hearing on this matter – faculty does a role play based on the fact pattern.</p> <p>Judge: Judge Cram Ray: Volunteer participant Betty: Volunteer participant Martha: Volunteer participant</p>	<p>(Role play for Judge Cram and volunteers)</p> <p>(Staff to distribute)</p> <p>Slide # 257</p>
11:05– 11:15 a.m.	<p>Table groups and address the next several questions.</p> <ul style="list-style-type: none"> How would you rule if you issue the order and what would be the terms and conditions of your order? What conduct can you restrain? Are there things you 'd like to order but believe you cannot? What are your options for filling these gaps? 	<p>Slide # 258</p> <p>For questions see Tab 23K</p>
11:15– 11:20 a.m.	<p>Judge Cram</p> <p>Debrief the questions above from table groups</p> <p>[Staff will chart.]</p>	
11:20 – 11:25 a.m.	<p>Mini lecture on the differences Candace Heisler</p> <ul style="list-style-type: none"> Differences in relationships covered by the two kinds of orders? <ul style="list-style-type: none"> DVPA: requires particular relationship (dating, marriage, etc.) <ul style="list-style-type: none"> Family Code 6211 	Slide 259

TIME	ITEM	SLIDES AND HANDOUTS
	FRIDAY JUNE 14, 2013	
	<ul style="list-style-type: none"> – Elder Abuse: no family or household relationship required <p>Firearms</p> <p>Relinquish within 24 hours of service/notice</p> <p>File receipt with court within 24 more hours</p> <p>May not possess or attempt to obtain while order is in effect</p> <ul style="list-style-type: none"> • W & I Code 15657.03(o)(1) • Family Code 6389; CCP 527.6 • Penal Code 12021(g)(1) and (2) <p>Note: PC 1524(a)(11) authorizes search warrants to obtain firearms not relinquished</p> <p>Orders not currently available in elder abuse:</p> <ul style="list-style-type: none"> • Payment of mortgage/other expenses • Pet custody • Alcohol, drug treatment • Mental health treatment <p>Role of the judge—Judge Cram</p> <ul style="list-style-type: none"> • What is his or her role in these proceedings? • How involved should he or she be? • Where is your comfort level? <p>Note: Add in question of how to handle the situation when a request for a restraining or protective order involving an elder person is filed in a different department. What can the court do to ensure access and safety?</p>	<p>Slide # 260</p> <p>3 minutes</p> <p>Slide # 261</p>
11:25– 11:30 a.m.	<p>Judge Cram</p> <p>Suggestions to maximize the court’s effectiveness in elder abuse matters and protective order hearings</p> <ul style="list-style-type: none"> • Review hearings <ul style="list-style-type: none"> – How are they done in your court? • Services for protected parties? 	Staff to chart ideas

TIME	ITEM	SLIDES AND HANDOUTS
	FRIDAY JUNE 14, 2013	
	<ul style="list-style-type: none"> – What is available? Do you coordinate with them? How? – Can you order participation in them? • Services for restrained parties <ul style="list-style-type: none"> – What is available? How assure compliance? Do you use <ul style="list-style-type: none"> – Mediators? What situations? Are there concerns? – GALs – Experts – Elder law attorneys 	
11:30 to 11:50 a.m.	<p>Accommodations and Calendar Management Judge Byrd</p> <p>Show Ms. Mary video</p> <p>Pose the question–What are the issues for the court in this case?</p> <p>Small group activity–5 minutes (at tables)</p> <p>Judge Byrd–Part 2 Question: What can the court do to accommodate Ms. Mary’s needs in order to maximize her participation?</p> <p>Then, debrief by calling out ideas and charting (staff to chart)</p>	<p>Slides # 262-263</p> <p>Slide # 264</p> <p>Slide # 265</p>
11:50 a.m. to 12:00 noon	<p>Mini-Lecture, Candace Heisler–The Elder in Court:</p> <ul style="list-style-type: none"> • Accommodations: <ul style="list-style-type: none"> • Courtroom accessibility • Scheduling • More frequent breaks (elder may not ask as 	Slides # 266-270

TIME	ITEM	SLIDES AND HANDOUTS
	FRIDAY JUNE 14, 2013	
	<p>showing respect for court)</p> <ul style="list-style-type: none"> • Support persons • Delays and continuances • Telephonic hearings (civil cases) • Trial setting preferences • Early memorialization of testimony (Conditional Examinations) • Right to Support Person When Testifying <ul style="list-style-type: none"> • The victim in a PC §368 case entitled to up to 2 support persons of own choosing at the preliminary hearing, juvenile court proceeding, or trial • One support person may be a witness • One support person can accompany the witness to the stand; the second can remain in court during the victim's testimony • Conditional Examinations: <ul style="list-style-type: none"> • Persons aged 65 or older and dependent adults • Allows prompt taking of testimony under oath and with cross examination after the arraignment • Includes full cross examination • Can be used later if witness is unavailable • Penal Code 1335-1345 <p>These procedures are equally applicable in other settings, including conservatorship cases.</p>	
12 Noon	Adjourn/Wrap up Justice Margulies	

