



Handling Elder Abuse Issues

JUNE 12-13, 2013 8:45 A.M.-4:15 P.M.
JUNE 14, 2013 8:45 A.M.-12 NOON
REDWOOD ROOM
JUDICIAL COUNCIL CONFERENCE CENTER
SAN FRANCISCO, CALIFORNIA



ADMINISTRATIVE OFFICE
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN
& THE COURTS

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HANDLING ELDER ABUSE ISSUES



ADMINISTRATIVE OFFICE
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN
& THE COURTS

June 12–14, 2013

San Francisco, California

Agenda

Lead Faculty: *Hon. Sandra L. Margulies*
Justice of the Court of Appeal, First Appellate District

Additional Faculty: *Hon. Donald Cole Byrd*
Judge of the Superior Court of California, County of Glenn

Hon. Julie Conger (Ret.)
Judge of the Superior Court of California, County of Alameda

Hon. Joyce M. Cram
Judge of the Superior Court of California, County of Contra Costa

Ms. Candace Heisler
Heisler and Associates, San Bruno

Harry E. Morgan, M.D.
Center for Geriatric and Family Psychiatry

Hon. Mark B. Simons
Justice of the Court of Appeal, First Appellate District

Day One—Wednesday, June 12, 2013

8:45–10:00 a.m.	Welcome and Introductions Overview – Elder Abuse in Various Court Settings Definitions, Forms of Abuse Impact of Elder Abuse
9:45–10:00 a.m.	Break
10:00 a.m.–12:00 p.m.	Victim Characteristics Perpetrator Tactics and Motivation Family Dynamics
12:00–12:45 p.m.	Lunch
12:45–2:45 p.m.	Judicial Ethics
2:45–3:00 p.m.	Court Leadership
3:00–3:15 p.m.	Break

3:15–4:15 p.m.	Evidentiary Issues: <i>Crawford</i> and Beyond
4:15 p.m.	Wrap-up and Adjourn

Day Two—Thursday, June 13, 2013

8:45–9:45 a.m.	Medical Issues: Science of Aging, Dementia, Delirium, and Depression
9:45–10:45 a.m.	Criminal Law Issues
10:45–11:00 a.m.	Break
11:00–12:00 p.m.	Medical Issues: Issues of Capacity
12:00–12:45 p.m.	Lunch
12:45–1:15 p.m.	Assessing Capacity, Continued
1:15–3:00 p.m.	Probate and Conservatorship Issues in Elder Abuse Cases
3:00–3:15 p.m.	Break
3:15–4:15 p.m.	Removal from Personal Residence Durable Power of Attorney
4:15 p.m.	Wrap-up and Adjourn

Day Three—Friday, June 14, 2013

8:45–9:30 a.m.	Undue Influence Assessment of Undue Influence
9:30–9:45 a.m.	The Probate Court as Supervising Fiduciary
9:45–10:00 a.m.	Break
10:00–11:30 p.m.	Protective Orders for Elderly and Dependent Adults
11:30–12:00 noon	Accommodations and Calendar Management
12:00 noon	Wrap-up and Adjourn

HANDLING ELDER ABUSE ISSUES

Faculty

HON. SANDRA L. MARGULIES, Lead Faculty
Court of Appeal, First Appellate District

HON. DONALD COLE BYRD
Superior Court of Glenn County

HON. JULIE CONGER (Ret.)
Superior Court of Alameda County

HON. JOYCE CRAM (Ret.)
Superior Court of Contra Costa County

HON. MARK B. SIMONS
Court of Appeal, First Appellate District

MS. CANDACE HEISLER
Heisler and Associates
San Bruno, California

DR. HARRY MORGAN
Center for Geriatric and Family Psychiatry
Glastonbury, Connecticut

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Under Separate Cover:

Code of Judicial Ethics

Court Guide to Effective Collaboration on Elder Abuse

Elder Abuse Cases: Proposed Performance Measures for Courts

Elder Abuse Pocket Reference

Identifying and Responding to Elder Abuse and Elder Abuse Tools Available for the
Courts: A Benchcard for Judges

Restraining Order Cheat Sheet

Hon. Shawna Schwarz, Santa Clara Superior Court

Available Online:

Archstone Report: <http://www.courts.ca.gov/documents/courtabused-eldersreport.pdf>

June 10–14, 2013

Primary Assignment Orientations and Elder Abuse Course

San Francisco

Administrative Office of the Courts
Education Division/Center for Judiciary Education and Research, and
Center for Families, Children & the Courts

DONALD COLE BYRD

Judge, Superior Court of California, County of Glenn, since 1998

Presiding Judge, 1998–99, 2001, 2003, since 2005

Partner, Meckfessel, Hopkins & Byrd, Willows, Glenn County, 1980–98

Partner, Geis, Meckfessel, Hopkins & Byrd, Willows, Glenn County, 1979

Associate Attorney, Geis, Meckfessel, & Hopkins, Willows, Glenn County, 1976–78

Special Master for Commission on Judicial Performance Hearings, 2006

Trial Court Budget Working Group, since 2004

Trial Court Presiding Judges Association (TCPJA)

Attorney General's Public Safety Officials Home Protection Advisory Task Force (AB2238),
2003

Rural Court Judges Working Group on Administrative and Operational Efficiency 2003 Judges
Advisory Committee

TCPJA Joint Rules Subcommittee, 2002–03

California Judges Association, since 1998

School Board Trustee, Willows Unified School District, Willows, Glenn County, California,
1988–94.

University, Pacific, McGeorge School of Law, Sacramento, California, J.D., 1975

Saint Mary's College of California, Moraga, California, B.A., 1971

JULIE M. CONGER (RET.)

Assigned Judge in several counties, since 2008

Judge of the Superior Court of California, County of Alameda, 1998–2008

Supervising Judge, 2000–04

Judge of the Municipal Court, Berkeley-Albany Judicial District, 1983–98

Presiding Judge, Berkeley- Albany Municipal Court, 1988–90, 1996–98

Attorney, Cooper, Hertz and Lyons (Certified Specialist in Criminal Law), Berkeley, Cal. 1979–82

Assistant Public Defender, Alameda County Public Defender's Office, Alameda County, 1975–79

Systems Analyst, Model Cities Program, Atlanta, 1970–71

Systems Analyst, AT&T Long Lines, Atlanta, 1969–70

Assistant Professor of Mathematics, Simmons College, Boston, 1967–69

Authored and presented numerous courses in Judicial Ethics, Disqualification and Disclosure, Judicial Speech, Ex Parte Communications, since 2003

Authored and presented courses on Code of Judicial Ethics to Workers' Compensation Judges, since 2003

Numerous presentations concerning Elder Abuse and the Court's Response, Alameda County Elder Protection Court, since 2003

Faculty, Judicial Ethics in Domestic Violence Cases, CJER, 2004

Developed and presented numerous supplemental Qualifying Ethics programs for California Judges, since 2004

Faculty, B.E. Witkin Judicial College, 2002

Faculty, Ethics for Temporary Judges, Alameda County Pro Tem Training Program, since 2001

Panelist, Ethics in Judicial Elections, CJA Annual Meeting, 2001

Chair, Faculty member, CJER Curriculum Committee for Qualifying Ethics Insurance Program, 1999–2002

Faculty, CJSP Course on Judicial Ethics, 1997–99

Lecturer, Code of Judicial Conduct and Judicial Ethics, Workers' Compensation Referee Training programs, 1997

Faculty, Seminars on Judicial Ethics, CJA Annual Meetings, 1993, 1997

Faculty, CJER New Judges Orientation Program, 1993

Member, California Judges Association

Response to Criticism Committee, since 2001

Ethics Committee, since 1997

Chair, 1999–2000

Vice-Chair, 1998–99

Discipline and Disability Committee, 1994–96

Member, Judicial Council, Temporary Judges Working Group, since 2004

Chair, Workers' Compensation Ethics Advisory Committee, since 2002

Member, Judicial Council, Blue Ribbon Panel of Experts on Arbitrator Ethics, 2001–02

Member, Judicial Council, Trial Court Coordination Advisory Committee, 1999–2000

Awards and Publications:

Bernard S Jefferson Award for Distinguished Service in Judicial Education, CJA, 2005

Ralph N. Kleps Award for Improvement in Administration of the Courts, awarded to Elder Abuse Protection Court of Alameda County Superior Court by the Judicial Council of California, 2004–05

Honored Woman of Achievement in Law, Isle City of Alameda Business and Professional Women, 2005

Judicial Distinguished Service Award, 2003, Alameda County Bar Association

Editor, On Not Taking Ourselves Seriously, humor column in California Judges Association quarterly publication, since 1994

Ethics Guide for Judges and Their Families, American Judicature Society publication adapted for California judges, CJER, 2003

Disqualification and Disclosure, CJER Treatise, 2002–03

University of California, Berkeley, Boalt Hall School of Law, J.D., 1974

M.I.T., Cambridge, M.S., mathematics, 1968

Smith College, Northampton, B.S. Magna cum laude, 1963

JOYCE M. CRAM

Judge of the Superior Court of California, County of Contra Costa, since 1998

Private mediation practice, Conflict Resolution Services, Moraga, California, 1994–98

Private law practice, Low, Ball & Lynch, San Francisco, California, 1977–92

Catholic University, School of Law, J.D., 1976

University of California, Santa Barbara, B.A., 1973

CANDACE J. HEISLER

Consultant and Trainer, Heisler and Associates, since 1998

Assistant District Attorney, City and County of San Francisco, 1973-98

Assistant Court Commissioner, San Francisco Superior Court, 1972-73

Assistant Adjunct Professor of Law, Hastings College, since 1985

Faculty:

National Council of Juvenile and Family Court Judges, National Elder Abuse Judicial Training Project, since 2007

National College of District Attorneys, National District Attorney's Association, National Prosecutors' Elder Abuse Project, since 2006

California Commission on Peace Officer Standards and Training, Domestic Violence Investigations; Crisis Negotiations; Officer Involved; First Responder; since courses created, since 1998

Instructor:

National College of District Attorney's Domestic Violence Annual Conference, since 1995

California District Attorneys Association, Domestic Violence, Elder Abuse, and other courses, since 1990

More than 100 presentations to various professionals throughout California and rest of United States

Publications:

Elder Abuse", Victims of Crime, 3rd Edition, Chapter 10, Sage Publications. Editors: R.C. Davis, A.J. Lurigio, S. Herman, 2006

Co-author, Elder Abuse Detection and Intervention. Sage Publications, 2007

Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases. A National Model for Judicial Education, The Family Violence Prevention Fund, 1991

The Role of the Criminal Justice System in Elder Abuse Cases" Journal of Elder Abuse and Neglect, 3(1), 1991

Domestic Violence in Civil Court Cases. A National Model for Judicial Education, (co-author and editor) The Family Violence Prevention Fund, 1992

"The Legal Perspective" a chapter in Elder Mistreatment: Ethical Issues, Dilemmas, and Decisions, Haworth Press (Binghamton, New York), 1995

U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Report on Elder Victimization Focus Group, 1998

San Francisco Elder Abuse, Prosecution and Protection: Understanding the Criminal Justice System's Role in Preventing Elder Abuse, 1998

"Elder Sexual Assault", Investigation and Prosecution of Sexual Assault, Chapter 9, California District Attorneys Association, 2001

"Elder Abuse and the Criminal Justice System: New Awareness, New Responses", Generations, Vol. 24, No. 2, Summer 2000

"Domestic Violence Among the Elderly: A Blueprint for the Criminal Justice System", Wisconsin Coalition Against Domestic Violence, Vol. 18, No. 4, Winter 1999/2000

"The Legal Response to Elder Abuse and Neglect", The Public Policy and Aging Report, Vol. 12, No. 2, Winter 2002

"The Legal Response to Elder Abuse and Neglect", Journal of Elder Abuse and Neglect, Vol. 14, No 1, 2002

"Community Approaches to Elder Abuse", Chapter in Clinics in Geriatric Medicine, Vol. 21, No. 2, 2005

Co-author of Curriculum, "Undue Influence: The Criminal Justice Response". City of Omaha, Office on Violence Against Women Grant. 2003 – 2006 "The Parallels Between Undue Influence, Domestic Violence, Stalking, and Sexual Assault". Journal of Elder Abuse and Neglect. Vol. 17, No. 3, 2005

Awards:

John J. Meehan Career Achievement Award, California District Attorney's Association, 1998

National Committee for the Prevention of Elder Abuse, Rosalie Wolf Award, 2008

Stephen L. Von Riesen Lecturer of Merit Award, National College of District Attorney's, 2001

Distinguished Faculty Award, National College of District Attorneys, 2007

State of California, Governor's Victim Services Award, 1991

San Francisco Commission on the Status of Women, Leadership Award, 1992

Hastings College of the Law, Alumna of the Year, 1993

Crime Victims United of California, Outstanding Service to Crime Victims Award, 1998

Hastings College of the Law, Clara Foltz Feminist Association, Distinguished Career Recognition Award, 1998

Crime Victims United of California Award for Outstanding Service to Victims, 1999

Robert Presley Institute of Criminal Investigation Excellence in Instruction Award, Domestic Violence, July 1999

Family Violence Project Award, Development of First Comprehensive Judicial Education Program on Domestic Violence, 1989

Hastings College of the Law, San Francisco, J.D., 1972

University of California at Los Angeles, B.A., 1969

SANDRA MARGULIES

Associate Justice of the Court of Appeal, First Appellate District, Division One, since 2002
Judge of the Superior Court of California, County of Alameda, 1988–2002
Judge of the Municipal Court, San Leandro-Hayward Judicial District, 1985–88
Deputy District Attorney, Alameda County, DA's office, 1977–85
National Association of Women Judges - Educational and Sabbatical Leave Policies Committee
Publications: Consultant to CEB Search and Seizure Practice Supplement, May 1987
Chair, Advisory Committee on Criminal Jury Instructions, 2006–2011
Faculty, Probate Conservatorship Task Force, 2007
Faculty, Hastings Litigation Advocacy Program, 1986–87
Faculty, CJER Municipal and Justice Courts Institute, 1986
Faculty, B. E. Witkin Judicial College of California, 1986–93, 1999–2000
Faculty, New Judge Orientation Program, 1994–96
Southwestern University School of Law, J.D., 1977
University of California, Los Angeles, B.A. History, 1974

DR. HARRY MORGAN

Harry E. Morgan, M.D., has developed and is President of The Center for Geriatric and Family Psychiatry, Inc., located in Glastonbury, Connecticut. The practice is a unique multidisciplinary professional group committed to providing for the mental health care needs of the elderly and their families.

Dr. Morgan is the Medical Director for the Alzheimer's Resource Center of Connecticut in Southington, Connecticut. He is Psychiatrist for the Southington Healthcare Alliance. He is a member of the active psychiatric staff at the Institute of Living/Hartford Hospital and is an Assistant Clinical Professor at the University of Connecticut Health Center. He is an active Psychiatric Consultant to many agencies, care facilities, and homecare organizations.

Dr. Morgan is Board Certified in Geriatric Psychiatry. He is a member of the Medical Advisory Board of the Alzheimer's Association of Connecticut, an active member of the American Association for Geriatric Psychiatry, and an active member of the American Psychiatric Association. As a Geriatric Psychiatrist, his teaching interests include education related to Alzheimer's disease and other dementing illnesses of later life, the diagnosis and treatment of depressive illness as it affects adults in later life, and the study of personality development during aging. He has consulted and taught nationally related to Forensic issues in geriatrics and aging. Dr. Morgan's clinical work with patients and families occurs in the office, in long term care facilities, and in patient's homes.

Dr. Morgan was educated at Dartmouth College, where he received his B.A. degree. He obtained his M.D. degree from Harvard Medical School and completed his psychiatric residency at the University of Cincinnati Medical Center.

MARK B. SIMONS

Associate Justice, Court of Appeal, First Appellate District, Division Five, since 2001

Judge, Superior Court of Contra Costa County, 1995–2001

Presiding Judge, 1999–2000

Judge, Municipal Court, Mt. Diablo Judicial District, 1980–95

Assistant Public Defender, Contra Costa County, 1973–80

Associate, Cooley Godward, 1971–73

Lecturer: University of California, Berkeley Law School, 1978–80

University of California, Hastings College of the Law, 2002–2004

CJER Faculty

New Judges Orientation Program, 1982–94

B.E. Witkin Judicial College of California, 1982, since 1984

Dean, 1995 and 1996

Associate Dean, 1994

Continuing Judicial Studies Program; CJER institutes

Member, New Judge Education Planning Committee, 1990–96

Chair, New Judge Education Planning Committee, 1994–96

Author, *California Preliminary Examinations* (Lexis)

Author, *California Evidence Manual* (West)

Recipient, Bernard S. Jefferson Award, 2000 and 2010

University of Chicago Law School, J.D., 1970

HANDLING ELDER ABUSE ISSUES

San Francisco
June 12-14, 2013

1

Learning Objectives

- Enhance judicial officers' skills and abilities to respond to elder abuse issues

2

Learning Objectives

- Identify forms of elder abuse
- Identify different court settings
- Define appropriate judicial role

3

Learning Objectives

- Recognize the characteristics of victims and perpetrators
- Consider issues of family dynamics in elder abuse cases

4

Learning Objectives

- Craft effective restraining orders

5

Learning Objectives

- Distinguish between normal aging and disease states
- Recognize issues relating to cognition, memory, and vulnerability to abuse

6

Learning Objectives

- Comply with judicial canons in proceedings involving elders
- Lead justice system and community efforts to improve the administration of justice in elder abuse proceedings

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Norman Scenario

Identify forms of abuse

8

California

- Largest number of persons 65-plus in US
- Total persons 65+ 4,148,055
- % of All Ages 11.2%
- % Increase 1999-2009 13.7%
- % Below Poverty 2009 8.7%

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Elder Abuse

- 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

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What is Elder Abuse?

- "Intentional actions that cause harm or create serious risk of harm, whether or not intended,

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What is Elder Abuse?

- 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)

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What is Elder Abuse?

- Conduct may or may not be criminal

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Limitations of this Definition

- Excludes
 - Abuse by strangers
 - Most frauds and scams
 - Self neglect
 - Dependent adults (age 18-64)

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Where Does Elder Abuse Occur?

- Private residences within community
- Facility settings (4.5%)

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Recent Studies and Research

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Elder Financial Abuse

- Costs more than \$2.6 billion per year
- Most often perpetrated by family members and caregivers
- Up to one million elders targeted yearly

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Elder Financial Abuse

- Related costs in the tens of millions for health care, social services, investigations, legal fees, prosecution, lost income and assets annually
- For each case of abuse that is reported, an estimated four or more are unreported.
 - MetLife Study 2009, www.maturemarketinstitute.com

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National Elder Mistreatment Study

- Prevalence rate of 11.4% in previous year to study
- Types of Abuse
 - Physical 1.6%
 - Verbal 4.6%
 - Sexual 0.6%
 - Neglect 5.1%
 - Financial by family members 5.2%

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Forms of Abuse

- Psychological is usually present
- Often long standing dynamics that have existed throughout the relationship
 - Organic or age-related psychopathology the exception.
 - Desmarais and Reeves, 2007

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Forms of Elder Abuse

- Physical abuse
 - Includes domestic violence
- Sexual abuse
- Neglect by a care provider
- Emotional or psychological abuse
- Abandonment
- Abduction
- Financial Exploitation

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Self Neglect

- 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

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Forms of Abuse

- 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

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Impact of Elder Abuse

- Earlier Morbidity
- Devastating medical impact
 - 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)

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Court Settings

How do elder abuse issues typically arise in your court?

25

Elder Abuse

- Present in virtually any court
 - Criminal
 - Civil
 - Family
 - Probate
 - Juvenile
 - Traffic
- May not be identified as elder abuse

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Judicial Involvement in Elder Abuse Matters

- Criminal Cases
- Civil Fraud and Conversion
- Domestic Violence
- Personal Injury
- Unlawful Detainer
- Lawsuits against Facilities
- Adult Adoptions
- Probate
- Conservatorship

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Judicial Involvement in Elder Abuse Matters

- 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)

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It's About Choices...

- Cost (green cards, yellow cards)
- Conditions
- Ground Rules
 - Movement = pay the fare
 - Ringing bell = pay fare or move
 - No more resources = go home
 - Silence

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Comings and Goings

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 your backyard and love your 10 year old cat.

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Comings and Goings

- How did it feel to make these choices?
- What obstacles did you face?
- Did anyone cheat or steal?
- How does this exercise apply to your role as a judge?

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Victims

- 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

32

Victims

- Women victimized more often than men
 - 72% of physical abuse victims reported to APS are women (NCEA, 1998)

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Victims

- Social and other isolation
- Cannot recoup losses
- Hesitant to use social service system

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Perpetrator Tactics and Motivation

- Motivations
 - Power and control
 - Greed
- Some sexual predators

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Created by the National Clearinghouse on Abuse in Later Life (NCALL), a project of the Wisconsin Coalition Against Domestic Violence (WCADV).
 307 S. Pearson St., Suite L, Madison, WI 53702-0540 / 255-6139 / Fax: (608) 255-0380
 This diagram adapted from the Power and Control/Equality wheel developed by the Domestic Abuse Intervention Project, Duluth, MN

Who Commits Elder Abuse?

- Intimate partners (long-term, new, or late onset)
 - Occurs in heterosexual/gay/lesbian relationships
 - Includes dating relationships
- Adult children and other family members
- Caregivers
- Persons in positions of authority

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Perpetrators

- Known and trusted by the victim
- May be dependent on elder
- Mental health and/or substance abuse issues co-occur with elder abuse

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Perpetrator Behaviors

- 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

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What About Caregiver Stress?

- 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

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Limitations of Caregiver Stress

- 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

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Caregiver Stress

- Recent studies do not lend credence to the caregiver strain theory; caregiver stress appears to “affect the intensity, but not the likelihood of, perpetrated abuse”
- National Elder Mistreatment Study (Acierno, 2009)

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Family Dynamics

Norman II

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- Who are the perpetrators in this family?
- Did seeing Norman II change your view of the situation or the identity of the perpetrators?
- What can the court do to enhance Norman's safety?

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**What do you think
Norman's feelings are for
his sons?**

45

Ruth and Lova

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Elder Abuse Dynamics

- Depending on the victim offender relationship and the type of elder abuse, EA may resemble domestic violence, child abuse, or fraud or the phenomenon can stand on its own with the complexity of the relationships, individual vulnerabilities, and contexts in which it occurs
 - Chicago Study

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Dynamics, continued

- Multiple forms co-occur
- Consider if multiple perpetrators
- Impact of psychological abuse
 - Manipulation of emotions, including love
 - Create fear
 - Prey on hopes and values
 - "Trapped"
- Courts rarely act until physical abuse or financial exploitation

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Perpetrators

- Acierno and colleagues (2009) found that 40% of sexual abuse of elders was committed by a spouse or partner
- Financial mistreatment is less likely to be experienced by married elders and is more likely to be committed by the victim's children or other relatives or caregivers (Laumann et al, 2008)

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What If the Abuser is a Child?

Are there special considerations or dynamics?

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Parent Child Dynamics

- Protect the child rather than considering personal safety
 - Want contact with children and grandchildren
 - Fear child will be homeless if turned away
- Feel special guilt, shame or embarrassment
- Feel alone and isolated
- Limited awareness of abuse by children
- May feel abuse related to poor child raising

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Understanding the Role of Family Dynamics

- How do family dynamics affect the case
 - Disclosing and reporting
 - Telling the court their true needs and desires
 - Putting their own needs ahead of an abuser's
 - Participating in the justice system(s)
 - Recognizing risk and lethality
 - Other

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Judicial Ethics

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Court Leadership

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Court Leadership

- What can you do as a judge to ensure access to justice for older victims of abuse?

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Court Leadership

- Process to identify cases
- A dedicated calendar for elder abuse matters
 - Criminal and court orders
 - Set time such as 10-11 AM
 - Reduce delays
 - Use telephonic hearings when appropriate
 - In criminal cases, use procedures to memorialize testimony early in process
 - Expect it will grow (Fresno experience)
 - Once a month to once a week

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Court Leadership

- Identifying cases
 - Clerks throughout the courthouse
 - Probate Department Judicial Officers and Investigators
 - DVTRO and civil harassment judges and commissioners
 - Civil and criminal divisions
 - Juvenile Court

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Court Leadership

- "User friendly" procedures
 - "One stop"
 - 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
 - Reconfigure if necessary

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Court Leadership

- Review forms
 - Multiple formats
 - Larger fonts
 - Plain English
- Accommodations as needed
 - Computer assisted testimony
 - Translators and interpreters

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Court Leadership

- Training for
 - Judges (National training, National Council of Juvenile and Family Court Judges, Oct 2010)
 - Court staff
 - Clerks
 - Bail Commissioners
 - Security

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Model Programs

- Elder Protection Court
 - Alameda County (Alameda and Contra Costa Counties)
 - Dedicated court for elder protection and abuse matters, criminal and civil
 - “Elder friendly” procedures

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Model Programs

- Staff helps elders complete forms, immediate court review of court order requests; phone hearings for home and hospital bound
- Case management, including transportation to court
- MDT helps court and parties work collaboratively and linkage to community agencies and services

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Model Programs

- Elder Justice Center
 - Tampa, FL
 - Persons 60 and older involved in court system

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Model Programs

- Remove barriers and enhance linkage to social and legal services
- Case management for guardianship cases
- Counseling for elders with legal and social issues, assistance with orders of protection

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Some Promising Court Practices

- Specialized Court Response
 - Assign elder abuse matters to DV dockets or courts
 - Establish elder abuse compliance court to monitor orders, probation orders etc. (WATCH program in Georgia)
 - Establish procedures that require or encourage APS and/or DV or SA program advocates attend elder protective order hearings

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Develop Specialized Teams

- Fiduciary Abuse Specialist Teams (FAST)—San Diego, Orange County (CA), Los Angeles
- WISE Senior Services (Los Angeles) created manual
- Financial entities, medical and mental health, prosecutors, law enforcement, etc.

66

Develop Specialized Teams

- Fatality Review Teams
 - American Bar Association Commission on Law and Aging Replication Manual
- Case Review Teams
 - Interdisciplinary members, including medical, mental health, APS, criminal justice, advocacy, legal, and others

67

Some Promising Practices

- Volunteer Programs
 - Probate Resource Center (DC)—local attorneys volunteer time to be in courthouse to answer questions and assist regarding Probate matters
 - Recruit attorneys to review guardianship filings (WA)
 - Recruit local attorneys to answer questions about Probate matters (Buffalo)
 - Community social workers to assist elderly litigants compile information for use in court and help develop care plans (Puerto Rico)

68

Aging and Disease States

Harry E. Morgan, MD

69

As We Age...

- The Aging Body
- The Aging Mind

70

Group Experience

- Define OLD people
- List 3 Characteristics of OLD people

71

Sociology—Widely Diverse Group

- No typical Old Person
- 50 to 120 years
- Large physiologic variability
- Diverse life experiences
- Economic – rich and poor

72

What is Expected with Aging

- Changes Associated with Aging
 - Grey Hair
 - NOT Skin wrinkles
- Diseases Associated with Long Life
 - Stroke and BP
 - Untreated chronic illness
- Diseases Occurring in Later Life
 - Alzheimer's

73

Psychology of Aging

- Cognitive Changes in Absence of Disease
 - Slower speed
 - Preservation of complex thought
- Determinants of Happiness in Late Life
 - Health
 - Finances
 - Family support


74

Mood

- Group of "survivors"
- Major depression not more prevalent than for younger people
- More adjustment reactions
- 85% of elders in community surveys are content and happy

75

Depression

- Not normal part of aging
- Very treatable
- Psychotherapy
- Outreach
- Medications 
- Suicide prevention

76

Depression

- Illness
- Treatable
- May be brought on by
 - Declining health
 - Loss and grief
 - Change in living situation
 - Sense of loss of control or independence
 - Crime victimization

77

Homeo-Stenosis

- Concept only
- Decreased ability to restore/recover baseline
- = decreased functional reserve
 - Give the aging time to recover and proceed with highest functional state

78

Aging and Its Effect on the Body

- Decreased estrogen
- Decreased testosterone
- Decreased gastric secretions
- Decreased sense of smell and taste
- Decreased thirst regulation
- Decreased metabolism and temperature regulation
- Is this important to the Court??

Ch-2
CSM1

79

Aging and Its Effect on the Body

- Skin
 - Decreased collagen
 - Decreased elasticity
- Musculo-skeletal changes (Exercise)
 - Bone density decreases
 - Leads to osteoporosis
 - Increases risk of fractures
 - Less adipose tissue ("padding")
 - But relatively more Fat/Muscle weight
 - Fat soluble medicines last longer

80

Sensory

- Sensory losses
 - Problems with hearing and vision (correctable?)
 - Balance and proprioception
 - Sensitivity to touch and pain
 - Neuropathy (which can effect balance and raise the risk of falls)
 - May be susceptible to hypothermia, heat stroke, and heat exhaustion

81

Vital Organs

- Lungs
 - Decreased muscle strength, cough reflex
 - Less elasticity
- Cardiac- decreased reserves
- Kidney- decrease function expected
- Liver – Little change without illness

82

Chronic Health Conditions

- Arthritis
- Ringing in the ears (tinnitus)
- Congestive heart failure
- Dementia , including Alzheimer's Disease

83

Chronic Health Conditions

- Diabetes Mellitus (sugar diabetes)
- Hypertension (high blood pressure)
- Hypothyroidism
- Parkinson's disease
 - A neurological disease that results in tremors, rigidity, lack of expression, and difficulty walking.
- Stroke

84

Central Nervous System

- Central Nervous System
 - Can lead to impaired gait, balance, coordination, motor strength
 - Cerebral atrophy in latest years
 - Decreased Catecholamines
 - Serotonin
 - Norepinephrine
 - dopamine

85

The Aging Brain

- Brain volume peaks in the early 20s and gradually declines for the rest of life
- In the 40s, when many people start to notice subtle changes in their ability to remember new names or do more than one thing at a time, the cortex starts to shrink
- Neurons (nerve cells) can shrink or atrophy
- Reduction in the extent of connections among neurons (dendritic loss)

86

The Aging Brain

- The normally aging brain has lower blood flow and gets less efficient at recruiting different areas into operations
- People most commonly experience declines in verbal fluency, or the ability to find words
- Must work harder at activities requiring "executive function," planning and organizing activities
- Aging slows down the speed at which information is processed ***
 - Not reliability of the information

87

Cognitive Preservation

- Health maintenance
- Exercise
- Mental activity
- Novel stimuli

88

Diseases of The Brain

- Many etiologies with Unique Differences
 - Strengths
 - Deficits
- Correlation of Functional Changes with Brain Pathology
 - Memory
 - Behavior
 - Executive function

89

Mild Cognitive Impairment

- Measurable change but—
- Able to lead generally normal life
- Despite subjective awareness of change
- Generally still capable legally

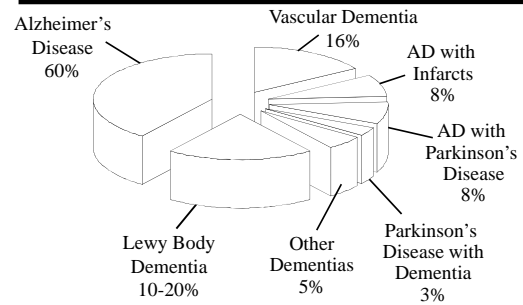
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Conversion Rates

- Amnestic MCI to Alz. Disease
 - 5 to 15% per year in most studies
- Non-Amnestic may convert to other dementia syndromes

91

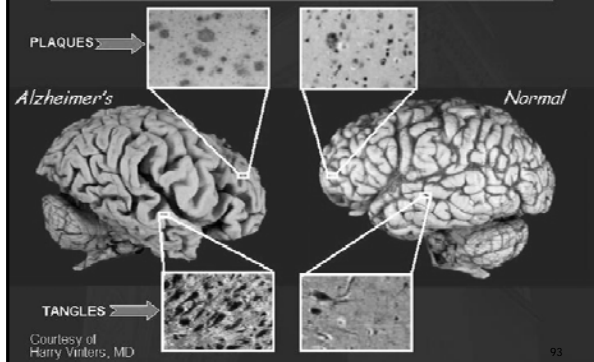
Many Etiologies for Dementia



Morris JC. Clin Geriatr Med. 1994(May);10(2):257-276

92

Amyloid Plaques and Neurofibrillary Tangles in AD and Normal Aging



93

Benefits of Early Intervention in Alzheimer's (and other Dementia)

- Explanation of Symptoms
 - Support
 - Education
- Future Planning
 - Legal
 - Healthcare
 - Personal
- Use of Preserved Capacity
- Access to Biologic Therapy

94

Prevalence and Impact of AD

- AD is the most common cause of dementia in people 65 years and older
- Affects 10% of people over the age of 65 and 50% of people over the age of 85
- Approximately 4 million dementia patients in the United States
- Annual treatment costs = \$100 billion
- AD is the fourth leading cause of death in the United States
- The overwhelming majority of patients live at home and are cared for by family and friends

Evens DA, Milbank Q. 1990;68:267-289. Alzheimer's Association. Available at: www.alz.org/hc/overview/stats.htm. Accessed 5/9/2001.

95

Pathology of AD

- There are 3 consistent neuropathologic hallmarks:
 - Amyloid-rich senile plaques
 - Neurofibrillary tangles
 - Neuronal degeneration
- These changes eventually lead to clinical symptoms, but they begin years before the onset of symptoms

Selkoe DJ. JAMA. 2000;283:1615-1617.

96

Fronto-Temporal Dementia

- Old term: Pick's Disease
- Deficits of judgment and mood occur before severe memory loss
- Many behavioral symptoms

97

Lewy Body Dementia

- Variable, Fluctuating Course
- Progressive disease
- Vivid Hallucinations
- Neuroleptic (antipsychotic) sensitive

98

Vascular Dementia- I

- Microvascular disease
- Similar to Alzheimer's course
- More fronto-executive deficits

99

Vascular Dementia- II

- " Post-stroke
- Multi-infarct (strokes)
- Deficits map on injury
- "Spotty"

100

Mixed Disorders

- More than one dementia
- Dementia plus Depression
- Dementia plus Psychosis

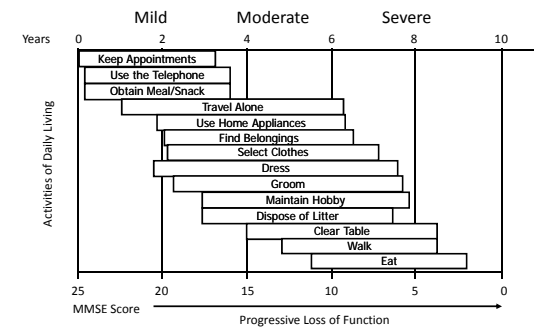
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Delirium

- Fluctuating
- Product of illness
- "Treatable"
- May co-exist with dementia

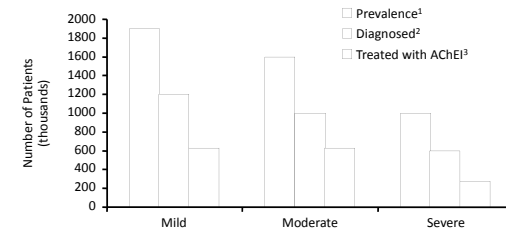
102

Progressive Loss of Activities of Daily Living



103

Prevalence and Treatment Rates



Sources: 1. Hebert LE, Scherr PA, Bienias J, et al. *Arch Neurol*. 2003;60:1119-1122.
2. Datamonitor AD Treatment Algorithms. 2002.
3. Market Measures. 2003.

104

Interventions

- Social
- Behavioral
- Pharmacologic
- Legal

105

Treatment of Cognitive Disease

- Medication
 - Memantine (Namenda)
 - Cholinesterase Inhibitors
 - Donepezil (Aricept)
 - Rivastigmine (Exelon)
 - Galantamine (Razadyne)
 - Antidepressants
 - Mood Stabilizers
 - Antipsychotics

106

Medications

- Can cause delirium
- May be a tool of compliance and abuse
- Importance of having medications cataloged and evaluated

107

Small Group Discussion

- Review the case of Mr. Demi with your table members
- Discuss
 - What forms of abuse appear to be present?
 - What are the medical issues?
 - What else do you want to know?
 - How will you get that information?
 - Does Mr. Demi need a conservator?
 - Does he appear to be competent to testify?

108

Criminal Law Issues

109

Dot Jarman Scenario

What conduct falls within Penal Code Section 368?

110

Abusive Conduct

- Physical abuse (threw ashtray, slapped, etc.)
- Neglect by a caregiver (keeping in cold basement, not providing adequate food)
- Psychological/emotional abuse ("why don't you just die?")
 - Called "unjustified mental suffering"

111

Abusive Conduct

- False imprisonment—locked in basement
- Financial exploitation through identity theft, credit card fraud and misuse, etc)

112

California Laws

- Penal Code 368(g)
 - "Elder" means any person who is 65 years of age or older
- Welfare and Institutions Code 15610.27
 - "Elder" means any person residing in this state, 65 years of age or older

113

"Dependent Adult"

- Person aged 18 to 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.
- Includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility
- PC 368(h)

114

"Mental Suffering"

- "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 emotion distress of the elder..."
- Welfare and Institutions 15610.53

115

Caretaker

- Any person who has the care, custody, or control of, or who stands in a position of trust with, an elder...
 - Penal Code 368(i)

116

What if...

- The parties in the scenario are spouses?
- PC 273.5 would also apply
- Situations in which both charges are present are not unusual
 - Note: Psychological Abuse (mental suffering is not included in PC 273.5)

117

Exercise #2

- Review the information about Susan.
- Discuss in your small group "Is Susan dangerous"? Why or why not?

118

Dot Scenario

Is Susan dangerous?

119

Dangerousness

- Little specific information about risks associated with elder abuse perpetrators except for intimate partner violence.
- All forms of elder abuse are associated with premature death (Lachs et al)
- Elder abuse increases risk of nursing home placement
- Elder abuse increases the risk of hospitalization

120

Increased Risk of Hospitalization from Elder Abuse (Dong and Simon, 2013)

- All forms of elder abuse independently increase risk of hospitalization
- Rate ratios (compared to non abused elders)
 - 2.22 - psychological abuse
 - 1.75 - financial exploitation
 - 2.43 -caregiver neglect
- If two or more forms of abuse, rate is 2.59-fold increase compared to non abused elders

121

Dangerousness

- Alcohol and substance abuse
- Presence of mental health problems
- Consider lethality factors in younger couples
 - J. Campbell research
 - Threats to kill, access to weapons, increase in frequency and severity, strangulation, forced sex
- Age does not make someone less dangerous
 - Elder perpetrators can seriously injure and kill

122

Dr. Donna Cohen

- Homicide-Suicide cases for over 20 years
- Most involve elders
- Firearm usually used
- Not "mercy killings" or suicide pacts
 - Most women were asleep or shot in back of head or body
 - Some had defensive wounds
- Perpetrators are not demented

123

Common Features (Cohen Research)

- Perpetrator nearly always the male who has controlling, dominant personality
- Perpetrator fears separation and views it as a threat to the integrity of the relationship
- Most cases involve spouses

124

Risk Factors

- | | |
|---|---|
| <ul style="list-style-type: none">• Male is caregiver• Advanced age• Husband is older• One or both spouses in declining health• Perpetrator has controlling personality• Availability of firearm• Isolation | <ul style="list-style-type: none">• Pending hospitalization or institutionalization of either spouse• History of domestic violence• Anger, hopelessness, or loss of control• Perpetrator is depressed, suicidal, or substance abuser |
|---|---|

125

Pretrial Release Class Discussion

- Susan has been charged with PC 368 neglect, physical abuse, financial abuse and false imprisonment, all felonies
- She has requested release on OR, or alternatively, on bail.
- How would you rule?
- Would you impose any terms and conditions?
- If so, what and why?
- If not, why?

126

Would you monitor compliance with your order(s)?

127

Possible Safety Enhancements

- Issue a criminal protective order with firearms restrictions and order relinquishment (CRC 4.700)
- Assure that order is entered in CLETS
- Order good conduct whether Susan is ordered to stay away from home or not
- Tailor terms to best protect Dot (add senior center, victim's health care provider, regular activities)
- Think about continuity of care for Dot if Susan has been providing care and continuing care is needed, (e.g., APS, senior services, other family members, community services)

128

Reminder

- PC §§ 270.1 and 1269(c) provide:
 - Serious or violent felony, PC 422 felony, PC 136.1
 - PC §§ 273.5, 243(e)(1), and most 273.6 violations
 - Cannot OR or release on reduced bail except in open court with 2 days notice to the prosecution

129

Questions

- Can you order a mental health assessment?
- Can you report suspected abuse to APS?

130

Victim Protection During Trial

- What else can you do during trial to protect the victim?
- General duty to control proceedings (EC §765)
- Support persons while testify (PC §§ 868.5; 868.8)
- Trial setting preference (PC 1048)
- Resist delays and continuances
- Conditional examinations

131

Sentencing

- Susan has been convicted of elder neglect and caretaker financial abuse
- Dot has prepared an Impact statement which is before you
- **Discuss in your small groups:**
What is your sentence?

132

Sentencing

- PC 368(b) is excluded from alignment
- PC 368 (d),(e), and (f) subject to realignment
- PC 186.11 white collar crime enhancement excluded from alignment
- PC 368(k) directs appropriate counseling if probation granted
- PC 1214 –restitution enforceable as civil judgment
- PC 1202.4 –identity theft restitution order can include costs to monitor and repair credit

133

Sentencing

- When does Penal Code Section 1203.097 apply in an elder abuse situation?
 - Relationship between the parties (FC 6211)
 - Conduct of domestic violence
- 10 year protection order under certain circumstances when convictions under PC §§ 273.5 and 646.9(k)(1) and (2), no matter what sentence is imposed; felony or misdemeanor

134

Possible Safety Enhancements

- Collaborate with other justice system entities to enhance safety (CRC 10.952)

135

ISSUES of CAPACITY

Harry E. Morgan, MD

136

Small Group Discussion

- Review the Cleopatra case file and discuss at your tables
- What are the capacity issues to consider?

137

In This Segment

- Frame Capacity
- Review Brain Illness
- Examine Cognitive Abilities
- Integrate Medical and Capacity Findings

138

Framing Capacity

139

Consent

- Informed Consent
 - Assumes capacity
- Consent may be
 - Real
 - Apparent

140

Aging and Capacity

- Aging is a normal life process
- Important to distinguish normal aging from results of abuse, misuse and disuse

141

Aging & Capacity

- Normal process of aging will impact older victim's perception of his or her choices and the consequences of the choices, i.e. court ordered loss of autonomy
- Until the contrary is demonstrated, individuals are presumed capable of making their own decisions

142

Capacity Concepts

- Capacity--continuum of decision making abilities
- Capacity is contextual and varies by complexity of the task to be done or decision to be made
- The more significant the decision and the consequences of the decision, the higher the level of capacity required

143

Capacity

- Capacity can fluctuate
 - Medical condition, illness
 - Medication
 - Time of day
 - Events in a person's life, e.g., grief, loneliness
- Experience and education may be relevant
 - Literacy and extent of education may related to ability to understand complex financial transactions
- Language capacity may be relevant to ability to understand

144

Capacity

- Capacity is task specific, not global
 - Enter into contract
 - Make a gift
 - Manage finances
 - Engage in complex planning and execution of steps
 - Personal care

145

Capacity

- Being competent or having adequate capacity is a judgment of a person's decision-making abilities
- Elements of Decision-making abilities include
 - Choice
 - Reasoning
 - Understanding
 - Appreciation

146

Capacity

- **Mental capacity includes ability to:**
 - Think clearly
 - Recall accurately
 - Organize thoughts
 - Express thoughts through communication
 - Plan and execute actions

147

Executive Function

- Ability to plan, consider and evaluate steps and alternatives, and carry out a plan
- Critical in financial transactions
- Person can have deficits in executive function without having typical dementia or memory impairment (Dyer et al)
- Requires alertness and attention
- Ability to process information
- Ability to modulate mood and affect

148

CAPACITY & COMPETENCY

CAPACITY:

- Assessment
- Always needs to relate to specific tasks

COMPETENCY:

- Legal status
- Development of Competence
- Competency can only be removed by Court Action or capably delegated

149

Undue Influence

- Complicating issue of consent
- May be criminal
- Role of weakened capacity

150

h3

Power-of-Attorney

- Benefits:
 - Fiduciary Responsibility
 - Need for training of agent
- Risks
 - Family conflict
 - Criminal tool

151

Mental Health Consideration in Issues of Capacity

- Involuntary– incapacity present
- Voluntary – level of capacity needed

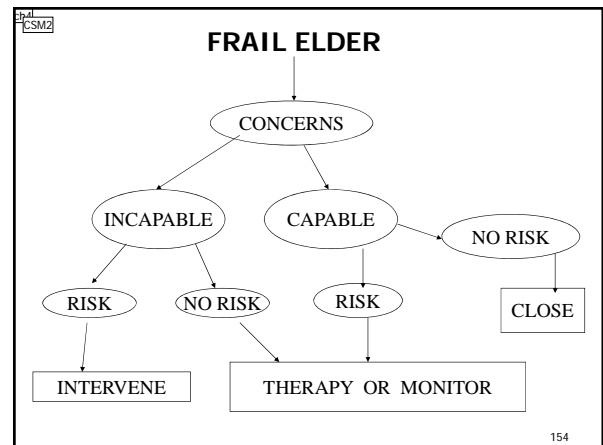
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INVOLUNTARY CONSERVATORSHIP

REQUIRES ALL OF THESE:

- Decreased Capacity
- Related Risk
- Mitigation of risk by appointment of Conservator

153



Brain Illness

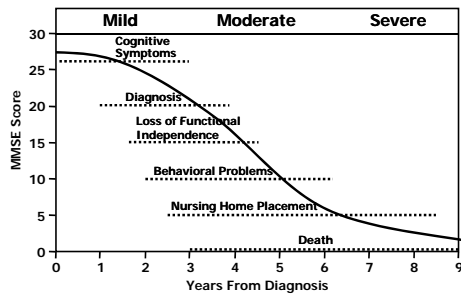
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Correlation of Functional Changes with Brain Pathology

- Memory
- Behavior
- Executive function

156

Alzheimer's Clinical Disease Progression



Reprinted from *Clinical Diagnosis and Management of Alzheimer's Disease*, H Feldman and S Gracon: Alzheimer's Disease: symptomatic drugs under development, pages 239-259, copyright 1996, with permission from Elsevier.

157

Mixed Disorders

- More than one dementia
- Dementia plus delirium
- Dementia plus depression
- Dementia plus psychosis

158

Delirium

- Temporary, reversible medical condition that
- can result in impaired cognitive function
- Causes
 - Illness and infection (UTI)
 - Intoxication
 - Medications
- Delirium and dementia often co-occur

159

Delirium vs. Dementia

- The distinguishing signs of delirium are:
 - Acute onset
 - Cognitive fluctuations over hours or days
 - Impaired consciousness and attention
 - Altered sleep cycles
 - Delirium is reversible; dementia is not
 - Once underlying cause treated, person returns to their prior level of function

160

Depression vs. Dementia

- The symptoms of depression and dementia often overlap
- Patients with depression:
 - Demonstrate decreased motivation during cognitive testing
 - Express cognitive complaints that exceed measured deficits
 - Maintain language and motor skills

161

Bereavement

- Kendler, K., Myers, J., Zisook, S. (2008). Does bereavement-related major depression differ from major depression associated with other stressful life events? *The American Journal of Psychiatry*, 165: 1449-55
- Impact on Legal Decisions

162

Examine Cognitive Abilities

163

Domains of Cognitive Function-I

- Alertness, Attention, Orientation
- Speech, Language – expressive, receptive
- Memory – Short vs. Long term
- Numerical, Arithmetic
- Sensory, Motor – apraxia

164

Domains of Cognitive Function-2

- Executive function – Initiation, sequencing, perseverating, organizing
- Judgment

165

Common Testing Options: Screening-1

- Clinical Interview
- Mini-Mental Status Examination (Folstein)
 - Portable and Universal
 - BUT state dependent and nonspecific
- SLUMS

166

Common Screening - 2

- Clock drawing – Spatial, organizational, abstraction, executive function
- Word List—Shopping list; Animals

167

Clinical Correlation

- Specific Testing:
 - Tying shoes-
 - Driving
- "Paradox" :
 - High MMSE and Incapacity
 - Low MMSE and Capacity

168

Sources of Collateral Information

- History of the symptoms is critical
- Agenda of the historian
- Medical records
- Protective Service

169

Class Discussion

- Return to the Cleopatra case, what information do you have about her capacity?
- Assume that the matter is referred to a health care professional
 - What else would you like to know?

170

Integrate Medical and Capacity Findings

171

Medical Testimony

- Help sorting the diagnosis
- Correlating with key deficit areas with task requiring capacity
- Know the sources of medical information

172

Medical Opinion is Ideally:

- A blend of interpretation of :
 - Relevant history...
 - Objective examination...
 - Likely diagnosis...
- That fits with the other available information in the effort to assist the Court in reaching a finding legal competency

173

Capacity in Dementia

- Static vs. Dynamic
- Many Judgment Calls
- Role of Monitoring
- Future Reconsideration

174

OTHER FACTORS TO CONSIDER

- The progressive nature of dementia requiring monitoring or reassessment of issues of capacity
- The complex nature of substance abuse issues and variability in capacity
- Issues of driving
- Family issues: Conflicted or Collaborative with each other and/or community services

175

Small Group Activity

Return to the Cleopatra case, .

- Was she capable?
- What evidence suggests this?
- Was there influence?
- What evidence?
- Was there abuse?
- Can we address issues posthumously?

176

Conservatorship Issues in Elder Abuse Cases

177

Hypothetical: Part I

- Father (95); daughter (64); younger son from second marriage
- Rental property \$2 million; bank account \$100,000
- Son and daughter file competing conservatorship petitions

178

Hypothetical: Part I

- Father giving away money, not paying bills
- House is a mess
- Father prefers daughter

179

Questions:

- What additional information would you like to have? How would you get the information?
- Would you appoint an attorney for the conservatee?
- Would you appoint a conservator? Who?

180

Appointment of Counsel

- Discretionary Appointment of Counsel
 - Prob. Code §§ 1470
- Mandatory Appointment of Counsel
 - Prob. Code § 2356.5 (Dementia)
 - Prob Code § 1471 (Per request of conservatee, proposed conservatee, or person alleged to lack legal capacity)

181

Appointment of Counsel

- New! 1/1/08
- Cal. Rule of Court 7.1101
- Establishes minimum standards for qualification and continuing education for court appointed attorneys in conservatorship and guardianship
- Standards apply to public and private attorneys

182

Hypothetical: Part II

- Court appoints daughter as conservator
- Son writes letter of complaint

183

Questions:

- Is this an ex parte communication?
- How do you handle it?

184

Ex Parte Communications Canon 3B(7), Code of Judicial Ethics

- Ex parte communications are generally improper, unless expressly allowed by law or expressly agreed to by the opposing party

185

Ex Parte Communications CRC 7.10(b) & (c)

- Generally, ex parte communications are prohibited
- Court may consider and act on ex parte communications (Prob Code. § 1051(b), W & I Code § 5321(a) effective 1/1/08:
 - Re fiduciary's performance of duties
 - Re conservatee's wellbeing

186

Ex Parte Communications Prob. Code § 1051(b)

- Full disclosure usually required
- Court may dispense with disclosure if necessary to protect the conservatee from harm

187

Ex Parte Communications CRC 7.10(c)

- If communication discloses possible elder or dependent adult abuse, court may refer to appropriate state or local governmental agencies, including APS, and set hearing

188

Hypothetical: Part III

- Investigator discovers and reports to the court:
 - Home filled with debris
 - Home infested with vermin and pests
 - Conservatee cannot navigate within the home

189

Hypothetical: Part III

- Rental properties are vacant
- Daughter gives father \$50 a month
- Son files petition to remove daughter and appoint himself
- Father insists on retaining daughter as conservator

190

Question:

What steps can the court take to ensure the immediate safety and well-being of the conservatee?

191

W&I Code § 10850

- Court may order APS employee or Ombudsman to testify about his/her observations:
 - if APS employee or Ombudsman states that he/she is aware of information regarding mental capacity of proposed conservatee or need for conservatorship; or
 - if court has other independent reason to believe that APS employee or Ombudsman has information

192

Investigator Reports; Timing of investigations

- Must interview relatives, friends, and neighbors
- Focus is on placement, quality of care, and finances
- First review is done after 6 months, and yearly thereafter, unless court allows every other year
- Additional reviews – any time, upon the court's own initiative

193

Grounds for removal

- Failure to use ordinary care and diligence in management of estate
- Failure to file inventory or account within time allowed
- Continued failure to perform duties or incapacity to perform duties suitably
- Conviction of felony, whether before or after appointment

194

Grounds for removal

- Gross immorality
- Having such an adverse interest that there is an unreasonable risk that conservator will fail to perform duties

195

Grounds for removal

- In the case of a conservator of the person, acting in violation of any provision of Prob. Code Section 2356 (regarding mental health placement and treatment)
- In the case of a conservator of the estate, insolvency or bankruptcy of conservator
- In any other case in which court determines that removal is in best interests of conservatee

196

Hypothetical: Part IV

- Court appoints public guardian as conservator. Public guardian petitions to remove conservatee from personal residence and place him in skilled nursing facility
- Dad wants to stay in house

197

Questions:

- How would you rule?
- What factors do you take into account?

198

Moving the Conservatee; Fixing the conservatee's residence

- Conservator may establish residence of conservatee at any place within state without permission of court, Prob. Code § 2352

199

Moving the Conservatee; Fixing the conservatee's residence

- Conservator shall select least restrictive appropriate residence that is available and necessary to meet needs of conservatee, and that is in best interests of conservatee

200

Moving the Conservatee

- Prob. Code § 2352.5: Presumption that personal residence is appropriate
- 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

201

Sale of Conservatee's Residence

- Court supervision required [PC § 2540]
- Conservator must discuss sale with conservatee
- Are there other alternatives? Does the conservatee agree?
- New I & A required if last one is more than 6 months old [PC § 2543]

202

Remaining at home

- Efforts should be made to comply with elder's wishes to remain in the home
- Standard: if feasible and if assistance is available
- Consider reverse mortgage

203

Durable Power of Attorney

- 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?

204

Durable Power of Attorney

- Power of attorney that includes written provision showing principal's intent that continued validity is not affected by the principal's incapacity. §§ 4018, 4124

205

Durable Power of Attorney

- Scope of authority: can be as specific or as broad as the principal desires. PC § 4261
- Limitation: certain acts affecting disposition of the principal's property must be expressly authorized. PC § 4264

206

Durable Power of Attorney

- A durable power of attorney and power of attorney for health care together may include virtually all the powers a conservator has

207

Durable Power of Attorney

- Effect of subsequent appointment of conservator or other fiduciary:
 - Attorney-in-fact may be accountable to later-appointed fiduciary. § 4206(a)
 - Limitation – California-appointed conservators. § 4206(b)
- DPOA may nominate conservator. §§ 1810, 4126

208

Hypothetical

- Dolores files petition for conservatorship
- Sonny, son from previous marriage, visits unannounced for 3 days
- Maria executes DPOA for health care and finances, nominating Sonny
- Sonny objects to Dolores' petition

209

Questions:

1. What issues are raised?
2. What additional information would you like to have?
3. How would you get the information?

210

Undue Influence

211

What Is Undue Influence?

- Use of one's role and power to exploit the trust, dependency and fear of another
 - Singer, 1996; Quinn, 2001
- Exploiters use their power to deceptively gain control over the decision making of another
 - Singer, 1996
- Not a crime but the method to exploit

212

Undue Influence

- Use of deception, abuse of a trusting relationship, and an array of tactics to take over victim's free will
- Pattern of manipulative behaviors
 - "Process not an event"
- Victims may have or lack capacity
 - "Susceptibilities"

213

Molko v. Holy Spirit Assn. (1988) 46 Cal.3d 1092, 1124

- "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."

214

Undue Influence

- More than persuasion or salesmanship
- Pattern of tactics similar to domestic violence, stalking, and grooming in sexual assault
- Brainwashing
- Method to commit financial exploitation (and sexual abuse)

Source: Undue Influence: The Criminal Justice Response (YWCA of Omaha, 2006)

215

Martha Bedford and Larry Thompson

- Review Fact Pattern
- What made Martha Bedford susceptible to undue influence?
- What tactics did Larry use to gain control of Martha Bedford's assets?

216

Victims: Vulnerability

- Lonely
- Unsophisticated, uninformed
- Ill or cognitively impaired
- Drugged, drunk/alcoholic
- Fatigued, exhausted, distracted
- Frightened
- Dependent

217

Perpetrators

- Opportunists
- Career criminals
- Fiduciary gained elder's trust/confidence
- Caregivers
- Family members, trusted friends or others

218

UI: Common Tactics



219

UI Case Realities

- UI is difficult to understand and prove
 - Concept historically applied in actions regarding wills and property transactions
 - Concept newly applied to elder abuse [Now in W&I Code §15610.30 in the definition of financial abuse]
 - Concept newly applied to criminal law

220

California Laws: Civil Code 1575

- Undue influence consists
 - 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

221

Civil Code 1567

- An apparent consent is not real or free when obtained through:
 - Duress;
 - Menace;
 - Fraud;
 - **Undue Influence**; or,
 - Mistake

222

Odorizzi v. Bloomfield School Dist.
(1966) 246 Cal.App.2d 123, 130

- "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 *approaches the boundaries of coercion*.
- Misrepresentations of law or fact are not essential to the charge, for a person's will may be overcome without misrepresentation

223

Odorizzi v. Bloomfield School Dist.
(1966) 246 Cal.App.2d 123, 130

- 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.]"

224

People v. Brock (2006)
143 Cal. App. 4th 1266

- Civil standard insufficient for a criminal conviction as guilty 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

225

Undue Influence

Assessing the Client

226

Context of the Meeting

- Safe Environment
- Meeting "alone"

227

Clinical Assessment

- Observation for signs of distress
- Look for physiologic arousal, anxiety, fear, protectiveness
- Examine degree of mood disturbance and relate to clients emotional needs

228

Coping Styles

- Assess degree of loss of self esteem or vulnerability
- Assess degree of dependence on influencing party

229

Cognitive appraisal

- Capacity Issues are still relevant
- Domains of Cognitive function

230

Framing of Client Relationships

- Be wary of clients who globally deny any problem
- Be wary of clients who express unrealistic idealization of their “influencing party”
- Explore the nature of awareness of other important relationships in the clients life

231

Special Consideration

- Options to observe interactions
 - With other important people in the life of the influenced individual
 - With the perpetrator if influence

232

The Probate Court as Supervising Fiduciary

- The probate court has a unique role when it supervises fiduciaries, based on 5 statutory relationships between fiduciaries and the probate court

233

The Probate Court as Supervising Fiduciary

1. Appointment
2. Instruction
3. Accounts
4. Removal
5. Surcharge

234

The Probate Court as Supervising Fiduciary

- No right to jury trial
- Exception: contested petition to establish a conservatorship. PC §§ 825, 1452, 1827, and 17006
- Thus, matters involving fiduciaries are generally tried to the probate court

235

CIVIL PROTECTIVE ORDERS

FOR THE ELDERLY &
DEPENDENT ADULTS

236

OBJECTIVES

- Recognize and Understand the Dynamics of Elder Abuse
- Identify Restraining Order Requirements Under W & I Code section 15657.03
- Proper Orders Under W & I Code

237

- Comparisons with Family Code's DVPA
- Identify significant differences W & I Code and Family Code's DVPA
- Options to Filling the Gaps

238

Martha, Ray and Betty, Part 1

- Martha is 87, widowed, lives with son, Ray, in own home
- Ray, 59, lives on social security, in Martha's home, unemployed
- Betty, 67, daughter of Martha, lives in nearby town, visits Martha weekly
- Betty seeks protection for Martha from Ray
 - Removal of Ray from home
 - Stay away, no contact

239

Betty's Allegations

- Ray calls Martha names, yells, treats like child
- Saw Ray strike Martha once
- Change in property title of family home and trust adding Ray as joint tenants
- Change in Martha's credit card spending pattern, weekly \$500 cash advances
- Ray says none of Betty's business, prevents her from speaking to Martha on the phone, and having private visits with her

240

Background

- Ex parte request
- Betty says afraid of Ray
 - Violent history
 - Arrest for abusing girlfriend 5 years ago
 - Restrained from contact with ex-wife through DVPA order 7 years ago

241

Class Discussion

- 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?

242

Court Settings

- Family Law
- Civil Calendar
- Probate Calendar
- Criminal Court

243

Issues

- Can be heard in multiple courts
 - DVPA action
 - Criminal case (CPO)
 - Probate (part of conservatorship)
- Can be spread across courts
- Need for coordination to avoid multiple appearances, inconsistent orders

244

Remember

- This may be domestic /family violence
 - 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
- What you see may be the tip of the iceberg!

245

Martha, Ray, and Betty, Part 2

- Review Betty’s application and supporting declaration in support of issuance of an elder abuse restraining order

246

Martha, Ray, and Betty, Part 2

- Review and discuss
 - Who can bring the proceeding?
 - Who is a person legally authorized to seek such relief?
 - Does Betty meet the definition?
 - What unique features characterize the statutory scheme?

247

Elder Abuse Restraining Orders

W & I Code 15657.03

- Ex parte may be issued without notice on showing of past acts of abuse
 - W & I Code 15657.03 (c)

248

Procedural Framework

California Code of Civil Procedure 527

- 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
- Hearing to take precedence

249

Procedural Issues

- Confidential Address
 - Forms may not disclose...
 - W & I Code 15657.04
- Ex partes must be ruled on the day they are submitted (Exception...)

250

Relief

- Standard injunctive orders available
 - Including all conduct under the broad definition of abuse, including mental distress
 - W & I Code 15657.03 (b)

251

Relief

- Kick out orders
 - Except where respondent holds title and plaintiff has no legal or equitable interest...
 - W & I Code 15657.03

252

Relief

- Kick out orders
 - Except where respondent holds title and plaintiff has no legal or equitable interest...
 - W & I Code 15657.03
 - Only if physical abuse or threat of physical abuse. Not financial

253

Available Relief

- DVPA
 - **Personal conduct order**
 - **Stay away, no contact**
 - **Kickout**
 - Spousal support and back payment
 - Restitution
 - **Attorney's fees**
 - Exclusive use of home

*Bolded items available
under both orders*

254

Available Relief

- DVPA-confirmed
 - Order house payment, other expenses
 - Custody of pet
 - Batterer's program (BIP)
 - Alcohol, drug treatment
 - Custody order and child support
 - **Firearms relinquishment; no firearms**

*Bolded items available
under both orders*

255

Available Relief

- Elder Abuse (W&I)
 - **Personal Conduct (including don't financially abuse)**
 - **Stay away, no contact**
 - **Kickout**
 - **Attorney's fees**
 - **Firearms relinquishment; no firearms**
 - **Other injunctive relief**

*Bolded items available
under both orders*

256

Martha, Ray and Betty, Part 3

The Court Hearing

257

Small Group Discussion

- Discuss these questions
 - How would you rule and if you issue the order, what would be the terms and conditions of your order?
 - What conduct can you restrain?
 - Are there things you would like to order but believe you cannot?
 - What are the options for filling these gaps?

258

Elder Abuse vs. DVPA

- Differences in relationships covered by the two kinds of orders?
 - DVPA: family and household members
 - Family Code 6211
 - Elder Abuse: no family or household relationship required

259

What If Ray Has a Gun?

- Firearms and Ammunition
 - Relinquish within 24 hours of service/notice or immediately on demand of LE
 - File receipt with court and LE within 24 hours
 - May not possess or attempt to obtain while order is in effect
 - W&I code 15657.03 (o)(1)
 - Family Code 6389; CCP 527.6
 - Penal Code 29825(a),(b); 30305

260

The Judge's Role

- What is his or her role in these proceedings?
- How involved should he or she be?
- Where is your comfort level?

261

Accommodations and Calendar Management

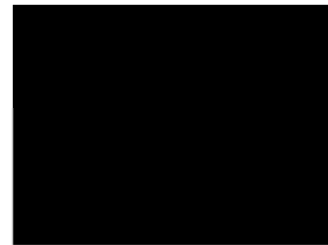
262

The Elder In Court

- What are the court issues in this case?

263

Ms. Mary



264

Ms. Mary

What can the court do to accommodate Ms. Mary's needs in order to maximize her participation?

265

The Elder In Court

- Accommodations
 - Courtroom Accessibility
 - Scheduling
 - More frequent breaks (elder may not ask as showing respect for court)
 - Support persons

266

The Elder In Court

- Accommodations
 - Delays and Continuances
 - Telephonic hearings (civil cases)
 - Trial setting preferences
 - Early memorialization of testimony (Conditional Examinations)

267

Right to Support Person When Testifying

- 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 persons 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

268

Conditional Examinations

- 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

269

Conditional Examination

- Conditional examination of ill or infirm witness to ill to appear in person may be through a contemporaneous, two-way video conference system, in which the parties and the witness can see and hear each other via electronic communication
- PC §1340

270

Judicial Ethics Issues in Cases Involving Elders

Hon. Julie Conger (ret.)
Superior Court of Alameda County



1

Hon. Julie Conger

(707) 331-0993

2

Primary Ethical Principles Elder Abuse Cases

- Independence and Impartiality—
Canon 1
- Faithful to the law and Professional
Competence—Canon 3B(2)
- Public Confidence in the Judiciary—
Canon 2

3

Learning Objectives

- Fairness and cultural issues and self-
represented litigants
- Ex parte communications
- Judicial speech

4

Learning Objectives

- Disqualification and disclosure
- Community outreach

5

Canon 3B(4)-Judges

- Must be “patient, dignified and
courteous to litigants, jurors,
witnesses, lawyers and others with
whom the judge deals in an official
capacity.”

6

Canon 3B(6)-Lawyers

- A judge must require lawyers in proceedings before them to refrain from words or conduct that would exhibit bias or prejudice.

7

Prohibited Categories

- Race
- Sex Gender
- Religion
- National origin
- Ethnicity
- Disability
- Age
- Sexual Orientation
- Marital status
- Socioeconomic status
- Political affiliation

8

Canon 3C(3)-Staff and Court Personnel

- Judges are required to exact the same standards of conduct concerning probity and lack of bias and prejudice from staff and court personnel "under the judge's direction and control."

9

- In a conservatorship proceeding, two siblings are so focused on their mutual animosity that they are not presenting the evidence you need to decide the case
- What do you do and why? How do you ethically obtain the information?

10

Canon 3B(8)

- Requires that "a judge shall dispose of all judicial matters fairly, promptly, and efficiently."

11

Self-Represented Litigants-Fundamental Principles

1. Matters should be decided on the merits rather than by procedural default
2. Trial judges have a duty to avoid miscarriages of justice

12

Self-Represented Litigants- Fundamental Principles

3. Trial judges have a duty to ensure adequate notice and clarity of instructions to ensure comprehension by litigants uneducated in the law
4. Trial judges may provide assistance to self-represented litigants to ensure compliance with the rules of evidence and procedure

13

Commentary to Canon 3B(8)

"The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience."

14

Options

1. Plain English
2. Talk to the judge, not each other
3. Civility counts
4. Ask questions

15

Options

5. Actively listen
6. Offer neutral assistance
7. Guard against miscarriage of justice

16

What a Judge Can Do:

1. Give effect to substance and provide opportunities to cure deficiencies
2. Explain basis for rulings
3. Grant continuance
4. Explain process of proceedings
5. Question witnesses

17

What a Judge Can Do

6. Under certain circumstances, call witnesses
7. Encourage, but not coerce, settlement or mediation
8. Direct SRL to available resources

18

What a Judge Should NOT Do

Accommodate SRL who:

1. Abuses dignity of courtroom
2. Is grossly negligent or lacks good faith
3. Deliberately delays or fails to comply with orders

19

What a Judge Cannot Do

Unreasonably accommodate SRL by:

1. Creating claims/defenses or disregarding law
2. Prejudice another party
3. Act as counsel
4. Deny fundamental rights

20

Canon 3B(7)-Three Parts

- A judge shall not initiate, permit or consider ex parte communications unless...

21

Ex parte

- Any communications to or from the judge outside the presence of the parties

22

Subject of communication

- Concerning a pending or impending case

23

- A judge must make reasonable efforts to avoid any ex parte communications. But there are exceptions...

24

Canon 3B(7)(d)

- If a judge inadvertently engages in an ex parte communication, then the judge must “promptly notify the parties of the “substance of the communication and provide the parties with an opportunity to respond.”

25

Exceptions-Other Judges

- Communication with other judges is an exception
- But, reasonable efforts must be made to avoid receiving factual information that is not part of the record
- And if such information is received it must be disclosed to the parties

26

Canon 3B(7)(a) and Commentary

A judge should not discuss a case with a judge:

- Who has previously been disqualified
- Whom the judge knows would be disqualified
- Who is participating or will participate in appellate review

27

Exceptions: Court Personnel

Canon 3B(7)(a)

- A judge may conduct ex parte communications with court personnel but reasonable efforts must be made to “avoid receiving factual information that is not part of the record or an evaluation of that factual information.”

28

Who are Court Personnel?

- Bailiffs
- Court reporters
- Court externs
- Research attorneys
- Courtroom clerks
- Other employees of the court

29

Who are NOT court personnel?

- Attorneys in a proceeding before the judge
- Employees of other governmental entities
- Social workers
- Persons appointed by the court

30

Who are NOT court personnel?

- Special masters
- CASA advocates
- Probation officers
- Adult protective services

31

Canon 3B(7)(c)

Change in 2013—

- Eliminated the provision permitting a judge to obtain the advice of a disinterested expert
- But **may** “initiate, permit or consider” ex parte communications when:
 - Expressly authorized by law, or
 - By stipulation of the parties

32

Exception-Scheduling and Administrative Purposes or Emergencies

- Provided neither party will gain a procedural or tactical advantage
- Proper notification of all parties

33

Settlement Conferences

Canon 3B(12)

- Permits judicial participation in settlement discussions
- May confer separately with the parties and/or their lawyers with the consent of the parties

34

Settlement Conferences

Canon 3B(12)

- Must maintain impartiality and the appearance of impartiality
- May not engage in conduct that could reasonably be perceived as coercive

35

Factors a Judge Should Consider Before Entering into Mediation or Negotiations:

- Whether the judicial participation is with consent or over objection of the parties
- The relative sophistication of parties or their counsel

36

Factors a Judge Should Consider Before Entering into Mediation or Negotiations:

- Whether a party is unrepresented
- Whether the trial is by judge or jury
- Whether the parties will participate and the effect of personal contact between the judge and parties

37

Factors a Judge Should Consider Before Entering into Mediation or Negotiations:

- Whether the judge should, in the course of these discussions, express an opinion on the merits or legal issues

38

Canon 3B(9)-Judicial Speech

- A judge may not make any public comment about a pending or impending proceeding in *any* court
- May not make a nonpublic comment that might "substantially interfere with a fair trial or hearing."

39

Terminology

- **Pending proceeding**—continues through any period in which an appeal may be filed until final disposition

40

Terminology

- **Impending proceeding**—a matter that is imminent or expected to occur in the near future

41

2013 Change Canon 2A

- "A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office."

42

Canon 3E(1)

- Judges are disqualified in any proceeding in which disqualification is required by law CCP 170.1(a)

43

Disqualifying Factors

1. Personal knowledge of evidentiary facts
2. Judge or family member a witness
3. Judge served as lawyer in proceeding (two year limitation)
4. Judge was associated with lawyer in proceeding (two year limitation)

44

Disqualifying Factors

5. Judge or family member has financial interest
6. Judge or family member is a party
7. Lawyer or associate of lawyer is spouse or family member of the judge
8. Judge doubts ability to be impartial

45

Disqualifying Factors

9. Judge believes disqualification would further the interests of justice
10. Person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial

46

Disqualifying Factors

11. Judge is physically impaired and cannot properly perceive the evidence or is unable to properly conduct the proceeding
12. Campaign contributions over certain limits within certain time frames
13. Judge in negotiations for employment with attorney or party in proceeding

47

New provision Canon 3E(3)(a)

Requires disqualification if a judge:

- While a judge or candidate for judicial office,
- Made a statement, other than in a court proceeding,

48

New provision Canon 3E(3)(a)

Requires disqualification if a judge:

- Has made a statement that a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in a proceeding

49

CCP Section 170.2 It Shall Not be Grounds for Disqualification That the Judge:

- a) Is or is not a member of a racial, ethnic, religious, sexual or similar group and the proceeding involves the rights of such a group

50

CCP Section 170.2 It Shall Not be Grounds for Disqualification That the Judge:

- b) Has in any capacity expressed a view on a legal or factual issue presented in the proceeding, except as provided in paragraph (2) of subdivision (a) of, or subdivision (b) or (c) of, Section 170.1.

51

CCP Section 170.2 It Shall Not be Grounds for Disqualification That the Judge:

- c) Has a lawyer or public official participated in the drafting of laws or in the effort to pass or defeat laws, the meaning, effect or application of which is in issue in the proceeding unless the judge believes that his or her prior involvement was so well known as to raise a reasonable doubt in the public mind as to his or her capacity to be impartial.

52

Disclosure

A judge must disclose:

- On the record
- Information reasonably relevant to the issue of disqualification under Code of Civil Procedure 170.1
- Even if the judge believes there is no actual basis for disqualification

53

Commentary to Canon 3E

- A judge should disclose membership in organizations which have the potential to give an appearance of partiality, even though membership is permitted under the Canons

54

Judicial Administration Standard 39 of the California Rules of Court

- Judicial participation in community outreach activities should be considered an official judicial function to promote public understanding of and confidence in the administration of justice

55

Commentary to Canon 2A

- A judge must accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly.

56

Canon 4A

A judge may engage in extrajudicial activities provided they do not:

- Cast reasonable doubt on the judge's impartiality
- Demean the judicial office
- Interfere with the proper performance of judicial duties
- Lead to frequent disqualification

57

Canons 4B, 2B

- Judges may "speak, write, lecture, teach and participate in activities concerning legal and non legal subject matters"

58

Commentary to Canon 4B

- May not use the judicial title to promote the personal or pecuniary interest of the judge or others
- Except may use the title in the promotion of legal education programs and materials

59

Judicial Ethics Case Scenarios

Handling Elder Abuse Issues – Judicial Ethics

Hypothetical Fact Pattern #1– Fairness

An elderly woman, who is Hispanic, appears before you. She speaks only a little English and appears to have trouble addressing the court. She is seeking a restraining order protecting her from her adult son. Both you and your clerk feel a growing sense of frustration. You overhear your clerk and bailiff complaining about the litigant during a pause in the proceedings. They are joined in their discussion by counsel for the son who makes disparaging remarks about the elderly woman.

Handling Elder Abuse Issues – Judicial Ethics

Hypothetical Fact Pattern #2 – Ex Parte Communications

You are an Elder Court judge. Festus (aged 78) appears before you pro per to obtain an Elder Protection order naming his spouse Elvira (aged 50) as respondent. You are also handling a domestic violence case in which Elvira is charged with having assaulted Festus. You are aware that a dissolution case has been filed and is also pending in the Family Law Court.

Festus is living alone in one-half of a duplex, co-owned with Elvira, who lives upstairs. Festus married Elvira two years ago after a whirlwind romance on a cruise ship; Elvira moved into Festus's house upon the marriage and, as a wedding gift, he placed the property in joint tenancy.

Festus has a grown son (Festus Junior) who lives out-of-state and has reported to the police that not only has Elvira physically abused Festus, but also she is looting his bank account as well. You have received a letter from Festus Junior stating that Elvira has forged a Power of Attorney document she is using to sell stock investments in Festus's portfolio.

Your Elder Case Manager has been assisting Festus in coming to court and filling out forms. The Elder Case Manager has reported to you that a review of criminal records reveals that Elvira was convicted 10 years ago of spousal abuse upon her third husband, also a gentleman much her senior.

Your Elder Court Manager has observed, in providing transportation for Festus from his home, that his house is extremely cluttered and filthy; your ECM suspects that Festus is a hoarder. In addition, she has detected a strong odor about his person, and notes that his clothing is disheveled, stained and unwashed. The ECM believes that Festus is self-neglectful, and has requested that Adult Protective Services perform an evaluation.

- 1) May you consider Festus Junior's report to the police concerning the financial abuse?
- 2) May you read the letter from Festus Junior?
- 3) May you consider the Elder Case Manager's report concerning Elvira's criminal past?
- 4) Can you receive information from the Elder Case Manager concerning her observations and suspicions of hoarding and self-neglect?
- 5) Can you receive information from Adult Protective Services concerning their evaluation of the situation?
- 6) Can you speak to the Family Law Judge who is handling the dissolution?
- 7) If so, what limitations, if any, are placed upon this conversation?

Handling Elder Abuse Issues – Judicial Ethics

Hypothetical Fact Pattern #3 – Disqualification

Judge Wilbur Fernandes handles an elder court calendar. During the course of his day, Judge Fernandes received a call from Marguerite (Margie), his 89-year old mother. His father died earlier in the year, and Margie continues to live in the home where she raised her family with Andrew who is Judge Fernandes' younger brother. Andrew is 40 years old and moved back into the family residence before their father passed away because he was living on the subway in New York City and unable to take care of himself. Andrew is unemployed and spends most of the day drinking beer and watching TV. During the phone call, Margie says that she wants to spend the night with Judge Fernandes because yesterday, she tripped and bruised her leg. When she couldn't get up, and asked Andrew for help, he yelled at her for interrupting his game on TV, and shook his fist. When Judge Fernandes gets to his mother's house, he was met at the door by Margie who has an eye nearly swollen shut. Judge Fernandes asks, "How did that happen?" Margie says she bumped into a door. Judge Fernandes is not sure she is telling the truth. Andrew is nowhere to be found. The next day, Judge Fernandes returns to work and begins to wonder about his disqualification or disclosure obligations.

Questions:

1. Is disqualification required in elder abuse cases under these circumstances?
2. If disqualification is not required, is disclosure required?
3. If disclosure is required, how long must Judge Fernandes do so?
4. Is Judge Fernandes required to report the incidence of elder abuse involving his mother to the police?

Chapter
2. Hearsay Evidence
B. Hearsay Exceptions

§ 2:115. The Confrontation Clause—Defining testimonial statements

Crawford expressly refused to provide any definition for “testimonial,” beyond noting that the challenged statement in that case would be covered by any definition. ([Crawford v. Washington, 541 U.S. 36, 53 n.4, 124 S. Ct. 1354, 158 L. Ed. 2d 177, 63 Fed. R. Evid. Serv. 1077 \(2004\).](#)) In Crawford, the defendant was charged with assault with a knife. His wife had been present at the time of the assault and was arrested, Miranda'd and interrogated by the police. At trial she was unavailable (because the defendant invoked one of the marital privileges) and the admission of the tape of her interrogation was successfully challenged on appeal.

The cases since Crawford defining “testimonial” may usefully be divided into two major subsets: those involving (1) statements by victims and witnesses to law enforcement officers or agents who testify to those statements; and (2) statements by individuals, like criminalists, provided to the trier of fact through a report prepared by that individual or through the testimony of an expert who relied on that report to form an opinion.

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§ 2:116. Victim/witness responses to police questions

Witnesses and victims provide responses to police questions in a variety of factual settings. In 911 calls, after an initial statement by the caller, the operator will commonly ask a series of questions. ([Davis v. Washington, 547 U.S. 813, 817–818, 126 S. Ct. 2266, 165 L. Ed. 2d 224, 70 Fed. R. Evid. Serv. 472, 30 A.L.R.6th 599 \(2006\).](#)) An officer dispatched to the scene may arrive during the 911 call or shortly thereafter, or an officer might encounter an injured person while on patrol. These officers will ask their own questions for different reasons, for example, to sort out whether a crime has occurred, control the scene, provide aid, and/or assist in a future prosecution, or the officers may arrange for a post-crime interview at the police station. What standards should govern the determination that those statements are testimonial or not?

Davis was the first United States Supreme Court decision on the Confrontation Clause following Crawford. Davis consisted of two companion cases, Davis v. Washington and Hammon v. Indiana. In Davis, Michelle McCottry placed a 911 call to the police, reporting that “[Davis is] here jumpin’ on me again”; “He’s usin’ his fists.” ([Davis 547 U.S. at p. 817.](#)) Later in the call, McCottry stated Davis has “‘just r[un] out the door’ and that he was leaving in a car” The 911 operator then gathered more information about the defendant. ([Davis 547 U.S. at p. 818.](#)) The Supreme Court concluded that McCottry’s initial statements were nontestimonial because the victim was “speaking about events *as they were actually happening* rather than describ[ing] past events ... hours after the events ... had occurred”; the victim “was facing an ongoing emergency”; the questions and answers in the call “were necessary to be able to *resolve* the present emergency, rather than simply to learn ... what had happened in the past”; and the victim’s 911 call occurred “in an environment that was not tranquil or even ... safe” ([Davis 547 U.S. at p. 827.](#)) Because the “primary purpose” of the 911 call in Davis “was to enable police assistance to meet an ongoing emergency,” McCottry’s statements were nontestimonial. ([Davis 547 U.S. at p. 827–829.](#)) This was true even for those statements given by McCottry in response to “the operator’s effort to establish the identity of the assailant, so that the dispatched officers might know whether they were encountering a violent felon.” ([Davis 547 U.S. at p. 827.](#)) Furthermore, the court pointed to the difference in the level of formality between the Davis and Crawford interviews. The Davis victim provided “frantic answers” over the phone in an unsafe environment. From this, the court deduced that in Davis the objective circumstances of the interrogation “indicate its primary purpose was to meet an ongoing emergency” not obtain a statement from a witness. ([Davis 547 U.S. at p. 827.](#))

In the companion case, Hammon, the police responded to a “‘reported domestic disturbance’” at the Hammon home and found the victim, Amy Hammon, alone on the front porch. Though she denied any problem, she permitted the police to enter and they found signs of a struggle. One of the officers stayed in the kitchen with Hershel Hammon, while the other questioned Amy in the living room. She then verbally described the assault and filled out a written “battery affidavit.” ([Davis 547 U.S. at p. 819–820.](#)) The Supreme Court concluded that Amy’s statements were obtained in a police interrogation directed at “possibly criminal past conduct ... [t]here was no immediate threat to her person.” When the statement was provided, the officer was not “seeking to determine (as in *Davis*) ‘what is happening,’ but rather ‘what did happen.’ Objectively viewed, the primary, if not indeed the sole purpose of the interrogation was to investigate a possible crime” ([Davis 547 U.S. at p. 829–830.](#)) The high court rejected the Indiana Supreme Court’s conclusion that “initial inquiries” at the crime scene are not testimonial and clarified, “we do not hold the opposite—that no questions at the scene will yield nontestimonial answers ‘[o]fficers called to investigate [domestic violence] need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to the potential victim’ Such exigencies may often mean that ‘initial inquiries’ produce

nontestimonial statements.” ([Davis 547 U.S. at p. 832.](#))

Davis summarized its conclusions on whether a statement in response to police interrogation is testimonial as follows: “Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.” ([Davis 547 U.S. at p. 822](#); [People v. Livingston, 53 Cal. 4th 1145, 1158–1159, 140 Cal. Rptr. 3d 139, 274 P.3d 1132 \(2012\)](#), petition for cert. filed (U.S. Sept. 25, 2012) [videotape of deceased witness was testimonial under *Davis* because its only purpose was to investigate a crime, long after any emergency had ended].)

[People v. Cage, 40 Cal. 4th 965, 984, 56 Cal. Rptr. 3d 789, 155 P.3d 205 \(2007\)](#) derived several basic principles from Davis. “First, the confrontation clause is concerned solely with hearsay statements that are testimonial, in that they are out-of-court analogs, in purpose and form, of the testimony given by witnesses at trial. Second, though a statement need not be sworn under oath to be testimonial, it must have occurred under circumstances that imparted, to some degree, the formality and solemnity characteristic of testimony. Third, the statement must have been given and taken primarily for the purpose ascribed to testimony—to establish or prove some past fact for possible use in a criminal trial. Fourth, the primary purpose for which a statement was given and taken is to be determined ‘objectively,’ considering all the circumstances that might reasonably bear on the intent of the participants in the conversation. Fifth, sufficient formality and solemnity are present when, in a nonemergency situation, one responds to questioning by law enforcement officials, where deliberate falsehoods might be criminal offenses. Sixth, statements elicited by law enforcement officials are not testimonial if the primary purpose in giving and receiving them is to deal with a contemporaneous emergency, rather than to produce evidence about past events for possible use at a criminal trial.” Davis confirms “the proper focus is not on the mere reasonable chance that an out-of-court statement might later be used in a criminal trial. Instead, we are concerned with statements, made with some formality, which *viewed objectively* are for the *primary purpose* of establishing or proving facts for possible use in a criminal trial.” ([Davis 547 U.S. at p. 984 n.14.](#))

In Davis, the declarants in each case were victims of their assailants' fists. In [Michigan v. Bryant, 131 S. Ct. 1143, 1150, 179 L. Ed. 2d 93, 84 Fed. R. Evid. Serv. 1033 \(2011\)](#), however, officers responded to a radio dispatch and, at the scene, found a gravely wounded victim of a gunshot. They asked him, “What had happened, who had shot him and where the shooting occurred.” He provided numerous statements incriminating the defendant. Shortly thereafter he was transported to a hospital and died several hours later. Bryant tracked Davis in concluding that whether a statement is testimonial depends upon the primary purpose test, and “[t]hus, the most important instance in which the [Confrontation] Clause restricts the introduction of out-of-court statements [for their truth] are those in which state actors are involved in a formal, out of court interrogation of a witness to obtain evidence for a trial.” (Bryant at p. 1155.)

In [People v. Blacksher, 52 Cal. 4th 769, 809, 816, 130 Cal. Rptr. 3d 191, 259 P.3d 370 \(2011\)](#), cert. denied, [132 S. Ct. 1556, 182 L. Ed. 2d 184 \(2012\)](#), an officer responded to the scene of a reported murder-suicide four minutes after the call was received and interviewed Eva, the mother and grandmother of the victims (and mother of the defendant) outside the residence where the shootings occurred. The bodies were still inside. Eva “did not know if defendant was still present. During a 10 to 15 minute conversation [the officer] asked Eva questions about the shooting, what de-

fendant was wearing and whether he was armed. [He] took notes so he could relay information to the dispatcher and other officers. [He learned] the shooter had fled the scene and was presumed to be armed with the firearm that was the murder weapon. [The suspect's] motive and whereabouts were unknown. The audio recording of police radio traffic confirms ... officers were trying to assess the emergency. Objectively, the primary focus of both Eva and [the officer] was to deal with that emergency, not to create an out-of-court substitute for trial testimony.”

Blacksher concluded that under Bryant the statements given to the officer were not testimonial and summarized Bryant's analysis: “1) The court must objectively evaluate the circumstances of the encounter along with the statements and actions of the parties. In this latter regard, ‘the relevant inquiry is not the subjective or actual purpose of the individuals involved ... , but rather the purpose that reasonable participants would have had, as ascertained from the individuals’ statements and actions’ in the given situation [¶] The inquiry is on the *primary* focus of both officer and declarant [¶] 2) The court should consider whether an ongoing emergency exists, or appears to exist, when the statement was made. Such an ongoing emergency focuses the participants on something other than obtaining evidence for trial [¶] The majority took care to clarify that the existence of an emergency is not the only circumstance in which a hearsay statement may not qualify as testimonial [¶] 3) Whether an ongoing emergency exists is a ‘highly context-dependent inquiry.’ ... Even when a threat to an initial victim is over, a threat to first responders and the public may still exist. The type of weapon involved may expand or limit the duration and scope of the emergency. A situation created by the use of fists may involve less ongoing danger than the use of a firearm [¶] 4) The medical condition of the declarant is a relevant consideration, as it bears on both the injured declarant's purpose in speaking and the potential scope of the emergency. ... [¶] 5) A non-testimonial encounter addressing an emergency may evolve, converting subsequent statements into testimonial ones. ... [¶] 6) Finally, regardless of the existence of an emergency, the informality of the statement and the circumstances of its acquisition are important considerations. Inquiries that are conducted in a disorganized way and in turbulent circumstances are distinguishable from a jail-house interview, as in *Crawford* or the sequestered preparation of an affidavit in *Hammon*” ([People v. Blacksher, 52 Cal. 4th at pp. 813-815.](#)) See [People v. Romero, 44 Cal. 4th 386, 420–422, 79 Cal. Rptr. 3d 334, 187 P.3d 56 \(2008\)](#) (Statements “are nontestimonial if the primary purpose is to deal with a contemporaneous emergency such as assessing the situation, dealing with threats, or apprehending a perpetrator. [Citations.] [The challenged] statements provided the police with information necessary for them to assess and deal with the situation, including taking steps to evaluate potential threats to others by the perpetrators, and to apprehend the perpetrators The primary purpose of the police in asking ... [the victim] to identify whether the detained individuals were the perpetrators, an identification made within five minutes of the arrival of the police, was to determine whether the perpetrators were still at large so as to pose an immediate threat.” ([Romero, 44 Cal. 4th at p. 422.](#)))

A sampling of intermediate appellate decisions finding statements of victims to be nontestimonial follows. In [People v. Johnson, 150 Cal. App. 4th 1467, 59 Cal. Rptr. 3d 405 \(6th Dist. 2007\)](#), as modified on denial of reh'g, (June 18, 2007), an officer responded to a report of domestic violence and the defendant opened the door with blood on his hands and shirt. A woman was screaming in the rear of the residence and, upon contacting her, the officer observed she had been beaten. He asked, “What happened?” She responded the defendant had assaulted her. The court recognized that the facts of the case were close to those in *Hammon*; the victim was in the protective presence of a police officer when she made the challenged statement. But it ruled the statement nontestimonial. At the time the officer asked his question, the officer did not know whether a crime had occurred. “The officer interrupted an ongoing emergency and obtained information from the victim in order to assess the situation.” ([People, 150 Cal. App. 4th at p. 1479](#); [People v. Chaney, 148 Cal. App. 4th 772, 56 Cal. Rptr. 3d 128 \(4th Dist. 2007\)](#); [People v. Pedroza, 147 Cal.](#)

[App. 4th 784, 793–794, 54 Cal. Rptr. 3d 636 \(2d Dist. 2007\).](#)) In [People v. Osorio, 165 Cal. App. 4th 603, 614, 81 Cal. Rptr. 3d 167 \(4th Dist. 2008\)](#) an officer arrived at an apartment house fire and was directed to an “injured party.” The officer had no information that an assault had occurred. After learning what had occurred, the officer asked and received a description of the assailant. The entire exchange lasted less than two minutes and did not constitute an in-depth interview or interrogation. He obtained only enough evidence to learn the dimension of the threat to the victim, firefighters and other officers in the area. The information obtained was not testimonial. In [People v. Johnson, 189 Cal. App. 4th 1216, 117 Cal. Rptr. 3d 132 \(1st Dist. 2010\)](#), review denied, (Feb. 16, 2011), the court held the victim's statements were nontestimonial when they were made during a 911 call from her car as she fled the scene where moments before her husband had fired a gun.

§ 2:117. Statements by injured victim

“The medical condition of the victim is important to the primary purpose inquiry to the extent it sheds light on the ability of the victim to have any purpose at all in responding to police questions [and] also provides important context for the first responder to judge the existence and magnitude of a continuing threat to the victim, themselves and the public.” ([Michigan v. Bryant](#), 131 S. Ct. 1143, 1159, 179 L. Ed. 2d 93, 84 Fed. R. Evid. Serv. 1033 (2011); [People v. Blacksher](#), 52 Cal. 4th 769, 814, 130 Cal. Rptr. 3d 191, 259 P.3d 370 (2011), cert. denied, 132 S. Ct. 1556, 182 L. Ed. 2d 184 (2012); [People v. Nelson](#), 190 Cal. App. 4th 1453, 1466–1467, 119 Cal. Rptr. 3d 56 (4th Dist. 2010), review denied, (Mar. 23, 2011); [People v. Osorio](#), 165 Cal. App. 4th 603, 613–614, 81 Cal. Rptr. 3d 167 (4th Dist. 2008) [statements by severely injured victim to paramedics at scene are admissible].) The Supreme Court cautioned that taking the victim's medical condition into account does not mean that all statements taken by police from a seriously injured victim are nontestimonial. ([Bryant](#), 131 S.Ct. at 1159.)

Even when the emergency is over, statements to medical professionals will often be nontestimonial. This determination will hinge on the medical professional's relationship to the police and the nature of the questions asked the victim. In [People v. Cage](#), 40 Cal. 4th 965, 986–988, 56 Cal. Rptr. 3d 789, 155 P.3d 205 (2007), the court concluded that a statement by an assault victim to a treating physician more than one hour after the crime was not testimonial. The victim responded to the doctor's question, “What happened?” and the doctor testified his sole object in asking the question was to learn “the exact nature of the wound, and thus the correct mode of treatment.” ([at p. 986](#)) Furthermore, there was no evidence the doctor was acting in conjunction with law enforcement, or that he had any evidence-gathering aim or made an effort to record or memorialize the victim's statement for later legal use. ([at page 987](#)). In [People v. Vargas](#), 178 Cal. App. 4th 647, 660–662, 100 Cal. Rptr. 3d 578 (2d Dist. 2009), review denied, (Feb. 3, 2010) the court concluded a sexual assault victim's statements to a forensic nurse specializing in sexual assault examinations were testimonial because, among other things, the nurse acted ““in an agency relationship with law enforcement,”” turning over the statements and evidence she collected to the police ([at p. 660](#)) and because the statements were collected in a formal manner for the primary purpose of proving past facts for use in a criminal trial and not to deal with a contemporaneous medical situation. ([at p. 661](#))

That the doctor in *Cage* was a mandated reporter (Pen. Code, § 1165.7, subd. (a)(21)) did not require a finding that the statements to him were testimonial. ([People v. Cage](#), 40 Cal. 4th 965, 988, 56 Cal. Rptr. 3d 789, 155 P.3d 205 (2007).) In [People v. Clark](#), 52 Cal. 4th 856, 927, 131 Cal. Rptr. 3d 225, 261 P.3d 243 (2011), cert. denied, 132 S. Ct. 1757, 182 L. Ed. 2d 543 (2012) the Supreme Court stated “We need not decide whether statements collected as mandated by California law as part of a sexual assault investigation are testimonial”

§ 2:118. Statements by undercover officers/informants

In the course of taping statements by unwitting declarants, a confidential informant (or undercover officer) may make statements. The statements by the police agent are not testimonial if they are not introduced for their truth. That is, they may be introduced to provide “context” for the statements of the co-conspirators ([U.S. v. Hendricks, 395 F.3d 173, 184, 66 Fed. R. Evid. Serv. 266 \(3d Cir. 2005\)](#)) or “to supply meaning to defendant's conduct or silence in the face of the [declarant's] accusatory statements.” (See [People v. Combs, 34 Cal. 4th 821, 842, 22 Cal. Rptr. 3d 61, 101 P.3d 1007 \(2004\)](#).)

§ 2:119. Volunteered statements

In a footnote, Davis noted that the two statements in the cases before it were the products of interrogations. “This is not to imply, however, that statements made in the absence of any interrogation are necessarily nontestimonial. The Framers were no more willing to exempt from cross-examination volunteered testimony or answers to open-ended questions than they were to exempt answers to detailed interrogation.” ([Davis v. Washington, 547 U.S. 813, 822–823 n.1, 126 S. Ct. 2266, 165 L. Ed. 2d 224, 70 Fed. R. Evid. Serv. 472, 30 A.L.R.6th 599 \(2006\).](#))

§ 2:120. Statements by unwitting declarants: co-conspirators and young children

If a co-conspirator makes statements in furtherance of the conspiracy (admissible under the hearsay exception in § 1223), they should not be labeled “testimonial,” even though the listener is a “false friend,” i.e., an undercover officer or police informant. [Crawford, 541 U.S. at 58](#) favorably cites [Bourjaily v. U.S., 483 U.S. 171, 107 S. Ct. 2775, 97 L. Ed. 2d 144, 22 Fed. R. Evid. Serv. 1105 \(1987\)](#), where a statement to an undercover FBI agent was admitted over a Confrontation Clause challenge. Crawford concluded the co-conspirator's declaration was not testimonial because it was made “unwittingly.” ([Crawford, 541 U.S. at p. 58](#); see [U.S. v. Saget, 377 F.3d 223, 229, 64 Fed. R. Evid. Serv. 1195 \(2d Cir. 2004\)](#), opinion supplemented, [108 Fed. Appx. 667 \(2d Cir. 2004\)](#) (Sotomayor, J.) [Declarant's tape recorded statements to a confidential informant, whose true status is unknown to the declarant, do not constitute testimony within the meaning of Crawford].) Bryant has expanded the factors considered in the determination of testimonial to include the purpose of the listener as well as the speaker. In the context of undercover informants taping unwitting co-conspirators that purpose will be manifest: to investigate criminal activity and develop evidence to prosecute its participants. Though Bryant could change the result in *Bourjaily*, it seems highly unlikely that the Supreme Court will reach this result and effectively bar the use of such statements in criminal prosecutions.

When a perpetrator makes statements to a “true friend” who subsequently reports the information to the police, the statements are not testimonial. ([People v. Cervantes, 118 Cal. App. 4th 162, 12 Cal. Rptr. 3d 774 \(2d Dist. 2004\)](#); [People v. Rincon, 129 Cal. App. 4th 738, 28 Cal. Rptr. 3d 844 \(2d Dist. 2005\)](#); [U.S. v. Lee, 374 F.3d 637, 643 \(8th Cir. 2004\)](#).)

The United States Supreme Court has not yet addressed the application of Crawford to young children who are abuse victims or who witness a crime and do not understand the concept of a criminal prosecution or the role their statements to police might play in one. Similarly, the police might mask their involvement in taking such a statement, precluding even an older, more knowledgeable child from an awareness of the police role. It is submitted that in either situation the child's ignorance resembles the co-conspirator's and suggests that any statement provided is not testimonial because the declarant is not aware he/she is talking to the police. (See, also, [People v. Morgan, 125 Cal. App. 4th 935, 946–947, 23 Cal. Rptr. 3d 224 \(3d Dist. 2005\)](#) [During search of home pursuant to a warrant, officer answers phone and caller asks to buy drugs. Though introduced for its truth, the statement is not testimonial because, among other reasons, it was made “unknowingly” to the police.].)

In [People v. Sisavath, 118 Cal. App. 4th 1396, 13 Cal. Rptr. 3d 753 \(5th Dist. 2004\)](#), however, the court applied a different analysis. The court considered the videotaped statement of a four-year old child abuse victim made to a trained interviewer employed by the county's Multi-disciplinary Interview Center, a facility designed to interview suspected child abuse victims. A prosecutor and an investigator from the District Attorney's office attended the interview that was conducted after the filing of the information. In evaluating the reasonable belief of the declarant, the court looked at it from the perspective of an outside neutral observer: Would an objective observer “reasonably expect the statement to be available for use in a prosecution?” ([People v. Sisavath, 118 Cal. App. 4th 1396, 13 Cal. Rptr. 3d 753 \(5th Dist. 2004\)](#).) Sisavath specifically rejected applying the objective test to “the same category of persons as the actual witness—here an objective four year old.” ([at p. 1402](#) n.3.) Relying on this analysis, which depends upon a reasonable person with a greater ability to appreciate the circumstances of the interview than the child-declarant, Sisavath found the statement testimonial. This approach seems inconsistent with Crawford. To the extent the objective

circumstances suggest a child does not know he or she is talking to the police, it is submitted that the “ignorant” child's statements are analogous to the statements made by “unwitting” participants in the crime and should be deemed nontestimonial.

§ 2:121. Statements to civilians

[Michigan v. Bryant](#), 131 S. Ct. 1143, 1155 n.3, 179 L. Ed. 2d 93, 84 Fed. R. Evid. Serv. 1033 (2011), specifically reserved the question whether statements to someone other than a law enforcement officer might be testimonial. To date, no statement found testimonial by the United States Supreme Court was made to a non-government agent. ([People v. Blacksher](#), 52 Cal. 4th 769, 813, 130 Cal. Rptr. 3d 191, 259 P.3d 370 (2011), cert. denied, 132 S. Ct. 1556, 182 L. Ed. 2d 184 (2012)). The same is true about decisions by the California Supreme Court. For example, in [Blacksher](#), the distraught witness's statements regarding the murder of her daughter and grandson to family members lacked the “formality and solemnity characteristic of testimony.” ([Blacksher](#), at p. 818.) In [People v. Griffin](#), 33 Cal. 4th 536, 579, 15 Cal. Rptr. 3d 743, 93 P.3d 344 (2004) (disapproved of by, [People v. Riccardi](#), 54 Cal. 4th 758, 144 Cal. Rptr. 3d 84, 281 P.3d 1 (2012)), the California Supreme Court considered a statement made by the murder victim to a friend at school shortly before the homicide, in which she expressed concern that the defendant would attempt to molest her later that day, when she returned home. The court held that the statement was not testimonial because the listener was a friend. (Accord, [People v. Gutierrez](#), 45 Cal. 4th 789, 812–813, 89 Cal. Rptr. 3d 225, 200 P.3d 847 (2009); see [Giles v. California](#), 554 U.S. 353, 376, 128 S. Ct. 2678, 2692–2693, 171 L. Ed. 2d 488 (2008): “Statements to friends and neighbors about [domestic] abuse and violence” are not testimonial and are barred only, if at all, by state hearsay rules.) In [People v. Geier](#), 41 Cal. 4th 555, 605, 61 Cal. Rptr. 3d 580, 161 P.3d 104 (2007), the California Supreme Court limited testimonial statements to those made to a law enforcement officer, including those in an agency relationship with law enforcement and applied this rule to include members of a private company (Cellmark) “paid to do work as part of a government investigation.” In [People v. Nelson](#), 190 Cal. App. 4th 1453, 1466–1467, 119 Cal. Rptr. 3d 56 (4th Dist. 2010), review denied, (Mar. 23, 2011), the court assumed that a firefighter “could be an agent of the police for purposes of securing a testimonial statement,” but concluded that the statement was not testimonial because it was taken during an emergency. Even civilians who are not paid by the government may become law enforcement agents if the prosecution authorities have provided training to that individual on questioning victims and witnesses. (See [People v. Vargas](#), 178 Cal. App. 4th 647, 660–662, 100 Cal. Rptr. 3d 578 (2d Dist. 2009), review denied, (Feb. 3, 2010).)

The logic of the Confrontation Clause does not seem to limit its reach to statements made to government agents. Unlike certain criminal procedure rights set out in the Bill of Rights, the forbidden act is not obtaining the evidence (the testimonial statement) but introducing the evidence against a defendant who has not had an opportunity to cross-examine the declarant. One example of a statement to a friend that may be treated as testimonial arises when the declarant uses the friend to deliver a message to the police. Thus, if the declarant in [Griffin](#) had also directed her friend to relay the declarant's concerns to the police if anything happened to her, the messenger is effectively the declarant's agent and the circumstances surrounding the declarant's statements to the messenger and the messenger's statement to the police should be evaluated in determining if the Sixth Amendment has been triggered.

A second example occurs if the “civilian” consciously sets out to obtain statements from victims to provide them to prosecution authorities. Victim advocacy groups, for example, might be encouraged to engage in such practices if it became clear that, so long as the advocates were not trained by the police, the statements provided by the victims could be introduced at trial without regard for the Confrontation Clause.

§ 2:122. Forensic analyst reports prepared by non-testifying experts—Are they business records?

Forensic analyst reports prepared by government employees or independent organizations hired by the government raise challenging questions under *Crawford*. Criminalist reports, autopsies and DNA comparisons are common examples. In *Crawford*, the court noted that business records are not “by their nature ... testimonial.” ([Crawford, 541 U.S. at 56.](#)) In [Melendez-Diaz v. Massachusetts, 557 U.S. 305, 129 S. Ct. 2527, 174 L. Ed. 2d 314 \(2009\)](#), the High Court clarified and limited that statement, concluding that a lab report prepared in connection with a drug prosecution was not the type of business record immune from Confrontation Clause analysis. Documents maintained in the regular course of business may be business records but “not ... if the regularly conducted business activity is the production of evidence for use at trial.” ([Melendez-Diaz, 557 U.S. at 321](#)) One example of a nontestimonial business record cited by *Melendez-Diaz* is a medical record prepared by a treating physician. ([Melendez-Diaz, 557 U.S. at 312, fn.2](#))

§ 2:123. Forensic analyst reports prepared by non-testifying experts—What is the primary purpose?

It is common for a prosecution expert to rely upon inadmissible matter, for example a report prepared by a non-testifying analyst, in forming his/her opinion. The expert may often be asked to testify about this basis evidence on direct examination. [Evid. Code, §§ 801, subd. \(b\)](#) and [802](#) and [Fed. R. Evid. 703](#) and [705](#) permit this. Whether this testimony violates the Confrontation Clause depends, initially, on whether the contents of the analyst's report is admitted for its truth. (See the discussion in § 4:23.) The United States Supreme Court *seems* to have resolved this issue, concluding the statement is admitted for its truth. (See the discussion in § 2:112.) If admitted for its truth, then we must determine if it is testimonial. In large part, this means deciding the primary purpose of the out-of-court statement. The United States Supreme Court has addressed forensic analyst reports in three cases and it is clear that eight of the justices are evenly divided in defining “primary purpose.” Four of them have concluded that a statement is testimonial if its primary purpose is to produce evidence for trial. ([Williams v. Illinois, 132 S. Ct. 2221, 2273, 183 L. Ed. 2d 89 \(2012\)](#).) Four others believe a statement is testimonial only if it has an accusatory purpose. ([Williams, 132 S.Ct. at 2243](#).) In each case, Justice Thomas has held the decisive vote and did not base his decision on the primary purpose of the out-of-court statement, but on its formality and solemnity.

The United States Supreme Court initially addressed this issue in *Melendez-Diaz*, where it considered a sworn affidavit prepared by a crime lab in a drug prosecution, and introduced directly into evidence. The affidavit stated the substance seized from the defendant was cocaine of a particular weight. *Melendez-Diaz* concluded this affidavit fell “within the ‘core class of testimonial statements.’” ([Melendez-Diaz, 557 U.S. at 310](#)) “[N]ot only were the affidavits ‘made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial’ [citation], but under Massachusetts law the *sole purpose* of the affidavits was to provide” evidence at trial. ([Melendez-Diaz, 557 U.S. at 311](#)) As a matter of state law, California, unlike Massachusetts does not admit such affidavits, but the reasons given by *Melendez-Diaz* for deeming the statements to be testimonial are insightful. In an opinion written by Justice Scalia, in which Justice Thomas separately concurred, *Melendez-Diaz* rejected arguments that Crawford should not apply because:

- (1) the analysts were not “accusatory” witnesses ([Melendez-Diaz, 557 U.S. at 313](#));
- (2) the analysis resulted from neutral, scientific testing ([Melendez-Diaz, 557 U.S. at 318](#));
- (3) the affidavit contained near-contemporaneous observations, not a recollection of past events ([Melendez-Diaz, 557 U.S. at 315–316](#)); and
- (4) the affidavit was not provided in response to an interrogation ([Melendez-Diaz, 557 U.S. at 316–317](#)).

Justice Thomas joined Scalia's opinion, but clarified that he did so because the affidavit was an example of “formalized testimonial materials.” ([Melendez-Diaz, 557 U.S. at 329](#)) Justices Kennedy, Breyer, Roberts and Alito dissented.

While *Melendez-Diaz* upheld “simple” notice-and-demand statutes ([Melendez-Diaz, 557 U.S. at 326–327 and fn. 12](#)), it rejected the argument that the Confrontation Clause was satisfied by the Massachusetts procedure, in which the defendant had the right to subpoena the analysts. ([Melendez-Diaz, 557 U.S. at 324–325](#)) Note, *Melendez-Diaz* also rejected the contention that “anyone whose testimony may be relevant in establishing the chain of custody, authenticity of the sample or accuracy of the testing device must appear in person as part of the prosecution's case.” But if the prosecution chooses to present evidence from such a person, it must be “introduced live.” ([Melendez-Diaz, 557 U.S. at](#)

[311 fn.1](#)) “Additionally, documents prepared in the regular course of equipment maintenance may well qualify as non-testimonial records.” ([Melendez-Diaz, 557 U.S. at 311 n.1](#))

Two years after *Melendez-Diaz*, the high court addressed the issue in [Bullcoming v. New Mexico, 131 S. Ct. 2705, 180 L. Ed. 2d 610 \(2011\)](#), a driving under the influence case. In *Bullcoming*, the Court reversed the trial court's decision to admit the findings in a forensic analyst's certified report detailing the defendant's blood-alcohol content, among other things, which were introduced through the testimony of a different analyst from the same laboratory who had neither observed nor reviewed the original analysis. ([Bullcoming, 131 S. Ct. at 2710–2712](#)) The certified report was testimonial because it was an “‘affirmation made for the purpose of establishing or proving some fact’” in a criminal proceeding, and was “created solely for an ‘evidentiary purpose’” ([Bullcoming, 131 S. Ct. at 2708](#)) “As a rule, if an out-of-court statement is testimonial in nature, it may not be introduced against the accused at trial unless the witness who made the statement is unavailable and the accused has had a prior opportunity to confront that witness.” ([Bullcoming, 131 S. Ct. at 2713](#)) *Bullcoming* determined that a “surrogate” who played no role in preparing or reviewing a technician's report may not testify to the testimonial findings in that report. ([Bullcoming, 131 S. Ct. at 2710, 2713](#)) In Part II of her concurring opinion, Justice Sotomayor noted that *Bullcoming* “is not a case in which the person testifying is a supervisor, reviewer, or someone else with a personal, albeit limited, connection to the scientific test at issue.” ([Bullcoming, 131 S. Ct. at 2722](#).) By his decision not to join footnote 4 of the majority opinion, Justice Thomas indicated his continuing skepticism about the primary purpose test. He signed on to the majority opinion apparently because of the formality of the forensic analyst's report; though not an affidavit, it had been certified. The four *Melendez-Diaz* dissenters dissented in *Bullcoming* as well.

The most recent United States Supreme Court decision in this area, [Williams v. Illinois, 132 S. Ct. 2221, 183 L. Ed. 2d 89 \(2012\)](#) addressed whether an analyst's report that was neither an affidavit nor a certificate was nonetheless “testimonial.” The four justices who had dissented in *Melendez-Diaz* and *Bullcoming* wrote the lead opinion in *Williams*. ([Williams, 132 S. Ct. at 2227](#)) *Williams* involved a DNA expert who opined that a DNA profile produced by an outside laboratory (Cellmark) from a vaginal swab of a rape victim matched the defendant's DNA profile. The expert testified the Cellmark report stated the DNA profile it had been provided was produced from semen found on the victim's vaginal swab. One issue addressed by the court was whether that testimony was introduced for its truth. (See the discussion in §§ 2:112 and 4:23.) On the second issue, whether the Cellmark report was testimonial, the four dissenters in *Melendez-Diaz* and *Bullcoming* joined in an opinion designated the lead opinion because Justice Thomas joined in the judgment. The lead opinion concluded that testimonial statements “hav[e] the primary purpose of *accusing a targeted individual of engaging in criminal conduct*.” ([Williams, 132 S. Ct. at 2242](#); emphasis added) Because no suspect had been identified at the time of the Cellmark report, it was not testimonial. ([Williams, 132 S. Ct. at 2228, 2243–2244](#))

Though Justice Thomas rejected the “plurality's flawed analysis” ([Williams, 132 S. Ct. at 2255](#)) he joined its judgment “solely because Cellmark's statements lacked the requisite ‘formality and solemnity’ to be considered ‘testimonial’ for purposes of the Confrontation Clause.” ([Williams, 132 S. Ct. at 2255](#)) Notably, and unlike *Melendez-Diaz* and *Bullcoming*, Thomas did not join the lead opinion in whole or in part. Ultimately Thomas' opinion rested on the difference between the affidavit in *Melendez-Diaz* and the certified findings in *Bullcoming* on the one hand and the mere report in *Williams*. As the dissenters noted, “Justice Thomas' unique method of defining testimonial statements ... grants constitutional significance to minutia.” ([Williams, 132 S. Ct. at 2276](#)) Worse, Thomas' approach lends itself to bad faith attempts to avoid the test of formality. ([Williams, 132 S. Ct. at 2276](#))

Soon after *Williams*, the California Supreme Court issued opinions in three forensic analyst report cases, [People v. Lopez, 55 Cal. 4th 569, 286 P.3d 469 \(2012\)](#) (forensic alcohol report); [People v. Dungo, 55 Cal.4th 608, 286 P.3d 442 \(2012\)](#) (autopsy); and [People v. Ruttirschmidt, 55 Cal. 4th 608, 286 P.3d 442 \(2012\)](#) (autopsy). In each case the expert who testified relied upon a forensic analyst report he or she did not prepare and provided the jury with certain information from that report. That these three cases generated nine opinions reflects the confused state of the law post-*Williams*. Among the significant issues decided in these cases are the following. First, the court recognized that when an expert relies upon and testifies to out-of-court statements, these statements are admitted for their truth and are subject to the Confrontation Clause. ([People v. Lopez, 55 Cal. 4th 569, 286 P.3d 469, 476 \(2012\)](#); see the discussion in §§ 2:112 and 4:23.) Second, in *Dungo*, the five-Justice majority determined that statements in the autopsy report regarding the deceased's physical condition should be distinguished from conclusions reached by the absent pathologist and should be viewed as insufficiently “formal” to be treated as testimonial. ([People v. Dungo, 55 Cal. 4th 608, 286 P.3d 442, 449 \(2012\)](#).) This determination assumes the only expert conclusions heard by the jury are those formed by the testifying expert. Third, in *Dungo*, the court determined that as to such statements the report is prepared for numerous purposes and the production of evidence for trial is not the primary purpose. ([People v. Dungo, 55 Cal. 4th 608, 286 P.3d 442, 458 \(2012\)](#).) This determination was reached even though, at the time the absent pathologist conducted the examination, a police officer was present, the police had arrested and interrogated a suspect, who had confessed, and the pathologist had been informed of that confession. ([People v. Dungo, 55 Cal. 4th 608, 286 P.3d 442, 458 \(2012\)](#), Chin, J, concurring) Fourth, In *Lopez*, a vehicular manslaughter case, the testifying expert relied upon a toxicology report prepared by another. According to the court the only critical fact in that report relied upon and testified to linked the blood analyzed to the defendant. This link consisted of a number placed on the vial of blood after it was taken from the defendant that established it was the same blood tested in the gas chromatograph. The court concluded even if the toxicology report as a whole was testimonial, reporting the number of the blood vial was not sufficiently formal or solemn to be treated as testimonial. ([People v. Lopez, 55 Cal. 4th 569, 286 P.3d 469, 479 \(2012\)](#).) A concurring opinion reformulated this to say that reporting the number of the vial was a business record not prepared to produce evidence at trial. ([People v. Lopez, 55 Cal. 4th 569, 286 P.3d 469, 482 \(2012\)](#), Corrigan, J, concurring) Finally, *Lopez* decided that the printout of the results of the gas chromatograph was not a statement and, therefore, not subject to the Confrontation Clause. ([People v. Lopez, 55 Cal. 4th 569, 286 P.3d 469, 478 \(2012\)](#).) So long as the conclusion about the meaning of these results is reached by the expert who testifies, *Crawford* is not implicated.

Though the extent to which *Crawford* applies to forensic analyst reports is still an open question at the United States Supreme Court, our high court has clearly aligned itself with the four justices who have consistently opposed applying *Crawford* to these reports in *Melendez-Diaz*, *Bullcoming* and *Williams*. This should come as no surprise. In [People v. Geier, 41 Cal. 4th 555, 593–607, 61 Cal. Rptr. 3d 580, 161 P.3d 104 \(2007\)](#), decided prior to *Melendez-Diaz*, our Supreme Court foreshadowed many of the arguments advanced by the Justices who would not apply *Crawford* to forensic analyst reports. *Geier* permitted a DNA expert to testify that based on her review of the notes prepared by another, nontestifying expert, the DNA extraction was conducted according to protocol. Based on the genetic profiles extracted, the expert testified the DNA from the vaginal swabs of the rape-murder victim matched the defendant's. The Supreme Court concluded that, as to DNA reports, “a statement is testimonial if (1) it is made to a law enforcement officer (including those in an agency relationship to law enforcement) and (2) describes a past fact related to criminal activity for (3) potential use at trial.” ([Geier, 41 Cal. 4th at 605](#).) Because the notes of the nontestifying expert “constitute a contemporaneous recollection of observable events rather than the documentation of past events” they were nontestimonial. ([Geier, 41 Cal. 4th at 605](#)) *Geier* went on to point out that these notes were generated as part

of a standardized scientific protocol. After recounting the procedures used to analyze the samples, the court noted they were not made in order to incriminate the defendant. Further, the accusatory opinions that the defendant's DNA matched and the unlikelihood of this result if the defendant was not the donor were “reached and conveyed” by the testifying witness. ([Geier, 41 Cal. 4th at 605](#)) By undermining the apparent clarity of the rulings in *Melendez-Diaz* and *Bullcoming*, *Williams* effectively allowed our Supreme Court to approximate the position it had earlier staked out in *Geier*.

A sampling of California and federal opinions on the admission of certain documentary evidence follows: [U.S. v. Bahena-Cardenas, 411 F.3d 1067, 1074–1075, 67 Fed. R. Evid. Serv. 579 \(9th Cir. 2005\)](#) [warrant of deportation is “routine, objective cataloguing of unambiguous factual matter” and therefore nontestimonial]; [Melendez-Diaz v. Massachusetts, 557 U.S. 305, 129 S. Ct. 2527, 2539, 174 L. Ed. 2d 314 \(2009\)](#); [certificate of non-existence of record is testimonial]; [People v. Saffold, 127 Cal. App. 4th 979, 26 Cal. Rptr. 3d 190 \(2d Dist. 2005\)](#) [proofs of service found nontestimonial]; [People v. Taulton, 129 Cal. App. 4th 1218, 29 Cal. Rptr. 3d 203 \(4th Dist. 2005\)](#) [records of conviction prepared under [Pen. Code, § 969, subd. \(b\)](#) found nontestimonial]; [People v. Morris, 166 Cal. App. 4th 363, 83 Cal. Rptr. 3d 253 \(1st Dist. 2008\)](#) [CLETS rap sheets are nontestimonial]; and [People v. Moreno, 192 Cal. App. 4th 692, 711, 121 Cal. Rptr. 3d 669 \(4th Dist. 2011\)](#), review denied, (May 11, 2011) [clerk's certification of the authenticity of section 969b materials is not testimonial; accord, [People v. Perez, 195 Cal. App. 4th 801, 804, 125 Cal. Rptr. 3d 723 \(4th Dist. 2011\)](#)].

***Crawford v. Washington* (2004) 541 U.S. 36**

***Davis v. Washington* (2006) 547 U.S. 813**

***Michigan v. Bryant* (2011) 131 S.Ct. 1143**

***Giles v. CA.* (2008) 554 U.S. 353**

***US v. Owens* (1988) 484 U.S. 555**

***People v. Blacksher* (2011) 52 Cal.4th 769**

***P.v. Cage* (2007) 40 Cal.4th 965**

***P.v. Monterroso* (2004) 34 Cal.4th 743**

***P.v. Wilson* (2005) 36 Cal.4th 309**

***P.v. Geier* (2007) 41 Cal.4th 555**

***P.v. Pirwani* (2004) 119 Cal.App.4th 770**

***P. v. Cooper* (2007) 148 Cal.App.4th 731**

***Melendez-Diaz v. Mass* (2009) 557 U.S. 305**

***Bullcoming v. New Mexico* (2011) 131 S.Ct.
2705**

***Williams v. Ill.* (2012) 132 S.Ct. 2221**

***People v. Lopez* (2012) 55 Cal.4th 569**

***People v. Dungo* (2012) 55 Cal.4th 608**

***P.v. Thomas* (2005) 130 Cal.App.4th 1202**

***P. v. Hill* (2011) 191 Cal.App.4th 1104**

Primary Assignment Orientations and Elder Abuse Course

Handling Elder Abuse Issues

Hypothetical Fact Pattern – Crawford Scenario

Vanna Weight (V) was 89 years old and lived alone in the home she had shared with her late husband for over 50 years. V's neighbors, Charles and Connie Intermeddler, contacted the police on June 1, 2009 and reported they had been concerned about V's welfare since her new caretaker, Dan Dreadful (D), was hired in March.

Detective Jones and a nurse and a social worker employed by Adult Protective Services (APS) went to V's home to check on her welfare. They observed that the interior of the home was clean, but somewhat disorderly. They conducted an interview of V (first interview) and videotaped it. During this interview, V engaged in some repetitive questioning and showed other signs of memory loss. V stated that she was very appreciative of D's help and trusted him. She acknowledged giving him money to pay her bills, but not for himself. During the interview a "Folstein mini-mental" evaluation of V was conducted to determine if she was mentally impaired. That test revealed significant impairment.

Detective Jones returned alone in six weeks and conducted a second interview. Jones observed that, with the exception of one bedroom, the house was clean. V's bedroom was messy and smelled badly. In the second interview, V's attitude towards D had changed dramatically. She was alternatively depressed about her life and angry with D, whom she accused of stealing from her and keeping her a prisoner in her bedroom. She provided Jones with her check book and other bank records. She denied ever giving D permission to use her

checkbook except to pay her bills, which she estimated at less than \$500 per month.

Detective Jones reviewed V's bank records and interviewed D regarding large withdrawals he had made from the account.

D was charged with a felony, theft from an elder adult (Penal Code section 368, sub. (e)) with an allegation that he had misappropriated more than \$50,000 within the meaning of Penal Code section 12022.6. sub (a).

In March 2010 V testified at D's preliminary hearing in a confused fashion that occasionally bordered on the incoherent. She was generally very positive about D's treatment of her, but twice complained he hit her, and four times said he "robbed" her, once while holding her prisoner in Wyoming. She was never questioned regarding her two interviews with the Detective Jones.

On April 29, 2008, V died of natural causes unrelated to any conduct by D.

At trial the prosecution announced its intention to call an expert to testify as to V's mental capacity, specifically her inability to make responsible financial decisions. One fact relied upon by the expert is that V had said in her second interview that D was stealing from her, but she continued to trust him with control over her checking account.



PART 1. OF CRIMES AND PUNISHMENTS [25. - 680.] (*Part 1 enacted 1872.*)

TITLE 9. OF CRIMES AGAINST THE PERSON INVOLVING SEXUAL ASSAULT, AND CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS [261. - 368.5.] (*Heading of Title 9 amended by Stats. 1982, Ch. 1111, Sec. 2.*)

CHAPTER 13. Crimes Against Elders, Dependent Adults, and Persons with Disabilities [368. - 368.5.] (*Chapter 13 heading added by Stats. 2010, Ch. 617, Sec. 2.*)

368. (a) The Legislature finds and declares that crimes against elders and dependent adults are deserving of special consideration and protection, not unlike the special protections provided for minor children, because elders and dependent adults may be confused, on various medications, mentally or physically impaired, or incompetent, and therefore less able to protect themselves, to understand or report criminal conduct, or to testify in court proceedings on their own behalf.

(b) (1) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which his or her person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) Any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:

(1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and

imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).

(2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(e) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:

(1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).

(2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(f) Any person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(g) As used in this section, "elder" means any person who is 65 years of age or older.

(h) As used in this section, "dependent adult" means any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. Any defendant ordered to be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

(Amended (as amended by Stats. 2011, Ch. 15, Sec. 336) by Stats. 2011, Ch. 366, Sec. 1.5. Effective January 1, 2012.)

WELFARE AND INSTITUTIONS CODE

SECTION 15600

(a) The Legislature recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons.

(b) The Legislature further recognizes that a significant number of these persons are elderly. The Legislature desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment.

(c) The Legislature further recognizes that a significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection.

(d) The Legislature recognizes that most elders and dependent adults who are at the greatest risk of abuse, neglect, or abandonment by their families or caretakers suffer physical impairments and other poor health that place them in a dependent and vulnerable position.

(e) The Legislature further recognizes that factors which contribute to abuse, neglect, or abandonment of elders and dependent adults are economic instability of the family, resentment of caretaker responsibilities, stress on the caretaker, and abuse by the caretaker of drugs or alcohol.

(f) The Legislature declares that this state shall foster and promote community services for the economic, social, and personal well-being of its citizens in order to protect those persons described in this section.

(g) The Legislature further declares that uniform state guidelines, which specify when county adult protective service agencies are to investigate allegations of abuse of elders and dependent adults and the appropriate role of local law enforcement is necessary in order to ensure that a minimum level of protection is provided to elders and dependent adults in each county.

(h) The Legislature further finds and declares that infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits.

(i) Therefore, it is the intent of the Legislature in enacting this chapter to provide that adult protective services agencies, local long-term care ombudsman programs, and local law enforcement agencies shall receive referrals or complaints from public or private agencies, from any mandated reporter submitting reports pursuant to Section 15630, or from any other source having reasonable cause to know that the welfare of an elder or dependent adult is endangered, and shall take any actions considered necessary to protect the elder or dependent adult and correct the situation and ensure the individual's safety.

(j) It is the further intent of the Legislature in adding Article 8.5 (commencing with Section 15657) to this chapter to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.

WELFARE AND INSTITUTIONS CODE

SECTION 15657.03

(a) (1) An elder or dependent adult who has suffered abuse as defined in Section 15610.07 may seek protective orders as provided in this section.

(2) A petition may be brought on behalf of an abused elder or dependent adult by a conservator or a trustee of the elder or dependent adult, an attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney, a person appointed as a guardian ad litem for the elder or dependent adult, or other person legally authorized to seek such relief.

(b) For the purposes of this section:

(1) "Conservator" means the legally appointed conservator of the person or estate of the petitioner, or both.

(2) "Petitioner" means the elder or dependent adult to be protected by the protective orders and, if the court grants the petition, the protected person.

(3) "Protective order" means an order that includes any of the following restraining orders, whether issued ex parte, after notice and hearing, or in a judgment:

(A) An order enjoining a party from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, or coming within a specified distance of, or disturbing the peace of, the petitioner, and, in the discretion of the court, on a showing of good cause, of other named family or household members or a conservator, if any, of the petitioner.

(B) An order excluding a party from the petitioner's residence or dwelling, except that this order shall not be issued if legal or equitable title to, or lease of, the residence or dwelling is in the sole name of the party to be excluded, or is in the name of the party to be excluded and any other party besides the petitioner.

(C) An order enjoining a party from specified behavior that the court determines is necessary to effectuate orders described in subparagraph (A) or (B).

(4) "Respondent" means the person against whom the protective orders are sought and, if the petition is granted, the restrained person.

(c) An order may be issued under this section, with or without notice, to restrain any person for the purpose of preventing a recurrence of abuse, if a declaration shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse of the petitioning elder or dependent adult.

(d) Upon filing a petition for protective orders under this section, the petitioner may obtain a temporary restraining order in accordance with Section 527 of the Code of Civil Procedure, except to the extent this section provides a rule that is inconsistent. The temporary restraining order may include any of the protective orders described in paragraph (3) of subdivision (b). However, the court may issue an ex parte order excluding a party from the petitioner's residence or dwelling only on a showing of all of the following:

(1) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(2) That the party to be excluded has assaulted or threatens to assault the petitioner, other named family or household member of the petitioner, or a conservator of the petitioner.

(3) That physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or a conservator of the petitioner.

(e) A request for the issuance of a temporary restraining order without notice under this section shall be granted or denied on the same day that the petition is submitted to the court, unless the petition is filed too late in the day to permit effective review, in which case the order shall be granted or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court.

(f) Within 21 days, or, if good cause appears to the court, 25 days, from the date that a request for a temporary restraining order is granted or denied, a hearing shall be held on the petition. If no request for temporary orders is made, the hearing shall be held within 21 days, or, if good cause appears to the court, 25 days, from the date that the petition is filed.

(g) The respondent may file a response that explains or denies the alleged abuse.

(h) The court may issue, upon notice and a hearing, any of the orders set forth in paragraph (3) of subdivision (b). The court may issue, after notice and hearing, an order excluding a person from a residence or dwelling if the court finds that physical or emotional harm would otherwise result to the petitioner, other named family or household member of the petitioner, or conservator of the petitioner.

(i) (1) In the discretion of the court, an order issued after notice and a hearing under this section may have a duration of not more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. These orders may be renewed upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the order.

(2) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(3) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present in court and does not challenge the sufficiency of the notice.

(j) In a proceeding under this section, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of abuse. The support

person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges he or she is a victim of abuse in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings if the person who alleges he or she is a victim of abuse and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(k) Upon the filing of a petition for protective orders under this section, the respondent shall be personally served with a copy of the petition, notice of the hearing or order to show cause, temporary restraining order, if any, and any declarations in support of the petition. Service shall be made at least five days before the hearing. The court may, on motion of the petitioner or on its own motion, shorten the time for service on the respondent.

(l) A notice of hearing under this section shall notify the respondent that if he or she does not attend the hearing, the court may make orders against him or her that could last up to five years.

(m) **(1)** The court may, upon the filing of a declaration by the petitioner that the respondent could not be served within the time required by statute, reissue an order previously issued and dissolved by the court for failure to serve the respondent. The reissued order shall remain in effect until the date set for the hearing.

(2) The reissued order shall state on its face the date of expiration of the order.

(n) **(1)** If a respondent, named in an order issued under this section after a hearing, has not been served personally with the order but has received actual notice of the existence and substance of the order through personal appearance in court to hear the terms of the order from the court, no additional proof of service is required for enforcement of the order.

(2) If the respondent named in a temporary restraining order is personally served with the order and notice of hearing with respect to a restraining order or protective order based on the temporary restraining order, but the respondent does not appear at the hearing, either personally or by an attorney, and the terms and conditions of the restraining order or protective order issued at the hearing are identical to the temporary restraining order, except for the duration of the order, then the restraining order or protective order issued at the hearing may be served on the respondent by first-class mail sent to the respondent at the most current address for the respondent that is available to the court.

(3) The Judicial Council form for temporary orders issued pursuant to this subdivision shall contain a statement in substantially the following form:

"If you have been personally served with a temporary restraining order and notice of hearing, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that is the same as this temporary restraining order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the following address: ____.

If that address is not correct or you wish to verify that the temporary restraining order was converted to a restraining order at the hearing without substantive change and to find out the duration of that order, contact the clerk of the court."

(o) (1) Information on any protective order relating to elder or dependent adult abuse issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with either paragraph (2) or (3).

(2) The court shall order the petitioner or the attorney for the petitioner to deliver a copy of an order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by the close of the business day on which the order, reissuance, extension, modification, or termination was made, to each law enforcement agency having jurisdiction over the residence of the petitioner, and to any additional law enforcement agencies within the court's discretion as are requested by the petitioner.

(3) Alternatively, the court or its designee shall transmit, within one business day, to law enforcement personnel all information required under subdivision (b) of Section 6380 of the Family Code regarding any order issued under this section, or a reissuance, extension, modification, or termination of the order, and any subsequent proof of service, by either one of the following methods:

(A) Transmitting a physical copy of the order or proof of service to a local law enforcement agency authorized by the Department of Justice to enter orders into the California Law Enforcement Telecommunications System (CLETS).

(B) With the approval of the Department of Justice, entering the order or proof of service into CLETS directly.

(4) Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported abuse.

(5) An order issued under this section shall, on request of the petitioner, be served on the respondent, whether or not the respondent has been taken into custody, by any law enforcement officer who is present at the scene of reported abuse involving the parties to the proceeding. The petitioner shall provide the officer with an endorsed copy of the order and a proof of service, which the officer shall complete and send to the issuing court.

(6) Upon receiving information at the scene of an incident of abuse that a protective order has been issued under this section, or that a person who has been taken into custody is the respondent to that order, if the protected person cannot produce an endorsed copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

(7) If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the respondent of the terms of the order and where a written copy of the order can be obtained, and the officer shall at that time also enforce the order. The law enforcement officer's verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 of the Penal Code.

(p) Nothing in this section shall preclude either party from representation by private counsel or from appearing on the party's own behalf.

(q) There is no filing fee for a petition, response, or paper seeking the reissuance, modification, or enforcement of a protective order filed in a proceeding brought pursuant to this section.

(r) Pursuant to paragraph (4) of subdivision (b) of Section 6103.2 of the Government Code, a petitioner shall not be required to pay a fee for law enforcement to serve an order issued under this section.

(s) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(t) (1) A person subject to a protective order under this section shall not own, possess, purchase, receive, or attempt to receive a firearm or ammunition while the protective order is in effect.

(2) The court shall order a person subject to a protective order issued under this section to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure.

(3) Every person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm or ammunition while subject to a protective order issued under this section is punishable pursuant to Section 29825 of the Penal Code.

(4) This subdivision shall not apply in a case in which the protective order issued under this section was made solely on the basis of financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

(u) Any willful disobedience of any temporary restraining order or restraining order after hearing granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(v) This section does not apply to any action or proceeding governed by Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code, by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, or by Division 10 (commencing with Section 6200) of the Family Code. Nothing in this section shall preclude a petitioner's right to use other existing civil remedies.

(w) The Judicial Council shall develop forms, instructions, and rules relating to matters governed by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

**2013 Legislative Update
Prepared by Candace Heisler**

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Domestic Violence

California Legislature Supports Passage of the Federal Violence Against Women (VAWA) Reauthorization Act

This measure calls on the United States Congress to pass the Violence Against Women Reauthorization Act of 2011, Senate Bill No. 1925, and to ensure the sustainability of vital programs designed to keep women and families safe from violence and abuse. (SJR 20)

No Need For Law Enforcement to Notify Victim of Right to Make Citizen's Arrest When Officer Makes a Warrantless Domestic Violence Arrest (Amending Penal Code Section 243e, 273.5, and 836)

If a peace officer makes a misdemeanor arrest for a violation of Penal Code Section 273.5 or 243(e)(1), the officer is not required to inform the victim of their right to make a citizen's arrest. This creates an exception to the officer's duty to inform domestic violence victims how to make a citizen's arrest when the officer makes the arrest him or herself. (SB 1144)

Domestic Violence and Sexual Assault Victims Who Refuse to Testify May Be Referred to Counselor Before Being Found in Contempt (Amending Code of Civil Procedure Section 1219 and Penal Code Section 1387)

A court is prohibited from incarcerating a domestic violence or sexual assault victim for contempt of court based upon their refusal to testify about the sexual assault or domestic violence crime. Prior to finding the victim in contempt, the court may refer the victim to a domestic violence counselor. Communications between the victim and counselor are confidential.

An order terminating an action does not bar further prosecution for the same offense if the termination was the result of the complaining witness being found in contempt of court for refusing to testify about the sexual assault or domestic violence crime and the new filing was within 6 months of the original dismissal of the action. The case can only be refiled once under this section. (AB 2051)

Changes to Domestic Violence Sentencing Law (Amending Penal Code Sections 1203.097)

The minimum fee to support domestic violence programs that can be imposed on a defendant is increased from \$400 to \$500. The court must state its reasons on the record for waiving or reducing the fee.

If a court decides not to order additional time in a batterer's intervention program when extra sessions are recommended to the court, it must state its reasons on the record.

An act or omission relating to the Probation Department's approval of a batterer's treatment programs is a discretionary act for which the public employee is not liable for an injury caused by his or her act or omission. (AB 1165; AB 2094)

Parole Board Must Give Great Weight to Evidence That a Person Had Experienced Intimate Partner Battering for Crimes Committed Before August 29, 1996 (Amending Penal Code Section 4801)

The Board of Parole Hearings is authorized to provide the Governor with the names of persons serving terms in state prison who it believes should have their sentence commuted, be pardoned for good conduct, are serving an unusual term, or for any other cause, including evidence of intimate partner battering and its effects.

"Intimate partner battering and its effects" includes evidence of the nature and effects of physical, emotional, or mental abuse upon the beliefs, perceptions, or behavior of victims of domestic violence where it appears the criminal behavior was the result of that victimization.

The Board of Parole Hearings, in reviewing a prisoner's suitability for parole shall give great weight to information that, at the time of the commission of the crime, the prisoner had experienced intimate partner battering, and was convicted of an offense that occurred prior to August 29, 1996. The fact that a prisoner has presented evidence of intimate partner battering cannot be used to support a finding that the prisoner lacks insight into his or her crime and its causes. (AB 1593)

Writ of Habeas Corpus Available to Challenge Conviction for Violent Felonies in Which Expert Testimony on Effects of Battering and Battered Woman Syndrome Not Presented or Not Competently Presented (Amending Penal Code Section 1473.5)

A writ of habeas corpus may be sought if competent and substantial expert testimony relating to intimate partner battering and its effects was not presented to the trier of fact at the trial court proceedings, and is of such substance that, had it been presented, there is a reasonable probability, sufficient to undermine confidence in the judgment of conviction or sentence, the result of the proceedings would have been different. The burden of proof is on the petitioner.

If a petitioner presented to the trier of fact expert testimony relating to intimate partner battering and its effects that was not competent or substantial, having presented that evidence is not a bar to granting the petition.

The prior law was set to sunset on January 1, 2020. The new law is operative indefinitely. (AB 593)

Court Authorized to Order One Party to Pay for Counsel for Other in Child Custody and Visitation Proceedings (Amending Family Code Sections 2104 and 7605; and repealing Family Code Section 3151.5)

In proceedings for dissolution or nullity of marriage or legal separation of the parties petitioner shall serve the preliminary declaration of disclosure either concurrently with the petition for dissolution or within 60 days of filing the petition. The respondent shall serve the other party with the preliminary declaration of disclosure either concurrently with the response to the petition or within 60 days of filing the response, unless those time periods are extended by written agreement of the parties or by court order. The preliminary declaration of disclosure of assets shall include all tax returns filed by the declarant within 2 years of the date the declaration was served.

In dissolution or nullity of marriage, legal separation, and child custody and visitation proceedings, the court may order a party (other than a governmental entity) to pay the amount reasonably necessary for attorney's fees and costs of maintaining or defending the proceeding, subject to augmentation or modification from time to time and before entry of judgment. A party lacking the financial ability to hire an attorney may ask the court, as with a pro per litigant, to order the other party to pay a reasonable amount to allow the unrepresented party to retain an attorney.

In child custody and visitation proceedings in which a request for attorney's fees and costs has been made the court shall order attorney's fees and costs for an in pro per litigant if the court finds that there is a disparity in access to funds to retain counsel and that one party is able to pay for the legal representation of both parties.

Family Code Section 3151.5 required that the court consider a child's attorney's statement of issues and contentions when the court determines custody or visitation. That section is repealed. (AB 1406)

Solano County Ability to Collect Extra \$2 To Support Domestic Violence Programs Extended Indefinitely (Amending Government Code Section

26840.11; Health and Safety Code Section 103628; and Welfare and Institutions Code Section 18309.5)

Existing law permitted the Solano County Board of Supervisors, upon making certain findings and declarations, to authorize an increase in fees for marriage licenses and confidential marriage licenses and for certified copies of certain vital records, up to \$2. The collected monies from the extra fees were to be allocated to programs and efforts to prevent, intervene, and prosecute domestic violence. The Solano County Board of Supervisors, was required to submit a report on funds received and expended in connection with the fee increases, and the outcome of activities associated with the act, to the Assembly Judiciary Committee and the Senate Judiciary Committee.

This law extends the operation of these provisions indefinitely. It also requires that the Solano County Board of Supervisors, by July 1, 2014, submit a follow-up report on funds received and expended in connection with the fee increases, and the outcome of activities associated with the act, to the Assembly Judiciary Committee and the Senate Judiciary Committee. (SB 154)

Stalking

Changes to Confidential Address Program (Amending Government Code Sections 6205.5, 6206, 6206.5, 6206.7, 6207, 6215.1, 6215.2, 6215.3, 6215.4, and 6215.5)

Victims of domestic violence or stalking and reproductive health care providers, employees, volunteers, and patients, may apply to the Secretary of State's Office to be enrolled in the Confidential Address Program authorizing state and local agencies to respond to requests for public records without disclosing a participant's residence address and providing confidentiality of identity for that person. Enrollment is for 4 years unless certification is withdrawn or invalidated earlier, and may be renewed.

Participants must be domiciled in California to apply to join the program. A minor in the program who reaches age 18 may renew as an adult. The Secretary of State may refuse to renew an certification if the person has abandoned his or her California domicile. (SB 1082)

Proof of Stalking Through Specific Types of Evidence to Qualify for Confidential Address Program Now Permissive (Amending Government Code Section 6206)

Victims of domestic violence, sexual assault, and stalking may apply to be part of the Secretary of State's Confidential Address Program at community-based victims' assistance program and permitting state and local agencies to maintain address confidentiality for that person.

Any person who makes a false statement in an application is guilty of a misdemeanor.

An applicant alleging the basis for the application is domestic violence or sexual assault could but was not required to attach specific evidence of the victimization to the application. Applicants alleging stalking as the basis for the application were required to

attach specific evidence to the application. That difference has been removed and stalking victims are no longer required to attach specific evidence. (AB 2483)

Sexual Abuse

Procedure When Victim of Sexual Assault Under Age 16 Refuses to Testify (Amending Code of Civil Procedure Section 1219.5)

A sexual assault victim under age 16 who refuses to testify shall meet with a victim advocate, unless the court, for good cause, finds that it is not in the best interest of the victim. The court shall refer a case involving the refusal of a minor under age 16 to testify to the Juvenile Probation Department for a report and recommendation about sanctions for refusing to testify. (SB 1248)

Divorce Awards Where One Spouse Convicted of Violent Sex Felony Offense (Amending Family Code Section 4320 and enacting Family Code Section 4324.5)

In a divorce proceeding in which one spouse has been convicted of a violent sex felony offense against the other, the convicted spouse is not entitled to spousal support from the injured spouse and is not entitled to any part of the injured spouse's retirement or pension benefits, if the divorce petition is filed within five years of the conviction and any time served in custody, on probation, or on parole.

Attorney's fees and costs may be payable from community assets except an injured spouse shall not be required to pay any of the convicted spouse's attorney's fees from the injured spouse's separate property.

A violent sex felony includes rape and spousal rape by force or threat to retaliate; sodomy by force, with a significant age difference, and by voluntarily acting in concert; oral copulation by force, with a significant age difference, and by voluntarily acting in concert; sexual penetration by force and by significant age difference; and rape, spousal rape, and sexual penetration in concert (See Penal Code Section 667.5) (AB 1522)

Sexual Activity with A Detained Party Includes Acts by a Peace Officer And Acts Occurring In A Vehicle Used To Transport A Detained Person (Amending Penal Code Section 289.6)

It is a crime for certain persons, including peace officers and employees and officers of a public entity detention facility, and employees, officers, or agents of a private person or entity that provides a detention facility or staff for a detention facility, or a person or agent of a public or private entity detention facility, to engage in sexual activity with a consenting adult who is confined in a detention facility.

"Detention facility" now includes a vehicle used to transport a person during a person's period of confinement, including after arrest but before booking. (AB 2078)

Human Trafficking

Evidence the Victim of Trafficking Engaged in Sex Acts Inadmissible to Prove Culpability or to Impeach Credibility (Enacting Evidence Code Section 1161)

Evidence that a victim of human trafficking has engaged in any commercial sex act as a result of being a victim of human trafficking is not admissible to prove the victim's criminal liability for any conduct related to that activity.

The sexual history or history of any commercial sex act of a victim of human trafficking to attack their credibility or impeach their character is inadmissible in a civil or criminal proceeding.
(Proposition 35)

Victim Entitled to 2 Support Persons When Testifying (Amending Penal Code Section 868.5)

The prosecuting witness is entitled to have up to two support persons present during testimony at a preliminary hearing, trial, or juvenile court proceeding in these additional categories of crime:

Penal Code Sections 236.1 (human trafficking); 266 (procuring a person for the purpose of prostitution); 266a (taking a person against his or her will or fraudulently inducing consent, for the purpose of prostitution); 266b (compelling illicit relation by menace); 266c (inducing commission of sex act through false representation creating fear); 266d (procuring a person to cohabit with another); 266e (hiring a panderer); 266f (selling a person for immoral purposes); 266g (prostituting one's wife); 266h (pimping); 266i (pandering); 266j (providing a child under age 16 for a lewd act); 267 (abduction of a minor for purposes of prostitution); 269 (aggravated sexual assault of a child); and obscenity crimes, including Penal Code Sections 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, and 311.11. (SB 1091)

The Crime of Human Trafficking Is Subdivided into 3 Felony Offenses With New Penalties and Enhancements (Amending Penal Code Sections 236.1; 236.2; 236.4; 290)

The crime of human trafficking is divided into three felonies by separating sex acts from forced labor.

Subdivision (a) is the felony crime of depriving or violating the personal liberty of another person with the intent to obtain forced labor or services. Punishable by 5, 8, or 12 years in prison and a \$500,000 fine.

Subdivision (b) is the felony crime of depriving or violating the personal liberty of another person with the intent to effect or maintain a violation of P.C. 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518. Punishable by 8, 14, or 20 years in prison and a fine of up to \$500,000

Subdivision (c) is the felony crime of causing, inducing, persuading, or attempting to cause, induce, or persuade, a minor to engage in a commercial sex act, with the intent to effect or maintain a violation

of 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518. Punishable by 5, 8, or 12 years in prison and a fine of up to \$500,000 or 15 years to life and a fine of up to \$500,000 if the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or another.

Neither consent by a minor victim nor mistake of fact as to the age of a victim is a defense.

"Forced labor or services" is defined as labor or services performed or provided by a person and obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the victim.

"Serious harm" includes any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or commercial sex acts in order to avoid incurring that harm.

A peace officer shall now inquire into whether indicators of human trafficking are present when the officer comes into contact with a minor who has engaged in a commercial sex act and a victim of any sexual assault. (Note: previously the inquiry was limited to domestic violence victims, persons suspected of violating P.C. 647(a) or 647(b), and persons deprived of liberty).

The court, in addition to any other penalty, fine, or restitution, is authorized to impose a fine of up to one million dollars upon conviction of P.C. 236.1 (human trafficking).

A new enhancement in subdivision (b) has been created for inflicting great bodily injury on a victim in the commission or attempted commission of P.C. 236.1 (human trafficking). Punishable by 5, 7, or 10 years in state prison. [Does not require personal infliction of GBI].

Fines collected pursuant to P.C. 236.1 and 236.2 must be deposited in the Victim-Witness Assistance Fund, administered by the California Emergency Management Agency (Cal EMA) to fund grants for services for human trafficking victims. 70% of the money is for public agencies and nonprofit corporations and 30% is for law enforcement and prosecution agencies.

Convictions for P.C. 236.1(b) and P.C. 236.1(c) are included in mandatory sex registration offenses. (Proposition 35)

***Freeze and Seize Procedures for Human Trafficking Cases Enacted
(Enacting Penal Code Section 236.6)***

"Freeze and seize" provisions for human trafficking cases, mirroring provisions for the aggravated white-collar crime enhancement (Penal Code Section 186.11) are enacted, permitting the preservation of property and assets for the payment of victim restitution and fines, even if the property or assets are not tools or instrumentalities of human trafficking. (AB 2466)

Freeze and Seize Provisions for Human Trafficking Offenses Involving Commercial Sex Acts By a Minor Under Age 18 (Enacting Penal Code Sections 236.7, 236.8, 236.9, 236.10, 236.11, and 236.12)

Forfeiture provisions may be used for human trafficking offenses that involve a commercial sex act and a minor under age 18. Any interest in a vehicle, boat, airplane, money, negotiable instruments, securities, real property, or other thing of value "that was put to substantial use for the purpose of facilitating the crime of human trafficking" involving a commercial sex act where the victim was a minor, may be seized and ordered forfeited by the court upon conviction.

Instrumentalities used to commit the crime of human trafficking are subject to forfeiture, as well as any property interest, whether tangible or intangible, acquired through human trafficking; and all proceeds from human trafficking, including all things of value that may have been received in exchange for the proceeds immediately derived from the commercial sex act. (SB 1133)

Court Orders

Criminal Protective Orders May Include Electronic Monitoring For Up to 1 Year (Amending Penal Code Section 136.2)

A court issuing a criminal protective order pursuant to Penal Code 136.2 may require the defendant to be placed on electronic monitoring if the local government, with the concurrence of the county sheriff or the chief probation officer, adopts a policy authorizing electronic monitoring of defendants and specifies the agency with jurisdiction to operate and oversee the electronic monitoring program

If the court determines that the defendant has the ability to pay, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay, the court may order electronic monitoring to be paid for by the local government entity that adopted the policy to authorize electronic monitoring.

The duration of electronic monitoring shall not exceed one year from the date the order is issued. At no time shall the electronic monitoring be in place if the protective order is not in place. (AB 2467)

Law Enforcement and Court Duties to Deal With Court Orders In Which Respondent Controls or Owns Firearms (Amending Family Code Sections 6306 and 6389, and Penal Code Section 18250)

The Domestic Violence Prevention Act requires the court, prior to a hearing on the issuance or denial of a protective order, to ensure that a search of various records and databases is conducted to determine if the proposed respondent has convictions for prior violent or serious felony offenses, or any misdemeanor convictions involving domestic violence, weapons, or other violence; outstanding warrants; parole or probation status; any prior restraining order; and any violations of prior restraining orders.

In addition, the court shall now ensure that the search determine if the proposed respondent has a registered firearm. Approved forms for protective orders shall require the petitioner to describe the number, types, and locations of any firearms presently known by the petitioner to be possessed or controlled by the respondent.

A person restrained under a protective order is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect. A willful and knowing violation of a protective order is a crime.

A court upon issuance of a protective order, must order the respondent to relinquish any firearm in the respondent's immediate control.

A law enforcement officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm be immediately surrendered. If no request is made by a law enforcement officer, the relinquishment shall occur within 24 hours of being served with the order, by either surrendering the firearm to the control of local law enforcement, or by selling the firearm to a licensed gun dealer.

The law enforcement officer or licensed gun dealer taking possession of the firearm shall issue a receipt to the person relinquishing the firearm at the time of relinquishment.

A person ordered to relinquish any firearm pursuant to this subdivision shall, within 48 hours after being served with the order, 1) file, with the court that issued the protective order, the receipt showing the firearm was surrendered; and 2) file a copy of the receipt with the law enforcement agency that served the protective order.

A willful and knowing violation of a protective order, including failure to file the required receipts with the local law enforcement agency and court is a crime.

The new provisions only apply to those courts identified by the Judicial Council as having sufficient resources currently available for those purposes. These provisions shall be implemented in other courts to the extent that funds are appropriated for these purposes in the annual state budget.

Law enforcement officer's duty to take temporary custody of firearms or other deadly weapons in plain sight or discovered pursuant to a consensual or other lawful search, when present at the scene of a domestic violence incident involving a threat to human life or physical assault is extended to law enforcement officers serving a protective order. (SB 1433)

A Tenant May Terminate a Lease Early for Elder and Dependent Adult Abuse (Amending Civil Code 1946.7 and Code of Civil Procedure Section 1161.3)

A tenant may notify the landlord in writing that s/he or a household member was a victim of elder abuse or dependent adult abuse (in addition to existing situations of domestic violence, sexual assault, or stalking) and intends to terminate the tenancy. The tenant must

attach a copy of a temporary restraining order, emergency protective order, protective order, or a report by a peace officer to the notice. The tenant can quit the premises after notification and limits the tenant's obligation for payment of rent. Notice to terminate tenancy must be given within 180 days of the date the order was issued or report made.

Elder and dependent adult abuse is defined in W&I 15610.07, and includes physical abuse, neglect, financial abuse, abandonment, isolation, abduction, and other treatment resulting in physical harm or pain or mental suffering

A landlord is prohibited from terminating a tenancy or failing to renew a tenancy based upon an act of elder or dependent adult abuse (in addition to existing provisions for domestic violence, sexual assault, or stalking) against a protected tenant or their household member when that act is documented by a temporary restraining order, emergency protective order, protective order, or written report, and the restrained person or person named in the police report is not a tenant of the same dwelling unit.

By January 1, 2014 the Judicial Council shall develop a new form or revise an existing form that may be used to assert an affirmative defense in an unlawful detainer action based on these provisions.
(SB 1403)

Elders and Dependent Adults

Term "Mental Retardation" Replaced by "Intellectual Disability"
(Amending Business and Professions Code Sections 4502 and 17206.1; Civil Code Section 1761; Education Code Sections 8769, 16191, 16195, 16196, 16200, 41306, 41401, and 51765 ; Government Code Sections 854.2, 6514, 12428, 12926, 14670.1, 14670.2, 14670.3, 14670.5, 14672.1, 14672.92, 16813, 16814, and 16816; Health and Safety Code Sections 1275.5, 1337.1, 1337.3, 13113, 51312, 110403, 123935, 125000, 127260, and 129395; Insurance Code Sections 10118, 10124, and 10203.4; Penal Code Sections 1001.20, 1346, 1370.1, 1376, and 2962; Probate Code Section 1420; Vehicle Code Section 25276; and Welfare and Institutions Code Sections 4417, 4426, 4512, 4801, 5002, 5008, 5325, 5585.25, 6250, 6505, 6513, 6551, 6715, 6717, 6740, 6741, 7275, 7351, and 11014)

Various state statutes refer to "mentally retarded" persons and "mental retardation" in various provisions relating to services, commitment to state facilities, and criminal punishment.

This law, known as the Shriver "R-Word" Act, revises many statutes to, remove the term "mental retardation" and replace it with "intellectual disability."

The intent of the Legislature with these changes is not to change the coverage, eligibility, rights, responsibilities, or substantive definitions referred to in the amended provisions of the bill.

Note: This change comports with federal law. Rosa's law (S. 2781), signed into law on October 5, 2010, which replaced the term "mental retardation" with term "intellectual disability." (AB 2370; SB 1381)

Protection and Advocacy Agencies Authorized to Review Unredacted Forms and Reports (Amending Welfare and Institutions Code Sections 4514, 4903, and 5328.15)

Protection and Advocacy agencies are private, nonprofit corporations charged with protecting and advocating for the rights of persons with developmental disabilities and mental disorders. They may investigate incidents of abuse or neglect of persons with developmental disabilities or persons with mental illness when complaints are reported to them or if there is probable cause to believe that abuse or neglect has occurred.

Agencies have the authority to examine records and interview facility or program service recipients, employees, or other persons who might have knowledge of the alleged abuse or neglect, including reports prepared by an agency charged with investigating reports of incidents of abuse, neglect, injury, or death occurring at programs, facilities, and services. This enactment provides that these agencies are authorized and entitled to review unredacted facility evaluation report forms, unredacted complaint investigation report forms, unredacted citation report, unredacted licensing reports, unredacted survey reports, unredacted plans of correction, and unredacted statements of deficiency prepared by a department responsible for issuing a license or certificate to a program, facility, or service serving an individual with a disability.

While all information and records obtained in the course of providing intake, assessment, and services under existing law to persons with developmental disabilities and to voluntary or involuntary recipients of services under the existing Lanterman-Petris Short Act or within a prescribed state or county hospital are confidential, the listed confidential information may be provided to a Protection and Advocacy Agency when it is incorporated within an unredacted facility evaluation report form, unredacted complaint investigation report form, unredacted citation report, unredacted licensing report, unredacted survey report, unredacted plan of correction, or unredacted statement of deficiency prepared by authorized licensing personnel or authorized representatives of the State Department of Health Care Services or the State Department of Social Services. (SB 1377)

Changes to Reverse Mortgage Counseling Requirements (Amending Civil Code Section 1923.2)

A lender cannot take a reverse mortgage loan application from an applicant until notice about counseling and a list of at least 10 housing counseling agencies approved by the US Department of Housing and Community Development has been provided.

A lender shall not accept a final application for a reverse mortgage loan from a prospective applicant or assess fees on an applicant without first receiving a certification from the applicant or their authorized representative that the applicant has received counseling from an approved agency, and that the counseling was conducted in person, unless the certification specifies that the applicant elected to receive the counseling in a manner other than in person. (AB 2010)

Silver Alert System for Missing Elders Created (Enacting Government Code Section 8594.10)

"Silver Alert" means a notification system designed to issue and coordinate alerts for missing persons 65 years of age or older.

A law enforcement agency may request a Silver Alert be activated when: (1) The missing person is 65 years of age or older; (2) The investigating law enforcement agency has utilized all available local resources; (3) The law enforcement agency determines that the person has gone missing under unexplained or suspicious circumstances; (4) The law enforcement agency believes that the person is in danger because of age, health, mental or physical disability, environment or weather conditions, that the person is in the company of a potentially dangerous person, or that there are other factors indicating that the person may be in peril; and (5) There is information available that, if disseminated to the public, could assist in the safe recovery of the missing person.

Upon activation of a Silver Alert, the California Highway Patrol shall assist the investigating law enforcement agency by issuing a be-on-the-lookout alert, an Emergency Digital Information Service message, or an electronic flyer.

This provision sunsets on January 1, 2016. (SB 1047)

Consumer Protections for Sale of Insurance to Seniors and Veterans Expanded (Amending Civil Code Section 1770; and Insurance Code Section 787 and 789.10; and enacting Insurance Code Section 785.4)

It is an unfair sales practice to fail to disclose to a veteran, when advertising for events, seminars, workshops or related activities concerning veterans' benefits, that promoters are not authorized to represent veterans when applying for or appealing the denial of veteran's benefits. This disclosure must be made in font at least the same size as the word "veteran" in advertising, and must be repeated orally and writing at the beginning of the event.

The term advertisement is expanded to include worksheets, questionnaires, or other materials designed to collect personal or financial information about a prospective insured or annuitant

It is an unfair sales practice for any advertising for a veteran's event, seminar, workshop or related activity that is not sponsored by the California Department of Veterans Affairs or the US Department of Veterans Affairs (VA), or other veterans' organizations designated by Congress, to fail to include a specific statement that the event is not sponsored by these governmental agencies.

An insurance agent who is not an attorney shall not deliver a living trust or other legal document to anyone 65 years or older if the purpose is to sell the senior an insurance product. An insurance agent who is an attorney shall not deliver a living trust or other legal document to a person 65 years or older, if the purpose is to sell the senior an insurance product, unless a detailed disclosure currently required of attorneys is provided by the insurance agent.

Logos and similar images used by veterans' organizations may not be copied or used in a way that implies endorsement by or a connection with that organization. Terminology in written materials similar to or that could deceive a prospective senior purchaser that the policy is offered by a veterans' organization is prohibited. Advertising for products intended to be sold to seniors that imply the sale is endorsed or associated with the Social Security Administration or Department of Veterans Affairs is prohibited.

Required notice before a visit to the home of a senior to sell insurance must be provided no less than 14 days before the visit; the notice must be in at least 16-point font in a stand-alone document. The notice shall include the agent's full name, license number, telephone number and address, and state specifically that "I am a licensed insurance agent" and "My purpose for coming to your home is to sell, discuss, or deliver" an insurance product. (SB 1170)

Insurance Broker Must Maintain Safeguards To Avoid Financial Incentives For Referring Policy holders to Veteran's Benefits (Enacting Insurance Code Section 785.5)

An insurance broker or agent shall not participate in, be associated with, or employ any party who participates in, or is associated with, obtaining veterans benefits for a senior, unless the insurance agent or broker maintains procedural safeguards designed to ensure that the agent or broker transacting insurance has no direct financial incentive to refer the policyholder, or prospective policyholder, to any veterans benefits program offered through the government. (SB 1184)

Civil Elder Abuse Lawsuits Shall Not Include Non-Cooperation Agreements (Enacting Welfare and Institutions Section 15657.8)

Beginning January 1, 2013, an agreement to settle a civil action for physical abuse, neglect, or financial abuse of an elder or dependent adult shall not include any provision that prohibits contact or cooperation with the county adult protective services agency, local law enforcement agency, long-term care ombudsman, California Department of Aging, the Department of Justice, or the Licensing and Certification Division of the State Department of Public Health, the State Department of Developmental Services, the State Department of State Hospitals, a licensing or regulatory agency with jurisdiction over the license or certification of the defendant, any other governmental entity, a protection and advocacy agency, or the defendant's current employer if the defendant's job responsibilities include contact with elders, dependent adults, or children.

Any such provision is void as against public policy. (AB 2149)

State Licensed Money Transmission Businesses Must Provide Agents with Training on Financial Abuse (Enacting Financial Code Section 2043)

The State Department of Financial Institutions regulates money transmission businesses in California as provided by the Money Transmission Act. Corporations and limited liability companies may become licensed to transmit money and may appoint agents to conduct money transmission activities on their behalf.

On or before April 1, 2013, and annually thereafter, licensees shall provide their agents with training materials on recognizing elder or dependent adult financial abuse, and how to appropriately respond if an agent suspects that s/he is being asked to engage in money transmission for a fraudulent transaction involving an elder or dependent adult.

Licensees shall provide training materials to newly appointed agents no later than one month following their appointment.

Requirements do not apply to licensees who are engaged solely in selling or issuing stored value, agents who perform duties other than those described, and licensees who exclusively offer their services via an Internet Web site. (AB 1525)

Changes to Long Term Care Ombudsman Program Requirements (Amending Welfare and Institutions Code Sections 9701, 9710.5, 9712, 9713, 9714, 9714.5, 9716, 9717, 9719, 9722, 9724, 9726, and 9726.1, enacting Sections 9712.5 and 9716.11, and repealing Section 9720)

The Mello-Granlund Older Californians Act establishes the Office of the State Long-Term Care Ombudsman, in the State Department of Aging, to allocate money to local programs to assist persons in long-term health care facilities and residential care facilities by investigating and trying to resolve resident complaints.

Beginning September 30, 2013, and annually thereafter, the Office shall submit an annual advocacy report which: (1) Describes the activities carried out by the office in the year for which the report is prepared, including, actions taken to carry out the advocacy duties of the office; (2) Contains and analyzes the data collected pursuant to Section 3058g(c) of Title 42 of the United States Code; (3) Evaluates the problems experienced by, and the complaints made by or on behalf of, residents; (4) Contains recommendations for both improving the quality of the care and life of residents and protecting the health, safety, welfare, and rights of residents; (5) Analyzes the success of the ombudsman program, in providing services to residents of long-term care facilities and other similar adult care facilities and identifying barriers that prevent the optimal operation of the program; (6) Provides policy, regulatory, and legislative recommendations to solve identified problems, resolve complaints, improve the quality of care and life of residents, protect the health, safety, welfare, and rights of residents, and remove barriers.

The annual advocacy report shall be posted on the Office's Internet Web site and submitted to the US Department on Aging Assistant Secretary, the Governor, Legislature, State Department of Public Health, State Department of Social Services, local ombudsman programs, and other appropriate governmental entities.

The Office of the State Long-Term Care Ombudsman shall maintain an Internet Web presence which is easily found and prominent on the department's homepage. The Internet Web site shall be consumer driven and shall include current long-term care trends and issues, links to local ombudsman programs, the annual advocacy report, and other information relevant to long-term care facility residents and consumers. (SB 345)

Reporting Laws

Changes to Reporting of Abuse in Long Term Care Facilities (Amending Welfare and Institutions Sections 15630 and 15631; and enacting Section 15610.67)

When suspected abuse of an elderly or dependent adult occurs in a long term care facility and results in serious bodily injury, a mandated reporter shall report by telephone to local law enforcement immediately or within 2 hours of observing, receiving a report about, or suspecting physical abuse. A written report shall be made to the local law enforcement agency, regulatory and licensing agency and local ombudsman within 2 hours.

If the abuse does not result in serious bodily injury the report shall be made telephonically and in writing within 24 hours of the observation, receipt of report about, or suspecting abuse.

If the suspected abuse is allegedly caused by a resident with a physician's diagnosis of dementia, and there is no serious bodily injury, the reporter shall report to the local ombudsman or law enforcement agency by telephone, immediately or as soon as practicably possible, and by written report, within 24 hours.

Reports shall be deemed to satisfy the reporting requirements of the federal Elder Justice Act of 2009, as set out in Subtitle H of the federal Patient Protection and Affordable Care Act, Health and Safety Code Section 1418.91, and Title 22, Section 72541 of the California Code of Regulations.

A local law enforcement agency receiving a report of suspected abuse in a long-term care facility may coordinate efforts with the local ombudsman to provide the most immediate and appropriate response warranted to investigate the mandated report.

The local ombudsman and local law enforcement agencies may collaborate to develop protocols to implement this authority

If a mandated reporter observes, receives reports about, or suspects abuse of a type not required to be reported that occurred in a state mental hospital or state developmental center, he or she may report to the designated investigator of the State Department of State Hospitals or State Department of Developmental Services or to local law enforcement. (It is no longer permissible to report to the local Ombudsman).

A person who is not a mandated reporter may report suspected abuse that occurred in a long term care facility to both the local long term care Ombudsman and local law enforcement.

In cases of abuse other than physical abuse occurring in long term care facilities, other than a state mental health hospital or a state developmental center, the telephonic and written reports shall be made to the local ombudsman or the local law enforcement agency.

The local ombudsman and the local law enforcement agency shall, as soon as practicable, when relevant: (1) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility; (2) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, or in an adult day program; (3) Report to the State Department of Public Health and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center; (4) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity; and (5) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney's office. (AB 40)

Changes to Reporting of Abuse, Sexual Assault and Deaths in Developmental Centers (Amending Welfare and Institutions Code Sections 4427.5 and 15630; enacting Welfare and Institution Code Section 4023 and 4415.5)

The Department of State Hospitals (DSH) and developmental centers within the Department of Developmental Services (DDS) shall report suspected abuse to the designated protection and advocacy agency.

DSH shall report, no later than the close of the first business day following the discovery of a reportable incident, to the designated agency the following incidents involving a resident of a state mental hospital:

- Any unexpected or suspicious death, regardless of whether the cause is immediately known;
- Any allegation of sexual assault in which the alleged perpetrator is an employee or contractor of a state mental hospital or of the Department of Corrections and Rehabilitation; and
- Any report made to the local law enforcement agency in the jurisdiction in which the facility is located that involves physical abuse, in which a staff member is implicated.

The chief of the Office of Protective Services (OPS), who has the responsibility and authority to manage all protective services within the OPS's law enforcement and fire protection divisions, including those at each state developmental center, shall be known as the "Director of Protective Services."

The Director of Protective Services shall be an experienced law enforcement officer with a Peace Officers Standards and Training (POST) Management Certificate or higher, with extensive management experience directing uniformed peace officer and investigation operations.

The Director of Protective Services shall be appointed by, and shall serve at the pleasure of, the Secretary of California Health and Human Services.

Developmental centers shall report, no later than the close of the first business day following the discovery of the reportable incident, to the designated agency, any of the following incidents involving a resident of a developmental center:

- Any unexpected or suspicious death, regardless of whether the cause is immediately known;
- Any allegation of sexual assault, as defined, in which the alleged perpetrator is a developmental center or department employee or contractor; and,
- Any report made to the local law enforcement agency in the jurisdiction in which the facility is located that involves physical abuse, in which a staff member is implicated.

Mandated reporters within developmental centers shall immediately report suspected abuse to DPS or to the local law enforcement agency.

A mandated reporter in a developmental center shall immediately report a death, a sexual assault, an assault with a deadly weapon by a nonresident of the developmental center, an assault with force likely to produce great bodily injury, an injury to the genitals when the cause of injury is undetermined, or a broken bone when the cause of the break is undetermined, to the local law enforcement agency having jurisdiction over the city or county in which the developmental center is located, regardless of whether the Office of Protective Services has investigated the facts and circumstances relating to the incident.

The developmental center must submit a written report of the incident to the local law enforcement agency within 2 working days of any telephone report to that agency.

These urgency measures took effect on September 28, 2012. (SB 1522, SB 1051)

New Mandated Reporters of Child Abuse (Amending Penal Code Sections 11165.7, 11166)

The categories of mandated reporters of child abuse are expanded to add:

1. An employee or administrator of a public or private post-secondary institution, whose duties bring him or her into contact with children on a regular basis, or who supervises those whose duties bring the administrator or employee into contact with children on a regular basis, as to child abuse or neglect occurring on that institution's premises or at an official activity of, or program conducted by, the institution.
2. An athletic coach, athletic administrator, or athletic director employed by any public or private school that provides any combination of instruction for kindergarten, or grades 1-12.
3. An athletic coach, including but not limited to, an assistant coach or a graduate assistant involved in coaching, at a public or private postsecondary institution.
4. A commercial computer technician. (includes "commercial film and photographic print or image processor" who prepare, publish, produce, or print any representation of information, data, or an image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser

disk, computer hardware, computer software, computer floppy disk, data storage medium, CD-ROM, computer-generated equipment, or computer-generated image, for compensation)

A commercial computer technician who has knowledge of, or observes, within the scope of his or her professional capacity or employment, any representation of information, data, or image depicting a child under age 16 engaged in an act of sexual conduct, shall immediately, or as soon as practical, telephonically report the instance of suspected abuse to the law enforcement agency in the county where the image or material is seen.

A commercial computer technician must prepare and send, fax, or electronically transmit a written follow up report with a brief description of the image. (AB 1817)

Children

New Misdemeanor Crimes for Failure to Notify on Death of a Child (Enacting Penal Code Section 273j)

Any parent or guardian having the care, custody, or control of a child under 14 years of age who knows or should have known that the child has died shall notify a public safety agency (as defined in Government Code Section 53102) within 24 hours of the time that the parent or guardian knew or should have known that the child has died. The section does not apply if a child is under the immediate care of a physician at the time of death, or if a public safety agency, a coroner, or a medical examiner is otherwise aware of the death.

Any parent or guardian having the care, custody, or control of a child under 14 years of age shall notify law enforcement within 24 hours of the time that the parent or guardian knows or should have known that the child is a missing person and there is evidence that the child is a person at risk (as defined in Penal Code Section 14213). The section does not apply if law enforcement is otherwise aware that the child is a missing person.

Penal Code Section 14213 provides that "evidence that the person is at risk" includes but is not limited to, evidence or indications that the missing person: (1) is the victim of a crime or foul play; (2) is in need of medical attention; (3) has no pattern of running away or disappearing; (4) may be the victim of parental abduction; or (5) is mentally impaired.

Violations are misdemeanors punishable by imprisonment in county jail for not more than one year, or by a fine not exceeding one thousand dollars (\$1,000), or both

This section does not preclude prosecution under any other provision of law. This act is known as Caylee's Law. (AB 1432)

New Terms Court Can Order to Reduce Likelihood of Improper Removal of a Child From the Jurisdiction (Amending Family Code Section 2040 and 3134.5)

At the commencement of proceedings for dissolution or nullity of marriage or legal separation of the parties, the summons must contain a temporary restraining order prohibiting both parties from, among other things, removing any minor children of the parties from the state without the prior written consent of the other party or court order. The restraining order must also restrain the parties from applying for a new or replacement passport for any minor children without the prior written consent of the other party or court order.

Upon request of the district attorney a court may issue a protective custody warrant to secure the recovery of an unlawfully detained or concealed child. The warrant must direct the arresting agency to place the child in protective custody, or to return the child as directed by the court. The court may include in the child's protective custody warrant an order to freeze the California assets of the party alleged to be in possession of the child.

An order to freeze assets may be terminated, modified, or vacated by the court upon a finding that the release of the assets will not jeopardize the safety or best interest of the child. If an asset freeze order is entered and thereafter the court dismisses the protective custody warrant for the child, notice of the dismissal shall be immediately served on depository institutions holding assets pursuant to the freeze order. (SB 1206)

Limitations on Release of School Records (Amending Education Code Sections 49076 and 49076.5)

A peace officer or a law enforcement agency seeking information from a school district about a pupil's identity and location must do one of the following: (1) obtain prior written consent from one parent; (2) provide information indicating that there is an emergency in which the information is necessary to protect the health or safety of the pupil or other individuals; or (3) obtain a lawfully issued subpoena or court order.

This change was required to assure that California law conforms to federal legal requirements. (AB 733)

Placement of Dependent Children Outside of the United States (Amending Welfare and Institutions Code Sections 361.2, 366, and 16010.6)

A social worker may not place a dependent child with anyone who is not a parent, outside the United States prior to a judicial finding by clear and convincing evidence that the placement, is in the best interest of the child, except as required by federal law or treaty.

The burden of proof rests with the party or agency requesting the placement of the child outside the United States. In deciding what is in the best interest of the child the court shall consider placement with a relative, placement of siblings in the same home, and the social, cultural, and educational needs of the dependent child. (AB 2209)

Changes to Child Custody Laws Regarding Immigrant Parents and Relatives (Amending Family Code Section 3040; Probate Code Section 1514; and Welfare and Institutions Code Section 309)

A court may place a child who has been removed from the custody of one or both parents with a parent, legal guardian, or relative regardless of that person's immigration status. A relative's foreign consulate identification card or foreign passport may be used for initiating required criminal records and fingerprint clearance checks.

A court may extend review hearing periods following consideration of the parent's circumstances if a parent has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to the country of origin, and, under these circumstances would authorize a court to continue the case only if the court finds a substantial probability that the child will be returned to the physical custody of his or her parent and safely maintained in the home within the extended time period or that reasonable services have not been provided to the parent or guardian.

The State Department of Social Services shall provide guidance on best practices and to facilitate an exchange of information and best practices among counties on an annual basis, beginning no later than January 1, 2014, on establishing memoranda of understanding with foreign consulates in juvenile court cases, including procedures for contacting a consulate, accessing a child's documentation, locating a detained parent, assisting in family reunification after a parent has been deported, aiding the safe transfer of a child to the parent's country of origin, and communicating with relevant departments and services in a parent's country of origin, and procedures to assist children in juvenile court cases who are eligible for special immigrant juvenile status and other specified visas. (SB 1064)

Changes to Rules for Supervised Visitation (Enacting Family Code Section 3200.5)

Any standards for supervised visitation providers adopted by the Judicial Council pursuant to Section 3200 shall conform to this section. A provider in cases in which the court has determined there is domestic violence, child abuse or neglect shall be a professional provider or nonprofessional provider based upon the child's best interest.

A "Nonprofessional provider" is a person who is not paid for providing supervised visitation services and absent a court order or party stipulation shall have no conviction for child molestation, child abuse, or other crimes against a person; have proof of automobile insurance if transporting the child; have no current or past court order in which the provider is the person being supervised; and agree to adhere to and enforce the court order regarding supervised visitation.

A "Professional provider" is a person who is paid for providing supervised visitation services, or an independent contractor, employee, intern, or volunteer operating independently or through a supervised visitation center or agency and shall be at least 21 years of age; have no conviction for driving under the influence (DUI) within the last five years; not have been on probation or parole for the last 10 years; have no conviction for child molestation, child abuse, or other crimes against a person; have proof of automobile insurance if transporting

the child; have no civil, criminal, or juvenile restraining orders within the last 10 years; have no current or past court order in which the provider is the person being supervised; be able to speak the language of the party being supervised and the child, or the provider must provide a neutral interpreter over 18 years of age who is able to do so; agree to adhere to and enforce the court order regarding supervised visitation; and meet the training requirements listed below.

Professional providers shall have received 24 hours of training in the role of a professional provider; child abuse reporting laws; recordkeeping procedures; screening, monitoring, and termination of visitation; developmental needs of children; legal responsibilities and obligations of a provider; cultural sensitivity; conflicts of interest; confidentiality; issues relating to substance abuse, child abuse, sexual abuse, and domestic violence; and basic knowledge of family and juvenile law.

Professional providers shall sign a declaration or Judicial Council form stating that they meet the training and qualifications of a provider.

The ratio of children to a professional provider shall be contingent on the degree of risk factors; nature of required supervision; number and ages of the children to be supervised during a visit; duration and location of the visit; and experience of the provider.

Professional providers shall advise the parties before commencement of supervised visitation that no confidential privilege exists; duty to report child abuse to the appropriate agency; and authority to suspend or terminate visitation.

Professional providers shall prepare a written contract to be signed by the parties before beginning supervised visitation which shall include the terms and conditions of supervised visitation; shall review custody and visitation orders relevant to the supervised visitation; shall keep a record for each case, including, at least, a written record of each contact and visit; who attended the visit; any failure to comply with the terms and conditions; and any incident of abuse.

If a provider determines that the rules of the visit have been violated, the child has become acutely distressed, or the safety of the child or the provider is at risk, the visit may be temporarily interrupted, rescheduled at a later date, or terminated. All interruptions or terminations of visits shall be recorded in the case file. Both parties shall be notified of the reasons for the interruption or termination of a visit.

A professional provider shall provide written reasons for temporary suspension or termination of supervised visitation and provide the written statement to the court, both parties, their attorneys, and the attorney for the child. (AB 1674)

Court May Order Drug Testing When Allegations of Drug and Alcohol Abuse in Custody, Visitation and Guardianship Proceedings (Amending Family Code Sections 3011 and 3041.5)

Courts are required to determine the best interest of the child when deciding child custody in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, petitions for exclusive custody of a child, and proceedings under the Domestic Violence Prevention Act. Among the relevant factors the court must consider is whether either of the child's parents habitually or continually uses alcohol or illegal drugs. The court may require independent corroboration of such an allegation.

Existing law, until January 1, 2013, authorizes a court to require any person who is seeking custody of, or visitation with, a child who is the subject of a custody, visitation, or guardianship proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol when there are concerns that the person continually or habitually uses alcohol or illegal drugs. This bill deletes the sunset date making the court's authority to order testing permanent. (AB 2365)

***Victim Right to Support Persons for Certain Crimes Against Children
(Amending Penal Code Section 868.5)***

Victims of a variety of crimes including murder, sex crimes, kidnapping, robbery, assault, and elder abuse are entitled to have up to 2 persons of their choosing for support at a preliminary hearing, trial, or at a juvenile court proceeding, while they testify.

This bill adds to that list human trafficking, procuring a person under 18 for the purpose of prostitution; taking a person against their consent or by misrepresentation for the purpose of prostitution; taking a person against their will and compelling them to live with another person in an illicit relation, inducing the commission of a sexual act through false representation creating fear, pandering, hiring a panderer, selling a person for an illicit use, prostituting one's wife, pimping, providing or transporting a child under the age of 16 for a lewd or lascivious act, abduction of a person under age 18 for prostitution, aggravated sexual assault of a child, bringing child pornography into the state, bringing obscene matter into or distributing it in the state, developing, duplicating, printing or exchanging obscene matter depicting sexual conduct of a person under 18, using a minor to assist in the distribution of obscene matter, advertising obscene matter, engaging in obscene live conduct, and possession or control of matter, representation, of information, data, or image depicting sexual conduct of a person under age 18. (SB 1091)

Firearms

Law Enforcement and Court Duties to Deal with Court Orders in which Respondent Controls or Owns Firearms (Amending Family Code Sections 6306 and 6389, and Penal Code Section 18250)

The Domestic Violence Prevention Act requires the court, prior to a hearing on the issuance or denial of a protective order, to ensure that a search of various records and databases is conducted to determine if the proposed respondent has convictions for prior violent or serious felony offenses, or any misdemeanor convictions involving domestic violence, weapons, or other violence; outstanding warrants; parole or

probation status; any prior restraining order; and any violation of a prior restraining orders.

In addition, the court shall ensure that the search determines if the proposed respondent has a registered firearm. Approved forms for protective orders shall require the petitioner to describe the number, types, and locations of any firearms petitioner knows to be possessed or controlled by the respondent.

A person restrained under a protective order is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect. A willful and knowing violation of a protective order is a crime.

A court upon issuance of a protective order, must order the respondent to relinquish any firearm in the respondent's immediate control.

A law enforcement officer serving a protective order that indicates that the respondent possesses weapons or ammunition shall request that the firearm be immediately surrendered. If no request is made by a law enforcement officer, the respondent shall relinquish all firearms within 24 hours of being served with the order, by either surrendering the firearm to the control of local law enforcement, or by selling the firearm to a licensed gun dealer.

The law enforcement officer or licensed gun dealer taking possession of the firearm shall issue a receipt to the person relinquishing the firearm at the time of relinquishment.

A person ordered to relinquish any firearm pursuant to this subdivision shall, within 48 hours after being served with the order, 1) file the receipt showing the firearm was surrendered with the court that issued the protective order; and 2) file a copy of the receipt with the law enforcement agency that served the protective order.

A willful and knowing violation of a protective order, including failure to file the required receipts with the local law enforcement agency and court is a crime.

The new provisions only apply to those courts identified by the Judicial Council as having sufficient resources currently available for those purposes. These provisions shall be implemented in other courts to the extent that funds are appropriated for these purposes in the annual state budget.

A law enforcement officer's duty to take temporary custody of firearms or other deadly weapons when present at the scene of a domestic violence incident involving a threat to human life or physical assault that are in plain sight or discovered pursuant to a consensual or other lawful search, is extended to law enforcement officers serving protective orders. (SB 1433)

Victim Compensation and Rights

Statute of Limitations To File Claims for Crime Compensation Increased to 3 Years (Amending Government Code Sections 13952, 13953, 13954,

13955, 13957.2, and 13957.7; and repealing Government Code Section 13957.9)

The period in which crime victims may file applications for crime compensation is extended to 3 years after the incident (previously the filing period was 1 year).

The claim may be filed by an "authorized representative" which now includes a county social worker designated by a county department of social services to represent a child abuse or elder abuse victim unable to file on his or her own behalf.

If the Board reduces maximum rates or imposes service limitations in the future these changes shall not affect payment or reimbursement of losses incurred prior to 3 months after the adoption of any changes.

A provider is prohibited from charging the victim or derivative victim for any difference between the cost of a service, and the program's payment for that service. (SB 1299)

Restitution and Restitution Fines Cannot Be Discharged By Time in Custody (Amending Penal Code Section 1205)

A court must order a defendant to make restitution in every case in which a victim has suffered economic loss as a result of the defendant's conduct. The amount of loss is a dollar amount that fully reimburses the victim or victims for every determined economic loss. Restitution orders are enforceable as though the order were a civil judgment.

A judgment that a defendant pay a fine may also direct that the defendant be imprisoned until the fine is satisfied and that the imprisonment begin at and continue after the expiration of any other prison sentence. Those provisions were applicable to restitution fines and restitution orders only if the defendant has defaulted on the payment of other fines.

This amendment makes these provisions regarding imprisonment until a fine is satisfied inapplicable to restitution fines and restitution orders. As a result, a defendant cannot satisfy an order to pay restitution and a restitution fine, or both through time spent in custody at the statutory rate of \$30 per day.

This urgency legislation took effect on June 29th, 2012. (SB 1371)

Defendants on Post Release Community Supervision and Mandatory Supervision Still Responsible for Restitution and Restitution Fines (Amending Penal Code Section 1214)

Unpaid victim restitution and restitution fines remain enforceable even though the defendant is no longer on probation or parole. A local collection program may continue to enforce restitution orders once a defendant is no longer on probation, post release community supervision, or mandatory supervision." Local collection agencies such as departments of revenue or probation departments should continue to collect victim restitution and restitution fines regardless of a defendant's supervision status. (SB 1210)

Compensation Fund for Victims of Corporate Fraud (Amending Corporations Code Sections 1502 and 2117; enacting Corporations Code Sections 2280 et seq; and repealing Corporations Code Section 1502.5)

The Victims of Corporate Fraud Compensation Fund is administered by the Secretary of State. Its purpose is to provide restitution to victims of corporate fraud.

An aggrieved person who obtains a final judgment, including a restitution order issued as part of a criminal case, against a corporation based upon the corporation's fraud, misrepresentation, or deceit, made with intent to defraud, may file an application with the Secretary of State for payment from the fund for the unpaid amount on the judgment. The maximum amount that can be paid from the Fund is \$50,000.

A claimant must apply for restitution on a prescribed form. The Secretary of State must approve claims meeting the legislative requirements. Notice to the claimant and corporation are required. A corporation must reimburse the fund and pay interest for any payment made from the fund by the Secretary of State in settlement of a claim or toward satisfaction of a final judgment against the corporation.

A new crime is created for filing a false or materially misleading claim. These provisions apply to claim applications submitted to the Secretary of State on or after January 1, 2013. (SB 1058)

District Attorney May Send Victim Contact Information to the Department of Corrections and Rehabilitation to Allow For Distribution of Restitution (Amending Penal Code Section 1203c)

A court must order restitution in every case in which a victim has suffered economic loss as a result of the defendant's conduct. If the defendant is committed to an institution under the jurisdiction of the Department of Corrections and Rehabilitation and the court has ordered restitution to a victim, the applicable county probation officer may send the victim's contact information and a copy of the restitution order to the department for the purpose of distributing restitution if the victim consents.

In addition, the District Attorney is authorized to send the victim's Contact information and a copy of the restitution order to the department for that purpose if the district attorney finds that it is in the best interest of the victim to send that information. The District Attorney may not send the information if the victim affirmatively objects. The district attorney is not required to inform the victim of the right to object. (AB 2251)

Criminal Procedure

Victim Right to Support Persons for Certain Crimes Against Children (Amending Penal Code Section 868.5)

Victims of a variety of crimes including murder, sex crimes, kidnapping, robbery, assault, and elder abuse are entitled to

to have up to 2 persons of their choosing for support at a preliminary hearing, trial, or at a juvenile court proceeding, while they testify.

This bill adds to that list human trafficking, procuring a person under 18 for the purpose of prostitution; taking a person against their consent or by misrepresentation for the purpose of prostitution; taking a person against their will and compelling them to live with another person in an illicit relation, inducing the commission of a sexual act through false representation creating fear, pandering, hiring a panderer, selling a person for an illicit use, prostituting one's wife, pimping, providing or transporting a child under the age of 16 for a lewd or lascivious act, abduction of a person under age 18 for prostitution, aggravated sexual assault of a child, bringing child pornography into the state, bringing obscene matter into or distributing it in the state, developing, duplicating, printing or exchanging obscene matter depicting sexual conduct of a person under 18, using a minor to assist in the distribution of obscene matter, advertising obscene matter, engaging in obscene live conduct, and possession or control of matter, representation, of information, data, or image depicting sexual conduct of a person under age 18. (SB 1091)

Prosecutor May Obtain Information from Case Management System to Respond to Certain Public Records Act Requests (Amending Penal Code 13302)

An employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a criminal record to a person who is not authorized by law to receive the record or information is guilty of a misdemeanor.

This section does not prohibit a public prosecutor from accessing and obtaining information from the public prosecutor's case management database to respond to a request for publicly disclosable information pursuant to the California Public Records Act. (AB 2222)

Report of Psychiatrists or Psychologists Prepared in an NGI Plea Must Include Substance Abuse and Police Report Information (Amending Penal Code Section 1027)

When a defendant pleads not guilty by reason of insanity (NGI), the court must appoint at least 2 psychiatrists or licensed psychologists to examine, investigate, and report on the defendant's mental status.

The report must include the defendant's psychological history and present psychological or psychiatric symptoms.

In addition the report must include the defendant's substance abuse history and substance abuse use history on the day of the offense, a review of the police offense report, and any other credible and relevant material reasonably necessary to describe the facts of the offense. (SB 1281)

Clarification Regarding Who Pays for Experts and Interpreters (Amending Evidence Code Sections 731, 752, 753 and 754)

In criminal actions and juvenile court proceedings, the compensation for an expert appointed for the court's needs is a charge against the court.

Compensation for a medical expert appointed for the court's needs in a civil action is a charge against the court.

Compensation for a medical expert in a civil action for purposes other than the court's needs is a charge against the county.

In criminal actions and juvenile court proceedings, compensation for interpreters or translators is a charge against the court.

In civil actions, compensation for interpreters and translators shall be apportioned and charged to the parties.

Compensation for an interpreter for the deaf or hearing impaired is a charge against the court, unless the interpreter is needed during an investigation or non-court proceeding, in which case compensation is a charge against the county (AB 1529)

Miscellaneous

Search Warrant for Tracking Devices Such as GPS Now Available (Amending Penal Code Section 1524)

A search warrant may be obtained when the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, or will assist in locating an individual who has committed or is committing one of the above listed offenses.

These provisions do not create a cause of action against any foreign or California corporation for providing location information. A tracking device search warrant issued pursuant to these provisions must identify the person or property to be tracked, and specify a reasonable time that the device may be used, not to exceed 30 days plus specific extensions. The warrant shall be executed within 10 days. (AB 2055)

Changes to Public Records Act Disclosure (Amending Government Code 6254 and 6275; Enacting Government Code. 6276.01)

A crime victim's confidential information and records are exempt from disclosure under the Public Records Act.

Prosecutors and public defenders are now included in those persons (judges, peace officers, court commissioners, and magistrates) whose home address and telephone number contained in an application or license for the carrying of a concealed firearm is not subject to disclosure under the California Public Records Act (AB 2221)

Psychotherapist Duty to Protect Against Threat to Reasonably Identifiable Person (Amending Civil Code Section 43.92)

There shall be no monetary liability on the part of, and no cause of action arises against a psychotherapist (as defined in Evidence Code Section 1010) for: 1) failing to protect from a patient's threatened violent behavior or failing to predict and protect from a patient's violent behavior except if the patient has communicated to the psychotherapist a serious threat of physical violence against a reasonably identifiable victim or victims; and 2) discharges their duty to protect by making reasonable efforts to communicate the threat to the victim or victims and to a law enforcement agency.

The purpose of this amendment is to change the name of the duty from a duty to warn and protect to a duty to protect. Nothing in this section shall be construed to be a substantive change, and any duty of a psychotherapist shall not be modified as a result of changing the wording in this section. (SB 1134)

Property Tax for Surviving Cotenant Does Not Increase Because of Death of Cotenant (Enacting Revenue and Taxation Code Section 62.3)

A transfer of co-tenancy interest in real property from one cotenant to the other that takes effect on the death of the transferor tenant and if it occurs after Jan 1, 2013, does not constitute a change of ownership, thereby relieving the survivor of a extra property taxes.

The transferee cotenant must sign an affidavit under penalty of perjury. The law took effect on September 29, 2012. (AB 1700)

New Safeguards to Prevent Lapse of Life Insurance Policies (Amending Insurance Code Section 10173.2, and Enacting Insurance Code Sections 10113.71 and 10113.72)

Every life insurance policy issued or delivered in California shall contain a provision for a grace period of at least 60 days from the premium due date during which time the policy remains in force. An insurer must give the applicant for an individual life insurance policy the right to designate at least one additional person to receive notice of lapse or termination of a policy for nonpayment of premium.

An insurer must provide each applicant with a form to make the designation and to notify the policy owner annually of the right to change the designation.

A notice of pending lapse and termination is not effective unless mailed by the insurer to the named policy owner, a named designee for an individual life insurance policy, and a known assignee or other person having an interest in the individual life insurance policy at least 30 days prior to the effective date of termination if termination is for nonpayment of premium.

The Legislative history states the bill provides consumer safeguards that will benefit people who have purchased life insurance coverage, especially seniors. Currently, individuals face loss of life insurance if a single premium is accidentally missed (even if they have been paying premiums on time for many years). If an insured individual

loses coverage and wants it reinstated, s/he may have to undergo a new physical exam and be underwritten again, risking a significantly more expensive, possibly unaffordable premium if his or her health has changed in the years since purchasing the policy. The bill is intended to make sure that policyholders have sufficient warning that their premium may lapse due to nonpayment. (AB 1747)

***Private Investigators May Enter Gated Community to Serve Process
(amending Code of Civil Procedure Section 415.21)***

A representative of a county sheriff or marshal, a registered process server, and a private investigator shall be allowed access to a gated community for a reasonable period of time to perform lawful service of process or a subpoena, upon identifying to the guard the person or persons to be served, and displaying a current driver's license or other identification or in the case of a private investigator, evidence of licensure. (AB 1720)

Changes to Laws Regarding Service of Process and Execution of Liens at Banks ((Amending Code of Civil Procedure Sections 482.070, 488.455, 488.460, 488.600, 488.610, 684.110, 700.140, 700.150, 700.160, 701.030, and 703.570; amending Financial Code Sections 1450 and 1620; amending Unemployment Insurance Code Sections 1755 and 1755.1; and enacting Civil Code Section 684.115)

Banks and financial institutions with more than 9 branches in California **shall**, and banks and financial institutions with less than 9 branches **may**, designate one or more central locations for service of legal process within the state. If banks or financial institutions fail to make the designation, then each branch shall be deemed to be a central location at which service may be made.

Banks and financial institutions shall file a notice of its designation with the State Department of Financial Institutions (DFI). DFI shall update its online records to reflect current designations within 10 days of filing. DFI shall provide this information to anyone requesting it, and may satisfy this requirement by making the information available free of charge to the public on its Web site.

Where a deposit account or property in a safe deposit box is attached or has been levied upon, if the writ of attachment or levy has been served at the designated central location, the information described in the garnishee's memorandum, which otherwise applies only with respect to property available at the branch where the levy was made, shall apply to all offices and branches of the bank.

The effects of service of legal process and execution of levies served within California is limited to accounts and safety deposit boxes maintained at the bank's branches and offices in California.

The California Employment Development Department (EDD) may levy upon accounts or other property held by banks and financial institutions using these procedures to collect delinquent employer contributions to the Unemployment Compensation program.

The Legislative history indicates that the purpose of this bill is to modernize procedures to serve attachments and execute levies which take into account the ability of banks to easily identify bank customer relationships across branches of a bank and reduce costs of debtor examinations and reduce the ability of debtors to conceal and move assets between accounts at a single bank. (AB 2364)

***Department of Mental Health is now the Department of State Hospitals
(Amending Welfare and Institutions Code Section 4000)***

State Department of Mental Health (DMH) has been eliminated and replaced by the State Department of State Hospitals (DSH), which will oversee California's mental health hospitals and psychiatric facilities. (AB 1470)

(January 2013)

California Protective Order Checklists

APPENDIX D: CALIFORNIA PROTECTIVE ORDER GUIDE

<i>TYPE OF ORDER</i>	<i>STATUTE</i>	<i>PROOF</i>	<i>ORDERS</i>		<i>DURATION</i>
Emergency Protective Order	Fam C §§6240–6274 Pen C §646.91	Reasonable Grounds	Personal conduct restraints, Stay away	Temp. care/control of minor child, Firearms restrictions, Address location restrictions, Ammunition restrictions	5 judicial business days or 7 days maximum
Temporary Restraining Order	Fam C §§6200 et seq, 6300 et seq	Reasonable Proof	Personal conduct restraints, Stay away, Residence exclusion Protection of animals	Temp. custody/visitation of minor child, Firearms restrictions, Address location restrictions, Ammunition restrictions	21 days from the date of order or 25 days if good cause
Order After Hearing	Fam C §§6200 et seq	Reasonable Proof	Ex parte orders + Child support and spousal support	Restitution, Batterer’s intervention, Firearms restrictions, Address location restrictions, Ammunition restrictions	5 years
Juvenile	Welf & I C §§213.5, 304, 362.4, 726.5	Reasonable Proof	Personal conduct restraints, Residence exclusion	Firearms restrictions, Address location restrictions, Ammunition restrictions	Ex parte—21 days or 25 days if good cause; OAH—3 years
Criminal Protective Order	Pen C §136.2	Good Cause Belief	Personal conduct restraints, Stay away	Firearms restrictions, Address location restrictions, Ammunition restrictions	Until defendant is no longer subject to court’s jurisdiction. If issued under Pen C §136.2(i), up to 10 years.
Stalking	Pen C §646.9(k)	Conviction of defendant	No contact		Up to 10 years
Workplace	CCP §527.8	TRO—Reasonable Proof OAH—Clear and	Personal conduct restraints, Stay away	Firearms restrictions, Address location restrictions, Ammunition	TRO—21 days or 25 if good cause OAH—3 years

TYPE OF ORDER	STATUTE	PROOF	ORDERS		DURATION
		Convincing	restrictions		
Civil Harassment	CCP §527.6	TRO— Reasonable OAH—Clear and Convincing	Personal conduct restraints, Stay away	Firearms restrictions, Address location restrictions, Ammunition restrictions	TRO—21 days or 25 if good cause; OAH—3 years
Elder and Dependent Adult	Welf & I C §15657.03	Reasonable Proof	Personal conduct restraints, Stay away	Residence exclusion, Firearms restrictions, Address location restrictions, Ammunition restrictions	TRO—21 days or 25 if good cause OAH—3 years
Private Postsecondary Educational Institution Protective Order	CCP §527.85	TRO— Reasonable Proof OAH—Clear and Convincing	Personal conduct restraints, Stay away, Prohibit further threats of violence	Firearms restrictions, Ammunition restrictions	TRO—21 days or 25 if good cause OAH—3 years

Family Law Act and Uniform Parentage Act—same as TRO and OAH

This chart is designed as a quick reference guide. Full details regarding each protective order can be found in the Protective Order Bench Manual.

Comparison of the DVPA and EARO

Issuance Issues

Issue	DVPA	EARO
Authority	Family Code §§6200 et seq	W&I §15657.03
Who Can Seek	Person who has suffered abuse by current or former spouse, current or former cohabitant, parent of a child in common, current or former dating or engaged party, child of a party or child subject to a paternity action, relationships through consanguinity and affinity within second degree	Elder or dependent adult, conservator, trustee, GAL, attorney in fact when authorized by POA, or other authorized person
Who Can Be Protected	Petitioner, Family or Household Members	Elder, Dependent Adult, Family or Household Members, Conservator
Legal Showing	“Abuse” which includes intentionally or recklessly causing or attempting to cause bodily injury to another, sexual assault, placing another person in fear of imminent serious bodily injury to that person or another; and behavior that has been or could be enjoined including molest, attack, strike, stalk, threaten, sexually assault, harass, telephone, destroy personal property, contact directly or indirectly, come within a specified distance, disturb the peace	Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, treatment with resulting physical harm, pain, or mental suffering, care custodian’s deprivation of goods or services necessary to avoid physical harm or mental suffering
Level of Proof	TRO: Reasonable proof of past abuse OAH: Preponderance of the evidence	TRO: Reasonable proof of past abuse OAH/Injunction: Preponderance of the

		evidence
Duration of TRO	21 days; 25 with good cause	21 days; 25 with good cause
Finding for Exclusion From Residence in TRO	<p>Ex parte TRO excluding a party from the petitioner's home requires a finding that:</p> <p>(1) the party who will stay in the dwelling has a right under color of law to possession of the premises;</p> <p>(2) the party to be excluded has assaulted or threatens to assault the petitioner, or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party; and (3) physical or emotional harm would otherwise result to petitioner, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.</p>	<p>Ex parte TRO excluding a party from the petitioner's home requires a finding that:</p> <p>(1) the party who will stay in the dwelling has a right under color of law to possession of the premises;</p> <p>(2) the party to be excluded has assaulted or threatens to assault the petitioner, other named family or household member of petitioner, or a conservator of the petitioner; and</p> <p>(3) physical or emotional harm would otherwise result to petitioner, other named family or household member of the petitioner, or petitioner's conservator</p> <p>Note: Exclusion from home on TRO requires physical abuse or threat of physical abuse.</p>
Duration of Final Order	Not more than 5 years for protective orders and firearms; custody and support orders continue to be in effect	Not more than five years
Renewal of Order	On request of a party, order can be made permanent without a showing of any further abuse since the issuance of the original order brought within three months of the expiration of the order	On request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order brought within three months of the expiration of the order

Terms and Conditions

Term or Condition	DVPA TRO	DVPA OAH	EARO TRO	EARO Order (Injunction)
Personal Conduct	X	X	X	X
No contact, stay away	X	X	X	X
Animals	X	X		
Residence Exclusion	X	X	X	X
Other Restraints Necessary to Effectuate Order	X	X	X	X
Prohibit Obtaining Petitioner's Address	X	X	X	X
Firearms Prohibitions	X	X	X Not financial abuse only	X Not financial abuse only
Ammunition Prohibitions	X	X	X Not financial abuse only	X Not financial abuse only
Temporary Custody, Visitation	X	X		
Temporary Use of Property, Possession, Debt Payment	X	X		
Record Unlawful Communications	X	X		
Child Support		X		
Spousal Support		X		
Restitution		X		
Batterer's Treatment		X		
Attorney Fees and Costs		X		X
Mandatory Entry of Order in CAPROS	X	X	X	X



CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS FIREARMS PROHIBITING CATEGORIES



State and federal law make it unlawful for certain persons to own and/or possess firearms, including:

- Any person who is convicted of a felony, or any offense enumerated in Penal Code sections 29900 or 29905
- Any person who is ordered to not possess firearms as a condition of probation or other court order listed in Penal Code section 29815, subdivisions (a) and (b)
- Any person who is convicted of a misdemeanor listed in Penal Code section 29805 (refer to List of Prohibiting Misdemeanors)
- Any person who is adjudged a ward of the juvenile court because he or she committed an offense listed in Welfare and Institutions Code section 707(b), an offense described in Penal Code section 1203.073(b), or any offense enumerated in Penal Code section 29805
- Any person who is subject to a temporary restraining order or an injunction issued pursuant to Code of Civil Procedure sections 527.6 or 527.8, a protective order as defined in Family Code section 6218, a protective order issued pursuant to Penal Code sections 136.2 or 646.91, or a protective order issued pursuant to Welfare and Institutions Code section 15657.03
- Any person who is found by a court to be a danger to himself, herself, or others because of a mental illness
- Any person who is found by a court to be mentally incompetent to stand trial
- Any person who is found by a court to be not guilty by reason of insanity
- Any person who is adjudicated to be a mentally disordered sex offender
- Any person who is placed on a conservatorship because he or she is gravely disabled as a result of a mental disorder, or an impairment by chronic alcoholism
- Any person who communicates a threat to a licensed psychotherapist against a reasonably identifiable victim, that has been reported by the psychotherapist to law enforcement
- Any person who is taken into custody as a danger to self or others under Welfare and Institutions Code section 5150, assessed under Welfare and Institutions Code section 5151, and admitted to a mental health facility under Welfare and Institutions Code sections 5151, 5152, or certified under Welfare and Institutions Code sections 5250, 5260, and 5270.15
- Any person who is addicted to the use of narcotics (state and federal)
- Any person who is under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year (federal)
- Any person who has been discharged from the military under dishonorable conditions (federal)
- Any person who is an illegal alien (federal)
- Any person who has renounced his or her US Citizenship (federal)
- Any person who is a fugitive from justice (federal)



CALIFORNIA DEPARTMENT OF JUSTICE BUREAU OF FIREARMS FIREARMS PROHIBITING CATEGORIES



Firearm prohibitions for misdemeanor violations of the offenses listed below are generally for ten years from the date of conviction, but the duration of each prohibition may vary. All statutory references are to the California Penal Code, unless otherwise indicated.

- Threatening public officers, employees, and school officials (Pen. Code, § 71.)
- Threatening certain public officers, appointees, judges, staff or their families with the intent and apparent ability to carry out the threat (Pen. Code, § 76.)
- Intimidating witnesses or victims (Pen. Code, § 136.1.)
- Possessing a deadly weapon with the intent to intimidate a witness (Pen. Code, § 136.5.)
- Threatening witnesses, victims, or informants (Pen. Code, § 140.)
- Attempting to remove or take a firearm from the person or immediate presence of a public or peace officer (Pen. Code, § 148(d).)
- Unauthorized possession of a weapon in a courtroom, courthouse, or court building, or at a public meeting (Pen. Code, § 171(b).)
- Bringing into or possessing a loaded firearm within the state capitol, legislative offices, etc. (Pen. Code, § 171(c).)
- Taking into or possessing loaded firearms within the Governor's Mansion or residence of other constitutional officers (Pen. Code, § 171(d).)
- Supplying, selling or giving possession of a firearm to a person for participation in criminal street gangs (Pen. Code, § 186.28.)
- Assault (Pen. Code, §§ 240, 241.)
- Battery (Pen. Code, §§ 242, 243.)
- Sexual Battery (Pen. Code, § 243.4)
- Assault with a stun gun or taser weapon (Pen. Code, § 244.5.)
- Assault with a deadly weapon other than a firearm, or with force likely to produce great bodily injury (Pen. Code, § 245.)
- Assault with a deadly weapon or instrument; by any means likely to produce great bodily injury or with a stun gun or taser on a school employee engaged in performance of duties (Pen. Code, § 245.5.)
- Discharging a firearm in a grossly negligent manner (Pen. Code, § 246.3.)
- Shooting at an unoccupied aircraft, motor vehicle, or uninhabited building or dwelling house (Pen. Code, § 247.)
- Inflicting corporal injury on a spouse or significant other (Pen. Code, § 273.5.)*
- Willfully violating a domestic protective order (Pen. Code, § 273.6.)
- Drawing, exhibiting, or using deadly weapon other than a firearm (Pen. Code, § 417, subd. (a)(1) & (a)(2).)
- Inflicting serious bodily injury as a result of brandishing (Pen. Code, § 417.6.)
- Making threats to commit a crime which will result in death or great bodily injury to another person (Pen. Code, § 422.)
- Bringing into or possessing firearms upon or within public schools and grounds (Pen. Code, § 626.9.)
- Stalking (Pen. Code, § 646.9.)
- Armed criminal action (Pen. Code, § 25800.)
- Possessing a deadly weapon with intent to commit an assault (Pen. Code, § 17500.)
- Driver of any vehicle who knowingly permits another person to discharge a firearm from the vehicle or any person who willfully and maliciously discharges a firearm from a motor vehicle (Pen. Code, § 26100, subd. (b) or (d).)
- Criminal possession of a firearm (Pen. Code, § 25300.)
- Firearms dealer who sells, transfers or gives possession of any firearm to a minor or a handgun to a person under 21 (Pen. Code, § 27510.)
- Various violations involving sales and transfers of firearms (Pen. Code, § 27590, subd. (c).)
- Person or corporation who sells any concealable firearm to any minor (former Pen. Code, § 12100, subd. (a).)
- Unauthorized possession/transportation of a machine gun (Pen. Code, § 32625)
- Possession of ammunition designed to penetrate metal or armor (Pen. Code, § 30315.)
- Carrying a concealed or loaded firearm or other deadly weapon or wearing a peace officer uniform while picketing (Pen. Code, §§ 830.95, subd. (a), 17510, subd. (a).)
- Bringing firearm related contraband into juvenile hall (Welf. & Inst. Code, § 871.5.)
- Bringing firearm related contraband into a youth authority institution (Welf. & Inst. Code, § 1001.5.)
- Purchase, possession, or receipt of a firearm or deadly weapon by a person receiving in-patient treatment for a mental disorder, or by a person who has communicated to a licensed psychotherapist a serious threat of physical violence against an identifiable victim (Welf. & Inst. Code, § 8100.)
- Providing a firearm or deadly weapon to a person described in Welfare and Institutions Code sections 8100 or 8103 (Welf. & Inst. Code, § 8101.)
- Purchase, possession, or receipt of a firearm or deadly weapon by a person who has been adjudicated to be a mentally disordered sex offender or found to be mentally incompetent to stand trial, or not guilty by reason of insanity, and individuals placed under conservatorship (Welf. & Inst. Code, § 8103.)

The following misdemeanor convictions result in a lifetime prohibition:

- Assault with a firearm (Pen. Code, §§ 29800, subd. (a)(1), 23515, subd. (a).)
- Shooting at an inhabited or occupied dwelling house, building, vehicle, aircraft, housecar or camper (Pen. Code, §§ 246, 29800, subd. (a)(1), 17510, 23515, subd. (b).)
- Brandishing a firearm in presence of a peace officer (Pen. Code §§ 417, subd. (c), 23515, subd. (d), 29800, subd. (a)(1).)
- Two or more convictions of Penal Code section 417, subdivision (a)(2) (Pen. Code § 29800, subd. (a)(2).)

* A "misdemeanor crime of domestic violence" (18 U.S.C. §§ 921(a)(33)(A), 922(g)(9).)

Note: The Department of Justice provides this document for informational purposes only. This list may not be inclusive of all firearms prohibitions. For specific legal advice, please consult with an attorney licensed to practice law in California.

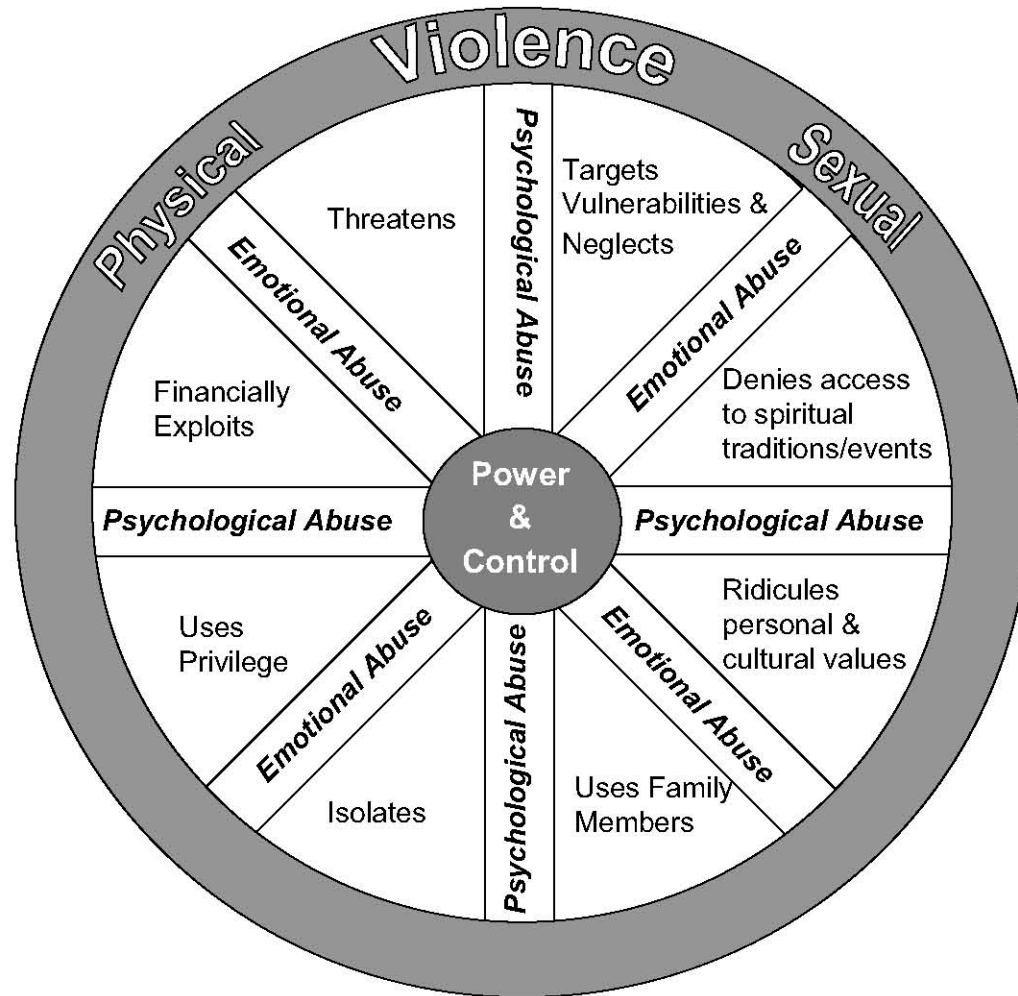
POWER AND CONTROL WHEEL

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



Abuse in Later Life Wheel



Created by the National Clearinghouse on Abuse in Later Life (NCALL), a project of the Wisconsin Coalition Against Domestic Violence (WCADV).

307 S. Paterson St., Suite 1, Madison, WI 53703(608) 255-0539 / FAX:(608) 255-3560

This diagram adapted from the Power and Control/Equality wheels developed by the Domestic Abuse Intervention Project, Duluth, MN

Bill Start

AMENDED IN ASSEMBLY MAY 13, 2013
AMENDED IN ASSEMBLY MAY 06, 2013
AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE— 2013–2014 REGULAR SESSION

ASSEMBLY BILL

No. 140

Introduced by Assembly Member Dickinson
(Coauthor(s): Assembly Member Gatto)

January 17, 2013

An act to add Section 86 to the Probate Code, and to amend Section 15610.30 of, and to add Section 15610.70 to, the Welfare and Institutions Code, relating to undue influence.

LEGISLATIVE COUNSEL'S DIGEST

AB 140, as amended, Dickinson. Undue influence.

Existing law provides that financial abuse of an elder or dependent adult occurs when, among other instances, a person or entity takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined.

Existing law makes failing to report, or impeding or inhibiting a report of, among other things, financial abuse of an elder or dependent adult, in violation of certain reporting requirements a misdemeanor. Existing law also makes it a misdemeanor for any caretaker of an elder or dependent adult to violate any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult.

This bill would change the definition of undue influence to mean excessive persuasion that causes another person to act or refrain from acting and results in inequity. The bill would require, in determining whether the result was produced by undue influence, the vulnerability of the victim, the influencer's apparent authority and whether the influencer knew or should have known of the victim's vulnerability, the actions or tactics used by the influencer, and the equity of the result to be considered. The bill would specify that nothing in these provisions be construed to imply that an inequitable result, without more, will constitute undue influence or excessive persuasion.

By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law prohibits the use of undue influence and establishes protections for individuals unable to resist undue influence in various areas of the law, including wills, trusts, and conservatorships.

This bill would define undue influence for those purposes without superseding or interfering with the common law of undue influence.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 86 is added to the Probate Code, to read:

86. "Undue influence" has the same meaning as defined in Section 15610.70 of the Welfare and Institutions Code. It is the intent of the Legislature that this section supplement the common law meaning of undue influence without superseding or interfering with the operation of that law.

SEC. 2. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this section, "representative" means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

SEC. 3. Section 15610.70 is added to the Welfare and Institutions Code, to read:

15610.70. (a) "Undue influence" means excessive persuasion that causes another person to act or refrain from acting and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

(1) The vulnerability of the victim, including, but not limited to, incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency.

(2) The influencer's apparent authority, including, but not limited to, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification, and whether the influencer knew or should have known of the victim's vulnerability.

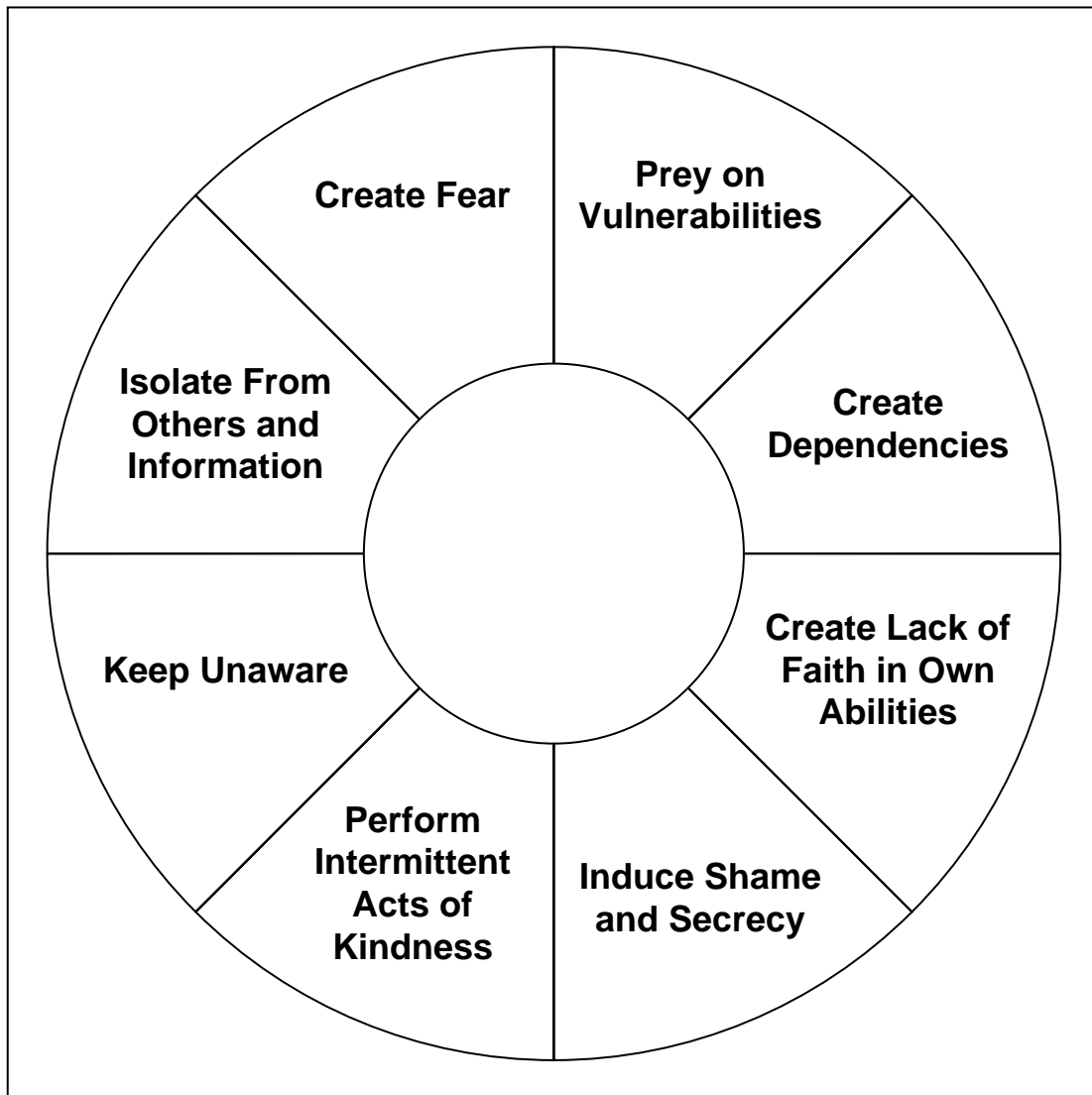
(3) The actions or tactics used by the influencer, including, but not limited to, controlling necessities, medication, the victim's interactions with others, or access to information, sleep deprivation, use of affection, intimidation, or coercion, initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, or claims of expertise in effecting changes.

(4) The equity of the result, including, but not limited to, the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship.

(b) ~~Nothing in this~~ *This* section shall *not* be construed to imply that an inequitable result, without more, establishes the element of undue influence or excessive persuasion.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

UI WHEEL



ATTACHMENT

The Probate Court as Supervising Fiduciary Hon. Richard Cline, Hon. William McKinstry¹

- The probate court has a unique role when it supervises fiduciaries. Fiduciaries in probate matters include guardians, conservators, personal representative and trustees, see Probate Code § 39, and have duties of loyalty and impartiality, and the duty to avoid conflict of interests, see §§ 2101, 16002-16004. 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.
 1. **Appointment.** The probate court may appoint these fiduciaries. See §§ 1514 (guardian), 1830 (conservator), 8400 (personal representative) and 15660(d) (successor trustee).
 - a. Some individuals may have a right to an appointment. See Probate Code §§ 1500 (nominee of parent of ward), 1501 (nominee of benefactor), 1810 (nominee of proposed conservator), 1811 (nominee of relatives), 8420 (named executor), and 8461 (priority of family)
 - b. Still, the probate court must do some assessment of an individual's capacity to perform fiduciary duties, since the probate court may not appoint someone who is removable. See e.g. §§ 1514 (unsuitable nominated guardian is removable), 8402(a)(3).
 2. **Instruction.** The probate court may instruct these fiduciaries. See §§ 2403(a), 9611(a) and 17200(b)(6). The instruction of a fiduciary constitutes prospective supervision of the fiduciary.
 3. **Accounts.** Accounts of fiduciaries may be due. See §§ 2256 (temporary guardians and conservators), 2620 (permanent guardians and conservators) 10950 (personal representatives) and 16062 (trustees). Accounts may be compelled. See §§ 2629, 11050, 17206. Every account is deemed a petition for approval. See § 1064(b). This places the burden of proving the account on the fiduciary to prove good conduct.
 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).
- Additional notes: No right to jury trial – except for 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.
- Recent events have caused the legislature to reinforce the supervisory role of the probate court.
 1. 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.
 2. 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 (AB 1363, SB 1116, SB 1550, and SB 1716) designed to improve the

¹ These teaching points are from Judge William McKinstry's notes, which are in turn taken from Judge Richard Cline's Fundamentals of Probate for a Probate Overview.

administration of probate conservatorship cases in the trial courts. See Probate Resources on Serranus.

Primary Assignment Orientation and Criminal Assignment Courses Program

Handling Elder Abuse Issues

Contra Costa Superior Court Elder Abuse Court

Elder Court provides comprehensive solutions to the variety of problems inherent in elder abuse cases. A dedicated docket includes criminal, civil (including civil harassment and small claims), probate and family cases. All cases are heard by one judge, who has had specialized training in elder issues. Free support services include: Senior Peer Counselors, Interpreters and Senior Self Help Clinic. In-home mediations are available.

The population over 65 continues to grow in Contra Costa County and throughout the state. According to the Census Bureau, seniors comprise over 12% of the county's population – a percentage that will continue to grow over the next two decades. Seniors are more likely to suffer from impairments that hamper their ability to access justice. For example, changes in the brain due to normal aging, Parkinson's, dementia or other problems may hamper the elder's ability to understand and process information. Many are isolated or physically frail. This combination of factors renders elders particularly vulnerable to financial exploitation and physical and psychological abuse by strangers as well as caregivers, friends and relatives. Once the abuse begins, shame, fear, trauma and confusion further compound the problem.

Elder Court grew out of an understanding that the education and outreach that are essential to encourage abuse victims to come forward were not in place. There was also a recognition that elders, like victims of domestic violence, have special physical, mental and psychological needs that traditional courtrooms are poorly equipped to address. Lastly, although there were agencies in the community that offered services for abused elders, there was little communication or coordination between them.

The Elder Court program begins in the community, where the goals are to educate the community about elder abuse, to help victims overcome the shame and fear that accompanies elder abuse, and to inform them about the availability of legal remedies. Once a case is filed, the goal becomes to effectively address the special challenges of elder abuse cases including the mental, physical or emotional frailty of the victim, the victim's need or desire to maintain a relationship with abusers who may be the victims' children, grandchildren or caregivers, the need for swift resolution of cases, the need for emotional support as criminal matters are pursued, the need to preserve financial assets, and the need to ensure that the elder is physically safe, with a home and adequate medical and other care during the pendency of the action.

The docket includes every case type that involves elder abuse. Hearings can be set late to accommodate an elder's physical needs and/or transportation issues. Emergency cases

can be heard in branch courts. The courtroom is equipped with a wheelchair, assistive listening devices, and several pairs of donated eyeglasses. A document magnifier is on order. (In-kind court services and Archstone Grant for some equipment.)

Senior Peer Counselors. Volunteer Counselors are available during every Elder Court session to assist petitioners seeking a restraining order. Volunteers also work closely with the District Attorney's Victim's Assistance Program. The volunteer greets the elder and offers emotional support prior to the hearing. After the hearing the volunteer helps the elder understand what happened in the courtroom and what will happen as a result, as well as helping them process the accompanying emotions. In "reassurance calls" following court hearings, in-home counseling, transportation assistance and referrals to community based resources are offered. (Contra Costa Health Services)

Senior Self Help Center is staffed by experienced attorneys and open from 9 am until 1:30 pm on Elder Court days. It offers free legal assistance and referrals to indigent seniors. Services include assistance completing restraining order and small claims forms, consumer credit, unlawful detainer, and foreclosure actions as well as preparing for hearings. A dedicated telephone line allows for telephone assistance. (Senior Legal Services funding with space/computer/printer/desk and telephone line from the Court)

Free Spanish Translation and Interpretation services at the Senior Self Help Center are available from a court interpreter training program. (Spanish Global Solutions)

Mediators assist elders to reconcile with family members and negotiate their differences. "Kitchen Top" mediations at home are available for those with mobility issues. (Center for Human Development)

Outreach. Brochures have been printed describing Elder Court and each of its supporting partners. Judge Cram and representatives of the Elder Court partner agencies frequently speak at service club meetings and community events. Community partners, such as "211.com", the California Senior Legislature and Adult Protective Services promote the program. (Archstone grant funds – printing costs).

Presiding Judge O'Malley telephoned individuals and invited them to join a Task Force with judges, a prosecutor, a public defender and agency leaders. The Task Force identified appropriate case types, determined each agency's role in the program and addressed logistical problems. Judge Cram spearheaded the creation and ongoing administration of Elder Court and she is the key component of the education and outreach program. The Court Executive Officer, Deputy Executive Officer and Director of Programs and Services coordinated the integration of Elder Court into the court's existing structure, ensured that court procedures were created and that staff was trained. All are invested in the continuing success of the program.

Recent Studies and Research

Elder Financial Abuse

- Costs more than \$2.6 billion per year
- Most often perpetrated by family members and caregivers
- Up to one million elders targeted yearly
- Related costs in the tens of millions for health care, social services, investigations, legal fees, prosecution, lost income and assets annually
- For each case of abuse that is reported, an estimated four or more are unreported
 - MetLife Study 2009, www.maturemarketinstitute.com

Elder Financial Abuse

- Losses from business enterprises: \$250,152,700 (e.g., life and health insurance scams, predatory lending; identity theft, and internet scams)
- Losses to acquaintances and strangers: \$3,266,377
- Losses to family members: \$10,661,236

Elder Financial Abuse

- Investor Protection Trust (June 15, 2010) “Elder Investment Fraud and Financial Exploitation” available at www.investorprotection.org/learn/research/?fa=eiffeSu.
- A survey conducted May 20-24, 2010 of 2,022 adults with at least one living parent aged 65 and above and 590 adults aged 65 and above
 - Found that 20%, or over 7.3 million, of Americans aged 65 or older have been financially exploited/victimized

Stealing seniors' assets costs Utah \$52 million annually

By Patty Henetz

The Salt Lake Tribune (February 23, 2011)

In an average week, Utah seniors lose \$1 million to thieves.

That's the grim finding of a new state study of elder financial abuse, which concluded the perpetrators are overwhelmingly the people seniors need to trust the most: their children and grandchildren.

These betrayers steal cars and pawn wheelchairs, refuse to pay rent to live in their parents' homes and steal their medications. More often, they appropriate credit cards, loot bank accounts or forge checks.

The criminal activity costs all of society, says Jilene Gunther, legal enforcement counsel for the Utah Division of Aging & Adult Services Elder Rights program. Her report, released last week and based on 2009 statistics, found that thefts ranging from \$35 to \$745,640 cost seniors, taxpayers, businesses and the government \$51,506,100.

Financial institutions saw \$30 million stolen; Utahns paid an estimated \$7.8 million to care for elders impoverished to the point they turned to Medicaid for health care.

National Elder Mistreatment Study

- Telephonic survey of 5,777 persons over age 60 in the continental US
- All cognitively capable

- Study: Acierno, R., Hernandez, M.A., Amstadter, A.B., Resnick, H.S., Steve, K., Muzzy, W., Kilpatrick, D.G. (February 2010) *Prevalence and Correlates of Emotional, Physical, Sexual and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*, Amer J Pub Health, 100(2), 292-297

National Elder Mistreatment Study

- Prevalence rate of 11.4% in previous year to study
- Types of Abuse
 - Physical 1.6%
 - Verbal 4.6%
 - Sexual 0.6%
 - Neglect 5.1%
 - Financial by family members 5.2%

Reporting Financial Exploitation

- High prevalence of financial exploitation but rarely reported
- When reported, usually by someone other than the victim.
 - 1 in 20 older adults indicated some form of perceived financial mistreatment by family members occurring at least one time in the recent past.

Under the Radar: NY State Elder Abuse Prevalence Study

- Telephonic survey of 4156 elders (over 60) in New York
- Review of files by 292 agencies and programs responsible for serving victims of elder abuse, including older victims of domestic violence
- Calendar year 2008
- 7.6% (about 1 in 13 elders) victims of any form of abuse
- Most common form is financial abuse- 4.2% (1 in 25)
- For every reported case of elder abuse, 23-24 are unreported

Chicago Study

- Study of 1795 elderly residents of Chicago at least 60 years of age for whom crime victimization data was available.
- Three sample groups were created; community non victims; community victims; and a police sample of elderly victims visited by trained elder service officers. Phone interviews were conducted with 328; 159 from community non victims; 121 from community victims; and 48 from the police sample.
- Victimization was examined twice over a 10 month period.

Findings

- Physical abuse 0.5%
- Financial abuse 2.2%
- Emotional abuse 4.51%
- Neglect 1.33%

Findings

- People from the police sample were more likely to have at least one incident of subsequent abuse than those from the community group
- For those in the police sample the number of forms of abuse that occurred frequently (more than 10 times) decreased
- Those in the police sample were more likely to have engaged in protective behavior or service seeking than those in the community sample.

Chicago Study Citation

- Amendola, K.L., Slipka, M.G., Hamilton, E.E., and Whitman, J.L. (Dec 2010) The Course of Domestic Abuse Among Chicago's Elderly: Protective Behaviors, Risk Factors, and Police Intervention, NCJRS Publication 232623; available at:
<http://www.ncjrs.gov/pdffiles1/nij/grants/232623.pdf>

Other Studies

- Cooper and Colleagues (2008) systemically reviewed 353 published studies in 9 countries through 2006.
- Prevalence rates in the 7 studies with best methodology were between 3.2 and 27.5%.
 - Physical abuse: 1.2 to 4.3%
 - Financial abuse: between 1.3 to 5%
 - Emotional/verbal abuse: 0.8% - 10.8%
 - Neglect: 0.2%-4.3%.

Other Studies

- National Social Life, Health and Aging Project (NSHAP) conducted by Laumann et al (2008)
 - 9% prevalence of verbal abuse (defined differently from Acierno's emotional abuse)
 - 3.5% for financial abuse
 - 0.2% physical abuse.
- Study did not study sexual abuse or neglect.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <div style="display: flex; justify-content: space-between;"> <div> TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): </div> <div> FAX NO. (Optional): </div> </div>	FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; margin: 10px 0;">FILED</div> <div style="font-weight: bold; margin: 5px 0;">LOS ANGELES SUPERIOR COURT</div> <div style="margin-top: 20px;"> JOHN V. CLARKE, CLERK <i>V. Sauer</i> BY V. SIGERS, DEPUTY </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER
CONSERVATORSHIP OF THE <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE OF (Name): <div style="background-color: black; width: 100px; height: 1.2em; margin-bottom: 5px;"></div> <div style="display: flex; justify-content: space-around;"> <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE </div>	
CAPACITY DECLARATION—CONSERVATORSHIP	
TO PHYSICIAN, PSYCHOLOGIST, OR RELIGIOUS HEALING PRACTITIONER The purpose of this form is to enable the court to determine whether the (proposed) conservatee (check all that apply): A. <input type="checkbox"/> is able to attend a court hearing to determine whether a conservator should be appointed to care for him or her. The court hearing is set for (date): . (Complete item 5, sign, and file page 1 of this form.) B. <input type="checkbox"/> has the capacity to give informed consent to medical treatment. (Complete items 6 through 8, sign page 3, and file pages 1 through 3 of this form.) C. <input type="checkbox"/> has dementia and, if so, (1) whether he or she needs to be placed in a secured-perimeter residential care facility for the elderly, and (2) whether he or she needs or would benefit from dementia medications. (Complete items 6 and 8 of this form and form GC-335A; sign and attach form GC-335A. File pages 1 through 3 of this form and form GC-335A.) (If more than one item is checked above, sign the last applicable page of this form or form GC-335A if item C is checked. File page 1 through the last applicable page of this form; also file form GC-335A if item C is checked.) COMPLETE ITEMS 1-4 OF THIS FORM IN ALL CASES.	

GENERAL INFORMATION

1. (Name): Susan I. Bernatz, PHD
2. (Office address and telephone number):
578 Washington Blvd., Suite 828, Marina del Rey, CA 90292 310 306-9995
3. I am
 - a. ☒ a California licensed ☐ physician ☒ psychologist acting within the scope of my licensure ☒ with at least two years' experience in diagnosing dementia.
 - b. ☐ an accredited practitioner of a religion whose tenets and practices call for reliance on prayer alone for healing, which religion is adhered to by the (proposed) conservatee. The (proposed) conservatee is under my treatment. (Religious practitioner may make the determination under item 5 ONLY.)
4. (Proposed) conservatee (name): [REDACTED]
 - a. I last saw the (proposed) conservatee on (date): [REDACTED]
 - b. The (proposed) conservatee ☐ is ☒ is NOT a patient under my continuing treatment.

ABILITY TO ATTEND COURT HEARING

5. A court hearing on the petition for appointment of a conservator is set for the date indicated in item A above. (Complete a or b.)
 - a. ☐ The proposed conservatee is able to attend the court hearing.
 - b. ☒ Because of medical inability, the proposed conservatee is NOT able to attend the court hearing (check all items below that apply)
 - (1) ☐ on the date set (see date in box in item A above).
 - (2) ☒ for the foreseeable future.
 - (3) ☐ until (date):
 - (4) **Supporting facts** (State facts in the space below or check this box ☐ and state the facts in Attachment 5):
 presents with a moderate to severe dementia.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: [REDACTED]

Susan I. Bernatz, PHD

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

Page 1 of 1

Form adopted for Mandatory Use
Judicial Council of California
GC-335 (Rev. January 1, 2004)

CAPACITY DECLARATION—CONSERVATORSHIP

Probate Code, §§ 811,
813, 1801, 1825,
1861, 1910, 2356.5

American LegalNet, Inc.
www.USCourtForms.com

CONSERVATORSHIP OF THE <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE OF (Name):	CASE NUMBER:
<input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	

6. EVALUATION OF (PROPOSED) CONSERVATEE'S MENTAL FUNCTIONS

Note to practitioner: This form is *not* a rating scale. It is intended to assist you in recording your *impressions* of the (proposed) conservatee's mental abilities. Where appropriate, you may refer to scores on standardized rating instruments.

(Instructions for items 6A-6C): Check the appropriate designation as follows: **a** = no apparent impairment; **b** = moderate impairment; **c** = major impairment; **d** = so impaired as to be incapable of being assessed; **e** = I have no opinion.)

A. Alertness and attention

- (1) Levels of arousal (lethargic, responds only to vigorous and persistent stimulation, stupor)

a ☒ b ☐ c ☐ d ☐ e ☐
- (2) Orientation (types of orientation impaired)

a ☒ b ☐ c ☐ d ☐ e ☐ Person

a ☐ b ☐ c ☒ d ☐ e ☐ Time (day, date, month, season, year)

a ☐ b ☐ c ☒ d ☐ e ☐ Place (address, town, state)

a ☐ b ☐ c ☒ d ☐ e ☐ Situation ("Why am I here?")
- (3) Ability to attend and concentrate (give detailed answers from memory, mental ability required to thread a needle)

a ☐ b ☐ c ☒ d ☐ e ☐

B. Information processing. Ability to:

- (1) Remember (ability to remember a question before answering; to recall names, relatives, past presidents, and events of the past 24 hours)
 - i. Short-term memory a ☐ b ☐ c ☒ d ☐ e ☐
 - ii. Long-term memory a ☐ b ☐ c ☒ d ☐ e ☐
 - iii. Immediate recall a ☐ b ☐ c ☒ d ☐ e ☐
- (2) Understand and communicate either verbally or otherwise (deficits reflected by inability to comprehend questions, follow instructions, use words correctly, or name objects; use of nonsense words)

a ☐ b ☒ c ☐ d ☐ e ☐
- (3) Recognize familiar objects and persons (deficits reflected by inability to recognize familiar faces, objects, etc.)

a ☐ b ☐ c ☒ d ☐ e ☐
- (4) Understand and appreciate quantities (deficits reflected by inability to perform simple calculations)

a ☐ b ☐ c ☒ d ☐ e ☐
- (5) Reason using abstract concepts. (deficits reflected by inability to grasp abstract aspects of his or her situation or to interpret idiomatic expressions or proverbs)

a ☐ b ☐ c ☒ d ☐ e ☐
- (6) Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest (deficits reflected by inability to break complex tasks down into simple steps and carry them out)

a ☐ b ☐ c ☒ d ☐ e ☐
- (7) Reason logically.

a ☐ b ☐ c ☒ d ☐ e ☐

C. Thought disorders

- (1) Severely disorganized thinking (rambling thoughts; nonsensical, incoherent, or nonlinear thinking)

a ☒ b ☐ c ☐ d ☐ e ☐
- (2) Hallucinations (auditory, visual, olfactory)

a ☒ b ☐ c ☐ d ☐ e ☐
- (3) Delusions (demonstrably false belief maintained without or against reason or evidence)

a ☒ b ☐ c ☐ d ☐ e ☐
- (4) Uncontrollable or intrusive thoughts (unwanted compulsive thoughts, compulsive behavior).

a ☒ b ☐ c ☐ d ☐ e ☐

(Continued on next page)

CONSERVATORSHIP OF THE <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE OF (Name):	CASE NUMBER:
<div style="background-color: black; width: 100px; height: 15px;"></div>	
<input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	

6. (continued)

- D. **Ability to modulate mood and affect.** The (proposed) conservatee ☐ has ☒ does NOT have a pervasive and persistent or recurrent emotional state that appears inappropriate in degree to his or her circumstances. (If so, complete remainder of item 6D.) ☐ I have no opinion.

(Instructions for item 6D: Check the degree of impairment of each inappropriate mood state (if any) as follows: a = mildly inappropriate; b = moderately inappropriate; c = severely inappropriate.)

Anger	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Euphoria	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Helplessness	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>
Anxiety	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Depression	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Apathy	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>
Fear	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Hopelessness	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Indifference	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>
Panic	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Despair	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>				

- E. The (proposed) conservatee's periods of impairment from the deficits indicated in items 6A-6D

- (1) ☒ do NOT vary substantially in frequency, severity, or duration.
 (2) ☐ do vary substantially in frequency, severity, or duration (explain; continue on Attachment 6E if necessary):

- F. ☒ (Optional) Other information regarding my evaluation of the (proposed) conservatee's mental function (e.g., diagnosis, symptomatology, and other impressions) is ☒ stated below ☐ stated in Attachment 6F.

Please refer to my report for an extensive understanding of her cognitive deficits.

ABILITY TO CONSENT TO MEDICAL TREATMENT

7. Based on the information above, it is my opinion that the (proposed) conservatee
- ☐ has the capacity to give informed consent to any form of medical treatment. This opinion is limited to medical consent capacity.
 - ☒ lacks the capacity to give informed consent to any form of medical treatment because he or she is **either** (1) unable to respond knowingly and intelligently regarding medical treatment **or** (2) unable to participate in a treatment decision by means of a rational thought process, **or both**. The deficits in the mental functions described in item 6 above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of medical decisions. This opinion is limited to medical consent capacity.

(Declarant must initial here if item 7b applies: SIB.)

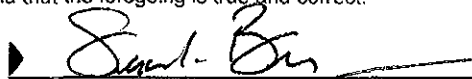
8. Number of pages attached: 10

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

Susan I. Bernatz, PHD

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

CONSERVATORSHIP OF THE <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE OF (Name):	CASE NUMBER:
<input type="checkbox"/> CONSERVATEE <input type="checkbox"/> PROPOSED CONSERVATEE	

**ATTACHMENT TO FORM GC-335, CAPACITY DECLARATION—CONSERVATORSHIP,
ONLY FOR (PROPOSED) CONSERVATEE WITH DEMENTIA**

9. It is my opinion that the (proposed) conservatee ☒ HAS ☐ does NOT have dementia as defined in the current edition of *Diagnostic and Statistical Manual of Mental Disorders*.

a. ☐ **Placement of (proposed) conservatee.** (If the (proposed) conservatee requires placement in a secured-perimeter residential care facility for the elderly, please complete items 9a(1)–9a(5).)

(1) The (proposed) conservatee needs or would benefit from placement in a restricted and secure facility because (state reasons; continue on Attachment 9a(1) if necessary):

(2) The (proposed) conservatee's mental function deficits, based on my assessment in item 6 of form GC-335, include (describe; continue on Attachment 9a(2) if necessary):

[REDACTED] suffers from a dementia and has global cognitive deficits in the areas of attention, memory, language, executive functioning and visual spatial skills.

(3) ☐ The (proposed) conservatee HAS capacity to give informed consent to this placement.

(4) ☒ The (proposed) conservatee does NOT have capacity to give informed consent to this placement. The deficits in mental function assessed in item 6 of form GC-335 and described in item 9a(2) above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of his or her actions with regard to giving informed consent to placement in a restricted and secure environment.

(5) A locked or secured-perimeter facility ☐ is ☒ is NOT the least restrictive environment appropriate to the needs of the (proposed) conservatee.

b. ☒ **Administration of dementia medications.** (If the (proposed) conservatee requires administration of psychotropic medications appropriate to the care of dementia, please complete items 9b(1)–9b(5).)

(1) The (proposed) conservatee needs or would benefit from the following psychotropic medications appropriate to the care of dementia, for the reasons stated in item 9b(5) (list medications; continue on Attachment 9b(1) if necessary):

[REDACTED] may need medication to assist with any behavioral disturbance she may have secondary to her moderate dementia.

(2) The (proposed) conservatee's mental function deficits, based on my assessment in item 6 of form GC-335, include (describe; continue on Attachment 9b(2) if necessary):

(3) ☐ The (proposed) conservatee HAS capacity to give informed consent to the administration of psychotropic medications appropriate to the care of dementia.

(4) ☒ The (proposed) conservatee does NOT have the capacity to give informed consent to the administration of psychotropic medications appropriate to the care of dementia. The deficits in mental function assessed in item 6 of form GC-335 and described in item 9b(2) above significantly impair the (proposed) conservatee's ability to understand and appreciate his or her actions with regard to giving informed consent to the administration of psychotropic medications for the treatment of dementia.

(5) The (proposed) conservatee needs or would benefit from the administration of the psychotropic medications listed in item 9b(1) because (state reasons; continue on Attachment 9b(5) if necessary):

10. Number of pages attached: 10

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: [REDACTED]

Susan I. Bernatz, PHD

(TYPE OR PRINT NAME)

[Signature]

(SIGNATURE OF DECLARANT)

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bernatz

FORENSIC NEUROPSYCHOLOGY

EXECUTIVE SUMMARY

NEUROPSYCHOLOGICAL EVALUATION

RE: [REDACTED]
Age: 96 years
Gender: Female
Handedness: Right
Highest Grade Completed: High School
Date of Evaluation: [REDACTED]
LASC CASE #: [REDACTED]

REASON FOR REFERRAL:

I performed a comprehensive geriatric neuropsychological evaluation of [REDACTED] per the Court order appointing this examiner as the 730 evaluator. The Court asked Dr. Bernatz to address the issues of, "whether [REDACTED] has capacity today to execute an Estate Plan consistent with the Estate Plan she executed on December 11, 2008." Additionally the Court requested that Dr. Bernatz opine whether [REDACTED] has capacity today to retain and direct private counsel in this manner. The evaluation was conducted at [REDACTED] residence located at [REDACTED] Los Angeles, CA.

SUMMARY/IMPRESSIONS:

Neuropsychological findings:

Dementia Syndrome: The results of the clinical interview with [REDACTED] and the neuropsychological test results revealed that [REDACTED] presents with significant neurocognitive deficits, greater than one would expect by age alone. The results revealed that [REDACTED] presents with a neurocognitive profile that appears consistent with a dementia syndrome as defined by the American Psychiatric Association's Diagnostic and Statistical Manual Mental Disorders, 4th Edition, Text Revision (DSM-TR). [REDACTED] retains some very limited abilities (e.g., relatively intact simple attention). She exhibits significant impairment across all other cognitive domains (e.g., orientation, immediate, delayed and recognition verbal memory, word fluency and word naming, executive functioning, including organizing, planning, initiating, abstract reasoning, mental flexibility, judgment and reasoning, and performing arithmetic tasks). [REDACTED] also performed poorly on a functional measure of managing money.

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RE: [REDACTED]
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This examiner called [REDACTED] the following morning after her evaluation as Mr. [REDACTED] noted that she is cognitively more alert and intact in the morning. [REDACTED] did remember meeting this examiner but was unable to recall the nature of our meeting, what the purpose of our meeting was for, or what we spoke about. Her mental status did not appear to be clinically any different than my meeting with her the day before.

This examiner was not able to review any medical records, neuroimaging, or obtain collateral data. Nonetheless, [REDACTED] presents with a clinical presentation of intact social skills and attention however she also presents with poor learning, word finding and naming difficulties, is disoriented, is impaired in her short-term and remote memory and visual spatial skills and has poor insight. These cognitive deficits are a decline from her previous level of functioning and intrude into her ability to take care of herself independently. These findings appear to be consistent with a probable Alzheimer's disease diagnosis.

TESTAMENTARY CAPACITY:

According to California Probate Code, Section 6100.5 (a) "An individual is not mentally competent to make a Will if at the time the Will is made either of the following is true:

- (1) The individual does not have sufficient mental capacity to be able to (a) understand the testamentary acts (b) understand and recollect the nature and situation of the individual's property, or (c) remember and understand the individual's relations with the living decedent, spouse, and parent, and those whose interests are affected by the Will.
- (2) The individual suffers from a mental disorder with symptoms including delusions, which delusions or hallucinations result in an individual to buy property in a way which, except for the existence of the delusions or hallucinations, the individual would not have done.

In my opinion, with a reasonable degree of certainty, [REDACTED] does not have the ability to make a Will. [REDACTED] did not know what the purpose of a Will was. She was unable to describe the nature of her assets. She was unable to recall the value of her home or even understand that she owned a home in [REDACTED] California. [REDACTED] also was unable to provide the names of her heirs, stating that she did not know whom she would give her belongings to when she passed away. She also had no distribution plan as to how she wanted to distribute her assets or property. This examiner also queried [REDACTED] as to whether she wanted her friend [REDACTED] to continue to reside in her real property in [REDACTED] California and she was unable to provide any response. The Court asked Dr. Bernatz to address the issue of, "whether [REDACTED] has the capacity today to execute an estate plan consistent with the estate plan she executed on December 11, 2008." It is this examiner's opinion that [REDACTED] currently does not have the capacity to execute an estate plan that is consistent with the estate plan that she executed on December 11, 2008.

RE: [REDACTED]
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ABILITY TO HIRE COUNSEL/CONTRACT:

According to Probate Code § 812, in order to make a decision, a person must understand and appreciate: (a) the rights, duties and responsibilities created by or affected by the decision. (b) the probable consequences for the decision maker and, where appropriate the persons affected by the decision. (c) the significant risks, benefits and reasonable alternatives involved in the decision.

In my opinion, with a reasonable degree of certainty [REDACTED] lacks the ability to enter into a business contract and hire an attorney. [REDACTED] had no understanding of the matters at issue (that there is ongoing litigation regarding her testamentary capacity and whether she is capable of retaining and advising counsel). She did not know the name nor recognize the names of any of the attorney's that currently represent her [REDACTED] or their law firm, [REDACTED]. She also did not recall ever meeting these individuals.

[REDACTED] did not know what the responsibilities were that were created by hiring an attorney. She also did not know what she was advising her attorney's to do. In summary, [REDACTED] has significant mental function deficits (short and long term memory, organizing, planning, judgment, arithmetic skills, logical and abstract reasoning and language) that preclude her from understanding and appreciating the action of retaining and advising her own counsel. It is this examiner's opinion that [REDACTED] does not understand and appreciate the complexities of the attorney-client relationship, particularly the rights, duties, responsibilities, risks and options.


CLINICAL RECOMMENDATIONS:

1. Having access to medical records from the past year would have enabled this examiner to be more specific with the diagnosis and to better understand the etiology of her dementia or cognitive decline. According to court documents [REDACTED] allegedly had testamentary capacity [REDACTED] months ago in December of 2006 and now is significantly cognitively impaired. Medical records would allow this examiner to better understand the etiology of her mental decline and to discern if any acute medical incidents caused an accelerated mental decline (ie. stroke, heart attack).
2. Although this examiner was not asked to opine as to [REDACTED] need to have a conservator, clinically, [REDACTED] has significant cognitive deficits that impair her ability to manage her home, finances, and medical condition. She is unable to care for herself independently and would strongly benefit from 24 hour 7 day a week care.

RE: [REDACTED]

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Respectfully Submitted, [REDACTED]



Susan I. Bernatz, Ph.D.

PSY 13345

Bernatz Forensic Neuropsychology

SIB:vmb

Important: This report contains confidential information and should be distributed only by those persons legally entitled to read it. This report includes information that should not be interpreted by non psychologists or psychologists without appropriate training in neuropsychology. If the patient wishes to learn the results of this evaluation, the proper route would include verbal interpretation by an appropriately trained neuropsychologist.

bernatz

FORENSIC NEUROPSYCHOLOGY

NEUROPSYCHOLOGICAL EVALUATION

RE: [REDACTED]
Age: 96 years
Gender: Female
Handedness: Right
Highest Grade Completed: High School
Date of Evaluation: [REDACTED]
LASC CASE #: [REDACTED]

REASON FOR REFERRAL:

I performed a comprehensive geriatric neuropsychological evaluation of [REDACTED] per the Court order appointing this examiner as the 730 evaluator. The Court asked Dr. Bernatz to address the issues of, "whether [REDACTED] has capacity today to execute an Estate Plan consistent with the Estate Plan she executed on December 11, 2008." Additionally the Court requested that Dr. Bernatz opine whether [REDACTED] has capacity today to retain and direct private counsel in this manner. The evaluation was conducted at [REDACTED] residence located at [REDACTED] Los Angeles, CA.

SOURCES OF INFORMATION:

LEGAL RECORDS:

Case [REDACTED]

1. Preliminary Response and Objections of [REDACTED] to Petition of [REDACTED] to (1) remove Trustee, (2) suspend Trustee's powers, (3) appoint Successor Trustee, and (4) for attorney's fees and costs; Declaration of [REDACTED] in opposition to Petition, filed [REDACTED]
2. Evidentiary Objections to Declarations of [REDACTED] and [REDACTED]
3. Further Response and Objections to Petition of [REDACTED] to (1) remove Trustee, (2) suspend Trustee's powers, (3) appoint Successor Trustee, and (4) for attorney's fees and costs; Declarations of [REDACTED] and [REDACTED] filed [REDACTED]

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A Psychological Corporation

RE: [REDACTED]
Page 2

4. Objector [REDACTED] suggestion regarding the Order Appointing Neuropsychologist pursuant to Evidence Code, Section 730, in response to suggestions/objections of [REDACTED], filed [REDACTED]
5. Statement of [REDACTED] re: Order Appointing Neuropsychologist pursuant to Evidence Code, Section 730, filed [REDACTED]

- [REDACTED]
1. Response and Objections to Petition of [REDACTED] to (1) remove Trustee, (2) suspend Trustee's powers, (3) appoint Successor Trustee, and (4) for attorney's fees and costs; Declarations of [REDACTED], [REDACTED], [REDACTED] and [REDACTED], filed [REDACTED]
 2. Evidentiary Objections to Declarations of [REDACTED] filed [REDACTED]

This examiner also reviewed copies of pleadings filed by [REDACTED] nephew of [REDACTED]. These included:

1. Request for Special Notice.
2. [REDACTED] suggestions to the Order Appointing Neuropsychologist pursuant to Evidence Code, Section 730.
3. Joint statement re: Order Appointing Neuropsychologist pursuant to Evidence Code, Section 730.

Case# [REDACTED]

1. Response and Objections of [REDACTED] to Order Appointing Neuropsychologist pursuant to Evidence Code, Section 730, filed [REDACTED]
2. Ex Parte Petition to remove Trustee, to Suspend Trustee's Powers, to Appoint Successor Trustee, and for Attorney's Fees and Costs.
3. Joint Statement Re Order appointing Neuropsychologist Pursuant to Evidence Code Section 730.
4. Petitions for Instructions and for Attorney's Fees and Costs.
5. (10/06/2008) Power of Attorney for [REDACTED]
6. (10/06/2008) Health Care Directive for [REDACTED]
7. (12/11/2008) Fourth Amendment to and Complete Restatement of the [REDACTED] Trust.
8. (12/11/2008) Revocation of the [REDACTED] Trust [REDACTED] and Assignment of Trust Assets.
9. (08/10/07) Declaration of Living Trust, [REDACTED] Trust [REDACTED]

BACKGROUND INFORMATION

Identifying Data

[REDACTED] is an alleged 96-year-old female currently residing in Los Angeles, CA. This examiner was unable to confirm her date of birth or other autobiographical

RE: [REDACTED]

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information as she was not allowed to have any collateral interviews or review medical records. [REDACTED] resides in her home independently although has daily assistance by [REDACTED]. [REDACTED] mentioned that he is at her home in the morning, for lunch and in the evening several hours.

Family/Social History

[REDACTED] had significant memory impairment with regards to recalling her autobiographical past. She did not remember her husband's first name. She did not recall when she moved to California from [REDACTED]. She could not recall the name of her neighbor [REDACTED]. She did not remember the name of her sister [REDACTED] although noted that she had a brother, [REDACTED]. With regards to her education, [REDACTED] reported she, "Went through everything that is needed." When this examiner asked [REDACTED] how long she had been living in her current residence, she could not remember and illogically stated, "My younger sister took over." This examiner also asked [REDACTED] if the home she currently resided in once belonged to her sister and she remarked, "No, I lived in [REDACTED]." [REDACTED] denied being married however later in the interview stated that, "Yes, she was married very shortly". [REDACTED] did not recall the length of her marriage or when she was married. She noted that she did not have any children from this union.

Medical History

This examiner was not provided with any medical records to review nor any physicians to contact. [REDACTED] was unable to provide any medical history. However, attached to the wall in the kitchen was a note with the name of [REDACTED] and his phone number [REDACTED].

Current Medications

[REDACTED] was unable to recall whether she takes any medications.

Previous Imaging Studies

No imaging scans were reviewed.

Previous Psychiatric History

[REDACTED] denied any previous psychiatric history.

Independent Living Skills

[REDACTED] reported that she does not eat breakfast or lunch, although does go out to dinner on a daily basis. When asked whom she goes to dinner with, she reported, "that man", although could not recall anyone's name (referring to [REDACTED]). Additionally, [REDACTED] was unable to provide this examiner with her daily schedule or routine. With

RE: [REDACTED]

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regard to her activities of daily living, (ADL's) she did not report whether she needs assistance with grooming or bathing. She reported that she is able to feed, transfer and toilet independently.

With regards to [REDACTED] ability to manage her instrumental activities of daily living (IADL's), it appears she is dependent across all domains. She needs assistance to maintain her home, medical care, finances, shop, prepare meals and clean up and for transportation. This examiner was unable to interview any caregiver to surmise the degree of her dependency.

Financial Knowledge

[REDACTED] was unable to recall any details about her finances and/or estate planning documents. [REDACTED] did not know what her current sources of income were or the monthly amount of her income. She was unable to recall where she does her banking. [REDACTED] was unaware that she owned property in [REDACTED] CA. When asked if she owned property in [REDACTED] she was unable to answer the question and stated, "I don't know, I don't know where I am." She was unable to describe what a Power of Attorney over Health care or Finances were [REDACTED] also was unable to describe what a grant deed was.

BEHAVIORAL OBSERVATIONS:

[REDACTED] was interviewed at her home in Los Angeles, CA. This examiner was greeted by [REDACTED] and her friend [REDACTED] in the living room. [REDACTED] then escorted this examiner and [REDACTED] to the kitchen so that we would be able to conduct the interview at the kitchen table. [REDACTED] was well groomed and casually dressed in a white fleeces top and brown pants. Behaviorally, [REDACTED] appeared to be mildly anxious, often picking at her fingernails and her hands during the evaluation. She was very confused during the evaluation at times stating, "I don't know what's wrong with me, I don't know where I am."

[REDACTED] did not wear glasses for distance or reading. She was not cognizant that she was wearing hearing aids. When this examiner asked her at the beginning of the interview if she was wearing hearing aids, she denied that she used aids. After this evaluation was done, [REDACTED] confirmed that she was wearing her hearing aids. [REDACTED] had no difficulty attending to the questions asked of her. However, often she appeared to have difficulty hearing them causing this examiner to repeat them loudly. [REDACTED] also had pronounced word fluency deficits. That is, she had difficulty pulling words up at will. She also often appeared to get lost in her own thought process, often stating that she was very confused, did not know where she was, and did not understand why she was being asked the questions. There was no evidence of hallucinations or delusions during the evaluation.

RE: [REDACTED]

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[REDACTED] was told the nature of the evaluation and she did verbally agree to the evaluation. It is felt that these test results provide a reasonable assessment of her current level of cognitive functioning.

TESTS ADMINISTERED:

1. Clinical interview
2. Folstein Mini-Mental State Exam (MMSE)
3. Repeatable Battery for the Assessment of Neuropsychological Status (RBANS)
 - a. Immediate Memory subtest
 - b. Story Memory subtest
 - c. Picture naming subtest
 - d. Semantic Fluency subtest
 - e. Digit Span subtest
 - f. List Recall subtest
 - g. List Recognition subtest
 - h. Story Recall subtest
4. Trail-Making Test, Part A and B Independent Living Scale - (Managing Money Subscale)
5. Geriatric Depression Scale

TEST RESULTS:

Global Cognitive Functioning: [REDACTED] performance on the Mini-Mental State Exam (11/30) fell in the impaired range given her age and education (M-26 SD-2). She had deficits in orientation 1/10, attention and calculation 0/5, recall 0/3, writing 0/1, and drawing 0/1.

Attention: [REDACTED] was oriented to person. However, she did not know what the year or season was, day of the week, or the date. She also could not recall what state, county, or city she currently resides in nor could she recall the address of her current residence.

[REDACTED] performance on a task of sustained attention fell in the average range (60%) as she was able to recall five digits forward. Conversely on a task in which she was asked to sequence numbers in ascending order, her performance fell in the impaired range due to her slow speed of processing (< 1st percentile). She was able to sequence numbers in ascending order correctly although it took five minutes to perform the task.

Memory: [REDACTED] performance on memory tasks was impaired. She had significant impairment in both immediate and delayed verbal memory. [REDACTED] scored in the impaired range in terms of her immediate memory (< 1st percentile) on both word learning tasks and story tasks. On the word learning task, across repeated trials, she exhibited a flat learning curve. Her performance did not improve over trials. After a significant delay, when asked to repeat the words or story from memory, her performance did not improve on either the word list or story recall (< 1st percentile). Furthermore, her

RE: [REDACTED]

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performance did not improve when asked to recognize words that had previously been read to her, as her performance fell in the impaired range (< 1st percentile).

In summary, [REDACTED] immediate memory, delayed memory and recognition memory for words and stories reflected severe impairment and were below what one would expect based on her age and education.

Language: Overall, [REDACTED] performance on language tasks fell in the impaired range. Her receptive speech appeared to be limited. At times she did not understand even simple constructs such as how two objects were similar (ie. cat and dog) or how to follow directions to connect numbers in ascending order on a paper and pencil task. Her performance on a word naming task placed her performance in the impaired range (< 1st percentile) as she was only able to name 2/10 line drawings of objects. Additionally, her word fluency ability, as assessed by her ability to generate names of fruits and vegetables within 60 seconds also fell in the impaired range (< 1st percentile). [REDACTED] was unfortunately unable to generate any words in 60 seconds. Conversely, her ability to read words fell in the average range (58th percentile).

In summary, [REDACTED] was impaired in both her word naming and word fluency skills but average in her ability to read words.

Executive Functioning: [REDACTED] performance on tasks of executive functioning was impaired. [REDACTED] was unable to subtract seven from one hundred. She stated, "96" and then, "that's how old I am." Additionally, on a task in which she was asked to switch from numbers to letters in ascending order, she lost set. For example, this examiner showed her how to sequence from 1-A then 2-B, and asked her to continue in sequence, she then went to number 3 and then to number 4 omitting letters. Her performance was also impaired on a clock drawing test. [REDACTED] was asked to draw a clock with the numbers correctly in the clock face. She was then asked to draw the hands so that they pointed to twenty minutes until four. [REDACTED] was unable to draw the clock correctly. She drew a circle and only placed the numbers 6 and 12 in the correct positions. She was unable to place the clock hands in the appropriate location pointing to twenty minutes until four o'clock.

Additionally, [REDACTED] abstract reasoning was also impaired. When asked how two objects were similar, for example, how a fork and spoon were alike, she was unable to answer the question. Her performance fell in the impaired range (1st percentile). [REDACTED] performance was also impaired on a task of word fluency, reflecting impairment in initiation. She also was unable to compute a simple arithmetic task such as \$5.00 minus \$1.19.

These test results suggest that it is extremely difficult for [REDACTED] to switch between two different strings of information, compute an arithmetic task, think flexibly, and initiate organize and plan.

RE: [REDACTED]

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Visual Spatial/Constructional Abilities: [REDACTED] performance on tasks of visual spatial skills was impaired. She was unable to copy two pentagons. [REDACTED] was only able to draw a four square box and not a pentagon. Additionally, she was unable to complete a simple clock drawing and place the numbers in the clock face correctly.

Money Management: [REDACTED] performance on tasks of money management fell in the impaired range (standard score equals 20). [REDACTED] was unable to perform most of the tasks asked of her on this test. For example, when asked how she supports herself financially, she reported in a very abstract manner, "Well, I have money coming in every month and I use that". When asked to be more descriptive or to explain where her money stream comes from, she was unable to explain in any detail. [REDACTED] was also unable to explain what Social Security benefits were, by what day of the year she had to file her personal income tax, to explain two reasons why it is important to pay her bills, or to name one thing she could do to keep from being cheated out of money.

Additionally, [REDACTED] was asked to write out two simple checks and at that point she became extremely confused and stated that she did not know what she was supposed to be doing and was unable to complete the task.

[REDACTED] pattern of performance is consistent with a person who is dependent on others to assist her with financial matters.

Mood:

[REDACTED] performance on a subjective test of depression fell in the normal range.

SUMMARY/IMPRESSIONS:

Neuropsychological findings:

Dementia Syndrome: The results of the clinical interview with [REDACTED] and the neuropsychological test results revealed that [REDACTED] presents with significant neurocognitive deficits, greater than one would expect by age alone. The results revealed that [REDACTED] presents with a neurocognitive profile that appears consistent with a dementia syndrome as defined by the American Psychiatric Association's Diagnostic and Statistical Manual Mental Disorders, 4th Edition, Text Revision (DSM-TR). [REDACTED] retains some very limited abilities (e.g., relatively intact simple attention). She exhibits significant impairment across all other cognitive domains (e.g., orientation, immediate, delayed and recognition verbal memory, word fluency and word naming, executive functioning, including organizing, planning, initiating, abstract reasoning, mental flexibility, judgment and reasoning, and performing arithmetic tasks). [REDACTED] also performed poorly on a functional measure of managing money.

This examiner called [REDACTED] the following morning after her evaluation as [REDACTED]. [REDACTED] noted that she is cognitively more alert and intact in the morning. [REDACTED] did remember meeting this examiner but was unable to recall the nature of our meeting, what

RE: [REDACTED]

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the purpose of our meeting was for, or what we spoke about. Her mental status did not appear to be clinically any different than my meeting with her the day before.

This examiner was not able to review any medical records, neuroimaging, or obtain collateral data. Nonetheless, [REDACTED] presents with a clinical presentation of intact social skills and attention however she also presents with poor learning, word finding and naming difficulties, is disoriented, is impaired in her short-term and remote memory and visual spatial skills and has poor insight. These cognitive deficits are a decline from her previous level of functioning and intrude into her ability to take care of herself independently. These findings appear to be consistent with a probable Alzheimer's disease diagnosis.

For the purpose of the task at hand an exact diagnosis is not necessary, except that her dementia syndrome does not appear to be a reversible dementia.

In order to have a diagnosis of dementia, one must have memory impairment as noted by impaired ability to recall previously learned information and either a language disturbance, impaired ability to carry more activities despite intact motor functioning, difficulties in recognizing or identifying objects despite intact sensory functioning or disturbance in executive functioning (planning, sequencing, organizing, or abstracting). The cognitive deficits can cause significant impairment in social or occupational functioning and represent significant decline from a previous level of functioning.

MENTAL FUNCTIONS:

When providing a psychological opinion concerning capacity an exact psychological diagnosis is not the most important factor I consider. As stated in California Probate Code, Section 811 (D), "The mere diagnosis of a mental and physical disorder shall not be sufficient, in and of itself to support a determination that a person is of unsound mind and lacks capacity to do a certain act."

Furthermore, according to California Probate Code, Section 810 (C), "A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits, so substantial that under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions, rather than on a diagnosis of a person's mental or physical disorder."

[REDACTED] has several mental function deficits. I will add some comments to specific areas of cognition in terms of categories DPCDA, California Probate Code, Section 810 - 813.

Attention:

[REDACTED] had no major impairment in her level of arousal although had deficits in her orientation to time, place, date, year and season. This is also related to her impairment in both short and long term memory.

RE: [REDACTED]

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Information Processing- Ability To:

1. *Remember* - [REDACTED] had major impairment in her short and long term verbal memory.
2. *Understand language and communicate either verbally or otherwise* - [REDACTED] had major impairments in her ability to express herself through spoken language. She was impaired in both her word fluency and word naming.
3. *Recognize familiar objects and persons* - [REDACTED] performance on a task in which she had to identify simple line drawings fell in the impaired range (< 1st percentile). Additionally, [REDACTED] was unable to recall the name of her neighbor who lives in the home next door to her, [REDACTED].
4. *Understand and appreciate quantities* - [REDACTED] has significant impairment in her ability to calculate simple one-stage problems. She was also unable to write out two checks or reconcile two checks from a previous balance provided to her.
5. *Reason logically using abstract concepts* - In this category, I would also add her ability to plan, organize, shift from one mental set to another (mental flexibility) and carry out actions in one's own self interest. [REDACTED] had no understanding as to why she would require daily assistance for her care. She also had no understanding or appreciation of her medical conditions. She also has no understanding that she is not managing her finances nor was she able to answer any questions with regards to what her finances or estate. On formal testing, [REDACTED] was impaired on a task of abstract reasoning. She also was unable to logically describe why she needed to pay her bills on time or to name one thing she could do to keep from being cheated out of money.

Thought Processing and Perception:

[REDACTED] did not demonstrate any hallucinations or delusions.

Ability to Modulate Mood and Affect:

[REDACTED] did not demonstrate a pervasive mood disorder.

The essential question is whether any of these deficits, either alone or in combination, significantly affect [REDACTED] ability to understand and appreciate the consequences of her decisions.

TESTAMENTARY CAPACITY:

According to California Probate Code, Section 6100.5 (a) "An individual is not mentally competent to make a Will if at the time the Will is made either of the following is true:

RE: [REDACTED]
Page 10

- (1) The individual does not have sufficient mental capacity to be able to (a) understand the testamentary acts (b) understand and recollect the nature and situation of the individual's property, or (c) remember and understand the individual's relations with the living descendant, spouse, and parent, and those whose interests are affected by the Will.
- (2) The individual suffers from a mental disorder with symptoms including delusions or hallucinations, which delusions or hallucinations result in an individual devising property in a way which, except for the existence of the delusions or hallucinations, the individual would not have done.

In my opinion, with a reasonable degree of certainty, [REDACTED] does not have the ability to make a Will. [REDACTED] did not know what the purpose of a Will was. She was unable to describe the nature of her assets. She was unable to recall the value of her home or even understand that she even owned a home in [REDACTED] California. [REDACTED] also was unable to provide the names of her heirs, stating that she did not know whom she would give her belongings to when she passed away. She also had no distribution plan as to how she wanted to distribute her assets or property. This examiner also queried [REDACTED] as to whether she wanted her friend [REDACTED] to continue to reside in her real property in [REDACTED] California and she was unable to provide any response.

The Court asked Dr. Bernatz to address the issue of, "whether [REDACTED] has the capacity today to execute an estate plan consistent with the estate plan she executed on December 11, 2008." It is this examiner's opinion that [REDACTED] currently does not have the capacity to execute an estate plan that is consistent with the estate plan that she executed on December 11, 2008.

ABILITY TO HIRE COUNSEL/CONTRACT:

According to Probate Code § 812, in order to make a decision, a person must understand and appreciate: (a) the rights, duties and responsibilities created by or affected by the decision. (b) the probable consequences for the decision maker and, where appropriate the persons affected by the decision. (c) the significant risks, benefits and reasonable alternatives involved in the decision.

In my opinion, with a reasonable degree of certainty, [REDACTED] lacks the ability to enter into a business contract and hire an attorney. [REDACTED] had no understanding of the matters at issue (that there is ongoing litigation regarding her testamentary capacity and whether she is capable of retaining and advising counsel). She did not know the names nor recognize the names of any of the attorney's that currently represent her [REDACTED] Esq., [REDACTED] Esq., [REDACTED] Esq.), or the name of the law firm, [REDACTED]. She also did not recall ever meeting these individuals.

RE: [REDACTED]

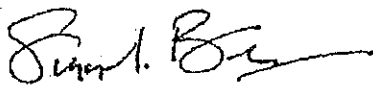
Page 11

[REDACTED] did not know what the responsibilities were that were created by hiring an attorney. She also did not know what she was advising her attorney's to do. In summary, [REDACTED] has significant mental function deficits (short and long term memory, organizing, planning, judgment, arithmetic skills, logical and abstract reasoning and language) that preclude her from understanding and appreciating the action of retaining and advising her own counsel. It is this examiner's opinion that [REDACTED] does not understand and appreciate the complexities of the attorney-client relationship, particularly the rights, duties, responsibilities, risks and options.

CLINICAL RECOMMENDATIONS:

1. Having access to medical records from the past year would have enabled this examiner to be more specific with the diagnosis and to better understand the etiology of her dementia or cognitive decline. According to court documents [REDACTED] allegedly had testamentary capacity seven months ago in December of 2008 and now is significantly cognitively impaired. Medical records would allow this examiner to better understand the etiology of her mental decline and to discern if any acute medical incidents caused an accelerated mental decline (ie. stroke, heart attack).
2. Although this examiner was not asked to opine as to [REDACTED] need to have a conservator, clinically, [REDACTED] has significant cognitive deficits that impair her ability to manage her home, finances, and medical condition. She is unable to care for herself independently and would strongly benefit from 24 hour 7 day a week care.

Respectfully Submitted, [REDACTED]



Susan I. Bernatz, Ph.D.
PSY 13345
Bernatz Forensic Neuropsychology

SIB:vmb

Important: This report contains confidential information and should be distributed only by those persons legally entitled to read it. This report includes information that should not be interpreted by non psychologists or psychologists without appropriate training in neuropsychology. If the patient wishes to learn the results of this evaluation, the proper route would include verbal interpretation by an appropriately trained neuropsychologist.

Case Three: Cleo (Pat)

You receive a telephone call from your colleague Pete of the State Adult Protective Service. He reports that a phone call was received from a “concerned out of state relative” of Cleo(Pat) because the relative reports Cleo(Pat) wants nothing to do with her family and refuses their phone calls since arriving in Connecticut to spend a weekend with her niece Kate about six months ago. The family asks for a home visit. Pete complies and finds Kate opening the door of a pleasant small suburban home with a small additional being built. Pete asks about Cleo(Pat) who is not in sight. Kate says that Cleo(Pat) has come to stay with her as she was lonely in New Hampshire and “loves the excitement” of the new “residence.” In fact, Cleo(Pat) is funding the new addition so that she will have more space. Pete asks if Cleo(Pat) understands all of this. Kate says that she took Cleo(Pat) to her own doctor for an examination and the doctor even gave her a mental status exam that proved she was competent. Reluctantly, Kate gets Cleo(Pat) who says that Kate is so nice to let her stay with her because her own family has abandoned her and they do not even care where she is. Cleo(Pat) seems a bit forgetful, yet clean and apparently happy with her situation.

Pete left and did contact the doctor who confirmed that a Mini-Mental Exam was done and showed a score of 28 out of 30 indicating that Cleo(Pat) was competent. He adds that he gave that report to Kate’s attorney who completed a power of attorney from Cleo(Pat) to Kate(See report).

Attorney Candace Heisler
Harry E. Morgan, MD

Prales 42 up (B) 28/36

PATIENT NAME: _____ DOB: _____

Respiratory: ☐ Effort ☐ Symmetry & Expansion ☐ Auscultation ☐ Breath Sounds ☐ Percussion ☐ Palpation

Cardiovascular: ☐ Palpation ☐ Auscultation ☐ Rhythm ☐ Murmur ☐ Abdominal Bruits ☐ Peripheral Edema
Pulses: ☐ CA ☐ RAD ☐ Femoral ☐ DFP ☐ PT

Abdomen: ☐ Palp ☐ Liver/Spleen ☐ Scars ☐ Hernia ☐ Tenderness ☐ Auscultation ☐ BS ☐ CVA

Neuro: DTR: ☐ Upper ☐ Lower ☐ Babinski ☐ Romberg ☐ Coordination ☐ Tremor ☐ Nystagmus
Cerebellar: ☐ HTS ☐ FTN

☐ Cranial Nerves
Sensation: ☐ Touch ☐ Sharp ☐ Vib ☐ Motor: ☐ Facial Strength
MS: ☐ Gait/Station ☐ Stability ☐ Extrem: ☐ Joint ☐ Muscle Strength ☐ Spasm ☐ Tenderness ☐ ROM
Spine: C _____ D _____ LS _____
☐ Digits and Nails ☐ Back: ☐ Kyphosis ☐ Scoliosis ☐ Neck

Mental Status: Oriented: ☐ Person ☐ Place ☐ Time Affect: ☐ Anxiety ☐ Depress Memory: ☐ Recent ☐ Remote ☐ MMSE

Thought Process: ☐ Hallucinations ☐ Delusions ☐ Obsessions ☐ Suicidal ideation ☐ Computation ☐ Speech

GU-Female: Pelvic: ☐ External genitalia ☐ Urethral Meatus ☐ Urethra ☐ Bladder ☐ Vagina ☐ Cervix ☐ Uterus ☐ Adenexa/Parametria
☐ Anus/Perineum ☐ Hernia ☐ DRE/Tone ☐ FOB

GU-Male: ☐ Inspection ☐ Scrotum ☐ Scrotal Contents ☐ Epididymides ☐ Seminal vesicles ☐ Testes ☐ Penis ☐ Urethral meatus
☐ Anus/Perineum ☐ DRE-Pros ☐ Spinchter Tone ☐ FOB ☐ Hernia

LAB: UA- SG _____ PH _____ G _____ P _____ HCT _____ Hgb _____ Blood Sugar: _____

EKG: Reason _____ Spirometry: Reason _____ Other: _____

DIAGNOSIS/CLINICAL FINDINGS: _____ PLAN: _____

Premonix
CXR
pt is not incompetent
rather, her apparent
confusion stems from hearing loss
as needed

Preventive Care: ☐ Ophth ☐ Pap ☐ Follow-up Visit
☐ Podiatry ☐ Chol/Lipids ☐ Pneumovax ☐ Refer to
☐ TD ☐ SIG/Colonosp ☐ Flu ☐ Diagnosis for Referral:
☐ Mammo ☐ DEXA ☐ Hep B ☐ Obtain and review Old Records

AUG 12 2002
Date

Services Provided under the Supervis

The Center for Geriatric and Family Psychiatry, Inc.

55 Nye Road, Suite 102 • Glastonbury, CT 06033 • (860) 657-9772 • Fax (860) 633-3517

Date: 11/03/2006

Patient Name: Cleopatra Matlis

DOB: 03/31/1914

Attorney , Special Deputy Assistant State's Attorney

Office of the Chief State's Attorney

Dear Attorney:

Pursuant to your request, I have reviewed documents provided to me by you regarding the last two years of life of Cleopatra Matlis (Pat) regarding providing my expert medical opinion as to her ability to fully understand financial transactions that occurred during the last year of her life. I have reviewed medical records of Ms. Matlis, autopsy findings, witness testimony regarding her behavior during the last one and one-half years of her life, in addition to the reports of Probate Court and findings related to her will.

In this case the postmortem examination revealed a detailed investigation and provided clear microscopic evidence of extra cellular plaque and intercellular tangles that positively diagnoses the presence of Alzheimer's disease in the brain. Additionally, the autopsy showed clear presence of vascular brain disease. I then correlated these findings to studies done in her life. As early as March 8, 2002 in Dr. T's report, there is a note of a transient ischemic attack which is a complication of vascular disease that has consequences somewhat like a silent stroke. Her medical condition at that time was reviewed and demonstrates a clear increased risk of vascular disease as demonstrated in laboratory findings and blood tests. A CT Scan of the brain on March 7, 2002 revealed old infarcts in the brain confirming the presence of vascular disease. On March 13, 2002, a carotid blood vessel study showed occlusion to a 50% to 70% degree in her carotid arteries. These medical findings are consistent with the findings on the autopsy.

In order to determine how early in the progression of her dementia there was substantial impairment of cognitive abilities, it is important to review collateral history. I do note that in patients with a mixed dementia, as in her case with both vascular and Alzheimer's type injury in the brain, there can be an uneven progression of disease. It is not medically likely, however, that there would be recovery or improvement in these downward steps in her brain conditions. It is clinically typical that she will have deteriorations in her function during periods of illness as also did occur due to severe chronic unresolving lung bronchitis and pulmonary infiltrates that occurred throughout April to August of 2002. These profound bouts of medical illness both would have made her more medically dependent upon those around her, and would have worsened the already existing cognitive deficits. Her documented hearing deficits simply magnified her dependency on the influence of others.

Based upon the reports of acquaintances and family members, I have attempted to determine a point in time in which her function had deteriorated to a point that would have been unable to understand her complex financial transactions and would certainly have been subject to the influence of those around her. I believe that this occurred early in 2002.

In the testimony of family and friends, there is discussion of empty purses, slow eating, and misidentification of clearly identifiable people in family pictures. This occurred during the fall of 2001 and into the early winter of 2002. In December of 2001, testimony of P--- shows both the existence of unusual clothing worn outside the home, including a housecoat, which was a dramatic change of behavior. Also, the decedent made very late night visits to her neighbor which was a change in character. The testimony of E--- L---- also shows that as a long time friend of Pat's and a bookkeeper, it was during the year of 2000 that she began to write checks for Pat because of a decline in various functions, including hearing, eyesight, and handwriting. Mr. C---'s testimony is consistent about the decedent's cognitive losses during his visits at the Connecticut sight during the summer of 2002.

Finally, there is clear evidence and long term testimony of Pat's frugality and personal style as well as a reticence to accept any contact with Kathleen L---. It would not have been within her personality characteristics to have left her home in the manner that it was left and to have changed so dramatically her spending patterns unless her brain disease made her vulnerable to influence.

Based upon all of the above, it is my clear medical opinion that Mrs. Matlis did suffer from Alzheimer's disease. She also suffered from cerebral vascular disease. The combination of these two disorders caused behavioral changes throughout the fall of 2001 and early winter of 2002. Such behavioral changes are often most noticeable by those people with whom she would have had daily contact. I note that her mental status examination done by several doctors is inconsistent. Dr. Peter L--- in Nashua, New Hampshire, described a period of forgetfulness and describes her as being hard of hearing in a February 17, 2002 note. Mental status examination done by Dr. T--- did not include cognitive testing or evaluation of dementia until as late as August 2002. That mental status examination in August included what is called a Mini Mental Status Examination with a score of 28/30. This score does not directly relate to the issue of capacity to make decisions. A Mini Mental Status Examination has never been used or construed as a test of competency, but rather, is a point in time test of memory and some spatial organization and some language. It does not measure executive function, the ability to plan, nor judgment. No mental health expert would rely on this for any statement of capacity determination. I am struck that his finding however, clearly circles the statement that the "patient is not incompetent." He attributes all of her "confusion" to her hearing loss. His record does not address any issues as to her understanding of financial affairs or to query her in other areas of capacity that could have been raised at the time. In fact, the nature of his comment and the timing of it suggests to me that he was prompted to do this by Ms. Kathleen L---- who had brought her aunt in for the evaluation for the purposes of demonstrating capacity. Within one month, I do note that Dr. H--- J---, a psychiatrist, did

evaluate the patient during the hospitalization and found her incapable of understanding or making decisions with regard to her finances.

It is my clear medical opinion, therefore, that Ms. Matlis suffered from a combination of brain disorders, including Alzheimer's disease and vascular dementia, that had altered her functional and social behavior as early as 2001 and which resulted in her inability to provide understanding or executive function in her daily life. This occurred clearly by early 2002. I do not believe there is any way that she could have understood the complicated nature of financial transactions that occurred throughout the year of 2002. She was clearly under the direct influence of Kathleen L----. I do believe her mental state could have been influenced by anyone with whom she spent 24-hours a day care. It is my belief, based upon review of all of these records, that her ability therefore to manage her finances was incapable throughout the year 2002 until the time of her death.

Sincerely,

H---- .M----, M.D.

Abuse—Case 1 – Mr. Demi

You receive a telephone call from an acquaintance who is an attorney and asks your advice as he proceeds on a new case. Mr. Demi is a 69 year old college educated, retired professional, who is a married man who has been brought to Attorney Kernal by his two adult daughters seeking conservatorship of Mr. Demi. He is emergently living with his married and very pregnant daughter in cramped quarters with her and her husband. He moved in with her as both daughters report Mr. Demi has been verbally and physically abused by his wife for many years. The daughters are threatened by their mother's anger but want to protect Mr. Demi.

Attorney Kernal interviews Mr. Demi who admits to having "some problems" with his memory. When asked about his wife, he visibly shakes and says she is mean to him. He says he wants to live with his daughter. He is relieved to be with his daughter so he says in reference to his wife that "she can have my house and all my money – if she just leaves me alone."

Candace Heisler
Harry E. Morgan, MD

Geriatric Depression Scale (Short Form)

Name: Mr. Demi

Answers indicating depression are highlighted.

Each bold answer counts as 1 point; scores greater than 5 indicate probable de

Date 1/30/01

1. Are you basically satisfied with your life?	Yes / No	Yes / No	Yes / No	Yes / No
2. Have you dropped many of your activities and interests? <i>Added Bowling</i>	Yes / No	Yes / No	Yes / No	Yes / No
3. Do you feel that your life is empty?	Yes / No	Yes / No	Yes / No	Yes / No
4. Do you often get bored?	Yes / No	Yes / No	Yes / No	Yes / No
5. Are you in good spirits most of the time? <i>X</i>	Yes / No	Yes / No	Yes / No	Yes / No
6. Are you afraid that something bad is going to happen to you?	Yes / No	Yes / No	Yes / No	Yes / No
7. Do you feel happy most of the time? <i>"if I try"</i>	Yes / No	Yes / No	Yes / No	Yes / No
8. Do you often feel helpless?	Yes / No	Yes / No	Yes / No	Yes / No
9. Do you prefer to stay at home rather than going out and doing new things? <i>No just annoyed - Not able to go out</i>	Yes / No	Yes / No	Yes / No	Yes / No
10. Do you feel you have more problems with memory than most? <i>X</i>	Yes / No	Yes / No	Yes / No	Yes / No
11. Do you think it is wonderful to be alive?	Yes / No	Yes / No	Yes / No	Yes / No
12. Do you feel pretty worthless the way you are now?	Yes / No	Yes / No	Yes / No	Yes / No
13. Do you feel full of energy?	Yes / No	Yes / No	Yes / No	Yes / No
14. Do you feel that your situation is hopeless?	Yes / No	Yes / No	Yes / No	Yes / No
15. Do you think that most people are better off than you are? <i>if they have it</i>	Yes / No	Yes / No	Yes / No	Yes / No
<i>2/15</i> Signature: <i>[Signature]</i>				

Mini-Mental State Examination

Name: Mr. Demi

Evaluation _____

Examiner(s) _____

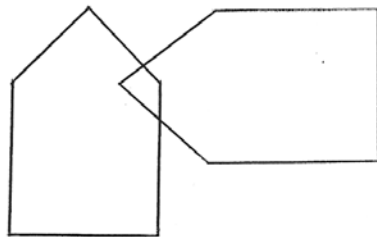
Level of Cooperation _____

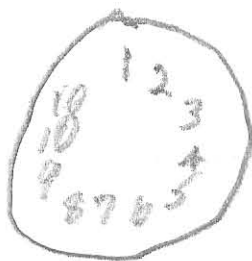
by? 1/20/09 Date Date Date

What is the : <u>X</u> Year, <u>X</u> Season, Date, Day, Month	Points	<u>0</u>	_____	_____
Where are we: Country, State, <u>CT</u> County, <u>Tolland</u> City, Location	5	<u>3</u>	_____	_____
Name three objects, APPLE, BOOK, COAT, then ask the patient to name all three objects. Give one point for each correct answer. Repeat until he hears all three. Count trials and record number.	3	<u>3</u>	_____	_____
Number of trials		<u>(1)</u>	<u>(—)</u>	<u>(—)</u>
Beginning with 100, count backward by 7s and continue until I tell you to stop (stop after five answers). Score one point for each correct subtraction of 7. If the patient will not, or cannot, perform this task, ask the patient to spell "WORLD" backwards (DLROW). Score one point for each correctly placed letter.	5	<u>1</u>	_____	_____
Record the patient's spelling		<u>D-X</u>	_____	_____
<u>eat - Fruit → Apple</u> Ask the patient to repeat the objects above (no cuing). <u>Read → Book</u> <u>wear - pants</u>	3	<u>0</u>	_____	_____
Show a pencil and a watch, and ask the patient to name them. Score one point for each correct answer.	2	<u>2</u>	_____	_____
Repeat the following: "No ifs, ands, or buts"	1	<u>1</u>	_____	_____
Follow the three-stage command. "Take a paper in your right hand; fold it in half; and put it on the table". Score one point for each correct answer.	3	<u>2</u>	_____	_____
Read and obey the following: "Close your eyes" (Show the patient the stimulus card)	1	<u>1</u>	_____	_____
Write a sentence (on a separate page)	1	<u>1</u>	_____	_____
Copy the design of the intersecting pentagons	1	<u>0</u>	_____	_____
Total Score 30		<u>14</u>	_____	_____

CLOSE YOUR EYES

Jeanne is my daughter





$$\begin{array}{r} \$ 15.79 \\ + 6.23 \\ \hline 102 \end{array}$$

$$\begin{array}{r} \$ 11.58 \\ - 7.14 \\ \hline 1872 \end{array}$$

The Center for Geriatric and Family Psychiatry, Inc.

55 Nye Road, Suite 102 • Glastonbury, CT 06033 • (860) 657-3056 • Fax (860) 633-3517

Date: 01/30/2009

Patient Name: Mr. Demi

DOB: 08/21/1939

99245, 290.21

Mr. Demi was seen to assess both capacity for decision making around financial and personal affairs as well as to assess his psychiatric capacity. He has recently relocated with his daughter J----- to be away from his wife where there have been allegations of abuse. He has been evaluated by Attorney Kernal with regard to financial planning. Attorney Kernal found him to be anxious and frightened with regard to perceived emotional abuse. This led to my urgent evaluation.

I met with Mr. Demi alone individually. He was able to tell me that he is living with his daughter J-----. He notes that she is a nurse and that she is pregnant. He tells me that he is separated from his wife and is feeling better living with J-----. He does not wish to be a burden upon her. He seems also to enjoy the time with his grandchild.

I reviewed outside medical evaluations including an assessment from Dr. A--- S----- at The University Health Center. The original evaluation dates to March of 2005. Memory loss was noted in the evaluation. Dr. S---- felt that he was suffering from an early Alzheimer's dementia at that time. A CT Scan of the head with and without contrast was obtained. This study done in November of 2005 showed no evidence of vascular disease or any other space occupying lesions. No hydrocephalus was seen.

I note that he is a patient of Dr. Carl K-----. He could not give me details of any of his medical information and these will be obtained. He notes that he does attend Woodlake at the Adult Day Center. He is also able to tell me that his own mother had Alzheimer's disease of a late onset variety. I found out from collateral information that he is taking Aricept and Namenda at appropriate full doses.

Social and family history was difficult to obtain from him. He could not tell me the details of his growing up in New Jersey. He became confused between his own siblings and his children. He was able to tell me he had a college education. It was difficult for him to give any details of his prior work history. He could not tell me for sure if he had 3 or 4 children. I did clarify with his daughter J---- in a separate session that he is a college educated engineer. He has worked as a nuclear safety officer. I note that he is of the Catholic religion. Of specific note he was involved as a biologist during the Vietnam War and was exposed to Agent Orange. The significance of this is unclear. Corroboration from family indicates that his wife does have substantial emotional issues and there have been very severe marital behavioral and interpersonal difficulties. His

daughter felt that he could defend himself throughout many years of marital distress until his dementia developed.

I obtained collateral family behavioral checklist of issues. These note specifically that the patient is often repetitive, asking the same questions over. He has trouble remembering recent events. He is noted to be anxious and worried frequently. Depression is noted by his daughter with crying episodes. I confirmed that these are much less frequent now that he is living with her. Additionally with regard to daily living skills, he was noted to be having some trouble preparing food and drink. He bathes and showers with prompts and reminders. He repeatedly asked about the time of day. He cannot use a portable phone independently. He needs verbal prompting to do any housework. He cannot participate in shopping alone. He does not recognize monetary values. Finally, he is unable to drive or take public transportation alone.

My clinical examination of him found his mental status to be that of an alert and very pleasant gentleman who appears slightly younger than his age of 69. He was able to tell me that he knew he was involved with an attorney and was here for an evaluation of this. He was capable and cooperative with engaging in this. He also was very comfortable with me talking later in the interview with his daughter. He feels close to her. I talked with him about his social situation with his wife. He does feel safe now with his daughter but is clear that he absolutely does not want to move back with her. He feels she has threatened him at various times. He is very frightened that he will actually overreact with his trained military moves. He feels that it would be safest for everyone if he stays separately. He cannot tell me at all about issues of financial planning or segregation of their moneys. He is concerned that he has money that she has access to but he cannot give me details.

Formal testing included a Mini Mental Status Examination on which he scored 14/30 with multiple deficits in orientation, 0/3 on short term memory but very poor concentration as he is easily distracted. He could not draw intersecting pentagons accurately. I gave him 2 numerical problems of \$15.79 adding \$6.23 and his answer was \$1.02. I then gave him in writing arithmetic difference of \$11.58 subtracting \$7.14 and he came up with the answer of \$1872 absent any decimal points. I asked him to draw the face of a clock. I asked him to place the hands at *ten after eleven*. His clock began with the number 1 at the top and proceeded clockwise around to the number 10 with a redundant number 10 after that and no 11 or 12. He could not place the hands and became frustrated in the task.

I noted in my mental status examination that he had no identifying features. His gait was unremarkable. There were no extrapyramidal movements. He vehemently denied any suicidal thought. He had no true homicidal thought except that he was worried he would retaliate at his wife if she continued to threaten him. He was discouraged at this time but much less depressed than he apparently had been. His sleep is now improving and his appetite seems to be good. Anxiety is present regarding his current situation. His self perception seems reasonably accurate with knowledge of a dementia and knowledge of needing help and assistance. There were no delusions or hallucinations noted. He had

reasonable insight into his situation. His general fund of knowledge was diminished as he had trouble finding words. I administered additionally a Geriatric Depression Scale. On this test interestingly he only scored 3/15. This is a non depressed range but I notice that his body language and other comments suggested that there had been a significant amount of prior discouragement.

As I spoke with his daughter, I found her to be an extremely capable and competent individual. Later phone calls were also received from another daughter. I spoke with Attorney Kernal via telephone. There are significant concerns with regard to the security of the financial situation as his wife has full access to moneys that are necessary for his support and his long term management of what is clearly an Alzheimer 's dementia.

Clinically I will obtain the results of the neuropsychological testing done in the past at The University Health Center by Dr. K---n. I will also seek medical records from Dr. Carl K---- with regard to current medical management.

I am most significantly concerned that my recommendation would be that he requires a conservator of person and estate. The conservator of person could be done alternatively with a Health Care Agent or Durable Power of Attorney as I believe he is understanding about key family members and could delegate this. On the other hand due to the substantial stresses that he feels at the hands of his wife and his inability, given his dementia, to understand his financial situation, or to cope with the relationship with his wife, I prefer the vehicle of an involuntary conservator of both person and estate. This removes from him any responsibility that would cause his wife to begin to put pressure emotionally or physically upon him to change either his living situation or his financial situation in a manner that would be to her advantage and not to be to his own advantage. I have spoken with Attorney Kernal about this. This has become in my mind increasingly urgent as it will be necessary to protect his finances. His long term future with a progressive dementia clearly indicates a need for substantial resources to provide home care or eventually the possibility of institutional care. Under separate cover I will have completed a document for Probate Court and will continue to work with Attorney Kernal this matter.

H----, M-----, M.D.

cc: C--- K----, M.D.
Attorney Kernal

Document approved by: Harry Morgan, M.D. Date: 02/09/2009 16:41

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Isabel Kernal, Esq. 123 Main Street, Your Town, California TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): Caringattorney@aol.com ATTORNEY FOR (Name): Sally Demi and Susan Demi	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Your County STREET ADDRESS: 1313 Mockingbird Lane MAILING ADDRESS: _____ CITY AND ZIP CODE: Your Town, California BRANCH NAME: Western District	
CONSERVATORSHIP OF THE <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE OF (Name): Albert Demi <input type="checkbox"/> CONSERVATEE <input checked="" type="checkbox"/> PROPOSED CONSERVATEE	
CAPACITY DECLARATION—CONSERVATORSHIP	CASE NUMBER _____

TO PHYSICIAN, PSYCHOLOGIST, OR RELIGIOUS HEALING PRACTITIONER

The purpose of this form is to enable the court to determine whether the (proposed) conservatee (check all that apply):

A. ☒ is able to attend a court hearing to determine whether a conservator should be appointed to care for him or her. The court hearing is set for (date): June 17, 2011. (Complete item 5, sign, and file page 1 of this form.)

B. ☐ has the capacity to give informed consent to medical treatment. (Complete items 6 through 8, sign page 3, and file pages 1 through 3 of this form.)

C. ☒ has dementia and, if so, (1) whether he or she needs to be placed in a secured-perimeter residential care facility for the elderly, and (2) whether he or she needs or would benefit from dementia medications. (Complete items 6 and 8 of this form and form GC-335A; sign and attach form GC-335A. File pages 1 through 3 of this form and form GC-335A.)

(If more than one item is checked above, sign the last applicable page of this form or form GC-335A if item C is checked. File page 1 through the last applicable page of this form; also file form GC-335A if item C is checked.)

COMPLETE ITEMS 1-4 OF THIS FORM IN ALL CASES.

GENERAL INFORMATION

1. (Name): **Dr. Jessica Feelgood**
2. (Office address and telephone number): **513 Maple Street, Suite 6, Your Town, CA**

3. I am

- a. ☒ a California licensed ☒ physician ☐ psychologist acting within the scope of my licensure ☒ with at least two years' experience in diagnosing dementia.
- b. ☐ an accredited practitioner of a religion whose tenets and practices call for reliance on prayer alone for healing, which religion is adhered to by the (proposed) conservatee. The (proposed) conservatee is under my treatment. (Religious practitioner may make the determination under item 5 ONLY.)

4. (Proposed) conservatee (name): **Albert Demi**

- a. I last saw the (proposed) conservatee on (date): **May 14, 2011**
- b. The (proposed) conservatee ☒ is ☐ is NOT a patient under my continuing treatment.

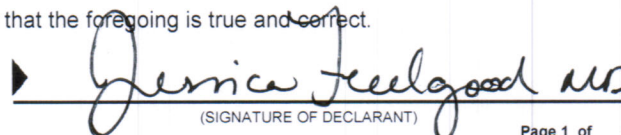
ABILITY TO ATTEND COURT HEARING

5. A court hearing on the petition for appointment of a conservator is set for the date indicated in item A above. (Complete a or b.)
- a. ☒ The proposed conservatee is able to attend the court hearing.
- b. ☐ Because of medical inability, the proposed conservatee is NOT able to attend the court hearing (check all items below that apply)
- (1) ☐ on the date set (see date in box in item A above).
- (2) ☐ for the foreseeable future.
- (3) ☐ until (date): _____
- (4) **Supporting facts** (State facts in the space below or check this box ☐ and state the facts in Attachment 5):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **May 16, 2011****Dr. Jessica Feelgood**

(TYPE OR PRINT NAME)


 (SIGNATURE OF DECLARANT)

Page 1 of 1

CONSERVATORSHIP OF THE <input checked="" type="checkbox"/> PERSON <input checked="" type="checkbox"/> ESTATE OF (Name): Albert Demi	CASE NUMBER:
<input type="checkbox"/> CONSERVATEE <input checked="" type="checkbox"/> PROPOSED CONSERVATEE	

6. EVALUATION OF (PROPOSED) CONSERVATEE'S MENTAL FUNCTIONS

Note to practitioner: This form is *not* a rating scale. It is intended to assist you in recording your *impressions* of the (proposed) conservatee's mental abilities. Where appropriate, you may refer to scores on standardized rating instruments.

(Instructions for items 6A–6C): Check the appropriate designation as follows: **a** = no apparent impairment; **b** = moderate impairment; **c** = major impairment; **d** = so impaired as to be incapable of being assessed; **e** = I have no opinion.)

A. Alertness and attention

- (1) Levels of arousal (lethargic, responds only to vigorous and persistent stimulation, stupor)
 a ☒ b ☐ c ☐ d ☐ e ☐
- (2) Orientation (types of orientation impaired)
 a ☒ b ☐ c ☐ d ☐ e ☐ Person
 a ☐ b ☒ c ☐ d ☐ e ☐ Time (day, date, month, season, year)
 a ☐ b ☒ c ☐ d ☐ e ☐ Place (address, town, state)
 a ☐ b ☒ c ☐ d ☐ e ☐ Situation ("Why am I here?")
- (3) Ability to attend and concentrate (give detailed answers from memory, mental ability required to thread a needle)
 a ☐ b ☒ c ☐ d ☐ e ☐

B. Information processing. Ability to:

- (1) Remember (ability to remember a question before answering; to recall names, relatives, past presidents, and events of the past 24 hours)
 - i. Short-term memory a ☐ b ☒ c ☐ d ☐ e ☐
 - ii. Long-term memory a ☐ b ☒ c ☐ d ☐ e ☐
 - iii. Immediate recall a ☒ b ☐ c ☐ d ☐ e ☐
- (2) Understand and communicate either verbally or otherwise (deficits reflected by inability to comprehend questions, follow instructions, use words correctly, or name objects; use of nonsense words)
 a ☐ b ☒ c ☐ d ☐ e ☐
- (3) Recognize familiar objects and persons (deficits reflected by inability to recognize familiar faces, objects, etc.)
 a ☒ b ☐ c ☐ d ☐ e ☐
- (4) Understand and appreciate quantities (deficits reflected by inability to perform simple calculations)
 a ☐ b ☐ c ☒ d ☐ e ☐
- (5) Reason using abstract concepts. (deficits reflected by inability to grasp abstract aspects of his or her situation or to interpret idiomatic expressions or proverbs)
 a ☐ b ☐ c ☒ d ☐ e ☐
- (6) Plan, organize, and carry out actions (assuming physical ability) in one's own rational self-interest (deficits reflected by inability to break complex tasks down into simple steps and carry them out)
 a ☐ b ☐ c ☒ d ☐ e ☐
- (7) Reason logically.
 a ☐ b ☐ c ☒ d ☐ e ☐

C. Thought disorders

- (1) Severely disorganized thinking (rambling thoughts; nonsensical, incoherent, or nonlinear thinking)
 a ☒ b ☐ c ☐ d ☐ e ☐
- (2) Hallucinations (auditory, visual, olfactory)
 a ☒ b ☐ c ☐ d ☐ e ☐
- (3) Delusions (demonstrably false belief maintained without or against reason or evidence)
 a ☒ b ☐ c ☐ d ☐ e ☐
- (4) Uncontrollable or intrusive thoughts (unwanted compulsive thoughts, compulsive behavior).
 a ☒ b ☐ c ☐ d ☐ e ☐

(Continued on next page)

CONSERVATORSHIP OF THE	<input checked="" type="checkbox"/>	PERSON	<input checked="" type="checkbox"/>	ESTATE OF (Name):	CASE NUMBER:
				Albert Demi	
	<input type="checkbox"/>	CONSERVATEE	<input checked="" type="checkbox"/>	PROPOSED CONSERVATEE	

6. (continued)

- D. **Ability to modulate mood and affect.** The (proposed) conservatee ☐ has ☒ does NOT have a pervasive and persistent or recurrent emotional state that appears inappropriate in degree to his or her circumstances. (If so, complete remainder of item 6D.) ☐ I have no opinion.

(Instructions for item 6D: Check the degree of impairment of each inappropriate mood state (if any) as follows: **a** = mildly inappropriate; **b** = moderately inappropriate; **c** = severely inappropriate.)

Anger	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Euphoria	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Helplessness	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>
Anxiety	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Depression	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Apathy	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>
Fear	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Hopelessness	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Indifference	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>
Panic	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>	Despair	a <input type="checkbox"/>	b <input type="checkbox"/>	c <input type="checkbox"/>				

- E. The (proposed) conservatee's periods of impairment from the deficits indicated in items 6A–6D

- (1) ☒ do NOT vary substantially in frequency, severity, or duration.
 (2) ☐ do vary substantially in frequency, severity, or duration (explain; continue on Attachment 6E if necessary):

- F. ☒ (Optional) Other information regarding my evaluation of the (proposed) conservatee's mental function (e.g., diagnosis, symptomatology, and other impressions) is ☒ stated below ☐ stated in Attachment 6F.
 Patient suffers from moderate cognitive impairment.

ABILITY TO CONSENT TO MEDICAL TREATMENT

7. Based on the information above, it is my opinion that the (proposed) conservatee
- a. ☐ has the capacity to give informed consent to any form of medical treatment. This opinion is limited to medical consent capacity.
- b. ☒ lacks the capacity to give informed consent to any form of medical treatment because he or she is **either** (1) unable to respond knowingly and intelligently regarding medical treatment **or** (2) unable to participate in a treatment decision by means of a rational thought process, **or both**. The deficits in the mental functions described in item 6 above significantly impair the (proposed) conservatee's ability to understand and appreciate the consequences of medical decisions. This opinion is limited to medical consent capacity.

(Declarant must initial here if item 7b applies: *JD*)

8. Number of pages attached: 1

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 16, 2011

Dr. Jessica Feelgood

(TYPE OR PRINT NAME)

 Jessica Feelgood MD
 (SIGNATURE OF DECLARANT)

Additional Hypothetical Fact Patterns

Victim Impact Statement Dot Jarmin

My daughter's treatment of me changed my life. I lost my future . My late husband and I planned carefully and saved our money so that our later years would be comfortable. I have lost it all. I had to sell my home to pay off all the debts that Susan caused. I was always afraid for my safety. There were days that I was so cold and hungry that I thought I might not make it. I could not believe that she would treat me this way and so I kept thinking that it would get better, but it didn't.

But you know, you love your children and I do still love Susan. She is my daughter. I don't know where I went wrong in raising her. I ask myself that every day. I am in a retirement community now and I will probably be ok. I just want this to be over. I could not bear to think of her in jail. I just don't want that on my conscience.

Primary Assignment Orientation and Criminal Assignment Courses Program

Handling Elder Abuse Issues

Hypothetical Fact Pattern – Part I-Probate and Conservatorship Section

A 95-year old father has two children, a daughter in her 60s from his first marriage, and a much younger son from a second marriage. The father has rental property in the Lake Tahoe area worth \$2 million, and \$100,000 in the bank. The son, who states that he has a PhD in sexology, lives on the beach in Hawaii with no visible means of support.

The son and daughter file competing petitions for conservatorship. Both claim that their father is unable to manage personal affairs or provide for his own food, clothing and shelter. Telemarketers are calling and he is giving away his money, while not paying his bills. The father would prefer the daughter as a conservator. The father's house, where he lives, is a mess. He has most of his faculties, but is unable to take care of himself or his property.

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Handling Elder Abuse Issues

Hypothetical Fact Pattern – Part II-Probate and Conservatorship Section

The court appoints the daughter as a conservator. Five months later, the son writes a letter to the court complaining that his father's living conditions have deteriorated and that the daughter has mismanaged his father's assets.

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Handling Elder Abuse Issues

Hypothetical Fact Pattern – Part III-Probate and Conservatorship Section

The court sends out the investigator. The investigator discovers that the father is living on the second story of his two-story house, because the first floor is completely filled with stacks of newspaper dating back to 1955. Piles of debris are situated near the heating vents, and the house is visibly infested with roaches and vermin. The investigator further discovers that: the conservatee is having great difficulty ambulating the stairs and making his way through the rubble to the kitchen; the rental properties owned by the conservatee are vacant; and the daughter is only giving father \$50 month.

The court investigator reports this information to the court. Copies are provided to the daughter and the son. In response to the investigator's report, the son files a petition to remove the daughter as conservator and appoint himself. The father insists on retaining his daughter as conservator.

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Handling Elder Abuse Issues

Hypothetical Fact Pattern – Part IV-Probate and Conservatorship Section

The court appoints the public guardian as conservator. The public guardian petitions to remove the conservatee from the personal residence and place him in a skilled nursing facility. Dad wants to stay in the house.

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Handling Elder Abuse Issues

Hypothetical Fact Pattern: Durable Power of Attorney— Maria, Dolores and Sonny

Dolores files a petition for conservatorship, on behalf of her mother, Maria. Maria is very sad, lonely and grief-stricken over the recent death of her husband. While the petition is pending, Sonny, Maria's son from a previous marriage visits. Maria has not seen Sonny in 5 years. Sonny appears unannounced and visits for 3 days. During this time, Maria executes a durable power of attorney for health care and finances, designating Sonny as the attorney-in-fact. Sonny objects to Dolores' petition, arguing that a conservatorship is not necessary because he has a durable power of attorney, or that he should be the conservator instead.

Martha Bedford and Larry Thompson

Facts Derived from APS Investigation and Assessment of Martha

- Niece and Nephew of Martha Bedford reported to APS their concerns that Larry Thompson was financially exploiting Martha after Martha's long-time neighbor contacted them.
- Larry was a handyman for Martha.
- Martha's husband had died a few years earlier. They had been married for 50 years.
- Husband had established two trusts, worth more than a million dollars, for Martha's benefit. Martha was the sole beneficiary of one trust. Martha and Niece were the beneficiaries of the other trust.
- Martha was legally blind. She also suffered from shortness of breath due to chronic obstructive pulmonary disease and other respiratory problems and had significant problems moving around.
- Martha and her Husband had lived in their house for 50 years. In July of the year this investigation occurred, Martha told her Niece that she would never leave her home. By September, she had sold her house and moved into a small condominium that had many stairs in a neighborhood across town.
- Niece learned of Martha's move from her Banker.
- Martha's former long-term Neighbor said that Larry had cut off contact between Martha and Neighbor, who had been friends for almost 50 years, prior to the move.
- Nephew visited Martha in September and observed the following:
 - Martha was confused about her age
 - Martha did not appear to be eating properly; there were no signs of dishes
 - Martha was alone much of the time but had nothing to do with her former long-time Neighbor or her long-time Friends
 - Martha was now showing her financial documents to other people and talking about her financial matters with them. She had previously been very private about her financial matters, so this behavior was unusual.
- Larry's name is on the title to the condominium. (It is unclear whether Larry is listed as the sole owner or a co-owner with Martha.)
- Martha indicated to APS that Larry did her grocery shopping, helped her pay bills, took her to doctor appointments, read her mail, took her dog to the veterinarian, and took her out to dinner occasionally. Larry's children cleaned the condominium. Martha said that she had sold her house and moved into the condominium because Larry was concerned that her old

house was unsafe. Martha also indicated that she had not met any neighbors in the condo subdivision and that she did not keep in touch with any of her old friends. Martha claimed that she and Larry were going to be married.

- Larry was present during a home visit by APS worker. Larry stated that neighbors were nosy and that they bad-mouthed him to Martha and that he had moved her out of that terrible neighborhood. Larry also said that Martha's Husband didn't do anything with her and that Husband had committed suicide.
- Larry does not live with Martha in the condominium. He lives with his two daughters, about 20 minutes away from the condominium.
- Martha's former Attorney indicated that he had written to Larry after becoming concerned about Larry's withdrawals from Martha's trust. Attorney said that several checks had been written to cash and that in the letter he had asked Larry to account for the cash. Within two weeks of mailing the letter, Martha's trust account was transferred to another bank.
- Martha's Medical Doctor stated that Larry had accompanied Martha for all recent medical appointments.
- Banker/Trustee indicated that she had denied previous attempts to name Larry as a beneficiary of the trusts. Banker/Trustee said that Martha, in the presence of Larry, had asked Banker/Trustee for money so that Larry could purchase a truck for Martha. Martha said that Larry needed the truck in order to transport Martha.
- Subsequently, Banker/Trustee reported to APS that Martha had appointed Larry as her agent for her Power of Attorney and that Larry was trying to liquidate the trust.
- Investigation revealed that Larry had very few assets of his own, paid his children with Martha's money to clean Martha's house, purchased a new truck, and purchased new furniture for the condo (including a big screen TV). Martha believed that her old furniture was in the basement of the condo, but the basement was empty.
- APS arranged for a psych assessment at Martha's home. The Police Department (PD) had to be called in to secure the situation. Larry told the PD officer that Larry and Martha were not getting married, but that he loved Martha. The psych assessment indicates:
 - Martha is limited by vision problems and dependent upon Larry and easily manipulated by him. She is uninformed about his actions with her finances and true marital intentions. Her cognitive functioning was estimated to be in the low average to average range and has severely impaired verbal short-term memory, poor verbal fluency, and mildly impaired judgment. Over the last 6 months she has had a history of depression and anxiety. Her medical and memory problems are increased by stress. Martha completed the 11th grade and worked in a restaurant prior to her marriage but has not worked outside the home since that time.

Primary Assignment Orientation and Criminal Assignment Courses Program

Handling Elder Abuse Issues

Hypothetical Fact Patterns: The Role of the Court

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.

What is the role of the judge? What do you do?

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 her mom. The court perceives at the hearing that the step-father is suffering from dementia.

What do you do?

CASE STUDY

Martha is an eighty seven year old widow who lives with her son, Ray, in the home that she and her husband purchased in 1967. Ray is fifty-nine years old and lives on social security. Martha's daughter, Betty, is sixty-seven years old, lives in a nearby town, and visits her mother about once a week.

Betty comes to court seeking protection for her mother, Martha. Betty is requesting that Ray be removed from their mother's home and ordered to stay away and to have no contact with Martha.

Betty alleges that she has observed Ray calling their mother names, yelling at her and treating her like a child. Betty reports that on one occasion she saw Ray slap Martha when Martha changed the television channel while Ray was watching a football game.

Most recently Betty reports that she observed a property tax statement for Martha's home and learned that the property title had been changed from Martha's family trust to Martha and Ray as joint tenants. At the same time she saw her mother's credit card monthly showing weekly \$500 cash advances and spending inconsistent with Martha's long standing spending habits.

When she confronted Ray about this matter Ray replied that it was none of her business. Since that time Betty claims that she has not been allowed to speak with her mother on the telephone or have a private discussion with her when she visits.

Betty has not given Ray notice of her request to the court. She claims that she is afraid of Ray because Ray has a violent history, having been arrested five years ago for abusing a girlfriend, and having been restrained by a family law court from having contact with his estranged wife seven years earlier.

Request for Elder or Dependent Adult Abuse Restraining Orders

Clerk stamps date here when form is filed.

Read *Can an Elder or Dependent Adult Abuse Restraining Order Help Me?* (Form EA-100-INFO) before completing this form. Also fill out Confidential CLETS Information (Form CLETS-001), with as much information as you know.

1 Elder or Dependent Adult in Need of ProtectionFull Name: Martha JonesSex: ☐ M ☒ F Age: 87**2 Person From Whom Protection Is Sought**Full Name: Raymond (Ray) JonesAddress (if known): 5678 Maple StreetCity: Enetown State: CA Zip: 95555

Fill in court name and street address:

Superior Court of California, County of

Orange341 The City DriveP.O. Box 14169Orange, CA 92863Family Law

Court fills in case number when form is filed.

Case Number:

12 EA 43621**3 Person Requesting Order**

Who is asking the court for protection? (Check a, b, or c):

a. ☐ The elder or dependent adult named in ①.b. ☐ Name: _____conservator of the ☐ person ☐ estate ☐ person and estate
of the person named in ①, appointed by (name of court): _____

Case No.: _____

c. ☒ Other (name): Betty Jones

(Show this person's legal authority to make this request on an attached sheet of paper. Write "Attachment 3c—Information About Person Requesting Protective Order" for a title. You may use Form MC-025, Attachment.)

4 Contact Information

Contact information for the person asking the court for protection:

a. Your Lawyer (if you have one for this case):

Name: William Smith, Esq. State Bar No: 99999Firm Name: Sole Practitioner

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and you want to keep your home address private, you may give a different mailing address instead. The person in ① does not have to give telephone, fax, or e-mail.):

Address: 1234 Main StreetCity: Enetown State: CA Zip: 94114Telephone: (717) 555-3123 Fax: (717) 555-3124E-Mail Address: wsmith@smithlaw.com**This is not a Court Order.**

5 Description of Protected PersonDescribe the person named in **(1)**. (Check a or b):

- a. ☐ Is age 65 or older and a resident of California.
- b. ☐ Is a resident of California and an adult under age 65. This person has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights. (Briefly describe limitations on the attached sheet of paper or Form MC-025. Write "Attachment 5—Description of Protected Person" for a title.)

6 Additional Protected Persons

- a. Are you asking for protection for any other family or household members or for the conservator of the elder or dependent adult listed in **(1)**? ☐ Yes ☐ No If yes, list them:

Full Name	Sex	Age	Lives with you?	How are they related to you?
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	

- ☐ Check here if there are more persons. Provide the above information for each one on the attached sheet of paper or MC-025. Write "Attachment 6a—Additional Protected Persons" for a title.

- b. Why do these people need protection? (Explain below):

- ☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 6b—Why Others Need Protection" for a title.

7 Relationship of PartiesHow does the person in **(1)** know the person in **(2)**? (Explain below):

- ☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 7—Relationship of Parties" for a title.

Martha is Ray's mother

8 Venue

Why are you filing in this county? (check all that apply):

- a. ☐ The person in **(2)** lives in this county.
- b. ☒ The person in **(1)** was abused by the person in **(2)** in this county.
- c. ☐ Other (specify): _____

This is not a Court Order.

Case Number:

12 EA 43621

9 Other Court Cases

- a. Has the person in (1) or any of the persons named in (6) been involved in another court case with the person in (2)? ☐ No ☐ Yes (If yes, specify the kind of each case and indicate where and when each was filed:)

Kind of Case	Filed in (County/State)	Year Filed	Case Number (if known)
(1) <input type="checkbox"/> Elder or Dependent Adult Abuse	_____	_____	_____
(2) <input type="checkbox"/> Civil Harassment	_____	_____	_____
(3) <input type="checkbox"/> Domestic Violence	_____	_____	_____
(4) <input type="checkbox"/> Divorce, Nullity, Legal Separation	_____	_____	_____
(5) <input type="checkbox"/> Paternity, Parentage, Child Custody	_____	_____	_____
(6) <input type="checkbox"/> Eviction	_____	_____	_____
(7) <input type="checkbox"/> Guardianship	_____	_____	_____
(8) <input type="checkbox"/> Workplace Violence	_____	_____	_____
(9) <input type="checkbox"/> Small Claims	_____	_____	_____
(10) <input type="checkbox"/> Criminal	_____	_____	_____
(11) <input type="checkbox"/> Other (specify): _____	_____	_____	_____

- b. Are there now any protective or restraining orders in effect relating to the person in (1) or any of the persons named in (6) and the person in (2)? ☐ No ☐ Yes If yes, attach a copy if you have one.

10 Description of Abuse

- a. Abuse means either:

- (1) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or
- (2) The withholding by a caretaker of goods or services that are necessary to avoid physical harm or mental suffering.

- b. Tell the court about the last time the person in (2) abused the person in (1).

(1) When did it happen? (provide date or estimated date): December 29, 2011

(2) Who else was there? Betty Jones

- (3) Describe what happened below.

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 1-b(3)—Describe Abuse" for a title.

Ray slapped my mother in the face and called her names. He ordered her into the bedroom so as not to bother him. She began to cry and went to her room. When I objected, Ray ordered me to leave and that it was none of my business.

- (4) Was the abuse solely financial abuse unaccompanied by force, threat, harassment, intimidation, or any other form of abuse?

☐ Yes, only financial abuse. ☒ No, the abuse included other forms of abuse described above.

This is not a Court Order.

(5) Did the person in ② use or threaten to use a gun or any other weapon?

☐ Yes ☒ No (If yes, explain below):

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10b(5)—Use of Weapons" for a title.

(6) Was the person in ① harmed or injured as a result of the acts of abuse described above?

☒ Yes ☐ No (If yes, explain below):

☒ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10b(6)—Harm or Injury" for a title.

Ray slapped my mother in the face and called her names. He ordered her into the bedroom so as not to bother him. She began to cry and went to her room. When I objected, Ray ordered me to leave and that it was none of my business.

(7) Did the police come? ☐ Yes ☒ No

If yes, did they give the person in ① or the person in ② an Emergency Protective Order? ☐ Yes ☐ No

If yes: The order protects (check all that apply):

a. ☐ The person in ① b. ☐ The person in ② c. ☐ The persons in ⑥

Attach a copy of the order if you have one.

c. Is the person in ② a care custodian who deprived the person in ① of (kept from him or her, did not allow him or her to have or receive, or did not provide him or her with) goods or services that the person needed to avoid physical harm or mental suffering?

☒ Yes ☐ No (If yes, describe below what the person was deprived of and how that affected him or her):

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10c—Deprivation by Care Custodian" for a title.

He does not buy healthy food for Martha. He only buys beer and junk food for himself. Ray put his name on the deed to Martha's house.

d. Has the person in ② abused the person in ① at other times?

☒ Yes ☐ No (If yes, describe prior incidents and provide dates below):

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 10d—Previous Abuse" for a title.

Throughout the last year, Ray refuses to allow me to speak to my mother when I call. He does not let her friends in to see her.

Ray lives in our mother's home. He does not work or pay her rent. He lives off her Social Security. He charges money on her credit cards.

This is not a Court Order.

Check the orders you want ☒**11** ☒ **Personal Conduct Orders**

I ask the court to order the person in **(2)** not to do the following things to the person in **(1)** or to anyone to be protected listed in **(6)**:

- a. ☒ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy the personal property of, or disturb the peace of the person.
- b. ☒ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.
- c. ☒ Other (specify):

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 11c—Other Personal Conduct Orders," for a title.

Order Ray to take his name off the deed and pay the money back
that he has taken from Martha.

The person in **(2)** will be ordered not to take any action to get the addresses or locations of any protected person unless the court finds good cause not to make the order.

12 ☒ **Stay-Away Orders**

- a. I ask the court to order the person in **(2)** to stay at least _____ yards away from (Check all that apply):

- (1) ☒ The elder or dependent adult in **(1)**
- (2) ☐ The persons in **(6)**
- (3) ☒ The home of the elder or dependent adult
- (4) ☐ The job or workplace of the elder or dependent adult
- (5) ☐ The vehicle of the elder or dependent adult
- (6) ☐ Other (specify): _____

- b. If the court orders the person in **(2)** to stay away from all the places listed above, will he or she still be able to get to his or her home, school, or job? ☒ Yes ☐ No (If no, explain below):

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 12b—Stay-Away Orders," for a title.

He must get a job and find a place to live.

This is not a Court Order.

13 ☒ **Move-Out Order**

I ask the court to order the person in (2) to move out from and not return to the residence at (address):

5678 Maple Street Ennetown, CA 95555

The person in (1) will suffer physical or emotional harm if the person in (2) does not leave the residence. The person in (2) is not named in the title or lease of the residence, either alone or with others beside the person in (1).

☒ I ask for this move-out order right away to last until the hearing, because:

a. The person in (2) assaulted or threatened the person in (1); and

b. The person in (1) has the right to live at the above residence (Explain below):

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 13—My Right to Residence," for a title.

It is Martha's home and has been for 60 years.

14 **Guns or Other Firearms and Ammunition**

Does the person in (2) own or possess any guns or other firearms? ☒ Yes ☐ No ☐ I don't know

Unless the abuse is only financial, if the judge grants a protective order, the person in (2) will be prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a gun, other firearm, and ammunition while the protective order is in effect. The person in (2) will also be ordered to turn in to law enforcement or sell to a gun dealer any guns or firearms within his or her immediate possession or control.

15 **Immediate Orders**

Do you want the court to make any of these orders now that will last until the hearing without notice to the person in (2)? ☒ Yes ☐ No (If you answered yes, explain why below):

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 15—Immediate Orders" for a title.

Martha is afraid of Ray. If he does not move out now, he will intimidate her.

16 ☐ **Request to Give Less Than Five Days' Notice**

You must have your papers personally served on the person in (2) at least five days before the hearing, unless the court orders a shorter time for service. (Form EA-200-INFO explains What Is "Proof of Personal Service"? Form EA-200, Proof of Personal Service, may be used to show the court that the papers have been served.)

If you want there to be fewer than five days between service and the hearing, explain why below:

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 16—Request to Give Less Than Five-Days Notice" for a title.

This is not a Court Order.

Case Number:

12 EA 43621

- (17) No Fee to Serve Orders** *If you want the sheriff or marshal to serve (notify) the person in (2) about the orders for free, ask the court clerk what you need to do.*

(18) ☒ Lawyer's Fees and Costs

I ask the court to order payment of my: a. ☒ Lawyer's fees b. ☐ Court costs

The amounts requested are:

Item	Amount	Item	Amount
Attorneys Fees	\$ Reasonable		\$
	\$		\$
	\$		\$
	\$		\$

☐ Check here if there are more items. Put the items and amounts on the attached sheet of paper or Form MC-025 and write "Attachment 18—Lawyer's Fees and Costs" for a title.

(19) ☒ Additional Orders Requested

I ask the court to make the following additional orders (specify):


☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or Form MC-025 and write "Attachment 19—Additional Orders Requested," for a title.

Order Ray to enroll and attend a substance abuse prevention program.

(20) Number of pages attached to this form, if any: 1

Date: 1/10/2012

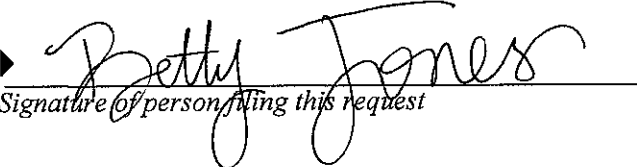
William Smith
Lawyer's name (if any)


Lawyer's signature

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: 1/10/2012

Betty Jones
Name of person filing this request


Signature of person filing this request

This is not a Court Order.

EA-100, ATTACHMENT 3c

Information About Person Requesting Protective Order

I, Betty Jones, am the daughter of Martha Jones. Martha is 87 years of age and is being abused by my brother, Raymond Jones.

I am Martha's power of attorney and I am a beneficiary of her trust. My mother has asked me to help her with her finances. I pay her utility bills and help her with making decisions about her affairs.

Betty Jones
Betty Jones

Clerk stamps date here when form is filed.

1 Elder or Dependent Adult in Need of Protectiona. Full Name: Martha Jones☒ Person requesting protection for the elder or dependent adult, if different (person named in item ③ of Form EA-100):Full Name: Betty Jones

Lawyer for person named above (if any for this case):

Name: William Smith, Esq. State Bar No.: 99999Firm Name: Sole Practitioner

b. Address for person named above (If you have a lawyer, give your lawyer's information. If you do not have a lawyer, give information for the person requesting the order. If you want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):

Address: 1234 Main StreetCity: Enetown State: CA Zip: 94114Telephone: (777) 555-3123 Fax: (777) 555-3124E-Mail Address: Wsmith@smithlaw.com

Fill in court name and street address:

Superior Court of California, County of
Orange

341 The City Drive

P.O. Box 14169

Orange, CA 92863

Family Law

Court fills in case number when form is filed.

Case Number:

12 EA 43621

2 Person You Want Protection FromFull Name: Raymond (Ray) Jones*The court will complete the rest of this form.***3 Notice of Hearing**

A court hearing is scheduled on the request for restraining orders against the person in ②:

Hearing
DateDate: Feb. 10, 2012Time: 10:00 a.m.

Name and address of court if different from above:

SameDept.: 6Room: N/A**4 Temporary Restraining Orders** (Any orders granted are on Form EA-110, served with this notice.)

a. Temporary Restraining Orders for personal conduct and stay-away orders as requested in Form EA-100, Request for Elder on Dependent Adult Abuse Restraining Orders are (check only one box below):

(1) ☐ All **GRANTED** until the court hearing.(2) ☐ All **DENIED** until the court hearing. (Specify reasons for denial in b, below.)(3) ☒ Partly **GRANTED** and partly **DENIED** until the court hearing. (Specify reasons for denial in b, below.)

4 Temporary Restraining Orders (Continued)

b. Reasons for denial of some or all of those personal conduct and stay away orders as requested in Form EA-100, *Request for Elder or Dependent Adult Abuse Restraining Orders*, are:

(1) ☐ The facts as stated in Form EA-100 do not sufficiently show reasonable proof of a past act or acts of abuse of the elder or dependent adult by the person in (2).

(2) ☒ Other (specify): ☐ As set forth on Attachment 4b.

Court cannot order changes to deeds and payment of money on
an ex parte basis.

Court cannot order Ray to substance abuse program on an ex parte basis.

5 Service of Documents by the Person in (1)

At least ☒ five ☐ _____ days before the hearing, someone age 18 or older—not you or anyone to be protected—must personally give (serve) a court file-stamped copy of this Form EA-109, *Notice of Court Hearing*, to the person in (2) along with a copy of all the forms indicated below:

- a. EA-100, *Request for Elder or Dependent Adult Abuse Restraining Orders* (file-stamped)
- b. ☒ EA-110, *Temporary Restraining Order* (file-stamped) **IF GRANTED**
- c. EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders* (blank form)
- d. EA-250, *Proof of Service of Response by Mail* (blank form)
- e. EA-120-INFO, *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders?*
- f. ☐ Other (specify): _____

Date: 1/10/2012

Hon. Ann Awesome
Judicial Officer

To the Person in (1):

- The court cannot make the restraining orders after the court hearing unless the person in (2) has been personally given (served) a copy of your request and any temporary orders. To show that the person in (2) has been served, the person who served the forms must fill out a proof of service form. Form EA-200, *Proof of Personal Service*, may be used.
- For information about service, read Form EA-200-INFO, *What Is "Proof of Personal Service"?*
- If you are unable to serve the person in (2) in time, you may ask for more time to serve the documents. Use Form EA-115, *Request to Continue Court Hearing and to Reissue Temporary Restraining Order*.

To the Person in ②:

- If you want to respond to the request for orders in writing, file Form EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders*, and have someone age 18 or older—**not you or anyone to be protected**—mail it to the person in ①.
- The person who mailed the form must fill out a proof of service form. Form EA-250, *Proof of Service of Response by Mail*, may be used. File the completed form with the court before the hearing and bring a copy with you to the court hearing.
- Whether or not you respond in writing, go to the hearing if you want the judge to hear from you before making an order. You may tell the judge why you agree or disagree with the orders requested.
- You may bring witnesses and other evidence.
- **At the hearing, the judge may make restraining orders against you that could last up to five years and may order you to sell or turn in any firearms that you own or possess.**

**Request for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the hearing. Contact the clerk's office or go to www.courts.ca.gov/forms for *Request for Accommodations by Persons with Disabilities and Response* (Form MC-410). (Civ. Code, § 54.8.)

(Clerk will fill out this part.)

—Clerk's Certificate—

I certify that this *Notice of Court Hearing* is a true and correct copy of the original on file in the court.

Clerk's Certificate

[seal]

Date: 1/10/2012

Clerk, by Allen Efficient, Deputy

Clerk stamps date here when form is filed.

Person in ① must complete items ①, ② and ③ only.

1 Protected Elder or Dependent Adulta. Full Name: Martha Jones☒ Person requesting protection for the elder or dependent adult, if different (person named in item ③ of Form EA-100):Full Name: Betty Jones

Lawyer for person named above (if any for this case):

Name: William Smith, Esq. State Bar No.: 99999Firm Name: Sole practitioner

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):

Address: 1284 Main StreetCity: Enetown State: CA Zip: 94114Telephone: (777) 555-3123 Fax: (777) 555-3124E-Mail Address: wsmith@smithlaw.com

Fill in court name and street address:

Superior Court of California, County of
Orange
341 The City Drive
P.O. Box 14169
Orange, CA 92863
Family Law

Court fills in case number when form is filed.

Case Number:

12 EA 43621**2 Restrained Person**Full Name: Raymond (Ray) JonesDescription: Sex: ☒ M ☐ F Height: 6'1" Weight: 230 Date of Birth: 12-15-1951Hair Color: Brown Eye Color: Brown Age: 60 Race: Cauc.Home Address (if known): 5678 Maple StreetCity: Enetown State: CA Zip: 95555Relationship to Protected Person: Son**3 Additional Protected Persons**

In addition to the elder or dependent adult named in ①, the following family or household members or conservator of that person are protected by the orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to Protected Person
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

☐ Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025, Attachment.

The court will complete the rest of this form.

4 Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: Feb. 10, 2012 Time: 10:00 ☒ a.m. ☐ p.m.**This is a Court Order**

To the Person in ②:

The court has issued the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

⑤ Personal Conduct Orders

☐ Not Requested ☐ Denied Until the Hearing ☒ **Granted as Follows:**

a. You must **not** do the following things to the elder or dependent adult named in ①

☐ and to the other protected persons listed in ③:

- (1) ☒ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy the personal property of, or disturb the peace of the person.
- (2) ☒ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.
- (3) ☐ Take any action to obtain the person's address or location. If this item ③ is not checked, the court has found good cause not to make this order.
- (4) ☐ Other (*specify*):
☐ Other personal conduct orders are attached at the end of this Order on Attachment 5a(4).

b. Peaceful written contact through a lawyer or a process server or any other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the person in ①.

⑥ Stay-Away Orders

☐ Not Requested ☐ Denied Until the Hearing ☒ **Granted as Follows:**

a. You **must** stay at least 100 yards away from (*check all that apply*):

- (1) ☒ The elder or dependent adult in ①
- (2) ☐ Each person in ③
- (3) ☒ The home of the elder or dependent adult
- (4) ☐ The job or workplace of the elder or dependent adult
- (5) ☐ The vehicle of the elder or dependent adult
- (6) ☐ Other (*specify*): _____

b. This stay-away order does not prevent you from going to or from your home or place of employment.

⑦ Move-Out Order

☐ Not Requested ☐ Denied Until the Hearing ☒ **Granted as Follows:**

You must immediately move out from and not return to (*address*):

5678 Maple Street Enetown, CA 95555

and must take only the personal clothing and belongings you need until the hearing.

This is a Court Order.

8 No Guns or Other Firearms and Ammunition

☐ **Not Issued** (financial abuse only) ☒ **Granted as Follows:**

This order must be granted unless only financial abuse is alleged.

- a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
- b. You must:
 - (1) Sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.
 - (2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in or sold. *(You may use Form EA-800, Proof of Firearms Turned In or Sold, for the receipt.)*
- c. ☒ The court has received information that you own or possess a firearm.

9 Financial Abuse

This case ☒ does **not** ☐ does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

10 Other Orders

☐ **Not Requested** ☒ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

Ray must take his name off the deed to Martha's house and pay
Martha to reimburse Martha for her expenses.

☐ Additional orders are attached at the end of this Order on Attachment 10.

To the Person in ①:**11 Mandatory Entry of Order Into CARPOS Through CLETS**

This Order must be entered into the California Restraining and Protective Orders System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

- a. ☒ The clerk will enter this Order and its proof-of-service form into CLETS.
- b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CLETS.
- c. ☐ By the close of business on the date that this Order is made, the person in ① or his or her lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agencies listed below to enter into CLETS:

Name of Law Enforcement Agency

Address (City, State, Zip)

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 11.

This is a Court Order.

⑫ No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, he or she will do it for free.

⑬ Number of pages attached to this Order, if any: 0

Date: 1/10/2012

Hon. Ann Awesome
Judicial Officer

Warnings and Notices to the Restrained Person in ② :**Possession of Guns or Firearms**

If the court grants the orders in item ⑧, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item ⑧. The court will require you to prove that you did so.

Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and Form EA-109, *Notice of Court Hearing*, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that does not differ from this order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item ②.

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

After You Have Been Served With a Restraining Order

- Obey all the orders.
- Read Form EA-120-INFO, *How Can I Respond to a Request for Orders to Elder or Dependent Adult Abuse?*, to learn how to respond to this Order.
- If you want to respond, fill out Form EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders*, and file it with the court clerk. You do not have to pay any fee to file your response.
- You must have Form EA-120 served on the person in ① (the person asking the court for protection of the elder or dependent adult or the elder or dependent adult if no other person is named in that item), or that person's attorney, by mail. You cannot do this yourself. The person who does the mailing should complete and sign Form EA-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served signed by you and other persons who have personal knowledge of the facts. You may use Form MC-030, *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at www.courts.ca.gov/forms. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to five years. Tell the judge why you disagree with the orders requested.

This is a Court Order.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item (4) on page 1.

Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the orders. Consider the restrained person "served" (noticed) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file; *or*
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

Conflicting Orders

A protective order issued in a criminal case on Form CR-161 takes precedence in enforcement over any conflicting civil court order. (Pen. Code, § 136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in full force. An *Emergency Protective Order* (Form EPO-001) that is in effect between the same parties and is more restrictive than other restraining orders takes precedence over all other restraining orders. (Pen. Code, § 136.2.)

(Clerk will fill out this part)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: 11/10/2012 Clerk, by Galen Giffen, Deputy

This is a Court Order.

Review and discuss the following questions with your table group:

- How would you rule and if you issue the order, what would be the terms and conditions of your order?
- What conduct can you restrain?
- Are there things you would like to order but believe you cannot?
- What are the options for filling these gaps?

Person in ① must complete items ①, ② and ③ only.

① Protected Elder or Dependent Adult

- a. Full Name: _____
- ☐ Person requesting protection for the elder or dependent adult, if different (person named in item ③ of Form EA-100):
- Full Name: _____
- Lawyer for person named above (if any for this case):
- Name: _____ State Bar No.: _____
- Firm Name: _____
- b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):
- Address: _____
- City: _____ State: _____ Zip: _____
- Telephone: _____ Fax: _____
- E-Mail Address: _____

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of _____

Court fills in case number when form is filed.

Case Number: _____

② Restrained Person

Full Name: _____

Description: Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address (if known): _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

③ ☐ Additional Protected Persons

In addition to the elder or dependent adult named in ①, the following family or household members or conservator of that person are protected by the orders indicated below:

Full Name	Sex	Age	Household Member?	Relation to Protected Person
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

- ☐ Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025, Attachment.

The court will complete the rest of this form.

④ Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order

To the Person in ②:

The court has issued the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

⑤ Personal Conduct Orders

☐ Not Requested ☐ Denied Until the Hearing ☐ Granted as Follows:

- a. You must **not** do the following things to the elder or dependent adult named in ①
☐ and to the other protected persons listed in ③:
- (1) ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy the personal property of, or disturb the peace of the person.
 - (2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.
 - (3) ☐ Take any action to obtain the person's address or location. If this item ③ is not checked, the court has found good cause not to make this order.
 - (4) ☐ Other (*specify*):
☐ Other personal conduct orders are attached at the end of this Order on Attachment 5a(4).
- _____
- _____
- b. Peaceful written contact through a lawyer or a process server or any other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the person in ①.

⑥ Stay-Away Orders

☐ Not Requested ☐ Denied Until the Hearing ☐ Granted as Follows:

- a. You **must** stay at least _____ yards away from (*check all that apply*):
- (1) ☐ The elder or dependent adult in ①
 - (2) ☐ Each person in ③
 - (3) ☐ The home of the elder or dependent adult
 - (4) ☐ The job or workplace of the elder or dependent adult
 - (5) ☐ The vehicle of the elder or dependent adult
 - (6) ☐ Other (*specify*): _____

- b. This stay-away order does not prevent you from going to or from your home or place of employment.

⑦ Move-Out Order

☐ Not Requested ☐ Denied Until the Hearing ☐ Granted as Follows:

You must immediately move out from and not return to (*address*):

and must take only the personal clothing and belongings you need until the hearing.

This is a Court Order.

8 No Guns or Other Firearms and Ammunition

☐ **Not Issued** (financial abuse only) ☐ **Granted as Follows:**

This order must be granted unless only financial abuse is alleged.

- a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
- b. You must:
 - (1) Sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.
 - (2) File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in or sold. *(You may use Form EA-800, Proof of Firearms Turned In or Sold, for the receipt.)*
- c. ☐ The court has received information that you own or possess a firearm.

9 Financial Abuse

This case ☐ does **not** ☐ does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

10 Other Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

☐ Additional orders are attached at the end of this Order on Attachment 10.

To the Person in ①:**11 Mandatory Entry of Order Into CARPOS Through CLETS**

This Order must be entered into the California Restraining and Protective Orders System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

- a. ☐ The clerk will enter this Order and its proof-of-service form into CLETS.
- b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CLETS.
- c. ☐ By the close of business on the date that this Order is made, the person in ① or his or her lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agencies listed below to enter into CLETS:

Name of Law Enforcement Agency

Address (City, State, Zip)

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 11.

This is a Court Order.

(12) No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, he or she will do it for free.

(13) Number of pages attached to this Order, if any: _____

Date: _____

Judicial Officer

Warnings and Notices to the Restrained Person in (2) :**Possession of Guns or Firearms**

If the court grants the orders in item (8), you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item (8). The court will require you to prove that you did so.

Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and Form EA-109, *Notice of Court Hearing*, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that does not differ from this order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item (2).

If this address is not correct or you wish to verify that the Temporary Restraining Order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

After You Have Been Served With a Restraining Order

- Obey all the orders.
- Read Form EA-120-INFO, *How Can I Respond to a Request for Orders to Elder or Dependent Adult Abuse?*, to learn how to respond to this Order.
- If you want to respond, fill out Form EA-120, *Response to Request for Elder or Dependent Adult Abuse Restraining Orders*, and file it with the court clerk. You do not have to pay any fee to file your response.
- You must have Form EA-120 served on the person in (1) (the person asking the court for protection of the elder or dependent adult or the elder or dependent adult if no other person is named in that item), or that person's attorney, by mail. You cannot do this yourself. The person who does the mailing should complete and sign Form EA-250, *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served signed by you and other persons who have personal knowledge of the facts. You may use Form MC-030, *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at www.courts.ca.gov/forms. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to five years. Tell the judge why you disagree with the orders requested.

This is a Court Order.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item ④ on page 1.

Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the orders. Consider the restrained person "served" (noticed) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the Proof of Service or confirms that the Proof of Service is on file; *or*
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

Conflicting Orders

A protective order issued in a criminal case on Form CR-161 takes precedence in enforcement over any conflicting civil court order. (Pen. Code, § 136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in full force. An *Emergency Protective Order* (Form EPO-001) that is in effect between the same parties and is more restrictive than other restraining orders takes precedence over all other restraining orders. (Pen. Code, § 136.2.)

(Clerk will fill out this part)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

EA-130**Elder or Dependent Adult Abuse
Restraining Order After Hearing**

Clerk stamps date here when form is filed.

Person in ① must complete items ①, ② and ③ only.

① Protected Elder or Dependent Adult

a. Full Name: _____

☐ Person requesting protection for the elder or dependent adult, if different (person named in item ③ of Form EA-100):

Full Name: _____

Lawyer for person named above (if any for this case):

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or e-mail.):

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of _____

Fill in case number:

Case Number: _____

② Restrained Person

Full Name: _____

Description: Sex: ☐ M ☐ F Height: _____ Weight: _____ Date of Birth: _____

Hair Color: _____ Eye Color: _____ Age: _____ Race: _____

Home Address (if known): _____

City: _____ State: _____ Zip: _____

Relationship to Protected Person: _____

③ ☐ Additional Protected Persons

In addition to the elder or dependent adult named in ①, the following family or household members or conservator of the elder or dependent adult named in ① are protected by the orders indicated below.

Full Name	Sex	Age	Household Member?	Relation to Protected Person
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

☐ Check here if there are additional protected persons. List them on an attached sheet of paper and write, "Attachment 3—Additional Protected Persons" as a title. You may use Form MC-025, Attachment.**④ Expiration Date**

This Order, except for any award of lawyer's fees, expires at:

Time: _____ ☐ a.m. ☐ p.m. or ☐ midnight on (date): _____

If no expiration date is written here, this Order expires three years from the date of issuance.

This is a Court Order.

5 Hearing

- a. There was a hearing on (date): _____ at (time): _____ in Dept.: _____ Room: _____
(Name of judicial officer): _____ made the orders at the hearing.
- b. These people were at the hearing:
- (1) ☐ The elder or dependent adult in need of protection
 - (2) ☐ The lawyer for the elder or dependent adult (name): _____
 - (3) ☐ The person in ① asking for protection (if not the elder or dependent adult)
 - (4) ☐ The lawyer for the person in ① asking for protection (name): _____
 - (5) ☐ The person in ②
 - (6) ☐ The lawyer for the person in ② (name): _____
 - ☐ Additional persons present are listed at the end of this Order on Attachment 5.
- c. ☐ The hearing is continued. The parties must return to court on (date): _____ at (time): _____.

To the Person in ②:

The court has granted the orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

6 ☐ Personal Conduct Orders

- a. You must **not** do the following things to the elder or dependent adult named in ① :
☐ and to the other protected persons listed in ③ :
- (1) ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy the personal property of, or disturb the peace of the person.
 - (2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by e-mail, by text message, by fax, or by other electronic means.
 - (3) ☐ Take any action to obtain the person's address or location. If this item is not checked, the court has found good cause not to make this order.
 - (4) ☐ Other (specify): _____
☐ Other personal conduct orders are attached at the end of this Order on Attachment 6a(4).
- b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

7 ☐ Stay-Away Orders

- a. You **must** stay at least _____ yards away from (check all that apply):
- (1) ☐ The elder or dependent adult in ①
 - (2) ☐ Each person in ③
 - (3) ☐ The home of the elder or dependent adult
 - (4) ☐ The job or workplace of the elder or dependent adult
 - (5) ☐ The vehicle of the elder or dependent adult
 - (6) ☐ Other (specify): _____

This is a Court Order.

b. This stay-away order does not prevent you from going to or from your home or place of employment.

8 ☐ **Move-Out Order**

You must immediately move out from and not return to (address):

and must take only the personal clothing and belongings you need.

9 ☐ **No Guns or Other Firearms and Ammunition**

This Order must be granted unless the abuse is financial only.

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.

b. If you have not already done so, you must:

- Sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms in your immediate possession or control. This must be done within 24 hours of being served with this Order.
- File a receipt with the court within 48 hours of receiving this Order that proves that your guns or firearms have been turned in or sold. (You may use Form EA-800, Proof of Firearms Turned In or Sold, for the receipt.)

c. ☐ The court has received information that you own or possess a firearm.

10 **Financial Abuse**

This case ☐ does not ☐ does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

11 ☐ **Lawyer's Fees and Costs**

You must pay to the person in **1** the following amounts for: a. ☐ Lawyer's fees b. ☐ Court costs

<u>Item</u>	<u>Amount</u>	<u>Item</u>	<u>Amount</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

☐ Additional amounts are attached at the end of this Order on Attachment 11.

12 ☐ **Other Orders (specify):**

☐ Additional orders are attached at the end of this Order on Attachment 12.

This is a Court Order.

To the Person in ①:**⑬ Mandatory Entry of Order Into CARPOS Through CLETS**

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

- a. ☐ The clerk will enter this Order and its proof-of-service form into CARPOS.
- b. ☐ The clerk will transmit this Order and its proof-of-service form to a law enforcement agency to be entered into CARPOS.
- c. ☐ By the close of business on the date that this Order is made, you or your lawyer should deliver a copy of the Order and its proof-of-service form to the law enforcement agency listed below to enter into CARPOS:

Name of Law Enforcement Agency

Address (City, State, Zip)

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 13.

⑭ Service of Order on Restrained Person

- a. ☐ The person in ② personally attended the hearing. No other proof of service is needed.
- b. ☐ The person in ① was at the hearing. The person in ② was not.
 - (1) ☐ Proof of service of Form EA-110, *Temporary Restraining Order*, was presented to the court. The judge's orders in this form are the same as in Form EA-110 except for the end date. The person in ② must be served with this Order. Service may be by mail.
 - (2) ☐ Proof of service of Form EA-110, *Temporary Restraining Order*, was presented to the court. The judge's orders in this form are different from the orders in Form EA-110. Someone—but not anyone in ① or ③—must personally serve a copy of this Order on the person in ②.

⑮ No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, he or she will do so for free.

⑯ Number of pages attached to this Order, if any: _____

Date: _____

Judicial Officer

Warnings and Notice to the Restrained Person in ②:**You Cannot Have Guns or Firearms**

If the court grants the orders in item ⑨ on page 3, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item ⑨. The court will require you to prove that you did so.

This is a Court Order.

Instructions for Law Enforcement**Enforcing the Restraining Order**

This Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the California Restraining and Protective Orders System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

This Order *starts* on the date next to the judge's signature on page 4 and *ends* on the expiration date in item ④ on page 1.

Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of this order and has disobeyed it, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the orders. Consider the restrained person served (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; or
- The restrained person was at the restraining order hearing or was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this Order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

Conflicting Orders

A protective order issued in a criminal case on Form CR-160 or Form CR-161 takes precedence in enforcement over any conflicting civil court order. (Pen. Code, § 136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in full force. An *Emergency Protective Order* (Form EPO-001) that is in effect between the same parties and is more restrictive than other restraining orders takes precedence over all other restraining orders. (Pen. Code, § 136.2.)

Clerk's Certificate
[seal]

(Clerk will fill out this part.)

Clerk's Certificate

I certify that this *Elder or Dependent Adult Abuse Restraining Order After Hearing* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Person in ① must complete items ①, ②, and ③ only.

① Name of Protected Person:

Your lawyer in this case (if you have one):

Name: _____ State Bar No.: _____

Firm Name: _____

Address (If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail.):

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Clerk fills in case number when form is filed.

Case Number:

② Name of Restrained Person:

Description of restrained person:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____
 Race: _____ Age: _____ Date of Birth: _____
 Address (if known): _____
 City: _____ State: _____ Zip: _____
 Relationship to protected person: _____

③ ☐ Additional Protected Persons

In addition to the person named in ①, the following persons are protected by temporary orders as indicated in items ⑥ and ⑦ (family or household members):

Full name	Relationship to person in ①	Sex	Age
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

☐ Check here if there are additional protected persons. List them on an attached sheet of paper and write, "DV-110, Additional Protected Persons" as a title.

The court will complete the rest of this form.

④ Expiration Date

This order expires at the date and time of the hearing below:

Hearing Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.

5 ☐ **Criminal Protective Order**

- a. ☐ A criminal protective order on Form CR-160, *Criminal Protective Order—Domestic Violence*, is in effect.
Case Number: _____ County: _____ Expiration Date: _____
- b. ☐ No information has been provided to the judge about a criminal protective order.

To the person in 2

The court has granted the temporary orders checked below. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

6 **Personal Conduct Orders** ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

- a. You must **not** do the following things to the person in ① and ☐ persons in ③:
- ☐ Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, or block movements
 - ☐ Contact, either directly or indirectly, in any way, including but not limited to, by telephone, mail, e-mail or other electronic means
 - ☐ Take any action, directly or through others, to obtain the addresses or locations of the persons in ① and ③. *(If this item is not checked, the court has found good cause not to make this order.)*
- b. Peaceful written contact through a lawyer or process server or another person as needed to serve Form DV-120 (*Response to Request for Domestic Violence Restraining Order*) or other legal papers is allowed and does not violate this order.
- c. ☐ Exceptions: Brief and peaceful contact with the person in ①, and peaceful contact with children in ③, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

7 **Stay-Away Order** ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

- a. You **must** stay at least (*specify*): _____ yards away from:
- | | |
|--|--|
| <input type="checkbox"/> The person in ① | <input type="checkbox"/> School of person in ① |
| <input type="checkbox"/> The persons in ③ | <input type="checkbox"/> The children's school or child care |
| <input type="checkbox"/> Home of person in ① | <input type="checkbox"/> Other (<i>specify</i>): _____ |
| <input type="checkbox"/> The job or workplace of person in ① | _____ |
| <input type="checkbox"/> Vehicle of person in ① | _____ |
- b. ☐ Exceptions: Brief and peaceful contact with the person in ①, and peaceful contact with children in ③, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

8 **Move-Out Order** ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

You must take only personal clothing and belongings needed until the hearing and move out immediately from (*address*): _____

This is a Court Order.

9 No Guns or Other Firearms or Ammunition

- a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
- b. You must:
- Sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms within your immediate possession or control. This must be done within 24 hours of being served with this order.
 - File a receipt with the court within 48 hours of receiving this order that proves guns have been turned in or sold. (You may use Form DV-800, *Proof of Firearms Turned In or Sold*, for the receipt.)
- c. ☐ The court has received information that you own or possess a firearm.

10 Record Unlawful Communications

☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in ① can record communications made by you that violate the judge's orders.

11 Care of Animals ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in ① is given the sole possession, care, and control of the animals listed below. The person in ② must stay at least _____ yards away from and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the following animals: _____

12 Child Custody and Visitation ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

You and the person in ① must follow the orders listed in attached Form DV-140, *Child Custody and Visitation Order*. The parent with temporary custody of the child must not remove the child from California until a noticed hearing (*Family Code Section 3063*).

13 Child Support

Not ordered now but may be ordered after a noticed hearing.

14 Property Control ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

Until the hearing, *only* the person in ① can use, control, and possess the following property and things: _____

15 Debt Payment ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

The person in ② must make these payments until this order ends:

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____
Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

16 Property Restraint ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

If the people in ① and ② are married to each other or are registered domestic partners,

☐ the person in ① ☐ the person in ② must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, each person must notify the other of any new or big expenses and explain them to the court. (*The person in ② cannot contact the person in ① if the court has made a "no contact" order.*)

Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.

17 Spousal Support

Not ordered now but may be ordered after a noticed hearing.

18 Lawyer's Fees and Costs

Not ordered now but may be ordered after a noticed hearing.

19 Payments for Costs and Services

Not ordered now but may be ordered after a noticed hearing.

20 Batterer Intervention Program

Not ordered now but may be ordered after a noticed hearing.

21 Other Orders ☐ Not requested ☐ Denied until the hearing ☐ Granted as follows:

☐ Check here if there are additional orders. List them on an attached sheet of paper and write "DV-110, other Orders" as a title.**22 No Fee to Serve (Notify) Restrained Person**

If the sheriff serves this order, he or she will do it for free.

Date: _____

*Judge (or Judicial Officer)***Warnings and Notices to the Restrained Person in 2****You Cannot Have Guns, Other Firearms or Ammunition**

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, or ammunition while this order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control as stated in item 9 above. The court will require you to prove that you did so.

If You Do Not Obey This Order, You Can Be Arrested and Charged With a Crime

- It is a felony to take or hide a child in violation of this order.
- If you travel to another state or to tribal lands or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.
- If you do not obey this order, you can go to jail or prison and/or pay a fine.

Service of Order by Mail

If the judge makes a restraining order at the hearing, which has the same orders as in this form, you will get a copy of that order by mail at your last known address, which is written in 2. If this address is not correct, or to know if the orders were made permanent, contact the court.

This is a Court Order.

Child Custody, Visitation, and Support

- **Child custody and visitation:** If you do not go to the hearing, the judge can make custody and visitation orders for your children without hearing from you.
- **Child support:** The judge can order child support based on the income of both parents. The judge can also have that support taken directly from your paycheck. Child support can be a lot of money, and usually you have to pay until the child is age 18. File and serve a *Financial Statement (Simplified)* (Form FL-155) or an *Income and Expense Declaration* (Form FL-150) so the judge will have information about your finances.
- **Spousal support:** File and serve an *Income and Expense Declaration* (Form FL-150) so the judge will have information about your finances. Otherwise, the court may make support orders without hearing from you.

Instructions for Law Enforcement

This order is effective when made. It is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency shall advise the restrained person of the terms of the order and then shall enforce it. Violations of this order are subject to criminal penalties.

Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Penal Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

Certificate of Compliance With VAWA

This temporary protective order meets all “full faith and credit” requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

**Restraining Order After Hearing
(Order of Protection)**

Clerk stamps date here when form is filed.

1 Name of Protected Person:

Your lawyer in this case (if you have one):

Name: _____ State Bar No.: _____

Firm Name: _____

Address (If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail.):

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of _____

2 Name of Restrained Person:

Description of restrained person:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____

Race: _____ Age: _____ Date of Birth: _____

Mailing Address (if known): _____

City: _____ State: _____ Zip: _____

Relationship to protected person: _____

Fill in case number:

Case Number: _____

3 ☐ Additional Protected Persons

In addition to the person named in **1**, the following persons are protected by orders as indicated in item **6** and **7** (family or household members):

Full name	Relationship to person in 1	Sex	Age
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

☐ Check here if there are additional protected persons. List them on an attached sheet of paper and write, "DV-130, Additional Protected Persons" as a title.

4 Expiration Date

The orders, except as noted below, end on

(date): _____ at (time): _____ ☐ a.m. ☐ p.m. or ☐ midnight

- If no date is written, the restraining order ends three years after the date of the hearing in item **5(a)**.
- If no time is written, the restraining order ends at midnight on the expiration date.
- Note: Custody, visitation, child support, and spousal support orders remain in effect after the restraining order ends. Custody, visitation and child support orders usually end when the child is 18.
- The court orders are on pages 2, 3, 4 and 5 and attachment pages (if any).

This order complies with VAWA and shall be enforced throughout the United States. See page 5.**This is a Court Order.**

5 Hearings

- a. The hearing was on (date): _____ with (name of judicial officer): _____
- b. These people were at the hearing (check all that apply):
- | | |
|--|---|
| <input type="checkbox"/> The person in ① | <input type="checkbox"/> The lawyer for the person in ① (name): _____ |
| <input type="checkbox"/> The person in ② | <input type="checkbox"/> The lawyer for the person in ② (name): _____ |
- c. ☐ The people in ① and ② must **return to court** on (date): _____
at (time): _____ ☐ a.m. ☐ p.m. to review (specify issues): _____

To the person in ②

The court has granted the orders checked below. Item ⑨ is also an order. If you do not obey these orders, you can be arrested and charged with a crime. You may be sent to jail for up to one year, pay a fine of up to \$1,000, or both.

6 ☐ Personal Conduct Orders

- a. The person in ② must **not** do the following things to the protected people in ① and ③:
- ☐ Harass, attack, strike, threaten, assault (sexually or otherwise), hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, or block movements.
 - ☐ Contact, either directly or indirectly, by any means, including, but not limited to, by telephone, mail, e-mail or other electronic means.
 - ☐ Take any action, directly or through others, to obtain the addresses or locations of any protected persons.
(If this item is not checked, the court has found good cause not to make this order.)
- b. Peaceful written contact through a lawyer or process server or another person as needed to serve legal paper is allowed and does not violate this order.
- c. ☐ Exceptions: Brief and peaceful contact with the person in ①, and peaceful contact with children in ③, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

7 ☐ Stay-Away Order

- a. The person in ② must stay at least (specify): _____ yards away from:
- | | |
|--|--|
| <input type="checkbox"/> The person in ① | <input type="checkbox"/> School of person in ① |
| <input type="checkbox"/> The persons in ③ | <input type="checkbox"/> The children's school or child care |
| <input type="checkbox"/> Home of person in ① | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> The job or workplace of person in ① | _____ |
| <input type="checkbox"/> Vehicle of person in ① | _____ |
- b. ☐ Exceptions: Brief and peaceful contact with the person in ① and peaceful contact with children in ③, as required for court-ordered visitation of children, is allowed unless a criminal protective order says otherwise.

8 ☐ Move-Out Order

The person in ② must move out immediately from (address): _____

This is a Court Order.

9 No Guns or Other Firearms or Ammunition

- a. The person in ② cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get guns, other firearms, or ammunition.
- b. The person in ② must:
- Sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms within his or her immediate possession or control. This must be done within 24 hours of being served with this order.
 - File a receipt with the court within 48 hours of receiving this order that proves guns have been turned in or sold. (*Form DV-800, Proof of Firearms Turned In or Sold, may be used for the receipt.*)
- c. ☐ The court has received information that the person in ② owns or possesses a firearm.

10 ☐ Record Unlawful Communications

The person in ① has the right to record communications made by the person in ② that violate the judge's orders.

11 ☐ Animals: Possession and Stay-Away

The person in ① is given the sole possession, care, and control of the animals listed below. The person in ② must stay at least _____ yards away from and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the following animals: _____

12 ☐ Child Custody and Visitation

Child custody and visitation are ordered on the attached Form DV-140, *Child Custody and Visitation Order* or (*specify other form*): _____

13 ☐ Child Support

Child support is ordered on the attached Form FL-342, *Child Support Information and Order Attachment* or (*specify other form*): _____

14 ☐ Property Control

Only the person in ① can use, control, and possess the following property: _____

15 ☐ Debt Payment

The person in ② must make these payments until this order ends:

Pay to: _____	For: _____	Amount: \$ _____	Due date: _____
Pay to: _____	For: _____	Amount: \$ _____	Due date: _____
Pay to: _____	For: _____	Amount: \$ _____	Due date: _____

☐ Check here if more payments ordered. Attach a sheet of paper and write, "DV-130, Debt Payments" as a title.

16 ☐ Property Restraint

The ☐ person in ① ☐ person in ② must not transfer, borrow against, sell, hide, or get rid of or destroy any property, including animals, except in the usual course of business or for necessities of life. In addition, the person must notify the other of any new or big expenses and explain them to the court. (*The person in ② cannot contact the person in ① if the court has made a "Personal Conduct" order.*)

Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order.

This is a Court Order.

17 ☐ **Spousal Support**

Spousal support is ordered on the attached Form FL-343, *Spousal, Partner, or Family Support Order Attachment* or (specify other form): _____

18 ☐ **Lawyer's Fees and Costs**

The person in **(2)** must pay the following lawyer's fees and costs:

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____
Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

19 ☐ **Payments for Costs and Services**

The person in **(2)** must pay the following:

Pay to: _____ For: _____ Amount: \$ _____ Due date: _____
Pay to: _____ For: _____ Amount: \$ _____ Due date: _____
Pay to: _____ For: _____ Amount: \$ _____ Due date: _____

☐ Check here if more payments ordered. Attach a sheet of paper and write, "DV-130, Payments for Costs and Services" as a title.

20 ☐ **Batterer Intervention Program**

The person in **(2)** must go to and pay for a 52-week batterer intervention program and show written proof of completion to the court. This program must be approved by the probation department.

21 ☐ **Other Orders**

Other orders (specify): _____

22 ☐ **No Fee to Serve (Notify) Restrained Person**

If the sheriff or marshal serves this order, he or she will do it for free.

23 ☐ **Service**

a. ☐ The people in **(1)** and **(2)** were at the hearing or agreed in writing to this order. No other proof of service is needed.

b. ☐ The person in **(1)** was at the hearing. The person in **(2)** was not.

(1) ☐ Proof of service of Form DV-109 and Form DV-110 (if issued) was presented to the court. The judge's orders in this form are the same as in Form DV-110 except for the end date. The person in **(2)** must be served. This order can be served by mail.

(2) ☐ Proof of service of Form DV-109 and Form DV-110 (if issued) was presented to the court. The judge's orders in this form are different from the orders in Form DV-110, or Form DV-110 was not issued. Someone—not the people in **(1)** or **(3)**—must personally "serve" a copy of this order to the person in **(2)**.

24 ☐ **Criminal Protective Order**

a. ☐ Form CR-160, *Criminal Protective Order—Domestic Violence*, is in effect.

Case Number: _____ County: _____ Expiration Date: _____

(If more orders, list them on extra sheet of paper and write, "DV-130, Other Criminal Protective Orders" as a title.)

b. ☐ No information has been provided to the judge about a criminal protective order.

This is a Court Order.

25 ☐ **Attached pages are orders.**

- Number of pages attached to this six-page form: _____
- All of the attached pages are part of this order.
- Attachments include (*check all that apply*):
 - ☐ DV-140 ☐ DV-145 ☐ DV-150 ☐ FL-342 ☐ FL-343
 - ☐ Other (*specify*): _____

Date: _____

*Judge (or Judicial Officer)***Certificate of Compliance With VAWA**

This restraining (protective) order meets all “full faith and credit” requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994) (VAWA) upon notice of the restrained person. This court has jurisdiction over the parties and the subject matter; the restrained person has been or will be afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. **This order is valid and entitled to enforcement in each jurisdiction throughout the 50 states of the United States, the District of Columbia, all tribal lands, and all U.S. territories, commonwealths, and possessions and shall be enforced as if it were an order of that jurisdiction.**

Warnings and Notices to the Restrained Person in 2**If you do not obey this order, you can be arrested and charged with a crime.**

- If you do not obey this order, you can go to jail or prison and/or pay a fine.
- It is a felony to take or hide a child in violation of this order.
- If you travel to another state or to tribal lands or make the protected person do so, with the intention of disobeying this order, you can be charged with a federal crime.

You cannot have guns, firearms, and/or ammunition.

You cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get guns, other firearms, and/or ammunition while the order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to a licensed gun dealer or turn in to a law enforcement agency any guns or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect.

Instructions for Law Enforcement**Start Date and End Date of Orders**

The orders *start* on the earlier of the following dates:

- The hearing date in item **5**(a) on page 2 or
- The date next to the judge’s signature on this page.

The orders *end* on the expiration date in item **4** on page 1. If no date is listed, they end three years from the hearing date.

This is a Court Order.

Arrest Required If Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Penal Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6.

Notice/Proof of Service

Law enforcement must first determine if the restrained person had notice of the orders. If notice cannot be verified, the restrained person must be advised of the terms of the orders. If the restrained person then fails to obey the orders, the officer must enforce them. (Family Code, § 6383.)

Consider the restrained person “served” (noticed) if:

- The officer sees a copy of the *Proof of Service* or confirms that the *Proof of Service* is on file; or
- The restrained person was at the restraining order hearing or was informed of the order by an officer. (Fam. Code, § 6383; Pen. Code, § 836(c)(2).) An officer can obtain information about the contents of the order in the Domestic Violence Restraining Orders System (DVROS). (Fam. Code, § 6381(b)(c).)

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, the orders remain in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The orders can be changed only by another court order. (Pen. Code, § 13710(b).)

Child Custody and Visitation

- The custody and visitation orders are on Form DV-140, items ③ and ④. They are sometimes also written on additional pages or referenced in DV-140 or other orders that are not part of the restraining order.
- **Forms DV-100 and DV-105 are not orders. Do not enforce them.**

Enforcing the Restraining Order in California

Any law enforcement officer in California who receives, sees, or verifies the orders on a paper copy, the California Law Enforcement Telecommunications System (CLETS), or in an NCIC Protection Order File must enforce the orders.

Conflicting Orders

A protective order issued in a criminal case on Form CR-160 takes precedence in enforcement over any conflicting civil court order. (Pen. Code, § 136.2(e)(2).) Any nonconflicting terms of the civil restraining order remain in full force. An emergency protective order (Form EPO-001) that is in effect between the same parties and is more restrictive than other restraining orders takes precedence over all other restraining orders. (Pen. Code, § 136.2.)

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Restraining Order After Hearing (Order of Protection)* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.