

URGENT REQUEST FOR CERTIFIED FINANCIAL RECORDS

Date: _____

On behalf of the Elder Adult at-Risk agency for Milwaukee County, pursuant to Wisconsin Statutes, Section 46.90 (5) (b) 6 and U.S. Federal Statute.

Please send information via: FAX / Email / Mail
(if information is too large to send by Fax or Email, please call me prior to mailing or to request for writer to pick up the documents)

I am requesting financial records for the following person(s):

Name(s) of Customer / Member: _____

DOB: _____

Address: _____

Phone: _____

Social Security Number: LAST 4 DIGITS: _____

Who(m) may be the victim of financial exploitation/material abuse as reported to the Milwaukee County Department on Aging - Elder Abuse / Adult Protective Services Unit.

URGENT REQUEST FOR CERTIFIED FINANCIAL RECORDS

- _____ Ownership documents for all accounts (open/closed) including loan(s), investment account(s), account signer(s), and/or safe deposit boxes.
- _____ Signature Cards, if applicable
- _____ Copies of all Power of Attorney for Finance Documents, if applicable
- _____ Copies of Guardianship or other Court Orders, if applicable
- _____ Copies of Account Statements going back ___ month(s), if applicable
- _____ Copies of Checks / Drafts going back ___ month(s), if applicable
- _____ Other: _____.

Name of Entity: _____

Account Name/Holder(s): _____

Account Number(s): _____

Hold and/or Freeze: _____

Please send the information by FAX to my office at xxx-xxx-xxxx.
Please respond promptly in order to protect the finances of your customer / member.
I can be contacted Monday through Friday by phone at (xxx) xxx-xxxx or by email at xxxxxxx@xxxxxx.gov with any questions and/or comments.

Thank you for your promptness regarding this matter,

Elder Abuse Investigator
Milwaukee County Department on Aging – Elder Abuse / Protective Services Unit
1220 W. Vliet Street, Suite 300
Milwaukee, WI 53205



Financial Exploitation “It Takes a Village”



Milwaukee County
Department on Aging



MILWAUKEE COUNTY
Disabilities Services Division



Panelists:

- Ramona Williams, MSW, APSW EA Prg Coor., Milwaukee Co. Dept on Aging
- Nicole Bickerstaff, BA, HSW EA Investigator, Milw. Co. Dept. on Aging
- Dewey Martin, JD Assistant Corp Counsel, Milwaukee County
- Eamon Guerin, Guerin Law Offices
- Kurt Benkley, JD, Assistant District Attorney, Milwaukee County District Attorney's office





Panelists:

- Nicole Zimmer, JD, Elder Rights Project Dir., SeniorLaw, Legal Action of Wisconsin
- Tim Zens, Fraud Investigator, BMO Harris Bank



Milwaukee County
Department on Aging



MILWAUKEE COUNTY
Disabilities Services Division



Learning Objectives:

- Various disciplines needed to resolve issues of financial exploitation
- Role of each discipline, expert, service in reaching a resolution
- Complexity of financial situation beyond a social service solution...legal, criminal, civil
- APS role with each discipline and the collaborations needed
- Best Practice hints as APS investigators
- Building successful coalition of experts





Panel Discussion:

- Each panelist will
 - Review their **role** in a financial exploitation case
 - Discuss the **collaborative process** between APS and their agency/service/ role in resolving a case
 - **Best Practice** overall in working through a financial exploitation case to successful resolution
 - **Roadblocks** to successful resolution
 - **Helpful hints** for APS to work successfully with their particular agency/service/resource.





Nicole Bickerstaff: EA/APS Investigative Role

- Case example:
 - Case of J
 - Financial was not main component initially
 - Process of discovery
 - Steps taken to secure physical and financial safety
 - Discussion of financial request letter
 - Limitations of APS role and engaging of others, who needs to be included on this case
 - Working jointly with other disciplines
 - First steps in intervention...guardianship/placement



Goals of the Adult Protective Service Worker and Petitioning Attorney When Dealing With HCPOA and POAs

Dewey Martin
Assistant Corporation Counsel
Milwaukee County



Investigate Cases

- A. Gather background information on ward.
 - Find out if there is a Health Care Power of Attorney (HCPOA)
 - Find out if there is a Financial Power of Attorney (POA)
 - 1. Gather documents
 - 2. Interview Agents
 - 3. Turn over report to Petitioning Attorney (Corporation Counsel)



Guardian Ad Litem Responsible for Investigating HCPOA and POA Agents

- a. Guardian Ad Litem must review all Advance Directives.
Wis. Stat. §54.401(4)(d).
- b. Guardian Ad Litem must interview agents as well.
(Dual Purpose)
 - i. To report to the Court that Agents are suitable to be guardians
 - ii. To report to the Court that Advance planning is appropriate
- c. Default for Guardianships is that HCPOA and POA should not be disturbed; or
- d. HCPOA or POA agents should be nominated as Guardian.
- e. Unless Agents are not in the Best Interest of the Ward.



Courts have the Power to Review the HCPOA or POA through the Guardianship Proceeding, Wis. Stats. §155 safeguards, and/or Wis. Stats. § 244 judicial review.

- 155.60 HCPOA Safeguards.
 - (4)(a) Any interested party may petition the court assigned to exercise probate jurisdiction for the county where a principal is present or the county of the principal's legal residence to review whether the health care agent is performing his or her duties in accordance with the terms of the power of attorney for health care instrument executed by the principal. If the court finds after a hearing that the health care agent has not been performing in accordance with the terms of the instrument, the court may do any of the following:
 - 1. Direct the health care agent to act in accordance with the terms of the principal's HCPOA.
 - 2. Require the health care agent to report to the court concerning performance of the health care agent's duties at periods of time established by the court.
 - 3. Rescind all powers of the health care agent.

- 244.16 POA Judicial relief.
 - (1) The following persons may petition the circuit court of the county where the principal is present or of the county of the principal's legal residence to construe a power of attorney or review the agent's conduct, and grant appropriate relief:
 - (a) The principal or the agent.
 - (b) A guardian, conservator, or other fiduciary acting for the principal.
 - (c) A person authorized to make health-care decisions for the principal.
 - (d) The principal's spouse, parent, or descendant.
 - (e) The principal's domestic partner.
 - (f) An individual who would qualify as a presumptive heir of the principal.
 - (g) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate.
 - (h) *A governmental agency having regulatory authority to protect the welfare of the principal.*



Relief Granted

The relief granted under sub. (1) must fit the purpose of the action; it is not a broad invitation to the court to wade into the private attorney-client arrangements of the parties unless it is within the realm of construing a power of attorney or reviewing the conduct of an agent.



244.17 Agent's liability.

An agent who violates this chapter is liable to the principal or the principal's successors in interest for the amount required to do all of the following:

- (1) Restore the value of the principal's property to what it would have been had the violation not occurred.
- (2) Reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.



Attorney Eamon Guerin

Guerin Law Offices

Kurt Benkley, JD, Assistant
District Attorney,
Milwaukee County District
Attorney's office

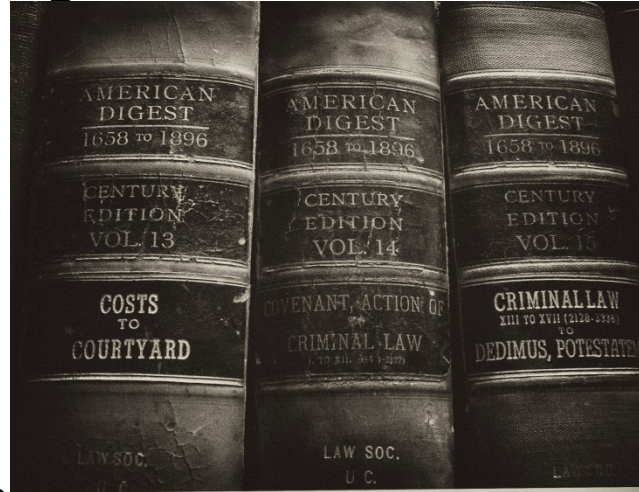
Financial exploitation of J

1. 92 year old recluse with \$2,000,
2. Will gives fortune to animal shelter
3. Alzheimer's dementia
4. Neighbors "befriend" victim
5. Victim deeds home to neighbors
6. Victim signs financial POA to neighbors
7. Neighbors use POA to change bank accounts
8. Physician finds victim incompetent three weeks later
9. APS intervenes before further financial exploitation



How can the APS caseworker help the prosecutor?

Understand when the law allows release of confidential APS file.



“(3) Elder-adult-at-risk agency duties. (a) Each elder-adult-at-risk agency shall develop a policy for notifying other investigative agencies, including law enforcement officials in appropriate cases, and shall establish an elder abuse reporting system to carry out the purposes of this section...”

Section 46.90(3)(a), Wis. Stats.

How can the APS caseworker help the prosecutor?

Be patient - prosecutor must do a lot of work:

1. Filed motion to access confidential **guardianship proceedings**.
2. Obtained guardianship hearing **transcri**
3. Obtained waiver to access JH's **medical**
4. Interviewed multiple **doctors** who treat
5. Video-recorded an interview with **victim**
6. Subpoenaed JH's **bank records**.
7. Interviewed **bank employees**.
8. Interviewed **notaries** who witnessed Deed and POA.
9. Interviewed **attorney** who drafted Deed and POA.
10. Obtained defendant's **jailhouse calls**.
11. Obtained **certified records** – eg. Deed.
12. Conducted **legal research** on several issues...



How can the APS caseworker help the prosecutor?

Think about what a prosecutor must prove.

1. Victim was mentally incompetent, and
2. Defendant *knew* it.



How can the APS caseworker help the prosecutor?

Ask bank to certify victim's account records.

CERTIFICATION OF BANK RECORDS

I, _____, being duly sworn upon oath, hereby verify and state:

1. I am an officer of _____ (name of financial institution);
2. Said financial institution is a bank, credit union, savings bank, or savings and loan association;
3. Said financial institution has produced the attached _____ pages of records pursuant to subpoena;
4. The attached financial records constitute the ordinary books of said financial institution used by said financial institution in the transaction of its business, the entries copied were made therein at the dates thereof and in the usual course of business, there are no interlineations or erasures in or among the items copied, the original books are in the custody of said financial institution, and I have carefully compared the attached records with the original books and found them to be true and correct copies of the specified account or entries.

(Authority: Section 891.24, Wisconsin Statutes)

Certifying Officer



ERP

ELDER RIGHTS PROJECT

civil legal aid for victims



The Role of Civil Legal Aid in Elder Financial Exploitation Cases

1. Intro to the elder rights project: civil legal aid for victims
2. Why relief in civil court is important for victims
3. Best practices/helpful hints for collaboration

Eligibility

- Wisconsin resident
- 60+
- Victim of crime (elder abuse)
- Civil legal need related to victimization
- No income or asset limits
- No criminal charges, convictions or police report required

Victims of Crime Act (1984)

- Goals for Victims

- Response to physical, emotional needs
- Stabilize lives
- Understanding of, participation in, criminal justice system
- Safety

- Funding

- Fees and fines of convicted federal offenders



U.S. Department
of Justice





Why bother with civil court?

- Lower burden of proof
- No jail time for the abuser - which appeals to some victims, especially those who know or are related to their abuser
- Relief can be specifically tailored to the harm
- Some kinds of harm might only have a civil remedy

Role of a legal aid lawyer in a financial exploitation case:

- Fill the gap – APS sends us a referral when a victim has a civil legal need that is not addressed by corporation counsel or a privately funded attorney

Role of a legal aid lawyer in a financial exploitation case:

- Represent the victim - advocate for the victim's wishes, not anyone else
 - If the victim does not want to proceed, we are out. (But we don't give up easily.)
 - Having an attorney on their side often encourages a reluctant victim to move forward
 - Can also work with the GOE/POA-F if victim cannot express his/her goals



Services a legal aid lawyer can provide in a financial abuse case:

- Represent victim in Protection Orders
- File lawsuit to recover money and property taken from a victim
- Review/Revoke abusive POAs
- Provide information and support through the criminal process, including restitution requests



Services a legal aid lawyer can provide in a financial abuse case:

- Defend evictions related to abuse/Evict abusers
- Defend against foreclosure when non-payment is related to financial exploitation
- Reverse unauthorized charges/Defend debt collection action where debt is related to financial exploitation (Identity theft)
- Obtain/preserve needed public benefits

How can APS help with civil cases?

- Obtain certified bank records
- Reach the hard to reach victim
- Identify non-legal resources that may be needed
- Obtain evaluations when opposing parties are challenging capacity
- Be willing to testify in court as fact witnesses/experts

Working
together
against
FINANCIAL
EXPLOITATION

Tim Zens
Fraud
Investigator
BMO Harris
Bank

NAPSA Annual Conference

August 28-30, 2017

THE GOAL



- ✓ Assist employees in becoming more comfortable and confident in identifying and reporting cases of Financial Exploitation
- ✓ Provide questionnaire framework to assist with speaking with the customers
- ✓ To assist our seniors in preventing, detecting and reporting Financial Exploitation
- ✓ Work together with Adult Protective Service Agencies, Senior Service Providers and Law Enforcement

What is the role of Banking Institutions?

- According to a report prepared for the American Bar Association:

Banks have the potential to be the “first line of defense” against financial exploitation, by identifying the abuse at its outset, before the elder’s assets have been dissipated.

- ✓ No institution is in a better position to observe and report suspicious behavior
- ✓ Unfortunately, past Financial Exploitation cases have not been identified or acted upon

If you suspect that someone is or has been a victim of financial exploitation,

REPORT IT!

Training – Awareness - Educate

- Financial institutions such as BMO Harris Bank have a responsibility to protect our customer's financial needs and assist them in making financial decisions that are in their best interest
- BMO Harris Bank strongly believes that awareness and education empowers their employees to detect and prevent cases of Financial Exploitation
- Financial Institutions need to promote strong Elder F
- Be vigilant in watching out for warning signs and red
- Provide scenario-based training to front-line staff
 - Example of financial exploitation of an elder
 - Useful tips on how to react or handle incidents



Elder Abuse Awareness

- BMO Harris Bank annually recognizes World Elder Abuse Awareness Day on June 15th
- The following acronym is a tool created to help BMO Harris employees with the proper steps in protecting vulnerable adults from Financial Exploitation:

WE CARE

W: Watch for Warning Signs and Red Flags

E: Engage the Customer in a Positive Way

C: Create a Safe Environment Based on Trust

A: Ask Questions and Address your Suspicions

R: React Quickly and Confidently

E: Escalate Suspicions to Investigative & Security Services

New Campaign To Combat Elder Financial Fraud

- Wisconsin Bankers and American Bankers Association are tackling Elder Financial Fraud
- WBA will participate in the ABA Foundation's new campaign
 - **SAFE BANKING FOR SENIORS**
 - **Preventing Elder Financial Abuse Presentation Toolkits**
- Provide Seniors and their caregivers tools to prevent financial fraud

The ABA Foundation and the WBA provides bankers with

- ✓ Event materials
- ✓ Lesson plans
- ✓ Media Outreach tools
- ✓ Best Practices

Getting to know One Another

- It takes several agencies working together to be successful
 - **Social Security / APS**
 - **Common Goal**
 - **Each has a unique role**
 - **Educate each other**
 - **Share best practices**
 - **Feedback - Results**



Signs & Red Flags for Financial Exploitation Account Activity

- Changes in account balances / Spending Habits / Account Activity
 - - “out-of-sync” check numbers
 - - Sudden flurry of “bounced” checks – insufficient funds
 - - Missed bills
 - - Checks written to “Cash”
 - - Large withdrawals
 - Previously inactive
 - New joint account holder
- - New account activity from new authorized signer



Signs & Red Flags

- Vulnerable Adult has companion who seems to be calling all the shots
 - Appears timid – afraid to engage in conversation
 - Doesn't understand why they are at the bank
- May appear confused about balance
- No knowledge of account activity or newly issued debit or credit card
- Changes or additions of authorized signers
- Signatures go from shaky to firm
- Forged and Altered documents
- Statements sent to address other than older adults home
- Disconnecting or changing of telephone
- Closing of CDs or accounts without regard to penalties



Branch Roles

- Identify the situation – Recognize warning signs in the customer's account activity or their behavior
- Many times a quick assessment is not sufficient
- Avoid confrontation and try to separate the client from the suspect
- Use probing questions to determine customer's intent
 - Let them tell; use their own words; don't prompt; open ended questions
- Delay the suspicious transaction if possible
- Take immediate protective action on accounts by placing holds or limiting account access
- Document Incident and Engage Fraud/Investigations Department

Protection of Confidential Information

- Financial Institutions have often resisted efforts to require or encourage their personnel to report suspected financial exploitation. The objection most commonly voiced by the banking industry is concerns that disclosure of confidential information relating to a customer may result in liability
- Simple answer from many banks is, “Send us a subpoena”
- Wisconsin is a voluntary state for reporting Financial Exploitation
- State Law Immunity – WI Statute 46.90 (4)c
 - No person may be held civilly or criminally liable or to be found guilty of unprofessional conduct for reporting in good faith under this subsection
- Subsection 46.90 (5)(b)6
 - The financial records that are maintained by financial institutions of an elder at risk shall be released without informed consent to an “elder adult at risk agency” or investigative agency

Follow the Money

- Examine the account documents
- Calculate the total amount of credits to determine exposure
- Determine the total amount of debits and which financial institution the items were negotiated at and who negotiated them
 - Checks
 - Wires
- Were the funds utilized for the benefit of the customer
 - Compare current bank statements to previous statements

Work together with the financial institution to determine where the money went

- Did the funds go into another account?
- Account information other than the victim's account will require a subpoena

LETS WORK TOGETHER

If everyone does their part, we can hopefully stop or slow down people from stealing from our parents, grandparents and elderly friends and neighbors





APS Best Practice Hints

- Provide APS investigators with expert resources
 - Develop connections that are able to assist i.e....
 - Police
 - Banking security personnel contacts
 - Private attorney willing to become guardian of estate
 - Rep payee/money management resources/agencies
 - Social security contacts/ connections
 - Civil litigation resources
 - Criminal litigation resources
 - Private C.M.
 - State IM connections





Signature Tactics

- Gaining trust of victim: visits, bringing food, bringing dog, develop friendship, giving to person
- Increasing dependence: running errands, giving rides, helping with day to day affairs, social connection
- Isolation: Pushed others away, point of contact, only connect with those in abusive system





Signature Tactic

- Taking advantage of relationship: Using trust etc.. to gain access to information
- Systematic take over of life: Controlling all outside connections, MD, attorney, finance, etc...
- Using outside entities that are acting in best interest of the abuser, not vulnerable adult.
- Taking advantage of impairments: Using trust to gain signatures, changing documents
- Theft of property while representing as ally





APS Best Practice Hints

- I-Team is a good place to build coalition of experts
- Provide specific training for financial exploitation cases, case staffings, consults
- Every investigation should include investigation of the finances...generally if the money is controlled the abuse is controlled...I always ask staff about the financial situation or find out.





APS Best Practice Hints

- Financial exploitation may be found in all other types of abuse i.e. physical, emotional, neglect and self neglect.
- Social workers are not forensic accountants, lawyers, money managers.. but we can assist these experts in the performance of their job...especially
 - Gathering information
 - Providing psycho-socio assessments
 - Developing a comprehensive safety/care plan
 - Coordination of resources/services





What ARE APS TOOLS

- Collaborative relationships
- Creditability/Expertise
- Statutory Authority
- Access to emergency services
- Ability to initiate protective services and placements
- Securing medical/psychological exams
- Restraining orders, WI. vulnerable adult





Issues To Overcome:

- Ease in doing quit claim deed
- Professionals not recognizing signs/red flags, failing to question, not using own ethics of profession to protect interest of client and who is the client??? Attorney, MD, banking officers...
- Need for better training and awareness of adult protective issues for medical and financial professionals
- Lack of uniform, training, protocol, forms statewide or even nationally.



Questions

