

ELDER PROTECTION COURTS

Judicial Perspective,
Holistic Approach



By Judge Patricia Banks, Judge Julie Conger,
and Judge Joyce M. Cram

The moral test of government is how it treats those who are in the dawn of life—the children; those who are in the twilight of life—the aged; and those in the shadows of life—the sick, the needy, and the handicapped.

—Hubert H. Humphrey

The government fulfills one of its moral obligations to the aged when it creates elder protection courts. These courts are still in their infancy; however, in the years to come, it will be difficult to fathom a court system without some form of elder protection court. Equally prevalent will be comprehensive support systems in the form of “elder justice centers” associated with those courts.

Juvenile, drug, veterans, homeless, and mental health courts are conceptually similar to elder protection courts to the extent that a comprehensive approach to underlying problems is taken. However, there is a fundamental difference. Elder

protection courts are not focused on the perpetrator; instead, they are focused on the victim. The purpose of an elder protection court is to make the court more accessible to elderly victims of physical, financial, and emotional abuse and to provide a single venue where all of these issues can be resolved expeditiously and compassionately. It is a matter of access to justice.

The Need for Elder Protection Courts

Imagine a case involving an older woman whose unemployed, drug-addicted daughter lives in her home and pays no rent. She steals from her mother to support her drug habit, and becomes verbally and physically abusive when confronted. The mother, diagnosed with early Alzheimer’s, is dependent on the daughter for transportation and care. An investigation shows that the daughter has drained her mother’s bank accounts and forged her name on a deed transferring

title to her mother's home into her name. Where does the mother turn for help? This type of case could be heard in many parts of the court system, such as those specializing in crime, probate, guardianship/conservatorship, civil matters, or restraining orders. Overlapping jurisdiction and multiple trips to different courts, possibly in different cities, could mean that full resolution may take years. This case offers but one illustration of the need for elder protection courts.

The number of baby boomers, now age 65 and older, will double between 2010 and 2030. By 2030, baby boomers will represent nearly 20 percent of the U.S. population. This growing population will generate different and greater demands on our legal system. The inclusion of elder abuse, neglect, and financial exploitation cases in the general court caseload restricts courts' ability to coordinate legal and social services and to develop partnerships that can strengthen efforts to detect, impede, and prevent elder abuse, neglect, and financial exploitation. Elder protection courts are necessary components of any serious effort to meet the legal needs of the elderly, most notably where allegations of abuse, neglect, and financial exploitation are concerned.

The Benefits of Elder Protection Courts

An effective elder protection court will recognize physical, sensory, and mental/cognitive changes prevalent in the aging population; consider the role of relationships in crafting remedies; consolidate ancillary cases involving the same older victim to create a consistent, efficient, and therapeutic outcome; provide a supportive environment for older victims; expedite cases in which elder abuse is an underlying factor; provide trained judges and court personnel attuned to the special needs of the elderly; increase the likelihood that law enforcement, adult protective services, and, more importantly, victims will pursue elder abuse cases; enable the development of a body of precedent-setting elder law cases; and capture critical data to support requests to court-funding bodies, legislators, and policymakers for personnel, audio/visual aids, transportation options, and other solutions for access issues for the elderly.

The elder law court and its partners will be better positioned than other kinds of courts to craft programs to educate the elderly, the bar, and the general public as to available rights and remedies for elder abuse, neglect, and financial exploitation.

Establishing an Elder Protection Court

The creation of an elder protection court in any jurisdiction starts with the buy-in of the chief judge, judicial colleagues, governmental partners, the bar, law enforcement, and the local aging network. The elder protection courts in California and Illinois are exemplary of the collaboration and planning required.

Alameda County, California

The first elder court in the nation was established in California's Alameda County Superior Court in 2002 by Judge Julie Conger, who retired in 2008. Judge Conger envisioned a court where victims of physical, financial, and emotional abuse could have their cases resolved by a single, trained judge from start to finish, rather than the piecemeal approach common in larger courts. This vision became the impetus for a specialized calendar dedicated to the fair and expeditious processing of elder abuse cases. She took cases from arraignment to preliminary hearing, trial, or other resolution, sentencing, and monitoring of probation. She also heard restraining order applications where no criminal case was pending. Initially, the Alameda County Elder Protection Court handled only elder protection orders. Beginning in 2006, the court expanded to become the direct calendar court for all felony elder abuse cases in Alameda County. In addition to the specialized calendar, individualized attention was given to the needs of the elderly litigants, with referrals to Adult Protective Services, Legal Assistance for Seniors, and victim-witness programs or law enforcement when appropriate.

Judge Conger's holistic approach to the legal needs of the victim was shown to produce positive outcomes such as early and efficient resolution of matters; reduction of re-occurrence and recidivism; greater compliance where monetary restitution and treatment programs were ordered as a condition of probation or



Judge Patricia Banks



Judge Julie Conger, ret.



Judge Joyce M. Cram, ret.

Judge Patricia Banks (patricia.banks@cookcountyl.gov) is the presiding judge of the Cook County Circuit Court's Elder Law and Miscellaneous Remedies Division, a member of the Circuit Court's Executive Committee, and a member of the ABA Commission on Law and Aging. In addition to her many other appointments and awards, she was the 2014 recipient of the CDEL Impact Award from the Center for Disability and Elder Law.

Judge Julie Conger, ret., (julieconger@comcast.net) retired from the Superior

Court of California, County of Alameda, in 2008 after 26 years of service. She now presides as an assigned judge in numerous counties in northern California. Judge Conger also serves as a commissioner on the California Commission on Aging.

Judge Joyce M. Cram, ret., (joy3ce@gmail.com) was appointed to the Superior Court of California, Contra Costa County, in 1998, where, until she retired in 2013, she presided over virtually every type of case, including criminal, civil, probate, and family law cases. She continues to teach judges and lawyers about elder abuse, probate, and ethics matters.

visitation; and prevention of conflicts between civil elder restraining orders and criminal protective orders. To prevent the reoccurrence of abusive situations, Judge Conger routinely ordered treatment programs to address underlying issues such as alcohol, drug addiction, and mental illness as part of case resolutions.

Prompted by the court's proven efficient disposition of cases, the Alameda County District Attorney's Office Real Estate Fraud division and Consumer Fraud division opted to file many real estate fraud and consumer fraud cases involving elderly victims directly in the Elder Protection Court. Many conservatorship cases give rise to allegations of elder abuse but, due to the difficulty of expediting matters in probate court, some of these cases cannot get before a judge in an expeditious manner. To remedy this, the elder court judge collaborated with the probate judge. The result of this collaboration: a separate elder abuse case can be filed in the elder protection court, litigated there, and consolidated with the underlying conservatorship matter and returned to the probate judge.

The key to Alameda County's success was the assignment of a case manager to review the court's database to determine if other pending cases involved the same victim in order to offer a more comprehensive resolution. The case manager also reviewed all filings in domestic violence and civil harassment cases to determine if elder abuse was implicated. An Elder Access Committee made invaluable contributions to the overall effort.

Contra Costa County, California

When Contra Costa County considered establishing an elder court, it enlisted the support of Judge Conger. The Contra Costa County Elder Court began in November 2008; Judge Joyce Cram presided until her retirement in 2013. The concept was that of a specialized calendar for the expeditious processing of elder abuse cases. Judge Cram's meetings with the court's justice partners caused the initial concept to expand to include not only criminal cases and restraining orders but also any case involving an elderly victim, whether civil, probate conservatorship (guardianship), landlord/

tenant, and even, in one case, an adult adoption matter. Any case involving physical, financial, or emotional abuse was heard by the same trained, dedicated judge from start to finish.

Once operational, the elder court became a magnet for much-needed services, provided at little to no cost to the court. First, the Senior Peer Counseling Program, under the auspices of the county mental health department, approached Judge Cram and asked if they could staff the court. This resulted in weekly support in the form of volunteers, themselves seniors, to meet with the litigants in advance of the hearing, explain the process, review the papers, and give the victims the confidence to appear in court. They also followed up with a reassurance call after the hearing to ensure orders were properly filed and complied with, and to walk the litigants through the emotional fallout from the hearings. Shortly after the senior peer counselors began assisting the elder court, Senior Legal Services staffers asked the court if they could provide a Senior Self-Help Center during elder court hours. The cost to the court was a computer, a file cabinet, and the use of a room once a week, in exchange for three hours of free drop-in consultation to seniors who wanted to represent themselves. The senior peer counselors have taken on the additional task of holding free monthly workshops, in the law library, walking self-represented litigants through the complicated process of establishing a conservatorship (adult guardianship) for those who cannot care properly for themselves or their finances.

Cook County, Illinois

In December 2010, Timothy C. Evans, chief judge of the Circuit Court of Cook County, announced the creation of the Elder Law and Miscellaneous Remedies Division to serve the legal needs of Cook County's elderly population, and he appointed Judge Patricia Banks presiding judge of this new division. Under her leadership and with the invaluable assistance of a workgroup/task force, the following milestones were reached:

1. A general order to establish jurisdiction of the division was entered;

2. Rules to govern the division were developed, circulated among the circuit court judges, and approved.
3. Eight judges were assigned to preside over elder abuse, neglect, and financial exploitation cases in which the victim is an elderly person, defined as age 60 or older, in criminal, domestic violence, and civil matters relating to the Adult Protective Services Act, the Illinois Power of Attorney Act, and cases of abuse, neglect, and financial exploitation of an elderly person not the subject of a guardianship; and
4. A Cook County Elder Justice Center (CCEJC) was opened in the main courthouse to serve the needs of the county's elderly population.

Elder protection courts in Cook County are housed in three separate locations. Three of the specialized elder court calendars are devoted to felonies, two to domestic violence, and the remainder to civil cases. This system allows trained and experienced judges to deal with issues of elder abuse, neglect, and financial exploitation of either a civil or criminal nature. The coding and indexing necessary to coordinate and track cases in Cook County's elder protection courts are programmed by the clerk of the circuit court with input from the presiding judge and the court's director of informational services. The clerk of the circuit court and the Cook County sheriff have partnered with the court to train their personnel to better serve the needs of elderly litigants. Victim advocates are available to the elder protection court judges to assist and provide victims with links and referrals to social and legal services. Audio/visual equipment is available for the hearing and visually impaired. To further ensure that Cook County's elderly population has access to the every aspect of the court, Chief Judge Evans has made an elder justice center available in Cook County's largest court facility, where over 180 of its judges preside.

The CCEJC is located in downtown Chicago in the Circuit Court of Cook County's main courthouse. The CCEJC is promoted as an elder-friendly and safe

place where older adults and their families can find information, be educated, and receive legal and social service referrals. Judges in the main courthouse may refer litigants to the center. Under the direction of a court coordinator, over 40 volunteers, including victim advocates, law school externs, practicing and retired attorneys and judges, Area Agency on Aging counselors, AARP volunteers, and retired professionals from multiple disciplines provide service to older adults from 9:00 a.m. to 4:00 p.m. daily. The center is equipped with a waiting room, more than 15 computers with Internet access, comprehensive referral binders, and volunteer training manuals to facilitate services to seniors. Interpreters are available for limited and non-English-speaking seniors.

In addition to a wealth of informational brochures and videos on elder issues, the CCEJC offers free senior enrichment/empowerment seminars bi-weekly on many topics. Experts from the public and private sector enlighten seniors on a variety of issues at no cost. Several graduate schools of social work located in Cook County are prepared to rotate student interns through the CCEJC to further enhance its usefulness to older adults in need of assessments. A dedicated elder mediation program is nearing completion and implementation. A monthly courthouse orientation tour is also available to seniors groups.

Site visits to the elder protection courts in California and the Elder Justice Center in Tampa, Florida, provided valuable information used in Cook County's development of its model elder protection courts and elder justice center.

Collaboration

Implementation of elder protection courts requires an enormous collaborative effort and a substantial investment of sweat equity from a multidisciplinary team. "Elder access committee," "elder justice partners," and "elder workgroup/task force" are different names for collaborative partners who perform comparable functions. Included among these collaborative partners in Cook County are the city and county Area Agency on Aging; Offices of the Public Defender, State's Attorney,

Public Guardian, and Attorney General; Probation Department; local bar association; defense attorneys; city and county law enforcement; elder law practitioners; local law schools with elder law programs; and the local aging networks. These individuals, agencies, and entities can be counted on to organize, conduct training, serve as resources, and participate in activities to alert the community to elder abuse and remedies. Regular meetings and other forms of communication are utilized to keep partners informed.

The individual efforts of presiding judges along with workgroups, task forces, elder access groups, justice partners, case managers, court coordinators, and other trained court personnel are necessary for the establishment and sustainability of elder protection courts.

Challenges

Developing and sustaining an elder protection court presents a number of challenges. Principal among these is funding to enable investment in people, materials, space, transportation, and other resources. Although an elder protection court can be established with minimal extra funding, not surprisingly, increased funding eliminates many ongoing difficulties. With increased funding, courts can more readily devise a process for collecting research and administrative data, develop performance and evaluation standards, and assess the effectiveness of interventions and treatment. Funding also provides for comprehensive training of judges, court personnel, forensic accountants, and geriatric experts. It also makes possible training materials, trainers, and training programs geared specifically toward lay and professional fiduciaries, as well as elder mediation programs. Funding to staff and maintain elder justice and forensic centers strengthens efforts to prevent exploitation of the elderly.

Another challenge lies in securing the confidence of victims to report elder abuse. An elder protection court is of no use if it is not utilized. As a group, the elderly are often reluctant to turn to the courts, or they are unaware of the services available to them. Many perpetrators of elder abuse are family members, and elders are often reluctant to bring suit that can result in adverse consequences for a loved one, such

as incarceration or removal from the home. Elders may fear that by advancing a claim of abuse and thus admitting their vulnerability, they may lose their independence.

Reducing victimization of the elderly is a monumental challenge. Elder protection courts represent a strong step toward providing justice for elder victims, but more can and should be done to investigate, prosecute, and resolve elder abuse. Legislative expansion of mandatory reporting requirements, as well as stronger penalties for nonreporting of elder abuse, neglect, and financial exploitation, could further reduce the incidence of these crimes. Specialized prosecution units, active probation officers monitoring compliance with restitution and other court orders, and a strong network to ensure continued support of victims subsequent to prosecution are needed.

Obtaining funding to eliminate physical barriers to the courthouse remains a significant challenge for elder protection courts. Making the courthouse accessible, friendly, and accommodating of physical impairments, and doing the necessary infrastructure planning to implement the elder law court plan, should be a part of every county's budget. However, many courts are not fully accessible to the elderly. Other issues for seniors include transportation, court documents' small type, and the physical layout of courtrooms, which create barriers for the aged and infirm. One important feature of an elder protection court is the elimination of these barriers through assistive listening devices, document readers, improved sound systems, ramps, and other mobility-access features.

Uniform training and education on aging issues is needed on all levels. The elderly and the general public must be educated as to the signs of elder abuse and available remedies. Comprehensive training in the science of aging is needed for judges, court personnel, forensic accountants, and geriatric experts. Moreover, members of the bar must be trained in the intricacies of elder abuse claims and the special challenges of representing seniors.

Finally, judges who have traditionally steered clear of holistic approaches on the basis of various judicial canons and who have held to beliefs that elderly matters should remain in the general caseload

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framework for educating judges and judicial officers on case management and remediation options available in cases that may involve underlying issues of elder abuse and neglect. The acceptance of the benchcard lies in its brevity—it can be printed on one double-sided piece of paper and is easily accessible to judges on the bench during court proceedings. The following questions guide the process of adapting the benchcard to your community:

- How does my state define the crime of elder abuse?
- How can I identify these cases?
- What are my reporting requirements?
- What assessment, remediation, and case management tools can I use to respond to elder abuse cases?
- What resources are available in the community?

Developing tools specific to one's jurisdiction requires leadership and initiative. It is also a practical exercise that will accomplish the feat of educating members of the justice community and developing a collaboration of local stakeholders. ♦

Prologue

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thousands of homes, many involving the elderly, saved from foreclosure. She is the perfect example of a “court as convenor.”

Judge Banks was able to persuade Judge Freddrenna Lyle of the Cook County bench to write on senior drivers from the judicial perspective. This subject has many, many aspects and is an SLD priority for study. Most of our readers can relate to the issues Judge Lyle discusses.

To round out our issue, Judge Banks prevailed upon Cynthia Gray of the American Judicature Society to write on the various ethics concerns for judges who become involved in the so-called “problem-solving” courts, as well as Jeffery Colman and Danielle Hirsch to describe Illinois’ access-to-justice progress.

We are aware that there is some overlap

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must be redirected through education and concrete examples of positive change to embrace an elder protection court model.

Conclusion

The elder protection courts described here have received local, state, and national recognition. They serve as models for small, medium, and large jurisdictions. Are these court models a panacea for the elderly when interacting with our legal system? Should they be used to address matters of elder abuse, restraining orders, involuntary commitments, tax deeds, housing code violations, traffic offenses, contract disputes, debt collection, abuse of powers of attorney, and many other matters involving the elderly? The authors say yes. As the elderly become a larger segment of the population served by our court systems, current access-to-justice issues will only intensify. Dedicated and knowledgeable elder law judges and a supportive elder justice center offer the promise of a swift and more lasting resolution to elder abuse, neglect, and financial exploitation cases. ♦

in these articles, as well as a redundancy of recommendations. These arise out of the meeting of the minds that have come together on this issue from different perspectives and different experiences. The consensus results from a collective understanding of the magnitude of the elder abuse problem, the necessity for judicial recognition of the problem, and the need to convene all those essential to the task of finding solutions.

It has been a privilege to have this opportunity to gain a better understanding of those needs, as well as to be associated with my co-editor, Judge Banks, a pioneer in this important area. ♦

—Edward W. Madeira Jr.

Co-Issue Editor

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