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RECOMMENDED GUIDELINES FOR STATE COURTS HANDLING CASES INVOLVING ELDER ABUSE

Lori Stiegel, American Bar Association, 1996

Adopted as ABA policy in 1996 when the ABA House of Delegates adopted the following resolution:

RESOLVED, That the American Bar Association supports efforts to improve the response of the state courts to elder abuse, adopts the attached "Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse," dated August, 1996, and urges the implementation of these Guidelines by courts at the state, territorial, and local level.

I. Ways in Which the State Courts Can Improve Their Handling of Cases Involving Elder Abuse

A Training of Judges and Other Court Personnel

Recommendation 1. Judges should receive training about elder abuse.

a. Topics should include:

- i. Dynamics of elder abuse and family violence;
- ii. Types of cases involving elder abuse;
- iii. Capacity issues;
- iv. State laws concerning elder abuse;
- v. Adult Protective Services (APS) system and Aging Services;
- vi. Case management issues and procedural innovations; and
- vii. Crafting effective orders in elder abuse cases.

b. Training should be designed and presented with the input and involvement of advocates, APS, prosecutors, law enforcement, aging services providers and should include coverage of their roles and resources.

Recommendation 2. Court staff should receive training about elder abuse.

- a. Topics should include:
 - i. Dynamics of elder abuse and family violence;
 - ii. Types of cases involving elder abuse;
 - iii. Capacity issues;
 - iv. Adult Protective Services system;
 - v. Aging Network and other Social Services;
 - vi. Case management issues and procedural innovations; and
 - vii. Data collection about elder abuse cases.

- b. Training should be designed and presented with the input and involvement of advocates, APS, prosecutors, law enforcement, aging services providers and should include coverage of their roles and resources.

B. Training of Other Relevant Professionals

Recommendation 3. Courts should ensure that prosecutors, investigators, lawyers, law enforcement officers, adult protective services workers, social workers, bank and financial institution officials, health care providers, and any other professionals appearing before them in cases involving elder abuse are familiar with the dynamics and issues of elder abuse and with the role of the courts in addressing elder abuse. To achieve that objective, courts should encourage and support the development and implementation of cross-training for victim/witness programs, APS staff, aging services providers, lawyers, prosecutors, law enforcement, banking officials, health care providers, and any other relevant professionals about the resources and assistance offered by each of them to older abused persons and about the ways in which they need to coordinate those efforts.

C. Judicial Administration and Case Management

Recommendation 4. Courts should provide accommodations for persons with physical and mental deficiencies and, if necessary, hold hearings in cases involving elder abuse in the setting that best accommodates the needs of the abused older person.

Recommendation 5. Courts should recognize that the capacity of older persons may fluctuate with time of day, medications, etc. and should be flexible in scheduling hearings to accommodate those individual variations.

Recommendation 6. Courts should expedite cases involving elder abuse on the calendar.

D. Case Management Where the Older Person's Capacity is at Issue

Non-Criminal and Criminal Court

Recommendation 7. Courts should use expert witnesses, evaluators, guardians *ad litem*, court investigators, court visitors, or interdisciplinary teams who are trained and knowledgeable about the problems of older persons to assess the older person's capacity.

Recommendation 8. Courts should understand gradations of diminished capacity in order to more effectively manage and adjudicate cases involving elder abuse.

Recommendation 9. Courts should consider that incapacity could increase the likelihood of abuse and, if necessary, order a qualified evaluator to conduct an unbiased assessment of the older person's capacity.

Non-Criminal Court

Recommendation 10. Courts should understand and use limited guardianship and other alternatives to guardianship appropriately.

Recommendation 11. When counsel for the older person is required to be appointed, or is otherwise appointed, the appointment should be at the earliest possible stage of the proceedings.

Criminal Court

Recommendation 12. Courts should allow prosecutors special latitude in questioning older abused persons and in offering additional witnesses and corroborating evidence.

Recommendation 13. Courts should ensure that plea agreements meet the needs of the older abused person, including protection from further abuse, and be willing to be creative in negotiations and sentencing, exploring the alternatives available to the older abused person.

E. Implementation of Procedural Innovations

Recommendation 14. Further analysis and study should be undertaken of the ramifications of courts more readily allowing an older abused person's testimony to be videotaped before capacity is lost or the individual dies.

Recommendation 15. Further analysis and study should be undertaken of the ramifications of courts taking steps when necessary to reduce the level of fear experienced by an older person who is testifying against his or her abuser such as allowing the hearing to be held in a less confrontational setting, allowing

testimony and cross-examination of the older abused person by videotape or closed-circuit television, and closing the courtroom to the public.

Recommendation 16. Further analysis and study should be undertaken of the ramifications of courts more readily allowing admission of evidence from collateral sources if the older abused person's capacity is at issue, as has been done by the Department of Justice regarding child witnesses and child abuse cases.

F. Intra-Court Coordination

Recommendation 17. Courts must develop ways of ensuring that judges become aware of cases involving older abused persons that might be underway simultaneously in different divisions or that might previously have been heard and have some influence on a current case.

Recommendation 18. Further study should be given to the concept of consolidation of the courts handling cases involving elder abuse, for example into a "family court."

G. Alternative Dispute Resolution

Recommendation 19. The use of alternative dispute resolution (ADR) in cases involving elder abuse is not recommended at this time. The possible use of ADR should be studied further.

II. Ways of Ensuring that Cases Involving Elder Abuse Enter the Court System

A. Training Guardians

Recommendation 20. Newly appointed guardians should receive training about their role and responsibilities as guardians, and about preventing, recognizing and reporting elder abuse.

B. Assistance from Victim/Witness Advocates and Court Staff

Recommendation 21. Victim/witness advocates should be available and involved in assisting older abused persons throughout the judicial process in both non-criminal and criminal court proceedings.

Recommendation 22. All victim/witness advocates should be trained about the dynamics of elder abuse and about the APS system and other aging network services available to assist older abused persons. Additionally, there should be an elder abuse specialist at every victim/witness program.

Recommendation 23. Especially if there are no victim/witness advocates

available to help an older abused person, court staff should help explain and demystify the court process for older abused persons who may be intimidated or confused, or who may have some type of mental or cognitive disability.

III. Coordination of the State Judicial System with Other Community Resources

Recommendation 24. Courts should:

- encourage and support the development and continuing operation of a state or local task force or coordinating council on elder abuse issues;
- lend their support to existing task forces or coordinating councils on elder abuse; or
- encourage evolving or existing task forces or coordinating councils on family violence or domestic violence to incorporate elder abuse advocates into their membership and elder abuse issues into their agenda.

Task force or coordinating council members should include judges and court personnel, representatives of the Attorney General, representatives of the Medicaid Fraud Control Unit, public and private lawyers, law enforcement officers, APS administrators or workers, social services providers, health care providers, banking and financial institution officials, victim/witness advocates, representatives of the long term care ombudsman program, and other relevant professionals. In addition to addressing systemic problems faced by the courts and the council members in preventing and responding to elder abuse, these task forces or coordinating councils should develop materials that explain their roles and their relationships to each other and the court system, and disseminate those materials to each other, the courts, and the public.

Recommendation 25. Courts should include APS and aging services on court advisory councils or develop other mechanisms for establishing linkages with those organizations and others that address elder abuse.

Recommendation 26. Courts should encourage and support the development and continued operation of multidisciplinary teams on elder abuse.

Recommendation 27. Courts should encourage and support the development of protocols or memoranda of understanding between various entities involved in elder abuse cases as to their roles and relationships.

Recommendation 28. Judges and court personnel should have familiarity with APS, aging and social services providers in their community or brochures or other materials from those agencies so that they can direct an older abused person to appropriate service providers.

Recommendation 29. Courts should encourage and support the development of a "court social worker" or "court ombudsman" program using trained volunteers to help older, disabled, incapacitated or other individuals by giving them information about social services and other community organizations; linking, rather than just referring, them to social services and other community organizations; assisting them with the completion of *pro se* documents; and helping them to understand the nature of the court process.