

Power of Attorney Revocations 101

Jessica Brock, ABA Commission on Law and Aging

Erica Costello, ABA Commission on Law and Aging

June 25, 2024

Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About ABA COLA

The ABA Commission on Law and Aging is a collaborative and interdisciplinary leader of the American Bar Association's work to strengthen and secure the legal rights, dignity, autonomy, quality of life, and quality of care of aging persons.

The Commission accomplishes its work through research, policy development, advocacy, education, training, and through assistance to lawyers, bar associations, and other groups working on issues of aging.

Key Lessons

1. Participants will learn when POA revocation may be a helpful civil remedy in cases of elder abuse.
2. Participants will learn client interviewing techniques in POA revocation cases.
3. Participants will learn how to take a POA revocation case from initial intake to closing.

Financial Exploitation and POA Revocation

Power of Attorney (POA)

- A Power of Attorney is a document that appoints an agent to transact business on behalf of the grantor.
- The acts of the agent legally bind the grantor.
 - The same as if they signed themselves.
- Authority granted is based on statute and document.
- Durability – presumed in nearly all states.
- Effective date is state specific – but in nearly all states it is when signed unless the document says otherwise.

Why Revoke a Power of Attorney?

- Agent is abusing authority
 - Financial exploitation
 - Confinement
 - Paternalism
- Stop the bleeding
- Concern of unknown authority being exercised

Methods of Revocation

- Language in a subsequent power of attorney
 - Must specifically state that the previous or all other powers of attorney are revoked
 - Execution of subsequent power is not automatically a termination
- Revocation letter/notice
- Divorce, annulment, or legal separation from the principal (in some jurisdictions)
- Court order

Sources of Information

- Power of Attorney document
 - Is it in effect right now?
 - Does it specify terms of revocation?
- Statute
 - Form (oral or in writing)
 - Service (almost every state requires actual notice to agent)
- Common law
 - Check case law on revocation
 - Where statute is silent, common law may apply

Warning:

- If an entity or person does not have actual knowledge of the revocation, they are not liable for relying on a revoked power of attorney.
- *See* Section 110(d) of the UPOAA

Practice Tip #1:

- Send a copy of the POA revocation to every person and institution that could possibly be relying on a prior POA (financial institutions, medical providers, skilled nursing facilities, insurance and benefits providers, etc.).

Practice Tip #2:

- If you are concerned an entity may not accept the revocation or is relying on an “unsprung” POA, contact general counsel for the entity to communicate the required legal action to their client.

Opening a POA Revocation Case

Initial Client Conversation

- The document
 - Is there definitely a POA being used?
 - Does the client have a copy of the POA?
 - Who might have a copy of the POA?
 - Was it used in a real property transaction?
 - Who needs to know it is revoked?
- Agent's actions
 - What is the agent doing under the POA?
 - How will the agent react to a revocation notice?
 - Do we need to take protective measures?

Attorney Planning

- Contact information
 - The agent
 - Revocation notice recipients
- Logistics
 - How will client sign the revocation?
 - Do you need a notary or witness?
 - Do you need to make protective arrangements?
- Accounting
 - Does client also want to ask for an accounting?
 - Will the accounting demand be sent with the revocation notice?

Practice Tip #3:

- Hand delivery of a revocation notice to an institution on the same day notice is mailed to the agent can be a protective action, allowing the client to secure accounts and records prior to the agent receiving notice.

Practice Tip #4:

- Securing an accompanying letter certifying client's capacity at the time of signing a revocation can be a type of protective action.

Writing the Revocation

I, John Smith, of Springfield, Illinois, hereby revoke any and all Powers of Attorney and all authority to act as my agent given to Mildred Simpson. From this date forward, Mildred Simpson has no authority to handle my property or business affairs or to make any decisions on my behalf. This document serves as notice of the revocation to Mildred Simpson and to all parties that receive it. A photocopy has the same effect as the original.

If Mildred Simpson tries to do business in my name, please contact...immediately.

Client Follow-Up

Follow-up Client Conversation (1 of 2)

- Review the revocation document
- Instructions on who needs a copy of the revocation notice and why
 - Also put this in writing to the client
 - Offer to do this for your client
- Does the client need/want to execute a new power of attorney?
 - Discuss pros and cons of doing this versus waiting a bit
 - If they want to execute a new POA, do they want to craft it differently, with more safeguards?

Practice Tip #5:

- Consider sending revocation notices to other parties for your client to ensure there is a record of notice. Provide copies of proof of service to your client for their records.

Follow-up Client Conversation (2 of 2)

- Now that the client has cut off the abusive agent, what do they want to do next?
 - Accounting
 - Conversion
 - Contact law enforcement
 - Nothing
- Sometimes the client just wants to stop the abusive behavior without taking further action. Create space for that possibility.

Practice Tip #6:

- Offer the client an advice letter on POA accountings and related actions at the close of representation. This can be framed as providing them with food for thought or arming them with information in case others try to tell them what the law says.

Resources

- [Drafting Advance Planning Documents to Reduce the Risk of Abuse or Exploitation](#), National Center for Law and Elder Rights
- [Managing Someone Else's Money Guides](#), Consumer Financial Protection Bureau
- [Five Safeguards for Power of Attorney](#), ABA Commission on Law and Aging
- [National Center on Law and Elder Rights](#)
- [ABA Commission on Law and Aging](#)
- [Administration for Community Living](#)

Questions?

Visit Our Website: ncler.acl.gov

NATIONAL
CENTER ON
**LAW &
ELDER
RIGHTS**

Search for resources

Read practice tips

Sign up for the email list

Request a case consultation

Learn about upcoming trainings

ncler.acl.gov



Case Consultations

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