



# CONSUMER ATTORNEYS OF CALIFORNIA

*Seeking Justice for All*

## **PROTECTING SENIORS' LEGAL RIGHTS IN ELDER ABUSE CASES**

**SB 1065**  
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### **SB 1065:**

As recently amended, all industry opposition has been removed and SB 1065 passed the Assembly Judiciary Committee with bipartisan support. It is currently pending before the Assembly Appropriations Committee.

SB 1065 helps seniors get to trial more quickly in an Elder Abuse Act claim by providing an expedited appeal process with a fixed outer limit of 100 days to resolve the appeal of an order denying a petition to compel arbitration. This 100 day expedited appeal only applies in cases where the plaintiff has filed a claim under the Elder and Dependent Adult Civil Protection Act, and where the plaintiff has been granted a trial preference because of age and poor or failing health.

### **BACKGROUND:**

California's elder abuse statute, the Elder Abuse and Dependent Adult Civil Protection Act (EADACPA), was enacted to protect elderly and dependent adults from abuse. (Welfare & Institutions Code § 15600 et seq.) It defines civil elder abuse to mean physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment resulting in physical harm or pain or mental suffering. (Welfare & Institutions Code § 15610.07). Other than financial elder abuse, these claims all require the higher standard of "clear and convincing" proof and are thus difficult to pursue. Cases brought under the Elder Abuse Act are not subject to MICRA.

Under current law, trial courts may grant victims of elder abuse a speedy hearing in light of their age and failing health. CCP § 36 (a). This law allows a party to a civil action who is over 70 years of age to petition the court for a preference, if the following apply:

- (1) The party has a substantial interest in the action as a whole; and
- (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

### **PROBLEM:**

Currently, elders who are (1) 70 and ill or will die in 6 months and (2) have been granted a preference have a right under the law to have their trial within 4 months. This right is being stripped away by a 2-3 year appellate process defendants are routinely utilizing to delay until the elder victim dies.

**Delaying an elder's speedy trial through unnecessary appeals:** Instead, under current law, a defendant who tries (and fails) to force an elder abuse victim into arbitration can nonetheless override the court's order and delay the hearing another 2-3 years by filing an appeal.

The delay caused by the appeal is done in the hope that the elder will not survive long enough for the appeal to be decided, thereby reducing the defendant's liability if the victim dies before trial.

**Example:** Mrs. Young, a 90-year-old stroke victim, brought an elder abuse action against her nursing home after she was sexually assaulted at defendants' facility and contracted a sexually transmitted disease. Mrs. Young obtained a CCP 36 trial preference. The nursing home defendant lost their motion to compel arbitration. However, the nursing home appealed the denial.

The appeal resulted in a 3-0 ruling in favor of Mrs. Young when the court found that the arbitration agreement could not be enforced against her. (*Young v. Horizon West, Inc.* (2013) 220 Cal. App. 4<sup>th</sup> 1122). ***The appeal took almost a year and a half, even as an expedited process (appellate preference was granted).***

### **SOLUTION:**

SB 1065 helps seniors get to trial more quickly in an Elder Abuse Act claim by providing a fixed outer limit of 100 days to resolve the appeal.

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