

Civil Legal Strategies: Using Demand Letters and Bench Memos in Elder Abuse Cases

TIP SHEET • August 2024

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Introduction

Representing survivors of elder abuse presents unique challenges and requires a person-centered approach. The effects of ageism and perceived diminished capability are two examples of challenges legal practitioners face when navigating these cases. Using bench memos (documents provided to the court that summarize the facts, issues, and arguments of a case) and demand letters (letters sent to the opposing party to ask them to take a specific action) can be effective strategic tools in these cases. Both can be a means of educating the judiciary and parties about the effects of elder abuse and the legal rights of older adults in these cases.

Key Lessons

1. Learning how to talk about ageism and diminished capability is essential to being an effective advocate for survivors of elder abuse.
2. Bench memos can be an effective means of educating the court and other parties about the context and systemic effects of elder abuse.
3. Demand letters can be an effective litigation, or pre-litigation, tool in elder abuse cases, but it is important to be aware of statutory and ethical requirements when crafting demand letters.

Practice Tips

1. Learn how to reframe ageism.

There are many resources available that describe ageism and its impact on individuals and communities. Additional great resources are available that help people talk about ageism in a productive way. Spend time with these resources. Part of being a good advocate is the ability to tell the client's story in a compelling way. Learning to reframe and talk about ageism is part of the storytelling process.

2. Bench memos are great educational vehicles for attorneys.

Bench memos can go beyond what lawyers might typically think of – summary judgment memos, appellate memos, etc. Just as one can be creative in pleading, lawyers can be creative in the filing of bench memos. Developing a set of bench memos that speak to the systemic roots and effects of elder abuse can enhance the practice of law. These memos do not need to be client-specific and can be used repeatedly when appropriate. Suggested bench memo topics include: elder abuse, guardianship and supported decision making, ageism, ableism, poverty, and diminished capability. One can also consider filing a respected resource as an explanatory exhibit in elder abuse cases.

3. Demand letters are often an integral part of litigation strategy. It is important to be familiar with the statutory requirements and ethical considerations in play.

Demand letters are used in a variety of cases, including elder abuse cases. Sometimes demand letters are required by statute before litigation can commence. Sometimes demand letters are an effective tool to resolve a dispute without the necessity of litigation. As with all litigation decisions, the use of demand letters must be client-driven and client-centered. It is important to have conversations with the client about their safety, the safety of their property, and likely responses to a demand letter before deciding to write a demand letter. It is also important to be clear about what actions the client is willing to take if the demand letter does not resolve the dispute before writing a demand letter.

4. Look to Model Rules of Professional Conduct 3.1, 4.1, 4.4, and 8.4 and corresponding case law when considering the ethics of sending a demand letter.

Conclusion

We are all aging and are all affected by ageism. It is no surprise that ageism and its accompanying biases, like perceived diminished capability, are factors in elder abuse cases. Practitioners can become more effective advocates by learning about ageism and diminished capability and by learning how to frame and talk about these issues. Using bench memos is one way practitioners can share this knowledge with the judiciary and other parties in an elder abuse case. Demand letters can also be an effective strategic and educational tool in elder abuse cases.

Additional Resources

- [Ageism](#), World Health Organization
- [Aging](#), Frameworks Institute
- [Model Rules of Professional Conduct](#), American Bar Association
- [Reframing Aging](#), National Center to Reframe Aging by the Gerontological Society of America
- [National Center on Law and Elder Rights](#)
- [ABA Commission on Law and Aging](#)
- [Administration for Community Living](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

This Tip Sheet was supported by contract with the National Center on Law and Elder Rights, contract number HHS75P00121C00033, from the U.S. Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201.