

# INVESTIGATING FINANCIAL EXPLOITATION: NEW YORK's FEIST-y NEW APPROACH

NAPSA WEBINAR  
FEBRUARY 14, 2019

PRESENTED BY: ALAN LAWITZ, ESQ., DIRECTOR, BUREAU OF ADULT SERVICES,  
NYS OFFICE OF CHILDREN & FAMILY SERVICES

KAREN WEBBER, CPA, CFE, PRESIDENT, WEBBER CPA, PLLC

# PRESENTERS

## **Alan J. Lawitz**

**Director, Bureau of Adult Services  
NYS Office of Children & Family Services**

### **Experience/Education**

- 37 Years Professional Involvement in Adult Protective Services
- Co-Author, *The New York State Cost of Financial Exploitation Study* (2016)
- Director, Bureau of Adult Services, NYS OCFS since 2007
- Previously Associate Attorney Heading Up Long Term Care Group in Bureau of House Counsel, NYS Dept of Health (legal issues relating to Assisted Living, Adult Care Facilities, Nursing Homes, Home Care, TBI)
- Senior Attorney , Bureau of Adult Services Law , NYS Dept of Social Services, (legal issues relating to APS, Long Term Care and Homeless Housing)
- Regional Representative , Northeast Region II , National Adult Protective Services Association
- B.A. Columbia College, Columbia University
- J.D. Syracuse University College of Law

## **Karen Webber, CPA, CFE**

**President  
Webber CPA, PLLC**

- Forensic Accountant to NYS/NYS E-MDTs
- 10 years in elder abuse intervention
- Certified Public Accountant (CPA)
- Certified Fraud Examiner (CFE)
- M.S. Forensic Accounting, The College at Brockport, State University of New York
- B.S. Accounting, The College at Brockport, State University of New York

# AGENDA

How We  
Started

FEIST Tool-  
8 Steps

Forensic  
Accountant

Case  
Example

Closing  
Comments

Q&A

## U.S. ADMINISTRATION FOR COMMUNITY LIVING (ACL) ISSUED FUNDING OPPORTUNITY TO STATES TO ENHANCE ADULT PROTECTIVE SERVICES PRACTICE (2015)

NYS Office of Children & Family Services, Bureau of Adult Services, applied for, and obtained grant to:

- Develop in Consultation with Forensic Accountant a new investigatory tool to assist APS and its partners conduct investigations of financial exploitation cases, and test tool at pilot site, and
- Provide APS in pilot sites with access to forensic accountant in appropriate cases, to review and make reports to assist APS in referrals for criminal and/or civil legal proceedings
- Develop and test new reportable data elements to better capture costs of financial exploitation and case outcomes.

## WHY DID OCFS SEEK SUCH GRANT?

- Increasing number of cases of financial exploitation in New York State, including many complex cases.
- Wanted to provide APS with a better structure for organizing investigation, observation of “red flags”, collection of records, and review of financial records collected.
- Recognition that review of complex cases and voluminous financial records often requires the expertise of forensic accountant or certified fraud examiner.



# FINANCIAL EXPLOITATION

## **NYS Social Services Law §473(6)(g)**

*Financial exploitation is the improper use of an adult's funds, property, or resources by another individual, including but not limited to, fraud, false pretenses, embezzlement, conspiracy, forgery, falsifying records, coerced property transfers, or denial of access to assets.*

- Extortion
- Unexplained disappearance of funds or valuables
- Inappropriate use of phone, food, or other resources
- Transfer of real property
- Transfer of other assets (vehicles, firearms, etc.)
- Caregiver refuses to use client funds to meet essential needs or services
- Misuse of adult's home
- Identity Theft
- Scams

# RISE OF CASELOADS: FINANCIAL EXPLOITATION REFERRALS TO APS

## New York State (outside NYC) Adult Protective Services:

	<u>Over 60</u>	<u>All Ages (18 and Over)</u>
2011	1,445 risks reported	1,860
2012	1,790 risks reported	2,302
2013	1,835 risks reported	2,346
2014	2,099 risks reported	2,623
2015	1,975 risks reported	2,474
2016	2,165 risks reported	2,643
2017	2,469 risks reported	2,960
2018	2,559 risks reported	3,042

In 2018, Financial Exploitation comprised

**40.8%**

of all Perpetrator-Involved Risks for clients age 60 and older.

# RISE OF CASELOADS: FINANCIAL EXPLOITATION REFERRALS TO APS

## New York City Adult Protective Services:

	<u>Over 60</u>	<u>All Ages (18 and Over)</u>
2011	1,579 risks reported	1,228
2012	1,874 risks reported	2,734
2013	2,077 risks reported	2,852
2014	2,311 risks reported	3,048
2015	2,236 risks reported	3,161
2016	2,309 risks reported	3,310
2017	2,620 risks reported	3,671
2018	2,793 risks reported	3,821

In 2018, Financial exploitation comprised

**32%**

of all Perpetrator-Involved Risks for clients age 60 and older



## UNDER THE RADAR: NYS ELDER ABUSE PREVALENCE STUDY (2011) NYSELDERABUSE.ORG

- Compared Reported (documented study) Cases to Survey of over 4,100 Senior New Yorkers (Self-Reported Study)
- Found *Dramatic Gap* between Cases Reported to Authorities and Cases Reported in Survey

### Findings:

- **Only 1 in 44 cases of financial exploitation are reported.**
- The Self-Reported Study showed that Financial Exploitation was the most prevalent form of elder mistreatment reported, affecting 42 out of 1,000 older New Yorkers

## FINANCIAL EXPLOITATION BY A PERSON THE CLIENT KNOWS

- Family, friend, acquaintance, caregiver, person acting with a power of attorney, court-appointed guardian, other fiduciary, or trusted insider at a financial institution
  - Stealing cash, jewelry, other items of value
  - Improper access (e.g., benefit checks, ATM or credit cards)
  - Forging elder's signature
  - Obtaining money/property by coercion, misrepresentation, fraud, undue influence
  - Charging excessive fees for basic care services

## FINANCIAL EXPLOITATION BY A STRANGER

- Telemarketing/phone scams
- Internet/social media
- Con-artists claiming to represent a bogus organization such as a charity, lottery, sweepstakes, law enforcement or other government agency, or utility
- Imposter Scams, e.g., “Grandparent scam”
- Unscrupulous salespeople or contractors
- Identity theft
- Reverse mortgage scams
- Medicare/Insurance fraud scams
- Health care fraud

## PROCESS OF FEIST DEVELOPMENT

- Initial meetings between Bureau of Adult Services (BAS) and Karen Webber, Forensic Accountant
- BAS and Karen Webber meeting with Advisory Group and Pilot State Reps
- Additional Meetings, calls and emails between BAS, Karen and Advisory Group members
- Development of initial draft by Karen Webber
- Sent draft to Advisory Group and Pilot Site Reps for review/comment
- Incorporated comments received and revised the FEIST
- First trainings of pilot sites in use of the FEIST: April, 2017

## ACL GRANT ADVISORY GROUP

**Includes representatives of:**

1. New York State Police
2. New York State Office for the Aging
3. New York State Division of Criminal Justice Services
4. New York State Elder Abuse Coalition
5. Lifespan of Greater Rochester, Inc.
6. New York City Elder Abuse Center/Weill Cornell Medical Center
7. Vera House, Inc.
8. Onondaga County Sheriff's Office
9. Onondaga County District Attorney's Office
10. Queens County District Attorney's Office
11. New York City Police Department
12. Brookdale Center for Healthy Aging, Hunter College

# FOUNDATION FOR FEIST

**The FEIST Is Built On A Foundation Of Other Resources Developed by NYS OCFS/Brookdale Center For Healthy Aging and Used by APS, including:**

- New Worker Institute Training and Special Topic Trainings, on investigation of suspected financial exploitation
- *Broken Trust: Financial Exploitation and Power of Attorney Abuse: A Guide for APS Professionals in New York State*
- Focus on warning signs of financial exploitation in the client's home, in the client's demeanor, in questionable financial transactions, and in suspicious relationships
- Standard NYS APS forms sent to financial institutions requesting customer records to assist in investigation of suspected financial exploitation

# FOUNDATION FOR FEIST

**The FEIST Is Built On A Foundation Of Other Resources Developed by NYS OCFS/Brookdale Center For Healthy Aging and Used by APS, including: (cont'd)**

- Use of “15 Day Letter” and special proceedings to direct agent under POA to provide accountings to APS
- Trainings of Financial Professionals Sponsored by NYS OCFS and NYS Department of Financial Services to recognize, prevent and report suspected financial exploitation

## THE FEIST SUPPORTS EXISTING APS PRACTICE

- Engagement of client and building of trust and rapport comes first
- It may take multiple visits to get the answers needed to complete the FEIST
- The FEIST is intended to provide a helpful structure, but is not to be rigidly applied
- The FEIST works in tandem with the electronic APS case recording and reporting systems (ASAP.Net or APS.Net) in a number of areas



# FINANCIAL EXPLOITATION INVESTIGATION SUITE OF TOOLS (FEIST)

## **Step 1**

Client Data

## **Step 2**

Client Questions

## **Step 3**

Red Flags Identified  
by Client Questions

## **Step 4**

Income & Expenses

## **Step 5**

Client Account Log

## **Step 6**

Document Review  
Guide

## **Step 7**

Bank Statement  
Summary

## **Step 8**

Red Flags Identified  
by Statement  
Review

**When and How to Use a Forensic  
Accountant?**



## STEP I: CLIENT DATA

Summarizes client information to facilitate the clear, concise communication of important data to other parties involved in an investigation. Access to APS data is governed by the APS confidentiality statute.

Not only should the form contain demographic information, it should also contain a summary of the alleged exploitation as communicated by the referral source or observed by APS.



## STEP 2: CLIENT QUESTIONS



- Provides a structure for asking probing questions and documenting the client's responses. For each question, indicate yes, no, or unknown/unwilling to answer, and describe any additional details noted. References to other FEIST documents are included to assist with completing related Steps where applicable, and space is provided for workers to document any observations they have during their visits that could be indicators of abuse.
- Assists the worker with recognizing when further investigation may not be necessary. Questions 1 through 24 are intended to identify whether financial exploitation may be occurring; if so, Questions 25 through 44 are intended to help the worker dig deeper and recognize the full scope of the abuse.
- Rapport must be built with the client before broaching these questions, and it may take many visits.



## STEP 3: RED FLAGS IDENTIFIED BY CLIENT QUESTIONS

Step 3 marks a **decision point**  
whether to continue the  
investigation:

Is there a reason to believe the client may be a victim of financial exploitation by the hands of another person ? Is this something you cannot rule out?

Is there a reason to believe someone may be taking the client's funds or property without the client's permission or knowledge?

Is there a reason to believe that someone is using the client's funds or property in their own interest rather than the interest of the client?

Does the client indicate he/she is being exploited, and this cannot be ruled out?



## STEP 4: CLIENT INCOME & EXPENSES

For each income source, indicate the approximate amount of each payment, and the frequency of payment (monthly, quarterly, annually, etc.).

For each regular expense item, list the payee, amount, and frequency of payment.



## STEP 5: CLIENT ACCOUNT LOG

- Acts as a “Table of Contents” for the documents so that they are presented to the third party in an organized format
- Assists workers with creating a list of accounts held by the client
- Assist workers with tracking the related documents requested and received

Information captured in *Step 5* includes:

- ✓ Financial institution name
- ✓ Account type and number
- ✓ Ownership information (individual, joint, POA listed, etc.)
- ✓ Dates when the accounts were opened and closed
- ✓ Time period for which statements or related documents were requested
- ✓ Dates those documents were received

# WHAT TO REQUEST FROM FINANCIAL INSTITUTIONS

✓ Use APS agency letterhead

✓ Use Standard Request Forms Distributed by NYS OCFS Bureau of Adult Services as part of National Protocol

Request should include each of the following items:

- Monthly statements
- Account opening/change documents
- Deposit items
- Withdrawal slips
- Copies of canceled checks (front and back)
- Teller notes
- Transfer details that show origin/destination account numbers & financial institutions
- Power of Attorney documents on record
- Bank checks
- Mortgage/loan statements/records
- Credit card statements



## KEY LEGISLATION

- Gramm-Leach-Bliley Act 15 U.S.C. §6802
  - (a) Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.
  - (e) Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information—
    - (3)(B)to protect against or prevent actual or potential fraud,
    - (8)to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.



# REQUESTING CREDIT INFORMATION

- Consumers are entitled to one free annual credit report from each of the three credit reporting agencies.
  - Credit reports can be requested online, via telephone, or by mail with client consent.
  - Credit card statements can usually be downloaded online, but may also be obtained via mail with client consent.
- ***Equifax***
    - Equifax Information Services, LLC
    - PO Box 105169, Atlanta, GA 30348
    - 1-800-525-6285/www.equifax.com
  - ***Experian***
    - PO Box 9554, Allen, TX 75013
    - 1-888-397-3742/www.experian.com
  - ***TransUnion***
    - Fraud Victim Assistance Department
    - PO Box 6790, Fullerton, CA 92834-6790
    - 1-800-680-7289/www.transunion.com



## STEP 6: DOCUMENT REVIEW GUIDE

Provides a list of other types of documents that workers may want to request as part of their investigations.

Assists workers in reviewing these records.

Provides some “Considerations for Review” - questions designed to point workers to specific pieces of information within certain documents that may be relevant to their investigation.

Narrows down the specific documents that may be relevant to a case.



## STEP 7: BANK STATEMENT SUMMARY

- Assists workers in performing an initial analysis of deposit and withdrawal trends in the client's bank accounts (checking, savings, money market accounts, certificates of deposit). Beginning balances, ending balances, deposits, and withdrawals are usually summarized on the first page of each bank statements, and should be input in the appropriate fields.
- If completed electronically, only beginning balances, deposits, and withdrawals should be entered into the spreadsheet. Ending balances, totals, and net activity fields will automatically calculate.
- If observed deposit or withdrawal patterns deviate from what the worker knows about the client's normal income and expenses, a more detailed review of bank statements is necessary to determine the cause of these changes.

## DETAILED REVIEW OF BANK STATEMENTS

- Use *Step 8: Red Flags Identified by Statement Review* as a guide
- Focus on patterns: what they were vs. what they are now
  - Deposits
  - Withdrawals
  - Account fees
- If public records indicate the transfer, sale or purchases of a home, or a new mortgage or mortgage payoff, look for related proceeds or withdrawals
- Look at nonfinancial information on the statements:
  - Changes of ownership
  - Changes of POA
  - Changes of address
  - Whether the client enrolled in electronic statements



## STEP 8: RED FLAGS IDENTIFIED BY STATEMENT REVIEW



- Serves as a summary of all “Red Flags” of abuse noted during the worker’s investigation. Space exists within the tool for the worker to reference the indicator or specific example of financial exploitation so that when submitted as part of the complete referral package, the third party may efficiently assess the case, review the relevant evidence, and take appropriate action.
- Place a checkmark next to each red flag to alert a reviewer or third party, and reference where in the referral package the worker has included evidence of that indicator.



## MAKING THE BEST REFERRAL

The Financial Exploitation Investigation Suite of Tools provides a detailed framework for gathering records, conducting a thorough investigation, and ultimately, if necessary, presenting these records in an organized manner to a third party for assistance with investigation and intervention:

- ✓ Completed forms for Steps 1 - 8
- ✓ All statements and supporting records obtained from financial institutions, marked with findings
- ✓ List of other parties involved with case and contact information
- ✓ Any other relevant documents obtained using Step 6: Document Review Guide
- ✓ Any deadline associated with the proposed intervention



# WHEN AND HOW TO REFER A CASE TO A FORENSIC ACCOUNTANT

Case characteristics that may merit the use of a forensic accountant:

- Urgency
- Complex account structure
- Duration
- Comingling of funds
- Unknown spending habits
- Multiple perpetrators are suspected
- Guardianship is desired
- Law enforcement involvement is desired
- Client acknowledgment

# NYS REMEDIES & RESOURCES

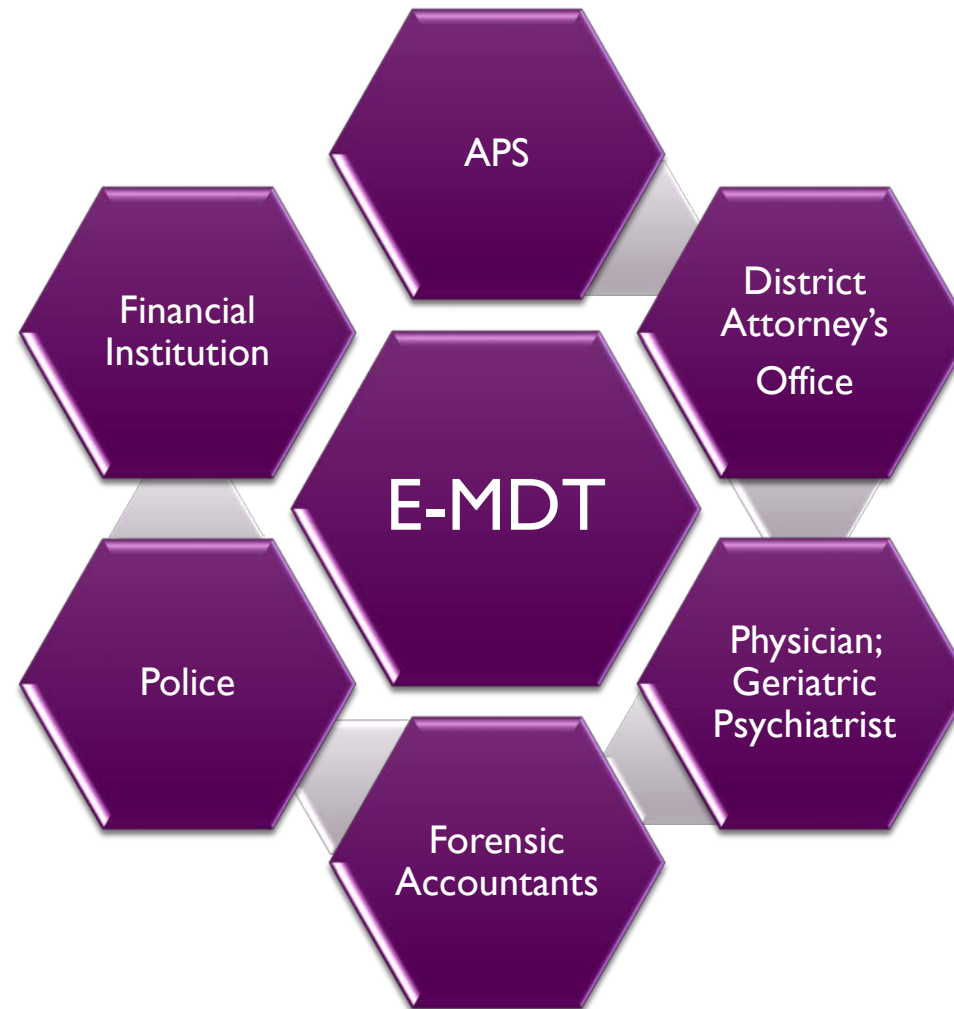
- Law enforcement/district attorney
- Legal aid
- Guardianship
- Representative/protective payee
- Civil attorney



- APS
- Mediation
- MDTs
- Forensic accountants
- Attorney General
- Nonprofit service providers



# ENHANCED MULTIDISCIPLINARY TEAM (E-MDT) MODEL



## WHY USE A FORENSIC ACCOUNTANT?



- A forensic accountant can efficiently review hundreds of documents and summarize the important facts of the case, allowing law enforcement, case workers and others to focus on their primary responsibilities to the Client.
- The evidence provided in a Forensic Accountant's Report is independent of the Client.
- Things are never what they seem!
  - Other accounts
  - Other perpetrators
  - Motives

# WHAT IS A FORENSIC ACCOUNTANT?

- “Forensic” refers to evidence.
- Under the narrowest definition, forensic accountants provide numbers-based evidence to support legal action.
- Under the broadest definition, forensic accountants provide clients with nontraditional accounting services.
- Litigation support
- Expert witness testimony
- Business valuation
- Divorce matters
- Bankruptcy
- Business dissolution
- Fraud investigation
- Internal auditing
- Compliance auditing
- Business consulting



# LAW ENFORCEMENT-BASED VS. COMMUNITY BASED

## Public, or law-enforcement-based

- Active criminal investigations

## Private, or community-based

- Civil matters
- Criminal investigations

## Why it matters

- Gathering enough evidence to get law enforcement involved
- Supporting guardianship petitions
- Helping the victim understand what really happened

# ROLE OF FORENSIC ACCOUNTANT

Consult	Consult with caseworker/supervisor when financial abuse is suspected
Review	Review bank and other records to determine whether an allegation is verified
Issue	Issue a concise, written report summarizing findings for use by APS, Client, law enforcement, court evaluator, and other interested parties
Provide	Provide expert witness testimony in court for guardianship, criminal or civil cases

# WHAT'S IN A FORENSIC ACCOUNTING REPORT?

- Objective and Scope
- Background
- Findings
- Conclusion
  - \$\$\$ Attributed to Victim(s)
  - \$\$\$ Attributed to Suspect(s)
  - \$\$\$ Unaccounted For
- Appendices (Exhibits)



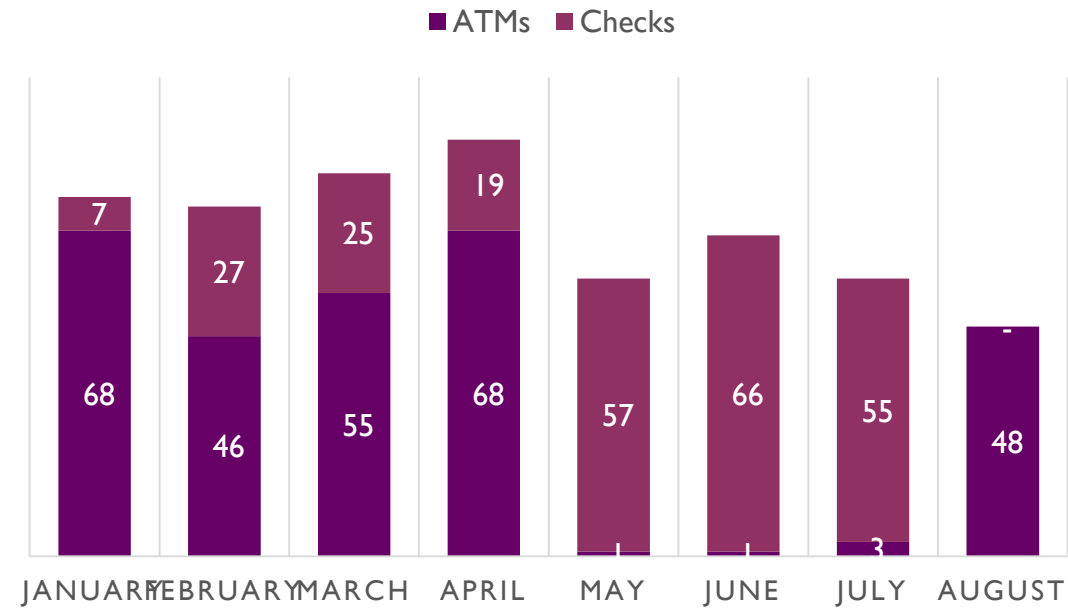
# APPENDICES/ SUPPORTING SCHEDULES

	2013	2014*	2015	2016	Grand Total
Beginning Balance	\$1,404,873.19	\$1,433,275.94	\$1,322,916.13	\$1,305,093.95	\$1,404,873.19
Deposits					
Social Security	23,028.00	23,418.00	23,846.40	6,377.40	76,669.80
Transfers from IRA 0488	18,984.24	20,277.18	20,665.48	-	59,926.90
Deposits from unknown sources	-	-	16,010.51	-	16,010.51
Total Deposits	42,012.24	43,695.18	60,522.39	6,377.40	152,607.21
Withdrawals					
Checks	59,604.84	108,026.89	161,764.00	57,040.27	386,436.00
ACH Payments					
Amex	25,029.69	21,551.02	29,915.25	25,711.18	102,207.14
Con Ed of NY	883.48	626.36	798.53	179.12	2,487.49
Total ACH Payments	25,913.17	22,177.38	30,713.78	25,890.30	104,694.63
Total Withdrawals	85,518.01	130,204.27	192,477.78	82,930.57	491,130.63
Transaction Fees	183.64	-	0.03	0.01	183.68
Change in Market Value	72,092.16	(23,850.72)	114,133.24	(21,239.07)	141,135.61
Ending Balance	<u>\$1,433,275.94</u>	<u>\$1,322,916.13</u>	<u>\$1,305,093.95</u>	<u>\$1,207,301.70</u>	<u>\$1,207,301.70</u>

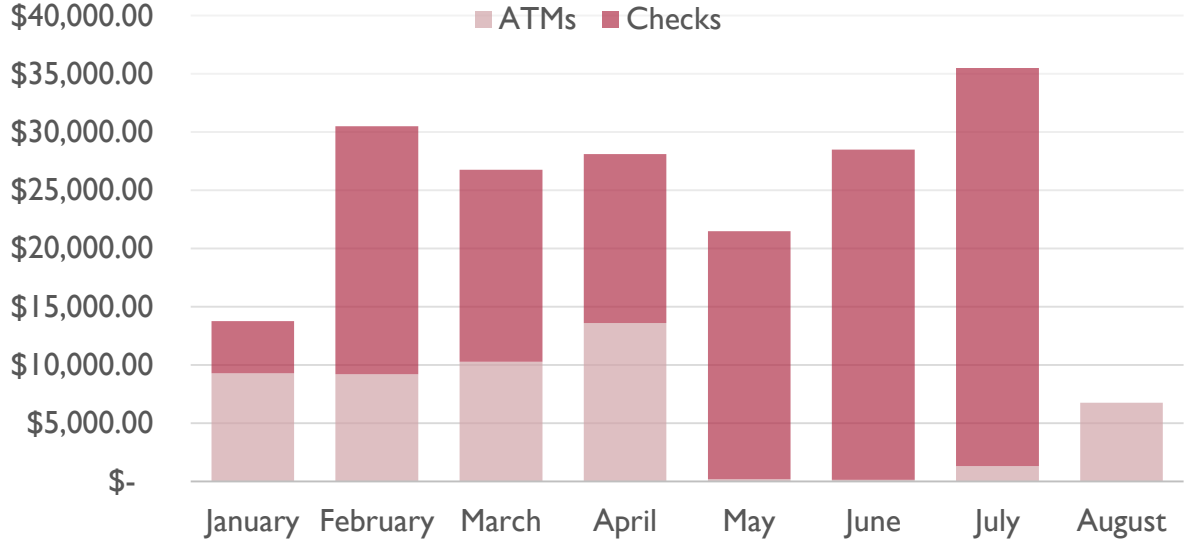
Housekeeper	\$ 99,000.00	25.6%
Personal Assistant	113,766.00	29.4%
Acquaintances	42,000.00	10.9%
Estimated Unaccounted For	<u>\$ 131,670.00</u>	34.1%

# ILLUSTRATIVE EXHIBITS

## COUNT OF CASH TRANSACTIONS BY TYPE

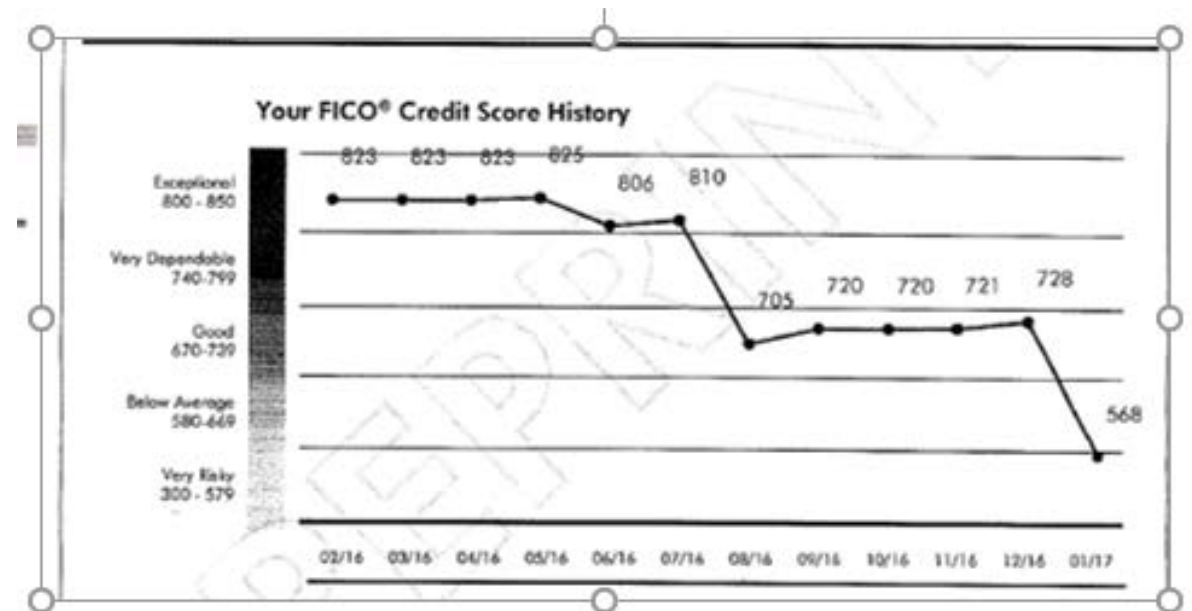
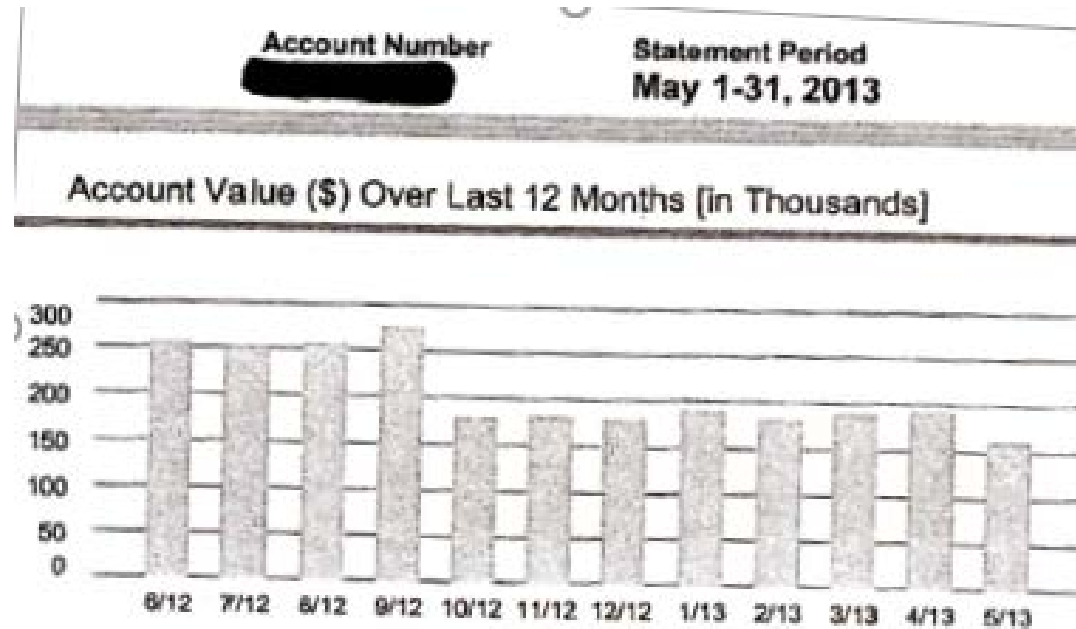


## SUM OF CASH TRANSACTIONS BY AMOUNT





# ILLUSTRATIVE EXHIBITS



# WHY DOES A FORENSIC ACCOUNTANT'S REPORT MATTER?

- Guardianships
- Criminal Prosecution
- Family Court
- Civil Matters
- Tax Fraud
- Welfare Fraud
- Insurance Fraud
- Consumer Fraud/Contractor Fraud
- Scams





# CASE EXAMPLE

## Fact Pattern

- Investment brokerage refers Ms. X's case to APS in December
- Large checks were being written from Ms. X's cash account to her two adult children, and the signatures appeared forged
- APS assessment found that Ms. X had severe cognitive impairments, and her two children did most of the talking for her
- Two adult children had been "trading" POA authority for years
- Teller at local bank corroborated that the two adult children often accompany the very confused Ms. X to the bank and do all the talking

## Use of FEIST Tool

- Step 2 questions found:
  - Ms. X did have some awareness that forgeries were occurring and was not comfortable with it
  - Power had been shut off that summer and she was on a payment plan
- Step 4 found delinquent taxes and cable bill
- Step 5 found that bank accounts had previously been closed due to fraud
- Step 6 found car in Ms. X's name
- Forensic accounting found \$147,000 stolen by two children
- Guardianship petition successful, criminal charges filed

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- Lessons Learned
  - Statewide Expansion
  - Upcoming Law Enforcement Tools
  - Impact on the Field
  - How to Find a Forensic Accountant



CLOSING COMMENTS

# LOCATING A FORENSIC ACCOUNTANT

- CPAverify.org
- State Society of CPAs
- Association of International Certified Professional Accountants  
f/k/a American Institute of CPAs (AICPA)
  - <http://www.aicpa.org/forthepublic/findacpa/pages/findacpa.aspx>
- Association of Certified Fraud Examiners (ACFE)
  - <http://www.acfe.com/findacfe.aspx>
- Retired investigators
- Student internship programs



Q & A

## CONTACT INFO

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