



Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse

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ABOUT THE ABA COMMISSION ON LEGAL PROBLEMS OF THE ELDERLY...

The Commission on Legal Problems of the Elderly is dedicated to examining the law-related concerns of older persons. Established by the American Bar Association in 1978, the Commission has sought to improve legal services for the elderly, particularly through involvement of the private bar, and has explored legal issues surrounding long-term care, surrogate decision making, individual rights, guardianship, housing, social security, and other public benefit programs. The 15-member multidisciplinary Commission includes lawyers, judges, physicians, professors, aging network leaders, and advocates for older persons.

ABOUT THE STATE JUSTICE INSTITUTE...

The State Justice Institute (SJI) was established by Federal law in 1984 to award grants to improve the quality of justice in the State courts, facilitate better coordination and information sharing between State and Federal courts, and foster innovative, efficient solutions to common problems faced by all courts. Since it became operational in 1987, SJI has awarded over \$80 million to support more than 800 projects benefiting the nation's judicial system and the public it serves. Institute matching requirements also have enabled these projects to benefit from more than \$20 million in support from other public and private sources.

The Institute is unique in both its mission and the ways it seeks to fulfill its statutory duties. Only SJI has the authority to assist all State courts -- criminal, civil, juvenile, family, and appellate -- and only SJI has the mandate to share the success of one State's innovations with every State and Federal court system. SJI carries out its unique national mission by —

- ▶ Underwriting national evaluations of promising State and local approaches;
- ▶ Serving as an information clearinghouse to assure that any one State court's successful innovations can be quickly and economically shared with every other State's courts;
- ▶ Establishing national resource centers where State and local judges and court officials can, on an ongoing basis, test new technologies, observe new approaches, and sit in classroom settings to learn from each other;
- ▶ Facilitating national meetings of key players from every State to exchange good ideas, identify continuing problem areas, and propose effective and efficient local, State, and national solutions; and
- ▶ Delivering national State-to-State "technical assistance" targeted at a jurisdiction's specific problems.

SJI also plays an important role in the national response to crime by educating judges about the nature and impact of family violence, drugs, rape, sexual assault, juvenile crime, and other crimes of violence; demonstrating the effectiveness of new trial and sentencing approaches; and collaborating, where appropriate, with the Department of Justice and other Federal agencies on important efforts to improve the criminal justice system and enhance public protection.

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More than 300 people participated in this project in various ways, almost all of them as volunteers. Their involvement was invaluable to the development of these recommendations.

We are indebted to the 214 individuals who completed the first round of the Delphi Study and the 170 of them who completed the second round. Both study instruments were time-consuming and arduous. The 59 focus group participants also deserve substantial gratitude for their important role in the project. [The names of the Delphi Study and focus group participants have not been provided in order to protect their privacy, in accord with SJI's policy on human subjects research.]

The project's Advisory Committee and the members of the Commission on Legal Problems of the Elderly, whose names are listed in the Preface, provided useful guidance throughout the project. The Advisory Committee members also reviewed the drafts of the Delphi Study instruments and offered many constructive suggestions.

A number of colleagues pre-tested the draft study instruments. They included Jackie Beery, Vicki Gottlich, Martha Hodgesmith, Sally Hurme, Professor Marshall Kapp, Abby Walters, and Professor Kate Wilber.

Thanks are owed to the following organizations and their staff members who helped identify participants for the focus groups:

- National Association of Adult Protective Services Administrators -- Paula Mixson, Mary Chavez & Gib Austin
- Joint Conference on Law & Aging
- National Conference of State Trial Judges -- Dolores Gedge & Stephen Goldspiel
- National Conference of Special Court Judges -- Dolores Gedge & Kristen Taylor
- National College of Probate Judges -- Judge Evelyn Shelley & Shelley Rockwell
- National Academy of Elder Law Attorneys -- Laury Adsit & Kim Prause
- National District Attorneys Association -- Dr. Jennifer Panagopoulos & Kathy Yates

Audrey Straight, Vicki Gottlich (twice), Maggie Glynn, Julie Doherty, Mary Joy Quinn, and Sandra Reynolds provided important assistance by taking notes during the focus groups.

The following individuals were part of the project staff and their efforts were greatly appreciated:

Researchers -- Dr. Dennis Kodner, Dr. Laura Wilson

Research Assistant -- Sarah Dipko

Law Clerk -- Claire McCusker

Interns -- Mary Pat Daley, John Buck, Colleen O'Connor

Commission staff -- Nancy Coleman, Stacey Brown, Norma Gregerman, Louise Maus, Lourdes Morales, Julie Pasatiempo, and Julie Ross.

The cover photograph is of the late Mrs. Bessie Shippey, who was 98-years old when she was physically abused for a period of 14 months by the owner of the care home in which she resided. Mrs. Shippey's family had placed her in this care home because it was run by a woman whom they considered to be a family friend. After Mrs. Shippey was rescued from the abusive setting

by her family, they asked her why she never told them what was happening to her. She replied "You told me she was your friend." Mrs. Shippey's willingness to speak out against her abuse ultimately led to the conviction of her abuser and to the strengthening of criminal penalties for abuse in Arizona. Ms. Martha Mason-O'Neill, granddaughter of Mrs. Shippey, graciously authorized the use of these photographs for this report. The photograph on the title page was taken by Rhonda McMillion, Assistant Staff Director for Information Services and Editor of the *ABA Washington Letter* in the ABA's Washington office. The setting for the photograph is the moot courtroom at the George Washington University National Law Center. Tom Henrikus, the Program Coordinator for the Law Center's Advocates for Older People Program arranged the use of the courtroom. Assistant Dean Alfreda Robinson and Law Librarian Scott B. Pagel shared their time to pose as the judge and lawyer, respectively. The evidentiary photograph used in that picture is of Mrs. Bessie Shippey. The photographs of Mrs. Shippey were provided by Anita O'Riordan, Director of the Arizona Attorney General's Elder Affairs Program.

Special thanks are owed to Dr. Laura Wilson, Director of the Center on Aging at the University of Maryland, who contributed a huge amount of in-kind support to the project by providing a team of volunteer students to analyze the data gathered in the first and second rounds of the Delphi Study. Stacey Brown of the Commission staff formatted this report and spent many hours creating and revising the statutory charts. Finally, this project could never have been completed without the valuable advice, support, and encouragement imparted by Nancy Coleman, Commission Director, and Daina Farthing-Capowich, SJI Project Officer.

PREFACE

Since 1978, the American Bar Association (ABA) Commission on Legal Problems of the Elderly (Commission) has focused many of its efforts on strengthening the due process rights of older persons and persons with disabilities and on enhancing the responsiveness of the judicial system to those persons. This project, titled "Recommended Guidelines for the State Courts in Handling Elder Abuse Cases," furthers those efforts to assist in meeting the legal needs of older persons who have been abused, neglected, or exploited.

The project, which was funded by the State Justice Institute and through the ABA Fund for Justice and Education, had as its goal the development of recommended guidelines for the state courts in handling elder abuse cases. This goal was accomplished through the extensive participation of close to three hundred individuals of diverse backgrounds -- judges, court personnel, private and publicly-funded lawyers, prosecutors, staff from several State Medicaid Fraud Control Units, Assistant Attorneys General, Adult Protective Services workers and administrators, aging services providers, health care professionals, researchers in the field of elder abuse, law enforcement officers, public guardians, state and local long term care ombudsmen, advocates for older persons, state legal services developers, law school professors, victim/witness advocates, and a few persons who fell into a miscellaneous category. These individuals took part in the project as members of its advisory committee, as reviewers of the draft study instruments, as respondents in the two long and difficult rounds of the Delphi Study, and as participants in nine focus groups. Participants were invited and selected for the project based on their reputation for expertise, interest, and leadership in their state court and/or in the fields of aging or elder abuse. The Commission is indebted to them for their efforts in developing the recommendations which are the subject of this report.

This project and its recommendations come at a fortuitous time in the field of elder abuse, which is currently undergoing a shift in focus from the provision of protective services to the utilization and expansion of legal remedies to address abuse, neglect, and exploitation. That change in how we respond to elder abuse, combined with the growth of the older populations and other demographic and societal changes, means that the court system will be faced with increasing numbers of cases involving elder abuse. Hopefully, these recommendations and the wealth of other information that was developed by this project will benefit judges and court staff as they deal with the difficult issues and problems presented in elder abuse cases; will stimulate statutory and procedural changes; and will enhance closer coordination between the judicial, aging, and adult protection systems.



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