

Law School for Social Workers – Outline of Discussion Topics

(Steven Riess – Jill Nielsen)

Introduction

Purpose: Discussion of principles underlying elder financial abuse

Civil law vs. Criminal law

- Manipulating social rules - public policy – coercive power of the state
- Fundamental fairness – predictability – treating people in similar circumstances similarly
- Degree of culpability: Strict liability – liability based on fault – liability based on recklessness – liability based on intentional conduct – liability with high culpability (crimes)
- Crimes and liberty: Due process protections – notice
- Overlapping civil/criminal conduct: EADACPA vs. Penal Code 368

Civil law

- Conduct (torts) vs. Agreements (contracts)
- Statutory schemes: Definitions – obligations - remedies
- Organization of CA statutes (the Codes – Articles – Chapters – etc.)
- Welfare & Institutions Code

EADACPA

- 15610.30 (definition of financial abuse)
- 15657.5 (the remedies)
- 15657.6 (failing to return property of an incapacitated victim)
- 15657.7 S/L
- 15657.01 Attachment
- 15657.03 Elder abuse restraining orders
- 15610.70 Undue influence

Penal Code 368

- Enhancement of an underlying crime

Lawyers as service provider enterprises

- Overhead: office – staff – insurance – CLE
- Fees: hourly (risks/benefits borne by client)
- Contingent (risks/benefits borne by attorney – 33-1/3 or 40%)
- Hybrid (combination of reduced hourly and reduced contingent fee)
- Flat fee (conservatorships)
- Value billing (insurance defense)
- Fee schedule (probate)
- Costs: Reimbursed by client monthly or advanced by lawyer – recovered out of settlement

How lawyers evaluate cases (or should!)

- Chances of success (out of 10 trials – the jury process)

- Range of full values
- Settlement value = chances of success X full value
- Can the client tolerate the economic cost
- Can the client tolerate the emotional cost
- Are there non-economic goals (reconciliation – retribution – justice)
- Are there non-legal goals (living arrangements – medical needs – mental health needs - financial services needs – public benefits)

Classifying financial abuse cases

- Domestic context cases (wrongs of opportunity)
- Commercial context cases (predatory enterprises)
- Fraudulent romance (undue influence)

Identifying viable civil cases

- Obvious culpability (sympathetic victim – detestable villain – exculpatory explanations)
- Prospects for satisfying a judgment (insurance - real property – bank accounts – attachment - disinheritance)
- Credibility of witnesses (capacity of victim – preserving victim’s testimony – documentary evidence - corroborating witnesses – sophistication of defendant)

Class A

- Strong liability (7 or more out of 10)
- Defendant is economically responsible
- Client can afford fees and costs
- Client can afford emotional costs

Class B

- Strong liability (7 or more out of 10)
- Defendant may be economically responsible
- Client can somewhat afford fees and costs (but must be ready to “pull the plug”)
- Client can probably afford emotional costs

Class C

- Questionable liability
- Economic responsibility of defendant is questionable
- Client will struggle to afford costs

Four Case Examples

Case 1	Nelda Myers (success)
Case 2	Vesta Maraccini (failure)
Case 3	Orlando Clark (success)
Case 4	Santiaga Serrata (failure)

General discussion, Questions