

# Elder Law: Our Parents, Ourselves

Submitted by  
Placer County LPA

The Elder Law attorney who is practicing today often works with families in crisis. Mom or Dad has just received the dreaded "D" diagnosis (dementia). The family is struggling to cope with a home situation that is deteriorating rapidly. No one can afford to quit their job and become Mom's full time caregiver, but the cost of bringing in care is beyond the family budget.

Often the first place the family goes after visiting the physician is to the attorney. The family has been told to "get things in order" so that they can assist Mom with her business affairs and her health care decisions. It has become apparent to me that the most important person in my office is the person who answers that phone call. We receive calls for everything from "I need to put Mom into a facility, but she doesn't want to go" to "how do I protect Dad's assets, if he has to go into skilled nursing." But the most troubling calls are the ones that begin, "Dad has Alzheimer's, and my sister has moved in with him, and is spending all of his money."

Every time I am asked to speak on the subject of aging, I always bring up the issue of elder abuse. Someone told me recently that where we are with elder abuse is about where we were with domestic violence about 20 years ago. This means that there is a lot of it going on, but no one is talking about it. I know that you have heard that the majority of elder abuse cases come from family members. In these challenging economic times, when people are losing jobs and houses, financial elder abuse will very likely be increasing.

Our public agencies (adult protective services) are overwhelmed, understaffed, and

will see their budgets cut in this era of drastic revenue shortfalls. I frequently hear from families that someone has contacted APS, but they wouldn't do anything about the problem. I tell them that APS can only do certain things, and since they are only one agency, getting all of the calls for these problems, they can't fix every situation.

We all need to be vigilant in order to protect our families, our friends, and our neighbors. Ironically, it seems sometimes that a senior will trust a stranger before they will trust someone in their own family. With dementia often comes a certain level of paranoia, but that usually takes the form of accusing the family members (or caregivers) of stealing something, when it has just been misplaced.

What should a good secretary be listening for when the phone rings? Here are some suggestions:

1) Who is calling? This is the most troubling issue for the attorney. As attorneys, we are usually retained to represent our clients. I would say more often than not, the person calling is not the senior, it is the son or daughter who is looking for help. Sometimes it is a spouse, who is embroiled in a dispute with children from a prior marriage. The attorney has to decide who they can represent in the situation. If the senior is no longer mentally competent, then from a legal standpoint, they cannot retain an attorney because they do not have the "capacity" to enter into a legal agreement. When growing up, I thought I wanted to be a doctor. Now I have to evaluate the mental capacity of my clients before I can sign them up. This becomes increasingly



*Lynn A. Dean is an attorney in private practice in Roseville, California. She graduated from California State University, Sacramento, with a B.A. in psychology, and went on to McGeorge School of Law. It was in law school that Lynn discovered her talents for trial advocacy. She was admitted to the California State Bar in 1983 and started her own practice in 1986, between the birth of her first child, Alan, and her second child, Monica. She is married to Michael Dean, an attorney practicing with Meyers Nave. Lynn's practice is devoted exclusively to estate planning and elder law and is focused on the needs of the aging population. She teaches classes through the local community college emeritus program, and is a frequent guest speaker at senior facilities and conferences on the topics of legal documents and asset protection.*

*(Continued on page 8)*

difficult when you are dealing with the various types of dementia, some of which can be very subtle.

2) What is the urgency of the problem? This question usually involves trying to find out what the person who is calling wants me to do. Since I view my practice as a service business, I will make house calls, hospital visits, and see people in facilities. If someone is dying in the hospital, and the person calling wants me to “come over right away so that Mom can give me her house” (yes, I have received those calls), I will generally talk to the person, but politely decline the job. I try to see people as soon as possible, because they are looking for information. They will talk to their friends, their neighbors, and their colleagues at work, and come in with a lot of bad advice. Many times, the caller has been procrastinating because he doesn’t want to deal with confronting his parents about the problems they have. When the situation reaches “crisis” level, now he calls me and wants it fixed in 24 hours. If the problem is elder abuse, I need to know if the person can be removed from the abusive situation in order to come to the office.

3) Is this someone we can help? In my legal toolbox, I can offer people a few things. I can help with legal documents, such as powers of attorney, if the parent who needs them is still competent. If they are no longer competent, I can explain what a conservatorship is, and how you go about creating one. Believe it or not, many of the children who call me have no idea as to whether their parent has created a will, trust, or powers of attorney. If the parent has dementia, they may no longer remember this fact, and they certainly don’t remember who the attorney was who helped them years ago. But beyond my legal toolbox, I can offer the family resources. My office can refer to geriatric care managers, companies that assist

with placement, companies that provide in-home care, people who can help move Mom into the facility, or to her daughter’s home. One of the best resources I can refer is a company called the “Dementia Whisperers” who can help the family understand and communicate with the family member who has dementia. This will relieve much of the stress involved in coping with this difficult condition.

4) Should we be calling APS? Or 911? Although the majority of the calls that I get are from the senior or a family member, sometimes we get calls from neighbors who are “concerned” about a situation that they see. Family members may be unwilling to deal with their parents due to family history, or they may live far away. The neighbors, or church friends, may be the closest people to the day-to-day situation. They call me because they see something bad happening, and feel that it is not their place to intercede. We have to determine whether the situation is drastic enough that we should be calling APS. I have had calls from my clients, when they are concerned about a neighbor who is refusing to see a doctor, or go to the hospital. Although this is not a “legal” question, we all have a responsibility to care.

I find this area of practice to be very rewarding. But the challenges are increasing, as the population ages, and the cost of care goes up. Our profession will be serving this population as the baby boomers age and face the same issues. The best advice that we can give our clients, and their children, is to have those important legal documents in place, and communicate their wishes. It will never be easy to transition from independence to a need for assistance. But with compassion, we can protect those we care about, and make sure that they have quality of care in the years that they are with us. □

