

DAS CLOSES THE DOOR ON CIVIL LIABILITY FOR FINANCIAL INSTITUTION FAILURE TO MAKE MANDATED ELDER ABUSE REPORT

By Christina M. Wickers*

I. INTRODUCTION

The court of appeal, in *Das v. Bank of America, N.A.*,¹ in an opinion of first impression, had to decide whether Welfare and Institutions Code² section 15630.1's mandated reporting duty for financial institutions opened the door to private civil actions through Evidence Code section 669. The court concluded that on its face Welfare Code section 15630.1 bars civil recovery.³ Since Welfare Code section 15630.1 does not allow claims by the public for failure to report under this section, the intended protection behind it is dramatically diluted. However, only the Legislature can expand Welfare Code section 15630.1 to give teeth to financial institutions' mandated reporting duty under the law.

II. FACTS OF THE DAS CASE

It was alleged in the underlying case that the deceased elder, Mr. Kaustubh K. Das ("Mr. Das"), suffered from a stroke or strokes, brain tumors and dementia. Mr. Das then made a series of transfers overseas, during a period of a few months, totaling over \$300,000. His daughter, Ms. Baishali Das ("Das"), filed seven causes of action on behalf of Mr. Das against Bank of America, N.A. She claimed that her father lacked capacity to make financial decisions and that "[s]ome or all of his deficiencies were 'readily apparent to the eyes of even casual observers.'" She also alleged that some of the bank's "employees 'wonder[ed]' about his state of mind" but did not report Mr. Das's strange behavior to Adult Protective Services (APS), despite the "suspicious nature" of his transactions. Instead, tellers at the branch supplied Mr. Das with "'hundreds' of blank wire forms" and made numerous transfers to foreign countries to pay for supposed taxes on a lottery scam.⁴

Das's suit was based, in part, on claims that the bank's failure to report suspected elder abuse of Mr. Das caused injury to him. The trial court sustained a demurrer against the plaintiff's causes of action because plaintiff failed as a matter of law to state facts sufficient to constitute a cause of action. Based on the plain language of Welfare Code section 15630.1(g)(1) and a review of the legislative history of Welfare Code section 15630.1, the court concluded that the financial institution's mandated duty to report suspected financial elder abuse does not establish a duty of care in a private action.⁵

III. PRESUMED NEGLIGENCE BASED ON STATUTORY DUTY

A. California Evidence Code Section 669

In California, the theory for recovery on presumption of negligence began in case law and was codified by the Legislature in 1967 through the enactment of Evidence Code section 669. Evidence Code section 669 provides:

The failure of a person to exercise due care is presumed if:

- (1) He violated a statute . . . ;
- (2) The violation proximately caused death or injury to . . . property;
- (3) The . . . injury resulted from an occurrence of the nature which the statute . . . was designed to prevent; and
- (4) The person suffering . . . the injury . . . was one of the class of persons for whose protection the statute . . . was adopted.⁶

If a presumption of negligence has been established by proving the elements described above, then the defendant can rebut the presumption by proving that he or she acted reasonably as provided in Evidence Code section 669(b).

The California Law Revision Commission (CLRC) recommended the adoption of Evidence Code section 669 and provided a number of foundational cases that supported its enactment.⁷ First, the CLRC noted that *Alarid v. Vanier*⁸ stood for the proposition that "a presumption of negligence arises from proof of the violation of a statute, ordinance, or regulation."⁹ In *Alarid*, once proof of the violation of a statute was established, the defendant could escape liability if she showed that, under the circumstances, she did what a reasonable person was expected to do "who desired to comply with the law."¹⁰ The purpose of Evidence Code section 669, as stated by the CLRC, was to "further the public policies expressed in the various statutes, ordinances and regulations"¹¹

The current application of Evidence Code section 669 is discussed at length in *California Service Station and Automobile Repair Assn. v. Am. Home Assurance Co.*¹² The court in *Service Station Assn.* explained that presumption of negligence in California is proven when the plaintiff can show (1) that the defendant owed a duty of care to the plaintiff and (2) that the defendant violated the applicable standard of care established by Evidence Code section 669(a).¹³

"In order for the presumption [of Evidence Code section 669] to be available, 'either the courts or the Legislature must have created a duty of care.' [citation]."¹⁴ A duty of care can be imposed by statute, even a statute that does not create civil liability.¹⁵ When there is a breach of the duty of care prescribed by a statute or under the common law, then Evidence Code section 669 "can be used to



create a presumption that the applicable standard of care has been breached.”¹⁶

The California courts have allowed recovery in a private action on the basis of Evidence Code section 669 for the breach of a statute that imposed a duty of care on health care providers. In *Norman v. Life Care Centers of America, Inc.*,¹⁷ the deceased elder had suffered from injuries at a skilled care facility. The elder had fallen out of her bed on more than three occasions and lost two teeth, fractured her wrist and thumb and broke her nose. The plaintiff requested a jury instruction on “negligence per se” [presumed negligence] on the basis that the defendant nursing home had violated certain Department of Health Services regulations governing skilled nursing facilities, justifying a presumption of negligence in accordance with Evidence Code section 669. The trial court denied that jury instruction and instead gave only the standard instruction on elder abuse generally.¹⁸ However, the court of appeal reversed and held that the trial court erred by not allowing the jury instruction for presumption of negligence.¹⁹ The court reasoned that Welfare Code section 15610 et seq. imposed a duty of care by defining neglect in terms of a failure to exercise care that “a reasonable person in like position would exercise.”²⁰ Thus, *Norman* is an example of the court’s use of a duty of care that is established under the Welfare Code to allow private civil actions under Evidence Code section 669.

B. Mandated Reporting Under Welfare Code Section 15630.1

1. Statutory Language

Welfare Code section 15630.1 also prescribes certain actions in connection with elder abuse, but in a different context. Welfare Code section 15630.1, subdivision (f), imposes a civil penalty ranging from zero to \$1,000 for a mandated reporter’s failure to report suspected elder financial abuse, and up to \$5,000 if the failure to report was willful.²¹

Additionally, subsection (g) of the statute provides:

(1) The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty may not be brought for the same violation.

(2) Nothing in the Financial Elder Abuse Reporting Act of 2005 shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.²²

Therefore, the plain language seems to suggest that Welfare Code section 15630.1 allows only the government to recover a

limited civil penalty for damages caused to elders as a result of a breach of the financial institution’s reporting duty.

2. Legislative History

Welfare Code section 15630.1 was part of the Financial Elder Abuse Reporting Act of 2005, enacted in Senate Bill 1018 (“SB 1018”).²³ The original version of the bill added certain financial institutions as mandated reporters and provided that a failure to make a required report was a misdemeanor – the same consequences for a failure to report that was established in Welfare Code section 15630 for other mandated reporters.²⁴ That potentially could allow private plaintiffs to bring the action under the negligence per se standard as in *Norman*.

However, by July 7, 2005, after negotiation with opponents of the bill, SB 1018 was amended to include subsections (f) and (g).²⁵ The result was the removal of the new law’s bite, making private parties ineffectual as watch dogs.

3. The Court’s Analysis in Das

Against this background, the appellate court in *Das* had to decide whether the superior court was correct in dismissing Das’s claim of presumption of negligence under Evidence Code section 669 on the basis that subdivision (g) barred Das’s claim.

The impact of barring private civil actions under Evidence Code section 669 is critical because the court also found that the plaintiff had no claim under principles of common law negligence or breach of fiduciary duty.²⁶ The relationship of banks and depositors is a contractual relationship, not fiduciary, and the depositor cannot establish the elements for a negligence action unless the bank is negligent in its duties as established in the contract.²⁷ Other than contractual duties set out by the banks themselves, the bank can only be held accountable in a civil action if it “knowingly aids the commission of a tort.”²⁸ Under this approach, a depositor who is injured because of a bank’s failure to report suspected elder abuse can only recover if the statute creates a duty of care that is not otherwise imposed under the common law. If so, then violation of the statute may constitute presumed negligence under Evidence Code section 669 if the requirements of that statute are met.

Here, Das argued that the bank’s reporting duty under Welfare Code section 15630.1 was a sufficient basis to state a claim for negligence per se and, in addition, that the statutory reporting obligation enlarged the bank’s liability on other theories.²⁹ However, the appellate court held that subdivisions (g)(1) and (g)(2) foreclosed any private civil action under Welfare Code section 15630.1.³⁰

The court reasoned that, on its face, Welfare Code section 15630.1(g)(1) explicitly limits the right of action to the government and that subdivision (g)(2) negates any legislative intent to enlarge any legal basis for a private civil action based on the reporting obligation.³¹ Moreover, the specific restrictions in Welfare Code sections 15630.1(g)(1) and (2) are an exception to Evidence

Code section 669's general rule. "A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates."³²

The cases *People v. Davis*,³³ *Tarasoff v. Regents of University of California*,³⁴ *Landeros v. Flood*,³⁵ *Alejo v. City of Alhambra*³⁶ and *Klein v. Bia Hotel Corp.*,³⁷ cited by appellant *Das*, were distinguishable because the statutes in the cases cited did not have a limiting paragraph like subdivision (g).³⁸ Accordingly, the court was unable to expand the application of Welfare Code section 15630.1 to private actions that might otherwise be allowed under the general rule of Evidence Code section 669.

4. Implications of *Das*

The narrow holding of *Das* indicates that financial institutions will not be responsible to private parties in a civil action for a failure to report suspected financial abuse under Welfare Code section 15630.1, even in what may appear to be egregious circumstances. Although a conservatorship or other measures might be instituted to protect a vulnerable individual against financial abuse, mandated reporting by banks of suspected financial elder abuse does not provide that protection.

Das makes clear that the Legislature has the ability to limit the scope of enforceability of any statute, by barring private actions for breach of any statutory duty of care, which makes it impossible for the victims to be made whole.

IV. POLICY CONSIDERATIONS

A. Elder Population Growth Both Nationally and in California

The elder population is growing in the United States. The U.S. Census Bureau ("Census Bureau") reported that from 1900 to 1996 the population of elders went from 3 million to 34 million.³⁹ From the years 1990 to 2000 the number of people in the U.S. over 65 years old increased by 12%.⁴⁰ Finally, from 2000 to 2009 the U.S. elder population over 65 increased by 13%, from 34,992,000 in 2000⁴¹ to 39,570,000 in 2009.⁴²

Locally in California, the elder population is increasing more rapidly than in the U.S. overall. The 2000 census reported that California had a population of over 3.5 million people over the age of 65.⁴³ The Census Bureau estimated in 2009 that 4.14 million California residents were over the age of 65.⁴⁴ Thus, the elder population in California increased 18% from 2000 to 2009, markedly greater than the U.S. overall.

Looking forward, the California Department of Finance reports a projected 36.4% increase from 2010 through 2020 in people over age 60.⁴⁵ Similarly, the California State Plan on Aging 2009-2013 claimed that California's population of people over 60 will increase 39% from the period 2010 to 2020.⁴⁶ Because of these actual and

projected increases in the elder population, one of California's primary concerns should be planning for the protection, care and welfare of its elder population.

B. Reporting and Financial Exploitation

Elder abuse and elder financial exploitation is a common risk to U.S. elders. The National Research Center on Elder Abuse (NRCEA), on the basis of its national survey, found that financial exploitation embodied 13% of the investigated reports of elder abuse in 2000,⁴⁷ and had grown to 20.8% in 2004.⁴⁸ Also in 2000, the NRCEA found that 48.5% of all reports of elder abuse were substantiated.⁴⁹ From 2000 to 2004, the NRCEA reported a 19.7% increase in abuse reports generally regarding elders and dependent adults and a 15.6% increase in substantiated abuse reports.⁵⁰ The 2004 Survey reported that 14.7% of all substantiated abuse reports were for financial abuse.⁵¹ Thus, elder abuse reports are on the rise and the category of financial abuse is an unquestionable problem that many elders face.

Though financial abuse is a palpable problem for elders, there is little financial abuse reporting by bank employees. The 2000 Survey reported that bankers were ranked as the lowest identified source of elder or dependent adult abuse complaints, reporting only 215 incidents (0.1%) of abuse.⁵² It is possible that the lack of state legislation may discourage bank employees from reporting financial elder abuse. Bank employees, left with only their consciences to guide them, may often fail to report elder abuse.

Though reporting statutes exist in some states, banks still have concerns about reporting.⁵³ Banks resist reporting because "disclosure of confidential information relating to a customer may result in liability," arising from federal financial privacy legislation.⁵⁴ However, despite this concern, some states have more rigorous reporting standards than California. The key examples are Arkansas, Iowa, Minnesota and Michigan, which mandate financial abuse reporting and also impose liability for "damages proximately caused by [mandated reporters'] failure to report."⁵⁵ Some argue that mandatory reporting requirements put banks in a better position to defend against privacy invasion lawsuits because the reporting is required by statute.⁵⁶

C. Background for SB 1018 and Welfare Code Section 15630.1

Proponents of SB 1018 saw financial elder abuse as a serious problem in California. A survey done in Los Angeles County by Adult Protective Services indicated that 26% of elder abuse was fiduciary (defined as stealing or misuse of property or other assets).⁵⁷ The many proponents of Welfare Code section 15630.1 drafted SB 1018 to provide better protection to the elderly against financial abuse by encouraging financial institutions to report suspected incidents of elder financial abuse.⁵⁸ The drafters claimed that financial abuse accounted for 29% of elder abuse reports in California in 2005, but only one in one hundred occurrences of financial elder abuse were



reported.⁵⁹ Thus, elders were experiencing financial abuse and California state law did not provide adequate protection.

Opponents were concerned about SB 1018 because of the potential for over-reporting and increased liability.⁶⁰ The California Bankers Association (CBA) and the California Chamber of Commerce initially opposed SB 1018 because it only contained limited protection from private civil litigation and would create unacceptable risks of litigation relating to privacy invasion and failure to prevent elder financial abuse.⁶¹ Also, the CBA claimed that the reporting duty was unnecessary because: (1) policies for voluntary reporting were already in place and (2) the duty could lead to over-reporting, which would “prevent . . . the quick action necessary to respond to a valid claim of suspected elder abuse.”⁶² Therefore the opponents contended that the proposed statute was unacceptable.

One of the many proponents of the bill, the County Welfare Directors Association of California (CWDA), responded to CBA’s opposition by asserting that the reporting duty was necessary because: (1) the policies currently in place were not enough because financial abuse was still underreported; (2) the high costs to elders due to the failure to report were far more damaging than the potential effect of APS becoming overwhelmed with reports; (3) if APS becomes overburdened by the reports, cases can be referred to “public assistance, shelter and care, public conservatorships,

medical and mental health services.”⁶³ Thus, the financial elder abuse crisis was recognized; and solutions for an influx in the number of APS reports were directly on hand.

Though proponents responded to CBA’s stated concerns, proponents decided to add subdivisions (f) and (g) to the new section 15630.1 to compromise with the opponents.⁶⁴ The changes may have proved fatal to the intended financial protections contemplated by the new statute.

D. Increased Reporting After SB 1018

1. Comparison to Population Growth

The increase in the elder population in California alone should cause an increase in elder abuse, which should also increase the reports of elder abuse. The statistics indicate that the increase in elder abuse reporting from 2006 to 2007 exceeded the California elder population growth in that period, although there may have been other factors that accounted for the reporting increase (which was not limited to financial abuse).

For example, from 2006 to 2007, the number of elders over the age of 65 in California has grown 1.83%. (See Table 1 below.)⁶⁵

TABLE 1

PERCENT INCREASE IN CALIFORNIA ELDERS OVER 65 FROM YEARS 2006 to 2007			
YEAR	ELDER POPULATION OVER 65	INCREASE IN ELDER POPULATION	PERCENT INCREASE IN ELDER POPULATION
2006	3,931,594		
2007	4,003,593	71,999	
			1.83%

During the same period there was an overall increase in elder abuse reports of 8%, from 5,365 per month in 2006 to 5,802 per month in 2007. (See Table 2 below.)⁶⁶

TABLE 2

CALIFORNIA ELDER ABUSE REPORTS IN 2006/2007				
#	MONTH/2006	NUMBER OF RE- PORTS	MONTH/2007	NUMBER OF RE- PORTS
1	Jan-06	5,195	Jan-07	6,054
2	Feb-06	4,557	Feb-07	4,395
3	Mar-06	5,392	Mar-07	6,041
4	Apr-06	4,767	Apr-07	5,740
5	May-06	5,521	May-07	5,997
6	Jun-06	5,832	Jun-07	6,024
7	Jul-06	5,829	Jul-07	6,222
8	Aug-06	6,366	Aug-07	6,385
9	Sep-06	5,237	Sep-07	5,767
10	Oct-06	5,613	Oct-07	6,196
11	Nov-06	5,022	Nov-07	5,519
12	Dec-06	5,047	Dec-07	5,285
TOTAL REPORTS/YEAR		64,378		69,625
AVERAGE REPORTS/ MONTH		5,365		5,802
PERCENTAGE IN- CREASE				8%

2. Comparison to Effect of SB 2199

It is interesting to compare the increase in elder abuse reporting after the enactment of SB 1018 with the change after Senate Bill 2199 ("SB 2199") took effect. SB 2199 increased the mandated reporters of suspected elder abuse to anyone who has the responsibility for the care or custody of an elder or dependent adult and otherwise defined and expanded the abuse reporting requirements. It became effective in January of 1999.⁶⁷

APS had an increase of 16.3% in elder abuse reporting in 1999 after SB 2199 took effect, compared to the average monthly number of reports in 1998.⁶⁸ In contrast, after SB 1018 was enacted, the average monthly number of reports increased 9.18% in the first 8 months of 2007 compared to 2006.⁶⁹

E. New Legislation Seeks to Delete the Sunset Date for SB 1018

As originally enacted, the mandatory reporting of suspected elder abuse by financial institutions would have expired on January 1, 2013. Senate Bill 33 and Assembly Bill 518, currently under consideration, advance the interests of SB 1018 because they seek to delete the sunset date of January 1, 2013.⁷⁰ When this article was written, both bills were unopposed.⁷¹ One likely reason SB 33 and SB 518 are unopposed by the banking interests, who opposed

the original enactment of SB 1018, is because SB 1018 has had little to no effect on how the banking institutions operate, without consequences. No movement has been made, thus far, to expand Welfare Code section 15630.1 to allow for private civil actions for a financial institution's failure to report suspected financial abuse.

F. Summing it up

Elder populations over the age of 65 have grown both in California and nationally. Though financial exploitation of elders has increased, banks' fear of liability may continue to hinder financial institutions' motivation to report suspected elder abuse. The many proponents of SB 1018, in addressing the types of concerns voiced in the NRCEA's survey, drafted the bill without a bar on civil actions against mandated financial reporters. Opponents voiced their concerns that mandated reporting with civil penalties would cause too many cases for APS to handle and would increase their liability. Ultimately, amended SB 1018, as enacted in Welfare Code section 15630.1, foreclosed civil actions, as confirmed by the Court in *Das*.

SB 1018 has had some modest effect on reporting of suspected financial elder abuse. However, SB 1018 had the potential to cause waves of reports to APS for the benefit of California's abused elder population but instead the statistics reflect, at best, a leaky faucet.



V. CONCLUSION

Though Mr. Das was harmed in the amount of \$300,000 as a result of the bank employees' failure to report suspected financial abuse, the court held that Welfare Code section 15630.1 provided no remedy. The court, on this issue of first impression, correctly relied on the plain language Welfare Code section 15630.1 subsections (f) and (g) to discern the Legislature's intent and effectuate its purpose.

These negotiated changes may have been necessary to pass SB 1018 initially. However, the courts would be in a better position to protect elders from financial abuse if the California Legislature would amended Welfare Code section 15630.1 to allow private litigation for a financial institution's failure to report suspected elder financial abuse. Moreover, banking institutions would be substantially encouraged to report suspected financial elder abuse because reporting would also protect their own interests. The Legislature should decide if the burden on bank employees to make a five minute phone call to APS is so high that it justifies losing the benefit of providing real protection to our elders from suspected financial abuse. For now, as confirmed by *Das*, Welfare Code section 15630.1 provides no private civil action against financial institutions for their failure to report suspected financial abuse.

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1. *Das v. Bank of America*, NA. (2010) 186 Cal. App. 4th 727 (hereafter "Das").
2. The California Welfare and Institutions Code is referred to in this article as "Welfare Code."
3. *Das*, *supra*, at p. 738.
4. *Das*, *supra*, at pp. 732-733.
5. *Das*, *supra*, at p. 738.
6. Evid. Code, section 669(a).
7. See Recommendation Relating to The Evidence Code, Number 1-Evidence Code Revisions (October 1966) 8 Cal. Law Revision Com. Rep. (1967) pp. 109, 117 (hereafter "CLRC Report"). The CLRC Report is available on the CLRC's Web site at <<http://www.clrc.ca.gov/pub/Printed-Reports/Pub066.pdf>>.
8. *Alarid v. Vanier* (1958) 50 Cal. 2d 617.
9. CLRC Report, *supra*, at p. 109.
10. *Alarid v. Vanier*, *supra*, 50 Cal. 2d at p. 624.
11. CLRC Report, *supra*, at p. 109.
12. *California Service Station and Automobile Repair Assn. v. Am. Home Assurance Co.* (1998) 62 Cal. App. 4th 1166 (hereafter "Service Station Assn.>").
13. *Id.* at pp. 1178-1181.
14. *Millard v. Biosources, Inc.* (2007) 156 Cal. App. 4th 1338, 1353, quoting *Rosales v. City of Los Angeles* (2000) 82 Cal. App. 4th 419, 430.
15. *Vesely v. Sager* (1971) 5 Cal. 3d 153, 164. "A duty of care, and the attendant standard of conduct required of a reasonable man, may of course be found in a legislative enactment which does not provide for civil liability."
16. 1 Levy, et al., Cal. Torts (2010) section 3.10[1].
17. *Norman v. Life Care Centers of America* (2003) 107 Cal.App. 4th 1233 (hereafter "*Norman*").
18. *Id.* at pp. 1240-1241.
19. *Id.* at pp. 1242-1243.
20. *Id.* at p. 1243, quoting Welf. & Inst. Code, section 15610.57(a)(1).
21. Welf. & Inst. Code, section 15630.1(f).
22. Welf. & Inst. Code, sections 15630.1(g)(1) and (2).
23. Sen. Bill No. 1018 (2005-2006 Reg. Sess.) section 4 (hereafter "SB 1018").
24. SB 1018, as introduced Feb. 22, 2005, found at <http://leginfo.ca.gov/pub/05-06/bill/sen/sb_1001-1050/sb_1018_bill_20050222_introduced.pdf>.
25. See Assem. Com. on Judiciary, analysis of Sen. Bill No. 1018, as proposed to be amended July 7, 2005, summary paragraphs 8 and 9. The Comments in the analysis noted: "As proposed To Be Amended, The Opposition Is Believed To Be Removed. This bill was put over for hearing on July 5 while the author conducted further negotiations with opponents. The Committee is informed that these negotiations are now complete, and that the opposition has been removed. As proposed to be amended, the bill addresses several important concerns of the financial industry. First, the bill provides that civil penalty for violation may be recovered only in an action brought by one of the specified public prosecutors. If that point might be unclear, the bill goes on the state that no other person may bring an action under the act. Obviously, there is to be no private right of action for recovery of the civil penalty. As proposed to be amended, the bill further provides that it shall not be construed to limit, expand or otherwise modify any civil liability or remedy that may exist under any law." Found at <http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1001-1050/sb_1018_cfa_20050707_094400_asm_comm.html>.
26. *Das*, *supra*, 186 Cal. App. 4th at pp. 740-743.
27. *Id.* at p. 741.
28. *Ibid.*
29. *Das*, *supra*, at p. 737.
30. *Id.* at p. 738.
31. *Das*, *supra*, at p. 737.
32. *Id.* at p. 738, quoting *San Francisco Taxpayers Assn. v. Board of Supervisors* (1992) 2 Cal. 4th 571, 577 [further citation omitted].
33. *People v. Davis* (2005) 126 Cal App. 4th 1416.
34. *Tarasoff v. Regents of University of California* (1976) 17 Cal. 3d 425.
35. *Landeros v. Flood* (1976) 17 Cal. 3d 399.
36. *Alejo v. City of Alhambra* (1999) 75 Cal. App. 4th 1180.
37. *Klein v. Bia Hotel Corp.* (1996) 41 Cal. App. 4th 1133.
38. *Das*, *supra*, at p. 739.
39. U.S. Dept. of Commerce, Bureau of the Census, Current Population Reports, Series P23-194, Population Profile of the United States: 1997, p. 50; found at <<http://www.census.gov/prod/3/98pubs/p23-194.pdf>>.

40. U.S. Dept. of Commerce, Bureau of the Census, Economics and Statistics Administration, The 65 Years and Over Population: 2000 (hereafter "65 Years and Over Population"), p. 1; found at <<http://www.census.gov/prod/2001pubs/c2kbr01-10.pdf>>.
41. U.S. Dept. of Commerce, Bureau of Census, Profile of General Demographic Characteristics: 2000 Census 2000 Summary File 2 (SF 2) 100-Percent Data; found at <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_00_SF2_DP1&prodType=table> (last accessed June 20, 2011).
42. U.S. Dept. of Commerce, Bureau of the Census, Table 10. Resident Population, by Race, Hispanic Origin, and Single Years of Age; found at <<http://www.census.gov/compendia/statab/2011/tables/11s0010.xls>> (last accessed June 20, 2011).
43. 65 Years and Over Population, *supra*, at p. 4.
44. U.S. Dept. of Commerce, Bureau of the Census, State and County Quick Facts; found at <<http://quickfacts.census.gov/qfd/states/06000.htm>> (last accessed Dec. 7, 2010).
45. Department of Finance, Population Projections Report 03 P-3, Table 119, California Projected Population Age 60 and Over, Percent Change by Decade for 2000 through 2050 (May 2004); found at <<http://www.aging.ca.gov/stats/CensusTables/T119.pdf>> (last accessed Nov. 21, 2010).
46. California Department on Aging, California State Plan on Aging – 2009-2013, p. 8 (estimated the population of "people over sixty years old in 2010 at 6.4 million, and in 2020 at 8.9 million); found at <http://www.aging.ca.gov/whatsnew/California_State_Plan_on_Aging_AoA_2009-2013_06-30-2009.pdf> (last accessed Nov. 21, 2010).
47. National Committee for the Prevention of Elder Abuse and National Adult Protective Services Association, The 2000 Survey of State Adult Protective Services: A Response to the Abuse of Vulnerable Adults (November 2002), p. 21 (hereafter "2000 Survey"); found at <http://www.ncea.aoa.gov/ncearoot/main_site/pdf/research/apreport030703.pdf> (last accessed June 2, 2011).
48. National Committee for the Prevention of Elder Abuse and National Adult Protective Services Association, The 2004 Survey of State Adult Protective Services: Abuse of Adults 60 Years of Age and Older (February 2006), p. 18 (hereafter "2004 Survey"); found at <http://www.ncea.aoa.gov/ncearoot/main_site/pdf/2-14-06%20final%2060+report.pdf>. See also LA 4 Seniors, Elder Abuse & Neglect (hereafter "LA 4 Seniors"); found at www.la4seniors.com/elder_abuse.htm (last accessed Nov. 21, 2010).
49. 2000 Survey, *supra*, at p. ix.
50. 2004 Survey, *supra*, at p. 5.
51. 2004 Survey, *supra*, at p. 18.
52. 2000 Survey, *supra*, at p. 23.
53. See Hughes, Can Bank Tellers Tell? – Legal Issues Relating to Banks Reporting Financial Abuse of the Elderly (2003) (hereafter "Hughes"), pp. 6, 10; found at <http://www.ncea.aoa.gov/ncearoot/main_site/pdf/publication/bank_reporting_long_final_52703.pdf>, see also 2000 Survey, *supra*, at p. 17 (bankers are mandated reporters in two states).
54. Hughes, *supra*, at p. 6.
55. *Id.* at p. 12.
56. *Id.* at p. 13.
57. LA 4 Seniors, *supra* (last accessed Nov. 21, 2010).
58. See Assem. Com. on Aging and Long-Term Care, Analysis of SB 1018, hearing June 28, 2005; found at <http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_1001-1050/sb_1018_cfa_20050706_104638_asm_comm.html>.
59. *Id.* at p. 6.
60. Assem. Com. on Aging and Long-Term Care, Analysis of SB 1018, *supra*, at pp. 7, 9.
61. *Id.* at p. 7.
62. *Id.* at p. 9.
63. Assem. Com. on Aging and Long-Term Care, Analysis of SB 1018, *supra*, at p. 9.
64. See note 25, *supra*.
65. U.S. Dept. of Commerce, Bureau of Census, State Characteristics, Selected Age Groups by States and Puerto Rico; 2006; found at <<http://www.census.gov/popest/states/asrh/SC-EST2006-01.html>> (last accessed June 20, 2011); U.S. Dept. of Commerce, Bureau of Census, State Characteristics, Selected Age Groups by States and Puerto Rico; 2007; found at <<http://www.census.gov/popest/states/asrh/SC-EST2007-01.html>> (last accessed June 20, 2011).
66. California Department of Social Services Administration Division, Data Systems and Survey Design Bureau, Adult Protective Services Reports of Alleged Abuse within APS Jurisdiction July 2005-March 2011; found at <<http://www.dss.cahwnet.gov/research/res/pdf/daptrends/SOC242M6Juris.pdf>> (last accessed June 20, 2011).
67. Adult Protective Services Program, Research and Development Division, Adult Programs Analysis Team, Early Impact of Senate Bill 1999, Opening the Door for Adult Protective Services Program (May 2000) pp. 2-3 (hereafter "SB 1999 Report"); found at <<http://www.cdss.ca.gov/research/res/pdf/dapreports/APS-SB2199.pdf>> (last accessed June 10, 2011).
68. SB 1999 Report, *supra*, at p. 6 (note that 1999 figures are for the first 8 months of 1999 only).
69. See Table 2 above. During the first 8 months of 2007 there were a total of 46,858 abuse reports, for a monthly average of 5,857, compared to an average of 5,365 reports per month during 2006, before the reporting mandates of SB 1018 took effect.
70. Information on pending bills may be found at <<http://www.leginfo.ca.gov/bilinfo.html>>.
71. See Sen. Rules Comm. Bill Analysis, SB 33; found at <http://leginfo.public.ca.gov/pub/11-12/bill/sen/sb_0001-0050/sb_33_cfa_20110414_115837_sen_floor.html> (last accessed June 10, 2011).

Attorney Wanted - Estate / Business Planning

Barulich Dugoni Law Group, Inc., a law firm focused on sophisticated estate and business planning seeks five to seven year attorney with suitable experience to support its estate planning, business succession planning and estate administration practices. This would be a full-time position and salary is commensurate with experience.

Experience must include business planning (formation, operation and succession), drafting and administering sophisticated estate plans, including irrevocable trusts, limited partnerships, limited liability companies and other ancillary documents and agreements. Transfer tax and income tax background required. Some real estate transactional experience and non-profit work preferred.

Candidates must be organized, efficient, and detail oriented, with the ability to prioritize and follow through to completion. Must be able to work independently with clients, develop business relationships and have partnership potential. Must be admitted to practice in California.

Interested and qualified applicants, please send cover letter and resume to: Steve Parker at Barulich Dugoni Law Group -- steve@bdlawinc.com.

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