

Working Together to Stop Exploitation

An African-American woman born on May 20, 1940, in rural southeastern North Carolina worked and saved all her life. She graduated from college during the height of the Civil Rights Movement after which she secured a job with the United States government in Washington, D.C. While she spent nothing on herself, she amassed a considerable amount of wealth by investing in real estate and assembling a sizeable amount of retirement assets. Many years later, when she began to experience a slight decline in her cognitive abilities, her family hired a well-known caretaker in the small North Carolina community where she was born and had now retired. After only six months with the caretaker, \$7.87 was all that remained of that lifetime of financial savings. Almost two years later, when the case of the caretaker was called for trial, the victim was unable to tell anyone what had happened.

This is a scenario that has become far too common in our line of work. In February of 2019, the Office of Financial Protection for Older Americans with the Consumer Financial Protection Bureau (CFPB) issued a report detailing various trends concerning the financial exploitation of older adults.¹ The first-of-its-kind analysis was based primarily on suspicious activity reports (SARs) filed with the Financial Crimes Enforcement Network from 2013 to 2017. During those years, the number of SARs on record quadrupled to 63,500 in 2017 and involved more than \$6 billion of attempted and actual losses. The CFPB estimates that the number of filings it analyzed represent only a fraction of older adult exploitation nationwide. Among its many findings, the report concluded that when older adults were exploited by someone they knew, the financial losses were far greater. Additionally, if a fiduciary was responsible for the loss, the average amount of money involved was \$83,600 per victim. Perhaps the most alarming statistic was that fewer than one third of the reports prompted the financial institution involved to relay the activity to Adult Protective Services (APS), law enforcement, or other authorities.

The CFPB report sheds light on several issues that we already knew existed. Exploitation of older adults is on the rise and can no longer be ignored or pushed aside for other more “important” cases. Many of you have already started to notice an increase in the number of these cases coming across your desk. As prosecutors, we have a unique responsibility to do all we can to stop the exploitation of our aging population. Luckily, we do not have to take on this daunting task alone. We are fortunate to have many other allied professionals working alongside us toward the common goal of preventing exploitation. Justice for older adults who become victims of financial exploitation can most effectively be obtained through a collaborative approach between prosecutors, law enforcement, and APS professionals. As we continue to learn more about how to strengthen these partnerships in 2020, here is a suggested list of New Year’s resolutions for prosecutors hoping to utilize APS and law enforcement more effectively in cases involving the exploitation of an older adult:

1. **Get (and stay) organized.** A prosecutor cannot begin to tell APS or law enforcement what he or she needs to create stronger exploitation cases unless that prosecutor knows every aspect of the law. Take some time to familiarize yourself with G.S. 14-112.2, the statute that criminalizes the financial exploitation of an older or disabled adult. There are also other specific crimes pertaining to older adults set forth in G.S. 14-32.3 that are important to know. Of course, do not forget that prosecution involving older adults may also fall under a number of more general crimes such as assault, false pretenses, and robbery. If

¹ https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfpb_suspicious-activity-reports-elder-financial-exploitation_report.pdf

you want to speak the same language as your APS partners, it also wouldn't hurt to learn how the APS process works under G.S. 108A as well as review guardianship proceedings under G.S. Chapter 35A. Likewise, there are a handful of cases discussing the application of each of these statutes in practice that make for a good read.

2. **Lose the “wait.”** With every passing moment, the challenge of mounting a successful prosecution in an exploitation case grows at an exponential rate. More often than not, the cognitive abilities of an older victim are in a state of decline, causing significant barriers to the victim's ability to remember pertinent facts. We know that the wheels of justice turn ever so slowly and our cases may not proceed to trial until years after the financial abuse has occurred. To mitigate the damage caused by this unavoidable delay, prosecutors can work with their counterparts in APS to create a safety plan for victims. Safety plans may include checking to make sure the older adult has safely disposed of old financial documents or designating a time and place to take care of ongoing financial responsibilities. In addition to developing a rapport with a trustworthy friend or family member, implementing the safety plan will ensure that your victim is protected from further abuse and removed from areas of stress that may further complicate his or her cognitive abilities.
3. **Save more money.** Don't forget that G.S. 14-112.2(f) contains a special “freeze and seize” provision allowing the district attorney to petition the court for an order freezing the defendant's assets for the purposes of restitution. To obtain such relief, G.S. 14-112.3 requires the prosecutor to establish by clear and convincing evidence that the defendant is about to or intends to divest himself or herself of assets in a manner that would render the defendant insolvent for purposes of restitution. This provision is unlike any other tool we have at our disposal in the world of financial crimes where restitution is almost never paid. Remember that by the time an exploitation case lands in your hands, both law enforcement and APS will likely know much more than you about the financial assets of the defendant. Working together as a team, we can work quickly to preserve these assets in an effort to provide our older victims with as much restitution as possible.
4. **Exercise regularly.** We are beginning to see an increase in the amount of charges alleging the financial exploitation of an older adult. However, we are not seeing a corresponding increase in convictions for these offenses. Granted, this is somewhat understandable given the complexities associated with any case involving an older adult. The concern we must address is whether we are engaging with our counterparts in APS and law enforcement on a consistent basis so that all parties have a clear picture of how the exploitation occurred. An environment where we constantly share ideas and exercise those thoughts will undoubtedly lead to better results. Just as we hope to maintain our New Year's resolutions all year long, we must commit to a long term plan of eliminating the exploitation of older adults. If we can get in the routine of exercising continuous contact with APS and law enforcement, we will begin to see these cases result in more positive dispositions.
5. **Learn something new.** Every exploitation case we handle is an opportunity to learn and improve the way we do our jobs as prosecutors. Do not be afraid to take a novel approach to an older issue that others consider settled. There are only a handful of cases interpreting G.S. 14-112.2, and we are the only persons capable of changing that number.

The easiest way to make sure we achieve all of our New Year's resolutions is to ask for support. Put down this article, open up the lines of communication with your local APS and law

enforcement, and encourage each other to engage in the zealous pursuit of justice for older adults who have been harmed by financial exploitation. I hope you set many new goals as it relates to prosecuting the exploitation of older adults and I wish you the best of luck in achieving them. As always, if you have any questions or would like to discuss a case, do not hesitate to reach out to me or any other member of the Financial Crimes Unit for assistance. Happy New Year!