Supreme Court No. _____
[2nd Civil Nos. B 140538 and B 142397, consolidated]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Conservatorship of the Person and Estate of JOEL M. LEVITT, FRUMEH LABOW, as Conservator, etc. Petitioner v. MARC B. HANKIN, Objector and Appellant	2nd Civil No. B 140538 [LASC No. BP 0459081
Conservatorship of the Person and Estate of PEGGY PAGE, FRUMEH LABOW, as Conservator, etc. Petitioner, v. MARC B. HANKIN, Objector and Appellant, KATHRYN STANLEY, as Executor, etc. Objector and Respondent.	2nd Civil No. B 142397 [LASC No. BP 0458901

From a Decision of the Second District Court of Appeal,
Division One

PETITION FOR REVIEW

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ISSUES FOR REVIEW

1. Did the enactment of the Elder Abuse and Dependent Adult Civil Protection Act ("EADACPA", Welfare and Institutions Code §15600 ***et.*** *seq.*) alter traditional probate practice for awarding attorney fees such that courts are required to (a) apply a market-based analysis similar to the "loadstar" approach in compensating legal services incurred to combat elder abuse, and (b) articulate the basis for any adjustment of fees so as to provide meaningful review?

2. Where the services rendered by an attorney in an elder abuse case involving a modest estate have been reasonably expended at rates consonant with the legal market place in circumstances in which a full award of fees will not endanger the conservatee's care, is the size of the estate in itself a sufficient ground to reduce the fee award, and is the probate court justified in applying a rule of thumb that fees in an elder abuse case will not be awarded in excess of 30% of the estate, irrespective of whether legal services were necessarily incurred because of the conduct of a persistent abuser?

3. If fees in an elder abuse case can be reduced based on the size of the estate after several years of delay, should such reduction be based on the size of the diminished estate or on the size of the estate at the outset of the action, and should the court make provision for additional payment of fees if there is subsequent acquisition of additional assets by the estate?

INTRODUCTION

More than 20 years ago, our Legislature recognized that the judicial system and public agencies alike were failing in the obligation to protect seniors against abuse. Expressly recognizing the difficulty and unattractiveness of such cases, the Legislature in enacting the Elder Abuse and Dependent Adult Civil Protection Act ("EADACPA", Welfare and Institutions Code § 15600 ***et. seq.***) stated that the principal solution lay in creating predictable fee awards as incentives for counsel to undertake such cases even where the victim has neither a large estate nor the prospect for recovery of substantial economic damages. In doing so, the Legislature recognized that the primary value of elder abuse litigation lies not in the recovery of assets, but in the non-pecuniary interest in being free of abuse and oppression, whether physical, mental or financial

The legislative scheme succeeded fairly well in cases where the abuse involved a defendant (*e.g.* a doctor or residential care facility) with substantial assets, cases which normally attract contingent-fee counsel based on the prospect of substantial recovery from a solvent defendant. The legislative policy failed utterly, however, with respect to small estates where the predator - no matter how flagrant or criminal - is judgment-proof and the prospect for recovery of substantial assets or damages is dim. These cases are largely unprosecuted, and legal counsel remain unavailable for the vast majority of victims of elder abuse living in low-income communities where abuse is known to be most prevalent.

The legislative intent to provide representation for all abused seniors failed not because it was flawed in conception, but ***because it was never implemented in cases with modest estates,*** even after being elucidated by this Court in Delaney v. Baker (1999) 20 Cal.4th 23, 82 Cal.Rptr.2d 610. Probate courts persist in fee award practices developed for decedent's estates, which fail to account for the persistence of predators, the need for legal counsel to preserve the senior's quality of life, and delay in compensation which create disincentives for

vigorous prosecution of abuse cases, and which fail to provide predictability or implement standards which will assure the availability of counsel.

The decision of the Court of Appeal herein is glaring evidence that despite EDACPA and Baker v. Delaney, courts persist in employing *the same fee standards which the Legislature found to have failed* to provide protection to the great mass of seniors, even as the majority of the Justices acknowledged the need for a change in these standards. The Opinion calls for legislative action while failing to recognize that the Legislature *did* address the problem in EDACPA, and it professes the courts' inability to reform fee practices *which are judicial in origin!* This case evidences abandonment of judicial responsibility to effectuate either the Legislative policy or the independent judicial duty to assure availability of counsel for abused low-income seniors. It affirms the failure of the courts to apply criteria suited to the needs of such cases, and affirms arbitrary fee practices which provide no meaningful analysis or review, which have no relation to market-based demands, and which would never be accepted in other types of cases where legal fees are awarded as a means of vindicating public policy. In short, it affirms the continued inferiority of elder abuse cases in disregard of the legislative mandate, assuring that a vast number of abuse cases will never make it to the courts.

Equally destructive of public policy is the notion advanced in the Concurring Opinion - and reflected in the trial court's decision - that fees are properly measured by the size of the estate because the primary objective of elder abuse actions is not to protect the senior's physical and mental well-being, but to preserve assets to benefit the senior's heirs - a concept guaranteed to assure that low-income elders with few assets *will never have representation.*

2.

SUMMARY OF THE CASES

Although these are the *only* elder abuse cases involving low-income elders, modest estates and impecunious predators ***ever*** *reported in this state,* they are typical of innumerable cases whose prosecution is directly impacted by the issues presented.

A. Peggy Page

Peggy Page, an 82-year old woman suffering memory impairment and progressive decline from Alzheimer's Disease, fell under the influence of a "jail-house lawyer" who knew how to work the legal system. Page was isolated from her family, immobile and incapable of caring for herself, and required to take six different daily medications. She had around $100,000 in bank accounts, $80,000 in mutual funds, and her home. Appellant Marc Hankin undertook a three year struggle to save her life and wrest control of Page's estate from a felon who had made himself made conservator and trustee of her living trust.

Page's neighbor, Charles Davis, took over her finances and rapidly depleted her estate. Davis convinced her to put his name on some of her bank accounts, had her sign checks to cash for thousands of dollars, order an ATM card and sign checks for repair of his car. Davis took her to attorney Keith Gill, who made out a will and living trust for Page naming Davis as trustee and beneficiary, and had her execute a power of attorney making Davis her attorney in fact. Davis devised a scheme to turn Page's home into a mosque to which Page was to contribute $50,000; Gill charged Page for preparing the plans.

Catherine Stanley - niece of Page's late husband - learned of her condition, and with several police officers entered Page's apartment, finding her filthy, disoriented, and deprived of medication. Davis (acting through Gill) secured appointment of himself as temporary conservator in an effort to recover control. He enlisted police help to force Page to leave the Stanleys and return with him, and was unsuccessful only because Hankin intervened with the police and persuaded them that Page's life was in danger, allowing time to file for revocation of Davis' temporary letters of conservatorship.

In protracted proceedings over some three years (too complex to fully abstract here), Hankin, on behalf of professional conservator Frumeh Labow, obtained Labow's appointment as temporary trustee of the Page trust and as conservator. He secured orders restraining Davis from disturbing Page or her family, and ratifying amendments to Page's trust and an amended will. Hankin petitioned to compel accountings for the conservatorship and trust, and repeatedly moved for further orders to obtain information from Davis and Gill.

Davis resisted at every stage, filing a multitude of objections and motions.[1] He objected to Page's execution of the new will, asserting that she lacked testamentary capacity and that it was the result of undue influence of Stanley and Hankin. He opposed every petition and motion, and denied that he had any access to or knowledge of Page's bank accounts, filed three Petitions for Writ of Mandate, and moved as "successor trustee" (though then suspended) to set aside an order withdrawing $5,000 from the trust for Page's living expenses.

The trial court severed trial of accounting issues, the validity of the trust amendment and will, and Davis' removal as trustee and request for fees, from trial of issues of physical abuse and neglect, fraud and misappropriation. Hankin (over his objection and request for a single trial) prosecuted a partial trial in January, 1998 which was aborted, and then another trial in which the court found that Page had been subjected to undue influence and fiduciary abuse by Davis and Gill. The Court denied their request for fees, ordered accountings and ratified the trust amendment and will.

Davis continued post-trial maneuvers to remain as conservator and to obtain compensation. He filed objections to the Statement of Decision and several motions for new trial, moved *ex parte* to prevent transfer of the case to another judge for trial

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[1] Davis took pride in his skill as a litigator, exhibiting a 9th Circuit decision reversing his criminal conviction and telling Hankin that he had handled the appeal himself Judge Berg remarked on Davis' acumen in raising procedural points. (Page App. 993:9-23)

of the remaining issues as to tort liability and approval of further accountings, and objected to an order directing him to participate in the subsequent trial phase. Davis moved *ex parte* for an order assigning a new trial judge, and made an "emergency application" for an order declaring a mistrial or staying all proceedings. All of these tactics had to be opposed by Hankin, who finally, in June 1998, obtained sanctions against Davis and a determination that he was a vexatious litigant pursuant to C.C.P. §391.

Hankin and Labow sought instructions under Probate Code 52403 as to whether to continue to seek Davis's removal as trustee and to pursue a damages action against Davis and Gill. Davis had diverted at least $65,000 to his own use, but claimed at deposition to have no assets. Though evidence of overreaching and fiduciary abuse by Gill and Davis was compelling, Page's estate was insufficient to support extensive litigation, as Hankin and Labow advised the court. However, Gill appeared solvent, and Davis apparently was hoarding remains of the estate. In the face of a likelihood of protracted litigation and a full trial, Labow and Hankin indicated their willingness to remain as Conservator and counsel, provided the Court instructed them to proceed with litigation against Gill.

Page died in December 1998. Davis continued to harass the trust and conservatorship even after Page's death. He repeatedly moved into Page's home even after he lost an unlawful detainer proceeding brought by the estate. He filed suit against Labow, asserting he was successor trustee of the living trust, successor conservator of the Page estate, and beneficiary of both the trust and will. Hankin was instrumental in having him removed from the home and later arrested. Hankin brought an OSC re Contempt against Davis in February, 1999 for violation of the order finding him a vexatious litigant.

Shortly before the conservatee's death, Hankin and Attorney A. George Glasco filed an action against Davis, Gill and a brokerage house seeking recovery of misappropriated assets and damages for elder abuse. Kathryn Stanley later became trustee and Administrator of the Estate and Hankin was substituted out of the action

in place of Glasco. Some months after the ruling on Hankin's fee request, the estate settled for $125,000 with the brokerage' and obtained default judgments totaling $413,000 against Gill and Davis.

B. **Joel Levitt**

Joel Levitt was financially and emotionally exploited by a woman brought into his home to provide care. In April, 1997, Levitt was 77 years of age, legally blind, and suffering from the effects of stroke and alcohol induced seizures. Following hospitalization for a debilitating stroke, a private placement agency sent a nurse-helper, Barbara Gold, to provide live-in care. On her first day of work, Gold obtained a check from Levitt for her home phone bill. She soon tried to have Levitt put $250,000 in certificates of deposit in her name, obtained his car and thousands of dollars from his accounts

Six weeks after her arrival, Levitt and Gold were married in Las Vegas. He confusedly claimed that he had known Gold "for two or three years," and said that she had told him she was wealthy. Gold had Levitt execute wills giving his estate to her and naming her roommate as executor without bond.

Levitt's niece contacted a public protective agency, which referred her to Marc Hankin, who secured ***ex parte*** appointment of a professional conservator as temporary Conservator over opposition of Gold, Levitt and his attorney. Levitt's estate (a house and financial assets) was worth about $470,000.

On the first days of trial of competency issues, Levitt consented to the conservatorship. But obtaining a conservatorship was only the beginning. Gold continued to exert control over Levitt. Over a period of 2 ½ years, Hankin made numerous motions to compel Gold's appearance, to produce documents and to secure accountings from her. She retained several counsel to resist these efforts (finally

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[2] Pursuant to a contingent fee agreement under which the civil action was initiated, Hankin received $20,000 from the brokerage settlement (again, this occurred some months after the ruling on his fees request).

substituting herself in *propria* ***persona),*** consistently failed to produce complete records and accountings, disrupted discovery, kept Levitt from attending his deposition, interfered with provision of services by care-givers hired by the conservator, wrecked Levitt's automobile and abandoned him on the street. She berated and mistreated Levittand withheld medication: he lost 20% of his weight, was hospitalized and thereafter needed 24-hour care. Hankin had to pursue several proceedings to redress the situation:

- An action for annulment of Levitt's marriage to Gold on grounds of incompetence;
- A petition for substituted judgment under Probate Code §2580 et seq. allowing execution of a new will so as to avoid Levitt's estate going to Gold in the event of his death prior to annulment of the marriage;
- Commencement of trial on accounting and undue influence issues, which was aborted when the Presiding Judge instructed the trial judge that Gold was to be given 60 days to file an amended Accounting;
- A suit against Gold for conversion, breach of fiduciary duty and elder abuse, resulting in a default and order for her to vacate Levitt's home.

Levitt's condition worsened - and Gold continued to interfere - to the point the Conservator had to place him permanently in a nursing home.

C. **The Fee Awards**

In Levitt, Hankin requested fees for 324 hours at $225 per hour for most of the work and $250 for the most recent hours, for a total of $76,594.50, less $4,250 advanced by Levitt's niece and nephew (to be reimbursed by the estate), plus expenses. The Probate Volunteer Panel Attorney observed that Hankin had actually under-billed by excluding some hearings, and that his "billings for activities where the PVP was also involved, whether telephone calls, depositions or court appearances, compared favorably with times recorded by the PVP." (Levitt App. 837-838) He noted Gold's highly obstructive behavior and that the "difficulties and complexity of

this case, which are well documented in the Court's file, definitely justify the number of hours billed . . ."

Because Medi-Cal assured Levitt full coverage for his medical care and support in a good nursing home, the fee awards would not have affected his care or quality of life.

The trial court used the value of the estate as a benchmark, explaining that "the court has a problem in making any distribution that is over one-third" of the estate, and on that basis reduced the fees, though counsel for the conservatee and the PVP attorney alike advised him of the difficulty in obtaining counsel for elder abuse cases and of the adverse impact of routine fee reductions on availability of representation. (Levitt RT 3:25-16:5) The Court said:

> . . . I am not upset about anybody's hours. I am not even upset about the pay rate other than the fact that I have to consider the size of the estate when I am looking at the pay rate.
> . . . .
> I know this is going to be uncomfortable for you and for everybody here, but I am going to cut the rates down on all this. And I am doing it not because I don't think the work justifies it. ***I think the time spent does justify it. I think don't [sic] the estate justifies it*** . . .
> [Levitt RT 10:11-12:3, emphasis added]

Judge Klausner conceded that the reduction meant that attorneys were not being compensated in abuse cases at the market rate:

> I have no problem with the time that you have spent, the effort that you have spent. Are you getting as much as you would on the outside or that you deserve on the outside? No. There is no question about it [at] all.
> [Levitt RT 15:24-28]

Hankin requested fees in Page as part of the settlement and termination of the conservatorship. The estate had about $45,000 in assets, and Page's home was sold with net proceeds of $84,180. Hankin requested $82,515 in fees (and $6,628 in

costs) for services from May, 1997 to November, 1999, totaling 363 hours, at the rate of $250 per hour for attorney time ($175 for some hours early in the case) and $100 per hour for paralegal services. The Probate Volunteer Panel counsel and probate attorney both observed that while Hankin's fees were substantial, the efforts which they reflected were probably necessary once the decision had been made not to abandon the estate to Davis and Gill. In other words, there would have been no estate but for such services.

The Court ruled that:

> It is clear that Mr. Hankin's services were reasonable. Mr. Hankin's services were not unproductive. Mr. Hankin did nothing inappropriate. Mr. Hankin did not request compensation for any service that should not have been rendered. The Court has no criticism of anything Mr. Hankin did.
>
> The reasonable value of Mr. Hankin's services is $69,000.00, ratherthan the sum of $82,515.00 which was requested at the rate of $275.00 per hour. [Page App. 1202:10-15]

Despite appellant's efforts to obtain an explanation, the trial court would not elucidate on how it arrived at the "reasonable value" of Hankin's services, simply asserting that he had "taken everything into consideration," although only specifying the value of the estate and stating that there was no question that the services were reasonable. (Page RT 3:23-6:23; 5:27-6:23)

D. The Appeal

On appeal, Hankin argued that the trial court, by reducing a fee request for hours reasonably expended based on no more than the size of the estate, failed to adhere to the legislative mandate of EADACPA that fees be based on a market-based approach, and failed to consider numerous factors which make elder-abuse cases unattractive to counsel and which would, in other types of cases, call for enhancement of fees. Appellant observed that this Court's decision in Delaney v. Baker had

articulated the need to provide fully adequate financial incentives for counsel to undertake abuse cases, but that probate courts had not implemented this admonition nor adopted criteria necessary to assure availability of counsel or to give proper weight to the non-pecuniary objectives of elder abuse litigation. Instead, fees in abuse cases are awarded as if they were decedent's estates concerned only with asset administration, without regard to the value of the senior's life and health. This approach has had catastrophic effect on availability of counsel for seniors with modest estates.

The Court of Appeal accepted the trial court's use of estate size as a "rule of thumb" for fee awards. It refused to require any meaningful analysis or explanation of how fee reductions are arrived at, and refused to explain what relevance estate size has to the broader public policy of preventing non-pecuniary injury by physical and psychological abuse, though tacitly acknowledging that existing fee practices did not assure availability of counsel for seniors of limited means. The Court professed that only the Legislature had the power to alter judicially developed rules of "discretion" that did not require probate courts to apply a market-based or "loadstar" approach in conservatorship cases, and which deprived attorneys of effective review. Though finding a need for legislative fact-finding as to the adequacy of fees, the Court inexplicably *failed to mention the legislative findings on this subject recounted in* Delaney!

Appellant petitioned for rehearing on the grounds that (a) although briefed at length to the Court of Appeal, the Opinion failed to recognize that the Legislature *had* addressed attorney fees in the legislative history of EADACPA, and that this legislation obligated the courts to implement judicial standards for assessing attorney fees awards which would assure the availability of counsel; and (b) the Opinion failed to explain why a reduction of fees should be based on the estate size diminished after years of litigation when it was no longer necessary for the conservatee's support, or the effect of later increases in estate assets (as in Page) where fees have earlier been reduced based on estate size.

The Court of Appeal denied rehearing

3.

REVIEW BY THIS COURT IS NECESSARY TO IMPLEMENT THE LEGISLATIVE POLICY OF ASSURING AVAILABILITY OF COUNSEL IN ABUSE CASES WITH MODEST ESTATES

While it is impossible to estimate the frequency of elder abuse against seniors with modest income and assets, two facts are known. First, **elder abuse is most prevalent in low-income communities.** Second, **almost none of these cases are prosecuted.** Of a dozen or so reported elder abuse cases in California, except for Page and Levitt not a single case concerns abuse by an individual outside the context of institutional or medical malpractice, *i.e.* cases with solvent defendants where a substantial contingent fee could be expected to attract capable counsel.[3] The typical abuse case involving a greedy but insolvent individual preying upon an isolated senior such as Page or Levitt has never reached published appellate review. Such cases are equally rare at the trial level. Why?

A.

THE CHRONIC PROBLEM OF PROVIDING COUNSEL

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[3] People v. Heitzman (1994) 9 Cal.4th 189, 37 Cal.Rptr.2d 236; California Assn. of Health Facilities v. Dept. of Health Services (1997) 16 Cal.4th 284, 65 Cal.Rptr.2d 872; ARA Living Centers-Pacific. Inc. v. Superior Court (1993) 18 Cal.App.4th 1556, 23 Cal.Rptr.2d 224; Easton v. Sutter Coast Hospital (2000) 80 Cal.App.4th 485, 95 Cal.Rptr.2d 316; Mack v. Soong (2000) 80 Cal.App.4th 966, 95 Cal.Rptr.2d 830; Black v. Dept. of Mental Health (2000) 83 Cal.App.4th 739,100 Cal.Rptr.2d 39; Covenant Care. Inc. v. Superior Court (2001) 89 Cal.App.4th 928, 107 Cal.Rptr.2d 291 (review granted); Akers v. Miller (1998) 68 Cal.App.4th 1143, 80 Cal.Rptr.2d 857; Conservatorship of Gregory (2000) 80 Cal.App.4th 514, 95 Cal.Rptr.2d 336; Community Care and Rehabilitation Center v. Superior Court (2000) 79 Cal.App.4th 789, 94 Cal.Rptr.2d 343; Delaney v. Baker, *supra,* 20 Cal.4th 23.

TO PROSECUTE LOW-INCOME ELDER ABUSE CASES

The legislative history of the Elder Abuse and Dependent Adult Civil Protection Act recounts both the failure of public agencies to protect vulnerable seniors and the inadequacy of existing incentives to assure the availability of legal representation for prosecution of elder abuse cases. As summarized in Delaney v. Baker (1999) 20 Cal.4th 23, 33, 82 Cal.Rptr.2d 610:

> "In 1982, the Legislature recognized 'that dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect such persons.' (Former 15600, added by Stats. 1982, ch. 1184, 3, p. 4223.)" It adopted measures designed to encourage the reporting of such abuse and neglect. (515601 et seq.) Subsequent amendment refined the 1982 enactment, but the focus remained on reporting abuse and using law enforcement to combat it (see ARA Living Centers, supra, 18Cal.App.4th at p. 1560).Also, Penal Code 5368 was enacted, making it a felony or misdemeanor (depending on the circumstances), for, among other things, a custodian of an elder or dependent adult to willfully cause or permit various types of injury. (Stats. 1986, ch. 769, 1.2, p. 2531.)
>
> In the 1991 amendments at issue here, the focus shifted to private, civil enforcement of laws against elder abuse and neglect. "[T]he Legislature declared that 'infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits.' (515600, subd. (h), added by Stats. 1991, ch. 774, 2.) It stated the legislative intent to 'enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.' (Id., subd. (j))" (ARA Living Centers, *supra*, 18 Cal.App.4th at p. 1560.) As was stated in the Senate Rules Committee's analysis of Senate Bill No. 679, "in practice, the death of the victim and the difficulty in finding an attorney to handle an abuse case where attorneys fees may not be awarded, impedes many victims from suing successfully.

[20 Cal.4th 33, emphasis added.]

In undertaking "to provide heightened remedies for. . . 'acts of egregious abuse' against elder and dependent adults. . ." (Delaney, *supra*, 20 Cal.4th 35), the Legislature recognized the inadequacy of existing civil remedies and the need to change existing **"incentives to prosecute these suits**" by private counsel. While the cases reflect some success where solvent defendants are available (mainly cases that would have been taken in any case by contingent fee counsel), prosecution of the vast bulk of abuse cases involving predators exerting undue influence and coercion on enfeebled seniors of moderate income remain rare. This is evidenced by the absence of any reported cases and by Order 14 of September 12,2000, in which the Los Angeles County Board of Supervisors recognized that seniors' legal representation needs remain unmet:

> The State Legislature has taken a number of steps to address the problem of elderly financial exploitation and abuse. However, elderly persons with modest estates do not have ready access to legal advise and assistance, which would enable them to effectively redress the exploitation of their assets or obtain properly documented estate planning for their protection.

The problem lies in the failure to award fees which take into account the unusual demands and financial disincentives inherent in these cases. As a Deputy County Counsel for Santa Clara County explained:

> Defense strategy in elder financial abuse cases is typically to aggressively litigate and prolonging the litigation until plaintiffs resources are exhausted or until the elder dies. Heirs, anxious to receive their inheritance, are willing to settle for terms more favorable to defendants than the elder who was victimized, and heirs do not make a sympathetic plaintiff. Further, my experience has

> been that settlement judges and trial judges, simply do not take either the attorneys fees or punitive damages provisions of the EADACPA seriously. Typically, this is conveyed by the Court to counsel within the first few minutes of any mandatory settlement discussions. Elder victims of financial abuse rarely achieve even a "make whole" settlement. Even after an expensive and time consuming trial, the elder rarely recover all of his/her lost assets.
> [Page App. 11711

An informal survey by Appellant of attorneys specializing in probate work found that few, if any, would take a case involving theft of $80,000 from an incompetent person - even if assets could be found and recovered - where the perpetrator found a lawyer to represent the proposed conservatee in resisting a petition for conservatorship and the perpetrator was highly litigious. (Page App. 998:3-26, 1122:9-1122:16) Most elder abuse cases are never filed for the simple reason that lawyers are unwilling to take them because they understand that fees are routinely cut to a level that will not justify the efforts required to properly prosecute the action. (Page App. 1121-1128; 1151-1173)

A recent article by two prominent probate counsel observes that "the problem with elder abuse litigation in modest estates is that counsel cannot predict the amount of work that may be required in order to achieve a result."

> Because many of the people who engage in elder abuse tend to be poor, have little else to do and are often somewhat disturbed themselves, they often litigate vexatiously and with little regard for cost. They are more than happy to take full advantage of the legal system for their own ends.
>
> Counsel attempting to battle with them cannot depend on the opposition's financial restraints in order to reach an economical resolution at an early stage. Enormous hours are accumulated by the time that a resolution against the abuser is achieved, and counsel must at that time take such fees that a court is willing to grant after

considering a number of factors that may be outside of counsel's control

[Oldman and Cooley, "Small Estate: Court Examines Problem of Attorney Fees in Elder Abuse Cases", Los Angeles Daily Journal, November 21, 2001, page 7]

While fees are routinely cut, elder abuse cases impose demands on counsel which would normally call for *enhanced* compensation:

The Elder Abuse Attorney is at Risk of Non-Payment. The attorney faces uncertainty in payment comparable to those faced by contingency fee attorneys. The attorney has no entitlement to payment if the Petition for Conservatorship is denied or the senior dies before the Petition is ruled upon. The lawyer finances the case for the client and gambles on the results and the availability of funds to pay fees, with diminished prospects for payment and incentives to take the case in conservatorships with modest estates and insolvent victimizers. The far higher up-side compensation for such risks provided by the typical contingent fee is denied elder abuse attorneys notwithstanding the economic fact that a "lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." Ketchum v. Moses (2001) 24 Cal.4th 1122, 104 Cal.Rptr.2d 377, 384, quoting Leubsdorf, *The Contingent Factor in Attorney Fee Awards* (1981) 90 Yale L.J. 473, 480.

Elder Abuse Cases Are Highly Litigious. Elder abuse cases impose special burdens because of contentious perpetrators who can be effective in using court procedures to amplify and delay litigation, and who may be tenacious in resisting efforts to remove them from the gravy train, as these cases demonstrate

Elder Abuse Cases Demand Special Expertise. These cases are often contests over the mind of the senior, requiring expertise in demonstrating incapacity, and knowledge of how to use medical experts. Conservatees often present an appearance

of rationality and retain feelings of dependence upon the defendant. Psychologically dependent victims may actually side with the perpetrator, requiring specialized skills to pierce the appearances and establish mental incapacity and undue influence.

Attorney Compensation is Regularly Delayed. Unlike the typical hourly fee case, recovery of fees in elder abuse and conservatorship cases is often delayed for years while a struggle proceeds for control of assets. It is by now a truism that delay in compensation effects a reduction. Missouri v. Jenkins (1989) 491 U.S. 274, 283, 109 S.Ct. 2463, 2469.

Unpredictability of Fee Awards Discourages Representation in Abuse Cases. As in fee-shifting cases, public policy supports predictability of awards and elimination of randomness. Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 626, 98 Cal.Rptr.2d 388, citing Burlington v. Dague (1992) 505 U.S. 557, 566, 122 S.Ct. 2638. Inability of counsel to enter into a contract with conservatee or conservator providing for definite hourly rates, the uncertain condition of the estate after several years, and the vagaries of judges all render future compensation speculative absent well-defined standards preventing random departure from a rule of full compensation.

Elder Abuse Cases Impose Severe Demands on the Attorney's Practice and preclude other employment. They demand immediate and often ***ex parte*** action to alleviate imminent danger to the conservatee and the conservatee's estate. Maria P. v. Riles (1987) 43 Cal.3d 1281, 1294 fn. 8, 240 Cal.Rptr. 872 (Lodestar calculation should consider "the extent to which the nature of the litigation precluded other employment by the attorney.")

Elder Abuse Cases Are Undesirable, a factor favoring enhancement of fees. Flannery v. California Highway Patrol (1998) 61 Cal.App.4th 629, 642, 71 Cal.Rptr.2d 632. Few lawyers would consider an abuse case involving a feeble conservatee, a litigious and impecunious defendant, and uncertainty as to recovery of even a normal hourly rate to be desirable. Legislative history and the dearth of such

cases in the legal literature attest to their unattractiveness. Most of these cases never reach the courthouse: those that do usually settle with only transient protection for the victim that allows the lawyer and conservator to cut their losses.

Even judges find these cases time-consuming and undesirable; Appellant has been told by at least one judge to stop bringing abuse cases to probate court because they tie up the calendar!

B.

THE LEGISLATIVE SOLUTION IS MARKET-BASED ATTORNEY COMPENSATION WHICH IS NOT LIMITED BY THE VALUE OF THE ESTATE OR ECONOMIC DAMAGES

The legislative response to the problem of elder abuse was to reform the basis for legal compensation: to require attorney compensation to reflect the real market forces necessary to attract counsel to abuse cases, and to emphasize the non-pecuniary function of such cases - the preservation of life and health - as a basis for compensation. As explained in Delaney, the 1991 amendments shifted the focus to private civil enforcement of laws against elder abuse and neglect, and recognized that existing incentives were inadequate. It sought to achieve this in part by "authorizing the court to award attorney's fees in specified cases; [and by] allowing pain and suffering damages to be awarded when a verdict of intentional and reckless abuse was handed down after the abused elder dies." (20 Cal.4th 33) These two major changes intended to make abuse cases economically viable quite clearly *rejected the notion that the size of the estate or the economic damages recovered would serve as a measure of attorney compensation* adequate to encourage attorneys to undertake abuse cases

Both these measures were intended to make the prosecution of abuse cases financially viable even when there was *no significant estate* and *no economic damages.* In the view of the Legislature, and contrary to the assumption of this Court of Appeal, the principal value of abuse litigation lies in preserving the life and health of the

senior, not in administering assets.[4] Yet the Opinion allows the probate court to discount the life of the senior according to their wealth, contrary to the Legislature's clear understanding that ***theprincipal value of such litigation is non-pecuniary and deterrent.*** That these two remedies (attorney fees and pain and suffering) are ineffective where the perpetrator is financially irresponsible reinforces the need in small estates to award fees which will not make availability of counsel dependent on the wealth of the conservatee.[5]

The public responsibility for protection of vulnerable seniors not from mere economic loss but from mental and physical abuse (Welfare and Institutions Code 515600) means that these cases are not to be valued by the estate or economic recovery; they are actions for violation of *personal and civil rights* of seniors, members of a "disadvantaged class". The objective of such suits is to "protect a particularly vulnerable portion of the population from gross mistreatment in the form of abuse and

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[4] This non-pecuniary emphasis is also evident in the definition of "neglect" in former Welfare and Institutions Code 515610.57 as "the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited to, all of the following: (a) Failure to assist in personal hygiene, or in the provision of food, clothing or shelter. (b) Failure to provide medical care for physical and mental health needs. . . . (c) Failure to protect from health and safety hazards. (d) Failure to prevent malnutrition." See Delaney, *supra,* 20 Cal.4th 34. "Abuse" includes "physical abuse, neglect, fiduciary abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services necessary to avoid physical harm or mental suffering." Welfare and Institutions Code § 15610.07.

[5] We would not set the "reasonable value" of the services of a criminal attorney defending the liberty of an individual according to the defendant's wealth. Why is it permissible to do so when the liberty, health and freedom of a vulnerable senior are being protected by a civil attorney? A probate court would not reduce physician' fees incurred in preserving the conservatee's life and health based on the interests of the heirs or estate: it would willingly exhaust assets to cover medical care. Yet the attorney who accomplishes ***the*** *same* ***end*** is told that he must subsidize the conservatee or the heirs even when fees will not even remotely exhaust the assets.

custodial neglect." (20 Cal.4th 33)

The legislative demand that abuse cases be economically attractive to private counsel was intended to assure protection *of personal rights.* It rejects existing fee practices in favor of a market-based approach that fully compensates efforts unrelated to economic injury. This is inherent in the insistence on incentives for private counsel and the acknowledged "difficulty in finding an attorney to handle an abuse case where attorneys fees may not be awarded." (20 Cal.4th 33, citing Sen. Rules Com. Analysis of Sen. Bill No. 679). As noted in Ketchum v. Moses, *supra,* 24 Cal.4th 1122, the Legislature has generally endorsed the market-based approach since it is the only means of anchoring the fee analysis to an objective determination of the value of legal services. PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095, 95 Cal.Rptr.2d 198. EADACPA contemplates a market-based approach requiring a loadstar-type analysis to assure representation for all abused seniors.

C.

THE JUDICIARY'S FAILURE TO IMPLEMENT LEGISLATIVE POLICY AND FINDINGS IN SMALL ESTATES

As the instant cases illustrate, probate courts awarding fees in elder abuse cases *do not adhere to a loadstar analysis,* but apply the probate-fee approach traditionally found in decedents' estates, where the principal concern is asset administration. The Opinion affirms the trial court's "rule of thumb" limiting fees to 30% of the estate - irrespective of the amount of time needed to combat a persistent predator, of the fact that the attorney saved the conservatee's life, or the fact that the conservatee is deceased and has no need for the estate. In this scheme, *attorneys are* ***always*** *under-compensated for representing low-income seniors abused by judgment-proof individuals,* and enhancement factors are never applied. The Opinion affirms the very fee practices of 20 years ago which the Legislature found had failed to assure

legal representation! Lower courts have thus institutionalized financial disincentives, and this Opinion has broadcastthis rule ofsystematic under-compensation to the legal community.

What attorney will take an elder abuse case like Page or Levitt, to protect the senior against a litigious abuser, knowing that *hundreds of hours may be involved,* and that at the end ofthe proceeding a small estate will be left, of which two thirds will go to the heirs and one third be left to be shared by the conservator and attorney? Obviously, no attorney will take such a case on a rational financial basis, no matter how severe the personal abuse.

The Opinion demonstrates failure of the lower courts to understand the legislative findings and solution. The pervasive misunderstanding of EADACPA is reflected in the Concurring Opinion of Justice Vogel, who believes that the primary concern in a fee award should be providing maximum returnfor *the conservatee's heirs.* Under this view (apparently shared by the trial court), an attorney will not be compensated for services demanded by his fiduciary duty to the senior if such an award would infringe upon the expectancy of heirs. The principal role ofthe attorney, then, is to maximize assets, not to protect the non-pecuniary interests of the senior in freedom from duress and psychological abuse.

The Opinion creates a catastrophic conflict ofinterest forthe attorney in small estates, who is compensated to benefit the estate and heirs, not to protect the personal integrity ofthe senior. The more successful counsel is in preserving and prolonging the life of the conservatee, and the more time that is devoted to protection of non-pecuniary rights, the more counsel will be under-compensated. This practice creates a disincentive to preserving the life and health of the conservatee since these efforts will not be rewarded for their intrinsic value to the conservatee, but rather will be accorded diminished value as the conservatee consumes more ofthe estate. Success in achieving the principle purpose of EADACPA is rewarded not with enhancement, but with diminution of fees. A probate practice of cutting medical payments for life-

saving care below normal rates would undeniably reduce the availability of medical care and the life expectancy of seniors. It can have no different effect on legal services.

The Opinion subverts the legislative scheme in every case in which an impecunious perpetrator preys upon a poor senior, and establishes a standard for compensation which is precisely contrary to that contemplated by the Legislature. It is not even sound in respect to the interests of heirs, for systematic fee cuts which discourage attorneys from undertaking small cases means that perpetrators will be free to loot the estate, to retain the benefit of their malfeasance, and to shift the costs of caring for abandoned seniors to the public.

It is no answer to assert - as the Opinion does - that the Legislature should now take corrective action to stop courts from pursuing probate fee policies already known to have failed. This simply confirms Appellant's point: *courts have failed to implement the policies already enacted by the Legislature.*

4.

REVIEW IS ESSENTIAL TO SECURE UNIFORM ELDER ABUSE FEE STANDARDS AND TO ASSURE MEANINGFUL REVIEW

The Opinion illustrates the absence of any clear understanding by trial courts as to the relationship between public policy and fees, and how various factors are to be applied. What consideration shall trial courts give to the size of the estate, to delay and uncertainty in compensation, to success in achieving non-pecuniary objectives, and to the effect on availability of counsel? The latter factor is wholly absent from the Opinion, though uppermost in the Legislature's intent. The Opinion fails to assure that the exercise of discretion is grounded in consideration of the policies appropriate to the matter at issue.[6] People v. Russell (1968) 69 Cal.2d 187, 195, 70 Cal.Rptr. 210.

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[6] To exercise discretion, "all the material facts and evidence must be both known and considered, together also with the legal principles essential to an informed, intelligent and just

Cf. Cummings v. Benco Building Services (1992) 11 Cal.App.4th 1382, 1387, 15 Cal.Rptr.2d 53 (court awarding fees under civil rights statutes must observe legislative objective of encouraging plaintiffs of limited means to bring meritorious actions to vindicate public interest in civil rights). The effect of such standardless review is to deprive counsel of consistency, predictability, and any meaningful review

The Opinion affirms the inferiority of elder abuse cases. In other areas where fees are awarded as a means of encouraging certain litigation (*e.g.* FEHA and private attorney general actions) this sort of vague and arbitrary approach would never be accepted. Outside of probate, reviewing courts pay close attention to whether the trial court applied proper standards and considerations in reaching a decision'. Bouvia v. County of Los Angeles (1987) 195 Cal.App.3d 1075, 241 Cal.Rptr. 239; City of Hawaiian Gardens v. City of Long Beach (1998) 61 Cal.App.4th 1100, 1113, 72 Cal.Rptr. 2d 134; Press v. Lucky Stores, Inc. (1983) 34 Cal.3d 311, 322, 193 Cal.Rptr. 900; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 98 Cal.Rptr.2d 388 ("fees award must be scrutinized for its compliance with all applicable standards," and where ruling gave no explanation for the basis of award or effect of enhancement factors, reviewing court is not justified in presuming that the trial court considered only appropriate factors); Lealao v. Beneficial California Inc. (2000) 82 Cal.App.4th 19, 47, 97 Cal.Rptr.2d 797.

Here, the Opinion affirms a 30% rule that is arbitrary in failing to give weight to non-pecuniary factors or to demands of the litigation and offiduciary responsibility which may require an attorney to expend far more time than the estate itself might justify. Estate of Trynin (1989) 49 Cal.3d 868, 874, 264 Cal.Rptr. 93 (services that

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decision." Martin v. Alcoholic Bev. Control Brd. (1961) 55 Cal.2d 867, 875, 13 Cal.Rptr. 513; In re Cortez (1971) 6 Cal.3d 78, 85-86, 98 Cal.Rptr. 307.

[7] Compare Ferland v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145, 1147-1148, noting that the abuse of discretion standard comes into play only *after* the reviewing court concludes that the judge applied proper legal principles and did not clearly err in any factual determination.

do not directly benefit estate by increasing or preserving it are compensable if attorneys were "acting in consonance with the fiduciary duties imposed upon them.") While the Opinion cites the size of the estate as a factor under the Standards of Judicial Administration, it fails to analyze the ***relevance*** of such factor in actions aimed at vindicating personal rather than economic rights or to the policy underlying EDACPA.

Although briefed by Appellant, the Court of Appeal failed to address any of the important questions as to ***how*** factors are applied in elder abuse cases:

- **What role, if any, does the size of the estate play in setting fees?**

The bare conclusion that the size of the estate is a valid consideration provides no guidance as to ***how*** it is to be used. Is it legitimate to use a percentage of the estate as a cap on fees for services related to protection of non-economic interests, when the essential objective and the "result obtained" is to prevent the conservatee from dying or being placed on public welfare roles? (Rules of Professional Conduct, Rule 4-200(b)(1),(5)) Does estate size have any bearing on the "reasonableness" of fees when more than sufficient assets remain to pay all fees after the conservatee has passed away? Why is a percentage cap reasonable when protection of the conservatee (not to mention the estate) from a persistent adversary who knows how to work the legal system requires prolonged legal efforts, as even the trial court recognized? Why does it apply to the attorney but not the conservator's fees or medical fees? Does it have any validity where the objective of fees is to assure availability of counsel for even poor abused elderly? Is it reasonable to allow grossly differential fees in different cases where the same amount of work is involved in alleviating identical threats, thereby affording less protection and value to the lives of Peggy Page and Joel Levitt less than the lives of wealthier seniors?

But for Appellant's services, Page and Levitt would have been left destitute, ending up (if they were lucky) in nursing homes supported by Medi-Cal, their assets

benefitting only criminal predators. The avoidance of this injury to both the conservatee and public is myopically discounted by the courts, so that the more the predator succeeds in stealing and injuring the senior, the less likely counsel will be to be reasonably compensated for all required services.

The Opinion's assertion that appellant contends that full fees should be awarded "irrespective of the size of the estate" (Opinion page 3) is incorrect. Appellant believes that the size of the estate is a significant factor when a full fees award would implicate the ability of the estate to support the conservatee, but not a major issue when fees are requested after the conservatee has passed away or when a full award would not imperil the senior's care and upkeep.'

- **If estate assets are used to assess "reasonableness", is the relevant figure the estate at the outset of the case, or can compensation be reduced based upon the diminished estate after years of litigation?**

Should compensation be based on a depleted conservatorship estate, or the happenstance that the attorney benefits the estate by delaying his fee request while the elder's needs consume assets? Though briefed by Appellant, the Opinion does not address the arbitrary effects of a delay in award of fees where the litigation is protracted and the estate diminished by the attorney's success in prolonging the conservatee's life, or the rational for making the *attorney* (rather than heirs) suffer the consequences of a diminution in estate size.

The focus should be not on what seems to be in the financial interest of the conservatee or heirs at the **time of the fee petition,** but on the availability of legal

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[8] As stated in the Page Opening Brief at page 39, "The size of the estate is a legitimate concern when an award of full compensation may deprive the conservatee of funds needed for his or her support. It should not be an excuse for reducing otherwise reasonable fee requests where a full award would in no manner endanger an elder's care: as when the conservatee has died or when available public social and medical services will maintain the senior in good stead."

assistance **at the time the abuse and exploitation is in progress and the legal services required.** There is no legitimate reason to make the attorney - who finances the legal action and suffers prolonged delay in payment - subsidize the estate. This compounds the unpredictability and arbitrariness of awards.

The Opinion has an adverse impact on estates, since counsel must make interim fee requests to avoid the effect of a diminishing estate, rather than making a more economical single fee request at the conclusion of the case. Each of these additional fee motions requires additional time and compensation for the attorney at the estate's expense. Estate of Trynin, *supra,* 49 Cal.3d 868, 880.

- **If estate assets are considered in assessing the "reasonableness" of fees, should provision be made for an increase in estate assets?**

Fluctuations in estate size render arbitrary and unfair fee reductions based on the temporary financial condition of the estate. It is manifestly unfair to saddle an attorney with a fee reduction based on the size of the estate of the deceased senior when (as in Page) the estate later acquires additional funds.

Appellant suggested to the Court of Appeal that probate courts should distinguish between the reasonable market value of legal services (which would normally have little relationship to the size of the estate where the services rendered were required by the attorney's fiduciary duty to protect the elder) and the amount the estate is capable of paying where assets are necessary for upkeep of the senior. By making any reduction based upon the conservatee's needs a separate step, courts will make a cleaner record, analysis of the conservatee's needs will be more carefully executed, and the attorney may have an opportunity to revisit the amount of payment if conditions change - *e.g.* if the conservatee's life span is unexpectedly shortened or the estate is later increased by recovery in a legal action (as in Page). This will assure that, while there are instances where the reasonable value of legal services rendered exceeds the ability of the estate to pay, the incidence of underpayment and unfairness

will be minimized

- **Are probate courts obligated to articulate a loadstar analysis in elder abuse cases similar to that of other public interest litigation?**

Some degree of transparency in calculation of fees is necessary if compensation is to be consistent and rational, and if attorneys are to gain confidence that compensation will at least make a good faith attempt to simulate market rates in elder abuse cases involving parties with limited resources. The rule of thumb used by the trial court fails to do this, and the Court of Appeal fails to scrutinize either the method (assuming there was one) or rationale of the trial judge.

The Opinion affords virtually unlimited deference to the probate judges's vague assertion that he considered "reasonableness", though he cited but one factor. There is no way to determine if correct factors were considered or policy appropriately applied, and so no barrier to arbitrariness in awards.

Nor is there anything to prevent probate judges who dislike abuse cases from cutting fees so as to effectively deter attorneys from filing or vigorously prosecuting them. Absent reviewable standards, attorneys and seniors alike are at the mercy of judges who may prefer clearing their calendar to encouraging elder abuse litigation - precisely the situation 20 years ago when the Legislature found the judicial system failing to protect vulnerable seniors.

The probate court stands in the shoes of the client in these cases and is usually the only source of compensation. If a private client contests counsel's charges, the attorney would at least have the right to know what services were deemed unreasonable. The elder abuse attorney - who is entirely dependant on the court's award - should have at least the right to know what fees the court considers unjustified or excessive, and why, and the opportunity to correct any factual errors affecting a decisional process which is decisive of the attorney's right to compensation. Western & Atlantic Railway Co. v. Henderson (1929) 279 U.S. 639, 644, 49 S.Ct. 445

(decisions based upon unfounded presumptions or reasoning violative of right to fair hearing); Fuentes v. Shevin (1972) 407 U.S.67, 92 S.Ct. 1983(right to avoid factually unfounded decisions).

Why do class actions, private attorney general, antitrust and other types of fee awards which are intended to encourage litigation require full consideration of all factors, a market-based approach to fees, and articulation of the grounds for the award, while elder abuse cases do not? In such cases, an adequate statement of the basis for the fees decision is essential to make an award fair and reviewable, since review of a fees award focuses upon proper process and reasoning, *i.e.* on the means and factors used by the court to reach the figure. Estate of Beach (1976) 15Cal.3d 623,645,125 Cal.Rptr. 570; Serrano v. Priest, (1977) 20 Cal.3d 25, 48-49,141 Cal.Rptr. 315. See Maria P. v. Riles, *supra*, 43 Cal.3d 1281,1294-1295, noting the necessity of an explanation of the method of arriving at the fee award so as to afford meaningful review.' What is the basis for affording inferior rights to attorneys in elder abuse cases, except a judicial convention of denying effective appellate review of probate fee awards, notwithstanding the legislative history of EADACPA reflecting an intent to place abuse cases on a plane similar to that of other public interest litigation where fees are expected to be based on a well-articulated analysis allowing effective review?

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[9] Federal courts recognize that in fashioning a fee award, the trial court has an obligation "to articulate . . . the reasons for its findings regarding the propriety for the hours claimed or for any adjustment its makes either to the prevailing party's claimed hours or to the Lodestar." Gates v. Deukmejian (9th Cir. 1992) 987 F.2d 1392, 1398. The order must be sufficient for the reviewing court to determine whether the court has properly applied applicable criteria or failed to compensate for compensable time. Ferland v. Conrad Credit Corp. (9th Cir. 2001) 244 F.3d 1145.

5.

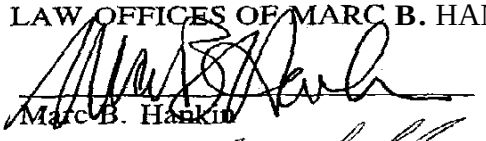
CONCLUSION

The message which the Opinion herein sent to the legal community and to predators alike is that attorneys will be systematically under-compensated for undertaking abuse cases involving seniors with modest estates, and that there is no assurance that criteria having any predictable or objective relationship to the market-place will ever be applied. Why should a trial court attempt to simulate the market-place when it has available the simple expedient of cutting fees to a percentage of the estate, irrespective of the impact on availability of services needed to combat a tenacious abuser?

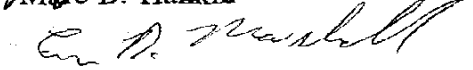
The crisis that the Legislature identified more than 20 years ago persists to this day. As long as courts fail to acknowledge the policy behind EDACPA and the market-based approach demanded by that policy, continue to treat abuse cases as a disfavored form of litigation, and refuse to apply criteria designed to assure incentives that will attract competent counsel, the Legislature's intent - and the public responsibility to protect disabled elderly - will be frustrated. Seniors with modest estates will suffer and die until this Court places elder abuse fee awards on a basis consistent with legislative policy and the reality of the market place.

DATED: December 6. 2001

Respectfully Submitted,
EVAN D. MARSHALL **and**
LAW OFFICES OF MARC B. HANKTN



Marc B. Hankin



Evan D. **Marshall**
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PROOF OF SERVICE

I am over the age of 18 and not a party to this action. I am employed at 233 Wilshire Blvd., Suite 550, Santa Monica, CA 90401. On December 6,2001, I served the attached **PETITION FOR REVIEW** on the parties in this action by placing true copies in sealed envelopes with proper postage in the U.S. mail at Santa Monica, California, addressed as follows:

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Charles E. Davis 3430 Faye Avenue Culver City, CA 90232	*In propria persona* (Estate of Page)
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Second District Court of Appeal Division One 300 South Spring Street, 2nd Floor Los Angeles, CA 90013-1213	Court of Appeal

I declare under penalty of perjury, that the foregoing is true and correct. Executed at Santa Monica, California on December 6, 2001.

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