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Abstract: The article discusses how lawyers should handle elder abuse to prevent the same. Estate planning is likely to come across elder abuse. Signs of physical abuse include injuries or a general lack of care; illegal or improper use of an elder's property, which results in a loss to the elder. It is stated that if a power of attorney or will, the engaged lawyer should talk to the client in private.

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You may think that because you don't practice elder law or estate planning you will never encounter elder abuse in your career. But as our population ages, we all need to be on the lookout for elder abuse -- physical, emotional, or financial -- and know what to do if we suspect our clients may be victims. Certainly, estate planning is a practice area where attorneys are likely to run across elder abuse, but attorneys practicing in the fields of family law, bankruptcy, and real estate should also be alert for signs that an elderly client is being taken advantage of.

An elderly client who has suddenly incurred debts that don't make sense given his or her lifestyle may be the victim of financial abuse. A grandchild bringing in a frail grandmother to "sign over the house to protect it" may be taking advantage of the elder, and a family law attorney reviewing a divorce agreement between spouses of vastly different ages might be looking at a case of elder abuse. A personal injury attorney or elder law attorney is probably more likely to see signs of physical elder abuse, but again, being alert for the signs is a good idea for all attorneys.

SIGNS OF PHYSICAL AND EMOTIONAL ABUSE

Signs of physical abuse include injuries, unexplained bruises, or a general lack of being cared for. Keep in mind that physical abuse won't only look like bruises or fractures but also broken eyeglasses, torn clothing, or bruises on strange places like wrists or neck, where elders would be unlikely to bump themselves.

Other signs of abuse may be lab tests that show medication is being over-consumed or underused. A sudden behavior change, especially if it coincides with the arrival of a new caretaker, can be an indicator of abuse, as can be a caregiver's refusal to allow visitors. The elder may also talk about the abuse, but keep in mind that it may sound more like "she got a little rough with me" or "I shouldn't have done that; it upset him and he pushed me by accident," rather than "she hit me."

SIGNS OF FINANCIAL ABUSE

Financial abuse is the illegal or improper use of an elder's property resulting in a loss to the elder. This includes withdrawal of money from an elder's account without authorization, forging a signature on an elder's check, stealing money or other items from the elder, or coercing the elder into signing a will, durable power of attorney, or deed to a house or car title. Telephone scams targeting the elderly by asking for personal financial information or pretending to be a family member who needs money are forms of financial abuse.

Details to watch for include unusual withdrawals from an elder's account, especially large amounts of cash, the addition of a child or caregiver to bank accounts as a joint owner rather than a signatory, unusual changes to a will or other estate planning documents, a child pressuring an attorney for a quick meeting to make a major change, bills going unpaid, or a child insisting on attending the meeting with the attorney and attempting to direct the elder's plan.

ETHICAL CONSIDERATIONS

If someone calls you with a report of elder abuse on a person who is not a client, find out if the caller is looking for representation for himself or herself, for the elder, or is simply looking for a referral to a state agency that can help. If you have represented the elder in the past, you need to make it clear to this other party that you would not be able to represent him or her, and you should make an attempt to reach out to the elder. You can also give that person information about the state agencies to contact. If you suspect that your own client is being abused, whenever possible you should first try to speak with your client. If your client seems to have diminished capacity and you believe you need to contact protective services or trusted family members, check with your local ethics rules about your ability to intervene. You can also contact your bar's ethics hotline for guidance on a specific situation.

The ABA Model Rule 1.14, Client with Diminished Capacity, states that:

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

In general, even if an attorney is seeking to have a guardian or conservator appointed for a client owing to abuse, the attorney cannot represent the proposed guardian/conservator and should not seek to serve in these roles. The attorney can, however, consider filing the petition and ask the court to appoint a suitable person in that role to protect the elderly client.

RESOURCES

Concerned family members or the elder themselves can contact their local Area Agency on Aging or elder protective services. Protective services will investigate to determine the extent of the abuse and, where appropriate, will work with the elder and caregivers to develop a care plan. Elder services can help the senior make a safety plan and obtain counseling, legal services, home care, and transportation. In most states an elder must consent to receive the services, although if the elder is not competent to consent, the agency may petition for temporary guardianship. If appropriate, the agency may refer the case to the district attorney for further investigation.

PREVENTION

Whether the situation involves an overbearing child trying to take advantage of a parent or an overwhelmed caregiver at an assisted living facility mistreating a resident, there are steps that can be taken to try to prevent elders from being abused.

Document preparation. If an elder client is in the hospital and the client's child calls you in to have the parent sign a power of attorney or will, take care to set clear boundaries. Explain to the child that you will need to meet privately with the parent, and shut the door to the room if you can. Engage your client in conversation beyond "how do you want your will done" or "your son said you want to name him as an agent in your power of attorney, is that right?" Get your client to talk about who his or her family members and friends are, what help is needed, and who has helped in the past. Refrain from taking instructions from the adult child over the phone and bringing the already drafted documents to the first meeting with the client. By having one meeting with the client where the child introduces you and then waits down the hall and a second meeting a day or so later without the child present at all, you can get a better picture of the situation. Be on the lookout for nonverbal signs from elder clients that all is not what it seems, such as cowering when their child is around or nodding their head or shaking it back and forth while saying the opposite thing.

Encourage your clients to execute legal documents that will provide someone they trust with the legal authority to assist them when needed. If they are executing these documents during a time when they can think about their decisions, they are more likely to choose appropriate people to help them. If they wait until they are in the hospital with only one child helping them and privacy is difficult to come by, it is more likely that they may feel pressured to name that child, who might not be appropriate or their choice otherwise. Once the documents are executed, make sure their financial institutions and doctors have copies of the documents.

long-term care facilities. Preventing elder abuse in a long-term care facility can involve making sure that the facility is close to people who can visit on a regular basis. If this isn't possible because the elder has few family members who live nearby, consider advising the elder to hire a geriatric care manager or non-medical companion care provider to visit the elder on a regular basis. The elder may also be involved with a church group or social organization that can send visitors. Let the staff see that this person has an involved community of people who drop by at unexpected times and care about the resident. Likewise, make sure there is a working phone that is within easy reach in the elder's room.

Keep in mind, however, that if there is suspected abuse of an elder in an assisted living or other long-term care facility, it is a good idea to have a plan in place to move the elder; staying in that facility could subject the elder to retribution or further exposure to the abuser. It may be better to transfer the elder to another residence and then approach the initial facility or authorities regarding the allegations.

Support and resources. Another way to prevent elder abuse is to make sure that caregivers have adequate support and resources. For example, perhaps you practice real estate law, and a client comes to you to have her elderly parent added to her deed because they will now be living together. Find out what support they have in place and talk to them about making sure they have thought about respite care and a backup plan.

Tips for elders and their families. Elders and their family members can also take steps to prevent abuse by carefully screening outside caregivers, not disclosing personal financial information over the phone, shredding financial papers before disposing of them, and being aware of scams that target the elderly. In addition, regularly checking in with family caregivers to make sure they have the support they need can resolve problems before they start.

We may not all encounter elder abuse in our practices, but being alert for the signs and knowing ways to assist our clients or the community can go a long way.

Being alert for the signs of elder abuse is a good idea for all lawyers.

ONLINE RESOURCES

National Center on Elder Abuse (ncea.aoa.gov): State resources and guidance on protecting yourself and others.

National Criminal Justice Reference Service's Special Feature on Elder Abuse (ncjrs.gov/elderabuse/financial.html): Information on common financial scams targeting the elderly.

USA.gov Caregivers' Resources (usa.gov/CitizenAopics/Health/caregivers.shtml): Resources for caregivers to find respite care, housing options, and support groups.

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