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FIGHTING SENIOR POVERTY THROUGH LAW

## Free Webinar: Basics of California Elder Abuse Restraining Orders and Recent Updates

Webinar Transcript

July 25, 2023

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Lauren Carden:

Hi everyone. We're just going to let everyone get signed in and then we will start the webinar. Okay. Welcome everyone. Thank you for all joining us today for this training on Basics of California Elder Abuse Restraining Orders and Recent Updates. My name's Lauren Carden, I'm the director of California Elder Rights at Justice in Aging, and I'm joined today by Dani Kaiserman from Bet Tzedek. I just have some logistics to cover and then I'll introduce her and our webinar. This training is delivered on the Zoom webinar platform, so everyone is on mute.

If you have questions or you want to ask a question, you can access the Q&A button on your Zoom control panel to type in the question to the presenters. We will probably answer any substantive questions at the end of the webinar, but we'll try to answer the technical questions through the Q&A function. If you have technical difficulties, you can also email us at [trainings@justiceinaging.org](mailto:trainings@justiceinaging.org). The webinar is being recorded. The recording will be available on our website resource page, which is listed in this slide. Then you'll also receive a post-webinar email with the recording and the materials.

We also have closed captioning available. To access this, you can enable CC on your Zoom control panel. Just a little about Justice in Aging. We're a national organization that uses the power of law to fight senior poverty by securing access to affordable healthcare, economic security, and the courts, for older adults living, sorry, older adults with limited resources. We focus our efforts primarily on fighting for people who have been marginalized and excluded from justice, such as women, people of color, LGBTQ+ individuals and people with limited English proficiency.

Justice in Aging is also committed to advancing equity for low income older adults in economic security, healthcare, housing, and elder justice initiatives.

We strive to address the enduring harms and inequities caused by systemic racism and other forms of discrimination that uniquely impact low income older adults in marginalized communities. We're also committed to recruiting, supporting and retaining a diverse staff and board. Okay, so we are going to jump into the presentation. I'll introduce our presenter and then I'll have a few slides that I'll go through before Dani gets started.

We're joined today by Dani Kaiserman. She's a staff attorney in the Elder Justice unit at Bet Tzedek Legal Services, located in Los Angeles, California. Dani represents low income clients seeking elder abuse remedies including restraining orders, conservatorships and advanced planning documents. In October 2017, Dani co-founded Bet Tzedek's Elder Abuse Restraining Order Clinic, which is at the Stanley Mosk Courthouse. There, she advises self-help litigants petitioning for and responding to restraining orders. Dani received her JD from UCLA School of Law.

Before I pass it to her, I want to just review very few basics about elder abuse. First, for our learning objectives today, by the end of today, we hope you'll all be able to understand elder abuse and the tools that legal aid can use to address it issue spot, what types of cases are appropriate for elder abuse, restraining orders, understand who's eligible to file an elder abuse restraining order, and what remedies they provide. Then most importantly, learn about the recent legislative changes with AB 1243.

Defining elder abuse. There are several definitions of elder abuse found throughout California law and federal law. First, who is an elder is dependent on what law you are looking at. Today, we're going to be focused on California and primarily focused on the California Elder Abuse and Dependent Adult Civil Protection Act. But I wanted to include these other definitions here just so folks can get an idea of the variation. Then, just as a reminder that it's always important to go to the relevant statute and double check the definition when taking on any case.

Just as examples here, so under the Federal Elder Justice Act and the Older Americans Act, an elder is defined as anyone age 60 and over. The California Adult Protective Services Act recently amended to also define elders as someone age 60 and over. But the law that we're focused on today, which is the Elder Abuse Independent Adult Civil Protection Act, uses or defines an elder as someone aged 65 and over. Then one other note just for our presentation today, so we'll use the term older adults and elder interchangeably. When we're using these terms, we're generally referring to the statutory definition of elder in the Elder Abuse Independent Adult Civil Protection Act.

What is abuse? Again, this is dependent on the statute, but under the Elder Abuse Independent Adult Civil Protection Act, it is defined as here, as physical abuse, neglect, abandonment, isolation, abduction or other treatment with resulting physical harm or pain or mental suffering, and then also deprivation by

a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. Then, financial abuse. The act does further define kind of each of those terms. I didn't list them all here, but this is just a note to remember to review the definitions if you are working on one of these cases.

Then, I just wanted to make a note about polyvictimization as well. Polyvictimization is when an older adult is harmed through multiple co-occurring or sequential forms of elder abuse by one or more perpetrators. There is substantial evidence and research that elder abuse cases frequently involve multiple forms of abuse, so that's just important to keep in mind when assessing a case involving elder abuse. Where does elder abuse occur? It can occur in a variety of settings listed here and in virtually any setting. Many cases do occur within domestic settings where the older adult lives, so either in their home or with a family member.

Cases can also occur in care facilities, which would include nursing homes, assisted living facilities and residential care homes. It can occur in community settings as well. That's in neighborhoods, in neighbors homes or at community settings or community facilities. Then abuse can occur in hospitals, clinics, or rehab centers. Then we also included financial institutions here, because abuse can occur through these institutions, like through fraudulent bank activities and scams. Who are the abusers? A perpetrator of elder abuse is usually someone the older adult knows and with whom there is a relationship of trust.

This can be family members, intimate partners, paid or unpaid caregivers, neighbors, friends and fiduciaries. This relationship between the older adult and the perpetrator is what makes these cases particularly difficult. Abuse can also be perpetrated by a stranger, though that is seen most in financial elder abuse cases and scams. How can legal aid assist? Legal aid can assist in other abuse cases in many ways. It's generally from these kinds of three perspectives. Prevention, intervention and remediation. Just some examples of what each of these are.

Actions that could help prevent abuse would include assisting a client with advanced planning documents like an advanced healthcare directive or a power of attorney document, which kind of creates the safeguards to prevent abuse in the future. Intervention or actions that can intervene during abuse when it's occurring could include assisting with elder abuse, restraining orders, which we're going to talk about. It could also be helping a client obtain a reasonable accommodation for having a trusted caregiver or preventing a client from being evicted from their home due to actions of an abuser.

Then, finally remediation. Actions that legal aid can take after abuse to remedy the harm can include assisting a client with restoring public benefits after they were the victim of a scam or assisting a client with kind of cleaning up their credit report if they've also had financial elder abuse. Again, these are the kinds of cases that you might see that would touch on elder abuse issues. Then with

that very brief background, I'm going to pass it over to Dani now to discuss one of the ways that legal aid attorneys can assist with elder abuse cases, which is through obtaining elder abuse restraining orders.

Dani Kaiserman:

All right, thank you, Lauren. Next slide please. Great, and good morning everyone. I'm happy to be here. It's kind of nice just talking to fellow California attorneys for a change. I know we're all in the same time zone at least. A brief outline for today, we're going to go over a couple case examples, sort of the basics of what is an elder abuse restraining order, eligibility and remedies, comparing a few types of restraining orders, how do you get one, some trends. Then, I think the reason why a lot of you are tuning in today is to learn more about the recent legislative changes for elder abuse restraining orders.

We're going to kind of break down the two big changes that went into effect this year in January and how to assist litigants in taking advantage of those new remedies. Next slide please. I think it's important to ground any discussion on restraining orders with a couple of case examples. Just for those of you new, you can understand when a restraining order might be beneficial. The first example I'll share is about Mary. Mary is 70 years old and lives with her adult son John. John helps Mary with some basic tasks. John struggles with mental illness and alcohol dependency.

He sometimes takes Mary's debit card and withdraws her SSI money to spend on alcohol. John has on rare occasions gotten frustrated with Mary and cursed at her. Mary hasn't been to the doctor in over a year and by the end of the month runs out of money to purchase food. When Mary's other children express concerns about John, Mary becomes defensive of him. We have a very loose fact pattern here and I see a few potential types of elder abuse happening. This may or may not be a good case for a restraining order depending on a few different things. With attorneys, the answer is always, it depends.

Starting with the types of abuse that I see, and feel free to think about this yourself as well, I'm seeing financial abuse. Taking her debit card without her consent, withdrawing her SSI money, spending it on himself. She arguably didn't give permission for him to do that and she's feeling that loss, right? She doesn't have money to spend on food at the end of the month, which is pretty serious. Another issue I'm seeing here is potential verbal abuse and mental suffering, anguish caused by that. That is through cursing and John getting frustrated with Mary.

Another type of potential elder abuse I'm seeing is neglect, because John is a caregiver and he is not acting as a caregiver should. According to reasonable person standards, he's stealing from her, he isn't taking her to the doctor, some of her basic needs aren't being met. Then, there may also be some isolation going on. We don't really have enough facts to kind of suss that out. You can kind of see that Mary and John have a very close relationship. She's getting

defensive of him. My big question in this case when, say one of Mary's other children called me, would be, well, does Mary want a restraining order? She may not.

Does Mary have capacity? If she didn't, is there someone available with legal authority to file a restraining order on Mary's behalf? Although this seems like a simple example, nothing is ever totally straightforward, but this situation comes up a lot in my work. Next slide please. In our second example, Pia is 80 years old and lives in a condo with her husband of five years. Pia was diagnosed with dementia two years prior. Pia's husband is her caregiver and power of attorney, Pia's husband and Pia's three children from a prior marriage do not get along. After a particularly bad argument between Pia's husband and the children.

Pia's husband decides to disconnect Pia's phone and not allow any visitors in the home. Pia's three children are devastated and want to spend as much time with their mother as possible. I wanted to throw in this example of isolation. Here we have isolation in the form of disconnecting the Pia's phone and not allowing visitors to enter the home. At the end of this webinar, we're going to be talking about those two new remedies that went into effect this year through legislative change. One of those focuses on this exact type of situation. Historically, there wouldn't have been anything for the children to do.

But now with AB 1243, the children would be eligible to file a restraining order for the sole purpose of stopping the isolation. Because we don't know in this example if there's any other type of abuse happening, presumably her Pia's husband is doing a fine job as a caregiver apart from the isolation. We don't have any facts that show there's neglect or verbal abuse or anything like that, but this might be a good case for isolation only restraining order. Next slide please. What is a restraining order? Restraining orders fall under the Elder Abuse and Dependent Adult Civil Protection Act, otherwise known as EADACPA.

All of the codes that I'll be citing from today are in Welfare and Institutions. Feel free to, as Lauren said, look those up later. If you are handling one of these cases and you're new to this area of the law, the Welfare and Institutions Code is pretty user-friendly. You can search terms and look up all those definitions. Elder abuse is defined pretty broadly in California as financial, physical neglect, isolation, deprivation of a care provider, abandonment abduction, and then there's this catchall category, other treatment leading to pain or mental suffering. A lot of the cases we see are going to fall under that last umbrella and that would be kind of your yelling, harassment, cursing threats.

We also saw a lot of our cases, as Lauren mentioned, polyvictimization. That would be when there are multiple types of abuse present. We see in a ton of our cases there's financial abuse and verbal abuse. Those two are often paired together. Next slide please. Who's eligible to file a restraining order? The elder or older adult who's 65-plus in California or a dependent adult can file this type

of restraining order, which recognizes that that population is more vulnerable to abuse and therefore they have this special restraining order to protect them.

A dependent adult is a person between 18 and 64 with physical or mental limitations that restrict their ability to carry out normal activities. If you are not sure whether someone falls into this category and you want to assist them with a restraining order, I typically ask them questions about their activities of daily living. Do they need any assistance for things like walking or shopping or taking medications, mobility issues? Do they have a caregiver? I like to let people talk about their disability however makes them most comfortable, and ultimately, it's up to a judge to decide.

I don't ever want to be in a position where I tell someone you are or you are not a dependent adult. I might say to a person I'm trying to help, "Listen, I don't know if a judge will consider you as a dependent adult, but let's go ahead and try. Let's put in some facts that show these physical or mental limitations and how they impact your life." I think it's important to give folks that you're helping that kind of autonomy to describe their own conditions. I will say something I like to warn litigants about is that this is going to be public.

There's certain disabilities people don't feel comfortable sharing in a public setting, because it would be available in a public record search. I do like to just tell people that and then they can choose what to share or not share. Then in addition to older and dependent adults, also any person with legal authority on behalf of that elder or dependent adult can file a petition. In order to be eligible for this type of restraining order, you do need to be a victim of one type of abuse, which again can be up for interpretation whether something meets that definition of abuse.

But I always like to let litigants decide for themselves if they feel like they have been a victim of abuse. Next slide please. When thinking about that other category of who could petition on behalf of an elder or dependent adult, there are a few common folks that come up; conservators, trustees, powers of attorney. I would say powers of attorney in my experience are the most common. If any of those three are going to petition on behalf of an older adult, they do need to include paperwork to show their authority.

That would be letters of conservatorship, trust documents, you don't need to include the whole 500-page trust, but the portions giving them that authority, powers of attorney, you should go ahead and include the whole thing. That can be either healthcare or financial ZPOAs. Some judges might disagree, but judges I've spoken to are okay with either petitioning on behalf of the elder as long as that power has been granted through the power of attorney. For those of you not familiar with financial powers of attorney, they often list out specific powers and including in those as commonly litigation or legal claims.

You would want to make sure that that box is checked or the initial for all of these powers are granted. Then less commonly, a guardian ad litem can petition on behalf of an elder or dependent adult. If you do go down that route, the GAL, or guardian ad litem, needs to be represented by an attorney to become a guardian ad litem. It's a pretty simple judicial council form that you fill out and just answer a few questions about your relationship to the person, why they need a GAL. Do they have dementia or something like that? In my experience, the ones that I've filed have all been granted, in terms of the GAL being allowed to proceed with the case.

Adult protective services can also file a petition, though not all counties are doing so. I know I'm here in Los Angeles and for many reasons mostly I think are APS social workers are just totally overwhelmed with cases they're not able to pursue doing restraining orders at this time. Next slide please. Then what does a restraining order get you, right? The most basic things it can do is to stop the abuse and also stop contact and communication. With a restraining order, you can ask that the person not contact you via phone, text, messages, mail, kind of in any way possible.

You can also have them stay away from you. Typically, it's 100 yards away, but that can be modified in cases where you're seeking a restraining order against a roommate or a neighbor to a smaller amount. The big one that a lot of people want a restraining order to do is to get a move out or an eviction, also called a residence exclusion. Then you can also ask for orders enjoining a party from a specific behavior, which is if there's something unique to your case that you want the judge to ask them to stop doing, you can go ahead and request that. Stop going to the bank with me.

I would say most of the litigants I help don't have anything to add besides sort of the basic ones included in the form, but every once in a while, something comes up. You can also ask for a care, possession or custody of an animal. Then there's some new orders. You can ask for anger management or counseling, coerced debt binding or stopping isolation. Those last two we'll cover towards the end of today's webinar. Next slide please. As I mentioned, a move out order is one of the main reasons why a lot of litigants want a restraining order.

In order to be eligible to get a person kicked out of the home or the apartment, there does need to be a couple of things met. First of all, the protected person, elder or the dependent adult, needs to be on the title or the lease or have permission from the title or lease holder in order to be eligible to ask for a move out. The respondent, the person who is allegedly doing the abuse also can be on the title or the lease as a co-tenant. But what there can't be is only the respondent on the lease or title. I think it's helpful to look at a couple examples. One example, you have two roommates who share an apartment.

The older adult roommate can request a move out against the other roommate, because they're both on the lease, so that older adult has the authority to

request the move out order. We don't know if it'll be granted. That's his separate story. Then in another example, we have an older adult who lives with her son. Only the son is on the lease and that is the alleged abuser. In this case, the older adult cannot request a move out order against the son, because they're not on the lease at all. I do want to note this, I included that you can have permission from the title or lease holder, because sometimes we see cases where the older adult lives in an apartment that is, let's say their daughter is the only one on the lease, but the person they want to move out against is the granddaughter.

That would be okay as long as the daughter agrees to it. Then in order to get the move out on the temporary basis, you need to show that the respondent has assaulted or threatened to assault. In my experience, the judges are a little bit lax on this one. I do think it would be hard to get in a financial abuse case alone, but I've definitely seen judges consider verbal abuse, cussing to be a threat to assault and grant a temporary move out order. Of course, it'll be up to the judge. Then, the permanent move out order is a little bit easier to get. You need to show that physical or emotional harm would otherwise result.

There you have a little bit more leeway. Next slide please. How to file an elder abuse restraining order. On the left side I put the central forms to your basic petition. The EA-100 is the main form. It's now up to nine pages. If you're doing a lot of these, you might want to check out some software that can kind of help you autofill. We use Lawyaw at Bet Tzedek, but I know there's a few different services that offer that kind of function. What we do, because the forms can be a little bit limiting is typically in the places where you describe the abuse, we just write there, "See attached declaration."

Then, we include all the details and a declaration from the petitioner who would either be the elder or dependent adult or the person filing on their behalf. That way, we don't need to kind of squeeze in a bunch of information into small boxes. We can take our time and kind of help the litigant explain what's happened to them in a way that makes sense. I think writing declarations is also helpful in these cases, because with elder abuse there's often kind of a long history. Maybe this is not the first or second time, but the abuse has been happening on and off for years and it also gives you a little more space to explain the relationship between the elder or dependent adult and the alleged abuser.

Then the other forms are a lot shorter and more straightforward to fill out. Definitely check to see whether your county has any local forms. I know in Los Angeles County, there's special forms about giving notice, and also depending on what courthouse you're at, they require specialized case cover sheets. Not on this list. I just wanted to point out the EA-600 series, which would be a request to continue the elder abuse restraining order hearing. Then also, or I'm sorry, that, the EA-600 is for modifying or terminating an elder abuse restraining order. Then, there's also additional forms if you need to request a continuance.



To file these, you can have anyone who needs them go to their local courthouse and ask for assistance from their self-help center. I am going to guess that this varies by county, so I don't want to make any promises about the level of help that a litigant would receive there. But typically, they do have packets available, at the very least, with all the required forms and then sometimes they would highlight the parts that need to be filled in. Because of how burdensome these forms are, that's why in LA County, Bet Tzedek started our Self-Help Elder Abuse and Dependent Adult Abuse Restraining Order Clinic where we help them fill out all the forms and write declarations, because otherwise, it's just asking a lot of this population.

I think in total there's about 38 pages of forms that need to be filled out. That can be a big ask for folks. Our clinic is currently operating remotely, which is also helpful, because getting to courthouses, as we all know, can be quite challenging. They are free to file and they can be submitted electronically or in person depending on local rules. The sheriff is available to serve the alleged abuser in these cases. I'll mention service a little bit later, because that is quite important. Next slide please. The timeline of an elder abuse restraining order case, the day that you file, you get an answer on the temporary restraining order, otherwise known as the TRO.

You fill out this whole packet, and then assuming, I should say, you file before I think the cutoff is 3:30 or 4:00, it again may depend on your local courthouse, you will get a hearing date that same day and a decision on whether the temporary restraining order was granted. Then, fast-forward three weeks is your hearing on the permanent restraining order. It's called permanent, but actually the max number of years you can get the first time you file is five. A five-year restraining order would be the max. A lot of times they're given for one or three years depending on the case.

Before the hearing date, the other party who you're seeking a restraining order against needs to be personally served. I cannot emphasize enough how important service is and if you are helping a litigant file a restraining order, I really recommend talking to them about service right from the very beginning, because if they don't know where the other party is located, which comes up more than you would think, then it may be a waste of their time to file a restraining order if the other party can't be served. You can request alternatives to personal service, like text message or mail, but you do need to get special permission from the judges to do that and the judges are going to want to see that you've attempted personal service at least a couple of times usually before they consider an alternative method.

At the bottom I put that usually one continuance is granted if you're not able to serve the person in time, but after that, it's going to be up to the judge whether they keep continuing the case or they might just dismiss it if you don't have a way to serve the other side. Next slide please. The burden of proof for elder abuse restraining orders is preponderance of the evidence, which is more likely

than not. That can, in the legal field, we say that's 51%. You need to show that abuse has occurred more likely than not or 51%. That being said, I've certainly lost cases.

I don't want to sell this as like, oh, anyone can get a restraining order for anything. You still need to have abuse and you need to prove it. You don't need to show that future abuse will happen. You only need to show that there was at least one previous act of abuse. Next slide please. The decision on a temporary restraining order is decided solely based on the forms and any attachments that you submit. For that initial temporary restraining order, there's no talking to the judge, at least in LA County I should say, perhaps other countries differ. You can attach written documentation as evidence, you can attach declarations as I've described. Typically, the person requesting a restraining order doesn't give notice before filing that TRO request.

You can imagine that telling someone you're going to file a restraining order against them can put you in a dangerous situation. If you have fear about doing so, there are ways to not tell the other side. Looking at the permanent restraining order hearing, it's a little bit different. First of all, the elder or dependent adult needs to show up for the hearing. If they don't show up, the case will be dismissed. As I mentioned again, the other side must be served if the other side doesn't show up and they have been personally served, it doesn't mean that the restraining order will automatically be granted.

I think it makes it a little bit easier to get, because you don't have someone disagreeing or saying you're a liar, but you still need to show that abuse occurred and a judge will hear testimony from the parties, any evidence you have to present. Next slide. The hearings for restraining orders vary a lot. They can be literally five minutes where the judge says to the petitioner, "Is everything you said in your declaration true?" They say, "Yes," and the judge says, "Okay, I'm granting this order." Or they can be full out trials with multiple witnesses, expert testimony, you're bringing in APS social worker to testify or doctors to talk about capacity? It really depends.

I would say most of them, the majority of them are definitely on the shorter side, but it depends on the allegations. Are there attorneys involved? That slows things down. Whether the other side appears and lots of different factors. Older adults can bring an advocate to have at their side, but they're not able to speak on behalf of the older adult, that advocate person. But it can be a nice comfort for someone, especially if it's their first time going to court, which it is for many of our older adults and dependent adults. We do recommend if a power of attorney petitions on behalf of an elder or dependent adult that older dependent adult also come to court, because we're seeing a lot of times the judges want to ask them to make sure they're on board with the restraining order as well.

If you do submit any declarations from witnesses with the initial paperwork, they need to be available to testify at the hearing. The reason for that is so the respondent or the alleged abuser can ask them questions if they have any. Next slide please. There's three main types of restraining orders. There's also a criminal protective order, which I'm not going to cover today. We're talking about EAROs, elder abuse restraining orders. There's a lot of overlap between those and DVROs, or domestic violence restraining orders.

They both have a preponderance of the evidence standard, and because so many cases of elder abuse involve family members, that's why a lot of older adults are eligible for both DV and EAROs. I would say if you have someone who's over 65 or a dependent adult, they should never be filing a civil harassment restraining order. The reason is because there's a higher standard of proof. It's harder for the petitioner to get, you need to show clear and convincing evidence, and you also don't get a lot of the same remedies like a move out order. It's a little bit nuanced. I'm not going to go into all the details.

Domestic violence restraining orders have a couple more remedies available. In cases of spouses, I usually recommend a DV restraining order even if the person is over 65. There might be a couple exceptions if there's capacity issues or something like that, but they're eligible for either in a lot of cases. Next slide please. Here's a couple trends that I think we covered in our examples. Next slide please. A lot of housing issues come up with elder abuse restraining orders. I think being in California, we all know housing is a huge, huge issue.

There's a sort of crossover between landlord tenant cases and restraining orders. I would say in order to be eligible for a restraining order, there has to be abuse. When I've spoken to judges about this issue, the response I've gotten is that they want to see more than just standard roommate conflict, disagreements over using the fridge. That doesn't rise to the level of abuse. Also, they're saying they don't want just non-payment of rent cases. If it's just a situation where one party's not paying, then the judges I've spoken to feel that those should be handled in unlawful detainer or housing court.

Then, you can get a restraining order against your landlord or as a landlord against your tenant. I would say it's going to be harder to get a move out order depending on the arrangements, but we definitely have seen cases where a landlord's behavior towards a tenant is abusive, and while you might not be able to get every single order you want, you could at least get a restraining order to stop the constant harassment or make sure that they give legally required notice before entering the apartment, things of that nature. Next slide please. Okay, so I want to now focus on the new legislation that I have mentioned.

Bet Tzedek Justice in Aging and Public Law Center co-sponsored AB-1243 back in 2021 and it just went into effect this January. It does two main things. The first thing has to do with isolation. It allows a concerned third party who is being denied contact with an older adult to use the restraining order process to

request visitation and prevent isolation. I'll talk more in detail about that in a moment. Then the second thing it does is it allows the judge to issue a finding of a coerced debt, so victims of financial elder abuse can dispute debts with creditors and credit reporting agencies. Next slide please.

How to file an elder abuse restraining order, allowing contact. I listed out the required forms and I think that the judicial council did a really great job on these forms and kind of making them user-friendly in terms of what information you need to provide. The info sheet they created is really helpful. Even if this hasn't come up for you yet, I think reading through the EA-300 info sheet is a great resource. Next slide please. The main form is the EA-300. With this form, you kind of just follow through the steps. It asks who is the elder dependent adult that you're not being allowed contact to? Who is preventing that contact?

Then who are you, the petitioner, right? What is your relationship to the elderly dependent adult and how are you being denied contact? Why do you want contact? It does ask for facts showing that the elder wants to see the person requesting that contact and it can be a little bit hard to show that, right? If the elder has been isolated, then you might not have a voice recording from them saying, "Hey, I want to see you." Because maybe you haven't seen them in a year or even two years, but to the best of your ability you can explain your relationship, talk a little bit about your history. "My mom and I always celebrated birthdays and holidays together and now my sibling isn't letting me see mom."

You have to sometimes rely on some of those past experiences to show that the elder wants the contact. Then you have to show that you're being prevented from contact by a person and that the reason why you're not being allowed to see the person isn't because you are an abuser, right? That you are trying to get mom to sign over documents every time you see her, so your siblings said you can't see mom anymore. Again, a little bit hard to prove a negative, but you just have to do your best with the facts of the situation. Next slide please.

With this type of restraining order, you don't fill out any of the other forms that we talked about earlier. The EA-100, the EA-109, et cetera. You can only request this when you are alleging isolation has occurred. If there is more than isolation occurring, then you probably want to consider doing a full restraining order, not just this contact restraining order. The caveat being, if you don't have legal authority to file the other type of restraining order, then you might be able to file just the isolation restraining order as kind of a stepping stone to being allowed to contact the elder.

Then through that process of contact, you might get more information or authority to then go ahead and file a full restraining order if you needed to at a later date. Again, the big difference is this restraining order is only for seeing the person and being able to visit with them and have calls with them. It doesn't get you anything else and it differs from the other type of restraining order because

you don't need to have legal authority to request this. In a lot of cases it might be the power of attorney who's the one doing the isolation.

Like let's rewind to that initial case example I gave with Pia and the husband and the children. Pia's husband was the power of attorney in that situation and he was the one isolating Pia, the elder, from her kids from a previous marriage. Those children, they don't have legal authority to file a regular restraining order, because the husband is the power of attorney. But through this type of contact restraining order, they are eligible, because you just need to show that you have some relationship with the person. This is not to get to see a stranger that you've always wanted to meet. You have to have some history of knowing the person.

It's commonly going to be used for friends and family members. Something else unique about this type of restraining order is, unlike the normal restraining order, you don't get temporary orders. The legislative authorities wanted to make sure that in order to grant the contact that there was a hearing, basically to make sure that the elder wants to see the person. Because you can imagine the case where you have an abusive son or daughter who is being denied visitation for maybe good reason and they're going to use this form to try to see their parents, and the judge wants to make sure that the parent actually wants to see them before granting this request. Next slide please.

Then the other type of restraining order amendment that was made under AB-1243 was to allow coerced debt findings. This was not our big idea. We actually copied it from the domestic violence restraining orders with AB-2517. For those of you who are new to the financial abuse world, and I think this term is actually just only becoming more popular in the last few years, coerced debt is when you create debt in an elder's name without their permission or through undue influence, which can be manipulation, coercion, or threats. If there's a situation where an elder has been coerced into taking on debt by a family member or a friend or whoever they're seeking a restraining order against, they can list those debts in this petition and ask for the court to make a finding about that being a coerced debt that the elder didn't mean to get themselves into.

With that finding, the intention is that if later on you are part of a collection case or a bankruptcy case or a criminal case, you can show that agency this finding that you didn't take on that debt on your own, you were coerced into it, and theoretically, that might be helpful to you. I'm going to give an example. I think this one is a little bit hard to understand without an example. I just had a case where an elder was moved into her daughter's house, and the daughter's daughter, so actually the granddaughter, took her grandmother to the car dealership and really heavily manipulated grandma into becoming a co-signer for a new Lexus.

She did this through a series of lies. She said that it's just a formality, but she was going to make all the payments and it didn't even matter. She really guilted

grandma into it and she also, whatever, threw in a lot of family drama and, "You owe me this, because X, Y, Z happened." There was definitely undue influence and some coercion going on there. Sure enough, granddaughter stopped making the payments, which for those of you who are not aware, if you co-sign a loan, you are then on the hook for the full payment if the other person stops making those.

In this case, there was also some other abuse that the granddaughter had done. Grandmother sought a restraining order against granddaughter and she listed in the coerced debt section that this was a coerced debt to Lexus for, I forget how much it was, let's say \$30,000. Then the judge, if they make that finding, that yes, this was a situation of undue influence, I mean sometimes it's just identity theft or pure using someone's name and signing for them to take out the debt. But in this case, it was more of an undue influence situation, then that coerced debt finding can later be useful to grandma when the debt collectors start hounding her for these payments.

We don't know how this is going to play out, whether creditors and these sorts of agencies are really going to take this finding seriously and recognize that the older adult has been victimized and therefore should be cut a little bit of slack. We know that creditors aren't not the most generous or forgiving folks, but I certainly think that it's a step in the right direction and that it could be useful. You might as well try if you have a litigant or client who's in that situation. Next slide please.

I wanted to show you what the box looks like. Here you would check box 18 for debts caused by financial abuse, money owed to, the example I gave would be Lexus for one year car lease amount, \$30,000. Then, you would describe what happened. My granddaughter dragged me to the Lexus dealership, she told me X, Y, Z, which turned out to be lies. She promised me this and you could probably attach a declaration. You would also want to attach what you signed the paperwork involved in that. Next slide please.

Okay, great. We have about five minutes for questions and I just want to note with both of those, the coerced debt and the contact only restraining orders, that they're new. I don't consider myself an expert. I've done I think about five now of the no contact, or allowing contact restraining orders. Because our clinic is self-help, I actually don't know the outcome of most of those. I know one case was kind of resolved at the hearing and it was a sibling situation and the sibling who was preventing the contact did come around and say, "Yes, you can visit mom," and they made a visitation schedule.

That is a success story, but I'd really love to hear if you have been helping folks on these cases to share what's worked, what hasn't been working, how are you seeing the judges handle these new types of restraining orders? You might be involved in the first one in your county, so there's probably going to be some hiccups along the way. Great. Do we have questions, Lauren?

Lauren Carden: Yes. Thank you so much, Dani, for all that information. I pulled some of the questions just for folks on the webinar. We may not be able to get to the more detailed questions, but Justice in Aging will follow up afterwards to answer those questions. What we did have, so one question was because these are civil restraining orders, is a police report required for an EARO? Then maybe you could talk about how much having one is weighed by the judge or whether that is kind of a determining factor for a judge.

Dani Kaiserman: Sure. Police reports are definitely not required, and in most cases that I assist with, there is not one present and a lot of them get granted without a police report. If you have one, you should definitely include it as an attachment. It doesn't hurt. We're finding that a lot of, maybe this is an LA issue, a lot of police departments are not giving full reports. A lot of litigants come in just with a business card, which we'll copy them, and the business card just says, "Went out on a visit, landlord tenant dispute with harassment," or something simple. You can certainly include that. Like I said, if you have it, include it, but definitely you shouldn't try for one if you don't have that.

Lauren Carden: Thank you. Then we've got, I think a couple questions about this kind of filling in the blanks, but can you request a judgment for... So this is about the coerced debt restraining order. Can you request a judgment for that amount of coerced debt through the restraining order process? I think that's what the questions are asking.

Dani Kaiserman: Yeah. So no, and I think that would be the next phase to a restraining order, would be to actually be able to get a judgment for funds lost to financial abuse or a coerced debt. But currently, as the law stands, you just get that finding of it. In fact, there's no way in my experience to recover money through a restraining order. I do tell people who have experienced financial abuse, if that's what you're looking to get, the restraining order is not going to be the tool for you, unless you also want it to prevent future abuse. You may need to do a restraining order hand in hand with a small claims action or a civil lawsuit for financial elder abuse. Great question though, in our dreams.

Lauren Carden: Yeah. Then, I think we have time for just one more. This might be dependent on folks' court, but if an elder's unable to physically go to court, are there other options or can someone else represent them or does the elder physically have to be in the courtroom?

Dani Kaiserman: I know in LA County our elders can appear remotely and that's either on kind of like Zoom, but not quite Zoom that LA County uses. Or actually, by telephone, because we definitely work with litigants who don't have the internet. I would say no to can someone go to court for them. I don't think that would fly in any county, unless that person has legal authority, like the conservatorship or a power of attorney over the elder. I think it depends on your county, and hopefully, post-COVID, courts realize that it is possible to do remote hearings and allow for that.

But I do know that a lot of judges really still prefer to see people in person and I think it can actually benefit your case, especially as an elder or dependent adult, for a judge to really see you, and this sounds terrible, but see the impact that the abuse has had and that visual connection of in person can be helpful. But of course, if you have a disability or are not able to attend in person, then I would explore with your local courthouse whether, even if it's not common to use remote hearings, you could do a disability ADA request to allow for a remote hearing if you're bed bound or something like that.

Lauren Carden:

Thank you so much. I think that is all the questions we'll be able to get to today. Again, if you didn't get a chance or your question didn't get answered, we will follow up with you. Or if you didn't get a chance to ask your question, you can email us at [info@justiceinaging.org](mailto:info@justiceinaging.org). You can also sign up for our alerts to get future emails about upcoming trainings. Thank you again, Dani, for sharing all your expertise and I hope everyone has a great afternoon.