

SAN FRANCISCO

Daily Journal

www.dailyjournal.com

VOL. 120 NO. 222

FRIDAY, NOVEMBER 14, 2014

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Financial elder abuse attorneys in high demand

By Joshua Sebold,
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Major changes in laws intended to protect the elderly from financial crimes have made it much easier for attorneys to bring and win cases against abusive caregivers and others, but the practice area remains surprisingly sparse.

Lawyers say a series of updates to California state laws over the past half-decade have combined to create a rare scenario: a practice area in high demand with a viable financial model for trial attorneys — that's mostly being ignored by lawyers.

Many of the attorneys who have laid the groundwork for this practice area are entering the later stages of their careers and are anxious to see a new crop of lawyers take up their calling. And they're surprised that not more attorneys are jumping in, given the staggering numbers of them who can't find work.

"There's so much work out there," said Kathryn A. Stebner of Stebner & Associates, a four attorney firm specializing in elder abuse involving institutional predators. "I could have a firm of 20 lawyers and just do elder financial abuse and they'd all be fully employed."

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Financial elder abuse attorneys are in high demand

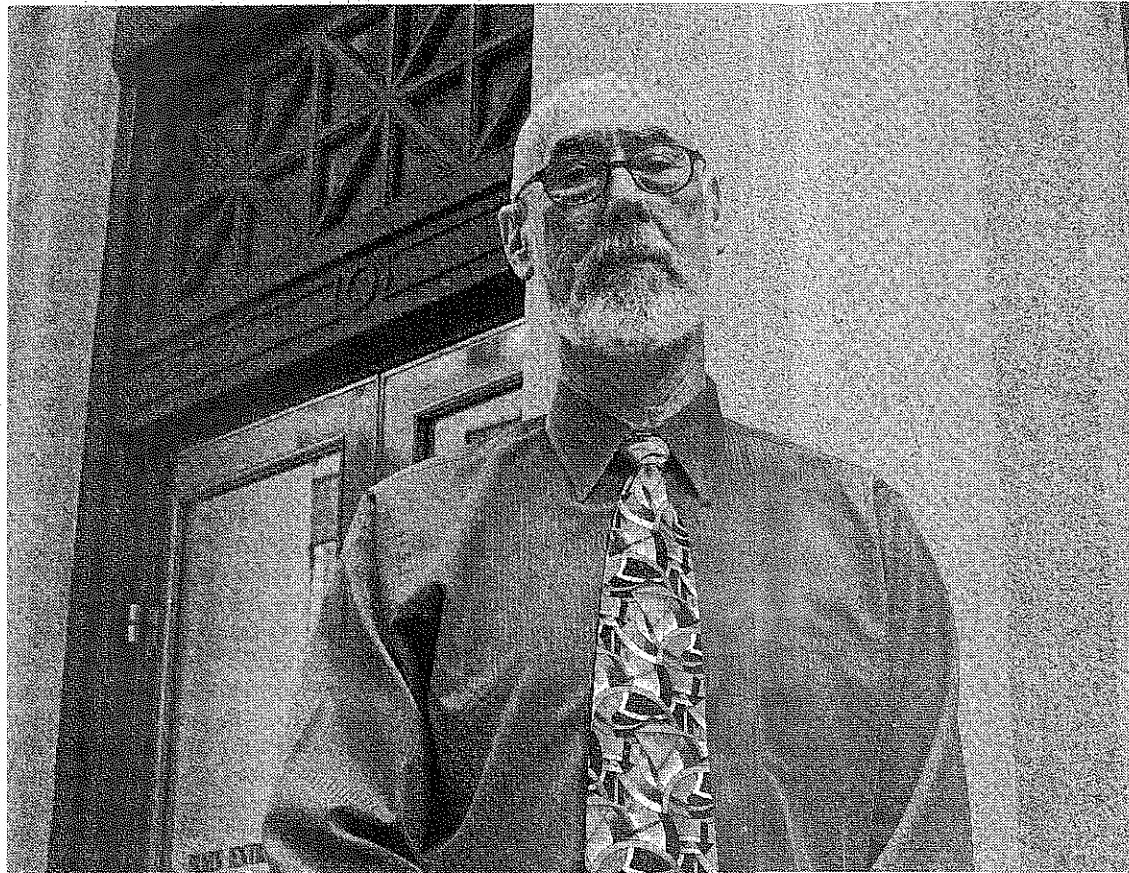
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The damages can add up quickly, especially when multiple defendants are involved. In a case typical of financial elder abuse lawsuits, Frank Fox of Majors & Fox LLP recently earned his clients, a couple in their 80s, a \$1 million settlement with one of three defendants accused of collaborating to convince the couple to sell their house and other assets and move into a managed care facility. Cases against the other defendants are still ongoing.

The practice area is also generating more class actions, targeting companies that structure financial products in ways that incentivize agents or third-party collaborators to take advantage of the elderly. A 2011 case related to an insurer that marketed deferred annuities to the elderly resulted in a \$9 million settlement for the class, plus \$3 million in attorney fees. *Rand v. American National Ins. Co.*, CV09-639 (N.D. Cal., filed 2009).

Annuity products designed to take advantage of the elderly typically won't mature until long after buyers' life expectancy, and also include large penalties if the elderly buyer dies or attempts to access the money before that maturity date, making them essentially useless to the investor while generating commissions for the insurance agent and profits for the underwriter.

Ingrid Evans, one of the attorneys who worked that case, said some regulatory changes that make it easier for plaintiffs to recover legal fees, but not for defendants, have also made it easier for attorneys to pursue class actions or small cases that previously wouldn't have been



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San Francisco attorney Steven Riess worked closely with legislators to make dramatic changes to elder abuse law in California.

economically viable.

A study by the MetLife Mature Market Institute found that financial elder abuse losses totaled \$2.9 billion in 2011, growing from \$2.6 billion in 2008. Observers expect the problem to get worse as the demographics in the country continue to trend older over time.

Other changes in the legal landscape have greatly increased the incentives for attorneys to bring

cases on behalf of elders, allowing them to freeze the bank accounts of perpetrators at the beginning of litigation, ensuring there are still funds to recover by the time cases resolve, and giving them more avenues for pursuing institutional predators, companies that profit off elders by offering them bad annuities, reverse mortgages or other defective products.

In the past it was difficult for at-

torneys to target the companies behind many of these schemes, leaving them to pursue independent insurance agents, salespeople and attorneys, who often have minimal assets to recover, making only the largest and most egregious cases economically viable for a plaintiff.

That changed when a litigator named Steven Riess met a recently elected state senator named Darrell Steinberg. Riess shared with Stein-

berg an idea for a proposal to make it much easier for attorneys representing the elderly to freeze assets belonging to defendants. Steinberg liked the idea and authored the bill in 2007, which passed and was signed by former Gov. Arnold Schwarzenegger.

Riess was energized by the success of the bill and decided to get more ambitious, writing SB 1140, a major overhaul of elder financial abuse law.

"I was told by various colleagues it had no prayer of getting through the Legislature," he said.

But Steinberg introduced the bill in the 2008 legislative session, and about a month later he became president pro tem of the state Senate.

"Suddenly there was a huge amount of horsepower behind anything he was promoting and it made it through," Riess said. "That was also the year that Schwarzenegger vetoed practically everything."

The pair followed up with another bill later that year, SB 1136, and Riess recently worked with Assemblyman Roger Dickinson to pass another bill, AB 140, in 2013. He has also posted a plethora of information about these and other statute changes impacting elder law, along with analysis of how courts have interpreted laws related to elder abuse on the website for his firm, Law Offices of Steven Riess.

Stebner said these and other changes have made it easier in particular to go after institutional predators, companies with business models designed to encourage agents and third parties to take advantage of elders, sharing some of the profits with the companies.

"If you're going after the mafia, you can arrest everyone on the street, but you're really looking for the kingpin," she said. "In this situation it's the companies, not the people selling them."

Advocates for the elderly are eager to see attorneys bring more cases against companies, but they're also growing impatient waiting for the wave to arrive.

Prescott Cole, senior staff attorney at the California Advocates for Nursing Home Reform, needs more attorneys to refer cases to. He said law enforcement is incentivized to prioritize other types of cases and has done little to adjust to the new opportunities, leaving it to trial attorneys to fill the gap.

"The world series for a deputy DA is capital murder," he said. "They like guns and gangs."

Cole and Betty F. Malks, a board member of the National Adult Protective Services Association, have teamed up for a pilot project based in California which will attempt to connect trial attorneys with a variety of resources to assist them in bringing these cases.

The group plans to set a meeting in the next few weeks to plan the program's launch, and Malks hopes to use NAPSA's national reach to expand the concept to other states.

Stebner will also be speaking about the issue at the annual Consumer Attorneys of California conference in San Francisco, along with representatives for NAPSA. They plan to create a follow up webinar to spread the word further.

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