Ventura County Bar Association

Recent Updates in Probate, Trust, Estate Planning & Conservatorships

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Nick Van Brunt
Partner – Sheppard Mullin

Scott Rahn
Founding Partner – RMO LLP

RMO LLP

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TRUST CONTEST OR REFORMATION?

Packard v. Packard, (February 24, 2025) 108 Cal.App.5th 1284

A petition to reform an alleged mistaken reflection of the trustor's intent did not constitute a challenge to the trust and, therefore, was not subject to the 120-day statute of limitations set forth in Probate Code section 16061.7.

BACKGROUND:

In 2010, Newton Packard created The Newton Roy Packard Trust, providing that his two sons, Gregory Packard and Scott Packard, would receive equal shares of his estate. The Trust contained a no contest clause disinheriting any beneficiary who directly challenged the trust.

In 2012, Newton executed an Amendment giving (1) Gregory a house; and (2) Scott a "sum equal to the value of the residence." In 2014, Newton scribbled the word "one-half" onto the First Amendment followed by his initials and the date.

Newton passed away in 2020, and upon his passing Gregory became successor trustee. In July, Gregory and Scott had the property valued at $970,000. The next month, Gregory's counsel sent Scott a 16061.7 notice, which set a deadline to contest in November. Ten months later, in June 2021, Gregory, through his counsel, agreed to reappraise the property and give half the value to Scott.

In May 2022, Scott filed a petition requesting the court reform the interlineation to give him one-half share of the estate, not one-half of the value of the house, arguing that it was Newton's intent that his sons share equally in his estate, not just the house. In response, Gregory filed a motion for judgment on the pleadings contending that although the pleadings requested reformation or construction, the petition was a poorly disguised contest to the trust itself, and because the 120-day statute of limitations had already run the petition was time-barred. Scott responded that his petition for reformation and construction did not constitute a trust contest under section 16061.8 and argued that extrinsic evidence can be used for construction or reformation of a trust even where the terms seem unambiguous, and, therefore, his petition was not a contest subject to the 120-day statute of limitations.

The trial court found Newton's annotation did not create an ambiguity and that, although "the court may consider extrinsic evidence regarding the circumstances under which a trust was made in order to interpret the trust instrument, it cannot give a trust a meaning to which it is not reasonably susceptible." The court also found that Scott did not provide a "plausible alternate interpretation" of the addition and that his requested remedy had the "practical effect" of invalidating the Second Amendment. Based on these findings, the probate court ruled in Gregory's favor, finding that Scott's petition constituted a contest and, therefore, was time-barred.

KEY ISSUE:

Whether a petition to reform a trust to correct an alleged mistake as to the testator's intent constitutes a contest subject to the 120-day statute of limitations period under Probate Code section 16061.7.

RESULT:

The court determined that Scott's petition did not constitute a challenge to the trust and, therefore, was not subject to the 120-day statute of limitations as set forth in Probate Code section 16061.7.

The court looked at the substance of the petition and its 'practical effect' to determine whether Scott's petition constituted a contest. The court determined that Scott neither sought to invalidate his father's trust, nor did he question the validity of the amendment. Instead, he was seeking to reform the trust to ensure his father's intent, that each son receive half of his estate, was enforced, and seeking to use extrinsic evidence to demonstrate his father's intent although the trust terms were unambiguous.

The court declined to express an opinion on the merits of Scott's petition, only that the petition itself did not constitute a challenge to the trust.

The order granting judgment on the pleadings was reversed and the case was remanded.

WILL CONTEST – REVOCATION OF WILL BY CANCELLATION

Estate of Layla Boyajian (July 3, 2025) 112 Cal.App.5th 843

To revoke a will under Probate Code section 6120, the will either must be destroyed or a subsequent document that meets will requirements must revoke it or conflict with its provisions.

BACKGROUND:

In 2006, Layla Boyajian wrote a holographic will leaving her entire estate to her son, Anush. In 2018, Robert prepared and Layla signed a document stating only that all prior estate planning documents, including the 2006 will, were revoked. Robert had the document notarized.

When Layla passed away in 2020, Anush petitioned to probate the 2006 will. Robert objected, arguing that the 2018 document he had procured revoked the 2006 will. The trial court ruled in Robert's favor, finding the 2018 document revoked the will, causing the estate to pass via intestacy.

Anush appealed.

KEY ISSUE:

Whether a document signed by the testator stating her intent to revoke a will is sufficient to cancel the previous instrument if it does not satisfy the requirements of a will.

RESULT:

The Court of Appeal reversed the trial court's decision, holding that revocation by cancellation requires a physical alteration to or destruction of the will or a subsequent will that revokes the prior will. The 2018 document did not meet the requirements of a will because other than purporting to revoke all prior wills it failed to state the testator's intent for her estate, nor did it meet will formalities, including failing to have it signed by two witnesses.

STANDING TO PARTITION

Amundson v. Catello (March 20, 2025) 109 Cal.App.5th 1053

Heirs to an estate going through probate court administration do not have standing to partition until a final order of distribution has been entered.

BACKGROUND:

Leslie Knoles (Decedent) co-owned a piece of real property with Ruth Catello in joint tenancy. In September 2020, Decedent allegedly executed and recorded a quitclaim deed which, if valid, would constitute a severance of the joint tenancy. Decedent passed shortly thereafter. In 2021, Decedent's four siblings initiated probate proceedings for the property and Decedent's other estate assets. Catello filed a competing probate petition seeking to admit a will. The court appointed a neutral administrator pending the litigation on the competing petitions. However, approximately two weeks before the administrator was appointed, Catello filed an action seeking to cancel the 2020 quitclaim deed and to quiet title. Catello's siblings responded and filed a cross claim for partition.

The Court entered an interlocutory judgment in the partition proceedings, determining that the property's owners were Catello and the Decedent's estate, with the siblings as the "estate successors in interest/beneficiaries." Partition by sale was ordered.

Catello appealed, claiming that because the probate court had not yet determined who was entitled to the property post-administration, the siblings lacked standing to sue for partition. She also claimed to own the property independent of the outcome of the probate proceedings due to the invalidity of the 2020 deed.

KEY ISSUE:

Whether heirs to an estate in pending probate proceedings have standing to pursue partition of an estate asset when no final order of distribution has been entered by the probate court.

RESULT:

The Appellate Court reversed, finding that standing would vest only in the person(s) the probate court determined was the rightful recipient of the property. While the siblings were intestate heirs, the final determination as to whether Decedent's estate would pass via intestacy or by the will proffered by Catello was yet to be determined, and, therefore, the siblings did not have standing to partition, yet.

STANDING RE CHARITABLE TRUST SPECIAL INTERESTS

Powers v. McDonough (9th Cir. December 23, 2025) 163 F.4th 1162

The intended beneficiaries of a charitable trust have special interest standing to sue for enforcement of the charitable trust.

BACKGROUND:

A group of homeless veterans with serious mental disabilities filed a putative class action against the Department of Veteran Affairs (VA) and the Department of Housing and Urban Development (HUD). They alleged that the VA failed to provide sufficient supportive housing on or near the West Los Angeles VA campus, which impaired their meaningful access to VA healthcare services and placed them at risk of institutionalization in violation of the Rehabilitation Act; and that the VA's practice of counting disability benefits as income for purposes of area median income (AMI) excluded the most severely disabled veterans from obtaining housing.

In addition, the veterans alleged that the VA misused land that had been deeded in the 1880s to provide permanent housing for disabled veterans. Plaintiffs argued this deed created a charitable trust and that the VA breached a fiduciary duty owed to them by failing to prioritize housing and instead leasing portions of the property to third parties, including a university, a private school, and an oil company. Plaintiffs asserted that these arrangements violated the Administrative Procedure Act (APA), the West Los Angeles Leasing Act (WLALA), and fiduciary obligations arising from what they characterized as a charitable trust.

The district court denied the government's motion to dismiss, certified the class, and granted summary judgment on the income limitation claim. Following a bench trial, the court ruled in favor of the veterans on their meaningful access, integration mandate, and charitable trust claims. It voided certain leases and issued broad injunctive relief requiring the VA to expand supportive housing and limiting its ability to renegotiate lease agreements. The VA, HUD, and the affected lessees appealed.

KEY ISSUES:

1. Whether the veterans, as intended beneficiaries of the alleged charitable trust, have "special interest" standing to sue to enforce the trust.
2. Whether the 1888 deed and subsequent federal legislation created a judicially enforceable charitable trust imposing fiduciary duties on the VA.

RESULT:

The Ninth Circuit affirmed the district court's ruling that the veterans had special interest standing to pursue enforcement of the alleged charitable trust. The Ninth Circuit applied the traditional balancing framework: charitable trusts are generally enforced by the Attorney General to protect trustees from excessive litigation by broad or indefinite beneficiary classes, however, courts may permit suit by beneficiaries with a sufficiently direct and concrete interest. Here, the class was narrowly defined:

disabled, homeless veterans for whom the trust property was specifically intended. The benefits at issue were concrete and life-altering rather than abstract. The Court also noted the absence of meaningful enforcement by the Attorney General which weighed in favor of allowing private enforcement.

However, the Ninth Circuit reversed the district court's ruling on the charitable trust claim, holding that even if the 1888 deed reflected charitable trust principles, Congress had not clearly imposed judicially enforceable fiduciary duties upon the federal government. Absent an express statutory imposition of trustee obligations, the VA's duties under the Leasing Act were statutory, not trust-based, and did not support a charitable trust cause of action. The charitable trust judgment was, therefore, reversed.

STANDING TO FILE PETITION FOR CONSERVATORSHIP

Conservatorship of the Person and Estate of Anne S., (July 10, 2025) 112 Cal.App.5th 1021

A fleeting connection is not enough to satisfy the "interested person" or "friend" prong for standing under Probate Code section 1820

BACKGROUND:

Marc Hankin petitioned for Attorney G. Scott Sobel to be appointed as probate conservator of the person and estate of Anne S. after Marc and his wife met Anne while on a walk, spoke with her briefly, and became alarmed she may be the victim of undue influence and abuse by her housemate.

In his petition, however, Sobel represented he had known Anne since 1990 and was "a constant confidant and adviser to Anne." Initially, Anne's health care agent also joined the petition.

However, after Anne objected to the petition, the health care agent withdrew her joinder, Sobel eventually withdrew his request for appointment after an agreement was reached between Anne and her family. Hankin, however, opposed the settlement and continued to pursue conservatorship.

The trial court dismissed Hankin's petition, finding that he lacked standing to pursue conservatorship. The court also imposed sanctions, finding his suit was frivolous. Hankin appealed, claiming he had standing to pursue conservatorship and that the court had abused its discretion by imposing sanctions.

KEY ISSUES:

1. Whether a person with only minimal contact with the proposed conservatee qualifies as an "interested person" or "friend" to give them standing under Probate Code section 1820.
2. Whether the trial court properly imposed sanctions on Hankin for filing and continuing to pursue his petition.

RESULT:

The Court determined that Hankin was not an "interested person" or a "friend" under Probate Code section 1820. While 1820 does authorize an "interested person" or "friend" to pursue conservatorship, Hankin's association with Anne was a single, fleeting interaction. Only those with a genuine connection with the proposed conservatee have standing to file a conservatorship.

The court upheld the trial court's finding that Hankin's continued pursuit of the petition was frivolous, justifying the court's issuance of sanctions.

DEADLINE TO DEMURRER

Goebner v. Superior Court, (April 30, 2025) 110 Cal.App.5th 1105

In probate proceedings, a demurrer may be filed at any time at or before the initial hearing date.

BACKGROUND:

On October 19, 2023, Thomas McDonald filed a probate petition contesting amendments to the Judith E. Stratos 2000 Trust, including an amendment naming William Goebner as successor trustee, on the basis of undue influence, fraud, and financial elder abuse. McDonald sought to invalidate the trust, compel the trustee to provide an accounting, and to remove and replace the trustee. That same day McDonald provided notice of the hearing to Goebner.

Two days prior to the hearing, Goebner filed a demurrer seeking to dismiss McDonald's claim pursuant to Probate Code section 1000 and California Code of Civil Procedure sections 430.10, et seq. The trial court overruled the demurrer as untimely under California Code of Civil Procedure section 430.40, which requires filing of a demurrer within 30 days after service. Goebner appealed the ruling, arguing that Probate Code section 1043 allows an objection or response at or before the initial probate hearing.

KEY ISSUE:

Whether a demurrer to a probate petition must be filed within 30 days as set forth under California Code of Civil Procedure section 430.40 et seq. or by the initial hearing as set forth by Probate Code section 1043.

RESULT:

The Court of Appeal determined that Probate Code section 1043 applied and, therefore, a demurrer may be filed at any time at or before the initial hearing in a probate case. While Probate Code section 1000 provides that the California Code of Civil Procedure applies to proceedings under the Probate Code, it does not apply where the Probate Code provides its own rule. Here, the plain language of Probate Code section 1043 expressly provides the timing for filing a response to a petition, a demurrer is a type of response, and therefore, Probate Code section 1043 controls.

MISMANAGEMENT AS A BASIS FOR EXECUTOR DISQUALIFICATION

Estate of Daniel W. Bodmann, (November 21, 2025) 116 Cal.App.5th 401

A nominated executor may be denied appointment based on pre-appointment misconduct under Probate Code sections 8402(a)(3) and 8502(a).

BACKGROUND:

Daniel W. Bodmann passed away in 2016 leaving behind an insurance company he had managed with his wife, Heather Holden-Bodmann, for thirty years. Daniel left a holographic will that named all seven of his children (both biological and step) as co-executors and directed his daughter, Andrea, to maintain the business. After Daniel passed, Andrea anointed her step-brother, Thomas Krouse, Jr., for an active role in managing the business.

Conflict arose quickly between Thomas and Heather. Thomas aggressively confronted Heather, directing her on how to run the business, including client relations, email communications, and retention of client information. Due to the hostile takeover by Thomas, the business, which was the primary estate asset, suffered and revenue and profits declined.

Thomas sought appointment to act as executor of the estate. After a lengthy bench trial, the trial court disqualified Thomas from acting due to his "unwarranted aggressive, disrespectful treatment" of Heather and the damage he caused the business. The trial court concluded Thomas' behaviors and their impact constitute mismanagement of an estate asset, disqualifying him from serving as executor.

Thomas appealed.

KEY ISSUES:

1. Whether a probate court may deny appointment of a nominated executor based on if disqualified under Probate Code section 8502.
2. Whether "mismanagement of the estate" under Probate Code section 8502(a) applies to conduct occurring before appointment as fiduciary.
3. Whether aggressive and disruptive conduct that materially harms an estate asset constitutes "mismanagement of the estate" under Probate Code section 8502(a).

RESULT:

The Court of Appeal affirmed. The Court held that a nominated fiduciary may be denied appointment under Probate Code section 8402(a)(3) even where that person had not yet been appointed if the court determines they would be subject to removal for mismanagement under Probate Code section 8502(a). The Appellate Court held that mismanagement is not limited to fraud or intentional misconduct and may include pre-appointment conduct. The Court affirmed substantial evidence supported the trial court's finding that Thomas' behavior harmed the insurance company and justified his disqualification.

Doe v. Kachru, (October 13, 2025) 115 Cal.App.5th 175

The Elder and Dependent Adult Civil Protection Act requires that "recklessness, oppression, fraud, or malice" be pleaded with detailed sufficiency to avoid demurrer.

BACKGROUND:

Jane Doe sued an obstetrician and others involved in the delivery of her child. Doe alleged she had expressly refused both a C-section and a vacuum-assisted delivery, but the physician proceeded with the latter over her objection. Doe asserted multiple causes of action, including medical battery, gender violence, and abuse of a dependent adult under Welfare and Institutions Code section 15600 et seq. The Welfare and Institutions Code allegations were sparse, at best, essentially regurgitating only the statutory elements. The obstetrician demurred. The trial court sustained the physician's demurrer without leave to amend.

Doe appealed.

KEY ISSUE:

Whether Doe's boilerplate allegations satisfied the pleading standards for an Elder and Dependent Adult Civil Protection Act under the Welfare and Institutions Code section 15610 et seq. to avoid demurrer.

RESULT:

The appellate court affirmed dismissal of all claims except for the medical battery. The court determined that the Elder and Dependent Adult Civil Protection Act (Welfare and Institutions Code section 150610 et seq.) does provide protections for dependent adults, but that it specifically requires a showing of "recklessness, oppression, fraud, or malice." Doe failed to plead facts to establish "recklessness, oppression, fraud, or malice" by clear and convincing evidence, only regurgitating the statutory language.

The case was remanded on the medical battery claim.

COST-OF-PROOF FEES

Gamo v. Merrell (August 14, 2025) 113 Cal. App. 5th 656

Welfare & Institutions Code section 15657.5(a) does not prevent defendants from obtaining "cost-of-proof fees" under Code of Civil Procedure section 2033.420 where they have incurred costs proving true facts that plaintiff refused to admit in discovery without any reasonable basis.

BACKGROUND:

Tirso Gamo, at the young age of 81, purchased a Maserati from J Star Auto Group, which was controlled by defendant, Merrell. Gamo claimed the sellers misrepresented the trade-in value of his old vehicle, promising $6,500 but only crediting him $2,000 in the contract. Gamo asserted he would not have bought the Maserati had he known he was receiving less than $6,500 for the car. In his complaint, Gamo alleged financial elder abuse, violation of the California Consumers Legal Remedies Act (CLRA), and related claims.

During discovery, the sellers sent requests for admission asking Gamo to admit "(1) he initialed each page of the contract, (2) he was given time to read the contract, (3) J Star went over the part of the contract showing his trade-in was valued at $2,000, (4) he did not have any condition that would have prevented him from reading and understanding the contract, and (5) J Star had not altered the terms of the contract." Gamo denied or withdrew admissions to these requests, requiring proof at trial.

At trial, the sellers prevailed on all claims. The sellers sought "costs-of-proof" and CLRA fees under California Code of Civil Procedure section 2033.420 and Civil Code section 1780(e). The trial court denied the motion, finding the request for fees and costs was barred by Welfare & Institutions Code section 1567.5(a), which awards attorney's fees to prevailing plaintiffs, not defendants. The sellers appealed.

KEY ISSUE:

Whether Welfare & Institutions Code section 15657.5(a) prevents prevailing defendants from obtaining cost-of-proof and CLRA fees under the California Code of Civil Procedure and Civil Code.

RESULT:

The Court of Appeal held that the unilateral fee provision in the elder abuse statute does not bar prevailing defendants from obtaining cost-of-proof fees and costs under Code of Civil Procedure section 2033.420 because cost-of-proof fees and costs serve a different purpose than the denial of attorney's fees to prevailing defendants under Welfare & Institutions Code section 15657.5(a). Cost-of-proof fees serve to encourage efficient trials and admissions in discovery and do not conflict with the public policy behind Welfare & Institutions Code section 15657.5(a) – i.e. encouraging plaintiffs to pursue financial elder abuse claims without fear that they will have to pay attorney's fees and costs if they are unsuccessful. The Court found that the sellers waived their argument for CLRA fees by failing to provide a separate and substantive analysis. The trial court's ruling on cost-of-proof fees was reversed and the matter remanded.

RECOVERABILITY OF INTERWINED FEES ON ELDER ABUSE CLAIMS

Haun v. Pagano, (February 18, 2026) C084385

The unilateral fee-recovery provision in Welfare and Institutions Code section 15657.5 does not preclude a petitioner who is also a respondent regarding competing elder abuse claims from recovering fees and costs incurred in the prosecution and defense of those claims if the prosecution and defense are sufficiently intertwined so as to make separating those fees impractical.

BACKGROUND:

Kelly and Michael Pagano cared for Charles Fraizer, age 83, after he was discharged from the hospital following a serious illness. While under their care, they took Charles to an estate planning attorney to prepare a new trust that significantly benefited them. The following week, the Paganos determined they were no longer able to provide Charles with the care he needed and moved him into hospice. Shortly thereafter, within the following month, Fraizer executed a second trust with the assistance of his nephews, including Theodore Haun.

The Paganos filed a civil action and later a probate petition alleging that Haun and another nephew committed financial elder abuse by improperly influencing Fraizer to execute the second trust. Haun, as trustee of the second trust, filed a competing probate petition alleging that the Paganos had committed financial elder abuse in obtaining the earlier trust. After an eight day bench trial, the probate court found that the Paganos' trust was the product of undue influence and that they committed financial elder abuse, dismissing their competing elder abuse claim against Haun. The court awarded Haun compensatory damages, damages under Probate Code section 859, and over $536,000 in attorney's fees.

The Paganos appealed.

KEY ISSUES:

1. Whether Welfare and Institutions Code section 15657.5's unilateral fee-shifting provision precludes an award of attorney's fees to a prevailing petitioner who defended against an unsuccessful competing elder abuse claim.
2. Whether *Carver v. Chevron* and related cases bar recovery of overlapping fees where claims subject to unilateral fee-shifting provisions are intertwined with other claims.
3. Whether the probate court abused its discretion in awarding the requested fees without apportionment.

RESULT:

The Court of Appeal affirmed, holding that *Carver* and similar cases were distinguishable because they involved prevailing defendants seeking fees under bilateral contractual or statutory

provisions that conflicted with unilateral fee-shifting statutes designed to encourage plaintiffs to bring certain claims. Here, Haun was not a prevailing defendant seeking reciprocal fees; he was the successful petitioner asserting a financial elder abuse claim, which is the exact type of claim section 15657.5 was enacted to encourage.

The Court concluded that awarding fees to Haun did not undermine legislative intent because his prosecution of his elder abuse claim was substantially intertwined with his defense of the Paganos' competing claim. The Court also found that because Haun's fees all related to litigation centered on financial elder abuse, apportionment was impracticable. While fees attributable exclusively to Haun's defense of the Paganos' petition would be subject to exclusion, the record supported the probate court's determination that the prosecution and defense work was fully intertwined.

INTENTIONAL INTERFERENCE WITH EXPECTED INHERITANCE

Halperin v. Halperin, A172110 (January 29, 2026)

A claim for intentional interference with expected inheritance may not be brought where an adequate remedy is available in probate.

BACKGROUND:

Susan, Michael, and David were the three children of Warren Halperin. Warren created a trust that left Michael and David their shares outright and free of trust, while Susan's share, IRA retirement accounts, was to be held in trust. Susan claimed that she was being treated unfavorably due to adverse tax consequences, which effectively made her share worth less than her brothers' shares. Warren told Susan that he intended to amend his trust so that the three children would be treated equally. Susan alleged that the brothers interfered with Warren's attempt to change his trust by communicating with the estate planning attorney themselves, interfering with Warren's instructions, and lying to Warren about her to make her look bad and to get him to obtain a restraining order to limit her contact with Warren.

Prior to Warren's passing, Susan initiated probate proceedings alleging misconduct and seeking removal of David as trustee. However, she later dismissed her petition without prejudice and instead filed a civil action against her brothers for intentional interference with expected inheritance (IIEI).

Susan renewed her allegations that her brothers interfered with their father's efforts to amend his 2014 trust to equalize distributions among his three children. Susan claimed her share under the existing trust was approximately $1 million less than each brother's share and that Warren intended to amend the trust but was prevented from doing so due to her brothers' interference. David demurred and the trial court sustained the demurrer as to the IIEI claim, finding that Susan had an adequate probate remedy. Susan appealed.

KEY ISSUE:

1. Whether a plaintiff may maintain an IIEI claim where she had standing to pursue her claim in probate court.
2. Whether probate provided an "adequate remedy" to bar her IIEI tort claim.
3. Whether the absence of an executed trust amendment rendered probate remedies inadequate.

RESULT:

The Court of Appeal affirmed the trial court's ruling. The Court held that IIEI claims are only available when the plaintiff lacks an adequate probate remedy. Susan had standing as an heir and beneficiary and previously pursued probate relief based on the same alleged interference. The fact that the probate claim might not provide identical tort damages did not render it inadequate. Nor did the absence of a formally executed amendment preclude her from seeking appropriate probate remedies. Because Susan had access to probate court and failed to demonstrate the inadequacy of the relief available to her, her IIEI claim was barred.

ELDER ABUSE RESTRAINING ORDERS

Herren v. George S., (March 3, 2025) 109 Cal.App.5th 410

A finding of diminished capacity is not required for an elder abuse restraining order, and an attorney fee agreement may provide substantial evidence to show financial elder abuse.

BACKGROUND:

An elder's daughter became his attorney-in-fact upon the elder signing a durable power of attorney in November 2022, following multiple neurocognitive and health concerns. As his condition worsened, his daughter began managing his caregivers and providing other assistance.

In May 2024, the elder, without the knowledge of his daughter or his caregivers, met with an attorney to set up an estate plan. The elder signed a fee agreement with the attorney in which he agreed to pay a $100,000 retainer. The same day, the attorney sent a letter demanding payment of the retainer.

After receiving the letter, the daughter, acting as her father's attorney-in-fact, filed for an elder abuse restraining order, alleging the elder had developed major neurocognitive defects, lacked capacity, was taken by another daughter dissatisfied with his current estate plan to meet with an attorney who agreed to create the estate plan only if he paid a $100,000 retainer. The petitions were filed against the attorney and the daughter who took the elder to the estate planner.

The attorney filed a response alleging the elder wanted to change his estate plan of his own volition, that he did not agree he was incompetent, and that he was being isolated from family, friends, and longtime counsel and medical providers. The elder also requested a capacity evaluation. After speaking with the elder, the attorney determined that the elder could retain her.

After an evidentiary hearing, the trial court issued the elder abuse restraining order. The attorney appealed, arguing that the daughter had no authority or standing to seek the restraining order without first rebutting the presumption that George had capacity to make decisions, and that the trial court was powerless to issue the restraining order without first determining the elder's competence. The attorney also argued that there was no substantial evidence that her conduct constituted financial elder abuse.

KEY ISSUE:

Whether the attorney-in-fact had the authority to seek a restraining order based on the Elder Abuse Act without first obtaining a determination of incapacity, and what evidentiary value the attorney's $100,000 retainer had in determining whether the elder needed protection from abuse.

RESULT:

The Court of Appeal affirmed, holding the attorney-in-fact had the authority to seek the restraining order without having to demonstrate incapacity, because no such determination is required under the Elder Abuse Act. Further, the retainer agreement constituted substantial evidence that the attorney committed financial elder abuse by procuring a $100,000 retainer, even if not ultimately paid.

LPS CONSERVATORSHIPS: JURY TRIAL WAIVER BY COUNSEL

The Conservatorship of the Person of BK, B343506 (January 28, 2026)

Counsel for a conserved person under LPS conservatorship may validly waive a conservatee's right to jury trial absent evidence that the conservatee was unaware of such right, that counsel acted without authority to do so, or that the counsel acted against the expressed wishes of the conservatee.

BACKGROUND:

B.K. had been under LPS conservatorship since 2019 due to schizophrenia, leaving him gravely disabled. The conservatorship had been renewed annually, until 2024, when B.K. demanded a jury trial with the hope he might end the conservatorship. Before trial, his counsel informed the court that after discussion with B.K., B.K. was willing to waive jury trial and proceed with a bench trial instead. B.K. personally confirmed that decision on the record for the court. Following a bench trial, the court determined B.K. remained gravely disabled and renewed the conservatorship. B.K. appealed, claiming his waiver of jury trial right was not knowing and intelligent, that trial court either needed to advise him of his right to a jury trial, the court should have obtained a waiver directly from B.K., or make an initial finding of incapacity that would then allow counsel to waive jury trial on his behalf.

KEY ISSUE:

1. Whether the trial court was required to personally advise B.K. in detail of his right to a jury trial before accepting her waiver.
2. Whether counsel could validly waive the jury trial right on B.K.'s behalf absent an express finding of incapacity.
3. Whether any failure to provide additional advisements constituted reversible error.

RESULT:

The Court of Appeal affirmed. The court held that in LPS conservatorship proceedings, counsel may waive a jury trial on behalf of a conservatee absent evidence counsel lacked authority to do so or disregarded the conservatee's wishes. Under the totality of the circumstances, substantial evidence supported an implied finding that the waiver was knowing and intelligent.

Even assuming additional advisement might be beneficial, any error was harmless because B.K. did not challenge the grave disability finding and there was no reasonable probability a jury would have come to a different conclusion.

LPS CONSERVATORSHIPS – LEAST RESTRICTIVE PLACEMENT

Conservatorship of A.J., (March 13, 2025) 109 Cal.App.5th 728

A jury may consider involuntary placement as evidence of a grave disability, however, a court may not delegate its obligation to designate the least restrictive alternative placement to a third-party, including the Public Guardian.

BACKGROUND:

Beginning in 2010, A.J. began experiencing auditory hallucinations, which resulted in hospitalization and incarceration on multiple occasions in Monterey County, San Francisco County, and Oregon. In 2023, he was diagnosed with schizophrenia and found incompetent to stand trial. The criminal court vacated its incompetency order, and the Public Guardian filed a petition to establish temporary conservatorship as they determined A.J. was gravely disabled and unwilling to voluntarily accept treatment. Ultimately, after a jury trial, A.J. was found to be gravely disabled, appointed a conservator for A.J., and delegated its authority to place A.J. in psychiatric, nursing, or other state-licensed facility to the Public Guardian. A.J. appealed, arguing that the delegation was inappropriate and his involuntary detentions should not have been allowed as evidence of his inability to provide his own shelter.

KEY ISSUES:

1. Whether the court improperly allowed the jury to consider A.J.'s prior involuntary hospitalizations in finding him gravely disabled under the LPS Act.
2. Whether the trial court erred in delegating to a third-party its responsibility to designate the least restrictive alternative placement.

RESULT:

The Court of Appeal affirmed the Court's findings and the appointment of a conservator, rejecting A.J.'s argument that the court improperly evidence of his prior involuntary hospitalizations to establish grave disability. His prior hospitalizations were one of only several factors. Other evidence included A.J.'s aggressive behavior leading to eviction, testimony from his psychiatrist about his inability to maintain housing, and the absence of any third-party offer or support of A.J. A jury may consider prior hospitalizations as relevant context and the Court of Appeal found no indication that the jury relied solely on his prior hospitalizations. Therefore, there was sufficient evidence to support the determination that A.J. could not provide for shelter due to his incapacity.

However, the Court of Appeal remanded to the trial court to determine the least restrictive placement for A.J. The Court of Appeal held that it was the duty of the trial court to designate the least restrictive alternative placement, and it may not delegate that obligation to a third-party, including the Public Guardian. The trial court needed to make that determination, regardless of the Public Guardian's expressed intent to place A.J. in the least restrictive setting.