



Profile: Kirsten Fish

Elder abuse specialist of 20 years remains a steadfast advocate for a marginalized population

By **STEPHEN ELLISON**

It's an unfortunate reality in today's world that some in the elderly population lose their ability to care for themselves and must rely on others for nourishment and wellness and comfort. A sadder part of that reality is the bad element among those tasked with providing such care, and that's where Kirsten Fish comes in and does some of her best work.

Fish, a partner with Needham Kepner & Fish in San Jose, has specialized in elder abuse and neglect cases for the better part of two decades, representing victims in cases that involve physical abuse, neglect, endangerment, sexual abuse, psychological abuse, abandonment and financial abuse. It's a niche within the plaintiffs' bar Fish did not necessarily seek out but one she certainly took ownership of from the outset. And even after 20 years, she remains just as passionate about her clients as she was on Day One.

"You're seeking justice for people, helping people in the worst times of their life, which is important," Fish said when asked about her connection to clients and cases. "Especially with elders because a lot of times they have no voice at all, they feel completely lost. They don't know who to turn to for help. I just feel a lot of compassion for them. And also, I feel like there's so much we can do to help them and actually make a difference, make change.

"But, a lot of what's happening in these nursing homes and with these financial abuse cases are not accidents," she continued. "I feel like we are trying to change the conduct of defendants, whether it's nursing homes or banks or whatever, so that it doesn't happen to anyone else. ... And it provides me with an emotional reward because I feel like I'm really helping people and actually making a difference, even if it's just a small one."

Making that small difference, however, is no small task. Elder abuse



Fish

cases, unlike personal injury cases, can involve much more than merely what happened, how it happened and why. For her part, Fish often finds herself in the role of psychological counselor, helping the victim's family cope with stages of self-blame, guilt and second-guessing. Part of getting the client's full story is to connect with those family members closest to the client and convince them that the harm their loved one has endured is not their fault, she said.

"When people make a really tough decision to put a loved one in a nursing home or an assisted-living facility, (they don't) make that decision lightly," Fish explained. "There are a lot of emotions that go into making that decision, and then when you finally do it and something goes terribly wrong at the facilities, for a lot of the families they have this immense feeling of guilt.

"A lot of it is you have to (be) a part-time psychologist," she said, "and tell them, 'This isn't your fault. There's nothing you could have done. You did everything right.' That's the biggest difference for me, just trying to help the family go through those feelings."

Once past that initial emotional phase, Fish said some elder abuse cases can be complex, especially if the victim had been abused over a long period of time. She said if a victim has been in a facility for a year or longer and abuse had been ongoing for months, she and her team are tasked with going back through "mountains of records" to find all the incidents that resulted in harm.

"So, just by virtue of it sometimes being an ongoing, continuing tour of abuse

and neglect, that makes the cases sometimes a little more difficult because you're really focusing on this pattern of conduct that can go over a long period of time," she said. "Sometimes it's a single file or a single assault, but usually it's a little more."

Following in Mom's footsteps

From a young age, Fish admired her mother, who worked as a registered nurse while raising two children and who later decided on a career change to law, inspired by her own experience as a plaintiff in a lawsuit. The younger Fish was inspired to watch her mother work as a nurse, go to law school at night and study all weekend as she also did "everything else moms have to do." The elder Fish rose to the challenge, excelled in law and transitioned to medical-malpractice plaintiffs' attorney.

So, when it came time for Fish to decide what to do after earning an undergraduate degree in chemistry from UC Davis, she decided to follow in Mom's footsteps and try her hand at law school.

"It was interesting because what I thought I was going to do turned out not at all what I ended up doing," said Fish, who graduated from Santa Clara University School of Law. "I figured that patent law would be a great fit for me and a practical use of the science background I had. So, when I was in law school, I took all patent- and IP-related classes ... all focused on tax and IP because I was so sure that's what I wanted to do. I even took and passed the patent bar in law school. I was all in on this patent course."

Fish graduated, passed the bar and landed a job at an intellectual property firm in its patent prosecution department. But she quickly realized it wasn't a good fit, she said. It happened to be a hard time for patent lawyers as it was just after the 9/11 terrorist attacks, and there was very little work in that specific discipline.



Fish said she felt lost, like she didn't know what she was doing, and that she had made a big mistake. Then the tables turned.

"I got the opportunity actually to work at a plaintiffs' personal injury firm the following year," she explained. "I jumped at it even though I was really scared. I didn't know the first thing about plaintiffs' personal injury. I had been so focused on a totally different track. But I was lucky to have some amazing mentors (at the firm) who basically took a chance on me, hired me even though I didn't know anything and taught me everything I needed to know."

No looking back

Those mentors are her current partners, Craig Needham and Anne Kepner, and their partnership is 20 years strong today. Needham and Kepner made it a baptism by fire and put Fish to work right away on motions, mediations and even trying cases. Fish excelled, and about two years in, she was given the opportunity to start working on elder abuse cases, joining forces with noted elder abuse attorney Kathryn Stebner.

Fish started with basic physical abuse and neglect cases and over time expanded her practice to include other categories of elder abuse, including sexual abuse, psychological abuse, and most recently, financial abuse.

"Over the past five years or so I've been working on a lot of financial elder abuse cases against banks and other financial institutions," she said. "That's turned out to be a real kind of David-and-Goliath situation, where we're up against these huge law firms with unlimited resources, and they fight us to the nail on everything. But I feel like we've more than held our own, and helping these poor people, elders and dependent adults who have basically fallen victim to these crazy financial scams, or actually any kind of abuse or neglect, is really important to me. Because these people often don't have a voice at all. So being an advocate for this really vulnerable and basically often ignored population and fighting for them is really rewarding to me on a personal level."

REDIRECT:

Getaway Spot: Paddleboarding in Monterey Bay or South Lake Tahoe

Go-To Music or Artist: Fleetwood Mac, The Jam, Carmen McRae, Johnny Marr, Andra Day

Recommended Reading: "Swimming Across" by Andrew S. Grove, "Looking Up" by Jane Boyle Needham, "Me Talk Pretty One Day" by David Sedaris

Dream Job: Running an animal rescue organization

Words to Live By: "People will forget what you said, people will forget what you did, but people will never forget how you made them feel."

– Maya Angelou

Fighting against heartbreak

Most of Fish's cases result in settlements, and that tendency, she said, can be partly attributed to the reputation she and Stebner have established in the elder abuse arena – that they know what they're doing. One recent settlement in particular was a memorable one for Fish because of the gravity of the case and her connection with the client.

The "heartbreaking" case involved an 88-year-old woman who had been sexually assaulted in a nursing home while she was recovering from a stroke. Through discovery, Fish found out that one of the home's residents was a registered sex offender. After the suit was filed, the nursing home tried to force Fish's client into binding arbitration based on an agreement that her daughter had signed when the victim was admitted into the facility. The nursing home claimed the daughter, by signing the binding arbitration agreement, had waived her mom's constitutional right to a jury trial. Fish's team fought that claim and won at both the trial court level and appellate court level. The result was a published decision that clarified what Fish described as a "murky area of the law" – the ability of a person to sign an elder to an arbitration agreement when they are signing the typical large stack of admission paperwork to get into a facility.

"So, because we were able to win on the arbitration issue, the case settled shortly thereafter – and while our client was still alive, so that she could use the money to pay for in-home caregiving and never have to go back to another care facility," Fish explained. "She was terrified, of course, of ever going back to a place like that. The family was extremely grateful. I still talk to the daughter to this day."

"The case presented a perfect example of how dangerous arbitration agreements can be in nursing home contracts," Fish continued. "Kathryn and I worked with the California Advocates for Nursing Home Reform to write and produce a public service announcement video featuring our client and her daughter, urging people getting their families into these facilities to refuse (arbitration) because you don't have to sign the agreement. Of course, they never tell you that. It's written in there, in that big stack of documents. ... Hopefully, we helped other elders and their families avoid this situation, where you're fighting on arbitration after you've already gone through such a horrible experience."

For that case, Fish and Stebner were named the 2014 Street Fighters of the Year by Consumer Attorneys of California.

Giving back

When she's not in the office or in court, Fish enjoys standup paddleboarding at Lake Tahoe and at Elkhorn Slough off Monterey Bay. But she gets just as much enjoyment from more work – teaching night courses in legal research and writing at Lincoln Law School in San Jose. It's a position she's held for the past 14 years, helping night school law students through a difficult process. Fish can relate to her students there because they are often working full time and going to school at night like her mom did.

"I feel like I'm giving back," she said. "It's really rewarding to work with students like that, who have so much already going on in their lives. ... When I think of these people, all the stuff that they're juggling and how they're handling it all, it's impressive."



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Based on her experience, Fish's advice for young lawyers or law students is to be flexible. Regardless of what career or area of law you think you're going into, don't feel like you can't change your mind and alter your career course.

"Don't be afraid to try something different because you really never know if it's something that works for you until you get in there and try," she said. "If I hadn't decided to kind of do a 180 in my career from IP, I would likely be stuck in a job that

I didn't really like, or didn't really fulfill me at all. So, you have to kind of embrace change and be willing to take chances."

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