

Early Detection of Questioned Documents in Elder Abuse and Will and Trust Cases

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It is not unusual for questioned documents to surface in financial elder abuse cases, will and trust contests, and contested conservatorships. Our firm specializes in these areas, and we estimate that questioned documents surface in approximately 25% of our cases. This is a sharp increase from a decade ago, and we expect the trend to continue. According to the Contra Costa Times, 70% of our nation's wealth is controlled by individuals age 50 and above, more people over age 65 live in California than anywhere else, and people 85 and older are the fastest growing segment of the elderly population. In this environment, it is not surprising that elders are too often targeted by predatory caregivers or family members.

These cases often depend on the authenticity of a deed, will, trust, power of attorney, check, or other financial document. The participation of a Board Certified Forensic Document Examiner is often critical. While the client and attorney may *suspect* that a signature is forged, it is important to *know* this as early as possible.

For the past decade, our firm has worked closely with M. Patricia Fisher, a Board Certified Forensic Document Examiner who has over thirty years of experience working on trust and estate cases that require special expertise. Her findings and advice have assisted us in making informed decisions about documents that have been produced by our own clients and by opposing parties. In several cases, Ms. Fisher confirmed that our suspicions about a document were correct, suggested what additional documents needed to be obtained, and provided oral and written opinions that allowed us to conduct discovery in a timely and cost-effective manner.

The most dramatic example involved notarized deeds that a father had purportedly executed to transfer the father's ranch to his son, the defendant. The notary testified during trial that she was present when the father signed the notary book. Ms. Fisher's analysis and testimony proved that the signatures were not the father's, and that the son's handwriting characteristics were evident in the notarized signatures. Based largely on this testimony, the jury awarded our client \$500,000 compensatory damages, \$100,000 pain and suffering, \$325,000 punitive damages, and attorneys' fees and costs.

Another case involved a disgruntled son who retyped his mother's trust and will to name himself as sole beneficiary at the expense of his siblings. Ms. Fisher detected his fraud, which led to an early settlement. This was particularly helpful because the other children did not have the money to pursue litigation.

In another elder abuse case we suspected that the defendant had forged dozens of checks to herself from the checking accounts of two elderly victims. In her discovery

responses, the defendant stated that the victims had signed the checks. Ms. Fisher identified 44 checks, totaling \$610,397, that the defendant had forged.

The benefits of involving a Board Certified Forensic Document Examiner can be significant. First, it allows the attorney to conduct discovery around a coherent theory of the case. This saves on discovery costs and avoids the possibility of building a case around the authenticity of a document only to learn after months of discovery that the document is a fake.

Second, the Welfare and Institutions Code allows victims to obtain an elder abuse writ of attachment to freeze the proceeds of fraud before they are depleted. Armed with a declaration from a document examiner, the attorney is in a better position to obtain the writ.

Third, when there is any doubt about the authenticity of an original will, it is prudent to have it examined and tested before lodging to avoid presenting a fraudulent document to the court.

Finally, a challenging party's odds of success can be greatly increased if the party asserting the validity of the questioned document is not aware that the challenging party suspects a forgery until after the proponent has been deposed. The proponent of a suspect document often "over-sells" its authenticity at deposition, claiming, for example, that they were present when the document was signed. If this occurs, the attorney armed with a reliable document analysis is well-positioned to discredit the testimony at trial.

Attorneys can better serve their clients in will, trust, and financial elder abuse cases by being alert for suspicious documents. Counsel should consult with a Board Certified Forensic Document Examiner to evaluate the documents and serve as a consultant until testimony is required. At trial, the document examiner must be capable of preparing and explaining exhibits that showcase the evidence that supports their testimony.

Loren Barr is a Certified Specialist in Estate Planning, Trust and Probate Law who specializes in trust and estate litigation and elder abuse cases. www.barrattorneys.com