

Attorney Timothy P. Crawford, CPA, CELA*, CAP**
wanted to share this information with you.

ATTORNEYS' OBLIGATION TO BE ALERT TO UNDUE INFLUENCE

Greater Milwaukee Area Offices in Brookfield, Glendale, Milwaukee & Racine

Your Asset Protection Law Firm
840 Lake Avenue, Suite 200
Racine, WI 53403
Toll Free: (888) 634-6675
(262) 634-6659

E-mail: tpc@tpcelderlaw.com
Website: www.TpcLaw.com

When preparing estate planning documents, an attorney has a fiduciary duty to the client to be alert to any undue influence being placed upon the client. The following questions must be answered when an action is contemplated involving undue influence:

- Is the client living in an assisted living facility or skilled nursing facility, especially one specializing in care for dementia patients?
- Who called the attorney on behalf of the client?
- Did the attorney meet with the client alone?
- Who else was present during the meeting with the attorney?
- Was the client reading from prepared notes which may have been dictated by the abuser?
- Who paid the attorney?
- What were the circumstances of prior, long-standing estate planning and advance directive documents?
- Are the new documents a big departure from an established plan?
- Did the client ask any questions related to the documents?
- Did the client appear to understand the nature and content of the documents?
- Was the client oriented to place, day, year and time?

In one recent case, the answers to the above questions indicated trouble on all fronts. The client, Sue*, was the long-standing Attorney in Fact for her mother, Fran. Fran was in her late nineties and living in a dementia section of an assisted living facility. Fran's son, Glen, engaged a new attorney to revise Fran's advance directive documents in his favor. The new attorney drafted the new documents without performing due diligence and without conferring with Fran alone while ignoring all relevant signs of undue influence. Then the attorney allowed Fran to sign the documents in the presence of Glen.

Distressed over her mother's care, Sue was forced to go to court to fight against her brother's actions to invalidate the new advance directive documents and to gain guardianship over her mother. The court did appoint Sue as Guardian for her mother and invalidated the new advance directive documents. Then Sue, as Guardian, was given court authority to file an action against the attorney hired by Glen.

Moral: Undue influence beware and estate planning attorney be wary.

*Names have been changed.

**“Those Who Plan Ahead Win.
Those Who Don’t Plan Ahead Lose.”**

This article is not intended as legal advice. It is basic information. I would recommend that you call Attorney Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Timothy P. Crawford can be reached toll-free at 1-888-634-6675. When you call in, please mention the fact that you have read this article.

*Attorney Timothy P. Crawford is a Board Certified Elder Law Attorney(CELA). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

**Timothy P. Crawford was invited to join the Council of Advanced Practitioners of the National Academy of Elder Law Attorneys (NAELA) in August of 2005. The Council of Advanced Practitioners (CAP) is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated the top in the nation by Martindale Hubbell. A Service that provides an independent rating of the quality of attorneys.

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“A majority of text has come from an article prepared by Attorney Howard S. Krooks, friend of Attorney Timothy P. Crawford, is used here with permission.”