

Conservatorship

Courts should not be a vehicle for elder financial abuse

By Gloria Duffy

Over the past two decades, elder abuse has not only been recognized as an ethical problem in our society, but as a clear danger for some of our seniors. In California, if an elder is experiencing physical, emotional or financial abuse, family members or others may go to court to protect the senior.

County probate courts establish conservatorships for individuals who cannot look after themselves, appointing a person to watch over and care for them. Unfortunately, this system creates further ethical dilemmas and opportunities for abuse of seniors through the court system itself. Current law permits the senior's funds to be tapped to pay for the legal fees of anyone who questions or objects to the protections. Without strong oversight from the courts, attorneys can profit from this by running up huge fees repre-

senting contrary family members and even financial abusers, depleting or exhausting the funds needed for the senior's care.

In 2010, a sibling and I had to go to court, to obtain a conservatorship for my mom. There were serious issues with her health, medical care, hoarding, identity theft, tax payments and misappropriation of her funds. In 2013, the court appointed me as my mom's conservator. I serve without compensation and not only care for her but also attempt to "conserve" her assets by protecting her from financial abuse.

But protecting her assets has proved almost impossible, under current court rules. Over the past 10 years, 14 attorneys have exploited our need to go to court to protect my mom and comply with tax and other laws, running up large bills through specious legal activities. This "elder financial abuse by other means" is particularly serious in coun-

ties that do not require attorneys to justify, and courts to examine, how their fees protect a person or their estate.

When a senior has some assets, and attorneys know their bills won't be examined, two or three attorneys from the same firm may jump in, unethically inflating their legal bills. They charge fees for talking to one another, and for having multiple attorneys review the same documents.

In our case, even a non-family vexatious litigant got into the act, scamming the court and our family by posing as a paralegal and requesting compensation through the court. As with all the other legal bills, the court granted his request, because no justification of the fees was required.

All those attorneys have also run up bills for the court-appointed attorney representing my mom and for my attorney, who must respond to the abundant, spurious and always unsuccessful litigation they file. My mom, a completely dis-

abled 97-year-old with around-the-clock care needs, is responsible for paying all these bills.

To counteract this, judges can dismiss attorneys, as has happened twice in my mom's case. But the best protection is strict "local rules of court" that require attorneys to justify their fees as benefiting the protected person's estate.

Santa Clara County recognized this problem, after some notable cases a decade ago. Since 2012, local rules of court in Santa Clara County require that "a petition for compensation of a guardian, conservator, trustee, and counsel, or for counsel for a conservatee or ward, must be accompanied by a complete statement of the services rendered, an explanation of the value or benefit of those services to the estate, and the total amount requested for such services, made under penalty of perjury and executed by the person rendering the services."

Then the judge must exam-

ine whether the fees actually benefit the protected person and their estate.

No such stringent local rules of court exist in Alameda, Contra Costa, San Francisco or San Mateo counties, or most other counties statewide. This must be corrected. To stop the kind of abuse that is occurring, county presiding judges, the statewide Judicial Council and the state Legislature must institute local rules of court that prevent financial exploitation through the courts, ideally creating a statewide standard.

From an ethical standpoint, one thing is clear. When they are called upon to protect vulnerable seniors, the courts should not be a vehicle for elder financial abuse.

Gloria Duffy is president and CEO of The Commonwealth Club. This op-ed is based on a presentation to the Silicon Valley Ethics Roundtable, whose input informed and improved it.